

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: January 2, 1998 Revised: 1/7/98 _____

Subject: Public Records and Public Meetings Exemptions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 166 creates a Public Records Law exemption for certain information in a document, report, or record prepared or reviewed by the Statewide Provider and Subscriber Assistance Program panel or obtained by the Agency for Health Care Administration pursuant to s. 408.7056, F.S. The bill also provides a Public Meetings Law exemption for information of a sensitive or personal nature specifically regarding the subscriber’s medical treatment or medical history, and for trade secret information, and internal risk management programs. The bill provides legislative findings as to the public necessity for the Public Records Law and Public Meetings Law exemptions.

The bill amends section 408.7056, Florida Statutes, and creates an undesignated section of law.

II. Present Situation:

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any Public Records or Public Meetings Law exemption that was created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 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.

Under s. 24(c), Art. I, Fla. Const., a bill that creates an exemption from the Public Records Law must also contain a statement of public necessity that justifies the exemption. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Statewide Provider and Subscriber Assistance Program

The Statewide Subscriber Assistance Program was created in 1985. The program was designed to operate through a panel comprised of employees of the Department of Insurance (DOI or department) and the Department of Health and Rehabilitative Services (HRS). The program was moved from HRS to the Agency for Health Care Administration (AHCA or agency) in 1993, and was renamed the Statewide Provider and Subscriber Assistance Program. Section 76 of chapter 93-129, Laws of Florida, redesignated s. 641.311, F.S., as s. 408.7056, F.S., renamed the program, and transferred rulemaking authority from DOI to AHCA. These revisions in the law also expanded the program to include providers with accountable health partnership's, entities created under s. 77 of ch. 93-129, L.O.F., to deliver health care services to employees of employer members of community health purchasing alliances.

Historically, the program panel has been comprised of three employees from the agency and three employees from the department. Additionally, AHCA may contract with a medical director from a state-licensed health maintenance organization (HMO) and a primary care physician to provide the program panel with technical expertise. The program panel convenes periodically to review and consider information relating to unresolved grievances arising between a subscriber or a provider (on behalf of a subscriber) and an accountable health partnership, an HMO, a prepaid health clinic, a Medicaid prepaid health plan, or an exclusive provider organization. Following its review, the program panel may recommend to the agency actions that the department or the agency should take concerning a case heard by the program panel and may notify the agency of the types of grievances which have not been satisfactorily resolved after subscribers or providers have followed the full grievance procedure of the managed care entity in which the subscribers or providers participate.

Subsection 408.7056(5), F.S., provides a Public Records Law exemption relating to the proceedings of the program panel. Information that would identify the subscriber or the spouse, a relative, or a guardian of a subscriber that is contained in a report obtained by DOI is designated

as confidential and exempt from s. 119.07(1), F.S., the Public Records Law, and s. 24(a), Art. I, Fla. Const.

The Statewide Provider and Subscriber Assistance Program is administered under rules 59A-12.014 and 59A-12.015, *Florida Administrative Code*. The proceedings of the program panel are not subject to the Administrative Procedure Act. The program is required to widely disseminate information about itself to the general public.

III. Effect of Proposed Changes:

Section 1. Amends s. 408.7056, F.S., relating to the Statewide Provider and Subscriber Assistance Program, by adding a new subsection (6) to this statutory provision. This subsection, in paragraph (a), makes information that identifies a managed care entity's subscriber or the spouse, relative, or guardian of a subscriber in a document, report, or record prepared or reviewed by the Statewide Provider and Subscriber Assistance Program panel or obtained by the Agency for Health Care Administration confidential and exempt from the Public Records Law, s. 119.07(1), F.S., and the public records requirements of s. 24(a), Art. I, Fla. Const.

Paragraph (b) provides that meetings of the panel must be open to the public unless the provider or subscriber whose grievance will be heard requests a closed meeting and AHCA or DOI determines that information of a sensitive, personal nature that discloses medical treatment or medical history, information that constitutes a trade secret, or information relating to internal risk management programs may be revealed. Upon such a determination, that portion of a meeting during which such information is discussed may be closed to the public as the bill exempts it from the Public Meetings Law, s. 286.011, F.S., and the public meetings requirements of s. 24(b), Art. I, Fla. Const. However, a certified court reporter must record the closed meeting proceedings. The exemptions created in this subsection are made subject to the Open Government Sunset Review Act of 1995 and scheduled for repeal on October 2, 2003, unless reviewed and saved from repeal.

Section 2. Creates an undesignated section of law that expresses legislative findings of public necessity for the new confidentiality, exemption from the Public Records Law, and exemption from the Public Meetings Law provisions created in section 1 of the bill. The public policy necessity for the Public Records Law exemption is the need to protect medical records and other information of a sensitive, personal nature about individuals and their families from release because it could be defamatory or would cause unwarranted damage to the good name or reputation of an individual. The necessity for the Public Records and Public Meetings Laws exemptions is also justified by the need to protect records from public disclosure in order to encourage the willingness of subscribers and providers to bring unresolved grievances before the panel. Such protection and encouragement would avoid impairment of the administration of a governmental program such as the Statewide Provider and Subscriber Assistance Program and would be expected to enhance its effectiveness. Explanatory statements depict the consequences of failure to close meetings in which sensitive, personal information is discussed or information relating to trade secrets or internal risk management programs is disclosed as resulting in: 1) the

release of defamatory or damaging information about individuals, 2) revelation of trade secrets that would negatively impact the business interests of those providing the information that would allow competitors to gain an unfair advantage, 3) undermining the medical quality assurance and inhibiting the peer review process of internal risk management programs, and 4) creating a conflict in law relating to internal risk management programs which are in all other instances made exempt from the Public Records and Public Meetings Laws.

Section 3. Provides for the bill to take effect upon becoming a law.

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 s. 18, Art. VII, State 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 s. 24(a), Art. I, State Constitution, relating to information that identifies a managed care entity's subscriber or the spouse, relative, or guardian of a subscriber in a document, report, or record prepared or reviewed by the Statewide Provider and Subscriber Assistance Panel or obtained by the Agency for Health Care Administration. It also creates an exemption from the Public Meetings Law, s. 286.011, F.S., and the public meetings requirements of s. 24(b), Art. I, State Constitution, relating to information of a sensitive, personal nature that discloses medical treatment or medical history, information that constitutes a trade secret, or information relating to internal risk management programs. A certified court reporter is required to make a record of the closed meeting proceedings. As a result, this bill appears to conform to the statutory and constitutional requirements for the creation of Public Records and Public Meetings Laws exemptions.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of s. 19(f), Art. I, State 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:

By restricting public access to the identity of a subscriber or the spouse, relative, or guardian of a subscriber bringing a grievance before the Statewide Provider and Subscriber Assistance Program panel, the bill expands confidentiality and access protection beyond reports obtained by the Department of Insurance to encompass documents, reports, and records prepared or reviewed by the Statewide Provider and Subscriber Assistance Program panel or obtained by the Agency for Health Care Administration. Such protection should enhance the comfort level of subscribers seeking resolution of disputes with the managed care entity through which they receive health care services.

The exemption from the Public Meetings Law of portions of meetings of the Statewide Provider and Subscriber Assistance Program panel during which information of a sensitive, personal nature involving the disclosure of medical treatment or medical history; information that constitutes a trade secret; or information relating to internal risk management programs removes obstacles to cooperation that could jeopardize the usefulness and effectiveness of the Program.

VIII. Amendments:

#1 by Governmental Reform and Oversight:

Technical amendment changing “and” to “or” on page 2, line 3.