

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 Government Data Practices
SPONSOR(S): Beshears
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 782

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|--------|----------|--|
| 1) Government Operations Subcommittee | | Stramski | Williamson |
| 2) Appropriations Committee | | | |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

The bill directs the Division of Library and Information Services of the Department of State to develop procedures for establishing schedules for the disposal of records held by an agency that contain personal identification information. It requires an agency that collects and retains personal identification information through a website to post a privacy notice which contains specified privacy disclosures, including a general description of the security measures in place to protect the information and the nature of public records requirements relating to the information.

The bill requires an agency that installs a cookie on an individual's electronic device to inform the individual and request permission to install a cookie, unless the cookie is installed temporarily and is deleted when the website application is closed. An individual who declines to have a cookie installed must still have access to the website. A contractor who contracts with a public agency also must abide by the privacy notice and cookie provisions of the bill.

The bill requires the Agency for Healthcare Administration (AHCA) to provide electronic access to a searchable database containing specified information relating to assisted living facilities. AHCA may provide a comment webpage to allow members of the public to comment on licensed assisted living facilities.

The bill dissolves the Florida Center for Health Information and Policy Analysis within AHCA. The bill establishes the Florida Health Information Transparency Initiative (Transparency Initiative). The purpose of the Transparency Initiative is to coordinate a comprehensive health information system in order to promote accessibility, transparency, and utility of state-collected data and information about health providers, facilities, services, and payment sources.

The bill authorizes AHCA to contract with vendors to disseminate and convert such data into easily usable electronic formats. The bill specifies the data to be included in the comprehensive health information system, directs AHCA to coordinate the collection, sharing, and use of such information, and provides that AHCA shall monitor data collection procedures to ensure that data collected and disseminated under the initiative are accurate, valid, reliable, and complete.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to monitor AHCA's implementation of the comprehensive health information system required by the bill. It also creates reporting requirements for OPPAGA.

The bill may have a fiscal impact on state and local government. See FISCAL COMMENTS.

This bill may be a county or municipality mandate. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution, sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records Retention and Disposal

State law establishes a records and information management system within the Division of Library and Information Services of the Department of State (division).² The division is directed by law to establish and administer a records management program relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

The division is tasked with establishing rules relating to the destruction and disposition of records that are binding on all agencies.³ The rules must provide, at a minimum, procedures for complying with and submitting to the division records retention schedules, procedures for the physical destruction of records, and standards for the reproduction of records for security or with a view to the disposal of the original record.⁴ Public records may only be destroyed or otherwise disposed of in accordance with records retention schedules established by the division.⁵

Pursuant to this authority, the division has established a General Records Schedule for State and Local Government Agencies⁶ that establishes minimum retention and disposal requirements for records held by agencies.⁷ Agencies must ensure that all destruction of records is conducted in a manner that safeguards the interests of the state and the safety, security, and privacy of individuals. An agency destroying records containing information that is confidential or exempt from public records requirements must ensure that destruction methods used prevent unauthorized access to the information and that it cannot be practicably read, reconstructed, or recovered following destruction.⁸

¹ For the purpose of public records laws, an "agency" is defined as "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 this chapter, 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." Section 119.011, F.S.

² Section 257.36(1), F.S.

³ Section 119.021(2)(a), F.S.

⁴ Section 257.36(1), F.S.

⁵ Section 257.36(6), F.S.

⁶ *General Records Schedule GS1-SL for State and Local Government Agencies* (October 1, 2013), available at http://dlis.dos.state.fl.us/barm/genschedules/GS1-SL-2013_Final.pdf (last visited March 18, 2014). The General Records Schedule provides a baseline for records retention. The division has developed 14 additional retention schedules applicable to specific public entities. Available at http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm (last visited March 20, 2014).

⁷ Rule 1B-24.003, Fla. Admin. Code.

⁸ Rule 1B-24.003(10), Fla. Admin. Code.

While the division has promulgated retention and records disposal rules and schedules that apply to a variety of records that contain personal identification information,⁹ it has not promulgated record destruction or disposal rules specifically relating to records that contain personal identification information.

Agency Website Collection of Personal Identification Information

Current law requires any agency¹⁰ or legislative entity that operates a website and uses electronic mail to post the following notice in a conspicuous location:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.¹¹

There does not appear to be any other provision in law requiring agency disclosures on websites relative to the collection of personal identification information. Personal identification information collected by an agency through a website must be retained and disposed of in accordance with the record retention and disposal schedules developed by the division, which vary depending on the type of record created by the website. For example, computer logs used to maintain the integrity and security of an agency's computer systems must be retained for 30 days or until a review of such logs is complete, whichever occurs first.¹²

Assisted Living Facilities

An assisted living facility is a residential establishment, or part of one, that provides housing, meals, and one or more personal services to one or more adults who are not relatives of the owner or administrator.¹³

The Agency for Healthcare Administration (AHCA) is the state agency tasked with licensing and regulating assisted living facilities.¹⁴ In carrying out these licensing and regulatory responsibilities, AHCA collects and maintains a broad range of information relating to assisted living facilities.¹⁵

AHCA currently makes available on its website¹⁶ a facility search function that provides certain information related to assisted living facilities. The search function reveals information such as the name and address of the facility, the number and types of licensed beds in the facility, the licenses held by the facility and the status of the licenses, and a link to enforcement actions, final orders, and inspection reports and details for the facility.

Florida Center for Health Information and Policy Analysis

The Florida Center for Health Information and Policy Analysis (Florida Center) is established within AHCA¹⁷ and is funded through appropriations in the General Appropriations Act, through grants, gifts, and other payments, and through fees charged for services.¹⁸ The Florida Center provides a comprehensive health information system (information system) that includes the collection, compilation,

⁹ See *General Records Schedule*, *supra* fn. 6.

¹⁰ "Agency" is defined by reference to s. 119.011, F.S., which defines "agency" as 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 purposes of ch. 119, 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.

¹¹ Section 668.6076, F.S.

¹² *General Records Schedule*, p. 9, *supra* fn. 6.

¹³ Section 429.02(5), F.S. A "personal service" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the Department of Elderly Affairs may define by rule. Section 429.02(16), F.S.

¹⁴ Section 429.04(1), F.S.

¹⁵ For example, s. 429.11, F.S., requires an applicant for licensure as an assisted living facility to furnish documentation of a satisfactory sanitation inspection, a satisfactory firesafety inspection, and proof of liability insurance, among others.

¹⁶ <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 18, 2014).

¹⁷ Section 408.05(1), F.S.

¹⁸ Section 408.05(7), F.S.

coordination, analysis, indexing, dissemination, and utilization of health-related data.¹⁹ There are five offices within the Florida Center, which serve different functions.²⁰ The offices are:

- Data Collection and Quality Assurance, which collects patient discharge data from all licensed acute care hospitals (including psychiatric and comprehensive rehabilitation units), comprehensive rehabilitation hospitals, ambulatory surgical centers, and emergency departments.²¹
- Risk Management and Patient Safety, which conducts in-depth analyses of reported incidents to determine what happened and how the health care facility responded to the incident.²²
- Data Dissemination and Communication, which maintains AHCA's health information website,²³ provides technical assistance to data users, and creates consumer brochures and other publications.²⁴
- Health Policy and Research, which 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.²⁵
- Health Information Exchange, which 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.²⁶

AHCA is required to perform certain functions related to the information system, in order to produce comparable and uniform health information and statistics for the development of policy recommendations.²⁷

Data Collection

The Florida Center identifies existing health-related data and collects data for use in the information system. The information collected by the Florida Center must include:

- The extent and nature of illness and disability of the state population;
- The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state;
- Environmental, social, and other health hazards;
- Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status;
- Health resources;
- Utilization of health care by type of provider;
- Health care costs and financing;
- Family formation, growth, and dissolution;
- The extent of public and private health insurance coverage in this state; and
- The quality of care provided by various health care providers.²⁸

The Florida Center electronically collects patient data from every Florida licensed inpatient hospital, ambulatory surgery center, emergency department, and comprehensive rehabilitation hospital on a

¹⁹ Section 408.05(1), F.S.

²⁰ Florida Center for Health Information and Policy Analysis, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/index.shtml> (last visited on March 19, 2014).

²¹ Office of Data Collection & Quality Assurance, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#DataC> (last visited on March 19, 2014).

²² Office of Risk Management and Patient Safety, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#PatientSafety> (last visited on March 19, 2014).

²³ www.FloridaHealthFinder.gov.

²⁴ Office of Data Dissemination and Communication, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#DataD> (last visited on March 19, 2014).

²⁵ Office of Health Policy and Research, the Agency for Health Care Administration, *accessible at*: http://ahca.myflorida.com/SCHS/division.shtml#Policy_Research (last visited on March 19, 2014).

²⁶ Office of Health Information Exchange, the Agency for Health Care Administration, *accessible at*: <http://ahca.myflorida.com/SCHS/division.shtml#HIE> (last visited on March 19, 2014).

²⁷ Section 408.05(3), F.S.

²⁸ Section 408.05(2), F.S.

quarterly basis. The data is validated for accuracy and maintained in three major databases: the hospital inpatient database, the ambulatory surgery database, and the emergency department database.²⁹

- 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.³⁰ This database also includes comprehensive inpatient rehabilitation data on patient-level discharge information from Florida's licensed freestanding comprehensive inpatient rehabilitation hospitals and acute care hospital distinct part rehabilitation units.³¹
- 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.³² Ambulatory surgery data records include, but are not limited to, patient demographics, medical information, and charge data.³³
- 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 AHCA and include the hour of arrival, patient's chief complaint, principal diagnosis, race, ethnicity, and external causes of injury.³⁴

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.³⁵

Reporting

The Florida Center is required to publish and make available the following reports:

- Member satisfaction surveys;
- Publications providing health statics on topical health policy issues;
- Publications providing health status profiles of people in Florida;
- Various topical health statics publications;
- Results of special health surveys, health care research, and health care evaluations; and
- An annual report on the Florida Center's activities.³⁶

The Florida Center also must provide indexing, abstracting, translation, publication and other services leading to a more effective and timely dissemination of health care statistics. The Florida Center is responsible for conducting a variety of special studies and surveys to expand the health care information and statistics available for policy analyses.³⁷

Public Access to Data

The Office of Data Dissemination and Communication makes data collected available to the public in three ways: by updating and maintaining AHCA's health information website³⁸, issuing standard and ad hoc reports, and responding to requests for de-identified data.³⁹

²⁹ Florida Center for Health Information and Policy Analysis, 2012 Annual Report, p. 2, found at: https://floridahealthfinderstore.blob.core.windows.net/documents/researchers/documents/Florida%20Center%20Annual%20Report%202012%20final%20w%20cover%20-%208_27_13.pdf (last visited on March 19, 2014).

³⁰ *Id.*, p. 3.

³¹ *Id.*, p. 4.

³² *Id.*, p. 3.

³³ *Id.*, p. 4.

³⁴ *Id.*, p. 4-5.

³⁵ *Id.*, p. 5.

³⁶ Section 408.05(5), F.S.

³⁷ *Id.*

³⁸ www.FloridaHealthFinder.gov

³⁹ Florida Center for Health Information and Policy Analysis, 2012 Annual Report, p. 6-9, found at:

https://floridahealthfinderstore.blob.core.windows.net/documents/researchers/documents/Florida%20Center%20Annual%20Report%202012%20final%20w%20cover%20-%208_27_13.pdf (last visited on March 19, 2014).

The Florida Center maintains www.FloridaHealthFinder.gov, which was established to assist consumers in making informed health care decisions and improvements in quality of care in Florida. The website provides a wide array of search and comparative tools to the public that 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 that allow specialized data queries, but requires users to have some knowledge of medical coding and terminology.⁴⁰

The Florida Center disseminates three standard reports that detail hospital fiscal data including a prior year report, an audited financial statement, and a hospital financial data report. Also, ad hoc reports may be requested for customers looking for specific information not included on a standard report or for customers who do not wish to purchase an entire data set to obtain information. The Center charges a set fee for standard reports⁴¹ and a variable fee based on the extensiveness of an ad hoc report.⁴²

The Florida 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.⁴³

State Consumer Health Information and Policy Advisory Council

The State Consumer Health Information and Policy Advisory Council (Advisory Council) assists the Florida Center in reviewing the information system. This includes the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information.⁴⁴ The Advisory Council assists AHCA in determining the method and format for the public disclosure of data collected by the Florida Center and 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 to allow consumers to compare health care services.⁴⁵ The Advisory Council consists of 13 members meet at least quarterly. The Advisory Council has the following responsibilities:

- Develop a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities;
- Develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data; and
- Create ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the Advisory Council.⁴⁶

Effect of Bill

Public Records Retention and Disposal

⁴⁰ *Id.*, p. 9.

⁴¹ 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 March 19, 2014).

⁴² Florida Center for Health Information and Policy Analysis, 2012 Annual Report, p. 7, found at: https://floridahealthfinderstore.blob.core.windows.net/documents/researchers/documents/Florida%20Center%20Annual%20Report%202012%20final%20w%20cover%20-%208_27_13.pdf (last visited on March 19, 2014).

⁴³ *Id.*, p. 7.

⁴⁴ Section 408.05(8), F.S.

⁴⁵ 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 March 19, 2014).

⁴⁶ Section 408.05(8), F.S.

The bill directs the division to adopt rules that include procedures for establishing schedules for the physical destruction or other disposal of records held by an agency that contain personal identification information. Personal identification information is defined as an item, collection, or grouping of information that may be used, alone or in conjunction with other information, to identify a unique individual. The definition includes, but is not limited to, 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, 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, education records, medical records, license plate number of a registered motor vehicle, images, including facial images, biometric identification, criminal history, and employment history.

Unless otherwise required by law, an agency may indefinitely retain records containing information that is not identifiable as related to a unique individual. The Department of State has indicated that such procedures are already in place by rule.⁴⁷

Agency Website Collection of Personal Identification Information

The bill creates part IV of chapter 282, F.S., relating to government data collection practices. The bill requires an agency⁴⁸ that collects personal identification information on a website and retains such information to maintain and conspicuously post a privacy policy on the website. The privacy policy must provide at a minimum:

- 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;
- Available alternatives to using the website;
- A statement as to how the agency uses the personal identification information, including, but not limited to, whether and under what circumstances the agency discloses such information;
- Information stating whether any other person, as defined in s. 671.201, F.S.,⁴⁹ collects personal identification information through the website;
- A general description of the security measures in place to protect personal identification information; however, such description must not compromise the integrity of the security measures; and
- An explanation of public records requirements relating to the personal identification information of an individual using the website and whether such information may be disclosed in response to a public records request.

The bill requires an agency website that installs a cookie on an individual's computer or electronic device to inform the individual of the use of cookies and request permission to install the cookies on the individual's computer. An individual who declines to have cookies installed must still be able to access and use the website. These requirements do not apply to a cookie temporarily installed if the cookie is only installed in the memory of the computer or electronic device and is deleted from such memory when the website browser or application is closed.

The bill provides that any contract between a public agency⁵⁰ and a contractor⁵¹ must specify that the contractor is subject to the personal identification information disclosure requirements and the

⁴⁷ Department of State Legislative Bill Analysis for HB 1231 (dated March 14, 2014), on file with the Government Operations Subcommittee.

⁴⁸ Agency is defined by reference to s. 119.011, F.S., which defines "agency" as 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 this chapter, 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.

⁴⁹ Section 671.201, F.S., defines "person" as "an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity."

requirements related to cookies. The failure of an agency to comply with the personal identification information disclosure requirements or the provisions related to cookies does not create a civil cause of action.

The bill directs the OPPAGA to submit a report to the President of the Senate and the Speaker of the House of Representatives by July 1, 2015, that:

- Identifies personal identification information, and the records in which such information is contained, held by an agency of the executive or legislative branch of state government;
- 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.

Data on Assisted Living Facilities

The bill requires AHCA to provide, by November 1, 2014, electronic access to data on assisted living facilities. The data must be searchable, downloadable, and available in generally acceptable formats.

The data must contain information on each licensed assisted living facility including, at a minimum:

- The name and address of the facility.
- The number and type of licensed beds in the facility.
- The types of licenses held by the facility.
- The facility's license expiration date and status.
- Other relevant information that AHCA currently collects.
- A list of the facility's violations, including a summary of the violation presented in a manner understandable by the general public, sanctions imposed by final order, and the date the corrective action was confirmed by AHCA.
- Links to inspection reports on file with AHCA.

The bill authorizes AHCA to provide a monitored comment webpage that allows members of the public to comment on specific assisted living facilities. If a comment webpage is provided, it must, at a minimum, allow members of the public to identify themselves, provide comments on their experiences and observations of an assisted living facility, and view others' comments. AHCA must review comments for profane content and redact profane content before posting the comments to the webpage. AHCA must maintain comments in their original form and must make the comments available for viewing without redaction. A controlling interest⁵² or employee of an assisted living facility is prohibited from posting comments on the page, but may respond to other comments. The bill requires AHCA to ensure that such responses are identified as being submitted by a representative of the facility.

AHCA may provide links to third-party websites that use the data published about assisted living facilities to assist consumers in evaluating the quality of care and service in assisted living facilities.

Florida Health Information Transparency Initiative

The bill dissolves the Florida Center within AHCA. It also abolishes the State Consumer Health Information and Policy Advisory Council.

The bill establishes the Florida Health Information Transparency Initiative (Transparency Initiative). The purpose of the Transparency Initiative is to coordinate a comprehensive health information system

⁵⁰ Public agency is defined by reference to s. 119.0701(1)(b), F.S., which defines a "public agency" as a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

⁵¹ Contractor is defined by reference to s. 119.0701(1)(a), F.S., which defines a "contractor" as "an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2)."

⁵² A "controlling interest" is an applicant or licensee, a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee, or a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. Section 408.803, F.S.

in order to promote accessibility, transparency, and utility of state-collected data and information about health providers, facilities, services, and payment sources.

The bill provides that AHCA is responsible for making state-collected health data available in a manner that allows for and encourages multiple and innovative uses of data sets collected under the state. Subject to funding by the General Appropriations Act, the bill requires AHCA to contract with one or more vendors to develop new methods of dissemination and to convert the data into easily useable electronic formats.

The bill revises the information required to be contained in the information system. It requires the information system to include:

- Health resources including licensed health professionals, licensed health care facilities, managed care organizations, and other health services regulated or funded by the state. This is required instead of including health resources related to physicians, dentist, nurses and other health professionals.
- Information regarding the utilization of health resources. This is required instead of including the utilization of health care by type of provider.
- Health care costs and financing, including Medicaid claims and encounter data and data from other public and private payers in the health care costs and financing. This is required instead of including trends in health care prices and costs, sources of payment for health care services, and federal, state, and local expenditures for healthcare in the healthcare costs and financing.
- The extent, source, and type of public and private health insurance coverage in Florida. This is required instead of including only the extent of public and private health insurance coverage in Florida.
- The data necessary to measure the value and quality of care provided by various health care providers, including applicable credentials, accreditation status, utilization, revenues and expenses, outcomes, site visits, and other regulatory reports, and the results of administrative and civil litigation. This is required instead of including data on the quality of care provided by various health care providers.

Under the bill, the information system would no longer be required to include data on:

- The extent and nature of illness and disability of the state population, including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality;
- The impact of illness and disability of the state population on the state economy and on other aspects of the well-being of the people in this state;
- Environmental, social, and other health hazards;
- Health knowledge and practices of the people in this state and determinants of health and nutritional practices and status; and
- Family formation, growth, and dissolution.

The bill also revises AHCA's functions related to the information system. It requires AHCA to:

- Collect and compile data from all state agencies and programs involved in providing, regulating, and paying for health services. This is required instead of the current requirement that AHCA coordinate the activities of state agencies involved in the design and implementation of the information system.
- Promote data sharing through the dissemination of state-collected health data by making such data available, transferable, and readily useable. This is required instead of the current requirement that AHCA undertake research, development, and evaluation regarding the information system for the purpose of creating comparable health information.
- Enable and facilitate the sharing and use of all state-collected health data to the maximum extent possible. This is required instead of the current requirement that AHCA establish by rule the types of data collected, compiled, processed, used, or shared.
- Monitor data collection procedures, test data quality, and take corrective actions as necessary to ensure that data and information disseminated under the initiative are accurate, valid, reliable, and complete. This is required instead of the current requirement that AHCA prescribe

standards for the publication of health-care-related data, which ensures the reporting of accurate, valid, reliable, complete, and comparable data.

- Initiate and maintain activities necessary to collect, edit, verify, archive, and retrieve data compiled. This is required instead of the current requirement that AHCA prescribe standards for the maintenance and preservation of the Florida Center's data.

The bill deletes a number of functions currently required to be performed by AHCA in relation to the information system. The functions deleted by the bill include:

- Reviewing the statistical activities of state agencies to ensure that they are consistent with the information system.
- Establishing minimum health-care-related data sets which are necessary on a continuing basis to fulfill the collection requirements of the center and which shall be used by state agencies in collecting and compiling health-care-related data.
- Establishing advisory standards to ensure the quality of health statistical and epidemiological data collection, processing, and analysis by local, state, and private organizations.
- Ensuring that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.
- Developing and implementing a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services.
- Administering, managing, and monitoring grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information network.
- Initiating, overseeing, managing, and evaluating the integration of healthcare data from each state agency that collects, stores, and reports on health care issues and make the data available to any health care practitioner through a state health information network.

The bill removes the requirement that technical assistance be provided to persons or organizations engaged in health planning activities in the effective use of statistics collected and compiled by the Florida Center. It also removes the requirement that the written agreements (for the sharing of health-care-related data with local, state, and federal agencies) specify the types, methods, and periodicity of data exchanges and specify the types of data to be transferred.

The bill directs AHCA to implement the Transparency Initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management. AHCA must ensure that a vendor who enters into a contract with the state does not inhibit or impede consumer access to state-collected health data and information.

AHCA may accept payments and use such funds for undertaking special studies and projects. The bill removes the prohibition on the use of such funds to offset annual appropriations from the General Revenue Fund.

The bill directs OPPAGA to monitor AHCA's implementation of the comprehensive health information system required by the bill. No later than one year after AHCA completes implementation, 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 this bill to other executive agencies.

Miscellaneous Provisions

The bill reenacts s. 120.54(8), F.S., for the purpose of incorporating an amendment made by the bill. It also makes conforming changes.

B. SECTION DIRECTORY:

Section 1 amends s. 257.36, F.S., requiring the Division of Library and Information Services of the Department of State to adopt rules providing procedures for an agency to establish schedules for the physical destruction or other disposal of records containing personal identification information.

Section 2 creates part IV of ch. 282, F.S., consisting of s. 282.801, F.S.; providing definitions; requiring an agency that collects and maintains personal identification information to post a privacy policy on its website; prescribing minimum requirements for a privacy policy; providing requirements and exceptions regarding an agency's use of cookies on its website; requiring that privacy policy requirements be specified in a contract between a public agency and a contractor; and specifying that a violation does not create a civil cause of action.

Section 3 requires the OPPAGA to submit to the Legislature a report relating to records containing personal identification information by a specified date.

Section 4 requires AHCA to provide specified data on assisted living facilities by a certain date; provides minimum requirements for such data; authorizes AHCA to create a comment webpage regarding assisted living facilities; provides minimum requirements for the website; authorizes AHCA to provide links to certain third-party websites; and authorizes AHCA to adopt rules to implement this section of the bill.

Section 5 amends s. 408.05, F.S.; dissolving the Center for Health Information and Policy Analysis within AHCA; requiring AHCA to coordinate a system to promote access to certain data and information; requiring that certain health-related data be included within the system; assigning duties to AHCA relating to the collection and dissemination of data; and establishing conditions for the funding of the system.

Section 6 requires OPPAGA to monitor AHCA's implementation of the health information system and to submit a report to the Legislature after completion of the implementation.

Section 7 reenacts s. 120.54(8), F.S., relating to rulemaking, to incorporate the amendment made to s. 257.36, F.S., in the bill.

Sections 8 through 17 respectively 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.; conforming provisions to changes made by the bill.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative economic impact on the private sector because it subjects contractors to the disclosure provisions regarding personal identification information and cookies. These requirements might require certain contractors to modify their websites.

D. FISCAL COMMENTS:

The bill requires state and local agencies that collect personal identification information or use cookies on their websites to implement certain notice requirements. Modification of agency websites to comply with these requirements may have an indeterminate negative fiscal impact on affected state and local agencies.

The bill requires OPPAGA to prepare two reports. Preparing those reports will require the use of certain resources, and may have a negative fiscal impact on the legislative branch.

The bill may save AHCA approximately \$2,000 in annual recurring travel costs that it reimburses to the State Consumer Health Information and Policy Advisory Council.⁵³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments that collect personal identification information or use cookies on their websites to modify the website in order to comply with the notice requirements provided in the bill. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

The bill authorizes AHCA to develop a comment webpage that allows members of the public to comment on assisted living facilities; however, the bill requires AHCA to prohibit controlling interests and employees from commenting on the webpage, except in response to other comments.

When government creates a public forum for the expression of ideas, the First Amendment to the United States Constitution generally prohibits restrictions on speech in that forum unless such restrictions are content neutral, narrowly tailored to serve an important government interest, and allow alternative channels of communication.⁵⁴ If the prohibition on commenting by controlling interests and employees of assisted living facilities is a content-based speech restriction, a reviewing court may find that it is an unconstitutional abridgement of the freedom of speech.

Additionally, the bill requires AHCA to monitor and redact those comments that contain profanity. The bill does not define what constitutes profane content for the purpose redacting comments. This profanity provision might be impermissibly vague if it fails to give an ordinary person fair notice of what speech is forbidden,⁵⁵ and may be an impermissible grant of discretion to monitor speech if it does not provide sufficiently defined standards for AHCA to apply the law.⁵⁶

B. RULE-MAKING AUTHORITY:

⁵³ Agency analysis for SB 1258 (2013), Agency for Health Care Administration, April 15, 2013. SB 1258 (2013) was substantially identical to those portions of this bill that address the replacement of the Florida Center for Health Information and Policy Analysis with the Florida Health Information Transparency Initiative.

⁵⁴ See *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

⁵⁵ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972).

⁵⁶ See *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992).

The bill grants rule-making authority to the division to adopt rules that include procedures for establishing schedules for the physical destruction or other disposal of records held by an agency which contain personal identification. The Department of State has indicated that such procedures are already in place by rule.⁵⁷

The bill grants rule-making authority to AHCA for the purpose of implementing requirements to provide electronic access to data on assisted living facilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Contractor Websites

The bill provides that any contract between a public agency⁵⁸ and a contractor⁵⁹ must specify that the contractor is subject to the personal identification information and cookies disclosure requirements in this bill. As drafted, the bill may impose the personal identification information and cookies disclosure requirements on any website operated by a contractor, not just a website operated pursuant to a contract with a public agency. If this requirement is intended to apply only to those websites operated by a contractor pursuant to a contract with a public agency, as opposed to any website operated by the contractor, it is recommended that the bill be amended to provide so explicitly.

Other Comments: Assisted Living Facility Comment Webpage and Profanity

The bill authorizes AHCA to develop a comment webpage that allows members of the public to comment on assisted living facilities. The bill requires AHCA to monitor and redact those comments that contain profanity. The bill does not define what constitutes profane content for the purpose of redacting comments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁵⁷ Department of State Legislative Bill Analysis for HB 1231 (dated March 14, 2014), on file with the Government Operations Subcommittee.

⁵⁸ Public agency is defined by reference to s. 119.0701(1)(b), F.S., which defines a “public agency” as a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

⁵⁹ Contractor is defined by reference to s. 119.0701(1)(a), F.S., which defines a “contractor” as “an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).”