

**STORAGE NAME:** h0985a.hr.doc  
**DATE:** March 20, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH REGULATION  
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
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
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I. SUMMARY:

Earlier this year, Congress passed new federal medical privacy regulations, which will for the first time explicitly permit doctors, hospitals, other health services and some of their business associates to use personal health records for marketing and fundraising. The rules were included in the federal regulations after a months-long public relation effort by the industry. Under the new federal act, doctors, clinic, hospitals and others that normally have access to medical records – along with business associates working under contract with them – will be allowed to send out individualized health information and product promotions.

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 an 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 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"/> |

B. PRESENT SITUATION:

Section 456.057, F.S., governs the provisions regulating 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.

Certified nursing assistants; pharmacists and pharmacies licensed under chapter 465; dental hygienists; nursing home administrators; respiratory therapists; athletic trainers; electrologists; clinical laboratory personnel; medical physicists; opticians and optical establishments; or facilities licensed under chapter 395; are not included in the provisions regulating the ownership of medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

Section 456.057, (5) F.S., provides exceptions so that such records may be furnished without written authorization under the following circumstances:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent.
- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
- In any civil or criminal action, unless otherwise prohibited by law, 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.

- 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.

According to an article from the *Washington Post*, January 16, 2001, *Patient Files Opened to Marketers, Fundraisers, Critics Decry Exemptions Won Through Lobbying*,

“New federal medical privacy regulation, . . . , will for the first time explicitly permit doctors, hospitals, other health services and some of their business associates to use personal health records for marketing and fundraising. The rules were included in the federal regulations after a months-long public relation effort by the industry. Under the exemptions, doctors, clinic, hospitals and others that normally have access to medical records – along with business associates working under contract with them – will be allowed to send out individualized health information and product promotions. A pregnant woman, for instance, could receive pitches about vitamins or infant health-care products. A patient who has been treated for sexually transmitted diseases could receive telemarketing calls offering condoms or new medicines....”

C. EFFECT OF PROPOSED CHANGES:

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.

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, absent a written authorization.

**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:

It is anticipated that 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:

This bill does not provide any specific rulemaking authority.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

During the Health Regulation Committee meeting March 29, 2001, Representative Justice offered and passed without objection a strike all amendment. The amendment expands the original scope of the bill by prohibiting practitioners licensed under Chapter 456, F.S.; health facilities licensed under Chapter 395, F.S.; and nursing homes licensed under Chapter 400, F.S., from using patient information for the purposes of solicitation and marketing the sale of goods and services. In addition, the amendment creates legislative intent providing that the Legislature finds that personally identifying information shall 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.

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VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

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