



an exception from the right to inspect public hospital records related to the confidential care and treatment of patients, including information such as analyses, plans, records or reports, pertaining to professional credentialing or privileging activities, peer review, quality improvement activities involving the quality of care provided by the hospital and its providers regardless of whether the information provided is subject to the Open Meetings Act.

### **FISCAL IMPLICATIONS**

Agencies should be able to make any statutory changes resulting from the enactment of this bill with existing staff and resources.

### **SIGNIFICANT ISSUES**

The amendment to the Open Meetings Act will impact the meeting of committees or boards of public hospitals dealing with matters related to care and treatment of patients. The changes recommended will make matters related to patient health, care, and treatment confidential as applicable by state and federal laws.

The amendment to the Inspection of Public Records Act makes records in public hospitals related to the care and treatment of patient confidential as applicable by state and federal laws. DOH reports that the bill may encourage hospitals to explore their practices with less fear of litigation.

### **PERFORMANCE IMPLICATIONS**

The bill attempts to provide additional protection of privacy of public citizens in matters related to the care and treatment of their health. However, the AGO is concerned the bill may be construed to prevent the release of general patient safety data that is helpful to consumers in determining hospital infection rates, mortality rates, and outcome measures for specific medical procedures.

The Federal Patient Safety and Quality Improvement Act established procedures for the voluntary, confidential reporting of medical errors to patient safety organizations (PSOs). A PSO is an organization certified by the Secretary of Health and Human Services (HHS) that seeks to improve patient safety and quality through collecting and analyzing patient safety data. After medical errors have been voluntarily and confidentially reported to the PSO, the PSO in turn submits the data to a national database for analysis and recommendations on ways to improve patient safety and reduce medical errors. The data reported to the PSOs will be shielded from use in liability suits and other litigation. This information cannot be used against a provider by an accrediting agency or other regulator. Organizations cannot punish employees based on good-faith reporting of information. Again, the AGO is concerned the bill may be construed as providing greater privilege and confidentiality protections which might prohibit the voluntary disclosure of information in accordance with Federal law.

### **OTHER SUBSTANTIVE ISSUES**

The Open Meetings Act is known as the "sunshine law." All states have such laws, which are essentially motivated by the belief that the democratic ideal is best served by a well-informed public. Sunshine laws generally require that public business be conducted in full public view,

that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public.

The Inspection of Public Records Act provides an open window for the public and media to access information deemed of importance to the public interest. The law requires open access to almost all public records in state and local government with few exceptions. Under the Act the public citizen or group has the right to take legal action if they are denied access to public records and awarded attorney fees if they are proven right.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Open Meetings Act and the Inspection of Public Records Act will continue to include public discussions and disclosure of patient health, care and treatment information as allowed by current provisions in both statutes.

### **QUESTIONS**

What other states have passed similar legislation?

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