

STORAGE NAME: h0985.hcc.doc

DATE: April 18, 2001

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

BILL #: HB 985
RELATING TO: Medical Records/Solicitation/Marketing
SPONSOR(S): Representatives Justice, Wiles and others
TIED BILL(S): None.

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

- (1) HEALTH REGULATION YEAS 11 NAYS 0
 - (2) JUDICIAL OVERSIGHT (W/D)
 - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 15 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

In 1996, the United States Congress passed legislation to facilitate the ability of workers to change jobs without losing their health insurance coverage. Under the law, Congress was required to take further action to address the sharing of medical information for purposes of continuity of health care coverage, while protecting the privacy of the patient's medical history. The law provided that if Congress failed to pass medical privacy legislation within three years, the Department of Health and Human Services (DHHS) would be required to adopt regulations addressing this issue. The legislative deadline passed without Congressional action. The DHHS passed federal regulations during the waning days of the Clinton administration, which required health-care providers to obtain consent before using patients' personal information and limited the data, that employers, pharmaceutical companies, and marketers can obtain. However, the rules provided substantial exemptions that allow doctors, clinics, hospitals and others that normally have access to medical records – along with business associates working under contract with them – to send out individualized health information and product promotions. The exemptions also allow foundations affiliated with hospitals to access patient information for fundraising.

In February, the new DHHS Secretary announced that the effective date of the federal rules would be delayed until April. Following this decision, the comment period was reopened. The status of a patient's ability to maintain the privacy of his or her medical information under the federal regulations is unclear.

HB 985 prohibits licensed practitioners governed under Chapter 456, Florida Statutes, from using patient medical records for the purposes of solicitation and marketing without a written release.

Provides for an effective date upon becoming law.

There is no financial impact to either state or local government with this bill.

See amendment section of this analysis for changes made by a substitute amendment that 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Florida Law

Section 456.057, F.S., relates to the ownership and control of patient records. A "records owner" means:

- any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person;
- any health care practitioner to whom records are transferred by a previous records owner; or
- any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.¹

The following professions are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of s. 456.057, F.S., to maintain such documents as required by the part or chapter under which they are licensed or regulated:

- Certified nursing assistants regulated under pt. II of ch. 464, F.S.;
- Pharmacists and pharmacies licensed under ch. 465, F.S.;
- Dental hygienists licensed under s. 466.023, F.S.;
- Nursing home administrators licensed under pt. II of ch 468, F.S.;
- Respiratory therapists regulated under pt. V of ch. 468, F.S.;
- Athletic trainers licensed under pt. XIII of ch. 468, F.S.;
- Electrologists licensed under ch. 478, F.S.;
- Clinical laboratory personnel licensed under pt. III of ch. 483, F.S.;
- Medical physicists licensed under pt. IV of ch. 483, F.S.;
- Opticians and optical establishments licensed or permitted under pt. I of ch 484, F.S.;
- and

¹ See s. 456.057(1)

- Persons or entities practicing under s. 627.736(7), F.S. (relating to mental and physical examinations for purposes of insurance)

Subsection (5) of s. 456.057 F.S., specifies the following circumstances under which medical records may be furnished without written authorization:

- To any person, firm, or corporation that has procured or furnished an examination or treatment with the patient's consent.
- When compulsory physical examination is made pursuant to Rule 1.360 of the Florida Rules of Civil Procedure (allowing for one party to request that another party submit to, or produce a person in that other party's custody or legal control for, examination by a qualified expert when the condition that is the subject of the requested examination is in controversy). In such instances, copies of the medical records must be furnished to both the defendant and the plaintiff.
- In a civil or criminal action upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records, unless otherwise prohibited by law,
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

Federal Law

In 1996, the United States Congress passed legislation to facilitate the ability of workers to change jobs without losing their health insurance coverage. Under the law, Congress was required to take further action to address the sharing of medical information for purposes of continuity of health care coverage, while protecting the privacy of the patient's medical history. The law provided that if Congress failed to pass medical privacy legislation within three years, the Department of Health and Human Services (DHHS) would be required to adopt regulations addressing this issue. The legislative deadline passed without Congressional action. The DHHS passed federal regulations during the waning days of the Clinton administration, which required health-care providers to obtain consent before using patients' personal information and limited the data, that employers, pharmaceutical companies, and marketers can obtain. However, the rules provided substantial exemptions that allow doctors, clinics, hospitals and others that normally have access to medical records – along with business associates working under contract with them – to send out individualized health information and product promotions. The exemptions also allow foundations affiliated with hospitals to access patient information for fundraising.

In February, the new DHHS Secretary announced that the effective date of the federal rules would be delayed until April. Following this decision, the comment period was reopened. The status of a patient's ability to maintain the privacy of his or her medical information under the federal regulations is unclear.

C. EFFECT OF PROPOSED CHANGES:

The bill amends subsection (5) of s. 456.057, F.S., to expressly prohibit the use of patient medical records for the purposes of solicitation and marketing.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (5) of section 456.057, Florida Statutes to prohibit the use of patient's medical records for the purposes of solicitation and marketing, notwithstanding any written authorization for the release of medical records under the section.

Section 2. Provides that this act take effect 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:

This bill will protect patient privacy.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require a city or county to expend funds or to take any 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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

See “amendments or committee substitute changes” section of this analysis.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee for Health Regulation unanimously adopted a strike-all amendment offered by the sponsor. The amendment expands the application of the bill by prohibiting health facilities licensed under ch. 395, F.S.; and nursing homes licensed under ch. 400, F.S., from using patient information for the purposes of solicitation and marketing the sale of goods and services, in addition to practitioners licensed under ch. 456, F.S. The amendment modifies the prohibition against using of patient’s medical records for the purposes of solicitation and marketing, notwithstanding any written authorization for the release of medical records under the section to allow for such use upon a written release permitting the use of patient information those purposes. The amendment also expresses legislative intent that personally identifying information should be kept confidential and not exploited for the purposes of solicitation and marketing the sale of goods and services. The strike-all amendment is traveling with the bill.

On Wednesday, April 18, 2001, the Council for Healthy Communities considered and unanimously adopted a substitute amendment to the strike all amendment. The substitute amendment makes technical changes to the legislative intent; conforming the House bill with the Senate bill. In addition, a new section five is created which allows the Department of Insurance to adopt rules consistent with the National Association of Insurance Commissioners (NAIC) model law, which provides a standard requiring banks and insurers to get affirmative approval from the customer before sharing health information with its affiliates. It permits the sharing of financial information with a simple disclosure, but health information must have an affirmative approval. **The substitute amendment is traveling with the bill.**

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

Lisa Rawlins Maurer, Legislative Analyst

Staff Director:

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier

Staff Director:

Lynne Overton

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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