

RIGHT TO KNOW ADVISORY COMMITTEE
Public Records Exception Subcommittee

Monday, December 4, 2023
12:00 p.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. Continue discussion and review of existing public records exceptions
 - Ref. No. 36
 - Ref. No. 50
3. Review subcommittee recommendations to full Advisory Committee
4. 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	Voted 11-28-2023 Accepted with no change (4-0)
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	Voted 11-28-2023 Accepted with no change (4-0)
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)
11	22 MRSA §1064	Title 22, section 1064, relating to immunization information system	DHHS, Maine CDC	No change	Voted 11-28-2023 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
*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	Voted 11-28-2023 Accepted with no change (4-0)
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	Voted 11-28-2023 Accepted with no change (4-0)
*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	Voted 11-28-2023 Accepted with no change (4-0)
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	No response received	Voted 11-28-2023 Accepted with no change (4-0)
*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

**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
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)	<i>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</i>	DHHS	Program has not been implemented yet, no change	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
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	Voted 11-28-2023 Accepted with no change (4-0)
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	Voted 11-28-2023 Accepted with no change (4-0)
*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 regarding compliance with Maine Death with Dignity Act	DHHS, Maine CDC	No change	Voted 11-9-23: Accepted with no 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)

**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
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 (MMUMA)	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 MMUMA	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 MMUMA	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 MMUMA	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 identification card, registered patients, registered primary caregivers and registered patients' physicians under the MMUMA	Repealed	Repealed	No Action Needed
*35	22 MRSA §2425, sub-§8	Title 22, section 2425, subsection 8, paragraph J, relating hearing on revocation of a registry identification card under MMUMA unless card is revoked	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
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 MMUMA	DAFS, Office of Cannabis Policy	Amend by repealing exception	Tabled to 12-4-23; will review proposed draft amendment
*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)
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	Voted 11-28-2023 AMEND (3-1; LC opposed)
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	DHHS	No response received	Voted 11-28-2023 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
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	DAFS	No response received	Voted 11-28-2023 Accepted with no change (4-0)
50	22 MRSA §3294	Title 22, section 3294, relating to confidential information provided to professional and occupational licensing boards	DFPR, Office of Professional and Occupational Regulation	No change, but recommends consideration of clarification	Tabled to 12-4-23; will review proposed draft amendment
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	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
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	Voted 11-28-2023 Accepted with no change (4-0)
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)

**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
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)
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)

**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
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	No response received	Voted 11-28-2023 Accepted with no change (4-0)
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	Voted 11-28-2023 AMEND (4-0)
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)
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	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
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	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
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	Voted 11-28-23: Accepted with no change (3-0; JB abstained)

**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
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	Voted 11-28-23: Accepted with no change (3-0; JB abstained)
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

**Right to Know Advisory Committee
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PROPOSED DRAFT LEGISLATION TO AMEND REF. #50

REF. # 50

Sec. ____ . 22 MRSA §3294 is amended to read:

§3294. Confidential information provided to professional and occupational licensing boards

If confidential information regarding a person subject to or seeking licensure, certification or registration by a licensing board indicates that the person may have engaged in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the licensing board, the director may release this information to the appropriate licensing board. Confidential information ~~shall~~ must be disclosed and used in accordance with section 3292 and may also be disclosed to members, employees and agents of a licensing board who are directly related to the matter at issue.

1. Notice to the licensee or applicant. Notice of the release of confidential information ~~shall~~ must be provided by the board to the licensee or applicant in accordance with the law and rules relating to the licensing board. If the law or rules relating to a licensing board do not provide for notice to licensees or applicants subject to or seeking licensure, certification or registration, the licensing board shall provide notice to the licensee or applicant upon determination of the board to take further action following its investigation.

2. Licensing board requests for confidential information. Any licensing board pursuing action within the scope of the board's authority or conducting an investigation of any person subject to or seeking licensure, certification or registration by the board for engaging in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the board may request confidential information from the bureau. Any information provided to the board for an investigation ~~shall be~~ is governed by section 3292 and this section.

3. Use of confidential information in investigations and proceedings. The use of confidential information in proceedings, informal conferences and adjudicatory hearings ~~shall be~~ is governed by Title 5, section 9057, subsection 6. The use of confidential information in investigations is governed by Title 10, section 8003-B, subsection 2, paragraph G as long as any confidential information disclosed under that subsection is not further disclosed by any person for purposes other than an investigation by a licensing board.

Summary

This language amends the public records exception to clarify that a licensing board that receives confidential information from the department may release that information during the pendency of an investigation as long as that confidential information is not further disclosed for any other purpose. The language also makes other technical and grammatical changes to conform with drafting standards recommended by the Right to Know Advisory Committee.

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CURRENT LAW: Cross-reference to Title 5, section 9057, subsection 6

§9057. Evidence

1. Rules of privilege. Unless otherwise provided by statute, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law.

2. Evidence. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude irrelevant or unduly repetitious evidence.

3. Witnesses. All witnesses shall be sworn.

4. Prefiling testimony. Subject to these requirements, an agency may, for the purposes of expediting adjudicatory proceedings, require procedures for the prefiling of all or part of the testimony of any witness in written form. Every such witness shall be subject to oral cross-examination.

5. Written evidence; exception. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

6. Confidential information. Information may be disclosed that is confidential pursuant to Title 22, chapters 958-A and 1071 and sections 7703 and 1828; Title 24, section 2506; and Title 34-A, except for information, the disclosure of which is absolutely prohibited under Title 34-A, section 1216. Disclosure may be only for the determination of issues involving unemployment compensation proceedings relating to a state employee, state agency personnel actions and professional or occupational board licensure, certification or registration.

A. For the purpose of this subsection, "hearing officer" means presiding officer, judge, board chair, arbitrator or any other person considered responsible for conducting a proceeding or hearing subject to this subsection. In the case of the Civil Service Appeals Board, the presiding officer is the entire board. "Employees of the agency" means employees of a state agency or department or members, agents or employees of a board who are directly related to and whose official duties involve the matter at issue.

B. The confidential information disclosed pursuant to this subsection is subject to the following limitations:

- (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, and access to the information is limited to these people. Disclosure is limited to information directly related to the matter at issue;

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- (3) Witnesses are sequestered during the introduction of confidential information, except when offering testimony at the proceeding;
- (4) The names or identities 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.

SECTION HISTORY

PL 1977, c. 551, §3 (NEW). PL 1987, c. 714, §1 (AMD). PL 1989, c. 175, §1 (AMD). PL 1997, c. 271, §1 (AMD). PL 2003, c. 205, §1 (AMD).

CURRENT LAW: Cross-reference to Title 10, section 8003-B, subsection 2

§8003-B. Confidentiality of investigative records

1. During investigation. Unless otherwise provided by Title 24, chapter 21, all complaints and investigative records of the licensing boards, commissions and regulatory functions within or affiliated with the Department of Professional and Financial Regulation are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

- A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter 4 has been issued;
- B.
- C. A consent agreement has been executed; or
- D. A letter of dismissal has been issued or the investigation has otherwise been closed.

2. Exceptions. Notwithstanding subsection 1, during the pendency of an investigation, a complaint or investigative record may be disclosed:

- A. To department employees designated by the commissioner;
- B. To designated complaint officers of the appropriate board or commission;
- C. By a department employee or complaint officer designated by the commissioner when, and to the extent, deemed necessary to facilitate the investigation;
- D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;

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E. When, and to the extent, deemed necessary by the commissioner to avoid imminent and serious harm. The authority of the commissioner to make such a disclosure shall not be delegated;

F. Pursuant to rules which shall be promulgated by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; and

G. To the person investigated on request. The commissioner may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure would prejudice the investigation. The authority of the commissioner to make such a determination shall not be delegated.

2-A. Certain client records confidential. Notwithstanding subsections 1 and 2, a treatment record provided to a licensing board or commission or in connection with a regulatory function within or affiliated with the department during investigation of a person licensed by the department in a medical, mental health, substance use disorder, psychological or health field that contains information personally identifying a licensee's client or patient is confidential during the pendency of the investigation and remains confidential upon the conclusion of the investigation. A treatment record may be disclosed only if:

A. The client or patient executes a written release that states that:

(1) Unless the release provides for more limited disclosure, execution of the release may result in the record becoming a public record; or

(2) If the client or patient wishes, execution of the release allows disclosure to only the person or persons clearly identified in the release. The release must require the person or persons identified in the release not to make a disclosure to another person;

B. The disclosure is necessary under Title 22, chapter 857 concerning personnel and licensure actions;

C. The disclosure is necessary under Title 22, section 3474 concerning reports of suspected adult abuse or exploitation;

D. The disclosure is necessary under Title 22, section 4011-A concerning reports of suspected child abuse or neglect; or

E. The disclosure is necessary under Title 22, section 7703 concerning reports of suspected child or adult abuse or neglect.

A release executed by a client or patient does not operate to disclose a record otherwise made confidential by law.

**Right to Know Advisory Committee
Public Records Exceptions Review Subcommittee**

PROPOSED DRAFT LEGISLATION TO AMEND REF. #50

This subsection does not prevent disclosure of records pursuant to an order of a court of competent jurisdiction upon good cause shown.

3. Attorney General records. The provision or disclosure of investigative records of the Department of the Attorney General to a departmental employee designated by the commissioner or to a complaint officer of a board or commission does not constitute a waiver of the confidentiality of those records for any other purposes. Further disclosure of those investigative records is subject to Title 16, section 804 and the discretion of the Attorney General.

4. Violation. A person who knowingly or intentionally makes a disclosure in violation of this section or who knowingly violates a condition of a release pursuant to subsection 2-A commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

SECTION HISTORY

PL 1989, c. 173 (NEW). PL 1993, c. 552, §§1,2 (AMD). PL 1993, c. 719, §4 (AMD). PL 1993, c. 719, §12 (AFF). PL 1999, c. 386, §B6 (AMD). PL 1999, c. 687, §§C10,11 (AMD). PL 2001, c. 345, §1 (AMD). PL 2009, c. 465, §§1, 2 (AMD). PL 2013, c. 267, Pt. B, §4 (AMD). PL 2017, c. 407, Pt. A, §50 (AMD).

DRAFT