

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 782 (205260)

INTRODUCER: Appropriations Committee (Recommended by Subcommittee on Health and Human Services); Governmental Oversight and Accountability Committee; and Senator Brandes

SUBJECT: Government Data Practices

DATE: April 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	<u>Fav/CS</u>
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 782 requires state agencies that collect and maintain personal identification information through websites to post privacy policies on those websites and to provide alerts and options about Internet cookies¹ on agency websites.

The bill requires the Agency for Health Care Administration (AHCA) to provide electronic access to basic information on each state-licensed assisted living facility (ALF). The AHCA must provide a monitored comment web page where the public can comment on ALFs and representatives of ALFs may respond.

The bill eliminates the AHCA's Florida Center for Health Information and Policy Analysis and replaces it with the Florida Health Information Transparency Initiative.

The bill requires reports from the Office of Program Policy Analysis and Government Accountability.

Certain provisions of the bill have a negative fiscal impact of \$206,488 in trust fund dollars for Fiscal Year 2014-2015 and other provisions have indeterminate fiscal impacts.

¹ A "cookie" is an electronic message sent to a web browser from a web server. The browser stores the message in a computer's random access memory or on a computer's long-term data storage device. The message may be retrieved by the web server each time the browser requests to view a web page from the server, under various circumstances.

II. Present Situation:

Records Management

Section 257.36, F.S., creates a records and information management program within the Division of Library and Information Services (division) of the Department of State. The division must establish and administer a records management program directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records, including public records. Each government agency, defined as any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law, must establish and maintain an active and continuing program for economical and efficient records management.

Under s. 257.36(6), F.S., a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division. The division must adopt rules, which are binding on all agencies, relating to the destruction and disposition of records. The rules must provide at least the following:

- Procedures for complying and submitting to the division's records-retention schedules;
- Procedures for the physical destruction or other disposal of records; and
- Standards for the reproduction of records for security or with a view to the disposal of the original record.

The division issues General Records Schedules² that establish minimum retention requirements for series of records that are common to all agencies or specified types of agencies based on the legal, fiscal, administrative, and historical value of those record series to the agencies and to the State of Florida.³ If an agency has a type of record not covered by an existing General Record Schedule, the agency must request that the division create a Records Retention Schedule for that type of record. When the division creates and approves such a schedule, the agency must adhere to it.⁴

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁵ The records of the legislative, executive, and judicial branches are specifically included.⁶

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act guarantees every person's right to inspect and copy

² The 13 active schedules for the various types of public entities are available at: http://dhis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm

³ The General Records Schedules are referenced in in Rule 1B-24.003, F.A.C.

⁴ Rule 1B-24.003(7), F.A.C.

⁵ FLA. CONST., Art. I, s. 24(a).

⁶ *Id.*

any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷

Assisted Living Facilities

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.⁸ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.⁹ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.¹⁰

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.¹¹ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.¹² If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.¹³

In March of 2013, there were 3,036 licensed ALFs in Florida with 85,413 beds.¹⁴ An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA), pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,¹⁵ limited mental health services,¹⁶ and extended congregate care services.¹⁷ There are 1,073 facilities having limited nursing services specialty licenses (LNS licenses), 279 having extended congregate care licenses (ECC licenses), and 1,084 having limited mental health specialty licenses (LMH licenses).¹⁸

The Florida Center for Health Information and Policy Analysis

The Florida Center for Health Information and Policy Analysis (Florida Center or Center), housed within the AHCA, is responsible for collecting, compiling, coordinating, analyzing, and disseminating health-related data and statistics for the purposes of developing public policy and

⁷ Section 119.07(1)(a), F.S.

⁸ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

⁹ Section 429.02(16), F.S.

¹⁰ Section 429.02(1), F.S.

¹¹ For specific minimum standards see Rule 58A-5.0182, F.A.C.

¹² Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

¹³ Section 429.28, F.S.

¹⁴ Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.

¹⁵ Section 429.07(3)(c), F.S.

¹⁶ Section 429.075, F.S.

¹⁷ Section 429.07(3)(b), F.S.

¹⁸ Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.

promoting the transparency of consumer health care information.¹⁹ The Center is divided into five offices, each handling an area of Center responsibility:

- The Office of Data Collection and Quality Assurance collects patient discharge data from all licensed acute care hospitals (including psychiatric and comprehensive rehabilitation units), comprehensive rehabilitation hospitals, ambulatory surgical centers, and hospital emergency departments.²⁰
- The Office of Risk Management and Patient Safety conducts in-depth analyses of reported incidents to determine what caused the incident and how the involved facility responded to the incident.²¹
- The Office of Data Dissemination and Communication maintains the AHCA's health information website,²² provides technical assistance to data users, and creates consumer brochures and other publications.²³
- The Office of Health Policy and Research conducts research and analysis of health care data from facilities and develops policy recommendations aimed at improving the delivery of health care services in Florida.²⁴
- The Office of Health Information Exchange monitors innovations in health information technology, informatics, and the exchange of health information, and provides a clearinghouse of technical resources on health information exchange, electronic prescribing, privacy and security, and other relevant issues.²⁵

Florida Center Data Collection

The Florida Center electronically collects patient data from every Florida-licensed inpatient hospital, ambulatory surgery center (ASC), emergency department, and comprehensive rehabilitation hospital on a quarterly basis. The data is validated for accuracy and maintained in three major databases, including the hospital inpatient database, the ambulatory surgery database, and the emergency department database:²⁶

- The hospital inpatient database contains records for each patient stay at Florida acute care facilities, including long-term care hospitals and psychiatric hospitals. These records contain extensive patient information including discharge records, patient demographics, admission information, medical information, and charge data.²⁷ This database also includes comprehensive inpatient rehabilitation data on patient-level discharge information from

¹⁹ Florida Center for Health Information and Policy Analysis, found at: <http://ahca.myflorida.com/SCHS/index.shtml>, last visited on Mar. 14, 2014.

²⁰ Office of Data Collection & Quality Assurance, found at <http://www.fdhc.state.fl.us/SCHS/division.shtml#DataC>, last visited on Mar. 14, 2014.

²¹ Office of Risk Management and Patient Safety, found at: <http://www.fdhc.state.fl.us/SCHS/division.shtml#PatientSafety>, last visited on Mar. 14, 2014.

²² www.FloridaHealthFinder.gov

²³ The Office of Data Dissemination and Communication, found at <http://www.fdhc.state.fl.us/SCHS/division.shtml#DataD>, last visited on Mar. 14, 2014.

²⁴ The Office of Health Policy and Research, found at http://www.fdhc.state.fl.us/SCHS/division.shtml#Policy_Research, last visited on Mar. 14, 2014.

²⁵ Office of Health Information Exchange, found at: <http://www.fdhc.state.fl.us/SCHS/division.shtml#HIE>, last visited on Mar. 14, 2014.

²⁶ Florida Center for Health Information and Policy Analysis, *2011 Annual Report*, p. 2, found at: http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs_ar2011.pdf, last visited on Mar. 14, 2014.

²⁷ *Id.*, p. 3

Florida's licensed freestanding comprehensive inpatient rehabilitation hospitals and acute care hospital distinct part rehabilitation units.²⁸

- The ambulatory surgery database contains “same-day surgery” data on reportable patient visits to Florida health care facilities, including freestanding ambulatory surgery centers, short-term acute care hospitals, lithotripsy centers, and cardiac catheterization laboratories.²⁹ Ambulatory surgery data records include, but are not limited to, patient demographics, medical information, and charge data.³⁰
- The emergency department database collects reports of all patients who visited an emergency department, but were not admitted for inpatient care. Reports are electronically submitted to the AHCA and include the hour of arrival, the patient's chief complaint, principal diagnosis, race, ethnicity, and external causes of injury.³¹

In addition to these databases, the Office of Risk Management and Patient Safety collects adverse incident reports from health care providers including, hospitals, ambulatory surgical centers, nursing homes, and assisted living facilities.³²

Florida Center Data Dissemination

The Office of Data Dissemination and Communication makes data collected by the Florida Center available in three ways: by updating and maintaining the AHCA's health information website at www.FloridaHealthFinder.gov, by issuing standard and ad hoc reports, and by responding to requests for de-identified data.³³

- The Florida Center maintains www.FloridaHealthFinder.gov (website) which was established to assist consumers in making informed health care decisions and to facilitate improvements in quality of care in Florida. The website provides a wide array of search and comparative tools to the public which allow easy access to information on hospitals, ambulatory surgery centers, emergency departments, hospice providers, physician volume, health plans, nursing homes, and prices for prescription drugs in Florida. The website also provides tools to researchers and professionals which allow specialized data queries that require users to have some knowledge of medical coding and terminology.³⁴ Some of the features and data available on the website include a multimedia encyclopedia and symptoms navigator, hospital and ambulatory surgery centers performance data, data on mortality, complication, and infection rates for hospitals, and a facility/provider locator.³⁵
- *Standard and Ad Hoc Reports* - The Center disseminates three standard reports which detail hospital fiscal data, including a prior-year report, an audited financial statement, and hospital financial data report. Also, ad hoc reports may be requested for customers looking for very specific information not included on a standard report or for customers who do not wish to purchase an entire data set to obtain information. One example of an ad hoc report would be a request for the average length of stay of patients admitted to a hospital with diabetes as a

²⁸ *Id.*, p. 4

²⁹ *Id.*, p. 3

³⁰ *Id.*, p. 4

³¹ *Id.*, p. 5

³² *Id.*

³³ *Id.*, pp. 6-9

³⁴ *Id.*, p. 9

³⁵ *Id.*, pp. 9-13

principle or secondary diagnosis.³⁶ The Center charges a regular fee for standard reports³⁷ and a variable fee based on the extensiveness of an ad hoc report.³⁸

- *Requests for De-identified Data* - The Center also sells hospital inpatient, ambulatory surgery, and emergency department data to the general public in a non-confidential format. However, the requester must sign a limited set data use agreement which binds the requester to only using the data in a way specified in the agreement. Information not available in these limited data sets include: patient ID number, medical record number, social security number, dates of admission and discharge, visit beginning and end dates, age in days, payer, date of birth, and procedure dates.³⁹

The State Consumer Health Information and Policy Advisory Council

Also created by s. 408.05, F.S., the State Consumer Health Information and Policy Advisory Council (Advisory Council) was established to make recommendations to the Florida Center for Health Information and Policy Analysis. The mission of the Advisory Council is to assist the Florida Center in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities and to recommend improvements for purposes of public health, policy analysis, health information exchange and transparency of consumer health care information.

The Advisory Council assists the AHCA in determining the method and format for the public disclosure of data collected by the Florida Center and also works with the Florida Center in the development and implementation of a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services.⁴⁰ The Advisory Council met four times in 2013. The membership of the Advisory Council is detailed in s. 408.05(8), F.S., and includes:

- An employee of the Executive Office of the Governor.
- An employee of the Office of Insurance Regulation.
- An employee of the Department of Education.
- Ten persons appointed by the secretary of health care administration, representing other state and local agencies, state universities, business and health coalitions, and local health councils.

III. Effect of Proposed Changes:

Government Data Collection and Retention Practices

Section 1 amends s. 257.36, F.S., by requiring that the Department of State's Division of Library and Information Services rules on the destruction and disposition of records must provide

³⁶ *Id.*, p. 8

³⁷ The price list for purchasing data from the Center is available at: <http://floridahealthfinderstore.blob.core.windows.net/documents/researchers/OrderData/documents/PriceList%20Jan%202011.pdf>, last visited on Mar. 14, 2014.

³⁸ *Supra* note 8, p. 7

³⁹ *Id.*, pp. 7-8. Also see note 19 for a price list.

⁴⁰ State Consumer Health Information and Policy Advisory Council, *Executive Summary*, found at: <http://ahca.myflorida.com/SCHS/CommitteesCouncils/docs/AC-ExecutiveSummary0113.pdf>, last visited on Mar. 14, 2014.

procedures for an agency to establish schedules for the physical destruction or other disposal of records held by the agency which contain personal identification information, as defined in s. 282.801, after meeting retention requirements. Unless otherwise required by law, an agency may indefinitely retain records containing information that is not identifiable as related to a unique individual.

Section 2 creates s. 282.801, F.S., and Part IV of ch. 282, F.S., relating to government data collection practices.

The bill provides the following definitions:

- “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of ch. 282, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
- “Cookie” means data installed and used in tracking website information.
- “Personal identification information” means an item, collection, or grouping of information that may be used, alone or in conjunction with other information, to identify a unique individual, including, but not limited to, his or her:
 - Name;
 - Postal or e-mail address;
 - Telephone number;
 - Social security number;
 - Date of birth;
 - Mother’s maiden name;
 - Official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, or Medicaid or food assistance account number;
 - Bank account number, credit or debit card number, or other number or information that can be used to access an individual’s financial resources;
 - Educational records;
 - Medical records;
 - License plate number of a registered motor vehicle;
 - Images, including facial images;
 - Biometric identification information;
 - Criminal history; or
 - Employment history.

An agency that collects personal identification information through a website and retains the information must conspicuously post a privacy policy on the website. The privacy policy must provide:

- A description of the services the website provides;
- A description of the personal identification information that the agency collects and maintains from an individual accessing or using the website;
- An explanation of whether the agency’s data collecting and sharing practices are mandatory or allow a user to opt-out of those practices;

- Any available alternatives to using the website;
- A statement as to how the agency uses the personal identification information, including whether and under what circumstances the agency discloses such information;
- Whether any other individual or public or private entity collects personal identification information through the website;
- A general description of the security measures in place to protect personal identification information; and
- An explanation of public records requirements relating to the personal identification information of an individual using the website and if such information may be disclosed in response to a public records request.

An agency that uses a website to install cookies must inform an individual accessing the website of the use of cookies and request permission to install a cookie. Individuals declining the installation of cookies must still be allowed to use the website. This provision doesn't apply to a temporarily installed cookie that is deleted from memory when the website browser or website application is closed.

Any contract between a public agency and a contractor must specify that the contractor must comply with the privacy policy and cookie requirements in the bill for applicable services the contractor performs for the public agency, except that the privacy policy and cookie requirements in the bill do not apply to a contractor providing a service that is limited to administering, facilitating, processing, or enforcing a financial transaction initiated by an individual with no direct relationship with the contractor.

The bill provides that the failure of an agency to comply with these provisions does not create a civil cause of action.

Section 3 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the president of the Senate and the speaker of the House of Representatives by July 1, 2015, which:

- Identifies personal identification information, as defined in s. 282.801, F.S., and the records in which such information is contained, held by a state agency;
- Describes the processes by which an individual may currently view and verify his or her personal identification information held by an agency, including how an individual may request the correction of incorrect personal identification information; and
- Identifies any obstacles that inhibit an individual's access to such records.

Section 7 reenacts 120.54(8), F.S., in order to incorporate the amendment made to s. 257.36, F.S., by this bill. This is a technical provision undertaken to ensure that agency rulemaking records are retained according to all the records retention provisions in s. 257.36(6), F.S.

Data on Assisted Living Facilities

Section 4 creates s. 429.55, F.S., to require the AHCA, by November 1, 2014, to provide, maintain, and update electronically accessible data on assisted living facilities (ALFs). The data must include:

- Specified information on each licensed ALF;
- A list of the facility's regulatory violations, if any; and
- Links to inspection reports on file with the AHCA.

The AHCA may provide a monitored comment web page that allows the public to comment on specific state-licensed ALFs. If the web page is provided, the AHCA must review comments for profanities and redact profanities before posting the comments to the web page. The AHCA must retain all comments as they were originally submitted, which are subject to Florida public records law. A controlling interest in an ALF, or an employee or owner of an ALF, is prohibited from posting comments on the page but may respond to comments posted on the page by others. The AHCA must ensure that such responses are identified as being from a representative of the facility.

The AHCA may provide links to third-party websites that use the published data to assist consumers in evaluating ALF quality of care and services.

The AHCA may adopt rules to administer this section.

The Florida Health Information Transparency Initiative

Section 5 amends s. 408.05, F.S., to:

- Eliminate the Florida Center for Health Information and Policy Analysis;
- Create the Florida Health Information Transparency Initiative (Initiative);
- Require the AHCA to make state-collected data on health providers, facilities, services, and payment sources available in a manner that allows for and encourages multiple innovative uses for the data;
- Require the AHCA, subject to the General Appropriations Act, to develop new methods of dissemination and to convert data into an easily usable electronic format, either by internal development or by contract with one or more vendors;
- Detail the types of data and information the AHCA must include in the comprehensive health information system, including data and information on:
 - Health resources,
 - Utilization of health resources,
 - Health care costs and financing,
 - The extent, source, and type of public and private health insurance coverage in the state, and
 - Data necessary for measuring value and quality of care provided by various health care providers;
- Require the AHCA to perform certain functions in order to collect and disseminate comprehensive health information and statistics to the public and to support the development of policy recommendations, including:
 - Collecting and compiling data from all state agencies and programs involved in providing, regulating, and paying for health services,
 - Promoting data sharing through the development, dissemination, and evaluation of state-collected health data and making such data available, transferable, and readily useable,

- Developing written agreements with local, state, and federal agencies for the sharing of health-care-related data,
- Enabling and facilitating the sharing and use of all state-collected health data to the maximum extent allowed by law,
- Monitoring data collection procedures, testing data quality, and taking such corrective actions as may be necessary to ensure that data disseminated under the Initiative are accurate, valid, reliable and complete, and
- Initiating and maintaining the activities necessary to collect, edit, verify, archive and retrieve the data;
- Require that the AHCA implement the Initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management;
- Require that the AHCA ensure that any vendor who enters into a contract with the state under this section does not inhibit or impede consumer access to state-collected health data;
- Remove significant portions of the statute regarding the Comprehensive Health Information System; and
- Eliminate the State Consumer Health Information and Policy Advisory Council.

Section 6 requires the OPPAGA to monitor the AHCA's implementation of section 5 of the bill. No later than one year after the AHCA completes implementation, the OPPAGA must provide a report to the president of the Senate and the speaker of the House of Representatives containing recommendations regarding the application of data practices made pursuant to s. 408.05, F.S., to other executive branch agencies

Sections 8 through 17 amend ss. 20.42, 381.026, 395.301, 395.602, 395.6025, 408.07, 408.18, 465.0244, 627.6499, and 641.54, F.S., respectively, to strike references made obsolete by the changes made to s. 408.05, F.S.

Effective Date

Section 18 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Florida Health Information Transparency Initiative is intended to modernize health care data collection and dissemination functions to facilitate public access to this data for innovative uses.

C. Government Sector Impact:

CS/SB 782 contains provisions for the AHCA to create and maintain a public information web page on ALFs which are very similar to provisions contained in CS/CS/SB 248 as passed by the Senate. The latter bill contains appropriations of \$104,909 in recurring funds and \$101,579 in non-recurring funds from the AHCA's Health Care Trust Fund to fund the AHCA's implementation of the ALF public information web page.⁴¹

The fiscal impact of the bill's provisions regarding the Florida Health Information Transparency Initiative is indeterminate and would depend largely on services and functions that could be outsourced and whether such outsourcing would lead to reduction of AHCA staff. Any such vendor contracts are subject to the General Appropriations Act.

The Department of State reports no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 4 requires the AHCA to give public access to data about assisted living facilities. These provisions are substantially similar to provisions in section 15 of CS/CS/SB 248.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.42, 120.54, 257.36, 381.026, 395.301, 395.602, 395.6025, 408.05, 408.07, 408.18, 465.0244, 627.6499, and 641.54.

This bill creates the following sections of the Florida Statutes: 282.801 and 429.55.

The bill creates two undesignated sections of Florida law.

⁴¹ CS/CS/SB 248 amends statutes regarding the enforcement of regulations for ALFs by revising fines imposed for licensure violations, clarifying existing enforcement tools, and requiring an additional inspection for ALFs having significant violations. The Senate passed that bill on March 18, 2014.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 2, 2014:

The CS provides that the bill’s requirements for public agency contracts relating to compliance with an agency’s privacy policy and cookie requirements do not apply to contractors providing certain limited services to the agency relating to financial transactions initiated by an individual with no relationship to the contractor.

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS provides a definition of “state agency” for purposes of an OPPAGA report, clarifies that AHCA must maintain and update the assisted living facility database, and clarifies AHCA’s duties with regards to redacting profanities on a comment webpage.

- B. **Amendments:**

None.