

STORAGE NAME: h0947.hcc.doc
DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS**

BILL #: HB 947
RELATING TO: Decedent's Medical Records/Presuits
SPONSOR(S): Representative Seiler
TIED BILL(S): None

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

- (1) HEALTH REGULATION YEAS 9 NAYS 0
 - (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

HB 947 allows the medical records of a deceased person to be released for a medical malpractice presuit investigation and exempts the health care practitioner from civil liability or discipline for the disclosure.

The bill takes effect upon becoming law.

The Committee on Judicial Oversight adopted one amendment to clarify who can obtain records pursuant to the bill. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 766.104(1), Florida Statutes, requires attorneys representing plaintiffs in personal injury or wrongful death actions arising out of medical negligence to make "a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant" prior to the filing of a lawsuit. This requirement is sometimes called a "presuit" investigation. Medical records of deceased individuals are not authorized for release to the family or attorney as part of the investigation required by s. 766.104 (1), F.S., to determine if an action for personal injury or wrongful death is warranted.

"Health care practitioner" is defined in s. 456.001, F.S., as any person licensed under the following chapters of the Florida Statutes:

- 457—Acupuncturists
- 458—Allopathic Physicians and Physician Assistants
- 459—Osteopathic Physicians and Physician Assistants
- 460—Chiropractic Physicians and Chiropractic Physician Assistants
- 461—Podiatric Physicians
- 462—Naturopaths
- 463—Optometrists
- 464—Nurses
- 465—Pharmacists
- 467—Midwives
- 468 part I—Speech-language Pathologists and Audiologists
- 468 part II—Nursing Home Administrators
- 468 part III—Occupational Therapists
- 468 part V—Respiratory Therapists
- 468 part X—Dietitians and Nutrition Counselors
- 468 part XIII—Athletic Trainers
- 468 part XIV—Orthotists, Prosthetists, and Pedorthists
- 478—Electrologists
- 480—Massage Therapists
- 483 part III—Clinical Laboratory Personnel
- 483 part IV—Medical Physicists
- 484 part I—Opticians

- 484 part II—Hearing Aid Specialists
- 486—Physical Therapists and Physical Therapy Assistants
- 490—Psychologists and School Psychologists
- 491—Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors

Section 456.057, Florida Statutes, provides for the ownership and control of patient medical records, as well as when reports and copies of reports must be furnished and under what conditions. Subsection (5) of this section specifically provides that medical 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 practitioners and providers involved in the care or treatment of a patient, except upon written authorization of the patient.

There are several enumerated exceptions to the provisions of section 456.057(5), including an exception for civil and criminal actions and medical negligence actions or administrative proceedings. However, in general, these exceptions either require written authorization from the patient or patient's legal representative or require a subpoena from a court of competent jurisdiction or from the Department of Health.

Any licensed health care practitioner who violates the provisions of s. 456.057, F.S., is subject to disciplinary action. The Attorney General is also authorized to enforce the provisions of that section for records owners not licensed by the state, through injunctive relief and fines not to exceed \$5,000 per violation.

C. EFFECT OF PROPOSED CHANGES:

This bill authorizes copies of the medical records of a deceased person to be made available for a medical malpractice presuit investigation to the spouse, parent, adult child, guardian, surrogate, proxy, or attorney of the deceased. It also exempts health care practitioners who disclose this information in good faith from civil liability or disciplinary action by their applicable licensure board.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 766.104, F.S., to authorize copies of the medical records of a deceased person to be made available for a medical malpractice presuit investigation to the spouse, parent, adult child, guardian, surrogate, proxy, or attorney of the deceased; and exempts health care practitioners who disclose this information in good faith from civil liability or disciplinary action by their applicable licensure board.

Section 2. Provides an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The 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:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judicial Oversight considered the bill on April 12, 2001. The committee adopted one amendment to clarify that records shall be made available to the deceased person's guardian pursuant to chapter 744, surrogate or proxy pursuant to chapter 765, or attorney in fact pursuant to chapter 709.

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Wendy Smith Hansen, Senior Attorney

Staff Director:

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier

Staff Director:

Lynne Overton

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Wendy Smith Hansen, Senior Attorney

Council Director:

Mary Pat Moore