

Committee Substitute for Senate Bill No. 702

An act relating to public records and meetings; creating s. 381.0273, F.S.; providing that information contained in patient safety data or other records maintained by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors which identifies a patient, which identifies the person or entity reporting patient safety data, or which identifies a health care practitioner or health care facility is confidential and exempt from disclosure under public-records requirements; authorizing the release of information under specified circumstances, including release to a health care research entity; specifying circumstances under which the corporation may deny a request for records or data that identifies a patient; providing that portions of meetings held by the corporation and its subsidiaries, advisory committees, or contractors at which such information is discussed are exempt from public-meetings requirements; providing for future legislative review and repeal under the Open Government Sunset Review Act of 1995; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 381.0273, Florida Statutes, is created to read:

381.0273 Public records exemption for patient safety data.—

(1) Information that identifies a patient and that is contained in patient safety data, as defined in s. 766.1016, or in other records held by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors pursuant to s. 381.0271 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Personal identifying information made confidential and exempt from disclosure by this paragraph may be disclosed only:

(a) With the express written consent of the patient or the patient's legally authorized representative in compliance with any federal or state law;

(b) By court order upon a showing of good cause; or

(c) To a health research entity if the entity seeks the records or data pursuant to a research protocol approved by the corporation, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the corporation, the fee provisions of which are consistent with s. 119.07(1)(a). The corporation may deny a request for records or data that identify the patient if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, or does not have scientific merit. The agreement must prohibit the release of any information that would permit the identification of any patient, must limit the use of records

or data in conformance with the approved research protocol, and must prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the corporation.

(2) Information that identifies the person or entity that reports patient safety data, as defined in s. 766.1016, to the corporation and that is contained in patient safety data or in other records held by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors pursuant to s. 381.0271 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information that identifies a person or entity reporting patient safety data made confidential and exempt from disclosure by this subsection may be disclosed only:

(a) With the express written consent of the person or entity reporting the patient safety data to the corporation;

(b) By court order upon a showing of good cause; or

(c) To a health research entity if the entity seeks the records or data pursuant to a research protocol approved by the corporation, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the corporation, the fee provisions of which are consistent with s. 119.07(1)(a). The corporation may deny a request for records or data that identify the person or entity reporting patient safety data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, or does not have scientific merit. The agreement must prohibit the release of any information that would permit the identification of persons or entities that report patient safety data, must limit the use of records or data in conformance with the approved research protocol, and must prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the corporation.

(3) Information that identifies a health care practitioner or health care facility which is held by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors pursuant to s. 381.0271, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information that identifies a health care practitioner or health care facility and that is contained in patient safety data made confidential and exempt from disclosure by this subsection may be disclosed only:

(a) With the express written consent of the health care practitioner or health care facility;

(b) By court order upon a showing of good cause; or

(c) To a health research entity if the entity seeks the records or data pursuant to a research protocol approved by the corporation, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the corporation, the fee provisions of which are consistent with s. 119.07(1)(a). The corporation may deny a request for records or data that identify the person or entity reporting

patient safety data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, or does not have scientific merit. The agreement must prohibit the release of any information that would permit the identification of persons or entities that report patient safety data, must limit the use of records or data in conformance with the approved research protocol, and must prohibit any other use of the records or data. Copies of records or data issued under this paragraph remain the property of the corporation.

(4) Any portion of a meeting held by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors during which information is discussed which is confidential and exempt from disclosure pursuant to this section is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. Subsections (1) and (2) apply to those portions of the minutes of such meetings which contain information made confidential and exempt from disclosure by this section.

Section 2. Section 381.0273, Florida Statutes, is subject to the Open Government Sunset Review Act of 1995 in accordance with section 119.15, Florida Statutes, and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds it is a public necessity that information that identifies a patient contained in patient safety data, as defined in section 766.1016, Florida Statutes, and that is maintained by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors be protected because such information is of a sensitive and personal nature and the release of such information could be defamatory to the patient or could cause unwarranted damage to the name or reputation of the patient. The Legislature finds that it is a public necessity that information that identifies the person or entity reporting patient safety data to the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors be protected because health care practitioners and health care facilities would be unlikely to voluntarily submit patient safety data if their identity were made public and such information could be defamatory to the person or entity or could cause unwarranted damage to the name or reputation of the person or entity. The Legislature finds that it is a public necessity that information that identifies the health care practitioner or health care facility identified in the patient safety data reported to the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors be protected because health care practitioners and health care facilities would be unlikely to voluntarily submit patient safety data if their identity were made public and such information could be defamatory to the person or entity or could cause unwarranted damage to the name or reputation of the person or entity. The Legislature also finds it is a public necessity that any portion of a meeting of the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors be closed when such sensitive and personal information relating to patient safety data is discussed. Without these protections, the effectiveness of the Florida Patient Safety Corporation would be seriously jeopardized and the

ability of the Florida Patient Safety Corporation to assist health care practitioners and health care facilities in reducing and preventing injury to patients in the future would be significantly impaired.

Section 4. This act shall take effect on the same date that CS for SB 1464 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor May 20, 2004.

Filed in Office Secretary of State May 20, 2004.