

Committee Substitute for
Committee Substitute for Senate Bill No. 440

An act relating to public records; creating s. 893.0551, F.S.; providing definitions; exempting from public records requirements information and records reported to the Department of Health under the electronic prescription drug monitoring program for monitoring the prescribing and dispensing of controlled substances listed in Schedules II-IV; authorizing certain persons and entities access to patient-identifying, practitioner-identifying, or pharmacist-identifying information; providing guidelines for the use of such information and penalties for violations; providing for future legislative review and repeal; providing a finding of public necessity; providing a contingent effective date.

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

Section 1. Section 893.0551, Florida Statutes, is created to read:

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

(1) For purposes of this section, the term:

(a) “Active investigation” has the same meaning as provided in s. 893.055.

(b) “Dispenser” has the same meaning as provided in s. 893.055.

(c) “Health care practitioner” or “practitioner” has the same meaning as provided in s. 893.055.

(d) “Health care regulatory board” has the same meaning as provided in s. 893.055.

(e) “Law enforcement agency” has the same meaning as provided in s. 893.055.

(f) “Pharmacist” means any person licensed under chapter 465 to practice the profession of pharmacy.

(g) “Pharmacy” has the same meaning as provided in s. 893.055.

(h) “Prescriber” has the same meaning as provided in s. 893.055.

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

- (a) Name.
- (b) Address.
- (c) Telephone number.
- (d) Insurance plan number.
- (e) Government-issued identification number.
- (f) Provider number.
- (g) Drug Enforcement Administration number.
- (h) Any other unique identifying information or number.

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

(a) The Attorney General and his or her designee when working on Medicaid fraud cases involving prescription drugs or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs. The Attorney General or his or her designee may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. The Attorney General's Medicaid fraud investigators may not have direct access to the department's database.

(b) The department's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a specific controlled substances investigation for prescription drugs involving a designated person. The health care regulatory boards may request information from the department but may not have direct access to its database. The health care regulatory boards may provide such information to a law enforcement agency pursuant to ss. 456.066 and 456.073.

(c) A law enforcement agency that has initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances. The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. A law enforcement agency may request information from the department but may not have direct access to its database.

(d) A health care practitioner who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. 893.05 and 893.055.

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

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

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

(4) Any agency or person who obtains such confidential and exempt information pursuant to this section must maintain the confidential and exempt status of that information.

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

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

Section 2. The Legislature finds that it is a public necessity that certain identification and location information of a patient or patient's agent; a health care practitioner as defined in s. 893.055, Florida Statutes; a dispenser as defined in s. 893.055, Florida Statutes; an employee of the practitioner who is acting on behalf of and at the direction of the practitioner; a pharmacist; or a pharmacy as defined in s. 893.055, Florida Statutes, that is contained in records that are held by the Department of Health under s. 893.055, Florida Statutes, the electronic prescription drug monitoring system for the monitoring of the prescribing and dispensing of controlled substances, be made confidential and exempt from public records requirements. Specifically, the Legislature finds that it is a public necessity to make confidential and exempt the name, address, telephone number, insurance plan number, government-issued identification number, provider number, Drug Enforcement Administration number, and any other unique identifying information or number. Information concerning the prescriptions that have been prescribed or dispensed to a patient is a private, personal matter between the patient, the practitioner, and the pharmacist. Nevertheless, the reporting of prescriptions on a timely and accurate basis by dispensing practitioners and pharmacists will ensure the ability of the state to review and provide oversight of prescribing and dispensing practices. Further, the reporting of this information will facilitate investigations and prosecutions of violations of state drug laws by patients, practitioners, and pharmacists, thereby increasing compliance with those laws. However, if in the process the information that would identify a patient is not made confidential and exempt from disclosure, any person could inspect and copy the record and be aware of the patient's prescriptions. The availability of such information to the public would result in the invasion of the patient's privacy. If the identity of the patient could be correlated with his or her prescriptions and

his or her prescription dispensing history, it would be possible for the public to become aware of the diseases or other medical concerns for which a patient is being treated by his or her physician. This knowledge could be used to embarrass or to humiliate a patient or to discriminate against him or her. Requiring the reporting of prescribing and dispensing information while protecting a patient's personal identifying information will facilitate efforts to maintain compliance with the state's drug laws and will facilitate the sharing of information between health care practitioners and pharmacists while maintaining and ensuring patient privacy. Additionally, exempting from disclosure the personal identifying information of practitioners will ensure that an individual will not be able to identify which practitioners prescribe the largest amount of a particular type of drug and to seek out those practitioners in order to increase the likelihood of obtaining a particular prescribed substance. Further, protecting personal identifying information of pharmacists and dispensers ensures that an individual will not be able to identify which pharmacists, pharmacies, or dispensing health care practitioners dispense the largest amount of a particular controlled substance and identify that pharmacy or dispensing health care practitioner as a potential target for a robbery or burglary. Thus, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain identification and location information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy.

Section 3. This act shall take effect July 1, 2009, if CS for CS for CS for CS for SB 462, or similar legislation establishing an electronic system to monitor the prescribing and dispensing of controlled substances, is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor June 18, 2009.

Filed in Office Secretary of State June 18, 2009.