

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
November 4, 2010
Draft Meeting Summary

Convened 2:10 p.m., Room 438, State House, Augusta

Present:	Absent:
Shenna Bellows, Chair	Linda Pistner
Karla Black	Chris Spruce
Ted Glessner	
Suzanne Goucher	
AJ Higgins	

Staff:
Peggy Reinsch, Carolyn Russo, Marion Hylan Barr

Public Records Exceptions Subcommittee Chair Shenna Bellows convened the meeting of the Public Records Exceptions Subcommittee of the Right to Know Advisory Committee at 2:10 p.m. and asked the members to introduce themselves.

• **Review of existing public records exceptions**

The Subcommittee then moved directly into its review of existing public records exceptions. The Subcommittee first heard from Tom Record, Senior Staff Attorney at the Bureau of Insurance, who responded to questions regarding certain exceptions in Title 24-A raised by the Subcommittee at the October meeting. Questions included why certain reports and records were not subject to subpoena, at what point reports become “public”, and whether to leave in statute provisions that have never been used or have not been used for a very long time. The Subcommittee also heard feedback from Charlie Soltan, who represents a number of insurance companies, and Jeff Austin, Vice President of Government Affairs and Communications at Maine Hospital Association. The Subcommittee completed its review of the Title 24-A exceptions, and specific recommendations are found in the chart below.

In its discussion of the Title 24-A exceptions, the Subcommittee talked about the issue of records that are both confidential and not subject to subpoena. Mr. Record indicated that Title 24-A language is based on model policies for accreditation purposes pursuant to the National Association of Insurance Commissioners (NAIC), and he was not sure if changing the subpoena language would impact accreditation. States must adopt the same or substantially similar language to that in the model law to retain accreditation status. Ms. Bellows noted that she was concerned about under-regulation of some of the insurance businesses and that she was uncomfortable with exceptions that are so broad and except records from subpoenas in court proceedings. Ms. Black indicated that she was uncomfortable amending the language, since we do not know how that would impact accreditation, the Bureau of Insurance and consumers. Although the other members present felt comfortable with the reasons for the exception from

subpoena, Ms. Bellows expressed that in principle she would vote against the motion to leave those exceptions with no change and did. Ms. Bellows did not offer a minority report though. There was a suggestion that the Subcommittee recommend that the Judiciary Committee look at the general question of information not being subject to subpoena. The Subcommittee agreed to make that recommendation.

Ms. Bellows also recommended that all rate filings be public from the date they are filed and dissented from majority decisions to retain confidentiality until approved. Ms. Bellows expressed concern about not making public information that deals with insurance fraud. Mr. Soltan explained that people might not come forward and report if they knew that disclosure would be made public.

The Subcommittee then discussed the issue of examinations of viatical or life settlement companies and why these reports are not made public when filed. Ms. Black also reminded the Subcommittee that the issue and the most recent statute were just debated, and she would not recommend revisiting it now. Mr. Record added that the issue has been discussed 5 years in a row. Ms. Bellows, again in principle, voted against the Subcommittee's recommendation for no change. Ms. Bellows recommended that this issue be flagged for future review by the IFS Committee.

The Subcommittee then made recommendations to exceptions in Title 22 as suggested by the Department of Health and Human Services. The Subcommittee made no changes, except to repeal part of Title 22, §1065, which is a provision dealing with information that is no longer reported to DHHS (the department requested the repeal). As noted in the chart that follows, in 2011 the Subcommittee will review and make recommendations regarding the remaining tabled exceptions in Title 22, Maine Turnpike Authority and Department of Transportation exceptions in Title 23, and Maine Health Security Act exceptions in Title 24. Although Tim Terranova from the Board of Medical Licensure was present, the Subcommittee meeting adjourned before the members were able to take up the Title 24 exceptions. Staff will draft amendments for consistent language as indicated by the chart.

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
1	Title 22, section 17, subsection 7, relating to records of child support obligors	11/4: no change
2	Title 22, section 42, subsection 5, relating to DHHS records containing personally identifying medical information	11/4: no change
3	Title 22, section 261, subsection 7, relating to records created or maintained by the Maternal and Infant Death Review Panel	11/4: no change
4	Title 22, section 664, subsection 1, relating to State Nuclear Safety Program facility licensee books and records	11/4: no change

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5	Title 22, section 666, subsection 3, relating to the State Nuclear Safety Program concerning the identity of a person providing information about unsafe activities, conduct or operation or license violation	11/4: no change
6	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases	11/4: no change
7	Title 22, section 815, subsection 1, relating to communicable disease information	11/4: no change
8	Title 22, section 824, relating to persons having or suspected of having communicable diseases	11/4: no change
9	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	11/4: no change
10	Title 22, section 1064, relating to immunization information system	11/4: no change
11	Title 22, section 1065, subsection 3, relating to manufacturer and distributor reports on distribution of influenza immunizing agents	11/4: REPEAL Sub-§3 or all
12	Title 22, section 1233, relating to syphilis reports based on blood tests of pregnant women	11/4: no change
13	Title 22, section 1317-C, subsection 3, relating to information regarding the screening of children for lead poisoning or the source of lead exposure	11/4: no change
14	Title 22, section 1494, relating to occupational disease reporting	11/4: no change
16	Title 22, section 1596, relating to abortion and miscarriage reporting	11/4: no change
17	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor	11/4: no change
25	Title 22, section 2425, subsection 8, paragraph A, relating to information submitted by qualifying and registered patients under the Maine Medical Use of Marijuana Act	11/4: no changes
26	Title 22, section 2425, subsection 8, paragraph B, relating to information submitted by primary caregivers and physicians under the Maine Medical Use of Marijuana Act	11/4: no changes
27	Title 22, section 2425, subsection 8, paragraph C, relating to list of holders of registry identification cards under the Maine Medical Use of Marijuana Act	11/4: no changes

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
28	Title 22, section 2425, subsection 8, paragraph F, relating to information contained in dispensary information that identifies a registered patient, the patient's physician and the patient's registered primary caregiver under the Maine Medical Use of Marijuana Act	11/4: no changes
29	Title 22, section 2425, subsection 8, paragraph G, relating to information that identifies applicants for registry identification card, registered patients, registered primary caregivers and registered patients' physicians under the Maine Medical Use of Marijuana Act	11/4: no changes
30	Title 22, section 2425, subsection 8, paragraph J, relating hearing on revocation of a registry identification card under the Maine Medical Use of Marijuana Act unless card is revoked	11/4: no changes
31	Title 22, section 2698-A, subsection 7, relating to prescription drug marketing costs submitted to the Department of Health and Human Services	11/4: no change
32	Title 22, section 2698-B, subsection 5, relating to prescription drug information provided by the manufacturer to the Department of Health and Human Services concerning price	11/4: no change
40	Title 22, section 3474, subsection 1, relating to adult protective records	11/4: no change
41	Title 22, section 3762, subsection 3, relating to TANF recipients	11/4: no change
42	Title 22, section 4007, subsection 1-4, relating to a protected person's current or intended address or location in the context of child protection proceeding	11/4: no change
43	Title 22, section 4008, subsection 3-A, relating to the child death and serious injury review panel	11/4: no change
46	Title 22, section 4018, subsection 4, relating to information about a person delivering a child to a safe haven	11/4: no change
47	Title 22, section 4021, subsection 3, relating to information about interviewing a child without prior notification in a child protection case	11/4: no change

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
48	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	11/4: no change
49	Title 22, section 4306, relating to general assistance	11/4: no change
50	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services	11/4: no change
51	Title 22, section 7250, subsection 1, relating to the Controlled Substances Prescription Monitoring Program	11/4: no change
53	Title 22, section 8707, relating to the Maine Health Data Organization	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link?
65	Title 24, section 2329, subsection 8, relating to alcoholism and drug treatment patient records of nonprofit hospitals and medical service organizations	9/27: table - no problem with exception, but check with TRecord about making language consistent 11/4: AMEND language
66	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input; <i>Consumers for Affordable Health Care input requested</i> 11/4: Tabled until 2011
67	Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	9/27: table - ask medical licensing boards for input 11/4: tabled until 2011
68	Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input 11/4: tabled until 2011
69	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4: tabled until 2011
70	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4: tabled until 2011
71	Title 24, section 2986, subsection 2, relating to billing for forensic examinations for alleged victims of gross sexual assault	9/27: no change - But note that records not in hands of public entity
73	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	9/27: table - ask Maine Trial Lawyers for input

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
74	Title 24-A, section 222, subsection 13, relating to insurance information filed with the Superintendent of Insurance concerning registration statements, tender offers, requests or invitations for tender offers, options to purchase, agreements	9/27: table - ask Consumers for Affordable Health Care, TRecord for input 11/4: Divided report - no change 3-1 (SBellows)
75	Title 24-A, section 225, subsection 3, relating to insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent 11/4: AMEND - language
76	Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem) 11/4: AMEND - language
77	Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem) 11/4: AMEND - language
79	Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions	9/27: table - ask Consumers for Affordable Health Care and TRecord for input 11/4: divided report - no change 4-1 (SBellows)
81	Title 24-A, section 952-A, subsection 4, relating to actuarial opinion of reserves	9/27: table - ask Maine Trial Lawyers for input 11/4: AMEND language; otherwise no change 3-1 (SBellows)
86	Title 24-A, section 2169-B, subsection 6, insurance scoring model	10/18: Table - ask TRecord, how can private orgs enforce prohibitions on scoring on illegal factors? 11/4: divided report - no change 3-1 (SBellows)
88	Title 24-A, section 2204, subsection 4, relating to insurance investigative information (definition)	10/18: Table - more info 11/4: no change

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
89	Title 24-A, section 2304-A, subsection 7, relating to insurance rate filings	10/18: Table - with #97 (filings) 11/4: divided report - no change 3-1 (SBellows)
89.5	NEW (11/1/10) Title 24-A, section 2304-C, subsection 3, relating to physicians and surgeons liability insurance rate filings	11/4: divided report - no change 3-1 (SBellows)
90	Title 24-A, section 2315, relating to information submitted to fire insurance advisory organizations	10/18: Table - repeal? Ask CSoltan, TRecord 11/4: REPEAL, note to IFS
91	Title 24-A, section 2323, subsection 4, relating to reports of insurers concerning loss and expense experience	10/18: Table - why keep if doesn't apply to anything Need more info 11/4: no change
91.5	NEW (11/1/10) Title 24-A, section 2325-B, subsection 9, relating to mandatory property and casualty insurance market assistance program policy form and rate filings	11/4: divided report - AMEND confidential until approved 3-1 (SBellows)
94	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records?
95	Title 24-A, section 2412, subsection 8, relating to insurance contracts and forms	10/18: Table (filings) 11/4: divided report - no change 3-1 (SBellows)
97	Title 24-A, section 2736, subsection 2, relating to rate filings on individual health insurance policies	10/18: Table (filings) 11/4: no change
100	Title 24-A, section 2842, subsection 8, relating to relating to alcoholism and drug treatment patient records for group and blanket health insurance	10/18: no change 11/4: AMEND language
106	Title 24-A, section 4245, subsections 1 and 3, relating to health maintenance organizations accreditation survey report	10/18: Table (subpoena) 11/4: divided report - no change 3-1 (SBellows)
107	Title 24-A, section 4406, subsection 3, relating to delinquent insurers	10/18: Table - why keep if doesn't apply to anything 11/4: no change
109	Title 24-A, section 6458, subsection 1, relating to risk-based capital standards for insurers	10/18: Table (subpoena) 11/4: divided report - no change 3-1 (SBellows)
110	Title 24-A, section 6708, subsection 2, relating to examination of captive insurance companies documents	10/18: Table (subpoena) 11/4: divided report - no change 3-1 (SBellows)

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
112	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	10/18: Table - ask TRecord, (subpoena) 11/4: divided report - no change 3-1 (SBellows) - but flag than inconsistent with treatment of examination reports
113	Title 24-A, section 6818, subsections 6 and 8, relating to fraudulent viatical or life insurance settlements information provided for enforcement	10/18: Table - why isn't fraud information public? (subpoena) 11/4: divided report - no change 3-1 (SBellows)

- **Other remaining issues**

In addition to the remaining exceptions for review, the Subcommittee will receive a draft of the new Criminal History Record Information Act from the Criminal Law Advisory Commission for action in 2011. CLAC continues to revise the draft, and the Judicial Branch and the Department of Public Safety continue to discuss issues regarding the maintenance and dissemination of criminal history record information. Staff will continue to work with these groups to prepare for the next interim, at which time the Subcommittee will meet.

The Subcommittee does not plan to meet again before the end of the legislative session in 2011.

Adjourned 4:30 p.m.