

CHAPTER 2011-197

Committee Substitute for House Bill No. 1473

An act relating to public records; amending s. 408.910, F.S.; providing definitions; creating an exemption from public records requirements for personal identifying information of an enrollee or participant in the Florida Health Choices Program; creating an exemption from public records requirements for proprietary confidential business information of a vendor; creating an exemption from public records requirements for client and customer lists of a program buyer's representative; providing exceptions; authorizing an enrollee's legal guardian to obtain confirmation of certain information about the enrollee's health plan; providing for retroactive application; providing a penalty for unlawful disclosure of confidential and exempt information; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (14) is added to section 408.910, Florida Statutes, to read:

408.910 Florida Health Choices Program.—

(14) EXEMPTION FROM PUBLIC RECORDS REQUIREMENTS.—

(a) Definitions.—For purposes of this subsection, the term:

1. “Buyer’s representative” means a participating insurance agent as described in paragraph (4)(g).

2. “Enrollee” means an employer who is eligible to enroll in the program pursuant to paragraph (4)(a).

3. “Participant” means an individual who is eligible to participate in the program pursuant to paragraph (4)(b).

4. “Proprietary confidential business information” means information, regardless of form or characteristics, that is owned or controlled by a vendor requesting confidentiality under this section; that is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

a. Business plans.

- b. Internal auditing controls and reports of internal auditors.
- c. Reports of external auditors for privately held companies.
- d. Client and customer lists.
- e. Potentially patentable material.
- f. A trade secret as defined in s. 688.002.

5. “Vendor” means a participating insurer or other provider of services as described in paragraph (4)(d).

(b) Public record exemptions.—

1. Personal identifying information of an enrollee or participant who has applied for or participates in the Florida Health Choices Program is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Client and customer lists of a buyer’s representative held by the corporation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Proprietary confidential business information held by the corporation is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Retroactive application.—The public record exemptions provided for in paragraph (b) apply to information held by the corporation before, on, or after the effective date of this exemption.

(d) Authorized release.—

1. Upon request, information made confidential and exempt pursuant to this subsection shall be disclosed to:

a. Another governmental entity in the performance of its official duties and responsibilities.

b. Any person who has the written consent of the program applicant.

c. The Florida Kidcare program for the purpose of administering the program authorized in ss. 409.810-409.821.

2. Paragraph (b) does not prohibit a participant’s legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the participant’s health plan, and the amount of premium being paid.

(e) Penalty.—A person who knowingly and willfully violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(f) Review and repeal.—This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that any information identifying an enrollee or participant in the Florida Health Choices Program, including information received during the program application process, be held confidential and exempt from public records requirements. The harm caused by releasing such personal and sensitive information outweighs any public benefit from releasing that information. If such information is not held confidential, the administration of the program could be significantly impaired because businesses and individuals would be less inclined to apply, participate, or enroll in the program, thereby significantly decreasing the number of program participants or enrollees. Therefore, it is a public necessity that any information identifying a participant or enrollee in the Florida Health Choices Program, including such information received during the program application process, be held confidential and exempt from public records requirements.

(2) The Legislature finds that it is a public necessity that proprietary confidential business information of a vendor and the customer and client lists of a buyer's representative be made confidential and exempt from public records requirements. The disclosure of a vendor's proprietary confidential business information or a customer and client list of a program buyer's representative could cause injury in the marketplace by providing competitors with detailed insights into confidential business information, strategies, methodologies, plans, or client lists, thereby diminishing the advantage that the program vendor or program buyer's representative maintains over those that do not possess such information. Without these exemptions, private-sector vendors or buyer's representatives whose business records generally are not required to be open to the public might refrain from participating in Florida Health Choices Program and not offer affordable, quality health insurance, health services, and benefits products through the program. The harm to program vendors or program buyer's representatives in the marketplace and harm to the effective administration of the Florida Health Choices Program caused by the public disclosure of such information far outweighs the public benefits derived from the release of the information. Therefore, it is a public necessity that proprietary confidential business information of program vendors and client lists of program buyer's representatives be held confidential and exempt from public records requirements.

Section 3. This act shall take effect October 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.