

STORAGE NAME: h0245b.hcl

DATE: March 29, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 245

RELATING TO: Public Records/Patient Information

SPONSOR(S): Representative Goode

COMPANION BILL(S) : SB 674 (s), HB 247 (c), CS/SB 276 ©

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

HB 245 creates an exemption for patient records of home medical equipment providers from the public records disclosure law.

It also exempts criminal records, juvenile records, and central abuse registry information obtained for determining good moral character of home medical equipment personnel from the public records disclosure law.

A public necessity statement is provided for these exemptions as required by Art. 1., s. 24, of the Florida Constitution.

There is no fiscal impact on the state, local government or the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 119.07(1), Florida Statutes, and section 24(a), Article I of the State Constitution, provide for public access to any records produced or obtained by a government agency. However, it permits the Legislature to provide by general law for the exemption of certain records. The general law exempting the records must state with specificity the public necessity justifying the exemption.

Many documents are obtained during inspection of a business licensed by the Agency for Health Care Administration. Since records obtained during the inspection of a health care facility may include confidential patient medical documentation, exemptions from public records disclosure as defined in section 119.07 (1), F.S., must be requested for such confidential information. Additionally, information obtained during the process of background screening may include personal and sensitive information, which, if released, could cause unwarranted damage to an individual's reputation.

Information contained in patient records, or information such as criminal records, juvenile records, and abuse registry information is generally exempt from the provision of s. 119.07 (1), Florida Statutes. Since home medical equipment providers are not licensed in Florida, this information is not currently collected or exempted by the state. If the agency begins collecting this information, a general law must be passed to exempt it from public inspection.

B. EFFECT OF PROPOSED CHANGES:

Creates public records exemptions for patient information received by home medical equipment providers and persons employed by, or providing services to, such home medical equipment providers, or which is received by the licensing agency through reports or inspection.

Public necessity statements are provided for the exemptions as required by Art. 1, s. 24 of the Florida Constitution.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. It exempts information from public disclosure. This exemption is necessary to protect sensitive personal information. Release of personal information may be injurious

to individuals and cause unwarranted damage to their reputation. Release of this type of information would also violate the individual's right to personal privacy.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Exempts information concerning patients of home medical providers from the public records law. Such information, when obtained by the home medical equipment supplier or by the Agency for Health Care Administration is exempt from public records release without the individual's consent. Provides for repeal on October 2, 2004, pursuant to the Open Government

Sunset Review Act of 1995. Patient records are already exempt from the public records law in home health agencies, nursing homes, hospitals and other health care facilities.

Section 2. Expresses the public necessity of these exemptions to protect the individual's right to privacy.

Section 3. Exempts information in connection with background screening of prospective employees from the public records law. Such information, when obtained by the home medical equipment supplier or by the Agency for Health Care Administration is exempt from public records release without the individual's consent. Provides for repeal on October 2, 2004, pursuant to the Open Government Sunset Review Act. Information obtained through background screening of personnel in home health agencies, nurse registry personnel, and homemakers, companions and sitters is already exempt from public records law.

Section 4. Expresses necessity of these exemptions on the basis of the potential shortage of applicants for employment with medical equipment suppliers if information of past misbehavior from juvenile records, criminal records, or central abuse registry are not kept confidential.

Section 5. Provides for an effective date to coincide with HB 247 if adopted, or similar legislation requiring licensure of home medical equipment providers.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

There is no fiscal impact on the Agency for Health Care Administration, local government, or the private sector.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take and action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

This bill accompanies HB 247 and SB 276, which provide for licensure by the Agency for Health Care Administration of home medical equipment providers. This bill protects confidential or sensitive information about patients received by home medical equipment providers or by the licensing agency from unconsented public release. The bill identifies the public necessity for exempting this information as the individual's right to privacy. Exemption from the provisions of s. 119.07 (1), F. S., is also provided for background screening records of employees of home medical equipment suppliers.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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