

CHAPTER 2014-156

House Bill No. 7177

An act relating to a review under the Open Government Sunset Review Act; amending s. 893.0551, F.S., relating to an exemption from public record requirements for certain information held by the Department of Health pursuant to the prescription drug monitoring program; specifying that the Attorney General, health care regulatory boards, and law enforcement agencies may disclose confidential and exempt information in certain instances if such information is relevant to an active investigation; requiring a law enforcement agency to enter into a user agreement before such agency may receive information from the prescription drug monitoring database; requiring the Attorney General, health care regulatory boards, and law enforcement agencies to take certain steps to ensure the continued confidentiality of all nonrelevant confidential and exempt information before disclosing such information; authorizing the department to disclose, under certain circumstances, relevant information to a law enforcement agency, rather than requiring the department to disclose confidential and exempt information; prohibiting an agency or person who obtains specified confidential and exempt information from disclosing such information except under certain circumstances; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

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

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

(1) For purposes of this section, the terms used in this section have the same meanings as provided in s. 893.055 ~~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 persons or entities upon request and entities after using a verification process to ensure the legitimacy of the ~~that~~ person’s or entity’s request as provided in s. 893.055 ~~for the information~~:

(a) The Attorney General or ~~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’s Medicaid fraud investigators may not have direct access to the department’s database. The Attorney General or his or her designee may disclose to a criminal justice agency, as defined in s. 119.011, only the confidential and exempt information received from the department that is relevant to a criminal justice agency as defined in s. 119.011 as part of an identified active investigation that prompted the request for the information 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 only information that is relevant to the specific controlled substances investigation that prompted the request for the information.

(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 and that has entered into a user agreement with the department. A law enforcement agency may request information from the department but may not have direct access to its database. The law enforcement agency may disclose to a criminal justice agency, as defined in s. 119.011, only the confidential and exempt information received from the department that is relevant to a criminal justice agency as defined in s. 119.011 as part of an identified active investigation that prompted the request for such information 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) If the department determines consistent with its rules that a pattern of controlled substance abuse exists, the department may shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055(7)(f). The law enforcement agency may disclose to a criminal justice agency, as defined in s. 119.011, only the confidential and exempt information received from the department that is relevant to a criminal justice agency as defined in s. 119.011 as part of an identified active investigation that is specific to a violation of s. 893.13(7)(a) 8., s. 893.13(8)(a), or s. 893.13(8)(b).

(5) Before disclosing confidential and exempt information to a criminal justice agency or a law enforcement agency pursuant to this section, the disclosing person or entity must take steps to ensure the continued confidentiality of all confidential and exempt information. At a minimum, these steps must include redacting any nonrelevant information.

(6)(5) An Any agency or person who obtains any such confidential and exempt information pursuant to this section must maintain the confidential and exempt status of that information and may not disclose such information unless authorized by law. Information shared with a state attorney pursuant to paragraph (3)(a) or paragraph (3)(c) may be released only in response to a discovery demand if such information is directly related to the criminal case for which the information was requested. Unrelated information may be released only upon an order of a court of competent jurisdiction.

(7)(6) A 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.

~~(7) 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. This act shall take effect October 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.