

SENATE BILL REPORT

SSB 6499

As Passed Senate, February 13, 2020

Title: An act relating to protecting the confidentiality of retirement system files and records relating to health information.

Brief Description: Concerning the confidentiality of retirement system files and records relating to health information.

Sponsors: Senate Committee on State Government, Tribal Relations & Elections (originally sponsored by Senators Schoesler, Hunt, Kuderer, Becker, Conway and Hasegawa; by request of Department of Retirement Systems).

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 1/31/20, 2/07/20 [DPS].

Floor Activity:

Passed Senate: 2/13/20, 47-0.

Brief Summary of First Substitute Bill

- Exempts medical information contained in records of public retirement system plan members from public disclosure requirements.
- Provides exceptions for authorized representatives of an applicant, health care providers regarding applicants for disability benefits, and persons assisting the Department of Retirement Systems.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6499 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Muzzall, Assistant Ranking Member; Hasegawa and Takko.

Staff: Samuel Brown (786-7470)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Medical Information. Under the federal Health Insurance Portability and Accountability Act, any information in an individual's medical record created, used, or disclosed during diagnosis or treatment that can personally identify the individual must be kept confidential by health care providers. Washington law provides additional exemptions from PRA disclosure requirements for certain types of health information in agency possession, including information about individuals' healthcare collected as part of the prescription monitoring program and under the Death With Dignity Act.

Summary of First Substitute Bill: Medical information in files and records maintained by the Department of Retirement Systems (DRS) or the Law Enforcement Officers and Firefighters (LEOFF) Plan 2 retirement board for retirement plan members is confidential and exempt from the PRA's disclosure requirements.

A retirement applicant's representatives may review a file or receive specific information with the applicant's signed authorization. Health care providers treating or examining applicants claiming disability benefits and physicians advising DRS on an application for disability benefits may view files and records at DRS' discretion.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is the same exemption the Department of Labor and Industries (L&I) has for records they use to determine when people can get back to work. We share records with L&I frequently. DRS provides a summary once a catastrophic disability determination is made. DRS is a non-HIPAA-protected organization, so they require a specific exemption. Newspapers are interested in the department's work product, not the medical records, and appreciate that DRS reached out to us before seeking this exemption. The LEOFF board could be added in an amendment, as their ombuds accesses these records too.

Persons Testifying: PRO: Shawn Merchant, Department of Retirement Systems; Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: No one.