

By the Committee on Elder & Long-Term Care and  
Representative Green

1                                   A bill to be entitled  
2           An act relating to public records and meetings;  
3           providing an exemption from the public records  
4           law for certain records relating to internal  
5           risk management programs in nursing homes and  
6           assisted living facilities; providing for  
7           release of such information under certain  
8           circumstances; providing an exemption from the  
9           public meetings law for meetings of internal  
10          risk management and quality assurance  
11          committees in nursing homes and assisted living  
12          facilities; providing for future legislative  
13          review and repeal; providing a statement of  
14          public necessity; creating s. 430.105, F.S.;  
15          providing for confidentiality and exemption  
16          from the public records law for information  
17          relating to clients of the Department of  
18          Elderly Affairs, clients of service providers  
19          contracting with the Department of Elderly  
20          Affairs, and certain elders receiving services  
21          through programs administered by or funded by  
22          the Department of Elderly Affairs; requiring  
23          consent for disclosure; providing for future  
24          legislative review and repeal; providing a  
25          statement of public necessity; providing a  
26          contingent effective date.

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

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30           Section 1. Confidentiality of records and meetings of  
31 risk management and quality assurance committees.--

1       (1) Records of meetings of the risk management and  
2 quality assurance committee of a long-term care facility  
3 licensed under part II or part III of chapter 400, Florida  
4 Statutes, as well as incident reports filed with the  
5 facility's risk manager and administrator, notifications of  
6 the occurrence of an adverse incident, and adverse incident  
7 reports from the facility are confidential and exempt from s.  
8 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State  
9 Constitution. However, if the Agency for Health Care  
10 Administration has a reasonable belief that conduct by a staff  
11 member or employee of a facility is criminal activity or  
12 grounds for disciplinary action by a regulatory board, the  
13 agency may disclose such records to the appropriate law  
14 enforcement agency or regulatory board.

15       (2) Records that are confidential and exempt under  
16 subsection (1) and that are obtained by a regulatory board are  
17 not available to the public as part of the record of  
18 investigation and prosecution in a disciplinary proceeding  
19 made available to the public by the agency or the appropriate  
20 regulatory board. However, the agency or the appropriate  
21 regulatory board shall make available, upon request by a  
22 health care professional against whom probable cause has been  
23 found, any such records that form the basis of the  
24 determination of probable cause.

25       (3) Records disclosed to a law enforcement agency  
26 pursuant to subsection (1) remain confidential and exempt  
27 until criminal charges are filed.

28       (4) The meetings of an internal risk management and  
29 quality assurance committee of a long-term care facility  
30 licensed under part II or part III of chapter 400, Florida  
31 Statutes, are exempt from s. 286.011, Florida Statutes, and s.

1 24(b), Art. I of the State Constitution and are not open to  
2 the public.

3 (5) This section is subject to the Open Government  
4 Sunset Review Act of 1995 in accordance with s. 119.15,  
5 Florida Statutes, and shall stand repealed on October 1, 2006,  
6 unless reviewed and saved from repeal through reenactment by  
7 the Legislature.

8 Section 2. The Legislature finds that it is a public  
9 necessity that information pertaining to the operation of  
10 internal risk management and quality assurance programs in  
11 long-term care facilities licensed under part II or part III  
12 of chapter 400, Florida Statutes, be confidential and exempt  
13 from public records requirements, and that meetings of quality  
14 assurance committees be closed to the public. The Legislature  
15 finds that it is in the interest of public health and safety  
16 to require long-term care facilities to operate internal risk  
17 management programs and for the Agency for Health Care  
18 Administration to review the operation of these programs. The  
19 Legislature finds that these programs are effective in  
20 reducing risk to residents and improving quality when facility  
21 staff have frank and open internal communication regarding  
22 potential resident risks and quality assurance problems and  
23 that public access to these discussions or agency records of  
24 these discussions will inhibit this frank and open internal  
25 communication.

26 Section 3. Section 430.105, Florida Statutes, is  
27 created to read:

28 430.105 Confidentiality of information.--

29 (1) Information, including personally identifying  
30 information contained in records relating to an individual's  
31 health or eligibility for or receipt of health-related, elder

1 care, or long-term care services, about clients of the  
2 department, clients of service providers that contract with  
3 the department, or functionally impaired elderly persons who  
4 receive services under any program administered or funded by  
5 the department is confidential and exempt from the provisions  
6 of s. 119.07(1) and s. 24(a), Art. I of the State  
7 Constitution, except as otherwise provided by law. Such  
8 information may be contained in records created by or received  
9 by the department or its service providers or obtained through  
10 files, reports, inspections, or otherwise by employees of the  
11 department, persons who volunteer through programs  
12 administered by the department or its contract providers, or  
13 by contract providers. Information made confidential and  
14 exempt from the public records law under this section may not  
15 be disclosed publicly unless the affected client or elder  
16 person or his or her legal representative provides written  
17 consent.

18 (2) This section is subject to the Open Government  
19 Sunset Review Act of 1995 in accordance with s. 119.15, and  
20 shall stand repealed on October 1, 2006, unless reviewed and  
21 saved from repeal through reenactment by the Legislature.

22 Section 4. The Legislature finds that it is a public  
23 necessity that identifying information and information of a  
24 personal and sensitive nature that is contained in the records  
25 of elderly persons collected and held by the Department of  
26 Elderly Affairs, by volunteers, by persons under contract with  
27 area agencies on aging, or any provider contracting with the  
28 department to provide services to clients of the department be  
29 held confidential and exempt from public disclosure. Similar  
30 information held by the Department of Children and Family  
31 Services is confidential. If such information were not held

1 confidential and exempt, elderly persons could fall prey to  
2 those seeking to capitalize on their weaknesses. Also, if  
3 their addresses were available, and their disabilities known,  
4 criminals could more readily attack these elderly citizens.  
5 Accordingly, it is necessary in order to protect the health,  
6 safety, and welfare of our elderly citizens, that identifying  
7 information regarding them be kept confidential and protected  
8 from general public disclosure, in accordance with the public  
9 records law and the State Constitution.

10 Section 4. This act shall take effect on the same date  
11 that House Bill \_\_\_\_ or similar legislation creating internal  
12 risk management and quality assurance programs in long-term  
13 care facilities licensed under part II or part III of chapter  
14 400, Florida Statutes, takes effect, if such legislation is  
15 adopted in the same legislative session or an extension  
16 thereof.

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19 LEGISLATIVE SUMMARY

20 Provides an exemption from the public records and public  
21 meetings law for records and meetings of internal risk  
22 management programs in nursing homes and assisted living  
23 facilities. Provides for certain information to be  
24 released to a health care professional against whom  
25 probable cause has been found. Provides that records  
26 disclosed to a law enforcement agency remain confidential  
27 until criminal charges are filed. Provides for  
28 confidentiality and exemption from the public records law  
29 for information relating to clients of the Department of  
30 Elderly Affairs, clients of service providers contracting  
31 with the Department of Elderly Affairs, and certain  
elders receiving services through programs administered  
by or funded by the Department of Elderly Affairs.  
Requires consent for disclosure. Provides for future  
review and repeal.