

policy that conflicts with another recognized social policy, that of the public's right of access to public records and meetings, especially as both policies have been elevated to constitutional status in Florida.

Government in the Sunshine

Floridians have expressed an unequivocal preference for "open government" or "government in the sunshine" as most recently indicated in a 1992 statewide "referendum" by which they amended the *State Constitution* by adopting Article I, section 24 entitled, "Access to Public Records and Meetings Requirements." As authorized under this constitutional provision, the Legislature has enacted general laws that provide for the exemption of records, s. 119.07(1), F.S., and meetings, s. 286.011, F.S., from the requirements relating to public records and public meetings, as specified in subsections (a) and (b), respectively, of section 24 of Article I of the *State Constitution*. An exemption from the requirement of access to public records and meetings may be created constitutionally only by stating specifically the public necessity justifying the exemption. Furthermore, the exemption created may be no broader than necessary to accomplish the stated purpose of the law. Specifically, Article I, section 24 of the *State Constitution*, as relates to public records requirements, states:

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. . . . This section shall be self-executing. The legislature, however, may provide by general law for the exemption of records from the requirements of subsection (a) . . . provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. . . . Laws enacted pursuant to [subsection (c) of section 24] shall contain only exemptions from the requirements of subsection (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

The term "public record" is defined in subsection 119.011(1), F.S., 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 term "agency" is defined under subsection (2) of the same section 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 the Public Records Law, 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.

Paragraph 119.07(1)(a), F.S., requires:

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

Paragraph 119.15(3)(e), F.S., defines the term “exemption” to mean a provision of the *Florida Statutes* which creates an exception to subsection 119.07(1), F.S., or s. 286.011, F.S., and which applies to the executive branch of state government or to local government, but it does not include any provision of a special or local law.

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., relating to legislative review of exemptions from public meetings and public records requirements, sets forth specific criteria for evaluating whether confidentiality provisions serve an identifiable public purpose and are no broader than necessary to meet the public purpose they serve. Paragraph 119.15(4)(b), F.S., states:

(4)(b) An exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and 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:

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

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Confidentiality of Patient Information and Medical Records

The *Florida Statutes* contain more than 250 provisions relating to the confidentiality of medical records. In fact, s. 119.07, F.S., the Public Records Law, contains several exemptions relating to such records. Under state law, patient information is confidential in the possession of a health care practitioner or a state agency, as provided under s. 455.667, F.S., (formerly s. 455.241, F.S.), except under certain specific circumstances. As confidential information, patient records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient. There are some significant exceptions to the, otherwise, exclusive control given patients over such information. These exceptions include: 1) release, without written authorization, of physical or mental examination or administered treatment information to a person that procures such examination or treatment with the patient's consent, 2) forwarding of examination results obtained when a compulsory physical examination is performed for purposes of civil litigation in conformity with the Rules of Civil Procedure or upon issuance of a subpoena in a civil or criminal action and under other similar circumstances.

The Florida Kids Health Program

The Balanced Budget Act of 1997 (P.L. 105-33), provided almost \$40 billion over the next 10 years to help states expand insurance coverage to more children, either through Medicaid or other health plans. The State Children's Health Insurance Program has the potential to significantly reduce the number of uninsured children nationally and in Florida. The act, which created Title XXI of the Social Security Act, will help states expand health care coverage to the nation's estimated 10 million uninsured children. The act initially allocates funds to states based on the number of uninsured children in the state and subsequently on the number of low-income children residing in a state. The new law is specific to the use of funds for "targeted low-income children." States may set income eligibility at up to 200 percent of the federal poverty level, or at 50 percent above their current eligibility level, whichever is higher.

Senate Bill 1228 is a bill to implement, in Florida, a children's health insurance program in conformance with the State Children's Health Insurance Program provisions of the federal Balanced Budget Act of 1997 (P.L. 105-33). The bill extends optional Medicaid eligibility to children ages 0 to 1 whose family income is between 185 percent and 200 percent of the federal poverty level, and to children ages 15 to 19 whose family income is between 28 percent and 100 percent of the federal poverty level. The bill creates "The Florida Kids Health Act" to establish a

children's health insurance program called Florida Kids Health, which includes Medicaid coverage for children, the Florida Healthy Kids program, private health insurance and HMO coverage, and coverage through alternative coverage providers. Under the provisions of this draft bill, certain applicant and participant information, some of which may be of a sensitive nature relating to personal medical information and family financial information, will need to be provided to the state.

III. Effect of Proposed Changes:

Section 1. Creates an exemption from the Public Records Law as provided under s. 119.07, F.S., and s. 24(a), Article I of the *State Constitution*. The exemption created applies to information contained in an application for determination of eligibility for the Florida Kids Health program that identifies applicants, including medical information and family financial information, and any information obtained through quality assurance activities and patient satisfaction surveys that identifies program participants. These provisions are made subject to the Open Government Sunset Review Act of 1995, and are scheduled for subsequent review and repeal under that act.

Section 2. Provides a statement of public necessity stating the need for the exemption. The successful administration of the Florida Kids Health program is contingent upon applicant and participant willingness to provide certain otherwise personal information to the state, and this need outweighs the public benefit derived from releasing such information.

Section 3. Specifies that this bill will take effect on the effective date of the companion substantive measure creating the Florida Kids Health program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill creates an exemption from the Public Records Law, s. 119.07(1), F.S., and the public records requirements of Article I, Section 24(a) of the Florida Constitution. The exemption pertains to information contained in an application for determination of eligibility for the Florida Kids Health program that identifies applicants, including medical information and family financial information, and any information obtained through quality assurance activities and patient satisfaction surveys that identifies program participants that, under the provisions of the companion substantive bill, is to be obtained by the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Health in the administration of the Florida Kids Health program. The provisions of this bill

have no impact on open meetings issues under the Open Meetings Law, s. 286.011, F.S., and the requirements of Subsection 24(b) of Article I of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.