

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
September 25, 2013
Meeting Summary

Convened 1:04 p.m., Room 438, State House, Augusta

Present:

Suzanne Goucher, Chair
MaryAnn Lynch
Linda Pistner

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Introductions

Suzanne Goucher, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

Review of Sentinel Events Exception—Title 22, section 8754

3: 22 MRSA §8754

The Subcommittee agreed to table discussion of this exception to the next meeting. After the reviewing a memo presented by the Advisory Committee's Extern, Stephen Wagner, the Subcommittee also heard remarks from representatives of the Maine Hospital Association and Maine Medical Mutual Insurance Company recommending that the confidentiality provision should be kept as is. Jeff Austin of the Maine Hospital Association noted that consumers would be better served reviewing comparative data among hospitals, including data related to sentinel events, than from the release of data about sentinel events in individual hospitals. Mr. Austin also reminded the Subcommittee that the stated legislative purpose of the sentinel events law is to improve quality of care and increase patient safety, not public disclosure. The confidentiality provision is meant to encourage a culture of reporting about medical errors and changing the provision would have an impact. Charlie Soltan representing Medical Mutual Insurance Company remarked that the reporting of sentinel events may involve potential liability for individual health care practitioners; the confidentiality provision is needed to ensure that reporting and discussion of errors happen freely.

MaryAnn Lynch expressed an interest in getting more information about the experience of other states, like California, Florida and Minnesota, which publicly disclose information about specific sentinel events. Ms. Lynch noted that hospitals are private entities, but rely on significant government revenue as payment for services. Staff will provide information about those states' experiences at the next meeting.

Suzanne Goucher stated that information about sentinel events and the quality of health care is important to consumers, especially with new ways of health care delivery; information should be available and accessible to the public. Mr. Austin agreed that one source of information for comparison purposes is needed; currently, there are many websites providing health care data and

no single source has emerged as a leader. Ms. Goucher asked Mr. Austin to provide an analysis of the types of reports required under the sentinel event reporting law to federal reporting requirements for hospitals to determine if similar information is disclosed to the public by other measures.

Review of Remaining Exceptions Addressed in LD 420

At the September 11th meeting, the Subcommittee recommended that all of the provisions addressed in LD 420 move forward as drafted with the exception of the provisions related to the Community Right-to-Know Act, which were tabled.

1 and 2: 22 MRSA §1696-D and § 1696-F, related to the Community Right-to-Know Act

The Subcommittee voted 3-0 to amend the provisions as proposed in LD 420. Subcommittee members noted their understanding that the Community Right-to-Know Act has never been implemented so no records subject to the confidentiality provisions exist. However, because members felt a recommendation to repeal the Act in its entirety would not be within their charge, they agreed to recommend that the Advisory Committee send letters to the legislative policy committees—the Joint Standing Committees on Environment and Natural Resources and Health and Human Services--- asking them to review the Act and other related statutory programs to determine whether the Community Right-to-Know Act should be repealed.

Review of Existing Exceptions in Titles 26 through 39-A

The Subcommittee continued its review of the exceptions tabled by the Subcommittee in 2012; the previous Subcommittee did not make any recommendation with regard to any of these exceptions.

6: 28-A MRSA § 755, relating to liquor licensees' business and financial records

The Subcommittee again voted 3-0 to table this provision. While the Bureau of Alcoholic Beverages and Lottery Operations has indicated that there are no changes to the comments they previously submitted in August 2012 on the exception, staff will inquire again to invite BABLO to submit suggested language to clarify ambiguous language in the current law.

16: 34-A MRSA § 5210, sub-§ 4, relating to the State Parole Board report to the Governor

The Subcommittee voted 3-0 to keep the provision as is. The Department of Corrections reported that there are 5 incarcerated persons subject to the parole provisions.

19: 35-A MRSA § 8703, sub-§ 5, relating to telecommunications relay providers

The Subcommittee voted 3-0 to amend the provision to clarify that the information must be kept confidential by the telecommunications relay provider, not the Public Utilities Commission. Staff will work with the Public Utilities Commission to develop draft language for the Subcommittee's review at the next meeting.

20: 35-A MRSA § 9207, sub-§ 1, relating to information about communications services providers

The Subcommittee voted 3-0 to keep the provision as is.

21 and 22: 36 MRSA § 575-A, sub-§ 2 and 36 MRSA § 579, relating to forest management and harvest plans and information concerning the Maine Tree Growth Tax Law

The Subcommittee voted 3-0 to keep the provision as is. The Subcommittee noted that, because of both a sunset provision and reporting requirement, the provisions will be reviewed by Legislature during the 2nd Regular Session. Members were comfortable recommending no change with the expectation that additional review will occur during the legislative session.

23: 36 MRSA § 1106-A, relating to forest management and harvest plans made available for Farm and Open Space Tax Law

The Subcommittee voted 3-0 to table action on this provision until 2014. For purposes of the Farm and Open Space Tax Credit, members noted that managed forest open space land is not used for commercial purposes. The confidentiality of forest management and harvest plans for land subject to the tax credit may not serve the same business and proprietary interests as plans submitted to qualify for the Tree Growth tax credit. Given the additional review of the provisions of the Tree Growth Tax Law by the Legislature in the 2nd Regular Session, the Subcommittee decided to wait until that review is completed before taking action on this provision.

24: 37-B MRSA § 708, sub-§ 3, relating to documents collected or produced by the Homeland Security Advisory Council

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information about the annual reports made to the Legislature by the Homeland Security Advisory Council pursuant to §708, sub-§2 and determine whether those reports are public records or protected from public disclosure by the confidentiality provision in sub-§ 3.

25: 37-B MRSA § 797, sub-§ 7, relating to MEMA reports of hazardous substances transportation routes

The Subcommittee voted 3-0 to keep the provision as is.

26: 38 MRSA § 414, sub-§ 6, relating to records and reports obtained by Board of Environmental Protection in water pollution control license application procedures

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask the Board of Environmental Protection for suggested language to amend the provision to cross-reference a definition of trade secret.

27: 38 MRSA § 470-D, relating to individual water withdrawal reports

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information about the annual aggregate data made available to the public about water withdrawals from the State Geologist and about the reporting by individuals to the Departments of Conservation, Environmental Protection and Health and Human Services. Staff will also solicit input on the provision from water utilities and other stakeholders.

Future Process for Review

Before the next meeting, Ms. Goucher asked the Subcommittee members to spend some time thinking about the future process for reviewing exceptions. Once the Subcommittee completes its work on Title 26 to 39-A, the Advisory Committee will have finished the cycle of review of all exceptions required by law. Should the Subcommittee recommend that the process start all over again (back to Title 1) using the existing process? Should the Subcommittee recommend a process that focuses on review of recently enacted exceptions that were not previously reviewed by the Advisory Committee?

Ms. Goucher reported that the Freedom of Information Coalition, of which she is a member, has discussed the issue. They do not see any need to go back to the beginning, but do think there is value in reviewing those recently enacted exceptions that were not previously reviewed by the Advisory Committee. Ms. Goucher suggested that the members consider this proposal and discuss further at the next meeting.

Future Meetings

The Subcommittee agreed to meet next on Monday, November 4, 2013, at 1:00 p.m. The agenda will include discussion of the tabled items (*chart 3, 6, 24, 26 and 27*) and initial discussion of the remaining exceptions (*chart 30 to 39*).

Ms. Goucher adjourned the meeting at 3:10 p.m.

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid