

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, February 4, 2014
TIME: 2:00 —4:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Bean, Chair; Senator Sobel, Vice Chair; Senators Brandes, Braynon, Flores, Galvano, Garcia, Grimsley, and Joyner

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 520 Richter (Identical H 457)	Public Records/Dental Workforce Surveys; Providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/04/2014 Favorable GO RC	Favorable Yeas 9 Nays 0
2	SB 390 Hays (Similar H 419)	Public Records/Identifying Information of Personnel of Department of Health; Providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/04/2014 Fav/CS GO RC	Fav/CS Yeas 9 Nays 0
Consideration of proposed committee bill:			
3	SPB 7014	OGSR/Department of Health; Amending provisions which make confidential and exempt certain information of a patient or patient's agent, health care practitioner, and others held by the Department of Health; specifying that the Attorney General, health care regulatory boards, and law enforcement agencies may disclose certain confidential and exempt information to certain entities only if such information is relevant to an active investigation that prompted the request for the information, etc.	Submitted as Committee Bill Yeas 7 Nays 2
Consideration of proposed committee bill:			

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Tuesday, February 4, 2014, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7016	Prescription Drug Monitoring; Revising provisions relating to the comprehensive electronic database system and prescription drug monitoring program maintained by the Department of Health; requiring a law enforcement agency to submit a subpoena as a condition of direct access to information in the program; authorizing the department to provide relevant information that does not contain personal identifying information if the program manager determines a specified pattern exists, etc.	Submitted as Committee Bill Yeas 7 Nays 2
5	SB 408 Braynon (Similar H 491)	Needle and Syringe Exchange Pilot Program; Requiring the Department of Health to establish a needle and syringe exchange pilot program in Miami-Dade County; providing for administration of the pilot program by the department or a designee; establishing pilot program criteria; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted, etc. HP 02/04/2014 Fav/CS CJ AHS AP	Fav/CS Yeas 9 Nays 0
Consideration of proposed committee bill:			
6	SPB 7028	Telemedicine; Citing this act as the "Florida Telemedicine Act"; creating licensure and registration requirements; providing health insurer and health plan reimbursement requirements for telemedicine; providing requirements for reimbursement of telemedicine services under the Medicaid program, etc.	Temporarily Postponed
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 520

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: January 27, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 520 creates a public records exemption for personal identifying information provided by dentists or dental hygienists to the Department of Health (DOH) in their responses to dental workforce surveys. The information is designated confidential and exempt, but must be disclosed by the DOH when authorized by the person who is identified or pursuant to court order. The bill allows the DOH to release the information for research purposes subject to specific conditions.

The bill provides for review and repeal of the exemption pursuant to the Open Government Sunset Review Act. The bill also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Workforce Surveys

The DOH currently administers two optional workforce surveys—one for dentists and one for dental hygienists—which may be completed as part of licensure renewal. The DOH first offered

⁴ Section 119.011(12), F.S., defines “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

the survey to dentists in 2009 and 89 percent of all dentists with active licenses responded.¹³ The DOH offered the survey to dental hygienists in 2011 and 87.9 percent responded.¹⁴ The data from both surveys are analyzed by the DOH Public Health Dental Program. The Public Health Dental Program disseminates the workforce reports on dentists and dental hygienists in two primary ways—by posting on the DOH website and through the Oral Health Florida Coalition, which is a broad-based organization of local stakeholders committed to improving oral health in Florida.¹⁵

Unlike dentists and dental hygienists, medical and osteopathic physicians are *required* to respond to a workforce survey as a condition of license renewal.¹⁶ Findings from the survey are used by the Physician Workforce Advisory Council, which provides advice and recommendations to the DOH on issues related to physician workforce planning.¹⁷ All personal identifying information contained in records provided by physicians in response to the survey is confidential and exempt.¹⁸

III. Effect of Proposed Changes:

The bill creates a public records exemption for dental workforce surveys that is, with one exception, identical to the exemption currently in law for physician workforce surveys. The exemption for physician workforce surveys makes disclosure of the information to research entities mandatory when the research entity has complied with the specified conditions. By contrast, SB 520 makes disclosure permissive.¹⁹

Specifically, the bill provides that all personal identifying information contained in records provided by dentists or dental hygienists licensed under ch. 466, F.S., in response to a dental workforce survey and held by the DOH, is confidential and exempt²⁰ from public records requirements. However, the DOH must disclose the information under the following circumstances:

- With the express written consent of the person who is identified or the person's legally authorized representative; or
- By court order upon a showing of good cause.

¹³ Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists* (March 2011) (on file with the Senate Health Policy Committee).

¹⁴ Florida Department of Health, *2013 Bill Analysis, Economic Statement, and Fiscal Note for SB 1066*, on file with the Senate Health Policy Committee.

¹⁵ E-mail from Katherine Kamaya, Florida Department of Health (Jan. 23, 2014) (on file with the Senate Committee on Health Policy). Oral Health Florida, under the facilitation of the Florida Public Health Institute, is working with national, state, and local stakeholders to improve oral health in Florida. The coalition's mission is to increase public understanding of and public support for programs and policies that aim to improve oral health in Florida.

¹⁶ See ss. 458.3191 and 459.0081, F.S.

¹⁷ Section 381.4018, F.S.

¹⁸ See ss. 458.3193 and 459.0083, F.S.

¹⁹ SB 520 is the substance of bills that have either passed, or been considered by, the Senate in each of the following Sessions: 2010, 2011, 2012, and 2013. All prior bills made disclosure of the information to research entities mandatory when the research entity complied with the required conditions for disclosure.

²⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. See *supra* note 6.

In addition, the DOH may disclose the information to a research entity, if the entity:

- Seeks the record or data pursuant to a research protocol approved by the DOH;
- Maintains the records in accordance with the protocol; and
- Enters into a purchase and data-use agreement with DOH. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

The bill authorizes the DOH to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity, which is required by the Florida Constitution.²¹ The statement finds that preserving the confidentiality of the information will result in more candid responses to the surveys, which, in turn, are important to addressing the availability of the dental workforce in Florida.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

²¹ Section 24(c), Art. I of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 520 could create a minimal fiscal impact for the DOH, because staff responsible for complying with public records requests may need training related to the new public records exemption. In addition, the DOH could incur costs associated with redacting the confidential and exempt information prior to releasing a record. These costs; however, can be absorbed by the DOH as part of current operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 466.051.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Richter

23-00421-14

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1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 466.051, F.S.; providing an exemption from public
 4 records requirements for information contained in
 5 dental workforce surveys submitted by dentists or
 6 dental hygienists to the Department of Health;
 7 providing exceptions to the exemption; providing for
 8 future legislative review and repeal of the exemption
 9 under the Open Government Sunset Review Act; providing
 10 a statement of public necessity; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 466.051, Florida Statutes, is created to
 16 read:

17 466.051 Confidentiality of certain information contained in
 18 dental workforce surveys.-

19 (1) Personal identifying information that is contained in a
 20 record provided by a dentist or dental hygienist licensed under
 21 this chapter in response to a dental workforce survey and held
 22 by the Department of Health is confidential and exempt from s.
 23 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 Personal identifying information in such a record:

25 (a) Shall be disclosed with the express written consent of
 26 the individual to whom the information pertains or the
 27 individual's legally authorized representative.

28 (b) Shall be disclosed by court order upon a showing of
 29 good cause.

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30 (c) May be disclosed to a research entity, if the entity
 31 seeks the records or data pursuant to a research protocol
 32 approved by the Department of Health, maintains the records or
 33 data in accordance with the approved protocol, and enters into a
 34 purchase and data-use agreement with the department, the fee
 35 provisions of which are consistent with s. 119.07(4). The
 36 department may deny a request for records or data if the
 37 protocol provides for intrusive follow-back contacts, does not
 38 plan for the destruction of the confidential records after the
 39 research is concluded, is administratively burdensome, or does
 40 not have scientific merit. The agreement must prohibit the
 41 release of information by the research entity which would
 42 identify individuals, limit the use of records or data to the
 43 approved research protocol, and prohibit any other use of the
 44 records or data. Copies of records or data issued pursuant to
 45 this paragraph remain the property of the department.

46 (2) This section is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2019, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that personal identifying information that is
 52 contained in a record provided by a dentist or dental hygienist
 53 licensed under chapter 466, Florida Statutes, who responds to a
 54 dental workforce survey be made confidential and exempt from
 55 disclosure. Candid and honest responses by licensed dentists or
 56 dental hygienists to the workforce survey will ensure that
 57 timely and accurate information is available to the Department
 58 of Health. The Legislature finds that the failure to maintain

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59 the confidentiality of such personal identifying information
60 would prevent the resolution of important state interests to
61 ensure the availability of dentists or dental hygienists in this
62 state.

63 Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

December 19, 2013

The Honorable Aaron Bean, Chair
Committee on Health Policy
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Bean:

Senate Bill 520, Public Records to Dental Workforce Surveys, has been referred to the Committee on Health Policy. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Sandra Stovall, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

COMMITTEES:
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Appropriations Subcommittee on Education
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and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
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JOINT COMMITTEE:
Joint Legislative Budget Commission



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Dental Workforce Survey / Public Records Exemption Bill Number SB 520
 Name Dr. Zack Kalavickal Amendment Barcode _____
 Job Title 28965 Dentist
 Address 28965 WESLEY CHAPEL BOULEVARD Phone 813-991-5100
Wesley CHAPEL, FL 33573 E-mail drzack@wesleychapeldentistry.com
 City State Zip
 Speaking: For Against Information
 Representing Florida Dental Association
 Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 390

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Public Records/Identifying Information of Personnel of Department of Health

DATE: February 4, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 390 creates a public records exemption for certain personal identification and location information of the Department of Health (DOH) personnel, their spouses, and children. The exemption applies to records of personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Public Records Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former agency personnel and their spouses and children.¹³ Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;¹⁴
- Firefighters;¹⁵
- Justices and judges;¹⁶
- Local and statewide prosecuting attorneys;¹⁷
- Magistrates, administrative law judges, and child support hearing officers;¹⁸
- Local government agency and water management district human resources administrators;¹⁹
- Code enforcement officers;²⁰
- Guardians ad litem;²¹
- Specified Department of Juvenile Justice personnel;²²
- Public defenders and criminal conflict and civil regional counsel;²³
- Investigators or inspectors of the Department of Business and Professional Regulation;²⁴ and,
- County tax collectors.²⁵

Although the types of exempt information vary, the following information is exempt²⁶ from public records requirements for all personnel listed above:

- Home addresses and telephone numbers²⁷ of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

¹³ See s. 119.071(4)(d), F.S.

¹⁴ See s. 119.071(4)(d)2.a., F.S.

¹⁵ See s. 119.071(4)(d)2.b., F.S.

¹⁶ See s. 119.071(4)(d)2.c., F.S.

¹⁷ See s. 119.071(4)(d)2.d., F.S.

¹⁸ See s. 119.071(4)(d)2.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

¹⁹ See s. 119.071(4)(d)2.f., F.S.

²⁰ See s. 119.071(4)(d)2.g., F.S.

²¹ See s. 119.071(4)(d)2.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. A guardian ad litem may be a public employee, volunteer, or contract or appointed attorney. See s. 39.820(1), F.S.

²² See s. 119.071(4)(d)2.i., F.S.

²³ See s. 119.071(4)(d)2.j., F.S.

²⁴ See s. 119.071(4)(d)2.k., F.S.

²⁵ See s. 119.071(4)(d)2.l., F.S.

²⁶ See *supra* note 6.

²⁷ The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

If exempt information is held by an agency²⁸ that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.²⁹

Department of Health

Regulation of Professions

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.³⁰ Practitioner regulation is conducted by the Division of Medical Quality (MQA) Assurance and includes the following professions:

- Emergency Medical Technicians and Paramedics (part III of ch. 401, F.S.)
- Acupuncture (ch. 457, F.S.)
- Allopathic Medicine, (ch. 458, F.S.)
- Osteopathic Medicine, (ch. 459, F.S.)
- Chiropractic Medicine, (ch. 460, F.S.)
- Podiatric Medicine (ch. 461, F.S.)
- Naturopathy (ch. 462, F.S.)
- Optometry (ch. 463, F.S.)
- Nursing, including Certified Nursing Assistants (ch. 464, F.S.)
- Pharmacy (ch. 465, F.S.)
- Dentistry (ch. 466, F.S.)
- Midwifery (ch. 467, F.S.)
- Speech-Language Pathology and Audiology (part I of ch. 468, F.S.)
- Nursing Home Administration (part II of ch. 468, F.S.)
- Occupational Therapy (part III of ch. 468, F.S.)
- Radiology (part IV of ch. 468, F.S.)
- Respiratory Therapy (part V of ch. 468, F.S.)
- Dietetics and Nutrition (part X of ch. 468, F.S.)
- Athletic Training (part XIII of ch. 468, F.S.)
- Orthotics, Prosthetics, and Pedorthics (part XIV of ch. 468, F.S.)
- Electrolysis (ch. 478, F.S.)
- Massage Therapy, (ch. 480, F.S.)
- Clinical Laboratory Personnel (part III of ch. 483, F.S.)
- Medical Physicists (part IV of ch. 483, F.S.)
- Opticianry (part I of ch. 484, F.S.)
- Hearing Aid Specialists (part II of ch. 484, F.S.)
- Physical Therapy Practice (ch. 486, F.S.)
- Psychology (ch. 490, F.S.)

²⁸ Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

²⁹ Section 119.071(4)(d)3., F.S.

³⁰ Section 20.43(1)(g), F.S.

- Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (ch. 491, F.S.)

The following facilities are also regulated or inspected by MQA:³¹

- Body Piercing Establishments (s. 381.0075, F.S.)
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.)
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.)
- Dental Laboratories (ch. 466, F.S.)
- Electrology Facilities (ch. 478, F.S.)
- Electrolysis Training Programs (ch. 478, F.S.)
- EMS Education Programs (ch. 401, F.S.)
- EMS Vehicle Permittees (ch. 401, F.S.)
- Environmental Testing Laboratories (s. 403.0625, F.S.)
- Massage Establishments (ch. 480, F.S.)
- Massage Schools (ch. 480, F.S.)
- Nursing Education Programs (ch. 464, F.S.)
- Office Surgery Sites (ch. 458 and ch. 459, F.S.)
- Optical Establishments (part I of ch. 484, F.S.)
- Pain Management Clinics (ch. 458 and ch. 459, F.S.)
- Pharmacies (ch. 465, F.S.)
- Trauma Centers (part II of ch. 395, F.S.)

As part of its enforcement responsibilities, the DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,³² and legally sufficient,³³ and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.³⁴ The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.³⁵

The Consumer Services Unit (CSU) is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for possible

³¹ Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

³² The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See* s. 456.073(1), F.S.

³³ A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See* s. 456.073(1), F.S.

³⁴ Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

³⁵ Section 456.066, F.S.

violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.³⁶

The Investigative Services Unit (ISU) is the investigative arm of MQA. Generally, steps in an investigation include:

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;
- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts health care facility inspections required before beginning practice and on a periodic basis.³⁷

Disability Determinations

The Division of Disability Determinations (DDD) is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It is also responsible for the periodic Continuing Disability Review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.³⁸

Personal Identification and Location Information of DOH Personnel

Currently, the personal identification and location information of current or former employees or contractors³⁹ of the DOH whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and that of their spouses and children, is not exempt from public

³⁶ Fla. Dept. of Health, *Consumer Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Dec. 17, 2013).

³⁷ Fla. Dept. of Health, *Investigative Services Unit Brochure*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/isu-brochure.pdf> (last visited Dec. 13, 2013).

³⁸ E-mail from Rhonda J. Wilson, Director, Division of Disability Determinations, Fla. Dept. of Health, to Bryan Wendel, Fla. Dept. of Health (Feb. 3, 2014) (on file with the Senate Health Policy Committee).

³⁹ Section 456.009(2), F.S., authorizes the DOH to contract with outside counsel and outside personnel for the investigation and prosecution of complaints.

records requirements, unless the information is subject to another exemption, e.g. former law enforcement officers.

III. Effect of Proposed Changes:

The bill expands the current public records exemptions for identification and location information of certain agency personnel to include current and former DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and their spouses and children.⁴⁰ The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of the DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The bill provides that the exemption may be maintained only if the DOH personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

The exemption is subject to an existing general requirement that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the statement indicates that the exemption is needed to protect the covered personnel from potential risk of harm resulting when individuals who are subject to investigation or inspection react negatively to an adverse outcome or decision.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ The personal identifying information of approximately 1,296 current or former DOH personnel and that of their families would be exempt. E-mail from Bryan Wendel, Fla. Dept. of Health, (Feb. 4, 2014) (on file with the Senate Health Policy Committee).

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 390 could create a minimal fiscal impact on agencies, due to training staff on the new public records exemption and additional administrative costs to comply with the new public records exemption.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 4, 2014:

The CS expands the exemption to include personnel of the Department of Health whose duties include, or result in, the adjudication of eligibility for social security disability benefits.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



172522

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
	.	
	.	
	.	

The Committee on Health Policy (Brandes) recommended the following:

Senate Amendment

Delete lines 197 - 252

and insert:

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health



172522

care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.



172522

40 Section 2. The Legislature finds that it is a public
41 necessity that the home addresses, telephone numbers, dates of
42 birth, and photographs of current or former personnel of the
43 Department of Health whose duties include, or result in, the
44 determination or adjudication of eligibility for social security
45 disability benefits, the investigation or prosecution of
46 complaints filed against health care practitioners, or the
47 inspection of health care practitioners or health care
48 facilities licensed by the Department of Health; that the names,
49 home addresses, telephone numbers, dates of birth, and places of
50 employment of the spouses and children of such personnel; and
51 that the names and locations of schools and day care facilities
52 attended by the children of such personnel be made exempt from
53 public record requirements. The Legislature finds that the
54 release of such identifying and location information might place
55 these current or former personnel of the Department of Health
56 and their family members in danger of physical and emotional
57 harm from disgruntled individuals who have contentious reactions
58 to actions carried out by such personnel of the Department of
59 Health, or whose business or professional practices have come
60 under the scrutiny of investigators and inspectors of the
61 Department of Health. The Legislature further finds that the
62 harm that may

By Senator Hays

11-00458-14

2014390__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying
 5 information of specific current and former personnel
 6 of the Department of Health and the spouses and
 7 children of such personnel, under specified
 8 circumstances; providing for future legislative review
 9 and repeal of the exemption under the Open Government
 10 Sunset Review Act; providing a statement of public
 11 necessity; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term “telephone
 21 numbers” includes home telephone numbers, personal cellular
 22 telephone numbers, personal pager telephone numbers, and
 23 telephone numbers associated with personal communications
 24 devices.
 25 2.a.(I) The home addresses, telephone numbers, social
 26 security numbers, dates of birth, and photographs of active or
 27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the

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30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1).
 41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.
 46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.
 50 b. The home addresses, telephone numbers, dates of birth,
 51 and photographs of firefighters certified in compliance with s.
 52 633.408; the home addresses, telephone numbers, photographs,
 53 dates of birth, and places of employment of the spouses and
 54 children of such firefighters; and the names and locations of
 55 schools and day care facilities attended by the children of such
 56 firefighters are exempt from s. 119.07(1).
 57 c. The home addresses, dates of birth, and telephone
 58 numbers of current or former justices of the Supreme Court,

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59 district court of appeal judges, circuit court judges, and
 60 county court judges; the home addresses, telephone numbers,
 61 dates of birth, and places of employment of the spouses and
 62 children of current or former justices and judges; and the names
 63 and locations of schools and day care facilities attended by the
 64 children of current or former justices and judges are exempt
 65 from s. 119.07(1).

66 d. (I) The home addresses, telephone numbers, social
 67 security numbers, dates of birth, and photographs of current or
 68 former state attorneys, assistant state attorneys, statewide
 69 prosecutors, or assistant statewide prosecutors; the home
 70 addresses, telephone numbers, social security numbers,
 71 photographs, dates of birth, and places of employment of the
 72 spouses and children of current or former state attorneys,
 73 assistant state attorneys, statewide prosecutors, or assistant
 74 statewide prosecutors; and the names and locations of schools
 75 and day care facilities attended by the children of current or
 76 former state attorneys, assistant state attorneys, statewide
 77 prosecutors, or assistant statewide prosecutors are exempt from
 78 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

79 (II) The names of the spouses and children of current or
 80 former state attorneys, assistant state attorneys, statewide
 81 prosecutors, or assistant statewide prosecutors are exempt from
 82 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

83 (III) Sub-sub-subparagraph (II) is subject to the Open
 84 Government Sunset Review Act in accordance with s. 119.15, and
 85 shall stand repealed on October 2, 2018, unless reviewed and
 86 saved from repeal through reenactment by the Legislature.

87 e. The home addresses, dates of birth, and telephone

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88 numbers of general magistrates, special magistrates, judges of
 89 compensation claims, administrative law judges of the Division
 90 of Administrative Hearings, and child support enforcement
 91 hearing officers; the home addresses, telephone numbers, dates
 92 of birth, and places of employment of the spouses and children
 93 of general magistrates, special magistrates, judges of
 94 compensation claims, administrative law judges of the Division
 95 of Administrative Hearings, and child support enforcement
 96 hearing officers; and the names and locations of schools and day
 97 care facilities attended by the children of general magistrates,
 98 special magistrates, judges of compensation claims,
 99 administrative law judges of the Division of Administrative
 100 Hearings, and child support enforcement hearing officers are
 101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 102 Constitution if the general magistrate, special magistrate,
 103 judge of compensation claims, administrative law judge of the
 104 Division of Administrative Hearings, or child support hearing
 105 officer provides a written statement that the general
 106 magistrate, special magistrate, judge of compensation claims,
 107 administrative law judge of the Division of Administrative
 108 Hearings, or child support hearing officer has made reasonable
 109 efforts to protect such information from being accessible
 110 through other means available to the public.

111 f. The home addresses, telephone numbers, dates of birth,
 112 and photographs of current or former human resource, labor
 113 relations, or employee relations directors, assistant directors,
 114 managers, or assistant managers of any local government agency
 115 or water management district whose duties include hiring and
 116 firing employees, labor contract negotiation, administration, or

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117 other personnel-related duties; the names, home addresses,
118 telephone numbers, dates of birth, and places of employment of
119 the spouses and children of such personnel; and the names and
120 locations of schools and day care facilities attended by the
121 children of such personnel are exempt from s. 119.07(1) and s.
122 24(a), Art. I of the State Constitution.

123 g. The home addresses, telephone numbers, dates of birth,
124 and photographs of current or former code enforcement officers;
125 the names, home addresses, telephone numbers, dates of birth,
126 and places of employment of the spouses and children of such
127 personnel; and the names and locations of schools and day care
128 facilities attended by the children of such personnel are exempt
129 from s. 119.07(1) and s. 24(a), Art. I of the State
130 Constitution.

131 h. The home addresses, telephone numbers, places of
132 employment, dates of birth, and photographs of current or former
133 guardians ad litem, as defined in s. 39.820; the names, home
134 addresses, telephone numbers, dates of birth, and places of
135 employment of the spouses and children of such persons; and the
136 names and locations of schools and day care facilities attended
137 by the children of such persons are exempt from s. 119.07(1) and
138 s. 24(a), Art. I of the State Constitution, if the guardian ad
139 litem provides a written statement that the guardian ad litem
140 has made reasonable efforts to protect such information from
141 being accessible through other means available to the public.

142 i. The home addresses, telephone numbers, dates of birth,
143 and photographs of current or former juvenile probation
144 officers, juvenile probation supervisors, detention
145 superintendents, assistant detention superintendents, juvenile

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146 justice detention officers I and II, juvenile justice detention
147 officer supervisors, juvenile justice residential officers,
148 juvenile justice residential officer supervisors I and II,
149 juvenile justice counselors, juvenile justice counselor
150 supervisors, human services counselor administrators, senior
151 human services counselor administrators, rehabilitation
152 therapists, and social services counselors of the Department of
153 Juvenile Justice; the names, home addresses, telephone numbers,
154 dates of birth, and places of employment of spouses and children
155 of such personnel; and the names and locations of schools and
156 day care facilities attended by the children of such personnel
157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
158 Constitution.

159 j. The home addresses, telephone numbers, dates of birth,
160 and photographs of current or former public defenders, assistant
161 public defenders, criminal conflict and civil regional counsel,
162 and assistant criminal conflict and civil regional counsel; the
163 home addresses, telephone numbers, dates of birth, and places of
164 employment of the spouses and children of such defenders or
165 counsel; and the names and locations of schools and day care
166 facilities attended by the children of such defenders or counsel
167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
168 Constitution.

169 k. The home addresses, telephone numbers, and photographs
170 of current or former investigators or inspectors of the
171 Department of Business and Professional Regulation; the names,
172 home addresses, telephone numbers, and places of employment of
173 the spouses and children of such current or former investigators
174 and inspectors; and the names and locations of schools and day

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175 care facilities attended by the children of such current or
 176 former investigators and inspectors are exempt from s. 119.07(1)
 177 and s. 24(a), Art. I of the State Constitution if the
 178 investigator or inspector has made reasonable efforts to protect
 179 such information from being accessible through other means
 180 available to the public. This sub-subparagraph is subject to the
 181 Open Government Sunset Review Act in accordance with s. 119.15
 182 and shall stand repealed on October 2, 2017, unless reviewed and
 183 saved from repeal through reenactment by the Legislature.

184 1. The home addresses and telephone numbers of county tax
 185 collectors; the names, home addresses, telephone numbers, and
 186 places of employment of the spouses and children of such tax
 187 collectors; and the names and locations of schools and day care
 188 facilities attended by the children of such tax collectors are
 189 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 190 Constitution if the county tax collector has made reasonable
 191 efforts to protect such information from being accessible
 192 through other means available to the public. This sub-
 193 subparagraph is subject to the Open Government Sunset Review Act
 194 in accordance with s. 119.15 and shall stand repealed on October
 195 2, 2017, unless reviewed and saved from repeal through
 196 reenactment by the Legislature.

197 m. The home addresses, telephone numbers, dates of birth,
 198 and photographs of current or former personnel of the Department
 199 of Health whose duties include the investigation or prosecution
 200 of complaints filed against health care practitioners or the
 201 inspection of practitioners or facilities licensed by the
 202 Department of Health; the names, home addresses, telephone
 203 numbers, dates of birth, and places of employment of the spouses

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204 and children of such personnel; and the names and locations of
 205 schools and day care facilities attended by the children of such
 206 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 207 the State Constitution if the personnel have made reasonable
 208 efforts to protect such information from being accessible
 209 through other means available to the public. This sub-
 210 subparagraph is subject to the Open Government Sunset Review Act
 211 in accordance with s. 119.15 and shall stand repealed on October
 212 2, 2019, unless reviewed and saved from repeal through
 213 reenactment by the Legislature.

214 3. An agency that is the custodian of the information
 215 specified in subparagraph 2. and that is not the employer of the
 216 officer, employee, justice, judge, or other person specified in
 217 subparagraph 2. shall maintain the exempt status of that
 218 information only if the officer, employee, justice, judge, other
 219 person, or employing agency of the designated employee submits a
 220 written request for maintenance of the exemption to the
 221 custodial agency.

222 4. The exemptions in this paragraph apply to information
 223 held by an agency before, on, or after the effective date of the
 224 exemption.

225 5. Except as otherwise expressly provided in this
 226 paragraph, this paragraph is subject to the Open Government
 227 Sunset Review Act in accordance with s. 119.15, and shall stand
 228 repealed on October 2, 2017, unless reviewed and saved from
 229 repeal through reenactment by the Legislature.

230 Section 2. The Legislature finds that it is a public
 231 necessity that the home addresses, telephone numbers, dates of
 232 birth, and photographs of current or former personnel of the

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233 Department of Health whose duties include the investigation or
234 prosecution of complaints filed against health care
235 practitioners or the inspection of practitioners or facilities
236 licensed by the Department of Health; that the names, home
237 addresses, telephone numbers, dates of birth, and places of
238 employment of the spouses and children of such personnel; and
239 that the names and locations of schools and day care facilities
240 attended by the children of such personnel be made exempt from
241 public record requirements. The Legislature finds that the
242 release of such identifying and location information might place
243 current or former personnel of the Department of Health whose
244 duties include the investigation or prosecution of complaints
245 filed against health care practitioners or the inspection of
246 practitioners or facilities licensed by the Department of Health
247 and their family members in danger of physical and emotional
248 harm from disgruntled individuals who have contentious reactions
249 to actions carried out by personnel of the Department of Health,
250 or whose business or professional practices have come under the
251 scrutiny of investigators and inspectors of the Department of
252 Health. The Legislature further finds that the harm that may
253 result from the release of such personal identifying and
254 location information outweighs any public benefit that may be
255 derived from the disclosure of the information.

256 Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, Chair
Children, Families, and Elder Affairs, Vice Chair
Governmental Oversight and Accountability, Vice Chair
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, Co-Chair
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Aaron Bean, Chair
Health Policy Committee
CC: Sandra Stovall, Staff Director
Celia Georgiades, Committee Administrative Assistant
From: Senator D. Alan Hays
Request to agenda SB 390 – Public Records/Identifying Information of
Subject: Personnel of Department of Health
Date: December 9, 2013

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6746
- 685 West Monroe Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: 2-4-14
Topic: Public Records
Name: Paul Rusk
Job Title: Analyst
Address: 2585 Bald Cypress Way, Tallahassee, FL 32399
Bill Number: 390
Amendment Barcode:
Phone: 850-245-4006
E-mail: paul.rusk@flhealth.gov
Speaking: [X] For [] Against [] Information
Representing: Department of Health
Appearing at request of Chair: [] Yes [X] No
Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SPB 7014

INTRODUCER: For consideration by the Health Policy Committee

SUBJECT: OGSR/Department of Health

DATE: January 10, 2014

REVISED: 02/5/14

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Stovall		HP Submitted as Committee Bill

I. Summary:

SPB 7014 amends section 893.0551 of the Florida Statutes relating to the public records exemption for the prescription drug monitoring program (PDMP).

The proposed bill strengthens the security of personal identifying information in the database by:

- Requiring law enforcement agencies to obtain a court order prior to receiving confidential information from the PDMP,
- Requiring recipients of PDMP confidential information to take steps to ensure the continued confidentiality of the information received, and
- Restricting the information the Department of Health (DOH or department) sends to a law enforcement agency when the DOH determines a pattern exists that is consistent with indicators of controlled substance abuse to non-identifying information.

The proposed bill also allows health care practitioners to share a patient's PDMP information with that patient and, upon the patient's written consent, put that information in the patient's medical record.

The proposed bill saves the exemption from the public records law for the personal identifying information in the PDMP from repeal on October 2, 2014.

II. Present Situation:

Florida's Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.¹ Dispensers of certain controlled substances must report specified

¹ S. 893.055(2)(a), F.S.

information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.²

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.³ Dispensers have reported over 87 million controlled substance prescriptions to the PDMP since its inception.⁴ Health care practitioners began accessing the PDMP on October 17, 2011.⁵ Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.⁶

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information⁷ of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁸

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.⁹ Currently, prescribers are not required to consult the PDMP database prior to prescribing a controlled substance for a patient however physicians and pharmacists queried the database more than 3.7 million times during fiscal year 2012-2013.¹⁰

Indirect access to the PDMP database is provided to:

- The DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations¹¹ involving potential criminal activity, fraud, or theft regarding prescribed controlled substances; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.¹²

² S. 893.055(3)(a)-(c), F.S.

³ 2012-2013 PDMP Annual Report, available at <http://www.floridahealth.gov/reports-and-data/e-force/news-reports/documents/2012-2013pdmp-annual-report.pdf>, last visited on Jan. 9, 2014.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

⁸ S. 893.0551(2)(a)-(h), F.S.

⁹ S. 893.055(7)(b), F.S.

¹⁰ Supra at n. 3

¹¹ S. 893.055(1)(h), F.S., defines an "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

¹² S. 893.055(7)(c)1.-4., F.S.

Law enforcement agencies may receive information from the PDMP database through the procedures outlined in the DOH's "Training Guide for Law Enforcement and Investigative Agencies."¹³ Agencies that wish to gain access to the PDMP database must first appoint a sworn law enforcement officer as an administrator who verifies and credentials other law enforcement officers' within the same agency.¹⁴ The administrator may then register individual law enforcement officers with the DOH.

Registered law enforcement officers may not directly access the PDMP, instead when they wish to obtain information from the PDMP database, they must submit a query to the DOH.¹⁵ These queries may be for a patient's history, a prescriber's history, or a pharmacy's dispensing history.¹⁶ The registered law enforcement officer must fill out a form indicating what type of search they want to perform, what parameters (name, date, time period, etc.) they want to include, and some details of the active investigation they are pursuing including a case number. This form is submitted to the DOH and, in most instances, the requested information is made available to the requesting officer. In some cases a request is denied. Generally, a request is denied due to lack of sufficient identifying information (incorrect spelling of a name, wrong social security number, etc.) or, alternatively, a request may return no results. The DOH may also deny a request that it finds not to be authentic or authorized.¹⁷

Prescription Drug Monitoring Programs in Other States

As of December 2013, every state except Missouri has passed PDMP legislation and only New Hampshire and Washington D.C. have yet to bring their PDMP to operation status.¹⁸ The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.¹⁹ All PDMPs examined are either run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the PDMP and primarily encourage prescribers to use the database through education and outreach programs.²⁰ Only three of the 26 states require prescribers to access the database prior to prescribing most or all controlled substances.²¹ In 17 of

¹³ This training guide may be found at http://www.hidinc.com/assets/files/flpdms/FL%20PDMP_Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf, last viewed on Jan. 9, 2014.

¹⁴ See the DOH's "Law enforcement administrator appointment form," available at <http://www.floridahealth.gov/reports-and-data/e-forcse/law-enforcement-information/documents/admin-appoint-form.pdf>, last visited on Jan. 9, 2014.

¹⁵ During FY 2012-2013 a total of 487 authorized law enforcement users queried the PDMP database 32,839 times. Id. at note 3.

¹⁶ Id. at note 11.

¹⁷ S. 893.055(7)(c), F.S., requires the DOH to verify a request as being "authentic and authorized" before releasing information from the PDMP.

¹⁸ National Alliance for Model State Drug Laws. *Compilation of State Prescription Monitoring Programs Maps*, can be found at <http://www.namsdl.org/library/6D4C4D9F-65BE-F4BB-A428B392538E0663/>, last visited on Jan. 10, 2014.

¹⁹ *OPPAGA Review of State Prescription Drug Monitoring Programs*, Jan. 31, 2013, on file with the Senate Health Policy Committee.

²⁰ Id., p. 8

²¹ Kentucky, New Mexico, and New York. Id., p. 4

23 states, including Florida, accessing the database is strictly voluntary and in the remaining six states accessing the database is only required under limited circumstances.²²

All states reviewed have the authority to take punitive action against dispensers of prescription drugs that do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, and / or criminal charges, however, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

As of December 5, 2013, 18 states require law enforcement to obtain a search warrant, subpoena, court order, or other type of judicial process in order to access the information in their state's PDMP.²³

Unauthorized Release of PDMP Data

In the early summer of 2013, the PDMP information of approximately 3,300 individuals was improperly shared with a person or persons who were not authorized to obtain such information.²⁴ The original information was released from the PDMP by the DOH during a Drug Enforcement Administration (DEA) investigation of a ring of individuals who used four doctor's information to conduct prescription fraud. Although as a result of the investigation only six individuals were ultimately charged, the information of approximately 3,300 individuals was released to the DEA because the DEA searched the PDMP for the records of all the patients of the four doctors who had been the victims of the prescription drug fraud.²⁵ During the conduct of the investigation and the resulting prosecution, the DEA shared the full file with the prosecutor who, in turn, shared the full file with the defense attorney during discovery. The improper release of information occurred when a defense attorney associated with the case shared the file with a colleague who was not associated with the case.²⁶

Reasonable Suspicion v. Probable Cause

The terms reasonable suspicion and probable cause are legal terms of art that refer to the level of proof which must be proffered before a certain action, generally a police action, may be taken. Reasonable suspicion is the lesser standard which is applied to actions such as Terry stops²⁷ and to searches in areas where there is a lesser expectation of privacy, such as in a school.²⁸ Probable

²² These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if there is a reasonable suspicion that the patient is abusing drugs, or if the prescription was written in a pain clinic. Id.

²³ These states are: Alaska, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, and Wisconsin. See the National Alliance for Model State Drug Laws, *Law Enforcement Access to State PMP Data*, available at <http://www.namsdl.org/library/C4AA9EA3-65BE-F4BB-AAFBAB1F5736F070/>, last visited on Jan 10, 2014.

²⁴ See John Woodrow Cox, *Did Florida's prescription pill database really spring a leak?*, Tampa Bay Times, July 5, 2013. Available at <http://www.tampabay.com/news/politics/did-floridas-prescription-pill-database-really-spring-a-leak/2130108>, Last visited on Jan. 9, 2014, and see the DOH presentation to the Senate Health Policy Committee on the PDMP, Sep. 24, 2013, on file with Health Policy Committee staff.

²⁵ Id.

²⁶ Id.

²⁷ *Terry v. Ohio*, 392 U.S. 1

²⁸ See *R.M. v. State*, 2014 WL 20628

cause is the greater of the two standards and is the one the police must meet when arresting a suspect.²⁹

In order to meet the standard for reasonable suspicion, a police officer must be able to show a “well-founded, articulable suspicion of criminal activity.”³⁰ In contrast, in order to meet the standard for probable cause, an officer must be able to show that the “facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed.”³¹ The key difference between the standards lies in the knowledge of the officer. With reasonable suspicion, the officer must only suspect that a crime has been committed, while with probable cause, the officer must have enough evidence to convince a “prudent man” that a crime has been committed.

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.³² One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.³³ Article I, s. 24 of the State Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³⁴ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

²⁹ *Popple v. State*, 626 So. 2d 185, p. 3

³⁰ *Id.*

³¹ *Henry v. U.S.*, 31 U.S. 98, p. 102

³² Section 1390, 1391 Florida Statutes. (Rev. 1892).

³³ Article I, s. 24 of the State Constitution.

³⁴ Chapter 119, F.S.

Unless specifically exempted, all agency³⁵ records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.³⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.³⁷ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.³⁸

Only the Legislature is authorized to create exemptions to open government requirements.³⁹ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁴⁰ A bill enacting an exemption⁴¹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁴²

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁴³ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁴⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act)⁴⁵ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law.

³⁵ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

³⁶ S. 119.011(12), F.S.

³⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³⁸ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

³⁹ Article I, s. 24(c) of the State Constitution.

⁴⁰ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁴¹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁴² Article I, s. 24(c) of the State Constitution.

⁴³ Attorney General Opinion 85-62.

⁴⁴ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁴⁵ S. 119.15, F.S.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁴⁶

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.⁴⁷ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

⁴⁶ S. 119.15(6)(b), F.S.

⁴⁷ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

Senate Review of s. 893.0551, F.S.

In the course of conducting the Open Government Sunset Review of s. 893.0551, F.S., Senate Health Policy Committee staff invited input from various stake holders. Staff met with representatives from various agencies and groups including the DOH, the Florida Department of Law Enforcement, the DEA, Florida Sheriffs Association, Florida Police Chiefs Association, the Attorney General's office, and various advocacy groups representing pharmacists and pain management physicians. Staff also observed several meetings held by the DOH on proposed rule amendments for the PDMP.

III. Effect of Proposed Changes:

The proposed bill saves the public records exemption for personal identifying information in the PDMP from repeal and enhances the security pertaining to information that is released from the PDMP. Specifically the proposed bill:

- Requires a law enforcement agency to obtain a court order from a court of competent jurisdiction showing a finding of reasonable suspicion of potential criminal activity, fraud, or theft regarding prescribed controlled substances before information within the PDMP database may be released to that agency. A court order must be issued by a judge.
- Requires the Attorney General, the DOH's regulatory boards, and law enforcement agencies to maintain the confidentiality of any PDMP information that they disclose to a criminal justice or law enforcement agency. To maintain the confidentiality of the information those entities must, at a minimum, redact or delete any information which is not relevant to their investigation.
- Allows a health care practitioner to share a patient's PDMP information with that patient or the patient's legal representative and, upon the patient's or patient's legal representative's written consent, include that information in the patient's medical record. Information placed in a patient's medical record may be disclosed subject to the requirements of s. 456.057, F.S.
- Allows the DOH to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists.
- Clarifies that any agency or person who obtains confidential and exempt information from the PDMP may not share that information unless specifically authorized to do so by this section of law.
- Strikes the Open Government Sunset Review language that automatically repeals this section of law on October 2, 2014.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies may incur a cost associated with obtaining a court order prior to accessing information in the PDMP. The Attorney General's office, the DOH's regulatory boards, and law enforcement agencies may incur minor costs associated with redacting or deleting non-relevant PDMP information before sharing such information with a criminal justice agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.0551 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2014	.	
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The Committee on Health Policy (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 119 - 165

and insert:

substances and that has obtained a court order issued by a court of competent jurisdiction upon a showing of reasonable suspicion of potential criminal activity, fraud, or theft regarding prescribed controlled substances. The law enforcement agency may disclose to a criminal justice agency as defined in s. 119.011 only ~~the~~ confidential and exempt information received from the



11 ~~department which is relevant to a criminal justice agency as~~
12 ~~defined in s. 119.011 as part of an active investigation that~~
13 ~~prompted the request for the information that is specific to a~~
14 ~~violation of prescription drug abuse or prescription drug~~
15 ~~diversion law as it relates to controlled substances. Before~~
16 ~~disclosing any information to a criminal justice agency, a law~~
17 ~~enforcement agency must take steps to ensure the continued~~
18 ~~confidentiality of all confidential and exempt information. At a~~
19 ~~minimum, these steps must include redacting or deleting all~~
20 ~~nonrelevant information.~~ A law enforcement agency may request
21 information from the department but may not have direct access
22 to its database.

(d) A health care practitioner who certifies that the
24 information is necessary to provide medical treatment to a
25 current patient in accordance with ss. 893.05 and 893.055. A
26 health care practitioner who receives a current patient's
27 confidential and exempt information under this subsection may
28 disclose such information to the patient or the patient's legal
29 representative. Upon the patient's or the legal representative's
30 written consent, the health care practitioner may place such
31 information in the patient's medical record, including
32 electronic medical records, and may disclose such information
33 subject to the requirements of s. 456.057.

(e) A pharmacist who certifies that the requested
35 information will be used to dispense controlled substances to a
36 current patient in accordance with ss. 893.04 and 893.055.

(f) A patient or the legal guardian or designated health
38 care surrogate for an incapacitated patient, if applicable,
39 making a request as provided in s. 893.055(7)(c)4.



40 (g) The patient's pharmacy, prescriber, or dispenser who
41 certifies that the information is necessary to provide medical
42 treatment to his or her current patient in accordance with s.
43 893.055.

44 (4) If the department determines that there exists a
45 pattern of controlled substance abuse consistent with department
46 rules for identifying indicators of abuse, the department may
47 shall disclose relevant such confidential and exempt information
48 that does not include personal identifying information to the
49 applicable law enforcement agency in accordance with s.
50 893.055(7)(f). The law enforcement agency may use such
51 information to support a court order pursuant to paragraph
52 (3)(c)

53
54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete lines 18 - 29

57 and insert:

58 to obtain a court order before such agency may receive
59 information from the prescription drug monitoring
60 database; authorizing a health care practitioner to
61 share a patient's information with that patient and
62 put such information in the patient's medical record
63 upon consent; authorizing the department to disclose,
64 under certain circumstances, relevant information that
65 does not include personal identifying information to a
66 law enforcement agency, rather than requiring the
67 department to disclose confidential and exempt
68 information; authorizing a law enforcement agency to



69 use specified information to support a court order,



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2014	.	
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The Committee on Health Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 158 - 165

and insert:

(4) If the department determines that there exists a pattern of controlled substance abuse consistent with department rules for identifying indicators of such abuse, the department may provide: shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055(7)(f)

(a) A patient advisory report to an appropriate health care



12 practitioner; and
 13 (b) Relevant information that does not contain personal
 14 identifying information to the applicable law enforcement
 15 agency. A law enforcement agency may use such information to
 16 support a subpoena pursuant to paragraph (3)(c).~~The law~~
 17 enforcement agency may

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 24

and insert:

under certain circumstances, a patient advisory report
to a health care practitioner and relevant information
that



266816

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2014	.	
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	.	

The Committee on Health Policy (Bean) recommended the following:

- 1 **Senate Amendment to Amendment (954834)**
- 2
- 3 Delete line 16
- 4 and insert:
- 5 support a court order pursuant to paragraph (3) (c). ~~The law~~

FOR CONSIDERATION By the Committee on Health Policy

588-00914-14

20147014__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunshine Review Act; amending s. 893.0551, F.S., which
 4 makes confidential and exempt certain information of a
 5 patient or patient's agent, health care practitioner,
 6 and others held by the Department of Health;
 7 specifying that the Attorney General, health care
 8 regulatory boards, and law enforcement agencies may
 9 disclose certain confidential and exempt information
 10 to certain entities only if such information is
 11 relevant to an active investigation that prompted the
 12 request for the information; requiring the Attorney
 13 General, health care regulatory boards, and law
 14 enforcement agencies to take certain steps to ensure
 15 the continued confidentiality of all nonrelevant
 16 confidential and exempt information before disclosing
 17 such information; requiring a law enforcement agency
 18 to obtain a subpoena before such agency may receive
 19 information from the prescription drug monitoring
 20 database; authorizing a health care practitioner to
 21 share a patient's information with that patient and
 22 put such information in the patient's medical record
 23 upon consent; authorizing the department to disclose,
 24 under certain circumstances, relevant information that
 25 does not include personal identifying information to a
 26 law enforcement agency, rather than requiring the
 27 department to disclose confidential and exempt
 28 information; authorizing a law enforcement agency to
 29 use specified information to support a subpoena,

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-00914-14

20147014__

30 rather than to disclose confidential and exempt
 31 information to a criminal justice agency; prohibiting
 32 an agency or person who obtains specified confidential
 33 and exempt information from disclosing such
 34 information except under certain circumstances; saving
 35 the exemption from repeal under the Open Government
 36 Sunset Review Act; providing an effective date.
 37
 38 Be It Enacted by the Legislature of the State of Florida:
 39
 40 Section 1. Section 893.0551, Florida Statutes, is amended
 41 to read:
 42 893.0551 Public records exemption for the prescription drug
 43 monitoring program.—
 44 (1) As used in ~~For purposes of~~ this section, the term:
 45 (a) "Active investigation" has the same meaning as provided
 46 in s. 893.055.
 47 (b) "Dispenser" has the same meaning as provided in s.
 48 893.055.
 49 (c) "Health care practitioner" or "practitioner" has the
 50 same meaning as provided in s. 893.055.
 51 (d) "Health care regulatory board" has the same meaning as
 52 provided in s. 893.055.
 53 (e) "Law enforcement agency" has the same meaning as
 54 provided in s. 893.055.
 55 (f) "Pharmacist" means a ~~any~~ person licensed under chapter
 56 465 to practice the profession of pharmacy.
 57 (g) "Pharmacy" has the same meaning as provided in s.
 58 893.055.

Page 2 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-00914-14

20147014__

59 (h) "Prescriber" has the same meaning as provided in s.
60 893.055.

61 (2) The following information of a patient or patient's
62 agent, a health care practitioner, a dispenser, an employee of
63 the practitioner who is acting on behalf of and at the direction
64 of the practitioner, a pharmacist, or a pharmacy which that is
65 contained in records held by the department under s. 893.055 is
66 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
67 of the State Constitution:

- 68 (a) Name.
- 69 (b) Address.
- 70 (c) Telephone number.
- 71 (d) Insurance plan number.
- 72 (e) Government-issued identification number.
- 73 (f) Provider number.
- 74 (g) Drug Enforcement Administration number.
- 75 (h) Any other unique identifying information or number.

76 (3) The department shall disclose such confidential and
77 exempt information to the following persons or entities after
78 using a verification process to ensure the legitimacy of that
79 person's or entity's request for the information:

- 80 (a) The Attorney General and his or her designee when
81 working on Medicaid fraud cases involving prescription drugs or
82 when the Attorney General has initiated a review of specific
83 identifiers of Medicaid fraud regarding prescription drugs. The
84 Attorney General or his or her designee may disclose to a
85 criminal justice agency as defined in s. 119.011 only the
86 confidential and exempt information received from the department
87 which is relevant to a criminal justice agency as defined in s.

Page 3 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

588-00914-14

20147014__

88 ~~119.011 as part of an active investigation that prompted the~~
89 ~~request for the information that is specific to a violation of~~
90 ~~prescription drug abuse or prescription drug diversion law as it~~
91 ~~relates to controlled substances. Before disclosing any~~
92 information to a criminal justice agency, the Attorney General
93 or his or her designee must take steps to ensure the continued
94 confidentiality of all confidential and exempt information. At a
95 minimum, these steps must include redacting or deleting all
96 nonrelevant information. The Attorney General's Medicaid fraud
97 investigators may not have direct access to the department's
98 database.

99 (b) The department's relevant health care regulatory boards
100 responsible for the licensure, regulation, or discipline of a
101 practitioner, pharmacist, or other person who is authorized to
102 prescribe, administer, or dispense controlled substances and who
103 is involved in a specific controlled substances investigation
104 for prescription drugs involving a designated person. The health
105 care regulatory boards may request information from the
106 department but may not have direct access to its database. The
107 health care regulatory boards may provide ~~such information~~ to a
108 law enforcement agency pursuant to ss. 456.066 and 456.073 only
109 information that is relevant to the specific controlled
110 substances investigation that prompted the request for the
111 information. Before disclosing any information to a law
112 enforcement agency, a healthcare regulatory board must take
113 steps to ensure the continued confidentiality of all
114 confidential and exempt information. At a minimum, these steps
115 must include redacting or deleting all nonrelevant information.

- 116 (c) A law enforcement agency that has initiated an active

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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117 investigation involving a specific violation of law regarding
 118 prescription drug abuse or diversion of prescribed controlled
 119 substances and that has obtained a subpoena issued by a court of
 120 competent jurisdiction upon a showing of reasonable suspicion of
 121 potential criminal activity, fraud, or theft regarding
 122 prescribed controlled substances. The law enforcement agency may
 123 disclose to a criminal justice agency as defined in s. 119.011
 124 only the confidential and exempt information received from the
 125 department which is relevant to a criminal justice agency as
 126 defined in s. 119.011 as part of an active investigation that
 127 prompted the request for the information that is specific to a
 128 violation of prescription drug abuse or prescription drug
 129 diversion law as it relates to controlled substances. Before
 130 disclosing any information to a criminal justice agency, a law
 131 enforcement agency must take steps to ensure the continued
 132 confidentiality of all confidential and exempt information. At a
 133 minimum, these steps must include redacting or deleting all
 134 nonrelevant information. A law enforcement agency may request
 135 information from the department but may not have direct access
 136 to its database.

137 (d) A health care practitioner who certifies that the
 138 information is necessary to provide medical treatment to a
 139 current patient in accordance with ss. 893.05 and 893.055. A
 140 health care practitioner who receives a current patient's
 141 confidential and exempt information under this subsection may
 142 disclose such information to the patient or the patient's legal
 143 representative. Upon the patient's or the legal representative's
 144 written consent, the health care practitioner may place such
 145 information in the patient's medical record, including

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146 electronic medical records, and may disclose such information
 147 subject to the requirements of s. 456.057.

148 (e) A pharmacist who certifies that the requested
 149 information will be used to dispense controlled substances to a
 150 current patient in accordance with ss. 893.04 and 893.055.

151 (f) A patient or the legal guardian or designated health
 152 care surrogate for an incapacitated patient, if applicable,
 153 making a request as provided in s. 893.055(7)(c)4.

154 (g) The patient's pharmacy, prescriber, or dispenser who
 155 certifies that the information is necessary to provide medical
 156 treatment to his or her current patient in accordance with s.
 157 893.055.

158 (4) If the department determines that there exists a
 159 pattern of controlled substance abuse consistent with department
 160 rules for identifying indicators of abuse, the department may
 161 shall disclose relevant such confidential and exempt information
 162 that does not include personal identifying information to the
 163 applicable law enforcement agency in accordance with s.
 164 893.055(7)(f). The law enforcement agency may use such
 165 information to support a subpoena pursuant to paragraph (3)(c)
 166 disclose the confidential and exempt information received from
 167 the department to a criminal justice agency as defined in s.
 168 119.011 as part of an active investigation that is specific to a
 169 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.
 170 893.13(8)(b).

171 (5) An Any agency or person who obtains any such
 172 confidential and exempt information specified in pursuant to
 173 this section must maintain the confidential and exempt status of
 174 that information and may not disclose such information unless

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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175 authorized under this section.

176 (6) A Any person who willfully and knowingly violates this
177 section commits a felony of the third degree, punishable as
178 provided in s. 775.082, s. 775.083, or s. 775.084.

179 ~~(7) This section is subject to the Open Government Sunset~~
180 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
181 ~~on October 2, 2014, unless reviewed and saved from repeal~~
182 ~~through reenactment by the Legislature.~~

183 Section 2. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SPB 7016

INTRODUCER: For consideration by the Health Policy Committee

SUBJECT: Prescription Drug Monitoring

DATE: January 10, 2014

REVISED: 2/5/14

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Looke</u>	<u>Stovall</u>		HP Submitted as Committee Bill

I. Summary:

SPB 7016 amends section 893.055 of the Florida Statutes relating to the prescription drug monitoring program to improve clarity by reorganizing text, rephrasing imprecise language, and deleting outdated or redundant language.

The bill also makes several substantive changes to:

- Require a law enforcement agency to obtain a court order showing a finding of reasonable suspicion of potential criminal activity, fraud, or theft regarding prescribed controlled substances before information within the prescription drug monitoring program (PDMP) database may be released to that agency;
- Allow the Department of Health (DOH or department) to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists;
- Define the term “dispense” or “dispensing” using existing language in the statute and in the definitions section of ch. 893, F.S.;
- Fund, subject to the General Appropriations Act, the PDMP with up to \$500,000 annually from excess collections related to the practice of pharmacy; and,
- Eliminate the PDMP direct support organization.

II. Present Situation:

Florida’s Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.¹ Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription

¹ S. 893.055(2)(a), F.S.

was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.²

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.³ Dispensers have reported over 87 million controlled substance prescriptions to the PDMP since its inception.⁴ Health care practitioners began accessing the PDMP on October 17, 2011.⁵ Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.⁶

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information⁷ of patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁸

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.⁹ Currently, prescribers are not required to consult the PDMP database prior to prescribing a controlled substance for a patient however physicians and pharmacists queried the database more than 3.7 million times during fiscal year 2012-2013.¹⁰

Indirect access to the PDMP database is provided to:

- The DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations¹¹ involving potential criminal activity, fraud, or theft regarding prescribed controlled substances; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.¹²

² S. 893.055(3)(a)-(c), F.S.

³ 2012-2013 PDMP Annual Report, available at <http://www.floridahealth.gov/reports-and-data/e-force/news-reports/documents/2012-2013pdmp-annual-report.pdf>, last visited on Jan. 9, 2014.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

⁸ S. 893.0551(2)(a)-(h), F.S.

⁹ S. 893.055(7)(b), F.S.

¹⁰ Supra at n. 3

¹¹ S. 893.055(1)(h), F.S., defines an "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

¹² S. 893.055(7)(c)1.-4., F.S.

Law enforcement agencies may receive information from the PDMP database through the procedures outlined in the DOH's "Training Guide for Law Enforcement and Investigative Agencies."¹³ Agencies that wish to gain access to the PDMP database must first appoint a sworn law enforcement officer as an administrator who verifies and credentials other law enforcement officers' within the same agency.¹⁴ The administrator may then register individual law enforcement officers with the DOH.

Registered law enforcement officers may not directly access the PDMP, instead when they wish to obtain information from the PDMP database, they must submit a query to the DOH.¹⁵ These queries may be for a patient's history, a prescriber's history, or a pharmacy's dispensing history.¹⁶ The registered law enforcement officer must fill out a form indicating what type of search they want to perform, what parameters (name, date, time period, etc.) they want to include, and some details of the active investigation they are pursuing including a case number. This form is submitted to the DOH and, in most instances, the requested information is made available to the requesting officer. In some cases a request is denied. Generally, a request is denied due to lack of sufficient identifying information (incorrect spelling of a name, wrong social security number, etc.) or, alternatively, a request may return no results. The DOH may also deny a request that it finds not to be authentic or authorized.¹⁷

Funding the PDMP

Restrictions on how the DOH may fund implementation and operation of the PDMP are also included in statute. The DOH is prohibited from using state funds and any money received directly or indirectly from prescription drug manufacturers to implement the PDMP.¹⁸ Funding for the PDMP comes from three funding sources:¹⁹

- Donations procured by the Florida PDMP Foundation, Inc.;
- Federal grants; and
- Private grants and donations.

The Legislature appropriated \$500,000 of the DOH's general revenue funds during the 2013 session to fund the PDMP for fiscal year 2013-2014.²⁰

¹³ This training guide may be found at

http://www.hidinc.com/assets/files/flpdms/FL%20PDMP_Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf, last viewed on Jan. 9, 2014.

¹⁴ See the DOH's "Law enforcement administrator appointment form," available at <http://www.floridahealth.gov/reports-and-data/e-forcse/law-enforcement-information/documents/admin-appoint-form.pdf>, last visited on Jan. 9, 2014.

¹⁵ During FY 2012-2013 a total of 487 authorized law enforcement users queried the PDMP database 32,839 times. Id. at note 3.

¹⁶ Id. at note 11.

¹⁷ S. 893.055(7)(c), F.S., requires the DOH to verify a request as being "authentic and authorized" before releasing information from the PDMP.

¹⁸ S. 893.055(10) and (11)(c), F.S.

¹⁹ Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE) webpage, available at <http://www.floridahealth.gov/reports-and-data/e-forcse/funding/index.html>, last visited on Jan. 9, 2014.

²⁰ Ch. 2013-153, L.O.F.

PDMP Direct-Support Organization

The Florida PDMP Foundation, Inc., (Foundation) is the direct-support organization authorized under the prescription drug monitoring program in s. 893.055, F.S. The Foundation is a not-for-profit Florida corporation that operates under contract with the department to acquire funding to support the PDMP. The Foundation transfers money to the department for the development, implementation, and ongoing operation of the PDMP.

Current law provides for the reversion, without penalty, to the state of all money and property held in trust by the Foundation for the benefit of the PDMP if the Foundation ceases to exist or if the contract is terminated.²¹

Prescription Drug Monitoring Programs in Other States

As of December 2013, every state except Missouri has passed PDMP legislation and only New Hampshire and Washington D.C. have yet to bring their PDMP to operation status.²² The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.²³ All PDMPs examined are either run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the PDMP and primarily encourage prescribers to use the database through education and outreach programs.²⁴ Only three of the 26 states require prescribers to access the database prior to prescribing most or all controlled substances.²⁵ In 17 of 23 states, including Florida, accessing the database is strictly voluntary and in the remaining six states accessing the database is only required under limited circumstances.²⁶

All states reviewed have the authority to take punitive action against dispensers of prescription drugs that do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, and / or criminal charges, however, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

As of December 5, 2013, 18 states require law enforcement to obtain a search warrant, subpoena, court order, or other type of judicial process in order to access the information in their state's PDMP.²⁷

²¹ See s. 893.055(11)(d)4., F.S.

²² National Alliance for Model State Drug Laws. *Compilation of State Prescription Monitoring Programs Maps*, can be found at <http://www.namsdl.org/library/6D4C4D9F-65BE-F4BB-A428B392538E0663/>, last visited on Jan. 10, 2014.

²³ OPPAGA Review of State Prescription Drug Monitoring Programs, Jan. 31, 2013, on file with the Senate Health Policy Committee.

²⁴ Id., p. 8

²⁵ Kentucky, New Mexico, and New York. Id., p. 4

²⁶ These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if there is a reasonable suspicion that the patient is abusing drugs, or if the prescription was written in a pain clinic. Id.

²⁷ These states are: Alaska, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, and Wisconsin. See the National Alliance for Model State Drug Laws, *Law Enforcement Access to State PMP Data*, available at <http://www.namsdl.org/library/C4AA9EA3-65BE-F4BB-AAFBAB1F5736F070/>, last visited on Jan 10, 2014.

Unauthorized Release of PDMP Data

In the early summer of 2013, the PDMP information of approximately 3,300 individuals was improperly shared with a person or persons who were not authorized to obtain such information.²⁸ The original information was released from the PDMP by the DOH during a Drug Enforcement Administration (DEA) investigation of a ring of individuals who used four doctor's information to conduct prescription fraud. Although as a result of the investigation only six individuals were ultimately charged, the information of approximately 3,300 individuals was released to the DEA because the DEA searched the PDMP for the records of all the patients of the four doctors who had been the victims of the prescription drug fraud.²⁹ During the conduct of the investigation and the resulting prosecution, the DEA shared the full file with the prosecutor who, in turn, shared the full file with the defense attorney during discovery. The improper release of information occurred when a defense attorney associated with the case shared the file with a colleague who was not associated with the case.³⁰

Reasonable Suspicion v. Probable Cause

The terms reasonable suspicion and probable cause are legal terms of art that refer to the level of proof which must be proffered before a certain action, generally a police action, may be taken. Reasonable suspicion is the lesser standard which is applied to actions such as Terry stops³¹ and to searches in areas where there is a lesser expectation of privacy, such as in a school.³² Probable cause is the greater of the two standards and is the one the police must meet when arresting a suspect.³³

In order to meet the standard for reasonable suspicion, a police officer must be able to show a "well-founded, articulable suspicion of criminal activity."³⁴ In contrast, in order to meet the standard for probable cause, an officer must be able to show that the "facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."³⁵ The key difference between the standards lies in the knowledge of the officer. With reasonable suspicion, the officer must only suspect that a crime has been committed, while with probable cause, the officer must have enough evidence to convince a "prudent man" that a crime has been committed.

²⁸ See John Woodrow Cox, *Did Florida's prescription pill database really spring a leak?*, Tampa Bay Times, July 5, 2013. Available at <http://www.tampabay.com/news/politics/did-floridas-prescription-pill-database-really-spring-a-leak/2130108>, Last visited on Jan. 9, 2014, and see the DOH presentation to the Senate Health Policy Committee on the PDMP, Sep. 24, 2013, on file with Health Policy Committee staff.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Terry v. Ohio*, 392 U.S. 1

³² See *R.M. v. State*, 2014 WL 20628

³³ *Popple v. State*, 626 So. 2d 185, p. 3

³⁴ *Id.*

³⁵ *Henry v. U.S.*, 31 U.S. 98, p. 102

III. Effect of Proposed Changes:

The proposed committee bill amends s. 893.055, F.S., to significantly, but technically, revise the section by reorganizing and grouping related items, clarifying imprecise language, and deleting outdated or redundant language.

The bill also makes several substantive changes to:

- Require a law enforcement agency to obtain a court order from a court of competent jurisdiction showing a finding of reasonable suspicion of potential criminal activity, fraud, or theft regarding prescribed controlled substances before information within the PDMP database may be released to that agency.
- Allow the DOH to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists. A law enforcement agency may use this information to support the court order necessary to obtain identified records, if needed for a lawful investigation.
- Define the term “dispense” or “dispensing” using existing language in the statute and in the definitions section of ch. 893, F.S.
- Fund, subject to the General Appropriations Act, the PDMP with up to \$500,000 annually from excess collections related to the practice of pharmacy; and
- Eliminate the PDMP direct support organization.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement agencies may incur a cost associated with obtaining a court order prior to accessing information in the PDMP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.055 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/05/2014	.	
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	.	
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The Committee on Health Policy (Bean) recommended the following:

- 1 **Senate Amendment (with title amendment)**
- 2
- 3 Delete lines 36 - 37
- 4 and insert:
- 5 or patient. ~~The patient advisory report shall be provided in~~
- 6 ~~accordance with s. 893.13(7)(a)8. An~~
- 7
- 8
- 9 Delete lines 412 - 417
- 10 and insert:
- 11 (e) If the program manager determines a pattern consistent



12 with the rules established under subparagraph (2)(c)4., the
 13 department may provide:
 14 (a) A patient advisory report to an appropriate health care
 15 practitioner; and
 16 (b) Relevant information that does not contain personal
 17 identifying information to the applicable law enforcement
 18 agency. A law enforcement agency may use such information to
 19 support a subpoena pursuant to subparagraph (b)3.

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 18

24 and insert:

25 determines a specified pattern exists; authorizing the
 26 department to provide a patient advisory report to any
 27 appropriate health care practitioner if the program
 28 manager determines a specified pattern exists;
 29 authorizing the



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/05/2014	.	
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The Committee on Health Policy (Bean) recommended the following:

- 1 **Senate Amendment to Amendment (336376)**
- 2
- 3 Delete line 19
- 4 and insert:
- 5 support a court order pursuant to subparagraph (b)3.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/05/2014	.	
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The Committee on Health Policy (Brandes) recommended the following:

- 1 **Senate Amendment (with title amendment)**
- 2
- 3 Delete lines 354 - 417
- 4 and insert:
- 5 and pursuant to the submission of a court order issued by a
- 6 court of competent jurisdiction upon a showing of reasonable
- 7 suspicion of ~~regarding~~ potential criminal activity, fraud, or
- 8 theft regarding prescribed controlled substances. The court
- 9 order may be issued without notice to the affected patients,
- 10 prescribers, or dispensers.



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11 4. A patient or the legal guardian or designated health
12 care surrogate of an incapacitated patient as described in s.
13 893.0551 who, for the purpose of verifying the accuracy of the
14 database information, submits a written and notarized request
15 that includes the patient's full name, address, and date of
16 birth, ~~and includes the same information if the legal guardian~~
17 ~~or health care surrogate submits the request. If the patient's~~
18 legal guardian or health care surrogate is the requestor, the
19 request shall be validated by the department to verify the
20 identity of the patient and the legal guardian or health care
21 surrogate, ~~if the patient's legal guardian or health care~~
22 ~~surrogate is the requestor~~. Such verification is also required
23 for any request to change a patient's prescription history or
24 other information related to his or her information in the
25 electronic database.

26
27 Information in or released from the prescription drug monitoring
28 program database for the electronic prescription drug monitoring
29 system is not discoverable or admissible in any civil or
30 administrative action, ~~except in an investigation and~~
31 ~~disciplinary proceeding by the department or the appropriate~~
32 ~~regulatory board.~~

33 (c)(d) Other than the program manager and his or her
34 program or support staff as authorized in paragraph (d),
35 department staff are, for the purpose of calculating performance
36 measures pursuant to subsection (8), shall not be allowed direct
37 access to information in the prescription drug monitoring
38 program database but may request from the program manager and,
39 when authorized by the program manager, the program manager's



861816

40 program and support staff, information that does not contain
41 ~~contains no~~ identifying information of any patient, physician,
42 health care practitioner, prescriber, or dispenser and that is
43 not confidential and exempt for the purpose of calculating
44 performance measures pursuant to subsection (7).

45 (d) The program manager and designated support staff, upon
46 the direction of the program manager or as otherwise authorized
47 during the program manager's absence, may access the
48 prescription drug monitoring program database only to manage the
49 program or to manage the program database and systems in support
50 of the requirements of this section or as established by the
51 department in rule pursuant to subparagraph (2)(c)4. The program
52 manager, designated program and support staff who act at the
53 direction of or in the absence of the program manager, and any
54 individual who has similar access regarding the management of
55 the database from the prescription drug monitoring program shall
56 submit fingerprints to the department for background screening.
57 The department shall follow the procedure established by the
58 Department of Law Enforcement to request a statewide criminal
59 history record check and to request that the Department of Law
60 Enforcement forward the fingerprints to the Federal Bureau of
61 Investigation for a national criminal history record check.

62 (e) If the program manager determines a pattern consistent
63 with the rules established under subparagraph (2)(c)4., the
64 department may provide relevant information that does not
65 contain personal identifying information to the applicable law
66 enforcement agency. A law enforcement agency may use such
67 information to support a court order pursuant to subparagraph
68 (b)3.



69
 70 ===== T I T L E A M E N D M E N T =====
 71 And the title is amended as follows:
 72 Delete lines 8 - 20
 73 and insert:
 74 agency to submit a court order as a condition of
 75 direct access to information in the program; requiring
 76 that the court order be predicated upon a showing of
 77 reasonable suspicion of criminal activity, fraud, or
 78 theft regarding prescribed controlled substances;
 79 providing that the court order may be issued without
 80 notice to the affected patients, subscribers, or
 81 dispensers; authorizing the department to provide
 82 relevant information that does not contain personal
 83 identifying information if the program manager
 84 determines a specified pattern exists; authorizing the
 85 law enforcement agency to use such information to
 86 support a court order; deleting obsolete provisions;



LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/05/2014	.	
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	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

1 **Senate Amendment (with title amendment)**
 2
 3 Delete lines 458 - 640
 4 and insert:
 5 ~~(8)(10)~~ Notwithstanding s. 456.025 and subject to the
 6 General Appropriations Act, up to \$500,000 of all costs incurred
 7 by the department in administering the prescription drug
 8 monitoring program may shall be funded through funds available
 9 in the Medical Quality Assurance Trust Fund that are related to
 10 the regulation of the practice of pharmacy under ch. 465. The
 11 department may also apply for and receive federal grants or



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12 private funding to fund the prescription drug monitoring program
13 except that the department may not receive funds provided,
14 directly or indirectly, by prescription drug manufacturers
15 applied for or received by the state. The department may not
16 commit state funds for the monitoring program if such funds are
17 necessary for the department's regulation of the practice of
18 pharmacy under ch. 465 without ensuring funding is available.
19 ~~The prescription drug monitoring program and the implementation~~
20 ~~thereof are contingent upon receipt of the nonstate funding. The~~
21 ~~department and state government shall cooperate with the direct-~~
22 ~~support organization established pursuant to subsection (11) in~~
23 ~~seeking federal grant funds, other nonstate grant funds, gifts,~~
24 ~~donations, or other private moneys for the department if the~~
25 ~~costs of doing so are not considered material. Nonmaterial costs~~
26 ~~for this purpose include, but are not limited to, the costs of~~
27 ~~mailing and personnel assigned to research or apply for a grant.~~
28 Notwithstanding the exemptions to competitive-solicitation
29 requirements under s. 287.057(3) (e), the department shall comply
30 with the competitive-solicitation requirements under s. 287.057
31 for the procurement of any goods or services required by this
32 section. ~~Funds provided, directly or indirectly, by prescription~~
33 ~~drug manufacturers may not be used to implement the program.~~
34 ~~(11) The department may establish a direct-support~~
35 ~~organization that has a board consisting of at least five~~
36 ~~members to provide assistance, funding, and promotional support~~
37 ~~for the activities authorized for the prescription drug~~
38 ~~monitoring program.~~
39 ~~(a) As used in this subsection, the term "direct-support~~
40 ~~organization" means an organization that is:~~



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41 ~~1. A Florida corporation not for profit incorporated under~~
42 ~~chapter 617, exempted from filing fees, and approved by the~~
43 ~~Department of State.~~
44 ~~2. Organized and operated to conduct programs and~~
45 ~~activities; raise funds; request and receive grants, gifts, and~~
46 ~~bequests of money; acquire, receive, hold, and invest, in its~~
47 ~~own name, securities, funds, objects of value, or other~~
48 ~~property, either real or personal; and make expenditures or~~
49 ~~provide funding to or for the direct or indirect benefit of the~~
50 ~~department in the furtherance of the prescription drug~~
51 ~~monitoring program.~~
52 ~~(b) The direct-support organization is not considered a~~
53 ~~lobbying firm within the meaning of s. 11.045.~~
54 ~~(c) The State Surgeon General shall appoint a board of~~
55 ~~directors for the direct-support organization. Members of the~~
56 ~~board shall serve at the pleasure of the State Surgeon General.~~
57 ~~The State Surgeon General shall provide guidance to members of~~
58 ~~the board to ensure that moneys received by the direct support~~
59 ~~organization are not received from inappropriate sources.~~
60 ~~Inappropriate sources include, but are not limited to, donors,~~
61 ~~grantors, persons, or organizations that may monetarily or~~
62 ~~substantively benefit from the purchase of goods or services by~~
63 ~~the department in furtherance of the prescription drug~~
64 ~~monitoring program.~~
65 ~~(d) The direct-support organization shall operate under~~
66 ~~written contract with the department. The contract must, at a~~
67 ~~minimum, provide for:~~
68 ~~1. Approval of the articles of incorporation and bylaws of~~
69 ~~the direct-support organization by the department.~~



963500

70 ~~2. Submission of an annual budget for the approval of the~~
71 ~~department.~~

72 ~~3. Certification by the department that the direct support~~
73 ~~organization is complying with the terms of the contract in a~~
74 ~~manner consistent with and in furtherance of the goals and~~
75 ~~purposes of the prescription drug monitoring program and in the~~
76 ~~best interests of the state. Such certification must be made~~
77 ~~annually and reported in the official minutes of a meeting of~~
78 ~~the direct support organization.~~

79 ~~4. The reversion, without penalty, to the state of all~~
80 ~~moneys and property held in trust by the direct support~~
81 ~~organization for the benefit of the prescription drug monitoring~~
82 ~~program if the direct support organization ceases to exist or if~~
83 ~~the contract is terminated.~~

84 ~~5. The fiscal year of the direct support organization,~~
85 ~~which must begin July 1 of each year and end June 30 of the~~
86 ~~following year.~~

87 ~~6. The disclosure of the material provisions of the~~
88 ~~contract to donors of gifts, contributions, or bequests,~~
89 ~~including such disclosure on all promotional and fundraising~~
90 ~~publications, and an explanation to such donors of the~~
91 ~~distinction between the department and the direct support~~
92 ~~organization.~~

93 ~~7. The direct support organization's collecting, expending,~~
94 ~~and providing of funds to the department for the development,~~
95 ~~implementation, and operation of the prescription drug~~
96 ~~monitoring program as described in this section and s. 2,~~
97 ~~chapter 2009-198, Laws of Florida, as long as the task force is~~
98 ~~authorized. The direct support organization may collect and~~



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99 ~~expend funds to be used for the functions of the direct support~~
100 ~~organization's board of directors, as necessary and approved by~~
101 ~~the department. In addition, the direct support organization may~~
102 ~~collect and provide funding to the department in furtherance of~~
103 ~~the prescription drug monitoring program by:~~

104 ~~a. Establishing and administering the prescription drug~~
105 ~~monitoring program's electronic database, including hardware and~~
106 ~~software.~~

107 ~~b. Conducting studies on the efficiency and effectiveness~~
108 ~~of the program to include feasibility studies as described in~~
109 ~~subsection (13).~~

110 ~~c. Providing funds for future enhancements of the program~~
111 ~~within the intent of this section.~~

112 ~~d. Providing user training of the prescription drug~~
113 ~~monitoring program, including distribution of materials to~~
114 ~~promote public awareness and education and conducting workshops~~
115 ~~or other meetings, for health care practitioners, pharmacists,~~
116 ~~and others as appropriate.~~

117 ~~e. Providing funds for travel expenses.~~

118 ~~f. Providing funds for administrative costs, including~~
119 ~~personnel, audits, facilities, and equipment.~~

120 ~~g. Fulfilling all other requirements necessary to implement~~
121 ~~and operate the program as outlined in this section.~~

122 ~~(c) The activities of the direct support organization must~~
123 ~~be consistent with the goals and mission of the department, as~~
124 ~~determined by the department, and in the best interests of the~~
125 ~~state. The direct support organization must obtain a written~~
126 ~~approval from the department for any activities in support of~~
127 ~~the prescription drug monitoring program before undertaking~~



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128 ~~those activities.~~

129 ~~(f) The department may permit, without charge, appropriate~~
130 ~~use of administrative services, property, and facilities of the~~
131 ~~department by the direct support organization, subject to this~~
132 ~~section. The use must be directly in keeping with the approved~~
133 ~~purposes of the direct support organization and may not be made~~
134 ~~at times or places that would unreasonably interfere with~~
135 ~~opportunities for the public to use such facilities for~~
136 ~~established purposes. Any moneys received from rentals of~~
137 ~~facilities and properties managed by the department may be held~~
138 ~~in a separate depository account in the name of the direct~~
139 ~~support organization and subject to the provisions of the letter~~
140 ~~of agreement with the department. The letter of agreement must~~
141 ~~provide that any funds held in the separate depository account~~
142 ~~in the name of the direct support organization must revert to~~
143 ~~the department if the direct support organization is no longer~~
144 ~~approved by the department to operate in the best interests of~~
145 ~~the state.~~

146 ~~(g) The department may adopt rules under s. 120.54 to~~
147 ~~govern the use of administrative services, property, or~~
148 ~~facilities of the department or office by the direct support~~
149 ~~organization.~~

150 ~~(h) The department may not permit the use of any~~
151 ~~administrative services, property, or facilities of the state by~~
152 ~~a direct support organization if that organization does not~~
153 ~~provide equal membership and employment opportunities to all~~
154 ~~persons regardless of race, color, religion, gender, age, or~~
155 ~~national origin.~~

156 ~~(i) The direct support organization shall provide for an~~



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157 ~~independent annual financial audit in accordance with s.~~
158 ~~215.981. Copies of the audit shall be provided to the department~~
159 ~~and the Office of Policy and Budget in the Executive Office of~~
160 ~~the Governor.~~

161 ~~(j) The direct support organization may not exercise any~~
162 ~~power under s. 617.0302(12) or (16).~~

163 ~~(12) A prescriber or dispenser may have access to the~~
164 ~~information under this section which relates to a patient of~~
165 ~~that prescriber or dispenser as needed for the purpose of~~
166 ~~reviewing the patient's controlled drug prescription history. A~~
167 ~~prescriber or dispenser acting in good faith is immune from any~~
168 ~~civil, criminal, or administrative liability that might~~
169 ~~otherwise be incurred or imposed for receiving or using~~
170 ~~information from the prescription drug monitoring program. This~~
171 ~~subsection does not create a private cause of action, and a~~
172 ~~person may not recover damages against a prescriber or dispenser~~
173 ~~authorized to access information under this subsection for~~
174 ~~accessing or failing to access such information.~~

175 ~~(9)(13) To the extent that funding is provided for such~~
176 ~~purpose through federal or private grants or gifts and other~~
177 ~~types of available moneys, the department shall study the~~
178 ~~feasibility of enhancing the prescription drug monitoring~~
179 ~~program for the purposes of public health initiatives and~~
180 ~~statistical reporting that respects the privacy of the patient,~~
181 ~~the prescriber, and the dispenser. Such a study shall be~~
182 ~~conducted in order to further improve the quality of health care~~
183 ~~services and safety by improving the prescribing and dispensing~~
184 ~~practices for prescription drugs, taking advantage of advances~~
185 ~~in technology, reducing duplicative prescriptions and the~~



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186 overprescribing of prescription drugs, and reducing drug abuse.
187 The requirements of the National All Schedules Prescription
188 Electronic Reporting (NASPER) Act are authorized in order to
189 apply for federal NASPER funding. ~~In addition, the direct-~~
190 ~~support organization shall provide funding for the department to~~
191 ~~conduct training for health care practitioners and other~~
192 ~~appropriate persons in using the monitoring program to support~~
193 ~~the program enhancements.~~

194 (10)(14) A Pharmacist, pharmacy, or dispensing health care
195

196 ===== T I T L E A M E N D M E N T =====

197 And the title is amended as follows:

198 Delete line 20

199 and insert:

200 Support a subpoena; authorizing the department to fund
201 the program with up to \$500,000 of funds generated
202 under ch. 465, F.S.; authorizing the department to see
203 federal or private funds to support the program;
204 repealing language creating a direct-support
205 organization to fund the program; deleting obsolete
206 provisions;

FOR CONSIDERATION By the Committee on Health Policy

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1 A bill to be entitled
 2 An act relating to prescription drug monitoring;
 3 amending s. 893.055, F.S.; defining and redefining
 4 terms; revising provisions relating to the
 5 comprehensive electronic database system and
 6 prescription drug monitoring program maintained by the
 7 Department of Health; requiring a law enforcement
 8 agency to submit a subpoena as a condition of direct
 9 access to information in the program; requiring that
 10 the subpoena be predicated upon a showing of
 11 reasonable suspicion of criminal activity, fraud, or
 12 theft regarding prescribed controlled substances;
 13 providing that the subpoena may be issued without
 14 notice to the affected patients, subscribers, or
 15 dispensers; authorizing the department to provide
 16 relevant information that does not contain personal
 17 identifying information if the program manager
 18 determines a specified pattern exists; authorizing the
 19 law enforcement agency to use such information to
 20 support a subpoena; deleting obsolete provisions;
 21 providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 893.055, Florida Statutes, is amended to
 26 read:

27 893.055 Prescription drug monitoring program.—

28 (1) As used in this section, the term:

29 (a) "Patient advisory report" or "advisory report" means

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30 information provided by the department ~~in writing, or as~~
 31 ~~determined by the department,~~ to a prescriber, dispenser,
 32 pharmacy, or patient concerning the dispensing of controlled
 33 substances. ~~All~~ Advisory reports are for informational purposes
 34 only and do not impose any obligation ~~no obligations of any~~
 35 ~~nature or any~~ legal duty on a prescriber, dispenser, pharmacy,
 36 or patient ~~except that the.~~ ~~The~~ patient advisory report shall be
 37 provided in compliance ~~accordance~~ with s. 893.13(7)(a)8. An
 38 advisory report ~~The advisory reports~~ issued by the department is
 39 ~~are~~ not subject to discovery or introduction into evidence in a
 40 ~~any~~ civil or administrative action against a prescriber,
 41 dispenser, pharmacy, or patient arising out of matters that are
 42 the subject of the report. A department employee, and a person
 43 who participates in preparing, reviewing, issuing, or any other
 44 activity related to an advisory report ~~is~~ may not allowed be
 45 ~~permitted~~ or required to testify in any such civil action as to
 46 any findings, recommendations, evaluations, opinions, or other
 47 actions taken in connection with preparing, reviewing, or
 48 issuing such a report.

49 (b) "Controlled substance" means a controlled substance
 50 listed in Schedule II, Schedule III, or Schedule IV in s.
 51 893.03.

52 (c) "Dispenser" means a pharmacy, dispensing pharmacist, or
 53 dispensing health care practitioner, and includes a pharmacy,
 54 dispensing pharmacist, or health care practitioner that is not
 55 located in this state but is otherwise subject to the
 56 jurisdiction of this state as to a particular dispensing
 57 transaction.

58 (d) "Health care practitioner" or "practitioner" means a

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59 ~~any~~ practitioner who is subject to licensure or regulation by
60 the department under chapter 458, chapter 459, chapter 461,
61 chapter 462, chapter 463, chapter 464, chapter 465, or chapter
62 466.

63 (e) "Health care regulatory board" means a ~~any~~ board for a
64 practitioner or health care practitioner who is licensed or
65 regulated by the department.

66 (f) "Pharmacy" means a ~~any~~ pharmacy that is subject to
67 licensure or regulation by the department under chapter 465 and
68 that dispenses or delivers a controlled substance to an
69 individual or address in this state.

70 (g) "Prescriber" means a prescribing physician, prescribing
71 practitioner, or other prescribing health care practitioner.

72 (h) "Active investigation" means an investigation that is
73 being conducted with a reasonable, good faith belief that it
74 ~~will~~ ~~could~~ lead to the filing of administrative, civil, or
75 criminal proceedings, or an investigation that is ongoing and
76 continuing and for which there is a reasonable, good faith
77 anticipation of securing an arrest or prosecution in the
78 foreseeable future.

79 (i) "Law enforcement agency" means the Department of Law
80 Enforcement, a Florida sheriff's department, a Florida police
81 department, or a law enforcement agency of the Federal
82 Government which enforces the laws of this state or the United
83 States relating to controlled substances, and ~~whose~~ ~~which~~ ~~its~~
84 agents and officers are empowered by law to conduct criminal
85 investigations and make arrests.

86 (j) "Program manager" means an employee of or a person
87 contracted by the Department of Health who is designated to

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88 ensure the integrity of the prescription drug monitoring program
89 in accordance with the requirements established in paragraphs
90 (2) (a) and (b).

91 (k) "Dispense" or "dispensing" means the transfer of
92 possession of one or more doses of a medicinal drug by a health
93 care practitioner to the ultimate consumer or to the ultimate
94 consumer's agent, including, but not limited to, a transaction
95 with a dispenser pursuant to chapter 465 and a dispensing
96 transaction to an individual or address in this state with a
97 dispenser that is located outside this state but is otherwise
98 subject to the jurisdiction of this state as to that dispensing
99 transaction.

100 (2) (a) The department shall maintain ~~design and establish~~ a
101 comprehensive electronic database system in order to collect and
102 store specified information from dispensed ~~that has~~ controlled
103 substance prescriptions and shall release information to
104 authorized recipients in accordance with subsection (6) and s.
105 893.0551 provided to it and that provides prescription
106 information to a patient's health care practitioner and
107 pharmacist who inform the department that they wish the patient
108 advisory report provided to them. Otherwise, the patient
109 advisory report will not be sent to the practitioner, pharmacy,
110 or pharmacist. The system must shall be designed to provide
111 information regarding dispensed prescriptions of controlled
112 substances and shall not infringe upon the legitimate
113 prescribing or dispensing of a controlled substance by a
114 prescriber or dispenser acting in good faith and in the course
115 of professional practice and must. ~~The system shall be~~
116 consistent with standards of the American Society for Automation

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117 in Pharmacy (ASAP). The ~~electronic system must~~ shall also comply
 118 with the Health Insurance Portability and Accountability Act
 119 (HIPAA) as it pertains to protected health information (PHI),
 120 electronic protected health information (EPHI), and all other
 121 relevant state and federal privacy and security laws and
 122 regulations. ~~The department shall establish policies and~~
 123 ~~procedures as appropriate regarding the reporting, accessing the~~
 124 ~~database, evaluation, management, development, implementation,~~
 125 ~~operation, storage, and security of information within the~~
 126 ~~system. The reporting of prescribed controlled substances shall~~
 127 ~~include a dispensing transaction with a dispenser pursuant to~~
 128 ~~chapter 465 or through a dispensing transaction to an individual~~
 129 ~~or address in this state with a pharmacy that is not located in~~
 130 ~~this state but that is otherwise subject to the jurisdiction of~~
 131 ~~this state as to that dispensing transaction. The reporting of~~
 132 ~~patient advisory reports refers only to reports to patients,~~
 133 ~~pharmacies, and practitioners. Separate reports that contain~~
 134 ~~patient prescription history information and that are not~~
 135 ~~patient advisory reports are provided to persons and entities as~~
 136 ~~authorized in paragraphs (7) (b) and (c) and s. 893.0551.~~

137 (b) The department shall maintain the electronic system so
 138 that a patient's health care practitioner or pharmacist is able
 139 to receive a patient advisory report upon request, when the
 140 direct support organization receives at least \$20,000 in
 141 nonstate moneys or the state receives at least \$20,000 in
 142 federal grants for the prescription drug monitoring program,
 143 shall adopt rules as necessary concerning the reporting,
 144 accessing the database, evaluation, management, development,
 145 implementation, operation, security, and storage of information

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146 ~~within the system, including rules for when patient advisory~~
 147 ~~reports are provided to pharmacies and prescribers. The patient~~
 148 ~~advisory report shall be provided in accordance with s.~~
 149 ~~893.13(7)(a)8. The department shall work with the professional~~
 150 ~~health care licensure boards, such as the Board of Medicine, the~~
 151 ~~Board of Osteopathic Medicine, and the Board of Pharmacy; other~~
 152 ~~appropriate organizations, such as the Florida Pharmacy~~
 153 ~~Association, the Florida Medical Association, the Florida Retail~~
 154 ~~Federation, and the Florida Osteopathic Medical Association,~~
 155 ~~including those relating to pain management; and the Attorney~~
 156 ~~General, the Department of Law Enforcement, and the Agency for~~
 157 ~~Health Care Administration to develop rules appropriate for the~~
 158 ~~prescription drug monitoring program.~~

159 (c) The department shall:

160 1. Establish policies and procedures and adopt rules
 161 necessary to provide for access to and evaluation, management,
 162 and operation of the electronic system.

163 2. Establish policies and procedures and adopt rules
 164 necessary to provide for the reporting, storage, and security of
 165 information within the electronic system, including:

166 a. Any additional information, other than the information
 167 listed in subsection (3), which must be reported to the system.

168 b. The process by which dispensers must provide the
 169 required information concerning each controlled substance that
 170 it has dispensed in a secure methodology and format. Such
 171 approved formats may include, but are not limited to, submission
 172 via the Internet, on a disc, or by use of regular mail.

173 c. The process by which the department may approve an
 174 extended period of time for a dispenser to report a dispensed

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175 prescription to the system.

176 d. Procedures providing for reporting during a state-
177 declared or nationally declared disaster.

178 e. Procedures for determining when a patient advisory
179 report is required to be provided to a pharmacy or prescriber.

180 f. Procedures for determining whether a request for
181 information under paragraph (6) (b) is authentic and authorized
182 by the requesting agency.

183 3. Cooperate with professional health care licensure
184 boards, such as the Board of Medicine, the Board of Osteopathic
185 Medicine, and the Board of Pharmacy; other appropriate
186 organizations, such as the Florida Pharmacy Association, the
187 Florida Medical Association, the Florida Retail Federation, the
188 Florida Osteopathic Medical Association, and those relating to
189 pain management; and the Attorney General, the Department of Law
190 Enforcement, and the Agency for Health Care Administration to
191 develop rules appropriate for the prescription drug monitoring
192 program. All dispensers and prescribers subject to these
193 reporting requirements shall be notified by the department of
194 the implementation date for such reporting requirements.

195 4. (d) Cooperate ~~The program manager shall work~~ with
196 professional health care licensure boards and the stakeholders
197 listed in subparagraph 3. paragraph (b) to develop rules
198 appropriate for identifying indicators of controlled substance
199 abuse.

200 (3) ~~The dispenser of The pharmacy dispensing the controlled~~
201 ~~substance and each prescriber who directly dispenses a~~
202 controlled substance shall submit to the electronic system, by a
203 procedure and in a format established by the department and

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204 consistent with an ASAP-approved format, the following
205 information for each prescription dispensed ~~inclusion in the~~
206 ~~database:~~

207 (a) The name of the prescribing practitioner, the
208 practitioner's federal Drug Enforcement Administration
209 registration number, the practitioner's National Provider
210 Identification (NPI) or other appropriate identifier, and the
211 date of the prescription.

212 (b) The date the prescription was filled and the method of
213 payment, such as cash by an individual, insurance coverage
214 through a third party, or Medicaid payment. This paragraph does
215 not authorize the department to include individual credit card
216 numbers or other account numbers in the database.

217 (c) The full name, address, and date of birth of the person
218 for whom the prescription was written.

219 (d) The name, national drug code, quantity, and strength of
220 the controlled substance dispensed.

221 (e) The full name, federal Drug Enforcement Administration
222 registration number, and address of the pharmacy or other
223 location from which the controlled substance was dispensed. If
224 the controlled substance was dispensed by a practitioner other
225 than a pharmacist, the practitioner's full name, federal Drug
226 Enforcement Administration registration number, and address.

227 (f) The name of the pharmacy or practitioner, other than a
228 pharmacist, dispensing the controlled substance and the
229 practitioner's National Provider Identification (NPI).

230 (g) Other appropriate identifying information as determined
231 by department rule.

232 (4) Each time a controlled substance is dispensed to an

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233 individual, the information specified in subsection (3)
 234 ~~controlled substance~~ shall be reported by the dispenser to the
 235 department through the system using a department-approved
 236 process as soon thereafter as possible, but not more than 7 days
 237 after the date the controlled substance is dispensed unless an
 238 extension is approved by the department. Costs to the dispenser
 239 for submitting the information required by this section may not
 240 be material or extraordinary. Costs not considered to be
 241 material or extraordinary include, but are not limited to,
 242 regular postage, electronic media, regular electronic mail, and
 243 facsimile charges. A person who willfully and knowingly fails to
 244 report the dispensing of a controlled substance as required by
 245 this section commits a misdemeanor of the first degree,
 246 punishable as provided in s. 775.082 or s. 775.083 for cause as
 247 determined by rule. A dispenser must meet the reporting
 248 requirements of this section by providing the required
 249 information concerning each controlled substance that it
 250 dispensed in a department-approved, secure methodology and
 251 format. Such approved formats may include, but are not limited
 252 to, submission via the Internet, on a disc, or by use of regular
 253 mail.

254 (5) ~~When the following acts of dispensing or administering~~
 255 ~~occur,~~ The following acts are exempt from the reporting under
 256 requirements of this section for that specific act of dispensing
 257 or administration:

258 (a) ~~The administration of A health care practitioner when~~
 259 ~~administering~~ a controlled substance directly to a patient by a
 260 health care practitioner if the amount of the controlled
 261 substance is adequate to treat the patient during that

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262 particular treatment session.

263 (b) ~~The administration of A pharmacist or health care~~
 264 ~~practitioner when administering~~ a controlled substance by a
 265 health care practitioner to a patient or resident receiving care
 266 as a patient at a hospital, nursing home, ambulatory surgical
 267 center, hospice, or intermediate care facility for the
 268 developmentally disabled which is licensed in this state.

269 (c) ~~The administration or dispensing of A practitioner when~~
 270 ~~administering or dispensing~~ a controlled substance by a health
 271 care practitioner within in the health care system of the
 272 Department of Corrections.

273 (d) ~~The administration of A practitioner when administering~~
 274 a controlled substance by a health care practitioner in the
 275 emergency room of a licensed hospital.

276 (e) ~~The administration or dispensing of A health care~~
 277 ~~practitioner when administering or dispensing~~ a controlled
 278 substance by a health care practitioner to a person under the
 279 age of 16.

280 (f) ~~The A pharmacist or a dispensing practitioner when~~
 281 ~~dispensing of~~ a one-time, 72-hour emergency resupply of a
 282 controlled substance by a dispenser to a patient.

283 (6) Confidential and exempt information in the prescription
 284 drug monitoring program's database may be released only as
 285 provided in this subsection and s. 893.0551 ~~The department may~~
 286 ~~establish when to suspend and when to resume reporting~~
 287 ~~information during a state-declared or nationally declared~~
 288 ~~disaster.~~

289 ~~(7)(a) A practitioner or pharmacist who dispenses a~~
 290 ~~controlled substance must submit the information required by~~

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291 ~~this section in an electronic or other method in an ASAP format~~
 292 ~~approved by rule of the department unless otherwise provided in~~
 293 ~~this section. The cost to the dispenser in submitting the~~
 294 ~~information required by this section may not be material or~~
 295 ~~extraordinary. Costs not considered to be material or~~
 296 ~~extraordinary include, but are not limited to, regular postage,~~
 297 ~~electronic media, regular electronic mail, and facsimile~~
 298 ~~charges.~~

299 (a) ~~(b)~~ A pharmacy, prescriber, or dispenser shall have
 300 access to information in the prescription drug monitoring
 301 program's database which relates to a patient of that pharmacy,
 302 prescriber, or dispenser in a manner established by the
 303 department as needed for the purpose of reviewing the patient's
 304 controlled substance prescription history. A prescriber or
 305 dispenser acting in good faith is immune from any civil,
 306 criminal, or administrative liability that might otherwise be
 307 incurred or imposed for receiving or using information from the
 308 prescription drug monitoring program. This subsection does not
 309 create a private cause of action, and a person may not recover
 310 damages against a prescriber or dispenser authorized to access
 311 information under this subsection for accessing or failing to
 312 access such information ~~Other access to the program's database~~
 313 ~~shall be limited to the program's manager and to the designated~~
 314 ~~program and support staff, who may act only at the direction of~~
 315 ~~the program manager or, in the absence of the program manager,~~
 316 ~~as authorized. Access by the program manager or such designated~~
 317 ~~staff is for prescription drug program management only or for~~
 318 ~~management of the program's database and its system in support~~
 319 ~~of the requirements of this section and in furtherance of the~~

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320 ~~prescription drug monitoring program. Confidential and exempt~~
 321 ~~information in the database shall be released only as provided~~
 322 ~~in paragraph (c) and s. 893.0551. The program manager,~~
 323 ~~designated program and support staff who act at the direction of~~
 324 ~~or in the absence of the program manager, and any individual who~~
 325 ~~has similar access regarding the management of the database from~~
 326 ~~the prescription drug monitoring program shall submit~~
 327 ~~fingerprints to the department for background screening. The~~
 328 ~~department shall follow the procedure established by the~~
 329 ~~Department of Law Enforcement to request a statewide criminal~~
 330 ~~history record check and to request that the Department of Law~~
 331 ~~Enforcement forward the fingerprints to the Federal Bureau of~~
 332 ~~Investigation for a national criminal history record check.~~

333 (b) ~~(e)~~ The following entities are ~~shall not be~~ allowed
 334 direct access to information in the prescription drug monitoring
 335 program database but may request from the program manager and,
 336 when authorized by the program manager, the program manager's
 337 program and support staff, information that is confidential and
 338 exempt under s. 893.0551. Before ~~Prior to~~ release, the request
 339 by the following entities shall be verified as authentic and
 340 authorized with the requesting organization by the program
 341 manager or, the program manager's program and support staff, ~~or~~
 342 ~~as determined in rules by the department as being authentic and~~
 343 ~~as having been authorized by the requesting entity:~~

344 1. The department or its relevant health care regulatory
 345 boards responsible for the licensure, regulation, or discipline
 346 of practitioners, pharmacists, or other persons who are
 347 authorized to prescribe, administer, or dispense controlled
 348 substances and who are involved in a specific controlled

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349 substance investigation involving a designated person for one or
 350 more prescribed controlled substances.

351 2. The Attorney General for Medicaid fraud cases involving
 352 prescribed controlled substances.

353 3. A law enforcement agency during active investigations
 354 and pursuant to the submission of a subpoena issued by a court
 355 of competent jurisdiction upon a showing of reasonable suspicion
 356 of regarding potential criminal activity, fraud, or theft
 357 regarding prescribed controlled substances. The subpoena may be
 358 issued without notice to the affected patients, prescribers, or
 359 dispensers.

360 4. A patient or the legal guardian or designated health
 361 care surrogate of an incapacitated patient as described in s.
 362 893.0551 who, for the purpose of verifying the accuracy of the
 363 database information, submits a written and notarized request
 364 that includes the patient's full name, address, and date of
 365 birth, ~~and includes the same information if the legal guardian~~
 366 ~~or health care surrogate submits the request. If the patient's~~
 367 legal guardian or health care surrogate is the requestor, the
 368 request shall be validated by the department to verify the
 369 identity of the patient and the legal guardian or health care
 370 surrogate, ~~if the patient's legal guardian or health care~~
 371 ~~surrogate is the requestor.~~ Such verification is also required
 372 for any request to change a patient's prescription history or
 373 other information related to his or her information in the
 374 electronic database.

375
 376 Information in or released from the prescription drug monitoring
 377 program database for the electronic prescription drug monitoring

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378 ~~system~~ is not discoverable or admissible in any civil or
 379 administrative action, except in an investigation and
 380 disciplinary proceeding by the department or the appropriate
 381 regulatory board.

382 ~~(c)(d)~~ Other than the program manager and his or her
 383 program or support staff as authorized in paragraph (d),
 384 department staff are, for the purpose of calculating performance
 385 ~~measures pursuant to subsection (8), shall not be allowed direct~~
 386 access to information in the prescription drug monitoring
 387 program database but may request from the program manager and,
 388 when authorized by the program manager, the program manager's
 389 program and support staff, information that does not contain
 390 ~~contains no~~ identifying information of any patient, physician,
 391 health care practitioner, prescriber, or dispenser and that is
 392 not confidential and exempt for the purpose of calculating
 393 performance measures pursuant to subsection (7).

394 (d) The program manager and designated support staff, upon
 395 the direction of the program manager or as otherwise authorized
 396 during the program manager's absence, may access the
 397 prescription drug monitoring program's database only to manage
 398 the program or to manage the program's database and systems in
 399 support of the requirements of this section or as established by
 400 the department in rule pursuant to subparagraph (2)(c)4. The
 401 program manager, designated program and support staff who act at
 402 the direction of or in the absence of the program manager, and
 403 any individual who has similar access regarding the management
 404 of the database from the prescription drug monitoring program
 405 shall submit fingerprints to the department for background
 406 screening. The department shall follow the procedure established

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407 by the Department of Law Enforcement to request a statewide
 408 criminal history record check and to request that the Department
 409 of Law Enforcement forward the fingerprints to the Federal
 410 Bureau of Investigation for a national criminal history record
 411 check.

412 (e) If the program manager determines a pattern consistent
 413 with the rules established under subparagraph (2)(c)4., the
 414 department may provide relevant information that does not
 415 contain personal identifying information to the applicable law
 416 enforcement agency. A law enforcement agency may use such
 417 information to support a subpoena pursuant to subparagraph (b)3.

418 (f) (e) All transmissions of data required by this section
 419 must comply with relevant state and federal privacy and security
 420 laws and regulations. However, an ~~any~~ authorized agency or
 421 person under s. 893.0551 receiving such information as allowed
 422 by s. 893.0551 may maintain the information received for up to
 423 24 months before purging it from his or her records or maintain
 424 it for longer than 24 months if the information is pertinent to
 425 ongoing health care or an active law enforcement investigation
 426 or prosecution.

427 (f) The program manager, upon determining a pattern
 428 consistent with the rules established under paragraph (2)(d) and
 429 having cause to believe a violation of s. 893.13(7)(a)8.,
 430 (8)(a), or (8)(b) has occurred, may provide relevant information
 431 to the applicable law enforcement agency.

432 (7)(8) To assist in fulfilling program responsibilities,
 433 performance measures shall be reported annually to the Governor,
 434 the President of the Senate, and the Speaker of the House of
 435 Representatives by the department each December 1, beginning in

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436 ~~2011.~~ Data that does not contain patient, physician, health care
 437 practitioner, prescriber, or dispenser identifying information
 438 may be requested during the year by department employees so that
 439 the department may undertake public health care and safety
 440 initiatives that take advantage of observed trends. Performance
 441 measures may include, but are not limited to, efforts to achieve
 442 the following outcomes:

443 (a) Reduction of the rate of inappropriate use of
 444 prescription drugs through department education and safety
 445 efforts.

446 (b) Reduction of the quantity of pharmaceutical controlled
 447 substances obtained by individuals attempting to engage in fraud
 448 and deceit.

449 (c) Increased coordination among partners participating in
 450 the prescription drug monitoring program.

451 (d) Involvement of stakeholders in achieving improved
 452 patient health care and safety and reduction of prescription
 453 drug abuse and prescription drug diversion.

454 ~~(9) Any person who willfully and knowingly fails to report~~
 455 ~~the dispensing of a controlled substance as required by this~~
 456 ~~section commits a misdemeanor of the first degree, punishable as~~
 457 ~~provided in s. 775.082 or s. 775.083.~~

458 (8)(10) All costs incurred by the department in
 459 administering the prescription drug monitoring program shall be
 460 funded through federal grants or private funding applied for or
 461 received by the state. The department may not commit funds for
 462 the monitoring program without ensuring funding is available.
 463 ~~The prescription drug monitoring program and the implementation~~
 464 ~~thereof are contingent upon receipt of the nonstate funding. The~~

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465 department and state government shall cooperate with the direct-
 466 support organization established pursuant to subsection (9) ~~(11)~~
 467 in seeking federal grant funds, other nonstate grant funds,
 468 gifts, donations, or other private moneys for the department if
 469 the costs of doing so are not considered material. Nonmaterial
 470 costs for this purpose include, but are not limited to, the
 471 costs of mailing and personnel assigned to research or apply for
 472 a grant. Notwithstanding the exemptions to competitive-
 473 solicitation requirements under s. 287.057(3)(e), the department
 474 shall comply with the competitive-solicitation requirements
 475 under s. 287.057 for the procurement of any goods or services
 476 required by this section. ~~Funds provided, directly or~~
 477 ~~indirectly, by prescription drug manufacturers may not be used~~
 478 ~~to implement the program.~~

479 (9) ~~(11)~~ The department may establish a direct-support
 480 organization that has a board consisting of at least five
 481 members to provide assistance, funding, and promotional support
 482 for the activities authorized for the prescription drug
 483 monitoring program.

484 (a) As used in this subsection, the term "direct-support
 485 organization" means an organization that is:

486 1. A Florida corporation not for profit incorporated under
 487 chapter 617, exempted from filing fees, and approved by the
 488 Department of State.

489 2. Organized and operated to conduct programs and
 490 activities; raise funds; request and receive grants, gifts, and
 491 bequests of money; acquire, receive, hold, and invest, in its
 492 own name, securities, funds, objects of value, or other
 493 property, either real or personal; and make expenditures or

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494 provide funding to or for the direct or indirect benefit of the
 495 department in the furtherance of the prescription drug
 496 monitoring program.

497 (b) The direct-support organization is not considered a
 498 lobbying firm within the meaning of s. 11.045.

499 (c) The State Surgeon General shall appoint a board of
 500 directors for the direct-support organization. Members of the
 501 board shall serve at the pleasure of the State Surgeon General.
 502 The State Surgeon General shall provide guidance to members of
 503 the board to ensure that moneys received by the direct-support
 504 organization are not received from inappropriate sources.
 505 Inappropriate sources include, but are not limited to, donors,
 506 grantors, persons, or organizations that may monetarily or
 507 substantively benefit from the purchase of goods or services by
 508 the department in furtherance of the prescription drug
 509 monitoring program and any funds provided, directly or
 510 indirectly, by prescription drug manufacturers.

511 (d) The direct-support organization shall operate under
 512 written contract with the department. The contract must, at a
 513 minimum, provide for:

514 1. Approval of the articles of incorporation and bylaws of
 515 the direct-support organization by the department.

516 2. Submission of an annual budget for the approval of the
 517 department.

518 3. Certification by the department that the direct-support
 519 organization is complying with the terms of the contract in a
 520 manner consistent with and in furtherance of the goals and
 521 purposes of the prescription drug monitoring program and in the
 522 best interests of the state. Such certification must be made

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523 annually and reported in the official minutes of a meeting of
 524 the direct-support organization.

525 4. The reversion, without penalty, to the state of all
 526 moneys and property held in trust by the direct-support
 527 organization for the benefit of the prescription drug monitoring
 528 program if the direct-support organization ceases to exist or if
 529 the contract is terminated.

530 5. The fiscal year of the direct-support organization,
 531 which must begin July 1 of each year and end June 30 of the
 532 following year.

533 6. The disclosure of the material provisions of the
 534 contract to donors of gifts, contributions, or bequests,
 535 including such disclosure on all promotional and fundraising
 536 publications, and an explanation to such donors of the
 537 distinction between the department and the direct-support
 538 organization.

539 7. The direct-support organization's collecting, expending,
 540 and providing of funds to the department for the development,
 541 implementation, and operation of the prescription drug
 542 monitoring program as described in this section and s. 2,
 543 chapter 2009-198, Laws of Florida, as long as the task force is
 544 authorized. The direct-support organization may collect and
 545 expend funds to be used for the functions of the direct-support
 546 organization's board of directors, as necessary and approved by
 547 the department. In addition, the direct-support organization may
 548 collect and provide funding to the department in furtherance of
 549 the prescription drug monitoring program by:

550 a. Establishing and administering the prescription drug
 551 monitoring program's electronic database, including hardware and

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552 software.

553 b. Conducting studies on the efficiency and effectiveness
 554 of the program to include feasibility studies as described in
 555 subsection (13).

556 c. Providing funds for future enhancements of the program
 557 within the intent of this section.

558 d. Providing user training of the prescription drug
 559 monitoring program, including distribution of materials to
 560 promote public awareness and education and conducting workshops
 561 or other meetings, for health care practitioners, pharmacists,
 562 and others as appropriate.

563 e. Providing funds for travel expenses.

564 f. Providing funds for administrative costs, including
 565 personnel, audits, facilities, and equipment.

566 g. Fulfilling all other requirements necessary to implement
 567 and operate the program as outlined in this section.

568 (e) The activities of the direct-support organization must
 569 be consistent with the goals and mission of the department, as
 570 determined by the department, and in the best interests of the
 571 state. The direct-support organization must obtain a written
 572 approval from the department for any activities in support of
 573 the prescription drug monitoring program before undertaking
 574 those activities.

575 (f) The department may permit, without charge, appropriate
 576 use of administrative services, property, and facilities of the
 577 department by the direct-support organization, subject to this
 578 section. The use must be directly in keeping with the approved
 579 purposes of the direct-support organization and may not be made
 580 at times or places that would unreasonably interfere with

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 581 opportunities for the public to use such facilities for
 582 established purposes. Any moneys received from rentals of
 583 facilities and properties managed by the department may be held
 584 in a separate depository account in the name of the direct-
 585 support organization and subject to the provisions of the letter
 586 of agreement with the department. The letter of agreement must
 587 provide that any funds held in the separate depository account
 588 in the name of the direct-support organization must revert to
 589 the department if the direct-support organization is no longer
 590 approved by the department to operate in the best interests of
 591 the state.

592 (g) The department may adopt rules under s. 120.54 to
 593 govern the use of administrative services, property, or
 594 facilities of the department or office by the direct-support
 595 organization.

596 (h) The department may not permit the use of any
 597 administrative services, property, or facilities of the state by
 598 a direct-support organization if that organization does not
 599 provide equal membership and employment opportunities to all
 600 persons regardless of race, color, religion, gender, age, or
 601 national origin.

602 (i) The direct-support organization shall provide for an
 603 independent annual financial audit in accordance with s.
 604 215.981. Copies of the audit shall be provided to the department
 605 and the Office of Policy and Budget in the Executive Office of
 606 the Governor.

607 (j) The direct-support organization may not exercise any
 608 power under s. 617.0302(12) or (16).

609 ~~(12) A prescriber or dispenser may have access to the~~

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 610 ~~information under this section which relates to a patient of~~
 611 ~~that prescriber or dispenser as needed for the purpose of~~
 612 ~~reviewing the patient's controlled drug prescription history. A~~
 613 ~~prescriber or dispenser acting in good faith is immune from any~~
 614 ~~civil, criminal, or administrative liability that might~~
 615 ~~otherwise be incurred or imposed for receiving or using~~
 616 ~~information from the prescription drug monitoring program. This~~
 617 ~~subsection does not create a private cause of action, and a~~
 618 ~~person may not recover damages against a prescriber or dispenser~~
 619 ~~authorized to access information under this subsection for~~
 620 ~~accessing or failing to access such information.~~

621 (10)~~(13)~~ To the extent that funding is provided for such
 622 purpose through federal or private grants or gifts and other
 623 types of available moneys, the department shall study the
 624 feasibility of enhancing the prescription drug monitoring
 625 program for the purposes of public health initiatives and
 626 statistical reporting that respects the privacy of the patient,
 627 the prescriber, and the dispenser. Such a study shall be
 628 conducted in order to further improve the quality of health care
 629 services and safety by improving the prescribing and dispensing
 630 practices for prescription drugs, taking advantage of advances
 631 in technology, reducing duplicative prescriptions and the
 632 overprescribing of prescription drugs, and reducing drug abuse.
 633 The requirements of the National All Schedules Prescription
 634 Electronic Reporting (NASPER) Act are authorized in order to
 635 apply for federal NASPER funding. In addition, the direct-
 636 support organization shall provide funding for the department to
 637 conduct training for health care practitioners and other
 638 appropriate persons in using the monitoring program to support

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639 the program enhancements.

640 ~~(11)(14) A pharmacist, pharmacy, or dispensing health care~~
 641 ~~practitioner or his or her agent, Before releasing a controlled~~
 642 ~~substance to any person not known to him or her ~~such dispenser,~~~~
 643 ~~the dispenser shall require the person purchasing, receiving, or~~
 644 ~~otherwise acquiring the controlled substance to present valid~~
 645 ~~photographic identification or other verification of his or her~~
 646 ~~identity ~~to the dispenser.~~ If the person does not have proper~~
 647 ~~identification, the dispenser may verify the validity of the~~
 648 ~~prescription and the identity of the patient with the prescriber~~
 649 ~~or his or her authorized agent. Verification of health plan~~
 650 ~~eligibility through a real-time inquiry or adjudication system~~
 651 ~~is ~~will be~~ considered to be proper identification. This~~
 652 ~~subsection does not apply in an institutional setting or to a~~
 653 ~~long-term care facility, including, but not limited to, an~~
 654 ~~assisted living facility or a hospital to which patients are~~
 655 ~~admitted. As used in this subsection, the term "proper~~
 656 ~~identification" means an identification that is issued by a~~
 657 ~~state or the Federal Government containing the person's~~
 658 ~~photograph, printed name, and signature or a document considered~~
 659 ~~acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).~~

660 ~~(15) The Agency for Health Care Administration shall~~
 661 ~~continue the promotion of electronic prescribing by health care~~
 662 ~~practitioners, health care facilities, and pharmacies under s.~~
 663 ~~408.0611.~~

664 ~~(16) The department shall adopt rules pursuant to ss.~~
 665 ~~120.536(1) and 120.54 to administer the provisions of this~~
 666 ~~section, which shall include as necessary the reporting,~~
 667 ~~accessing, evaluation, management, development, implementation,~~

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668 ~~operation, and storage of information within the monitoring~~
 669 ~~program's system.~~

670 Section 2. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



Meeting Date 2/4/14

Topic PDMP Bill Number 7016
(if applicable)

Name Amy Mercer Amendment Barcode 861816
(if applicable)

Job Title Ex. Director

Address 924 N. Gadsden St. Phone 850 219 3631
Street

TALL, FL 32303 E-mail amercer@fca.com
City State Zip

Speaking: For Against Information

Representing FL Police Chiefs Assoc

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



Meeting Date _____

Topic PDMP Bill Number 7016
(if applicable)

Name Electra Bustle Amendment Barcode 861816
(if applicable)

Job Title _____

Address _____ Phone _____
Street

_____ E-mail _____
City State Zip

Speaking: For Against Information

Representing Florida Sheriffs Assoc

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-2014

Meeting Date

Topic PRESCRIPTION DRUG MONITORING PROGRAM Bill Number 7016
Name MICHAEL A. JACKSON Amendment Barcode 963500 (if applicable)
Job Title EXECUTIVE VICE PRESIDENT + CEO (if applicable)
Address 610 N. ADAMS ST Phone 850 222-2400
TALLAHASSEE FL 32301 E-mail MJACKSON@PHARMVIEW.COM
City State Zip
Speaking: For Against Information
Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14

Meeting Date

Topic Chapter 893 Bill Number SB 7016
Name Buddy Jacobs Amendment Barcode ~~963500~~ 14 (if applicable)
Job Title General Counsel Fla. Prosecuting Attys Assoc (if applicable)
Address 961687 Gateway Blvd. Phone _____
Fernandina Bch, FL E-mail _____
City State Zip
Speaking: For Against Information
Representing State Attorneys Assoc

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4
2/11/14
Meeting Date

Topic POMP

Bill Number 7016
(if applicable)

Name DAVID KING

Amendment Barcode _____
(if applicable)

Job Title AGENT

Address 123 W. INDIANA AVE
Street

Phone 386-804-9098

DELAND FL 32720
City State Zip

E-mail DJ KING @ VCSO.US

Speaking: For Against Information

Representing NOVIA CO SHERIFFS OFFICE / FLORIDA SHERIFFS ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/2014
Meeting Date

Topic Prescription Drug Monitoring Program

Bill Number 7016
(if applicable)

Name PAMELA BUREN FORT

Amendment Barcode _____
(if applicable)

Job Title _____

Address 104 S. MONROE STREET
Street

Phone 850/425-1344

TALLAHASSEE FL 32301
City State Zip

E-mail TcgLobby@aol.com

Speaking: For Against Information

Representing ACLU of FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic ~~Pharmacy practice~~ PDMP

Bill Number SB 7016
~~SB 7007~~ (if applicable)

Name Larry Gonzalez

Amendment Barcode _____ (if applicable)

Job Title General Counsel

Address 223 S. Gadsden St.

Phone 850-222-0465

Tallahassee, FL 32301
Street City State Zip

E-mail lgonz@earthlink.net

Speaking: For Against Information

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-14
Meeting Date

Topic PDMP

Bill Number 7016 (if applicable)

Name Electra Bustle

Amendment Barcode _____ (if applicable)

Job Title _____

Address 123 S. Adams St.

Phone _____

32301
Street City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic PDMP

Bill Number 7016
(if applicable)

Name Amy Mercer

Amendment Barcode
(if applicable)

Job Title Ex. Director

Address 924 N Gadsden St.
Street

Phone 8502193631

TALL, FL 32303
City State Zip

E-mail amercer6fpc@ca.com

Speaking: For Against Information

Representing FL Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 408

INTRODUCER: Health Policy Committee and Senator Braynon

SUBJECT: Needle and Syringe Exchange Pilot Program

DATE: February 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	Fav/CS
2.			CJ	
3.			AHS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 408 creates the “Miami-Dade Infectious Disease Elimination Act (IDEA). The IDEA requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program in Miami-Dade County to prevent the transmission of HIV/AIDS, viral hepatitis, and other blood-borne diseases. The bill specifies the duties of the pilot program. The pilot program must be funded through private grants and donations.

The bill specifies that possession, distribution, or exchange of needles or syringes through the pilot program is not a violation of criminal law; however, possession or redistribution of syringes or needles outside of the program by staff, volunteers, or participants remains a violation subject to criminal prosecution.

The pilot program expires on July 1, 2019, or, if operated by a designee, 5 years after the entity is designated, and requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

II. Present Situation:

Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), particularly among injection drug users (IDUs), their sexual partners, and offspring. The studies found that comprehensive strategies—in the absence of a vaccine or cure for AIDS—are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including syringe exchange programs (SEPs).^{1,2} In general, these strategies are referred to as harm reduction.

Syringe exchange programs provide free sterile syringes and collect used syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, hepatitis B virus, and hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and³
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.⁴

¹ This analysis uses the terminology SEP, interchangeably with the term “needle exchange program” (NEP).

² National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), available at [http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20\(17\).pdf](http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf) (last visited Jan. 28, 2014). See also World Health Organization, *Treatment of injecting drug users with HIV/AIDS: promoting access and optimizing service delivery* (2006), available at http://www.who.int/substance_abuse/publications/treatment_idus_hiv_aids.pdf (last visited Jan. 28, 2014); Centers for Disease Control, *Integrated Prevention Services for HIV Infection, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis for Persons Who Use Drugs Illicitly: Summary Guidance from CDC and the U.S. Department of Health and Human Services* (Nov. 12, 2012), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6105a1.htm> (last visited Jan. 28, 2014); World Health Organization, United Nations Office on Drugs and Crime, and UNAIDS, *WHO, UNODC, UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users*, 10 – 26 (2012 Revision), available at http://apps.who.int/iris/bitstream/10665/77969/1/9789241504379_eng.pdf (last visited Jan. 28, 2014); Institute of Medicine of the National Academies, *Preventing HIV Infection Among Injecting Drug Users in High Risk Countries* (September 2006), available at <http://iom.edu/Reports/2006/Preventing-HIV-Infection-among-Injecting-Drug-Users-in-High-Risk-Countries-An-Assessment-of-the-Evidence.aspx> (last visited Jan. 28, 2014).

³ Researchers from the University of Miami recently found that IDUs in Miami—a city without an SEP—were 34 times more likely to dispose of a used syringe in a public location than were IDUs in San Francisco—a city with multiple SEPs. Tookes, HE, Kral, AH, Wenger, LD, Cardenas, GA, Martinez, AN, Sherman, RL, Pereyra, M, Forrest, DW, LalLota, M, Metsch, LR. “A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs.” *Drug and Alcohol Dependence*, June 2012, Vol. 123, Issue 1, pp 255-259, available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited Jan. 28, 2014).

⁴ National Institute of Drug Abuse, *supra* note 2, at 18. See also U.S. Department of Health and Human Services, David Satcher, MD, Assistant Secretary for Health and Surgeon General, *Evidence-based findings on the efficacy of syringe exchange programs: an analysis of the scientific research completed since April 1998* (March 17, 2000), available at

The first sanctioned SEP began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington in 1988. Programs have since developed throughout the United States.⁵ As of July 2013, thirty states, plus the District of Columbia and Puerto Rico, have a combined total of 214 SEPs.⁶

In 1988, Congress enacted a ban on the use of federal funds for SEPs. The ban remained in place until 2009, but was reinstated again at the end of 2011 as part of the omnibus spending bill that continued operations of the federal government through 2012.

Intravenous Drug Use in Florida

The majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA) with an IDU-associated risk through 2012 are primarily in the southeast or central part of the state.⁷ Researchers from the University of Miami recently estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive and one in three are HCV positive.⁸ The DOH estimates that 50 - 90 percent of HIV-infected IUDs are also co-infected with HCV.⁹

The chart below contains data from 2012 of 11 counties with the highest incidence of PLWHA with an IDU-associated risk.¹⁰

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	25,544	3,274	13%
Broward	16,593	2,103	13%
Palm Beach	7,769	1,484	19%

<http://home.mchsi.com/~apclc/8fedstudies2.pdf> (last visited Jan. 28, 2014). In his report the Surgeon General noted, “The data indicate that the presence of a syringe exchange program does not increase the use of illegal drugs among participants in syringe exchange programs, and in many cases, a decrease in injection frequency has been observed among those attending these programs.” World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) 28 – 29, available at <http://www.who.int/hiv/pub/idu/pubidu/en/> (last visited Jan. 28, 2014) (Concluding specifically that injecting paraphernalia legislation is a barrier to effective HIV control among IDUs).

⁵ Sandra D. Lane, R.N., Ph.D., M.P.H., *Needle Exchange: A Brief History, a Publication from The Kaiser Forums*, available at <http://hpcpsdi.rutgers.edu/facilitator/SAP/downloads/articles%20and%20data/History+of+Needle+Exchange.pdf> (last visited Jan. 28, 2014).

⁶ North American Syringe Exchange Network, *Syringe Exchange Program Coverage in the United States* (July 2013), available at [http://www.amfar.org/uploadedFiles/amfarorg/Articles/In The Community/2013/July%202013%20SEP%20Map%20.pdf](http://www.amfar.org/uploadedFiles/amfarorg/Articles/In%20The%20Community/2013/July%202013%20SEP%20Map%20.pdf) (last visited Jan. 28, 2014).

⁷ Florida Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2012* (PowerPoint slide) (Revised Sept. 17, 2013), available at [http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/ documents/HIV-AIDS-slide%20sets/IDU_2012.pdf](http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/HIV-AIDS-slide%20sets/IDU_2012.pdf) (last visited Jan. 28, 2014). The PowerPoint reflects data as of June 30, 2013.

⁸ Tookes et al., *supra* note 3.

⁹ Florida Department of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2011* (Revised Dec. 11, 2012) (on file with the Senate Health Policy Committee).

¹⁰ *Supra* note 7.

Orange	7,149	1,291	18%
Hillsborough	5,898	1,144	19%
Duval	5,372	1,009	19%
Pinellas	3,564	723	20%
Lee	1,677	305	18%
St. Lucie	1,508	302	20%
Volusia	1,358	324	24%
Brevard	1,256	268	21%
STATE TOTAL	98,291	17,289	18%

Among those with HIV, drug users have been found to experience significant barriers to accessing care. Specifically, they receive HIV care at lower rates than other populations; have greater difficulty accessing treatment and being prescribed medications, and even when treatment is available, may fail to connect with the health care system due to mistrust, fear of prosecution, stigmatization, and a chaotic lifestyle; and may be discriminated against in the system due to the perception that they will not adhere to a medication regimen or that HIV has been self-inflicted, and thus treatment is not deserved.¹¹

Florida Comprehensive Drug Abuse Prevention and Control Act

The term drug paraphernalia is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.¹²

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this provision commits a first degree misdemeanor.¹³

This section of law also provides that it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

¹¹ World Health Organization, *Treatment of injecting drug users with HIV/AIDS: promoting access and optimizing service delivery*, p. 1 (2006), available at http://www.who.int/substance_abuse/publications/treatment_idus_hiv_aids.pdf (last visited Jan. 28, 2014).

¹² Section 893.145, F.S.

¹³ A first degree misdemeanor is punishable by up to one-year imprisonment in a county jail, a fine of up to \$1,000, or both. See ss. 775.082, F.S., and 775.083, F.S.

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.¹⁴

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.¹⁵

III. Effect of Proposed Changes:

Section 1 names the act the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

Section 2 adds a new subsection to s. 381.0038, F.S., that requires the DOH to establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program is created to prevent the transmission of the HIV/AIDS and other blood-borne diseases by offering free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes in a one-for-one exchange. The pilot program must be administered by the DOH or its designee. The bill identifies the entities that the DOH is authorized to designate to operate the program at a fixed location or through a mobile health unit:

- A licensed hospital;
- A licensed health care clinic;
- A substance abuse treatment program;
- An HIV or AIDS service organization; or
- Another nonprofit entity designated by the DOH.

The program must do all of the following:

- Provide for maximum security of exchange sites and equipment, including: an accounting of the number of needles and syringes in use and in storage; safe disposal of returned needles; and any other measure that may be required to control the use and dispersal of sterile needles and syringes.
- Strive for one-to-one exchange (one sterile needle and syringe unit for each used one).

¹⁴ A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed \$5,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹⁵ Section 893.146, F.S.

- Make available the following: educational materials: HIV counseling and testing; referral services to provide education regarding HIV/AIDS and viral hepatitis transmission; and drug use prevention and treatment.

The program must be funded through grants and donations from private resources and funds, without the use of state funds.

The possession, distribution, or exchange of needles or syringes as part of a pilot SEP established by the DOH or its designee is not a violation of ch. 893, F.S., or any other law. However, a SEP staff member, volunteer, or participant is not immune from criminal prosecution for possessing needles or syringes that are not part of the exchange pilot program or for redistributing needles or syringes if acting outside the program.

The pilot program must collect data regarding the following: number of participants served; the number of needles and syringes exchanged and distributed; the number of participants entering drug counseling and treatment; the number of participants receiving HIV/AIDS or viral hepatitis testing; and demographic profiles of participants served. However, no personal identifying information may be collected from a participant for any purpose.

The pilot program expires on July 1, 2019, or, if operated by a designee, 5 years after the entity is designated. Six months before the pilot program expires, the OPPAGA must submit a report to the Legislature that includes the collected data and a recommendation on whether the pilot program should continue.

Section 3 adds a severability clause, which provides that if any provision of this act or its application to a person is invalid, the invalidity would not affect other provisions or applications of the act which can be given effect without the invalid provision, and the provisions of this act are severable.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The private sector would benefit from any cost savings resulting from avoided treatment costs, consistent with the discussion below, in proportion to its share of covered costs.

C. Government Sector Impact:

The DOH indicates that an exchange program site will be required to obtain a permit as a sharps collection program under Chapter 64E-16, F.A.C. The DOH anticipates that permitting costs can be absorbed by current resources.

Currently, no data exist to estimate the potential fiscal impact of the pilot program. However, the CDC indicates that HIV prevention interventions, such as syringe exchange programs, are intended to prevent infection in people who are HIV-negative. Such programs can be evaluated to determine the number of infections prevented that would have otherwise occurred had the intervention not been provided.

The lifetime treatment cost of an HIV infection can be used as a conservative threshold value for the cost of averting one infection. Currently, the lifetime treatment cost of an HIV infection is estimated at \$379,668 (in 2010 dollars), therefore a prevention intervention is deemed cost-saving if its cost-effectiveness ratio (cost of the intervention/number of infections averted) is less than \$379,668 per infection averted.¹⁶

The State of Florida pays for HIV/AIDS treatment through Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program, among others. If 10 percent of the reported PLWHA with an IDU-associated risk living in Miami-Dade County had avoided infection, that would represent a savings in treatment costs of approximately \$124 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.0038 of the Florida Statutes.

¹⁶ Centers for Disease Control, *HIV Cost-effectiveness* <http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/> (last visited Jan. 28, 2014).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 4, 2014:

The CS adds a short title and modifies the program repeal date to be either July 1, 2019, or, if operated by a designee, 5 years from the date the entity is designated.

- B. **Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/04/2014	.	
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The Committee on Health Policy (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

Section 2. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; sterile needle and syringe exchange pilot program.-The Department of Health shall establish a



11 program to educate the public about the threat of acquired
12 immune deficiency syndrome and a sterile needle and syringe
13 exchange pilot program.

14 (1) The acquired immune deficiency syndrome education
15 program shall:

16 (a) Be designed to reach all segments of Florida's
17 population;

18 (b) Contain special components designed to reach non-
19 English-speaking and other minority groups within the state;

20 (c) Impart knowledge to the public about methods of
21 transmission of acquired immune deficiency syndrome and methods
22 of prevention;

23 (d) Educate the public about transmission risks in social,
24 employment, and educational situations;

25 (e) Educate health care workers and health facility
26 employees about methods of transmission and prevention in their
27 unique workplace environments;

28 (f) Contain special components designed to reach persons
29 who may frequently engage in behaviors placing them at a high
30 risk for acquiring acquired immune deficiency syndrome;

31 (g) Provide information and consultation to state agencies
32 to educate all state employees; ~~and~~

33 (h) Provide information and consultation to state and local
34 agencies to educate law enforcement and correctional personnel
35 and inmates; ~~-~~

36 (i) Provide information and consultation to local
37 governments to educate local government employees; ~~-~~

38 (j) Make information available to private employers and
39 encourage them to distribute this information to their



40 employees;-
41 (k) Contain special components which emphasize appropriate
42 behavior and attitude change; and-
43 (1) Contain components that include information about
44 domestic violence and the risk factors associated with domestic
45 violence and AIDS.
46 (2) The education program designed by the Department of
47 Health shall use ~~utilize~~ all forms of the media and shall place
48 emphasis on the design of educational materials that can be used
49 by businesses, schools, and health care providers in the regular
50 course of their business.
51 (3) The department may contract with other persons in the
52 design, development, and distribution of the components of the
53 education program.
54 (4) The department shall establish a sterile needle and
55 syringe exchange pilot program in Miami-Dade County. The pilot
56 program shall be administered by the department or the
57 department's designee. The department may designate one of the
58 following entities to operate the pilot program at a fixed
59 location or through a mobile health unit: a hospital licensed
60 under chapter 395, a health care clinic licensed under part X of
61 chapter 400, a substance abuse treatment program, an HIV or AIDS
62 service organization, or another nonprofit entity designated by
63 the department. The pilot program shall offer the free exchange
64 of clean, unused needles and hypodermic syringes for used
65 needles and hypodermic syringes as a means to prevent the
66 transmission of HIV, AIDS, viral hepatitis, or other blood-borne
67 diseases among intravenous drug users and their sexual partners
68 and offspring.



69 (a) The pilot program shall:
70 1. Provide for maximum security of exchange sites and
71 equipment, including an accounting of the number of needles and
72 syringes in use, the number of needles and syringes in storage,
73 safe disposal of returned needles, and any other measure that
74 may be required to control the use and dispersal of sterile
75 needles and syringes.
76 2. Strive for a one-to-one exchange, whereby the
77 participant shall receive one sterile needle and syringe unit in
78 exchange for each used one.
79 3. Make available educational materials; HIV counseling and
80 testing; referral services to provide education regarding HIV,
81 AIDS, and viral hepatitis transmission; and drug-abuse
82 prevention and treatment.
83 (b) Notwithstanding any other provision of law, the
84 possession, distribution, or exchange of needles or syringes as
85 part of the pilot program established by the department or the
86 department's designee is not a violation of any part of chapter
87 893 or any other law.
88 (c) A pilot program staff member, volunteer, or participant
89 is not immune from criminal prosecution for:
90 1. The possession of needles or syringes that are not a
91 part of the pilot program; or
92 2. Redistribution of needles or syringes in any form, if
93 acting outside the pilot program.
94 (d) The pilot program shall collect data for annual and
95 final reporting purposes, which shall include information on the
96 number of participants served, the number of needles and
97 syringes exchanged and distributed, the demographic profiles of



98 the participants served, the number of participants entering
 99 drug counseling and treatment, the number of participants
 100 receiving HIV, AIDS, or viral hepatitis testing, and other data
 101 deemed necessary for the pilot program. However, personal
 102 identifying information may not be collected from a participant
 103 for any purpose.

104 (e) State funds may not be used to operate the pilot
 105 program. The pilot program shall be funded through grants and
 106 donations from private resources and funds.

107 (f) The pilot program shall expire 5 years after the date
 108 the department designates an entity as defined in subsection (4)
 109 to operate the pilot program. Six months before the pilot
 110 program expires, the Office of Program Policy Analysis and
 111 Government Accountability shall submit a report to the President
 112 of the Senate and the Speaker of the House of Representatives
 113 that includes the data collection requirements established in
 114 this subsection; the rates of HIV, AIDS, viral hepatitis, or
 115 other blood-borne diseases before the pilot program began and
 116 every subsequent year thereafter; and a recommendation on
 117 whether to continue the pilot program.

118 (g) The department may adopt and develop rules to
 119 administer this subsection.

120 Section 3. If any provision of this act or its application
 121 to any person or circumstance is held invalid, the invalidity
 122 does not affect other provisions or applications of the act that
 123 can be given effect without the invalid provision or
 124 application, and to this end the provisions of this act are
 125 severable.

126 Section 4. This act shall take effect July 1, 2014.



127 ===== T I T L E A M E N D M E N T =====
 128 And the title is amended as follows:
 129 Delete everything before the enacting clause
 130 and insert:
 131 A bill to be entitled
 132 An act relating to an infectious disease elimination
 133 pilot program; creating the "Miami-Dade Infectious
 134 Disease Elimination Act (IDEA)"; amending s. 381.0038,
 135 F.S.; requiring the Department of Health to establish
 136 a sterile needle and syringe exchange pilot program in
 137 Miami-Dade County; providing for administration of the
 138 pilot program by the department or a designee;
 139 establishing pilot program criteria; providing that
 140 the distribution of needles and syringes under the
 141 pilot program is not a violation of the Florida
 142 Comprehensive Drug Abuse Prevention and Control Act or
 143 any other law; providing conditions under which a
 144 pilot program staff member or participant may be
 145 prosecuted; prohibiting the collection of participant
 146 identifying information; providing for the pilot
 147 program to be funded through private grants and
 148 donations; providing for expiration of the pilot
 149 program; requiring the Office of Program Policy
 150 Analysis and Government Accountability to submit a
 151 report and recommendations regarding the pilot program
 152 to the Legislature; providing rulemaking authority;
 153 providing for severability; providing an effective
 154 date.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
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The Committee on Health Policy (Braynon) recommended the following:

Senate Substitute for Amendment (357286) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Miami-Dade Infectious Disease Elimination Act (IDEA)."

Section 2. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; sterile needle and syringe exchange



11 pilot program.—The Department of Health shall establish a
12 program to educate the public about the threat of acquired
13 immune deficiency syndrome and a sterile needle and syringe
14 exchange pilot program.

15 (1) The acquired immune deficiency syndrome education
16 program shall:

17 (a) Be designed to reach all segments of Florida's
18 population;

19 (b) Contain special components designed to reach non-
20 English-speaking and other minority groups within the state;

21 (c) Impart knowledge to the public about methods of
22 transmission of acquired immune deficiency syndrome and methods
23 of prevention;

24 (d) Educate the public about transmission risks in social,
25 employment, and educational situations;

26 (e) Educate health care workers and health facility
27 employees about methods of transmission and prevention in their
28 unique workplace environments;

29 (f) Contain special components designed to reach persons
30 who may frequently engage in behaviors placing them at a high
31 risk for acquiring acquired immune deficiency syndrome;

32 (g) Provide information and consultation to state agencies
33 to educate all state employees; ~~and~~

34 (h) Provide information and consultation to state and local
35 agencies to educate law enforcement and correctional personnel
36 and inmates;—

37 (i) Provide information and consultation to local
38 governments to educate local government employees;—

39 (j) Make information available to private employers and



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40 encourage them to distribute this information to their
41 employees;-
42 (k) Contain special components which emphasize appropriate
43 behavior and attitude change; ~~and-~~
44 (1) Contain components that include information about
45 domestic violence and the risk factors associated with domestic
46 violence and AIDS.
47 (2) The education program designed by the Department of
48 Health shall use ~~utilize~~ all forms of the media and shall place
49 emphasis on the design of educational materials that can be used
50 by businesses, schools, and health care providers in the regular
51 course of their business.
52 (3) The department may contract with other persons in the
53 design, development, and distribution of the components of the
54 education program.
55 (4) The department shall establish a sterile needle and
56 syringe exchange pilot program in Miami-Dade County. The pilot
57 program shall be administered by the department or the
58 department's designee. The department may designate one of the
59 following entities to operate the pilot program at a fixed
60 location or through a mobile health unit: a hospital licensed
61 under chapter 395, a health care clinic licensed under part X of
62 chapter 400, a substance abuse treatment program, an HIV or AIDS
63 service organization, or another nonprofit entity designated by
64 the department. The pilot program shall offer the free exchange
65 of clean, unused needles and hypodermic syringes for used
66 needles and hypodermic syringes as a means to prevent the
67 transmission of HIV, AIDS, viral hepatitis, or other blood-borne
68 diseases among intravenous drug users and their sexual partners



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69 and offspring.
70 (a) The pilot program shall:
71 1. Provide for maximum security of exchange sites and
72 equipment, including an accounting of the number of needles and
73 syringes in use, the number of needles and syringes in storage,
74 safe disposal of returned needles, and any other measure that
75 may be required to control the use and dispersal of sterile
76 needles and syringes.
77 2. Strive for a one-to-one exchange, whereby the
78 participant shall receive one sterile needle and syringe unit in
79 exchange for each used one.
80 3. Make available educational materials; HIV counseling and
81 testing; referral services to provide education regarding HIV,
82 AIDS, and viral hepatitis transmission; and drug-abuse
83 prevention and treatment.
84 (b) Notwithstanding any other provision of law, the
85 possession, distribution, or exchange of needles or syringes as
86 part of the pilot program established by the department or the
87 department's designee is not a violation of any part of chapter
88 893 or any other law.
89 (c) A pilot program staff member, volunteer, or participant
90 is not immune from criminal prosecution for:
91 1. The possession of needles or syringes that are not a
92 part of the pilot program; or
93 2. Redistribution of needles or syringes in any form, if
94 acting outside the pilot program.
95 (d) The pilot program shall collect data for annual and
96 final reporting purposes, which shall include information on the
97 number of participants served, the number of needles and



98 syringes exchanged and distributed, the demographic profiles of
99 the participants served, the number of participants entering
100 drug counseling and treatment, the number of participants
101 receiving HIV, AIDS, or viral hepatitis testing, and other data
102 deemed necessary for the pilot program. However, personal
103 identifying information may not be collected from a participant
104 for any purpose.

105 (e) State funds may not be used to operate the pilot
106 program. The pilot program shall be funded through grants and
107 donations from private resources and funds.

108 (f) The pilot program shall expire July 1, 2019, or, if
109 operated by a designee, five years after the entity is
110 designated. Six months before the pilot program expires, the
111 Office of Program Policy Analysis and Government Accountability
112 shall submit a report to the President of the Senate and the
113 Speaker of the House of Representatives that includes the data
114 collection requirements established in this subsection; the
115 rates of HIV, AIDS, viral hepatitis, or other blood-borne
116 diseases before the pilot program began and every subsequent
117 year thereafter; and a recommendation on whether to continue the
118 pilot program.

119 (g) The department may adopt and develop rules to
120 administer this subsection.

121 Section 3. If any provision of this act or its application
122 to any person or circumstance is held invalid, the invalidity
123 does not affect other provisions or applications of the act that
124 can be given effect without the invalid provision or
125 application, and to this end the provisions of this act are
126 severable.



127 Section 4. This act shall take effect July 1, 2014.

128
129 ===== T I T L E A M E N D M E N T =====

130 And the title is amended as follows:

131 Delete everything before the enacting clause
132 and insert:

133 A bill to be entitled
134 An act relating to an infectious disease elimination
135 pilot program; creating the "Miami-Dade Infectious
136 Disease Elimination Act (IDEA)"; amending s. 381.0038,
137 F.S.; requiring the Department of Health to establish
138 a sterile needle and syringe exchange pilot program in
139 Miami-Dade County; providing for administration of the
140 pilot program by the department or a designee;
141 establishing pilot program criteria; providing that
142 the distribution of needles and syringes under the
143 pilot program is not a violation of the Florida
144 Comprehensive Drug Abuse Prevention and Control Act or
145 any other law; providing conditions under which a
146 pilot program staff member or participant may be
147 prosecuted; prohibiting the collection of participant
148 identifying information; providing for the pilot
149 program to be funded through private grants and
150 donations; providing for expiration of the pilot
151 program; requiring the Office of Program Policy
152 Analysis and Government Accountability to submit a
153 report and recommendations regarding the pilot program
154 to the Legislature; providing rulemaking authority;
155 providing for severability; providing an effective



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156

date.

By Senator Braynon

36-00457-14

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A bill to be entitled

An act relating to a needle and syringe exchange pilot program; amending s. 381.0038, F.S.; requiring the Department of Health to establish a needle and syringe exchange pilot program in Miami-Dade County; providing for administration of the pilot program by the department or a designee; establishing pilot program criteria; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information; providing for the pilot program to be funded through private grants and donations; providing for expiration of the pilot program; requiring a report to the Legislature; providing rulemaking authority; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.0038, Florida Statutes, is amended to read:

381.0038 Education; needle and syringe exchange pilot program.—The Department of Health shall establish a program to educate the public about the threat of acquired immune deficiency syndrome and a sterile needle and syringe exchange pilot program.

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

36-00457-14

2014408__

(l) The acquired immune deficiency syndrome education program shall:

(a) Be designed to reach all segments of Florida's population;

(b) Contain special components designed to reach non-English-speaking and other minority groups within the state;

(c) Impart knowledge to the public about methods of transmission of acquired immune deficiency syndrome and methods of prevention;

(d) Educate the public about transmission risks in social, employment, and educational situations;

(e) Educate health care workers and health facility employees about methods of transmission and prevention in their unique workplace environments;

(f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high risk for acquiring acquired immune deficiency syndrome;

(g) Provide information and consultation to state agencies to educate all state employees; and

(h) Provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates.

(i) Provide information and consultation to local governments to educate local government employees.

(j) Make information available to private employers and encourage them to distribute this information to their employees.

(k) Contain special components which emphasize appropriate behavior and attitude change.

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 (1) Contain components that include information about
60 domestic violence and the risk factors associated with domestic
61 violence and AIDS.

62 (2) The education program designed by the Department of
63 Health shall utilize all forms of the media and shall place
64 emphasis on the design of educational materials that can be used
65 by businesses, schools, and health care providers in the regular
66 course of their business.

67 (3) The department may contract with other persons in the
68 design, development, and distribution of the components of the
69 education program.

70 (4) The department shall establish a sterile needle and
71 syringe exchange pilot program in Miami-Dade County. The pilot
72 program shall be administered by the department or the
73 department's designee. The department may designate one of the
74 following entities to operate the pilot program at a fixed
75 location or through a mobile health unit: a hospital licensed
76 under chapter 395, a health care clinic licensed under part X of
77 chapter 400, a substance abuse treatment program, an HIV or AIDS
78 service organization, or another nonprofit entity designated by
79 the department. The pilot program shall offer the free exchange
80 of clean, unused needles and hypodermic syringes for used
81 needles and hypodermic syringes as a means to prevent the
82 transmission of HIV, AIDS, viral hepatitis, or other blood-borne
83 diseases among intravenous drug users and their sexual partners
84 and offspring.

85 (a) The pilot program shall:

86 1. Provide for maximum security of exchange sites and
87 equipment, including an accounting of the number of needles and

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2014408__

88 syringes in use, the number of needles and syringes in storage,
89 safe disposal of returned needles, and any other measure that
90 may be required to control the use and dispersal of sterile
91 needles and syringes.

92 2. Strive for a one-to-one exchange, whereby the
93 participant shall receive one sterile needle and syringe unit in
94 exchange for each used one.

95 3. Make available educational materials; HIV counseling and
96 testing; referral services to provide education regarding HIV,
97 AIDS, and viral hepatitis transmission; and drug-use prevention
98 and treatment.

99 (b) Notwithstanding any other provision of law, the
100 possession, distribution, or exchange of needles or syringes as
101 part of a needle and syringe exchange pilot program established
102 by the department or the department's designee is not a
103 violation of any part of chapter 893 or any other law.

104 (c) A needle and syringe exchange pilot program staff
105 member, volunteer, or participant is not immune from criminal
106 prosecution for:

107 1. The possession of needles or syringes that are not a
108 part of the exchange pilot program; or

109 2. Redistribution of needles or syringes in any form, if
110 acting outside the pilot program.

111 (d) The pilot program shall collect data for annual and
112 final reporting purposes, which shall include information on the
113 number of participants served, the number of needles and
114 syringes exchanged and distributed, the demographic profiles of
115 the participants served, the number of participants entering
116 drug counseling and treatment, the number of participants

36-00457-14

2014408__

117 receiving HIV, AIDS, or viral hepatitis testing, and other data
118 deemed necessary for the pilot program. However, personal
119 identifying information may not be collected from a participant
120 for any purpose.

121 (e) State funds may not be used to operate the pilot
122 program. The pilot program shall be funded through grants and
123 donations from private resources and funds.

124 (f) The pilot program shall expire July 1, 2019. Six months
125 before the pilot program expires, the Office of Program Policy
126 Analysis and Government Accountability shall submit a report to
127 the President of the Senate and the Speaker of the House of
128 Representatives which includes the data collection requirements
129 established in this subsection; the rates of HIV, AIDS, viral
130 hepatitis, or other blood-borne diseases before the pilot
131 program began and every subsequent year thereafter; and a
132 recommendation on whether to continue the pilot program.

133 (g) The department may adopt and develop rules to
134 administer this subsection.

135 Section 2. If any provision of this act or its application
136 to any person or circumstance is held invalid, the invalidity
137 does not affect other provisions or applications of the act that
138 can be given effect without the invalid provision or
139 application, and to this end the provisions of this act are
140 severable.

141 Section 3. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, Vice Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II
Democratic Whip
36th District

January 14, 2014

Senator Aaron Bean, Chair
Health Policy
302 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Bean:

This letter is to request that Senate Bill #408, relating to Needle and Syringe Exchange Pilot Program be placed on the agenda of the next scheduled meeting of the committee.

SB 408 Requiring the Department of Health to establish a needle and syringe exchange pilot program in Miami-Dade County; providing for administration of the pilot program by the department or a designee; establishing pilot program criteria; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted, etc.

Thank you for consideration of this request.

Sincerely,

Signature of Senator Oscar Braynon II
Senator Braynon
District 36

cc. Sandra Stovall, Staff Director,
Celia Georgiades, Committee Administrative Assistant, Room 530K

REPLY TO:
606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flssenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Form with handwritten entries: Meeting Date 2/4/14, Topic Needle Exchange Pilot Program, Name Jarrn King, Job Title Legislative Affairs Manager, Address 110 SE 6th St, Fort Lauderdale FL 33301, Phone 954-610-3064, E-mail jarrn.king@aidnaath.org, Speaking For, Representing AIDS Healthcare Foundation, Appearing at request of Chair No, Lobbyist registered with Legislature Yes.

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

2-4-2014

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic NEEDLE SYRINGE EXCHANGE PILOT PROGRAM

Bill Number SB 408 (if applicable)

Name STEPHEN R. WINN

Amendment Barcode (if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APACHE PARKWAY

Phone 850-878-7463

Tallahassee FL 32301

E-mail

Speaking: [X] For [] Against [] Information

WAIVE IN SUPPORT

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

2/4/14

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic

Bill Number 408 (if applicable)

Name Chris Nuland

Amendment Barcode (if applicable)

Job Title

Address 1000 Riverside Ave #115

Phone 904-233-3051

Jacksonville, FL 32204

E-mail nulandlaw@aol.com

Speaking: [X] For [] Against [] Information

Representing Florida Public Health Association; Florida Chapter, American College of Physicians

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-14
Meeting Date

Topic Syringe Exchange Program Bill Number 408
Name John Dudley Amendment Barcode _____
Job Title 2nd year medical student (if applicable)
Address 2055 Thomasville Rd #B104 Phone _____
Tallahassee FL 32308 E-mail _____
City State Zip
Speaking: For Against Information wave in support
Representing self

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-14
Meeting Date

Topic Syringe Exchange Pilot Program (Miami-Dade I.D.E.A.) Bill Number SB 408
Name Michelle E. Jacquis Amendment Barcode _____
Job Title Dir. Policy Management + Legislative Operations (if applicable)
Address Po Box 10269 Phone 850-251-2288
Tallahassee, FL 32302 E-mail mjacquis@fimedical.org
City State Zip
Speaking: For Against Information *WAVE IN SUPPORT*
Representing FL Medical Association

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Syringe exchange program

Bill Number 408
(if applicable)

Name Hansel Tookes

Amendment Barcode _____
(if applicable)

Job Title 4th year medical student

Address 475 Brickell Ave

Phone _____

Miami FL 33131
City State Zip

E-mail hetookes@med.miami.edu

Speaking: For Against Information

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-14
Meeting Date

Topic Needle Exchange Program

Bill Number 408
(if applicable)

Name Martha DeCastro

Amendment Barcode _____
(if applicable)

Job Title Vice President for Nursing

Address 306 E College Avenue

Phone 222 9800

Tallahassee FL 32301
City State Zip

E-mail Martha@fha.org

Speaking: For Against Information

Representing Florida Hospital Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Syringe Exchange

Bill Number 408
(if applicable)

Name Chris Fisher

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address 5 Sinclair Circle

Phone 850-510-7518

Street
Indianalantic Fl 32903
City State Zip

E-mail christinep.fisher@aol.com

Speaking: For Against Information

Representing The AIDS Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Needle + Syringe Exchange

Bill Number 8B 408
(if applicable)

Name Jill Gran

Amendment Barcode _____
(if applicable)

Job Title legislative

Address 2868 Mahan Dr

Phone 850-878-2196

Street
Tallahassee Fl 32309
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Alcohol + Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 4, 2014

Meeting Date

Topic Needle & Syringe Exchange Pilot Program Bill Number 408
(if applicable)

Name Patricia Greene Amendment Barcode _____
(if applicable)

Job Title Senior Policy Advisor, Metz, Husband & Daughton

Address 215 South Monroe St., Suite 505 Phone 850-205-9000

Street

Tallahassee, Florida 32301

City

State

Zip

E-mail patricia.greene@metzlaw.com

Speaking: For Against Information

Representing Waive in Support for Florida Academy of Family Physicians (FAFP)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SPB 7028

INTRODUCER: For consideration by the Health Policy Committee

SUBJECT: Telemedicine

DATE: January 24, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall	HP	Pre-meeting

I. Summary:

SPB 7028 creates the Florida Telemedicine Act (the act) and defines the key components for the practice of telemedicine. The act establishes a registration process for out of state, non-Florida licensed health care practitioners with a biennial fee and exemptions from registration for limited annual consultations, emergency services, and practitioner-to-practitioner consultations without the patient present.

The standard of care for telemedicine service coincides with health care services provided in-person. The nonemergency prescribing of a legend drug based solely on an online questionnaire is specifically prohibited and a controlled substance may not be prescribed through telemedicine for chronic, non-malignant pain.

Regulatory boards, or the Department of Health (department) if there is not an applicable board, may adopt rules to administer the act. Rules prohibiting telemedicine that are inconsistent with this act must be repealed.

The act requires a telemedicine provider to be responsible for the quality of any equipment or technology and to maintain records in accordance with federal and state laws.

Under the act, if a health insurer or health plan covers telemedicine services, then remuneration must equal the amount that would have been paid for in-person services. The amount of the reimbursement is to be determined by the individual telemedicine provider and the health insurer or health plan. The act allows a health plan or health insurer to impose a deductible, copayment or co-insurance if the amount charged does not exceed the amount charged for a non-telemedicine service. Health plans and health insurers may limit telemedicine coverage to in-network providers.

SPB 7028 authorizes the executive directors of the regulatory boards, along with the department to negotiate one or more interstate compacts to allow for the practice of telemedicine across state

lines. An annual report of any negotiated compacts is due to the Governor and Legislature on December 31, for ratification by the Legislature during the next session.

The Medicaid program must reimburse providers for telemedicine services in the same manner as provided for in-person services. Reimbursement amounts must be negotiated between the parties, to the extent permitted under federal law. Regardless of the amount negotiated, reimbursement for both the originating and the distant site should be considered based on the services provided during the encounter. A process for discontinuation of reimbursement for a Medicaid service through telemedicine is provided if the Agency for Health Care Administration (AHCA) can document a specific telemedicine service is not cost effective or does not meet the clinical needs of Medicaid recipients. The Medicaid provisions sunset on June 30, 2017.

The AHCA is required to submit a report on the usage and costs, including any savings, of telemedicine services provided to Medicaid recipients by January 1, 2017 to the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the House and Senate.

The proposed bill's effective date is July 1, 2014.

II. Present Situation:

Telemedicine utilizes various advances in communication technology to provide healthcare services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include:¹

- **Primary Care and Specialist Referral Services** - involves a primary care or allied health professional providing consultation with a patient or specialist assisting the primary care physician with a diagnosis. The process may involve live interactive video or the use of store and forward transmission of diagnostic images, vital signs, and/or video clips with patient data for later review.
- **Remote patient monitoring** - includes home telehealth, using devices to remotely collect and send data to home health agencies or remote diagnostic testing facilities.
- **Consumer medical and health information** - offers consumers specialized health information and online discussion groups for peer to peer support.
- **Medical education** - provides continuing medical education credits.

The term telehealth is also sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.² Telehealth often collectively defines the telecommunications equipment and

¹ American Telemedicine Association, *What is Telemedicine?*, <http://www.americantelemed.org/learn/what-is-telemedicine> (last visited Jan. 6, 2014).

² Majerowicz, Anita; Tracy, Susan, "Telemedicine: Bridging Gaps in Healthcare Delivery," *Journal of AHIMA* 81, no. 5, (May 2010): 52-53, 56, http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324 (last visited Jan. 27, 2014).

technology that is utilized to collect and transmit the data for a telemedicine consultation or evaluation.

Board of Medicine Rulemaking

Florida's Board of Medicine recently convened a Telemedicine Workgroup to review its rules on telemedicine which had not been amended since 2003. The 2003 rule focused on standards for the prescribing of medicine via the internet. A recently proposed revision to the telemedicine rule defines telemedicine, establishes a standard of care, prohibits the prescription of controlled substances, permits the establishment of a doctor-patient relationship via telemedicine, and exempts emergency medical services from the rule.³

Interstate Medical Licensure Compact

The Federation of State Medical Boards (FSMB), a non-profit organization representing state medical boards that license and discipline allopathic and osteopathic physicians has drafted eight consensus principles aimed at addressing the process of licensing and regulating physicians who practice across state lines. Under an interstate compact, the participating state medical boards would retain their licensing and disciplining authority but would share essential information to streamline the process for those physicians who practice across state lines, including telemedicine.⁴ The draft development of the Interstate Medical Licensure Compact, which would be voluntary on the part of both physicians and states, is expected in early Spring or Summer of 2014.⁵

Telemedicine in Other States

As of January 2014, at least 20 states and the District of Columbia have mandated that private insurance plans cover telemedicine services at reimbursement rates equal to an in-person consultation.⁶ Forty-four states reimburse under Medicaid for limited services, some restricting reimbursement to only rural or low provider access areas.⁷ The breadth of state telemedicine laws vary from the very limited of authorizing store and forward services to mandating private insurance coverage and payment equivalency between face-to-face visits and telemedicine encounters. While nine states specifically issue a special-telemedicine-only license or certificate, several others may allow physicians from contiguous states to practice under certain conditions.⁸

³ See Notice of Proposed Rule 64B8-9.0141, F.A.C., published January 15, 2014.

⁴ Federation of State Medical Boards, *Interstate Compact for Physician Licensure Moves Forward with Consensus Principles* (October 7, 2013), http://www.fsmb.org/pdf/nr_interstate_compact.pdf (last visited Jan. 24, 2014).

⁵ Federation of State Medical Boards, *State Medical Board Effort to Streamline Medical Licensing Gains Support in U.S. Senate* (January 14, 2014), http://www.fsmb.org/pdf/interstate_compact_senators_january13C.pdf (last visited Jan. 24, 2014).

⁶ American Telemedicine Association, *2014 State Telemedicine Legislative Tracking*, <http://www.americantelemed.org/docs/default-source/policy/state-telemedicine-legislation-matrix.pdf> (last visited Jan. 24, 2014).

⁷ Id.

⁸ Center for Connected Health Policy, *State Telehealth Laws and Reimbursement Policies*, (November 2013), p.6, <http://telehealthpolicy.us/sites/telehealthpolicy.us/files/uploader/50%20State%20Medicaid%20Update%20Nov.%202013%20-%20Rev.%2012-20.pdf> (last visited Jan. 24, 2014).

States have used telemedicine in correctional systems to eliminate the need to transport inmates in both Colorado and Wyoming.⁹ In some cases, the health care professional is located in another location at the same facility and is able to interact with the inmate. This option addresses situations with violent inmates or handicap accessibility issues. Some jails use this same technology for online visits in place of face-to-face visitation, including the Alachua County jail in Florida.¹⁰

Rural counties have utilized telemedicine to fill the void for specialty care in their emergency rooms and to avoid costly and time consuming transfers of patients from smaller hospitals to the larger tertiary centers for care. In a California project, the rural hospitals' emergency rooms received video conference equipment to facilitate the telemedicine consultations as part of the study. The rural hospital physicians, nurses and parents were linked with pediatric critical care medicine specialists at the University of California, Davis.¹¹ Researchers at the university found that parents' satisfaction and perception of the quality of care received was significantly greater with telemedicine than with telephone guidance.¹²

Federal Provisions for Telemedicine

Federal laws and regulations address telemedicine from several angles, from prescribing controlled substances and setting hospital emergency room guidelines, to establishing reimbursement guidelines for the Medicare program.

Prescribing Via the Internet

Federal law specifically prohibits the issue of controlled substances prescribed via the internet without an in-person evaluation. The federal regulation under 21 CFR §829 specifically states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.¹³ However, the Ryan Haight Online Pharmacy Consumer Protection Act,¹⁴ signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

⁹ Government Computing News, *Prisons Turn to Telemedicine for Treating Inmates*, (May 21, 2013), <http://gcn.com/blogs/pulse/2013/05/prisons-telemedicine-treating-inmates.aspx> (last visited Jan. 28, 2014)

¹⁰ Gainesville, Sun, *Now You Can Visit an Inmate From Home*, (Jan. 9, 2014), <http://www.gainesville.com/article/20140109/ARTICLES/140109711?p=1&tc=pg#gsc.tab=0> (last visited Jan. 28, 2014).

¹¹ *In Rural ERs, Kids Get Better Care with Telemedicine*, <http://www.futurity.org/in-rural-ers-kids-get-better-care-with-telemedicine> (last visited Jan. 28, 2014).

¹² *Id.*

¹³ 21 CFR §829(e)(2).

¹⁴ Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April of 2009 as required under the Haight Act.¹⁵ The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

- The patient and the practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substance via the Internet; and,
- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.¹⁶

Medicare Coverage

Specific telehealth services delivered at designated sites are covered under Medicare. The federal Centers for Medicare and Medicaid Services' regulations require both a distant site (location of physician delivering the service via telecommunications) and a separate originating site (location of the patient) under their definition of telehealth. Asynchronous "store and forward" activities are only reimbursed under Medicaid in federal demonstration projects.¹⁷

To qualify for Medicare reimbursement, the originating site must meet one of these qualifications:

- Located in a federally defined rural county;
- Designated rural health professional shortage area;¹⁸ or,
- Identified as a participant in a federal telemedicine demonstration project as of December 21, 2000.¹⁹

Federal requirements provide additional qualifications for an originating site once one of the initial elements above has been satisfied. An originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A critical access hospital;
- A rural health clinic;
- A federally qualified health center;
- A hospital;
- A hospital-based or critical access hospital-based renal dialysis center (including satellites);
- A skilled nursing facility; and,

¹⁵ Id., at sec. 3(j).

¹⁶ 21 CFR §802(54).

¹⁷ Only two states have a federal demonstration project that meets these qualifications, Hawaii and Alaska.

¹⁸ The rural definition was expanded through a final federal regulation released on December 10, 2013 to include health professional shortage areas located in rural census tracts of urban areas as determined by the Office of Rural Health Policy. See 78 FR 74229, 74400-74402, 74812 (December 10, 2013).

¹⁹ See 42 U.S.C. sec. 1395(m)(m)(4)(C)(i).

- A community mental health center.²⁰

Reimbursement for the distant site is established as “an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system.”²¹

Federal law also provides for a facility fee for the originating site that started and remained at \$20 through December 31, 2002 and then, by law, is subsequently increased each year by the percentage increase in the Medicare Economic Index or MEI. For calendar year 2014, the originating fee was 80 percent of the lesser of the actual charge or \$24.63.²²

Telehealth services covered under Medicare include professional consultations, office visits, and office psychiatry services within certain health care procedure codes.²³ Practitioners eligible to bill for telehealth services include physicians, nurse practitioners, physician assistants, nurse midwives, clinical nurse specialists, clinical psychologists, clinical social workers, and registered dietitians or nutrition specialists who are licensed to provide the service under state law.²⁴

Telemedicine Services in Florida

The University of Miami (UM) initiated telehealth services in 1973 and claims the first telehealth service in Florida, the first use of nurse practitioners in telemedicine in the nation, and the first telemedicine program in correctional facilities.²⁵ Today, UM has several initiatives in the areas of tele-dermatology, tele-trauma, humanitarian and disaster response relief telehealth, school telehealth services, and acute teleneurology or telestroke.²⁶ While some of the UM’s activities reach their local community, others reach outside of Florida including providing Haiti earthquake relief and teledermatology to cruise line employees. Telehealth communications are also used for monitoring patients in the hospital and conducting training exercises.

The UM also utilizes telemedicine to research the effectiveness of telemedicine in different trauma situations with the United States military. The research utilizes a robot which is operated from a control station using a joystick. The control station is on a laptop that allows the provider to operate the robot from any location with a wireless connection.²⁷ Lessons learned from this

²⁰ See 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).

²¹ See 42 U.S.C. sec. 1395(m)(m)(2)(A).

²² Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM8533(December 20, 2013)*, <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM8533.pdf> (last visited: Jan 28, 2014).

²³ See 42 U.S.C. sec. (m)(m)(4)(F) for statutory authority and visit <http://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/> for additional federal guidance.

²⁴ Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services - Rural Health Fact Sheet Series*, December 2012, <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcfsht.pdf> (last visited Jan. 27, 2014).

²⁵ University of Miami, Miller School of Medicine, *UM Telehealth - Our History*, <http://telehealth.med.miami.edu/about-us/our-history> (last visited Jan. 31, 2014).

²⁶ University of Miami, Miller School of Medicine, *UM Telehealth*, <http://telehealth.med.miami.edu/featured/teledermatology> (last visited Jan. 28, 2014).

²⁷ University of Miami, Miller School of Medicine, *UM Telehealth - Teletrauma*, <http://telehealth.med.miami.edu/featured/teletrauma> (last visited Jan. 31, 2014).

research are intended to provide assistance to deployed surgeons on the battlefield treating injured soldiers.

The UM along with other designated trauma centers participate in the Florida Emergency Trauma Telemedicine Network (FETTN). Coordinated by the department, the FETTN, facilitates the treatment of trauma patients between trauma centers and community or rural hospitals.²⁸ The FETTN allows for multiple interface options and currently 7 out of 25 trauma centers are part of the network.²⁹ In 2011-12, the seven Level 1 or Level 2 trauma centers that participated as a hub site, known as the location where the consulting physician is delivering the services, were Holmes Regional Medical Center, Tallahassee Memorial Hospital, Sacred Heart Hospital, University of Miami, Shands-Gainesville, Shands-Jacksonville, and Orlando Health.³⁰

According to the department, the trauma centers and their satellites as well as the rural hospitals that currently participate in the FETTN are not reimbursed for the consultation and treatment services provided within the telemedicine network.

Florida Medicaid Program

Florida's Medicaid program reimburses for a limited number of telemedicine services by designated practitioners.³¹ Audio only, email messages, facsimile transmissions, or communications with an enrollee through another mechanism other than the spoke site, known as the site where the patient is located, are not covered under Florida Medicaid.

Telemedicine is currently covered by Medicaid for the following services and settings:³²

- Behavioral Health
 - Tele-psychiatry services for psychiatric medication management by practitioners licensed under s. 458 or 459, F.S.
 - Tele-behavioral health services for individual and family behavioral health therapy services by qualified practitioners licensed under chs. 490 or 491, F.S.
- Dental Services
 - Video conferencing between a registered dental hygienist employed by and under contract with a Medicaid-enrolled group provider and under the supervision of a supervising dentist.
 - Services include oral prophylaxis, topical fluoride, and oral hygiene instructions.
- Physician Services
 - Services provided using audio and video equipment that allow for two-way, real time interactive communication between physician and patient.

²⁸ Florida Department of Health, *2014 Agency Legislative Bill Analysis of SB 70*, p.2, on file with the Senate Health Policy Committee (August 26, 2013).

²⁹ *Id.*, at .3.

³⁰ Florida Department of Health, *Long Range Program Plan* (September 28, 2012), on file with the Senate Health Policy Committee.

³¹ Agency for Health Care Administration, *Highlights of Practitioner Services Coverage and Limitations Handbook Presentation*, Bureau of Medicaid Services, Summer 2013, p.30.

³² Agency for Health Care Administration, *2014 Legislative Bill Analysis of SB 70*, November 7, 2013, p. 3, on file with the Senate Health Policy Committee.

- State plan waiver specifically authorizes reimbursement for specialty physician services for Children’s Medical Services Network.
- Physicians may bill for consultation services only provided via telemedicine.

The distant or hub site, where the provider is located, is eligible for reimbursement; the spoke site, where the patient is located, is not eligible for reimbursement unless a separate service is performed on the same day. Medicaid also requires that the referring physician and the patient be present during the consultation.³³

Medicaid requires the following specific clinical records documentation to qualify for reimbursement as a telemedicine service:³⁴

- A brief explanation of why services were not provided face-to-face;
- Documentation of telemedicine services, including results of assessment; and,
- A signed statement from the patient (or parent or guardian, if a child), indicating their choice to receive services through telemedicine.

Medicaid services are reimbursable only in the hospital outpatient, inpatient and physician office settings. During the 2013 Legislative Session, Medicaid provider enrollment requirements were revised to allow the enrollment of physicians actively licensed in Florida to interpret diagnostic testing results through telecommunications and information technology provided from a distance.³⁵

Since 2006, the Children’s Medical Services Network (CMS Network) has been authorized to provide specified telemedicine services under Florida’s 1915(b) Medicaid Managed Care waiver. Authorized services include physician office visits (evaluation and management services) and consultation services already covered by the Medicaid state plan in select rural counties. Currently, the CMS Network provides telemedicine services in 57 of Florida’s 67 counties.³⁶

The CMS Network works with the University of Florida’s (UF) pediatric endocrinology staff to provide telehealth services for enrollees with diabetes and other endocrinology diseases in the Daytona Beach service area.³⁷ Additional partnerships with the Institute for Child Health Policy at UF include referring children with special health care needs to community health centers for consults via telehealth for nutritional, neurological, and orthopedics in Southeast Florida.³⁸

Child Protection Teams

The Child Protection Team (CPT) program under Children’s Medical Services utilizes a telemedicine network to perform child assessments. The CPT is a medically directed multi-disciplinary program that works with local Sheriff’s offices and the Department of Children and

³³ Agency for Health Care Administration, *supra*, note 31, at 34.

³⁴ *Id.* at p.36.

³⁵ See Chapter 2013-150, L.O.F., sec. 1.

³⁶ Florida Department of Health, *supra*, note 28, at 2.

³⁷ Florida Department of Health, *Maternal and Child Health Block Grant Narrative for 2013*, <http://www.floridahealth.gov/healthy-people-and-families/womens-health/pregnancy/mch-fl-2013-1narrative.pdf>, p.21, (last visited: Jan. 31, 2014).

³⁸ *Id.*

Families in cases of child abuse and neglect to supplement investigative activities.³⁹ The CPT patient is seen at a remote site and a registered nurse assists with the medical exam. A physician or Advanced Registered Nurse Practitioner (ARNP) is located at the hub site and has responsibility for directing the exam.

Hub sites are comprehensive medical facilities that offer a wide range of medical and interdisciplinary staff whereas the remote sites tend to be smaller facilities that may lack medical diversity. In 2013, CPT telehealth services were available at 14 sites and 437 children were provided medical or other assessments via telemedicine technology.⁴⁰

Other Department of Health Initiatives

The department utilizes tele-radiology through the Tuberculosis (TB) Physician's Network.⁴¹ The ability to read electronic chest X-Rays remotely can lead to a faster diagnosis, treatment and a reduction in the spread of the disease, according to the department. This service is not currently reimbursed by Medicaid.

Compliance with Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information as well as create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and,
- Business Associates.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which the medical service is delivered. The HITECH Act specifically identified telemedicine as an area for review and consideration and funding was provided, in part, to strengthen infrastructure and tools to promote telemedicine.⁴²

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that the equipment and technology is HIPAA compliant.

³⁹ Florida Department of Health, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Jan. 7, 2014).

⁴⁰ Florida Department of Health, *supra* note 37, at 21.

⁴¹ Florida Department of Health, *supra* note 28, at 2.

⁴² Public Law 111-5, sec. 3002(b)(2)(C)(iii) and sec. 3011(a)(4).

III. Effect of Proposed Changes

Section 1 designates ss. 465.4501-465.4507, F.S., as the “Florida Telemedicine Act.”

Section 2 provides definitions for the Florida Telemedicine Act, including:

- Act
- Advanced Communications Technology
- Distant Site
- Encounter
- Health Care Provider
- In Person
- Originating Site
- Patient Presenter
- Store and forward
- Telemedicine
- Telemedicine provider

Section 3 creates s. 456.4503, F.S., to establish a new registration process for an out of state health care practitioner who holds an active, unrestricted license in his or her state of residency in order to provide telemedicine services to a patient physically located in Florida. The registration process includes a biennial fee set by the applicable regulatory board in an amount not to exceed \$50.

The registration process for each health care practitioner type will be established by the applicable regulatory board for that profession, or if there is no regulatory board, then the department. Registration under this act will be treated the same as a license for disciplinary purposes and the health care provider must agree to make available any pertinent records upon the request of the applicable board, the department or any other federal or state regulatory authority. Failure to comply with a records request may result in revocation of the out of state practitioner’s registration or a fine, as established by the applicable board or the department, as applicable.

Registration under this act is only required for those health care practitioners who engage in telemedicine across state lines more than 10 times per calendar year. Emergency physician consultations are exempt from the registration requirements. Licensure is also not required for consultations between an out of state practitioner and an in-state practitioner for the transmission and review of digital images, pathology specimens, test results or other medical data related to a patient in this state.

A Health care practitioner acting within the scope of his or her practice may utilize telemedicine within his or her practice or act under the direction or supervision of an authorized practitioner. A health care practitioner or patient presenter using telemedicine technology at the direction and supervision of a physician may not be interpreted as practicing medicine without a license. Providers, however, are required to be trained and knowledgeable about the equipment being utilized. Failure to acquire appropriate training and knowledge is grounds for disciplinary action.

The regulatory boards, or the department if there is no board, may adopt rules to implement this act and are directed to repeal any rules that prohibit the practice of telemedicine. The boards may also adopt rules regarding patient presenters but may not require the use of a presenter, if special skills and training are not needed for the patient to participate in the encounter.

Section 4 creates s. 456.4504, F.S., to specify that the standard of care for the delivery of telemedicine services shall be the same as if the services were delivered in person.

The proposed bill references the standard of care in s. 766.102, F.S. That section of law addresses medical negligence and provides:

The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

The telemedicine provider is responsible for the quality of the telemedicine equipment and technology and its safe use. Telemedicine equipment must be able to provide the health care provider the same information, at a minimum, that would have been obtained in an in-person encounter. The equipment and technology must enable the telemedicine provider to meet or exceed the prevailing standard of care for the practitioner's profession.

The health care provider is not required to conduct a patient history or physical exam before the telemedicine encounter as long as the telemedicine evaluation meets the community standard of care for the services provided.

The act prohibits prescribing a legend drug based solely on an electronic questionnaire without a visual examination. To do so is a failure to practice medicine with the level of care, skill and treatment recognized by the reasonably prudent practitioner and is not authorized under this act. Additionally, a practitioner may not prescribe a controlled substance through the use of telemedicine for chronic, non-malignant pain.

Medical record-keeping requirements must be kept in the same manner as an in-person encounter under federal and state law. All records generated, including audio, video, electronic or other means must conform to confidentiality and record-keeping laws of this state, regardless of the patient's location. Telemedicine technology must be encrypted and include a record-keeping program to verify each interaction.

If a third party vendor is used by a telemedicine provider, a business associate agreement is required. The act requires that the third party vendor comply with the HITECH Act. For patient owned technology, the telemedicine provider is responsible for ensuring that the equipment meets the same requirements under the HITECH Act and is appropriate for the medical services being rendered.

Section 5 creates s. 456.4505, F.S., to establish reimbursement guidelines for telemedicine services reimbursed through health insurance policies or health plans. Mandatory coverage for

telemedicine services under health insurance plans and policies is not required under the act; however, if covered, then the services must be paid in an amount equal to the amount the health care provider would have received had the services been provided without the use of telemedicine services. The level of reimbursement for telemedicine services is to be determined between the health care provider and the health insurance plan.

A health plan or health insurer may impose a deductible, copay, or a coinsurance for telemedicine as long as that cost does not exceed the amount charged for an in-person encounter for the same health care service. A health insurance policy or plan may also limit telemedicine coverage to only those providers within the insurer's network, without regard to the provisions of ss. 627.6471 and 627.6472, F.S.

Section 6 creates s. 456.4506, F.S., to authorize the executive directors of the various regulatory boards for health care professions and the department to negotiate interstate compacts for the provision of telemedicine services across state lines. Annually, the department is required to present a status report to the Governor, the President of the Senate, and the Speaker of the House of Representatives of any negotiated compacts for potential ratification by the Legislature. The report is due each December 31.

Section 7 creates s. 456.4507, F.S., to establish a requirement for the AHCA to reimburse for telemedicine services under Medicaid. Telemedicine services are to be reimbursed in the same manner and in an equivalent amount to Medicaid services provided in-person under parts III (Medicaid) and IV (Medicaid Managed Care) of ch. 409, F.S. An exception to this requirement is provided if the AHCA determines a service that is delivered through telemedicine is not cost effective or does not meet the clinical needs of recipients. If, after implementation, the AHCA documents this determination, then coverage for that particular service may be discontinued.

Under this section, reimbursement for Medicaid services delivered via telemedicine shall be negotiated between the parties; however, both the originating site and distant site should receive compensation based on the services rendered.

The AHCA is also required to submit a usage and cost report on telemedicine services in the Medicaid program. The report is due to the President of the Senate, Speaker of the House of Representatives, and the minority leaders by January 1, 2017.

This section relating to telemedicine services under the Medicaid program sunsets on June 30, 2017.

Section 8 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Out of state practitioners not currently licensed to practice in Florida would pay a biennial fee of \$50 to register to provide professional services via telemedicine to patients in the state. It is unknown how many out of state practitioners would register under this act.

The potential expansion of telemedicine reimbursement opportunities under both private insurance coverage and Medicaid could facilitate a growth in health care provider fees for private sector health care providers, especially those providers that are currently providing these services now and not receiving any reimbursement.

Additionally, health care technology companies that provide the equipment for these services may see an increase in demand from health care practitioners for new equipment and maintenance needs of any existing equipment.

C. Government Sector Impact:

For SB 70, which had a similar provision for telemedicine coverage of Medicaid services, the AHCA provided an indeterminate fiscal impact because the rulemaking in SB 70 had been delegated to the department and both costs and savings would be associated with the bill's provisions. The expected savings were based on possible efficiencies, improvements in disease management, and improved patient outcomes that resulted from telemedicine services.⁴³

An increase in the services covered by telemedicine could also lead to an indeterminate increase in utilization and costs. SPB 7028 broadens the number of services available through telemedicine.⁴⁴

The department indicated in its analysis of SB 70 that a potential increase in Medicaid reimbursement funds for consultation and treatment under Medicaid could be achieved

⁴³ Agency for Health Care Administration, *supra*, note 32, at 7.

⁴⁴ *Id.*, p. 8.

for the TB project. According to the department, the estimated revenue impact to the state would be \$103,190.⁴⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are numerous other sections of state law that refer to “in person” or “face to face” requirements for certain medical services or health care related activities. While SPB 7028 defines “in person” for purposes of the Florida Telemedicine Act, there are other usages of this phrase in statute.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 456.4501, 456.4502, 456.4503, 456.4504, 456.4505, 456.4506, and 456.4507.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴⁵ Florida Department of Health, *supra* note 28, at 5.

FOR CONSIDERATION By the Committee on Health Policy

588-01505-14

20147028__

1 A bill to be entitled
 2 An act relating to telemedicine; creating s. 456.4501,
 3 F.S.; providing a short title, the "Florida
 4 Telemedicine Act"; creating s. 456.4502, F.S.;
 5 defining terms applicable to the act; creating s.
 6 456.4503, F.S.; creating licensure and registration
 7 requirements; providing applicability; authorizing the
 8 health care boards and the Department of Health to
 9 adopt rules; creating s. 456.4504, F.S.; providing
 10 standards and prohibitions for the provision of
 11 telemedicine; creating s. 456.4505, F.S.; providing
 12 health insurer and health plan reimbursement
 13 requirements for telemedicine; creating s. 456.4506,
 14 F.S.; providing legislative findings; authorizing the
 15 regulatory boards and the department to negotiate
 16 interstate compacts for telemedicine; requiring an
 17 annual report to the Governor and the Legislature on
 18 the status of such compacts; requiring legislative
 19 ratification of such compacts; creating s. 456.4507,
 20 F.S.; providing requirements for reimbursement of
 21 telemedicine services under the Medicaid program;
 22 requiring a report to the Legislature on the usage and
 23 costs of telemedicine in Medicaid by a certain date;
 24 providing for future repeal; providing an effective
 25 date.
 26
 27 Be It Enacted by the Legislature of the State of Florida:
 28
 29 Section 1. Section 456.4501, Florida Statutes, is created

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30 to read:
 31 456.4501 Short title.—Sections 465.4501-465.4507 may be
 32 cited as the "Florida Telemedicine Act."
 33 Section 2. Section 456.4502, Florida Statutes, is created
 34 to read:
 35 456.4502 Definitions.— As used in this act, the term:
 36 (1) "Act" means the Florida Telemedicine Act.
 37 (2) "Advanced communications technology" means:
 38 (a) Compressed digital interactive video audio, or data
 39 transmissions;
 40 (b) Real-time synchronous video or web-conferencing
 41 communications;
 42 (c) Secure web-based communications;
 43 (d) Still-image capture or asynchronous store and forward;
 44 (e) Health care service transmissions supported by mobile
 45 devices (mHealth); or
 46 (f) Other technology that facilitates access to health care
 47 services or medical specialty expertise.
 48 (3) "Distant site" means the location at which the
 49 telemedicine provider delivering the health care service is
 50 located at the time the service is provided via telemedicine.
 51 (4) "Encounter" means an examination, consultation,
 52 monitoring, or other health care service.
 53 (5) "Health care provider" means a health care practitioner
 54 or out-of-state licensed individual who provides health care
 55 services within the scope of his or her professional license.
 56 (6) "In person" means that a patient is in the physical
 57 presence of the health care provider without regard to whether
 58 portions of the encounter are conducted by other providers.

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59 (7) "Originating site" means the location of the patient at
 60 the time a health care service is being furnished via
 61 telemedicine. The originating site may also mean the location at
 62 which the advanced communications technology equipment that
 63 facilitates the provision of telemedicine is located, with or
 64 without the patient being present. An originating site is one of
 65 the following:

66 (a) The office of a health care provider.

67 (b) A critical access hospital as defined in s. 1861(mm) (1)
 68 of the Social Security Act.

69 (c) A rural health clinic as defined in s. 1861(aa) (2) of
 70 the Social Security Act.

71 (d) A federally qualified health center as defined in s.
 72 1861(aa) (4) of the Social Security Act.

73 (e) A hospital as defined in s. 1861(e) of the Social
 74 Security Act.

75 (f) A hospital-based or critical access hospital-based
 76 renal dialysis center, including satellites.

77 (g) A community mental health center as defined in s.
 78 1861(ff) (3) (B) of the Social Security Act.

79 (h) A correctional facility.

80 (i) If the security and privacy of the advanced
 81 communications technology can be verified by the distant site,
 82 the patient's home.

83 (8) "Patient presenter" means an individual who has
 84 clinical background training in the use of advanced
 85 communications technology equipment and who is available at the
 86 originating site to present the patient, manage the cameras or
 87 equipment, and perform any hands-on activity necessary to

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88 successfully complete the telemedicine encounter.

89 (9) "Store and forward" means the type of telemedicine
 90 encounter that uses still digital images of patient data for
 91 rendering a medical opinion or diagnosis. The term includes the
 92 asynchronous transmission of clinical data from one site to
 93 another.

94 (10) "Telemedicine" means the use of advanced
 95 communications technology by a health care provider or by a
 96 health care provider acting under an appropriate delegation or
 97 supervision as may be required by the appropriate board, or the
 98 department if there is no board, to provide a health care
 99 services. Services provided through telemedicine may include
 100 patient assessment, diagnosis, consultation, treatment,
 101 prescription of medicine, transfer of medical data, or other
 102 medical-related services. The term does not include audio-only
 103 calls, e-mail messages, or facsimile transmissions. Telemedicine
 104 also includes telehealth and telemonitoring.

105 (11) "Telemedicine provider" means a health care provider
 106 who provides telemedicine services to a patient physically
 107 located in this state.

108 Section 3. Section 456.4503, Florida Statutes, is created
 109 to read:

110 456.4503 Licensure and registration requirements.—

111 (1) An out-of-state health care provider who provides
 112 telemedicine across state lines to a patient physically located
 113 in this state must have a Florida license to practice a health
 114 care profession or must meet the following telemedicine
 115 requirements:

116 (a) Hold an unrestricted active license to practice his or

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117 her profession in the health care provider's state of residency;
 118 and

119 (b) Complete telemedicine registration with the department
 120 through a procedure established by the appropriate board for the
 121 health care provider's area of practice, or the department if
 122 there is no board; and

123 (c) Pay a biennial registration fee set by the applicable
 124 board, not to exceed \$50.

125 (2) A registration issued under this section, regardless of
 126 the location of the telemedicine provider, shall be treated as a
 127 license for disciplinary action by the appropriate board in this
 128 state, or the department if there is no board. A telemedicine
 129 provider licensed in this state or registered to practice
 130 telemedicine in accordance with this act is subject to this act,
 131 the jurisdiction of this state's applicable board, other legal
 132 and regulatory authorities in this state, as applicable, and the
 133 jurisdiction of the courts of this state. The telemedicine
 134 provider shall also make available any pertinent records upon
 135 request of the board, the department, or the regulatory
 136 authority. Failure to comply with such request may result in
 137 revocation of the telemedicine provider's license or
 138 registration at the discretion of the applicable board, or the
 139 department if there is no board, or a fine as established by the
 140 applicable board or the department, as applicable.

141 (3) Registration as a telemedicine provider is required
 142 only for those out-of-state health care providers who engage in
 143 the practice of telemedicine across state lines more than 10
 144 times per calendar year. Physician consultations that occur on
 145 an emergency basis are exempt from registration requirements.

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146 (4) This section does not prohibit or require licensure or
 147 registration for consultations between an out-of-state health
 148 care provider and a health care practitioner in this state or
 149 for the transmission and review of digital images, pathology
 150 specimens, test results, or other medical data by an out-of-
 151 state health care provider or other qualified providers related
 152 to the care of a patient in this state.

153 (5) This section does not preclude a health care provider
 154 who acts within the scope of his or her practice from using the
 155 technology of telemedicine within his or her practice or under
 156 the direction and supervision of another health care provider
 157 whose scope of practice includes the use of such technology. A
 158 health care provider or patient presenter acting under the
 159 direction and supervision of a physician through the use of
 160 telemedicine may not be interpreted as practicing medicine
 161 without a license. However, a health care provider must be
 162 trained in, educated on, and knowledgeable about the procedure
 163 and technology and may not perform duties for which the
 164 practitioner does not have sufficient training, education, and
 165 knowledge. Failure to have adequate training, education, and
 166 knowledge is grounds for disciplinary action by the appropriate
 167 board or the department if there is no board.

168 (6) The boards, or the department if there is no board, may
 169 adopt rules to administer the requirements of this act and must
 170 repeal rules that are inconsistent with this act, including
 171 rules that prohibit the use of telemedicine in this state. The
 172 appropriate board, or the department if there is no board, may
 173 also develop standards and adopt rules relating to requirements
 174 for patient presenters. Such rules may not require the use of

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175 patient presenters in telemedicine services if special skills or
 176 training is not needed for a patient to participate in the
 177 encounter.

178 Section 4. Section 456.4504, Florida Statutes, is created
 179 to read:

180 456.4504 Telemedicine standards.-

181 (1) The standard of care as provided in s. 766.102 is the
 182 same regardless of whether a health care provider provides
 183 health care services in person or by telemedicine. The
 184 applicable board for each health care provider, or the
 185 department if there is no board, may adopt rules specifically
 186 related to the standard of care for telemedicine.

187 (2) A telemedicine provider providing telemedicine services
 188 under this act is responsible for the quality of the equipment
 189 and technology employed and for its safe use. Telemedicine
 190 equipment and advanced communications technology must, at a
 191 minimum, be able to provide the same information to the
 192 telemedicine provider as the information that would be obtained
 193 in an in-person encounter with a health care provider which
 194 enables the telemedicine provider to meet or exceed the
 195 prevailing standard of care for the practice of the profession.

196 (3) The telemedicine provider is not required to conduct a
 197 patient history or physical examination of the patient before
 198 engaging in a telemedicine encounter if the telemedicine
 199 provider conducts a patient evaluation sufficient to meet the
 200 community standard of care for the services provided.

201 (4) For the purposes of this act, the nonemergency
 202 prescribing of a legend drug based solely on an electronic
 203 questionnaire without a visual examination is considered a

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204 failure to practice medicine with the level of care, skill, and
 205 treatment which is recognized by a reasonably prudent physician
 206 or other authorized practitioners and is not authorized under
 207 this act.

208 (5) A controlled substance may not be prescribed through
 209 the use of telemedicine for chronic, nonmalignant pain.

210 (6) Medical records must be kept by each telemedicine
 211 provider that participates in a patient telemedicine encounter
 212 to the same extent as required for an in-person encounter under
 213 state and federal law. Telemedicine providers are encouraged to
 214 create electronic health records to record the encounter and to
 215 transmit information in the most efficient manner possible.

216 (7) Any medical records generated, including records
 217 maintained via video, audio, electronic, or other means, due to
 218 a telemedicine encounter must conform to the confidentiality and
 219 recordkeeping requirements of federal law, nationally recognized
 220 health care accreditation organizations, and the laws and rules
 221 of this state regardless of where the medical records of a
 222 patient in this state are maintained.

223 (8) Telemedicine technology used by a telemedicine provider
 224 must be encrypted and must use a recordkeeping program to verify
 225 each interaction.

226 (9) In those situations in which a telemedicine provider
 227 uses telemedicine technology provided by a third-party vendor,
 228 the telemedicine provider must:

229 (a) Require a business associate agreement with the third-
 230 party vendor; and

231 (b) Ensure that the third-party vendor complies with the
 232 administrative, physical, and technical safeguards and standards

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233 set forth by the Health Information Technology for Economic and
 234 Clinical Health (HITECH) Act and by federal regulations
 235 implemented pursuant to HITECH.
 236 (10) If a patient provides any of the telemedicine
 237 technology, such as a patient-owned smartphone, tablet, laptop,
 238 desktop computer, or video equipment, the telemedicine provider
 239 must take steps to ensure that such technology:
 240 (a) Complies with the administrative, physical, and
 241 technical safeguards set forth by HITECH and by federal
 242 regulations implemented pursuant to HITECH; and
 243 (b) Is appropriate for the medical discipline for which the
 244 technology is provided.
 245 Section 5. Section 456.4505, Florida Statutes, is created
 246 to read:
 247 456.4505 Requirements for reimbursement.—
 248 (1) If health care services provided through telemedicine
 249 are an included benefit in a health insurance policy or health
 250 plan coverage, such services must be paid in an amount equal to
 251 the amount that a health care provider would have been paid had
 252 such services been furnished without the use of advanced
 253 communications technology.
 254 (2) Reimbursement amounts for telemedicine providers at the
 255 distant site and the originating site and any originating fees
 256 are to be determined between the individual telemedicine
 257 provider and the health insurer or health plan.
 258 (3) This section does not preclude a health insurer or
 259 health plan from imposing a deductible, a copayment, or a
 260 coinsurance requirement for a health care service provided
 261 through telemedicine if the deductible, copayment, or

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262 coinsurance does not exceed the amount applicable to an in-
 263 person encounter for the same health care service.
 264 (4) A health insurance policy or health plan may limit
 265 coverage for health care services that are provided through
 266 telemedicine to telemedicine providers that are in a network
 267 approved by the health insurer or health plan without regard to
 268 s. 627.6471 or s. 627.6472.
 269 Section 6. Section 456.4506, Florida Statutes, is created
 270 to read:
 271 456.4506 Interstate compacts for telemedicine.—The
 272 Legislature finds that lack of access to high-quality,
 273 affordable health care services is an increasing problem, both
 274 in this state and nationwide. The Legislature finds that this
 275 problem could be alleviated by greater interstate cooperation
 276 among, and by the mobility of, health care providers through the
 277 use of telemedicine. Therefore, the executive directors of the
 278 boards, together with the department, may negotiate one or more
 279 interstate compacts for the provision of telemedicine services
 280 across state lines. The department shall annually submit a
 281 report on the status of any negotiated compacts to the Governor,
 282 the President of the Senate, and the Speaker of the House of
 283 Representatives. Any negotiated compacts shall be submitted by
 284 December 31 for ratification by the Legislature during the next
 285 regular legislative session.
 286 Section 7. Section 456.4507, Florida Statutes, is created
 287 to read:
 288 456.4507 Telemedicine services under Medicaid.—
 289 (1) The Agency for Health Care Administration shall
 290 reimburse Medicaid services provided through telemedicine in the

588-01505-14

20147028__

291 same manner and equivalent to Medicaid services provided in
 292 person under parts III and IV of chapter 409, except as provided
 293 in subsection (6).

294 (2) Telemedicine services reimbursed under Medicaid must
 295 meet the standards and requirements of this act.

296 (3) Except as provided in subsection (6), the agency may
 297 not require in-person contact between a health care provider and
 298 Medicaid recipient as a prerequisite for payment for services
 299 appropriately provided through telemedicine in accordance with
 300 generally accepted health care practices and standards
 301 prevailing in the applicable health care community at the time
 302 the services are provided.

303 (4) A Medicaid service that is provided through a fee-for-
 304 service or managed care program may not be denied as a
 305 creditable Medicaid service solely because that service is
 306 provided through telemedicine.

307 (5) Reimbursement of telemedicine services under Medicaid
 308 shall be the amount negotiated between the parties involved to
 309 the extent permitted under state and federal law. Regardless of
 310 the reimbursement methodology or amount, telemedicine providers
 311 located at the originating site and the distant site should both
 312 receive reimbursement based on the services rendered, if any,
 313 during the telemedicine encounter.

314 (6) If, after implementation, the agency determines that
 315 the delivery of a particular service through telemedicine is not
 316 cost-effective or does not adequately meet the clinical needs of
 317 recipients and the determination has been documented, the agency
 318 may discontinue Medicaid reimbursement for that telemedicine
 319 service.

Page 11 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20147028__

320 (7) The agency shall submit a report on the usage and
 321 costs, including savings, if any, associated with the provision
 322 of health care services through telemedicine under the Medicaid
 323 program by January 1, 2017, to the President of the Senate, the
 324 Speaker of the House of Representatives, and the minority
 325 leaders of the Senate and House of Representatives.

326 (8) This section is repealed June 30, 2017.

327 Section 8. This act shall take effect July 1, 2014.

Page 12 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Telemedicine Bill Number SB 7028
Name Amy-Erin Blakely Amendment Barcode _____
Job Title President Blakely & Associates (if applicable)
Address 1304 N. Ferncreek Ave Phone 407 620 1355
Orlando FL 32803 E-mail blakely.associates@
City State Zip ymail.com
Speaking: For Against Information
Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Telemed Bill Number _____
Name Stan Whittaker Amendment Barcode _____
Job Title Chair Florida Assoc of Nurse Practitioners (if applicable)
Address 6294 NW Torrey A Plc Rd Phone _____
Bristol FL 32321 E-mail _____
City State Zip
Speaking: For Against Information
Representing FL Association of Nurse Practitioners

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/4/14
Meeting Date

Topic Telemedicine
Name David Christian
Job Title VP - Government Affairs
Address 136 S. Bronough St.
Tallahassee FL 32301
City State Zip

Bill Number SB 7028
(if applicable)
Amendment Barcode _____
(if applicable)
Phone 850/521-1211
E-mail dchristian@flchamber.com

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Telemedicine
Name Tammy Perdue
Job Title General Counsel
Address 516 N. Adams St.
Tallahassee FL 32301
City State Zip

Bill Number SPB 7028
(if applicable)
Amendment Barcode _____
(if applicable)
Phone 850-224-7173
E-mail tperdue@aif.com

Speaking: For Against Information

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Telemedicine

Bill Number SB 7028
(if applicable)

Name Holly Miller

Amendment Barcode _____
(if applicable)

Job Title Governmental Affairs Counsel

Address 1430 Piedmont Dr E
Street

Phone 850 224 6496

City _____ State _____ Zip _____

E-mail hmiller@amediaul.org

Speaking: For Against Information

Representing FMA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Telemedicine

Bill Number SB 7028
(if applicable)

Name Larry Gonzalez

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 223 S. Gadsden St.
Street

Phone 850-222-0465

City Tallahassee, FL State _____ Zip 32301

E-mail lgonz2@earthlink.net

Speaking: For Against Information

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic Telemedicine

Bill Number 7028
(if applicable)

Name Layne Smith

Amendment Barcode _____
(if applicable)

Job Title Director, Gov. Relations

Address 4500 San Pablo Rd.

Phone 904-953-7334

Jacksonville FL 32224
City State Zip

E-mail smith.layne@unf.edu

Speaking: For Against Information

Representing Mayo Clinic

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic _____

Bill Number SB 7028
(if applicable)

Name Paul Sanford

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 S. Monroe St

Phone 222-7206

Tallahassee, FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FIC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-4-14

Meeting Date

Topic telemedicine

Bill Number SPB 7028
(if applicable)

Name Connie Galietti

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address _____

Phone 850-877-2751

Tallahassee, FL
Street City State Zip

E-mail connie@flapsych.com

Speaking: For Against Information

Representing Florida Psychological Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/12

Meeting Date

Topic Telehealth

Bill Number SB 7028
(if applicable)

Name Anna Baznik

Amendment Barcode _____
(if applicable)

Job Title Pres/CEO

Address 3157 N Alafaya Trail

Phone 4074910965

Orlando FL 32826
Street City State Zip

E-mail abaznik@impowerfl.org

Speaking: For Against Information

Representing IMPOWER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/2014
Meeting Date

Topic TELEMEDICINE

Bill Number SB 7028
(if applicable)

Name Bob Reynolds

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address P.O. Box 4369

Phone 850-422-0656

TALL. FL 32315
Street City State Zip

E-mail RRRASSOCIATES@EXOTLINK.NET

Speaking: For Against Information

Representing FRESENIUS MEDICAL CARE NORTH AMERICA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/14
Meeting Date

Topic telehealth

Bill Number 7028
(if applicable)

Name Alisa LaPolt

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1344

Phone _____

Tallahassee FL 32302
Street City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Nurses Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/4/13 Meeting Date

Topic Telemedicine, Name Justin Senior, Job Title Deputy Sec. for Medicaid, Address 2727 Mahan Drive Tallahassee FL 32308, Phone 850-412-4007

Speaking: For, Against, Information, Representing Agency for Health Care Administration, Appearing at request of Chair: Yes, No, Lobbyist registered with Legislature: Yes, No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)



February 3, 2014 The Honorable Aaron Bean Chairman, Senate Health Policy Committee 302 Senate Office Building 404 South Monroe Street Tallahassee, FL 32399-1100

Dear Chairman Bean and Health Policy Committee Members: Fresenius Medical Care North America (FMCNA) supports SB 7028 which provides standards and prohibitions related to telemedicine. FMCNA operates 119 outpatient dialysis facilities in Florida, serving over 8,200 individuals with End Stage Renal Disease (ESRD) through our life-sustaining dialysis services.

Our interests in adoption of SB 7028 relates to our use of specialized Registered Nurses to deliver nursing services to patients through remote, centralized Case Management centers. The ability to provide specialized nursing care to patients remotely via telephonic or tele-nursing means is critical to improving outcomes and reducing costs. Our company currently offers specialized Case Management programs for patients with ESRD and earlier stages of chronic kidney disease (CKD). These specialized programs are geared toward wellness, education, early diagnosis of some illnesses, early intervention, prevention of complications, avoiding hospital readmissions and overall better management of certain medical conditions.

If the bill scope were simply broadened beyond telemedicine to also include physical (face to face) practice as well, then the Nurse Licensure Compact would be an option for Florida which would also enable us to provide seamless staffing of emergency dialysis treatment centers during times of disasters. During times of disasters, weather, power outages or other disaster-related barriers often impair our ability to staff the dialysis facilities that may still be functional and mobile dialysis units that are dispatched and sent to disaster locations.



FRESENIUS MEDICAL CARE

The changing landscape of healthcare delivery requires services to be provided to patients in an integrated and coordinated manner, particularly services provided to patients with complex, chronic and costly medical conditions. The provision of nursing services through centralized, intra-state Case Management centers has become the standard of care in some specialized areas, and Case Management services will undoubtedly grow in the future. With the passage of SB 7028, Florida is ahead of the curve in creating the infrastructure for providers and health plans to develop new payment methodologies and care delivery models to further the goals of improving patient outcomes and reducing health care costs. SB 7028 would assist to go beyond current limitations on intra-state nursing practice.

Case Management and disaster staffing relief for renal patients is only one clinical area where the ability to develop a Nurse Licensure Compact will facilitate care delivery, and the justification to support this legislation applies to many other types of healthcare services. We urge the Members of the Senate Health Policy Committee to support SB 7028 and consider how broadening this bill to enable Florida to enter interstate compacts which facilitate healthcare practice by both telephonic/electronic means as well as physical (face to face) practice. This action would make the Nurse Licensure Compact a viable option for Florida to enter into.

Sincerely,

Wendy Funk Schrag

Wendy Funk Schrag, LMSW, ACSW
Fresenius Medical Care North America
Director of Advocacy & State Government Affairs
Wendy.schrag@fmc-na.com
316.841.5245

CourtSmart Tag Report

Room: KN 412
Caption: Senate Health Policy

Case:
Judge:

Type:

Started: 2/4/2014 2:06:07 PM
Ends: 2/4/2014 3:50:00 PM Length: 01:43:54

2:06:09 PM Meeting Called to Order
2:06:52 PM Roll Call
2:07:13 PM Sen. Bean delivers opening remarks
2:07:31 PM (Tab 1) SB 520- Dental Workforce Surveys
2:08:03 PM Becky Kokkinos, Legislative Assistant to Senator Richter
2:08:20 PM Dr. Zack Kalavickal, Florida Dental Association waives in support
2:08:39 PM Roll Call on SB 520
2:09:00 PM SB 520 reported favorably
2:09:13 PM (Tab 2) SB 390- Public Records
2:09:28 PM Jessica Crawford, Legislative Assistant to Senator Hays
2:09:48 PM Barcode 172522 Courtesy AM
2:10:05 PM adopted AM
2:10:17 PM Paul Runk, Department of Health waives in support
2:10:37 PM Roll call on SB 390
2:11:13 PM SB 390 reported favorably
2:11:21 PM (Tab 4) SB 7016 Prescription Drug Monitoring
2:11:56 PM Sen. Bean explains bill
2:15:33 PM Sen. Sobel explains Barcode 861816
2:15:45 PM Sen. Brandes explains Barcode
2:16:05 PM Sen. Sobel asks for questions about amendment
2:16:24 PM Sen. Sobel asks question
2:16:39 PM Sen. Brandes responds
2:17:19 PM Sen. Sobel asks question about court order
2:17:29 PM Testimony by Amy Mercer, Ex. Director, Florida Police Chiefs Assoc.
2:18:41 PM Sen. Sobel asks for questions
2:18:46 PM Sen. Flores asks question
2:19:21 PM Ms. Mercer responds
2:20:04 PM Sen. Sobel asks question
2:20:28 PM Ms. Mercer responds
2:20:41 PM Testimony by electra Bustle, Florida Sheriffs Association
2:24:45 PM Sen. Sobel asks for further questions
2:25:17 PM Sen. Flores makes comment
2:26:03 PM Sen. Sobel comments on data base
2:27:57 PM Sen. Joyner voices concern
2:30:00 PM Sen. Sobel asks for other comments
2:30:05 PM Sen. Grimsley makes comment
2:30:42 PM Roll Call
2:31:06 PM AM passes
2:31:10 PM Barcode 336376 by Sen. Bean
2:31:40 PM Sen. Sobel asks for questions about AM
2:31:59 PM AM adopted
2:32:17 PM Sen. Bean explains AM 963500
2:33:21 PM Sen. Sobel asks for questions on AM and testimony
2:33:47 PM Michael Jackson, Executive Vice President, Florida Pharmacy Association
2:35:21 PM Sen. Sobel thanks Mr. Jackson and asks for other comments
2:36:19 PM AM 106398 to Amendment 336376
2:36:54 PM Sen. Sobel asks for debate
2:37:22 PM Barcode 963500 by Sen. Bean adopted
2:37:40 PM Sen. Brandes comments
2:38:23 PM Testimony by David King
2:39:23 PM David King, Vowsia Co. Sheriffs Office/Florida Sheriffs Assn.
2:41:10 PM Sen. Sobel asks for questions

2:41:14 PM Sen. Brandes asks question about length of investigation
2:41:24 PM Mr. King responds
2:42:15 PM Sen. Brandes makes follow-up comment
2:42:24 PM Mr. King responds about court orer
2:42:36 PM Sen. Sobel asks for questions
2:42:57 PM Testimony by Pamela Burch Fort, ACLU of Florida
2:44:14 PM Sen. Sobel asks for questions
2:44:46 PM Amy Mercer waives in opposition
2:45:00 PM Electra Bustle waives in opposition
2:45:20 PM Testimony by Buddy Jacobs, General Counsel Fl.
2:52:27 PM Sen. Sobel thanks Mr. Jacobs
2:54:21 PM Ms. Stovall explains direction of bill
2:56:25 PM Sen. Bean closes the bill
2:58:12 PM Roll Call on 7016
2:58:47 PM Amendment passes
2:59:16 PM Sen. Bean explains SPB 7014
2:59:52 PM (Tab 3) Presentation on Senate Proposed Bill 7014 OGSR/Department of Health
3:01:04 PM Barcode 725578 by Sen. Brandes
3:01:17 PM Roll Call on 725578
3:01:47 PM Amendment Adopted
3:01:53 PM Barcode 954834 by Sen. Bean
3:02:14 PM AM 266816 to AM 954834
3:02:31 PM Sen. Sobel declares AM adopted
3:03:27 PM Roll Call 7014
3:03:53 PM SPD submitted as committee bill
3:04:03 PM Sen. Bean closes bill
3:04:25 PM (Tab 5) SB 409- Needle and Syringe Exchange Pilot Program by Sen. Braynon
3:05:20 PM Sen. Braynon explains bill
3:06:26 PM Sen. Bean asks question
3:06:55 PM Sen. Bean asks for questions on Substitute AM 925030 and declares AM adopted
3:07:43 PM Chris Nuland, Florida Public Health Association waives in support
3:07:57 PM John Dudley, FSU school of medicine, waives in support
3:08:16 PM Testimony by Hansel Tookes, 4th year medical student, Florida Medical Association
3:11:01 PM Sen. Bean thanks Mr. Tookes
3:11:22 PM Martha Decastrow waives in support
3:11:41 PM Jill Gran waives in support
3:11:46 PM Patricia Greene waives in support
3:12:05 PM Jason King waives in support, AIDS Healthcare Foundation
3:12:19 PM Sen. Braynon explains sunset date
3:12:36 PM Sen. Bean asks for additional questions
3:12:45 PM Sen. Braynon waives close
3:12:50 PM Sen. Grimsley moves bill as committee substitute
3:13:07 PM Roll Call on SB 408
3:13:32 PM Committee substitute on SB 408 reported favorably
3:13:58 PM (Tab 6) Senate Proposed Bill 7028 Telemedicine
3:14:24 PM Sen. Joyner presents proposed bill
3:17:37 PM Sen. Bean asks for questions and makes motion
3:19:34 PM Testimony by Amy-Erin Blakely, President Blakely and Associates
3:23:37 PM Sen. Bean thanks Ms. Blakely
3:24:03 PM Testimony by Stan Whittake, FL Association of Nurse Practitioners
3:26:34 PM Testimony by David Christian, VP Government Affairs
3:27:10 PM Testimony by Tammy Perdue, General Counsel, Representing AIF
3:27:43 PM Testimony by Holly Miller, Governmental Affairs Counsel
3:29:17 PM Testimony by Larry Gonzales, General Counsel, Florida Society of Health, waives in support
3:30:18 PM Testimony by Layne Smith, Director of Govt. Relations waives in support
3:30:37 PM Testimony by Paul Sanford, Florida Insurance Counsel
3:35:32 PM Testimony by Connie Galietti, Florida Psychological Association
3:36:35 PM Testimony by Anna Baznik, President/CEO of IMPOWER
3:39:47 PM Testimony by Bob Reynolds, Lobbyist for Fresenius Medical Care North America
3:40:45 PM Testimony by Alisa La Polt, Florida Nurses Association
3:42:47 PM Sen. Bean asks for questions/comments on Telemedicine
3:42:59 PM Sen. Sobel makes comments on fiscal impact

3:44:01 PM Sen. Bean responds
3:44:40 PM Sen. Sobel asks follow-up question
3:45:04 PM Sen. Bean responds
3:45:27 PM Testimony by Justin Senior, Ageing for Health care Administration
3:46:56 PM Sen. Bean asks for questions
3:47:01 PM Sen. Brandes asks question about D.C.
3:47:12 PM Mr. Senior responds
3:47:56 PM Sen. Garcia asks question about reimbursement
3:48:11 PM Mr. Senior responds
3:48:41 PM Sen. Garcia asks follow-up question
3:48:52 PM Mr. Senior responds
3:48:57 PM Sen. Bean responds
3:49:13 PM Sen. Grimsley makes comments
3:49:32 PM Sen. Galvano makes comment
3:49:42 PM Sen. Garcia makes comments
3:49:48 PM Motion to Rise