RIGHT TO KNOW ADVISORY COMMITTEE
Public Records Exception Subcommittee

Tuesday, November 28, 2023
11:00 a.m.

Location: State House, Room 438 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
https://legislature.maine.gov/Audio/#438

1. Introductions

2. Review and discussion of existing public records exceptions
   - Complete review of exceptions previously tabled on 10/23 or 11/9
     - Ref. No. 9;
     - Ref. No. 14;
     - Ref. No. 18;
     - Ref. No. 24;
     - Ref. No. 25;
     - Ref. No. 42 *(see proposed draft amendment)*;
     - Ref. No. 53; and
     - Ref. No. 66 *(see proposed draft amendment)*
   - Review remaining exceptions for review:
     - Ref. No. 7*(questionnaire completed)*;
     - Ref. 11*(questionnaire completed)*;
     - Ref. No. 15 *(questionnaire completed)*;
     - Ref. No. 16 *(repealed so no action needed)*;
     - Ref. No. 19;
     - Ref. No. 23-A *(questionnaire completed)*;
     - Ref. No. 36 *(questionnaire completed)*;
     - Ref. No. 45;
     - Ref. Nos. 49;
     - Ref. No. 50 *(questionnaire completed)*;
     - Ref. No. 51 *(questionnaire completed)*;
     - Ref. No. 65; and
     - Ref. Nos. 71 to 74 *(questionnaires completed)*

3. Review of request for a new public records exception for "proprietary information" included in grant applications and grant recipient reports under the Emergency Medical Services Stabilization and Sustainability Program in 32 MRS §98 (effective Oct. 25)

4. Discuss final report and recommendations to full Advisory Committee

5. Adjourn

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
1	22 MRSA §17, sub-§7	Title 22, section 17, subsection 7, relating to records of child support obligors	DHHS	No change	Voted 10-23-23: Accepted with no change (4-0)
2	22 MRSA §42, sub-§5	Title 22, section 42, subsection 5, relating to DHHS records containing personally identifying medical information	DHHS	No change	Voted 10-23-23: Accepted with no change (4-0)
3	22 MRSA §261, sub-§7	Title 22, section 261, subsection 7, relating to records created or maintained by the Maternal and Infant Death Review Panel	DHHS	No change	Voted 10-23-23: Accepted with no change (4-0)
4	22 MRSA §264, sub-§8	Title 22, section 264, subsection 8, relating to records held by the coordinator of the Aging and Disability Mortality Review Panel	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
5	22 MRSA §664, sub-§1	Title 22, section 664, subsection 1, relating to State Nuclear Safety Program facility licensee books and records	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
6	22 MRSA §666, sub-§3	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	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
7	22 MRSA §811, sub-§6	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases	DHHS, Maine CDC	No change	
8	22 MRSA §815, sub-§1	Title 22, section 815, subsection 1, relating to communicable disease information	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
9	22 MRSA §824	Title 22, section 824, relating to persons having or suspected of having communicable diseases	DHHS, Maine CDC	No change	Tabled 10-23-23
10	22 MRSA §832, sub-§3	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
11	22 MRSA §1064	Title 22, section 1064, relating to immunization information system	DHHS, Maine CDC	No change	
*12	22 MRSA §1065, sub-§3	Title 22, section 1065, subsection 3, relating to manufacturer and distributor reports on distribution of influenza immunizing agents	Repealed	Repealed	No Action Needed
13	22 MRSA §1233	Title 22, section 1233, relating to syphilis reports based on blood tests of pregnant women	DHHS, Maine CDC	No change	Voted 10-23-23: Accepted with no change (4-0)
14	22 MRSA §1317-C, sub-§ 3	Title 22, section 1317-C, subsection 3, relating to information regarding the screening of children for lead poisoning or the source of lead exposure	DHHS, Maine CDC	No change	Tabled 10-23-23
15	22 MRSA §1413	Title 22, section 1413, relating to information that directly or indirectly identifies individuals included in amyotrophic lateral sclerosis (ALS) registry	DHHS, Maine CDC	No change	
*16	22 MRSA §1494	Title 22, section 1494, relating to occupational disease reporting	Repealed in recent budget bill, Public Law 2023, chapter 412, Part UU	Repealed	No Action Needed
*17	22 MRSA §1555-D, sub-§ 1	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	Repealed	Repealed	No Action Needed
18	22 MRSA §1596	Title 22, section 1596, relating to abortion and miscarriage reporting	DHHS, Maine CDC	No change	Tabled 10-23-23
19	22 MRSA §1597-A, sub-§6	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor			

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	**DESCRIPTION**	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
*20	22 MRSA §1696-D	Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	Repealed	Repealed	No Action Needed
*21	22 MRSA §1696-F	Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	Repealed	Repealed	No Action Needed
22	22 MRSA §1711-C, sub-§2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS, Division of Licensing and Certification	No change	Voted 10-23-23: Accepted with no change (4-0)
23	22 MRSA §1714-E, sub-§5	Title 22, section 1714-E, subsection 5, relating to department records regarding determination of credible allegation of MaineCare fraud	DHHS, Division of Licensing and Certification	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)
^23-*A*	*22 MRSA §1717, sub-§15 (as enacted by PL 2023, c. 309)*	*Title 22, section 1717, subsection 15, relating to personally identifying information or health information created or obtained in connection with DHHS licensing or quality assurance activities*	DHHS	Program has not been implemented yet, no change	
24	22 MRSA §1816, sub-§2	Title 22, section 1816, subsection 2, paragraph B, relating to survey findings of health care accrediting organization, including deficiencies and work plans, of hospitals reported to DHHS	DHHS, Division of Licensing and Certification	No change	Tabled 10-23-23
25	22 MRSA §1828	Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS, Division of Licensing and Certification	No change	Tabled 11-9-23
*26	22 MRSA §1848, sub-§1 Repealed by PL 2023, c. 37	Title 22, section 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	All of chapter 405-A, including section 1848 repealed by Public Law 2023, c. 37	All of chapter 405-A, including section 1848 repealed by Public Law 2023, c. 37	No Action Needed
27	22 MRSA §2140, sub-§17	Title 22, section 2140, subsection 17, relating to information collected by DHHS	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
		regarding compliance with Maine Death with Dignity Act			change (3-0; Monaghan absent)
28	22 MRSA §2153-A, sub-§1	Title 22, section 2153-A, subsection 1, relating to information provided to the Department of Agriculture by the US Department of Agriculture, Food Safety and Inspection Service	Dept. of Agriculture, Conservation and Forestry	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)
29	22 MRSA §2153-A, sub-§2	Title 22, section 2153-A, subsection 2, relating to information provided to the Department of Agriculture by the US Food and Drug Administration	Dept. of Agriculture, Conservation and Forestry	No change	Voted 11-9-23: Accepted with no change (3-0; Monaghan absent)
*30	22 MRSA §2425, sub-§8	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	Repealed	Repealed	No Action Needed
*31	22 MRSA §2425, sub-§8	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	Repealed	Repealed	No Action Needed
*32	22 MRSA §2425, sub-§8	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	Repealed	Repealed	No Action Needed
*33	22 MRSA §2425, sub-§8	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	Repealed	Repealed	No Action Needed
*34	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph G, relating to information that identifies applicants for registry	Repealed	Repealed	No Action Needed

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
		identification card, registered patients, registered primary caregivers and registered patients' physicians under the Maine Medical Use of Marijuana Act			
*35	22 MRSA §2425, sub-§8	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	Repealed	Repealed	No Action Needed
36	22 MRSA §2425-A, sub-§12	Title 22, section 2425-A, subsection 12, relating to applications and supporting information submitted by patients, caregivers and providers under the Maine Medical Use of Marijuana Act	DAFS, Office of Cannabis Policy	Amend by repealing exception	
*37	22 MRSA §2698-A, sub-§7	Title 22, section 2698-A, subsection 7, relating to prescription drug marketing costs submitted to the Department of Health and Human Services	Repealed	Repealed	No Action Needed
*38	22 MRSA §2698-B, sub-§5	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	Repealed	Repealed	No Action Needed
39	22 MRSA §2706, sub-§4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
40	22 MRSA §2706-A, sub-§6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
41	22 MRSA §2769, sub-§4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
42	22 MRSA §3022, sub-§8,12,13, 14	Title 22, section 3022, subsections 8, 12,13 and 14, relating to medical examiner information	Office of the Attorney General	No change	Tabled 10-23-23; tabled 11-9-23—will review proposed amendment on 11/28/23
43	22 MRSA §3034, sub-§2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	Office of the Attorney General	No change	Voted 11-9-23: Accepted with no change (4-0)
44	22 MRSA §3109, sub-§2-A	Title 22, section 3109, subsection 2-A, relating to personal information of TANF participants surveyed by DHHS	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
45	22 MRSA §3174-X, sub-§6	Title 22, section 3174-X, relating to records of the Medicaid ombudsman program			
46	22 MRSA §3188, sub-§4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	No change	Voted 11-9-23: Accepted with no change (4-0)
47	22 MRSA §3192, sub-§13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	No change	Voted 11-9-23: Accepted with no change (4-0)
48	22 MRSA §3292	Title 22, section 3292, relating to use of confidential information for personnel and licensure actions	DHHS, Office of Family and Child Services, Office of Aging and Disability Services and Division of Licensing and Certification; and DFPR, Office of Professional and Occupational Regulation	No Change	Voted 11-9-23: Accepted with no change (4-0)
49	22 MRSA §3293	Title 22, section 3293, relating to confidential information provided to state employees and Bureau of Human Resources			
50	22 MRSA §3294	Title 22, section 3294, relating to confidential information provided to	DFPR, Office of Professional and Occupational Regulation	No change, but recommends	

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
		professional and occupational licensing boards		consideration of clarification	
51	22 MRSA§3295	Title 22, section 3295, relating to confidential information provided in unemployment compensation proceedings related to state employment	Department of Labor	No change	
52	22 MRSA §3474, sub-§1	Title 22, section 3474, subsection 1, relating to adult protective records	DHHS, Office of Aging and Disability Services	No change	Voted 11-9-23: Accepted with no change (4-0)
53	22 MRSA §3762, sub-§3	Title 22, section 3762, subsection 3, relating to TANF recipients	DHHS, Office of Family Independence	No change	Tabled 11-9-23
54	22 MRSA §4007, sub-§1-A	Title 22, section 4007, subsection 1-A, relating to a protected person's current or intended address or location in the context of child protection proceeding	DHHS, Office of Family Independence	No change, but is this an exception?	Voted 11-9-23: Accepted with no change (4-0)
55	22 MRSA §4008, sub-§1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
56	22 MRSA §4008, sub-§3-A	Title 22, section 4008, subsection 3-A, relating to records of child death and serious injury review panel	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
57	22 MRSA §4008, sub-§3-A	Title 22, section 4008, subsection 3-A, relating to records of child death and serious injury review panel	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
58	22 MRSA §4018, sub-§4	Title 22, section 4018, subsection 4, relating to information about a person delivering a child to a safe haven	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
59	22 MRSA §4019, sub-§9	Title 22, section 4019, subsection 9, relating to files, reports, records, communications and working papers used or developed by child advocacy centers	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
60	22 MRSA §4021, sub-§3	Title 22, section 4021, subsection 3, relating to information about interviewing a child without prior notification in a child protection case	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
61	22 MRSA §4036, sub-§1-A	Title 22, section 4036, subsection 1-A, relating to child protective case documents in a proceeding awarding parental rights and responsibility	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
62	22 MRSA §4087-A, sub-§6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
63	22 MRSA §4306	Title 22, section 4306, relating to general assistance	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
64	22 MRSA §5307, sub-§2	Title 22, section 5307, subsection 2, relating to fingerprint-based criminal background check for "high-risk" MaineCare providers	DHHS	No change	Voted 11-9-23: Accepted with no change (4-0)
65	22 MRSA §5328, sub-§1	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services			
66	22 MRSA §5409, sub-§1 and 2	Title 22, section 5409, subsections 1 and 2, relating to records held by the Maine Health Insurance Marketplace	DHHS, Office of the Health Insurance Marketplace	No change	Tabled 11-9-23—will review proposed amendment on 11/28
67	22 MRSA §7250, sub-§1	Title 22, section 7250, subsection 1, relating to the Controlled Substances Prescription Monitoring Program	DHHS, Office of Behavioral Health	No change	Voted 11-9-23: Accepted with no change (4-0)
68	22 MRSA §7703, sub-§2	Title 22, section 7703, subsection 2, relating to facilities for children and adults	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
69	22 MRSA §8110, sub-§5	Title 22, section 8110, subsection 5, relating to criminal history record information for employees of a children's residential care facility, an emergency children's shelter, a shelter for homeless children or any group home that provides care for children	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)

Public Records Exceptions For Review by RTKAC in 2023:
Exceptions in Titles 22 and 22-A

REF NO.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
70	22 MRSA §8302-C, sub-§1	Title 22, section 8302-C, subsection 1, relating to criminal history record information for child care providers and child care staff members	DHHS, Office of Family Independence	No change	Voted 11-9-23: Accepted with no change (4-0)
71	22 MRSA §8707	Title 22, section 8707, relating to records of the Maine Health Data Organization	Maine Health Data Organization	No change	
72	22 MRSA §8714, sub-§1	Title 22, section 8714, subsection 1, relating to protected health information in data collected by MHDO	Maine Health Data Organization	No change	
73	22 MRSA §8715-A, sub-§2	Title 22, section 8715-A, subsection 2, relating to cancer-incidence registry data and vital statistics data reported to MHDO	Maine Health Data Organization	No change	
74	22 MRSA §8733	Title 22, section 8733, relating to information provided to MHDO by a prescription drug manufacturer, wholesale drug distributor or pharmacy benefits manager	Maine Health Data Organization	No change	
75	22 MRSA §8754	Title 22, section 8754, relating to medical sentinel events and reporting	DHHS, Division of Licensing and Certification	No change	Voted 11-9-23: Accepted with no change (4-0)
76	22 MRSA §8824, sub-§ 2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
77	22 MRSA §8943	Title 22, section 8943, relating to the registry for birth defects	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no change (4-0)
78	22 MRSA §9061	Title 22, section 9061, relating to criminal background check record or other personally identifiable information for direct access worker	DHHS, Division of Licensing and Certification	No change	Voted 11-9-23: Accepted with no change (4-0)

*Statute Repealed since last review in 2015—no RTKAC action needed
^*Exception enacted by 131st Legislature*

Reference # 9

STATUTE: 22 MRSA §824

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Reporting of suspected or confirmed diseases or conditions designated as notifiable is mandated under Maine State Law [22 M.R.S.§ §820 and 822]. Though the primary responsibility of reporting lies with health care providers, the following entities are also required to report notifiable diseases in Maine: medical laboratories (including blood donor centers and blood banks), veterinarians, veterinary medical laboratories, health care facilities, childcare facilities, correctional facilities, educational institutions, and local health officers.

Maine CDC shares a number of reports with the public on the rates of various diseases or conditions, without revealing the identities of the cases who were reported to have those diseases or conditions, in order to prevent or control a communicable, occupational, or environmental disease or condition.

Once Maine CDC receives this reported data, it may not release any names or potentially identifying information to the public or the media, unless otherwise specified. This particular statute gives sole discretion to the Department to determine whether, or how

much data is necessary to be shared in order to protect the spread of contagious diseases or conditions while protecting the individual cases or suspected cases from being revealed. The Department will consider the type and amount of information, any direct identifiers and geographic factors when determining whether the information may potentially identify individuals and will restrict or suppress such identifying information prior to releasing any other health information. The Department releases aggregate public health data frequently for public health and for public health action.

The agency does receive regular requests related to notifiable conditions, but not that many for specific names. The kinds of requests do relate, however, to particular identifiers like race, which could potentially identify a case if that geographic area has a proportionately small number of individuals who fit that demographic identifier. Therefore, the Maine CDC must be cognizant of other factors besides just the name or address, when considering whether to release certain data to the public.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
Maine CDC supports continuing this record exception to prevent the release of individual health information outside of its intended public health purpose.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
There have been no problems, and the agency finds this language sufficiently clear.

4. Does your agency recommend changes to this exception?

No changes recommended.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Maine CDC

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Please see link below for information that is released to public regarding nationally notifiable conditions list in Maine.

- https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/disease-reporting/documents/notifiable-conditions-rule-2-17-2021.pdf

REF. #14

STATUTE: 22 MRSA §1317-C, sub-§3

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 0222

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Under this statute, Maine CDC's Child Lead Poisoning Prevention Unit does not release individual-level data or information that would identify a lead poisoned child, and we do not release individuals' blood lead level information without authorization from the child's parent or guardian. Requests for these records are very infrequent; perhaps once per year does the agency deny or modify a request for records, based on this statute. The agency has had to redact information covered by the statute in fulfilling requests for legal proceedings.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Maine CDC supports the continuation of the exception, in order to protect the privacy of children's medical health information, i.e., children's blood lead levels.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The statute prohibits the Department's Maine CDC from releasing information, if that information either directly or *indirectly* identifies children, families or other persons. What constitutes indirect identification and whether other mandates contained in other sections of 22 MRS Ch 252 (e.g., §§1320-A and 1321) that make information about properties publicly available may be considered indirect identification and are, therefore, inconsistent with §1317-C(3): this issue should be noted. The Maine CDC has received differing legal guidance from internal counsel and the Attorney General's Office on whether or not §1317-C(3) is in conflict with §§1320-A and 1321.

In addition, because §1317-C(3) includes authority to "disclose information that relates to the address of a residential unit in which an environmental lead hazard or case of lead poisoning has been identified if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual," the Maine CDC routinely fulfills requests for lead inspection reports and abatement orders issued for dwelling units where lead poisoned children reside, because these notifications and documents do not directly identify a lead poisoned child living in the dwelling.

4. Does your agency recommend changes to this exception?

We would welcome a discussion among all relevant stakeholders and would be happy to participate in the legislative process revise the current statute to either clarify or remove the prohibition against indirect identification, in order to resolve internal inconsistencies within the Lead Poisoning Control Act.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Pine Tree Legal Associates – Attorney Lynn Ward, lward@ptla.org
Maine Chapter of the American Academy of Pediatrics
Maine Medical Association

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

22 MRS Ch 252 §§1320 and 1320-A authorize the Department's Maine CDC to inspect a property for the presence of lead-based substances under three different scenarios, one of which is in response to the identification of a lead poisoned child living at the property. When the Department orders an inspection of a rental property, property owners typically want to know why the Department is inspecting the premises. In other words, the

property owner wants to know the specific authority for inspection. Maine CDC's practice is to inform the property owner that the inspection is being conducted as a result of one of various reasons under §§1320 and 1320-A. No staff disclose whether there is a lead-poisoned child living at the property, in order to comply with §1317-C.

There is also federal guidance about sharing similar information covered under this exception in Maine law that may be helpful to consider. Refer to: https://www.cdc.gov/nceh/lead/resources/policy-resources.htm.

REF. # 18

STATUTE: 22 MRSA §1596

AGENCY: Department of Health and Human Services

CONTACT PERSON: Tera Pare, Maine CDC

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The identity of any patient or health care professional reporting pursuant to 22 MRSA §1596 is confidential and the department ensures the confidentiality of the identity of patients or health care professionals reporting the information. Both abortions and miscarriage reports are considered restricted vital statistics data, reports and records as defined in its rule at 10-146 CMR Ch. 4.

The form used and prescribed by the State Registrar of Vital Statistics for reporting abortions occurring in the State of Maine excludes the name of the patient and any data shared related to abortions does not identify the name of the health care professional reporting the abortion.

Standard data tables are provided on the Data, Research, and Vital Statistics (DRVS) website. Statistics are also shared with the U.S. CDC who produce the Abortion Surveillance Report which is displayed by State/Area of Residence and State/Area of Clinical Service.

Requests for abortion data outside of the standard tables occur very seldom; only one FOAA request was requested in the past year and data items that could potentially identify an individual were suppressed when the request was fulfilled.

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

DRVS does not provide exemptions for the release of abortion or miscarriage data that identifies the identity of any patient or health care professional reporting the data and would oppose any exception that could jeopardize the privacy of those individuals and facilities, safeguards of confidentiality in laws and ethical guidelines.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have occurred with denying the release of this data. Current law and regulations clearly protect their confidentiality as an exception to a public record.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

N/A

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

DRVS is charged with safeguarding access to this information by developing regulation for such disclosures. Abortion can be a very politically charged and polarizing topic. Maine CDC finds it important to assure patients that they may expect their identity to be protected, and providers can report their cases without retaliation or fear for their safety.

REF. #24

STATUTE: 22 MRSA §1816, sub-§2

AGENCY: Department of Health and Human Services

CONTACT PERSON: Bill Montejo, Director of the Division of Licensing and Certification

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This was a change that was a result of the most recent legislative session and is only just now becoming effective. This allows for the sharing of survey documents from accreditation organizations with the State Agency and allows for continued confidentiality of those records consistent with federal CMS requirements.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

DLC supports continuation of this as we were the ones who submitted for this requirement to the legislature.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

There have been no problems, and this has only recently become effective.

4. Does your agency recommend changes to this exception?

No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Stakeholders already participated in in providing feedback as part of the last legislative session where this change was made.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

This is an exemption that was recently enacted during the last legislative session and has only recently taken effect.

REF. # 25

STATUTE: 22 MRSA §1828

AGENCY: Department of Health and Human Services

CONTACT PERSON: Bill Montejo, Division of Licensing and Certification

RETURN BY: September 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

DLC applies this records exception to all relicensure surveys and complaint surveys it conducts under its State Licensing authority. The records subject to this exemption include medical and treatment records, facility investigation and incident reports, and non-redacted facility risk and quality documents that contain identifiable information.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

DLC supports continuation of this exemption as it is necessary to maintain patient confidence that their individual medical record information will not be made readily available to the public. There is a process for the release of survey and investigation findings to be made public which document any regulatory violations and the evidence that supports those violations without the release of identifiable and confidential records.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

We have not encountered any problems and we feel that there is clarity in the current language.

4. Does your agency recommend changes to this exception?

No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

The Key stake holders would be the Maine Long Term Care Ombudsman Program, Brenda Gallant at bgallant@maineombudsman.org and the Maine Hospital Association with the contact being Jeff Austin at jaustin@themha.org .

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

There is an existing process for public release of survey findings and the evidence to support those findings which does protect confidential medical and patient information in the form of regulatory statements of deficiencies and the corresponding facility plans of correction.

REF. #42

STATUTE: 22 MRSA §3022, sub-§§8, 12, 13, 14

AGENCY: Office of the Attorney General

CONTACT PERSON: Jonathan Bolton and Danna Hayes

RETURN BY: October 30, 2022

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

   The Office of Chief Medical Examiner applies this public record exception to every report request received. The records subject to the exception include: the Investigative Summary, Report of Examination or Autopsy report, medical records, law enforcement records, inter-agency communication, and photographs. We apply this exception over a hundred times a month.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

   The Office of Chief Medical Examiner supports the continuation of this exception to protect the privacy of a decedent, and the integrity of law enforcement investigations.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential

under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

It is clear the records are intended to be confidential. The language is sufficiently clear in describing what records are covered.

4. Does your agency recommend changes to this exception?

No.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

N/A

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

N/A

REF. #53

STATUTE: **22 MRSA §3762, sub-§3**

AGENCY: Department of Health and Human Services, Office for Family Independence

CONTACT PERSON:

Julian Baer
Sr. Program Manager – TANF/ASPIRE
Office for Family Independence
Department of Health and Human Services
julian.baer@maine.gov
207-592-4620

RETURN BY: **September 30, 2022**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Response: The Office for Family Independence (OFI) reviews all files that are requested under FOAA or litigation to ensure compliance with this statute and associated regulations, as well as all other applicable federal and State statutes and regulations. Records requested include files associated with program participants, as well as other records associated with implementation and administration of programs under the jurisdiction of OFI. Records are often provided to the requestor with the necessary redactions, rather than a wholesale denial of the request.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Response: The exception cited above reads as follows: "The rules must include eligibility criteria, budgeting process, benefit calculation and confidentiality. The confidentiality rules must ensure that confidentiality is maintained for TANF recipients at least to the same extent that confidentiality was maintained for families in the Aid to Families with Dependent Children program unless otherwise required by federal law or regulation." As such, OFI supports the exception as it brings consistency for the TANF program with its preceding program, as well as with governing federal statutes and regulations.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Response: There are numerous State and federal statutes and regulations governing information related to numerous, separate programs, and a participant and members of the participant's household may be enrolled in multiple programs. As a result, significant lack of clarity regarding confidentiality exists.

4. Does your agency recommend changes to this exception?

Response: OFI does not recommend changes to the above-referenced exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Response: The Office of the Attorney General.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Response: None at this time.

REF. # 66

STATUTE: **22 MRSA §5409, sub-§§1 and 2**

AGENCY: Department of Health and Human Services, Office of the Health Insurance Marketplace

CONTACT PERSON: Megan Garratt-Reed, Director of the Office of the Health Insurance Marketplace.

RETURN BY: **September 30, 2022**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The Office of the Health Insurance Marketplace (OHIM) does not yet have practical experience applying this exception, as we have not yet received a FOAA request since beginning operations.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

OHIM supports the continuation of this exception, since it protects program applicants from public disclosure of their personal financial information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

No problems have arisen in the practical application of this exception.

4. Does your agency recommend changes to this exception?

OHIM would support a change to this exception to clarify that all personally identifiable information of applicants is protected from disclosure, not just financial and health information.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Consumers for Affordable Health Care (Director Ann Woloson: awoloson@mainecahc.org)
Participating Insurance Carriers (Maine Association of Health Plans: meahp@maine.rr.com)

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Right to Know Advisory Committee
Public Records Exceptions Review Subcommittee

PROPOSED DRAFT LEGISLATION TO AMEND EXCEPTIONS
REFLECTS DISCUSSION FROM PRIOR SUBCOMMITTEE MEETINGS

REF. # 42

Sec. ___. 22 MRSA §3022, sub-§8 is amended to read:

8. Certain information confidential. The following records ~~in the possession or custody of a medical examiner or the Office of Chief Medical Examiner are not public records within the meaning of Title 1, section 402, subsection 3 and~~ are confidential:

A. Medical records relating to a medical examiner case;

B. Law enforcement agency reports or records relating to a medical examiner case;

C. Communications with the Department of the Attorney General relating to a medical examiner case;

D. Communications with the office of a district attorney relating to a medical examiner case;

E. Death certificates and amendments made to the certificates, except for the information for which the medical examiner is responsible, as listed in section 2842, subsection 3, and not ordered withheld by the Attorney General relating to a medical examiner case or missing person;

F. Photographs and transparencies, histological slides, videotapes and other like items relating to a medical examiner case;

G. Written or otherwise recorded communications that express or are evidence of suicidal intent obtained under section 3028, subsections 4 and 5.

Summary

This language amends the public records exception to clarify that records relating to a medical examiner case are confidential and that the location or custodian of the record does not affect its confidentiality. The language also makes other technical and grammatical changes to conform with drafting standards recommended by the Right to Know Advisory Committee.

REF. # 66

Sec. ___. 22 MRSA §5409 is amended to read:

§5409. Records

Except as provided in this section or by other provision of law, information obtained by the marketplace under this chapter is a public record within the meaning of Title 1, chapter 13, subchapter 1.

Right to Know Advisory Committee
Public Records Exceptions Review Subcommittee

PROPOSED DRAFT LEGISLATION TO AMEND EXCEPTIONS
REFLECTS DISCUSSION FROM PRIOR SUBCOMMITTEE MEETINGS

1. Financial information. Any personally identifiable financial information, supporting data or tax return of any person obtained by the marketplace under this chapter is confidential ~~and not open to public inspection~~ pursuant to 26 United States Code, Section 6103 and Title 36, section 191.

2. Health information. Health information obtained by the marketplace under this chapter that is covered by the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or information covered by Title 22, section 1711-C is confidential ~~and not open to public inspection~~.

3. Personally identifiable information. Personally identifiable information not otherwise described in subsection 1 or 2 that is obtained by the marketplace under this chapter is confidential. As used in this subsection, "personally identifiable information" means information that permits the identity of an individual to whom the information applies to be able to be reasonably inferred or known by either direct or indirect means.

Summary

This language amends the public records exception to clarify that any personally identifiable information obtained by the marketplace confidential. The language also makes other technical and grammatical changes to conform with drafting standards recommended by the Right to Know Advisory Committee.

Reference #7

STATUTE: 22 MRSA §811, sub-§6

AGENCY: Department of Health and Human Services

CONTACT PERSON: Molly Bogart

RETURN BY: November 17, 2023

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 13 through 21-A before the end of 2021; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
These hearings occur if there are public health measures that need to be enforced by a court, in support of the Maine CDC's determination that a case is not complying with Maine CDC's recommendations, and that refusal is resulting in an extreme threat to public health. These particular hearings are quite rare, but the agency would need to rely on this exception to deny a request, should one be made.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
Maine CDC supports continuation of this exception, to protect the identity of an individual failing to comply public health control measures. If this information was released, the non-compliant individual may face stigma and backlash in a detrimental way.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

There are no problems with the language of this exception.

4. Does your agency recommend changes to this exception?
No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
Maine CDC staff.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
N/A

Reference #11

STATUTE: 22 MRSA §1064

AGENCY: Department of Health and Human Services

CONTACT PERSON: Molly Bogart

RETURN BY: November 17, 2023

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Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
The Immunization Program has applied this exception whenever FOAA requests have been received, regarding information in the IIS, governed by this statute. As a result, the Program denies the provision of any identifiable data to the public regarding immunization status or records from this tracking system.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
Maine CDC supports the continuation of this statutory exception, in order to protect private health information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
The language is clear that the intent is to only utilize data to manage/control outbreak of a disease preventable by immunization. Additionally, the adopted rule reiterates the intent, purpose and mechanisms of how immunization data will be utilized and/or released.

4. Does your agency recommend changes to this exception?
No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
Consumers of health care

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
The IIS rule is also clear and details the intended use of data when necessary. None of these uses would qualify under FOAA, for the release of identifiable data.

Reference #15

STATUTE: 22 MRSA §1413

AGENCY: Department of Health and Human Services

CONTACT PERSON: Molly Bogart

RETURN BY: November 17, 2023

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).
These data are not being collected yet, due to this registry still being established. Maine CDC is in the final stages of rulemaking prior to proposal, and, once adopted, will administer new rules and create a form to collect the data. However, because the law is so new, no requests for data has happened yet.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.
Although no data collection has started yet, Maine CDC Data, Research, and Vital Statistics (DRVS) support this exception, because such data includes an individual's medical information and personal identifiers that will be reported and should remain confidential.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?
N/A at this time

4. Does your agency recommend changes to this exception?
Not at this time

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.
None at this time

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.
None at this time

Reference # 23-A

STATUTE: 22 MRSA §1717, sub-§15 (as enacted by PL 2023, c. 309)

AGENCY: Department of Health and Human Services

CONTACT PERSON: Molly Bogart

RETURN BY: November 17, 2023

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 by the end of 2023; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

This provision is new, and has not been implemented yet as the program it is part of has not yet been implemented. The Department proposed the legislation (LD 636 in the 131st Legislature, enacted as PL 2023, Ch. 309).

This exception includes Department records that contain personally identifiable information or health information of clients, patients, or residents created or obtained in connection with licensing or quality assurance activities in the context of this section.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Supports. This exception ensures that information shared with the Department by clients and staff during interviews and surveys are not accessibly in identifiable ways to facility owners/administrators. This is important to protect staff and patients from repercussions that would make them less likely to be open and honest with the Department when it conduct interviews.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

This has not been implemented yet, and as such the Department cannot comment on issues identified in application of the exception.

4. Does your agency recommend changes to this exception?

No, the Department does not recommend any changes.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

N/A

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

As this new section is implemented, the Department will assess the necessity and efficacy of the exception that is part of this work.

STATUTE: **22 MRSA §2425-A, sub-§12**

AGENCY: Department of Administrative and Financial Services

CONTACT PERSON: Anya Trundy

RETURN BY: November 17, 2023

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

The public records exceptions in 22 MRS 2425-A(12) present profound administrative and logistical burdens for the Office of Cannabis Policy. These exceptions hamper the mandate and goals of the Office and have led to serious risks for public health and public safety. The provisions are outdated and no longer serve the interests for which they were initially designed. That initial design was intended to protect patients' rights and confidentiality. Currently, however, those exceptions harm medical cannabis patients, allow bad behaviors to go unchecked, and provide cover and protection solely for businesses.

The Office of Cannabis Policy often receives and must deny requests for records that fall under the confidentiality provisions of 22 MRS 2425-A(12). Those requests come to the Office in multiple ways, but statute nearly universally results in the same outcome: denial. Those requests come to the Office via the formal FOAA; media inquiries; requests for information from municipal governments; requests from attorneys representing registered caregivers in a variety of contexts; inquiries from legislators about policy questions based on specific constituent concerns; requests from other program registrants (registered caregivers/dispensaries) about the registration status of prospective employees; and general public inquiries from citizens, researchers, etc.

In addition to the external requests, the exceptions create significant internal concerns for the Office, its ability to meet its mission, and the goals of keeping the public safe and informed. More on those issues with public health and public safety can be found in responses to questions 2, 3, and 6.

It is important to provide additional detail about request denials. Below are a few examples of the context in which the Office denies specific categories of inquiries:

- OCP denies all FOAA requests for these records, as well as requests generated by municipalities, unless the municipality simply asks OCP to confirm/deny whether a particular registrant is currently registered with the medical program.
- When OCP is asked by legislators to discuss specific situations about their constituents or other concerned individuals, OCP must refuse to discuss those situations. In fact, statute bars OCP from even discussing whether an individual who claims to be a caregiver is in fact a caregiver. Nowhere in statute are there provisions for caregivers or caregiver assistants to waive that confidentiality in the presence of third parties. Those scenarios, at times, put OCP in an awkward situation in which legislators perceive the Office's lack for detail or engagement as stonewalling behavior, despite it being the Legislature's own actions and statutes that created the problem.
- OCP also denies requests generated by attorneys for records related to their client's application or registration information.
    - Unless the client has executed a release of information that is sufficient to overcome the confidentiality provisions of 22 MRS § 2425-A(12).
- The statute does not currently provide any exception under which OCP can verify whether a prospective employee (assistant) possesses a current and valid registry identification card, which puts registrants at a disadvantage because they cannot be sure that the individuals that they are hiring to work in their facilities are appropriately credentialed with OCP.
    - Similarly, OCP is unable to provide verification to one registrant that another registrant is in good standing and authorized to engage in wholesale transactions. Thus, program participants are unable to verify with certainty that they are engaged in transactions with valid registrants as opposed to illicit actors operating with expired, suspended, revoked or forged program credentials.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

The Office of Cannabis vehemently opposes the continuation of any exceptions to the Right To Know that manifests as confidentiality provisions that protect medical cannabis businesses at the expense of medical cannabis patients.

Protecting patient privacy is paramount in any medical-related setting. At the same time, protecting patient safety is also critical. The initial design of the exceptions/confidentiality provisions made sense in the early years of the state's medical cannabis program. However, those provisions are now seriously and essentially wholly outdated. Initially, the Maine's medical cannabis program was small and limited. Individual caregivers could cultivate cannabis for five—and only five—patients. In that setting, caregiver confidentiality would be reasonably connected to patient confidentiality.

Additionally, as Maine was one of the earliest states to approve medical cannabis at the ballot, there were legitimate fears that federal officials would crackdown on state-based, explicit violations of federal law. If federal officials were to do so in Maine in the program's earliest days, violations of caregiver confidentiality would threaten patient privacy and protection. During that time, confidentiality was important for Maine's program to function.

Now, however, several aspects of the state and federal cannabis policy landscapes have changed, and those initial confidentiality provisions are more than just outdated. They are administratively crippling and are dangerous threats to public health and public safety. First, the vast majority of Maine's medical caregivers operate commercial-level medical cannabis businesses. Recent research OCP commissioned shows that the average Maine caregiver serves over 250 patients each. With few exceptions, gone are the days where caregivers serve small groups of patients, whose own privacy is intimately linked to caregiver privacy.

Second, because most caregivers are operating commercial enterprises, they behave in ways quite different than caregivers who operated in the early days of the program's history. Most operate storefronts or "offices" that are typically open to the medical patient public at large. Some subset of caregivers do not see patients at all; instead, they cultivate and wholesale cannabis and produce cannabis products that are sold to other caregivers and dispensaries. The vast majority of caregivers advertise store fronts, online, via their own websites, and in media. In that context, caregivers today are very publicly and comfortably letting anyone know that they are a caregivers and participants in the state's medical cannabis program while the State is prohibited from making public that same information, even to protect public safety.

Third, the historic concerns about federal government intervention in Maine's medical cannabis program are no longer valid. The United States Congress, since 2014, has enacted provisions in annual federal spending legislation that prohibits the U.S. Department of Justice from using any federal funds to enforce the Controlled Substances Act in states that have approved medical cannabis programs. Even in the face of continued *de jure* federal cannabis prohibition, that congressional move has ushered in a permissive policy environment for medical cannabis. In fact, adult use cannabis businesses in Maine do not enjoy and never have enjoyed similar confidentiality

protections, even though Congress has opted not to extend that non-enforcement provision to adult-use cannabis reform states' programs.

Ultimately, these outdated exceptions keep the public in the dark. It is impossible for OCP to confirm the registration status of caregiver businesses to the public, most elected officials, other state agencies, or other program registrants. The limitations, however, go far beyond simply confirming whether a business is part of the regulated program. OCP cannot notify the public, patients, medical practitioners, or public health officials when a caregiver has engaged in wrongdoing, even in the case of behaviors that put patient and public health at risk.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

The exceptions identified in statute are clear in describing the records that are covered. The Office of Cannabis Policy believes it is important to reiterate that they are wrong and part of a system of bad public policy. As noted in the response to Question 2, it is OCP's contention that those records described should no longer be confidential because their original purpose is no longer served.

These exceptions are problematic for local/municipal regulations and enforcement. For example, OCP cannot provide a list of registered caregivers to a municipality. OCP may only verify if a registration is valid and if the conduct the caregiver is engaged in is authorized. That verification can also only be provided to municipal official who are authorized under statute to receive that information, such as a code enforcement officer.

Additionally, the application of this exception conflicts significantly with OCP's mission and charge. For example, part of OCP's mission is to protect public health and safety. However, even in the face of OCP receiving irrefutable evidence that a caregiver is engaging in behavior that threatens public health, the Office is restricted from issuing public notices or notifying public health authorities.

One recent specific example provides clarity on these challenges and risks. This example also illustrates how the statutory confidentiality provisions put public health and safety at risk. One of the biggest weaknesses in Maine's medical cannabis program is a lack of mandatory contamination testing for cannabis and cannabis products.[1] OCP, over the past several years, has received numerous complaints about contamination in the medical cannabis supply chain.

[1] For greater detail on the myriad problems generated by a lack of mandatory medical cannabis testing, see OCP's recent report "Contaminants in Maine's Medical Cannabis Program" available at: https://www.maine.gov/dafs/ocp/resources/reports.

To evaluate those complaints, OCP sampled and tested cannabis and vape cartridges from 120 medical cannabis operators across the state in August 2023. This inquiry showed that 42% of the cannabis and cannabis products sampled failed for contaminants including yeast and mold, microbials, heavy metals, and pesticides. Maine has 106,000 medical cannabis patients who all face health conditions to varying degrees. Some significant number of patients have weakened immune systems. And those numbers include nearly 300 patients under the age of 18.

OCP received, from state regulated cannabis testing facilities, certificates of analysis (COAs) from this product testing effort. Those COAs showed the levels of contamination (or showed a lack of contamination) for each product the Office sampled and for each analyte tested. The Office was able to communicate each COA only to the specific business from which that sample was taken. However, the Office could not alert the general public, issue a notice to inform patients about their potential exposure and risk, or even contact state and local public health authorities about contamination in the supply chain for a medicine. Surely it is not the intent of the original legislative exceptions to put the public at risk in such ways. Nor, OCP would argue, is it the public will to be restricted from carrying out its own mission of protecting public health and public safety.

This situation is clear. Confidentiality provisions protect businesses, while creating risk of harm for patients who are not protected. Imagine if a CVS or a Walgreens were distributing tainted pharmaceuticals, and state and federal regulators identified both the contamination and the range of time in which those products were distributed. Now, further imagine that regulators were barred from notifying the public what was contaminated, which businesses sold those contaminated pharmaceuticals, and during what time period they were sold. The public would be outraged, as would any reasonable government official, and that outrage would be magnified if the justification for that failure to disclose was a statute that said that the pharmacy was afforded confidentiality simply because it serves patients. This is a parallel scenario that OCP faces because of the exceptions in statute.

OCP is further restricted from notifying other state agencies (with the exception of law enforcement) who are outside of the Department of Administrative and Financial Services. If OCP identifies contamination in a food-based cannabis edible, the Office is statutorily restricted from notifying CDC. If synthetic cannabinoids are being inverted into the medical supply chain, OCP cannot reach out to the Department of Agriculture, Conservation and Forestry's hemp regulators. If a field investigator conducting a routine inspection that identifies potential labor violations including workplace safety, the Office is restricted from making referrals to those relevant administrative agencies.

While the exceptions in 22 MRS 2425-A(12) are clear, they create numerous problems and tremendous risk for the sensible administration of government in the state of Maine.

4. Does your agency recommend changes to this exception?

Yes and without question. No exceptions to confidentiality should exist except ones that protect patients' expectations of privacy.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Between summer 2022 and autumn 2023, OCP conducted statewide listening tours that solicited feedback from 1) the general public and 2) municipal officials specifically, regarding any number of questions and issues with the program the Office administers. During that time, OCP received ample feedback from municipalities, public health authorities, patients, and concerned citizens that the exceptions in 22 MRS 2425-A(12) are harmful and undesirable. Municipal officials, in particular, noted how difficult it makes their day-to-day operations and ability to enforce local cannabis codes. Members of the public and patients were outraged that OCP was unable to disclose which caregiver businesses were caught selling contaminated products. Concerns over these exceptions are widespread.

OCP recommends soliciting feedback from municipal officials, state agencies outside of DAFS, media, ancillary cannabis program participants, public health authorities, cannabis testing facilities, and patients. Any consultation with medical cannabis trade groups or advocacy organizations must be taken in the context of potential bias and self-interest. In years' past when OCP has sought to make improvements to the medical cannabis program statute in ways that would bring administrative efficiencies and protections for public health and safety, several trade groups and advocacy organizations stood in the way, often with incorrect assessments of policy and explicit misinformation.

Finally, in engaging the public on these concerns, it is critical to be aware of another problem that exists in the medical cannabis policy environment. OCP, over the years, has received numerous complaints and concerns from interested parties including advocates, business owners, and patients, who have been harassed, subject to online bullying campaigns, and made to feel physically or verbally threatened. Those individuals have reported such an unsafe environment emerged when they spoke counter to some of the state's most vocal medical cannabis trade groups and advocacy organization. OCP implores the Right to Know Advisory Committee to create a safe environment in which people can freely express their perspectives without fears of threats and harassment.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

The Veterans and Legal Affairs committee, the committee of jurisdiction for cannabis-related matters, has formed a subcommittee to review, during the legislative interim period, the structure, conflicts, and deficiencies within the medical cannabis statute. While the subcommittee initially set out to make the statute "clearer" through recodification of the law, it recently determined that both a substantive revision and comprehensive recodification, colloquially referred to as a "recodivision", is likely more appropriate given the challenges presented by the labyrinthian *Maine Medical Use of*

Cannabis Act. While that is an important and timely effort on behalf of that committee, OCP would strongly recommend that the confidentiality provisions discussed herein be urgently addressed by the committee, for the public health and safety reasons described above.

STATUTE: **22 MRSA §3294**

AGENCY: Department of Health and Human Services; Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation

CONTACT PERSON: Molly Bogart and Kristin Racine

RETURN BY: **September 30, 2022**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

Response: The Office of Professional and Occupational Regulation ("OPOR") is an umbrella state agency which administers 37 state licensing programs, each of which is a separate state entity. Twenty-nine of these licensing programs have associated boards to which the Legislature has granted independent regulatory authority. OPOR staff provides various support to the state licensing programs, including responding to Freedom of Access Act ("FOAA") requests and otherwise providing support, through the central Complaint Office, to process and facilitate review of complaints against licensees.

The cited statute, 22 M.R.S. § 3294 permits release of certain information that would otherwise be confidential to be disclosed to a licensing board if the information indicates that person may have engaged in conduct which may be in violation of the board laws or rules. Given the nature of the information (information deemed confidential by Title 22, chapter 958-A [Adult Protective Services Act], 1071 [Child and Family Services and Child Protection Act], 22 M.R.S. §§ 7703 [Facilities for Children and Adults], or 1828 [Administration of Medicaid Program and licensing or certification of hospitals, nursing homes, and other medical facilities and entities]), this provision would likely apply to information shared with a board that licenses a health care professional in an

investigation and complaint against that professional who is alleged to have violated the laws or rules relating to the board. For a complete list of the professions and occupations licensed by a state licensing program within OPOR, please visit: https://www.maine.gov/pfr/professionallicensing/professions.

In the past five (5) years, OPOR staff would estimate that there have only been a few instances when confidential information was permissibly shared with a board pursuant to this section. Without tracking any data on the application of this section, it has been cited in connection with investigations and complaints of licensees of the Board of Social Worker Licensure. In at least one (1) instance, this section was cited in denying production of confidential information provided by DHHS. The denial was issued to counsel for the licensee under investigation, in response to a request for a copy of the complaint file which included investigative records provided by the DHHS OCFS' Out of Home Investigations Unit. Pursuant to Title 22, Section 7703, notwithstanding the exception at issue in this questionnaire, the records were deemed confidential information such that any disclosure was subject to the limitations set forth in 5 M.R.S. § 9057(6)(B).

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Response: OPOR supports the continued use of the exception to ensure the information that may be disclosed pursuant to this exception remains confidential, except for limited purposes which are outlined in the statute. The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare, and it carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. 10 M.R.S. § 8008. Permitting the limited disclosure of this otherwise confidential information to a board to evaluate whether that individual has engaged in activities in violation of the laws or rules relating to the board ensures the board has all relevant information in an investigation while carrying out this purpose.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Response: OPOR has identified a point of needed clarification regarding the application of this exception. It is evident that information deemed confidential pursuant to this chapter and others remains confidential at all times as to the *public* that may submit a FOAA request. However, the exception also permits disclosure by the licensing board subject to the limitations set forth in 5 M.R.S. § 9057(6)(B). This section permits further disclosure by a licensing board if:

1. The hearing officer determines that introduction of the confidential information is necessary for the determination of an issue before the hearing officer;
2. During the introduction of confidential information, the proceeding is open only to the hearing officer, employees of the agency, parties, parties' representatives, counsel of record and the witness testifying regarding the information;
3. Witnesses are sequestered during the introduction of confidential information, except when offering testimony at the proceeding;
4. Names of reporters of confidential information or of other persons may not be disclosed except when disclosure is determined necessary and relevant by the hearing officer; and
5. After hearing, the confidential information is sealed within the record and may not be further disclosed, except upon order of court.

In consideration that the respondent licensee, and, if represented, their counsel, would be likely to request information in advance of an adjudicatory hearing proceeding, OPOR notes it would be helpful to clarify when a board may disclose the confidential information to the licensee in advance of a hearing. Title 22, Section 3294, subsection 1 provides for notice of the release of confidential information by the board to the licensee in accordance with the law and rules relating to the licensing board; or, if the law or rules relating to a licensing board does not provide for such notice to licensees, it shall provide notice "*upon determination of the board to take further action following its investigation*." 22 M.R.S. § 3294(1) (emphasis added)

Pursuant to Title 10, Section 8003-B(1), all complaints and investigative records of a licensing board are confidential during the pendency of an investigation. An exception, contained in 10 M.R.S. 8003-B(2)(G), is that *during the pendency of an investigation*, a complaint or investigative record may be disclosed to the person investigated on request. If there could be some clarification as to the timing of permissive release of the confidential information to the respondent licensee who is being investigated, in light of 22 M.R.S. § 3294(1), 10 M.R.S. § 8003-B(1), and 5 M.R.S. § 9057(6)(B), this would be very helpful.

4. Does your agency recommend changes to this exception?

Response: No specific changes; however, OPOR recommends that the Advisory Committee review the exception and its application in light of 22 M.R.S. § 3294(1), 10 M.R.S. § 8003-B(1), and 5 M.R.S. § 9057(6)(B), and consider clarifying at what point a licensee respondent in an investigation/board complaint may be provided with confidential information that is provided to the board under this exception.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Response: Additional stakeholders would include the various regulatory programs' legal counsel, which is provided by various Assistant Attorneys General within the Office of the Attorney General, as well as DHHS staff.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Response: None at this time.

STATUTE: 22 MRSA §3295

AGENCY: Department of Labor

CONTACT PERSON: FOAA contact, FOAA.DOL@maine.gov

RETURN BY: November 17, 2023

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

4. Does your agency recommend changes to this exception?

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

McCarthyReid, Colleen

From: Smith, Kimberly A (DOL) <Kimberly.A.Smith@maine.gov>
Sent: Friday, November 17, 2023 12:51 PM
To: McCarthyReid, Colleen
Cc: Murray, Dillon F; Davison, Anne; DOL, FOAA
Subject: FW: Right to Know Advisory Committee Review of Public Records Exception in Title 22
Attachments: Ref 51 DOL.docx

Good afternoon, Colleen,

I've reviewed the questionnaire with our unemployment team, and have the following information in response to your request.

1. We are not aware of any instance in recent history in which this statute has been used.
2. We support the continuation of the language. While it has not been used in recent history, it is important that information remain available for adjudication of unemployment claims. The statute is consistent with other state and federal laws regarding confidentiality.
3. The language is clear and we anticipate no problems should it be invoked.
4. No changes are necessary.
5. Other than DOL and DHHS, no other stakeholders.
6. We have no other information to provide.

Regards,
Kim

MAINE DEPARTMENT OF LABOR
Kimberly Smith, Deputy Commissioner
Maine Department of Labor, 54 State House Station, Augusta, Maine, 04333-0054
Office: (207) 621-5096; TTY users call Maine Relay 711

From: McCarthyReid, Colleen <Colleen.McCarthyReid@legislature.maine.gov>
Sent: Wednesday, October 25, 2023 11:07 AM
To: DOL, FOAA <FOAA.DOL@maine.gov>; Murray, Dillon F <Dillon.F.Murray@maine.gov>
Cc: Davison, Anne <anne.davison@legislature.maine.gov>
Subject: Right to Know Advisory Committee Review of Public Records Exception in Title 22

You are receiving this email because you are identified as the Freedom of Access Act Contact for the Department of Labor. I hope you can assist with this request from the Right to Know Advisory Committee related to the provision allowing the release of confidential information by DHHS to the Department of Labor in Title 22, section 3295.

One of the duties of the Right to Know Advisory Committee is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions according to a schedule laid out in Title 1, section 433. Last year the Advisory Committee began its review of existing exceptions in Title 22, but the review was not fully completed. Before the end of 2023, the Advisory Committee will be finishing its review of exceptions in Title 22.

The attached questionnaire includes a citation to Title 22, section 3295 and six questions about DOL's experience with the identified provision. Please return the completed questionnaire by email to colleen.mccarthyreid@legislature.maine.gov or in hard copy to the Office of Policy and Legal Analysis at the address below **by November 17, 2023**. If you are not the

STATUTE: **22 MRSA §8707**

AGENCY: Maine Health Data Organization

CONTACT PERSON: Karynlee Harrington, Debra Dodge

RETURN BY: **November 17, 2023**

The Right to Know Advisory Committee is established in Title 1, chapter 13 to serve as a resource for ensuring compliance with the Freedom of Access Act and upholding the integrity of the purposes underlying the Freedom of Access Act. Among its duties is to undertake review of existing provisions of law that allow records that would otherwise be public to be kept confidential. The Advisory Committee is required by law to complete a review of existing public records exceptions in Titles 22 through 24-A; the exception cited above is within the scope of that review. We would appreciate your input during this process.

Thank you.

QUESTIONS

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

MHDO Response: **MHDO's enabling statute at §8707 requires MHDO to adopt rules to provide for public access to the health care data is collects so long as it does not identity an individual; establish criteria for what is confidential information; and allow exceptions to confidentiality only for public health studies. These rules are at 90-590 CMR Chapter 120, *Release of Data to the Public.* In addition, 22 MRS §1711-C, the statute regarding confidentiality of health care information which applies to health care practitioners in Maine, requires that MHDO "adopt rules to define health care information that directly identifies an individual…" 22 MRS §1711-C(E). These rules are at 90-590 CMR Chapter 125, *Health Care Information that Directly Identifies an Individual.* To date, MHDO has not experienced any issues with administering the provisions in Rule Chapter 120 including those that protect individual privacy and proprietary information. Both rules can be found here: https://mhdo.maine.gov/rules.htm**

2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

MHDO Response: MHDO supports the laws and rules that protect the identity of an individual. In addition, we support the laws and rules that protect what is considered confidential and proprietary information. These protections allow MHDO to release its health care data sets to the broadest extent possible to produce meaningful analysis in pursuit of improved health, health equity, and health care quality for Maine people. Acceptable uses of MHDO Data include, but are not limited to, study of health care disparities, health care costs, utilization, and outcomes; benchmarking; quality analysis; longitudinal research; other research; and administrative or planning purposes.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

MHDO Response: No problems and or concerns with the laws and rules as described above that protect individual privacy and proprietary information. Yes, to both specific questions above.

4. Does your agency recommend changes to this exception?

MHDO Response: No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

STATUTE: **22 MRSA §8714, sub-§1**

AGENCY: Maine Health Data Organization

CONTACT PERSON: Karynlee Harrington, Debra Dodge

RETURN BY: **November 17, 2023**

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Thank you.

QUESTIONS

Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

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MHDO Response: No problems and or concerns with the laws and rules as described above that protect individual privacy and proprietary information. Yes, to both specific questions above.

4. Does your agency recommend changes to this exception?

MHDO Response: No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

STATUTE: **22 MRSA §8715-A, sub-§2**

AGENCY: Maine Health Data Organization

CONTACT PERSON: Karynlee Harrington, Debra Dodge

RETURN BY: **November 17, 2023**

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MHDO Response: No problems and or concerns with the laws and rules as described above that protect individual privacy and proprietary information. Yes, to both specific questions above.

4. Does your agency recommend changes to this exception?

MHDO Response: No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

STATUTE: **22 MRSA §8733**

AGENCY: Maine Health Data Organization

CONTACT PERSON: Karynlee Harrington, Debra Dodge

RETURN BY: **November 17, 2023**

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Thank you.

QUESTIONS

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2. Please state whether your agency supports or opposes continuation of this exception and explain the reasons for that position.

MHDO Response: MHDO supports the laws and rules that protect the identity of an individual. In addition, we support the laws and rules that protect what is considered confidential and proprietary information. These protections allow MHDO to release its health

care data sets to the broadest extent possible to produce meaningful analysis in pursuit of improved health, health equity, and health care quality for Maine people. Acceptable uses of MHDO Data include, but are not limited to, study of health care disparities, health care costs, utilization, and outcomes; benchmarking; quality analysis; longitudinal research; other research; and administrative or planning purposes.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

MHDO Response: No problems and or concerns with the laws and rules as described above that protect individual privacy and proprietary information. Yes, to both specific questions above.

4. Does your agency recommend changes to this exception?

MHDO Response: No

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS
www.mainelegislature.gov/opla
13 State House Station, Augusta, Maine 04333-0013
(207) 287-1670

MEMORANDUM

TO: Public Records Exceptions Subcommittee, Right to Know Advisory Committee
FROM: Colleen McCarthy Reid and Anne Davison
DATE: November 28, 2023
RE: Exceptions without Agency Responses to Questionnaires

For your review, there are 4 public records exceptions in Title 22 for which staff has not received responses yet. If we receive information, we will forward it as soon as possible. The 4 exceptions, including links to the statute, are outlined below.

REF NO.	STATUTORY CITATION	**DESCRIPTION**	DEPARTMENT/AGENCY	PROPOSED ACTION
19	22 MRSA §1597-A, sub-§6	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor	DHHS	
45	22 MRSA §3174-X, sub-§6	Title 22, section 3174-X, relating to records of the Medicaid ombudsman program	DHHS	
49	22 MRSA §3293	Title 22, section 3293, relating to confidential information provided to state employees and Bureau of Human Resources	DAFS, Bureau of Human Resources	*DAFS Legislative Liaison anticipates BHR recommendation of no change to exception*
65	22 MRSA §5328, sub-§1	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services	DHHS	