

By the Committees on Governmental Oversight and Accountability;
and Health Policy

585-03735-14

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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 enter into a user agreement before such agency may
19 receive information from the prescription drug
20 monitoring database; requiring the law enforcement
21 agency to ensure the continued confidentiality of all
22 confidential and exempt information; authorizing a
23 health care practitioner to share a patient's
24 information with that patient and put such information
25 in the patient's medical record upon consent;
26 authorizing certain impaired practitioner consultants
27 to access information for a specified purpose;
28 authorizing the department to disclose a patient
29 advisory report to a health care practitioner under

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30 certain circumstances; prohibiting an agency or person
31 who obtains specified confidential and exempt
32 information from disclosing such information except
33 under certain circumstances; saving the exemption from
34 repeal under the Open Government Sunset Review Act;
35 providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

39 Section 1. Section 893.0551, Florida Statutes, is amended
40 to read:

41 893.0551 Public records exemption for the prescription drug
42 monitoring program.—

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

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

46 (b) "Dispenser" has the same meaning as provided in s.
47 893.055.

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

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

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

54 (f) "Pharmacist" means a ~~any~~ person licensed under chapter
55 465 to practice the profession of pharmacy.

56 (g) "Pharmacy" has the same meaning as provided in s.
57 893.055.

58 (h) "Prescriber" has the same meaning as provided in s.

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59 893.055.

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

67 (a) Name.

68 (b) Address.

69 (c) Telephone number.

70 (d) Insurance plan number.

71 (e) Government-issued identification number.

72 (f) Provider number.

73 (g) Drug Enforcement Administration number.

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

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

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

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

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

115 (c) A law enforcement agency that has initiated an active
116 investigation involving a specific violation of law regarding

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117 prescription drug abuse or diversion of prescribed controlled
118 substances and that has entered into a user agreement with the
119 department as required under s. 893.055. The law enforcement
120 agency may disclose to a criminal justice agency as defined in
121 s. 119.011 only ~~the~~ confidential and exempt information received
122 from the department which is relevant to ~~a criminal justice~~
123 ~~agency as defined in s. 119.011 as part of an active~~
124 investigation that prompted the request for the information that
125 ~~is specific to a violation of prescription drug abuse or~~
126 ~~prescription drug diversion law as it relates to controlled~~
127 ~~substances.~~ Before disclosing any information to a criminal
128 justice agency, a law enforcement agency must take steps to
129 ensure the continued confidentiality of all confidential and
130 exempt information. At a minimum, these steps must include
131 redacting or deleting all nonrelevant information. A law
132 enforcement agency may request information from the department
133 but may not have direct access to its database.

134 (d) A health care practitioner who certifies that the
135 information is necessary to provide medical treatment to a
136 current patient in accordance with ss. 893.05 and 893.055. A
137 health care practitioner who receives a current patient's
138 confidential and exempt information under this subsection may
139 disclose such information to the patient or the patient's legal
140 representative. Upon the patient's or the legal representative's
141 written consent, the health care practitioner may place such
142 information in the patient's medical record, including
143 electronic medical records, and may disclose such information
144 subject to the requirements of s. 456.057.

145 (e) A pharmacist who certifies that the requested

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146 information will be used to dispense controlled substances to a
147 current patient in accordance with ss. 893.04 and 893.055.

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

151 (g) The patient's pharmacy, prescriber, or dispenser who
152 certifies that the information is necessary to provide medical
153 treatment to his or her current patient in accordance with s.
154 893.055.

155 (h) An impaired practitioner consultant who is retained by
156 the department under s. 456.076 for the purpose of reviewing the
157 controlled substance prescription history of a practitioner who
158 has agreed to be evaluated or monitored by the consultant.

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 a patient advisory report to an appropriate health
163 care practitioner shall disclose such confidential and exempt
164 information to the applicable law enforcement agency in
165 accordance with s. 893.055(7)(f). The law enforcement agency may
166 disclose the confidential and exempt information received from
167 the department to a criminal justice agency as defined in s.
168 119.011 as part of an active investigation that is specific to a
169 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.
170 893.13(8)(b).

171 (5) An ~~Any~~ agency or person who obtains any such
172 confidential and exempt information specified in pursuant to
173 this section must maintain the confidential and exempt status of
174 that information and may not disclose such information unless

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175 authorized under this section. Information shared with a state
176 attorney pursuant to paragraph (3) (a) or paragraph (3) (c) may be
177 released only in response to a discovery demand if such
178 information is directly related to the criminal case for which
179 the information was requested. Unrelated information may be
180 released only upon an order of a court of competent jurisdiction
181 as provided in s. 893.055(6) (c).

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

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

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