

By the Committee on Health Policy

588-01652-14

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunshine Review Act; amending s. 893.0551, F.S., which
4 makes confidential and exempt certain information of a
5 patient or patient's agent, health care practitioner,
6 and others held by the Department of Health;
7 specifying that the Attorney General, health care
8 regulatory boards, and law enforcement agencies may
9 disclose certain confidential and exempt information
10 to certain entities only if such information is
11 relevant to an active investigation that prompted the
12 request for the information; requiring the Attorney
13 General, health care regulatory boards, and law
14 enforcement agencies to take certain steps to ensure
15 the continued confidentiality of all nonrelevant
16 confidential and exempt information before disclosing
17 such information; requiring a law enforcement agency
18 to obtain a court order before such agency may receive
19 information from the prescription drug monitoring
20 database; authorizing a health care practitioner to
21 share a patient's information with that patient and
22 put such information in the patient's medical record
23 upon consent; authorizing the department to disclose,
24 under certain circumstances, a patient advisory report
25 to a health care practitioner and relevant information
26 that does not include personal identifying information
27 to a law enforcement agency, rather than requiring the
28 department to disclose confidential and exempt
29 information; authorizing a law enforcement agency to

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30 use specified information to support a court order,
31 rather than to disclose confidential and exempt
32 information to a criminal justice agency; prohibiting
33 an agency or person who obtains specified confidential
34 and exempt information from disclosing such
35 information except under certain circumstances; saving
36 the exemption from repeal under the Open Government
37 Sunset Review Act; providing an effective date.
38

39 Be It Enacted by the Legislature of the State of Florida:
40

41 Section 1. Section 893.0551, Florida Statutes, is amended
42 to read:

43 893.0551 Public records exemption for the prescription drug
44 monitoring program.—

45 (1) As used in ~~For purposes of~~ this section, the term:

46 (a) "Active investigation" has the same meaning as provided
47 in s. 893.055.

48 (b) "Dispenser" has the same meaning as provided in s.
49 893.055.

50 (c) "Health care practitioner" or "practitioner" has the
51 same meaning as provided in s. 893.055.

52 (d) "Health care regulatory board" has the same meaning as
53 provided in s. 893.055.

54 (e) "Law enforcement agency" has the same meaning as
55 provided in s. 893.055.

56 (f) "Pharmacist" means a ~~any~~ person licensed under chapter
57 465 to practice the profession of pharmacy.

58 (g) "Pharmacy" has the same meaning as provided in s.

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59 893.055.

60 (h) "Prescriber" has the same meaning as provided in s.
61 893.055.

62 (2) The following information of a patient or patient's
63 agent, a health care practitioner, a dispenser, an employee of
64 the practitioner who is acting on behalf of and at the direction
65 of the practitioner, a pharmacist, or a pharmacy which ~~that~~ is
66 contained in records held by the department under s. 893.055 is
67 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
68 of the State Constitution:

69 (a) Name.

70 (b) Address.

71 (c) Telephone number.

72 (d) Insurance plan number.

73 (e) Government-issued identification number.

74 (f) Provider number.

75 (g) Drug Enforcement Administration number.

76 (h) Any other unique identifying information or number.

77 (3) The department shall disclose such confidential and
78 exempt information to the following persons or entities after
79 using a verification process to ensure the legitimacy of that
80 person's or entity's request for the information:

81 (a) The Attorney General and his or her designee when
82 working on Medicaid fraud cases involving prescription drugs or
83 when the Attorney General has initiated a review of specific
84 identifiers of Medicaid fraud regarding prescription drugs. The
85 Attorney General or his or her designee may disclose to a
86 criminal justice agency as defined in s. 119.011 ~~the~~
87 confidential and exempt information received from the department

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88 which is relevant to a criminal justice agency as defined in s.
89 119.011 as part of an active investigation that prompted the
90 request for the information that is specific to a violation of
91 prescription drug abuse or prescription drug diversion law as it
92 relates to controlled substances. Before disclosing any
93 information to a criminal justice agency, the Attorney General
94 or his or her designee must take steps to ensure the continued
95 confidentiality of all confidential and exempt information. At a
96 minimum, these steps must include redacting or deleting all
97 nonrelevant information. The Attorney General's Medicaid fraud
98 investigators may not have direct access to the department's
99 database.

100 (b) The department's relevant health care regulatory boards
101 responsible for the licensure, regulation, or discipline of a
102 practitioner, pharmacist, or other person who is authorized to
103 prescribe, administer, or dispense controlled substances and who
104 is involved in a specific controlled substances investigation
105 for prescription drugs involving a designated person. The health
106 care regulatory boards may request information from the
107 department but may not have direct access to its database. The
108 health care regulatory boards may provide ~~such information~~ to a
109 law enforcement agency pursuant to ss. 456.066 and 456.073 only
110 information that is relevant to the specific controlled
111 substances investigation that prompted the request for the
112 information. Before disclosing any information to a law
113 enforcement agency, a healthcare regulatory board must take
114 steps to ensure the continued confidentiality of all
115 confidential and exempt information. At a minimum, these steps
116 must include redacting or deleting all nonrelevant information.

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117 (c) A law enforcement agency that has initiated an active
118 investigation involving a specific violation of law regarding
119 prescription drug abuse or diversion of prescribed controlled
120 substances and that has obtained a court order issued by a court
121 of competent jurisdiction upon a showing of reasonable suspicion
122 of potential criminal activity, fraud, or theft regarding
123 prescribed controlled substances. The law enforcement agency may
124 disclose to a criminal justice agency as defined in s. 119.011
125 only ~~the~~ confidential and exempt information received from the
126 department which is relevant to a criminal justice agency as
127 defined in s. 119.011 as part of an active investigation that
128 prompted the request for the information that is specific to a
129 violation of prescription drug abuse or prescription drug
130 diversion law as it relates to controlled substances. Before
131 disclosing any information to a criminal justice agency, a law
132 enforcement agency must take steps to ensure the continued
133 confidentiality of all confidential and exempt information. At a
134 minimum, these steps must include redacting or deleting all
135 nonrelevant information. A law enforcement agency may request
136 information from the department but may not have direct access
137 to its database.

138 (d) A health care practitioner who certifies that the
139 information is necessary to provide medical treatment to a
140 current patient in accordance with ss. 893.05 and 893.055. A
141 health care practitioner who receives a current patient's
142 confidential and exempt information under this subsection may
143 disclose such information to the patient or the patient's legal
144 representative. Upon the patient's or the legal representative's
145 written consent, the health care practitioner may place such

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146 information in the patient's medical record, including
147 electronic medical records, and may disclose such information
148 subject to the requirements of s. 456.057.

149 (e) A pharmacist who certifies that the requested
150 information will be used to dispense controlled substances to a
151 current patient in accordance with ss. 893.04 and 893.055.

152 (f) A patient or the legal guardian or designated health
153 care surrogate for an incapacitated patient, if applicable,
154 making a request as provided in s. 893.055(7)(c)4.

155 (g) The patient's pharmacy, prescriber, or dispenser who
156 certifies that the information is necessary to provide medical
157 treatment to his or her current patient in accordance with s.
158 893.055.

159 (4) If the department determines that there exists a
160 pattern of controlled substance abuse consistent with department
161 rules for identifying indicators of such abuse, the department
162 may provide:

163 (a) A patient advisory report to an appropriate health care
164 practitioner; and

165 (b) Relevant information that does not contain personal
166 identifying information to the applicable law enforcement
167 agency. A law enforcement agency may use such information to
168 support a court order pursuant to paragraph (3)(c) ~~shall~~
169 ~~disclose such confidential and exempt information to the~~
170 ~~applicable law enforcement agency in accordance with s.~~
171 ~~893.055(7)(f). The law enforcement agency may disclose the~~
172 ~~confidential and exempt information received from the department~~
173 ~~to a criminal justice agency as defined in s. 119.011 as part of~~
174 ~~an active investigation that is specific to a violation of s.~~

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175 ~~893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).~~

176 (5) An ~~Any~~ agency or person who obtains any ~~such~~
177 confidential and exempt information specified in ~~pursuant to~~
178 this section must maintain the confidential and exempt status of
179 that information and may not disclose such information unless
180 authorized under this section.

181 (6) A ~~Any~~ person who willfully and knowingly violates this
182 section commits a felony of the third degree, punishable as
183 provided in s. 775.082, s. 775.083, or s. 775.084.

184 ~~(7) This section is subject to the Open Government Sunset~~
185 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
186 ~~on October 2, 2014, unless reviewed and saved from repeal~~
187 ~~through reenactment by the Legislature.~~

188 Section 2. This act shall take effect July 1, 2014.