

## CHAPTER 2019-127

### Committee Substitute for Committee Substitute for House Bill No. 1253

An act relating to the prescription drug monitoring program; amending s. 893.055, F.S.; defining the term “electronic health recordkeeping system”; requiring the Department of Health to develop a unique identifier for each patient in the system; prohibiting the unique identifier from identifying or providing a basis for identification by unauthorized individuals; authorizing the Attorney General to request information for an active investigation or pending civil or criminal litigation involving prescribed controlled substances; requiring such information to be released upon the granting of a petition or motion by a trial court; providing exceptions; requiring a trial court to grant a petition or motion under certain circumstances; limiting the patient information the department may provide; authorizing the Attorney General to introduce as evidence in certain actions specified information that is released to the Attorney General from the prescription drug monitoring program; authorizing certain persons to testify as to the authenticity of certain records; amending s. 893.0551, F.S.; authorizing the Attorney General to have access to records when ordered by a court under specified provisions; providing for future repeal of amendments unless reviewed and saved from repeal through reenactment by the Legislature; providing for effect of amendments by other provisions; providing an effective date.

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

Section 1. Paragraphs (f) through (k) of subsection (1) of section 893.055, Florida Statutes, are redesignated as paragraphs (g) through (l), respectively, paragraph (b) of subsection (2) is redesignated as paragraph (c), paragraph (b) of subsection (5) and subsection (10) are amended, a new paragraph (f) is added to subsection (1), and a new paragraph (b) is added to subsection (2) of that section, to read:

893.055 Prescription drug monitoring program.—

(1) As used in this section, the term:

(f) “Electronic health recordkeeping system” means an electronic or computer-based information system used by health care practitioners or providers to create, collect, store, manipulate, exchange, or make available personal health information for the delivery of patient care.

(2)

(b) To protect personally identifiable information, the department shall assign a unique identifier to each patient for whom a record exists in the system. Such identifier may not identify or provide a reasonable basis to

identify a patient by any person not authorized under this section to access personally identifiable information in the system.

(5) The following entities may not directly access information in the system, but may request information from the program manager or designated program and support staff:

(b) The Attorney General for:

1. Medicaid fraud cases involving prescribed controlled substances.

2. An active investigation or pending civil or criminal litigation involving prescribed controlled substances, other than Medicaid fraud cases, upon the granting of a petition or motion by a trial court which specifically identifies the active or pending matter. The Attorney General shall ensure that information obtained under this subparagraph is not used for any purpose other than the specific matter stated in the petition or motion. Notice to any party regarding such petition or motion is not required, except in cases of pending civil litigation. The trial court shall grant the petition or motion and authorize release of information when the information appears reasonably calculated to lead to the discovery of admissible evidence. The department may not release any patient information pursuant to this subparagraph other than the patient's unique identifier assigned pursuant to paragraph (2)(b), year of birth, and the county, city, and zip code where the patient resides, consistent with the provisions of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations. The Attorney General shall maintain a log of each person with whom the information is shared to document the chain of custody, execute a confidentiality agreement or an agreement bound by a protective order with each such person, ensure that the information is maintained in a secure manner, and require each such person to return all information or certify its destruction under penalty of perjury to the Attorney General upon the final resolution of the matter for which the information was requested.

(10) Information in the prescription drug monitoring program's system may be released only as provided in this section and s. 893.0551.

(a) Except as provided in paragraph (b), the content of the system is intended to be informational only. Information in the system is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient arising out of matters that are the subject of information in the system. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to management of the system may not be permitted or required to testify in any such civil or administrative action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the system.

(b) The Attorney General may introduce information from the system released pursuant to subparagraph (5)(b)2. as evidence in a civil, criminal, or

administrative action against a dispenser, manufacturer, or a pharmacy. The program manager and authorized persons who participate in preparing, reviewing, issuing, or any other activity related to the management of the system may testify for purposes of authenticating the records introduced into evidence pursuant to this paragraph.

Section 2. Paragraph (e) of subsection (3) and subsection (6) of section 893.0551, Florida Statutes, are amended to read:

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

(3) The department shall disclose such information to the following persons or entities upon request and after using a verification process to ensure the legitimacy of the request as provided in s. 893.055:

(e) The Attorney General or his or her designee:

1. When working on Medicaid fraud cases involving prescribed controlled substances or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud or specific identifiers that warrant a Medicaid investigation regarding prescribed controlled substances. The Attorney General's Medicaid fraud investigators may not have direct access to the department's system. The Attorney General or his or her designee may disclose to a criminal justice agency, as defined in s. 119.011, only the information received from the department that is relevant to an identified active investigation that prompted the request for the information.

2. Upon a court order authorizing the release of patient information under s. 893.055(5)(b)2.

(6) An agency or person who obtains any 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)(f), or paragraph (3)(h), or with the Attorney General or his or her designee pursuant to subparagraph (3)(e)2. 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.

Section 3. The amendments to ss. 893.055 and 893.0551, Florida Statutes, made by this act shall stand repealed on June 30, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. If such amendments are not saved from repeal, the text of ss. 893.055 and 893.0551, Florida Statutes, shall revert to that in existence on June 30, 2019, except that any amendments to such text other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

Section 4. This act shall take effect July 1, 2019.

Approved by the Governor June 24, 2019.

Filed in Office Secretary of State June 24, 2019.