

RIGHT TO KNOW ADVISORY COMMITTEE
Public Records Exception Subcommittee

Thursday, November 9, 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 Ref. Nos. 23; 25; 27 to 29; and 39 to 44, *except for Ref. No. 42 which was tabled on 10/23*
 - Review remaining Ref. Nos. for which questionnaires have been completed: Ref. Nos. 46 to 48; 50; 52 to 64; 66 to 70; and 75 to 78
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. Planning for next meeting
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			
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			
*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			
16	22 MRSA §1494	Title 22, section 1494, relating to occupational disease reporting			
*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	DHHS, Maine CDC	No change	Voted 10-23-23: 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	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
		present at a specific location if the substance is a trade secret			
*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	
^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>			
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	
*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	

**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
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	
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	
*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 identification card, registered patients, registered primary caregivers and	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
		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			
*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	
40	22 MRSA §2706-A, sub-§6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS, Maine CDC	No change	
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	
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

**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
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	
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	
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	
47	22 MRSA §3192, sub-§13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	No change	
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	
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 professional and occupational licensing boards	DFPR, Office of Professional and Occupational Regulation	No change, but recommends consideration of clarification	
51	22 MRSA §3295	Title 22, section 3295, relating to confidential information provided in			

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Exceptions in Titles 22 and 22-A**

REF No.	STATUTORY CITATION	DESCRIPTION	RESPONDING DEPARTMENT/AGENCY	PROPOSED ACTION	SUBCOMMITTEE ACTION
		unemployment compensation proceedings related to state employment			
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	
53	22 MRSA §3762, sub-§3	Title 22, section 3762, subsection 3, relating to TANF recipients	DHHS, Office of Family Independence	No change	
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?	
55	22 MRSA §4008, sub-§1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS, Office of Family Independence	No change	
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	
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	
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	
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	
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	
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	
62	22 MRSA §4087-A, sub-§6	Title 22, section 4087-A, subsection 6, relating to information held by or records	DHHS, Office of Family Independence	No change	

**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
		or case-specific reports maintained by the Child Welfare Ombudsman			
63	22 MRSA §4306	Title 22, section 4306, relating to general assistance	DHHS, Office of Family Independence	No change	
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	
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	
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	
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	
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	
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	
71	22 MRSA §8707	Title 22, section 8707, relating to records of the Maine Health Data Organization			

**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
72	22 MRSA §8714, sub-§1	Title 22, section 8714, subsection 1, relating to protected health information in data collected by MHDO			
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			
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			
75	22 MRSA §8754	Title 22, section 8754, relating to medical sentinel events and reporting	DHHS, Division of Licensing and Certification	No change	
76	22 MRSA §8824, sub-§ 2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS, Maine CDC	No change	
77	22 MRSA §8943	Title 22, section 8943, relating to the registry for birth defects	DHHS, Maine CDC	No change	
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	

*Statute Repealed since last review in 2015—no RTKAC action needed

^Exception enacted by 131st Legislature

STATUTE: [22 MRSA §1714-E, sub-§5](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: [William Logan](#)

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). **Records subject to this exemption would be investigative records of DHHS staff, primarily in the Program Integrity unit. This exemption has not been cited as a basis for denial to my knowledge. DHHS is unaware of any FOAA request for these types of records during the past several years.**
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. **Supports continuation. Removing the exemption could negatively impact investigations by Department staff or law enforcement. The Department further notes that the confidentiality only applies for a limited period - it does not apply after the provider subject to the payment suspension has received notice of the suspension.**
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. The statutory language is clear on the records covered and that those records are intended to be confidential.**
4. Does your agency recommend changes to this exception? **No.**

Right to Know Advisory Committee
13 State House Station Augusta, Maine 04333
Telephone: (207) 287-1670

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available. **William Savage, AAG is the Chief of the Health Care Crimes Unit in the AAG's office.** william.savage@maine.gov
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

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

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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).

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.

STATUTE: [22 MRSA §2140, sub-§17](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: [Tera Pare](#), Maine CDC

RETURN BY: September 30, 2022

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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).

22 MRS §2140 pertains to Maine's Death with Dignity Act, a recent law enacted in 2019 that establishes that all reporting of patient-directed care to end life is kept confidential. The reporting consists of a minimum of four forms that are completed and sent to Data, Research, and Vital Statistics (DRVS). The required forms are the patient request for medication, the attending physician form, a consulting physician form and an end-of-life closure form. A fifth form, an Interpreter Form, is required if the individual used an interpreter. DRVS staff review the forms to ensure completeness and that the dates are within the parameters outlined in the law.

To date, DRVS has received two requests, where both requestors wanted everything our agency retained, regarding these cases that did not contain the forms. Part of their request asked for information on the health-care providers' identities. Due to § 2140(17)(C), Maine CDC DRVS denied this request for information.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. DRVS is charged with safeguarding access to this information by developing regulation for such disclosures. We would oppose any changes that required any of the data be made

public. Families of decedents should have the expectation that their loved ones' medical decision, patient-directed care, cause and manner of death are kept private, just as any medical record should be. Providers should also feel free to report required medical record documentation without fear of being targeted by individuals who oppose the law.

Maine CDC is not HIPAA protected and therefore relies on these critical statutes to protect personal 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?

There have been no problems. It is clear in the law and in Department rule that these forms are confidential. If a form is missing or incomplete, the provider is contacted by phone in order to obtain the information. There has never been a provider that did not comply with the law. Reports are linked with death certificates which are also confidential and will not be 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.

N/A

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

It is important that the patient's family and providers know that their identities are kept confidential. An individual's treatment and care plan is between their provider and themselves.

STATUTE: [22 MRSA §2153-A, sub-§§1 and 2](#)

AGENCY: Department of Agriculture, Conservation and Forestry

CONTACT PERSON: Shannon Ayotte

RETURN BY: October 30, 2022

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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).

A. Per Director of Quality Assurance and Regulations: In my five years with DACF, the only time we have not provided requested information is when we either did not collect it or could not provide it in the format requested. That has happened maybe twice with Weights & Measures when solicitors were requesting detailed information in a specific spreadsheet format. State inspection reports are a matter of public record; we have no reason not to share them if requested. We have never had a request for inspection information under our Fed/State or FDA contract inspections. If we did, our protocol would be to forward that request to the federal project officer.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. Supports as if we want to receive this kind of information from FSIS and FDA we must have those statutory confidentiality provisions. Without them in place, those agencies will not share the information.

3. Please identify any problems that have occurred in the application of this exception. NA

Reference # 28 and 29

Is it clear that the records described are intended to be confidential under the FOA statutes? Yes

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

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

STATUTE: [22 MRSA §2706, sub-§4](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: [Tera Pare](#), Maine CDC

RETURN BY: September 30, 2022

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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).

Data, Research, and Vital Statistics (DRVS) is the custodians of certificates and records of birth, marriage, and death and has charge of the statewide system for the registration of vital statistics.

22 MRS §2706, sub-§4 is the exception to the law that acknowledges that it is unlawful for any employee of the State or of any municipality in the State to disclose data contained in such records, except as authorized in 22 MRS §2706 and except that a clerk of a municipality may cause to be printed in the annual town report the births reported within the year covered by the report, by number of births and location by city or town where birth occurred, deaths reported within the year covered by the report, by date of death, name, age and location by city or town where death occurred, and marriages reported within the year covered by the report by names of parties and date of marriage. All other details of birth, marriage, divorce or death may not be available to the general public, except as specified in department rules.

22 MRS §2706, sub-§4 identifies other exceptions to include all content of 22 MRS §2706, what may be printed in the municipal clerk's annual town report, as well as what is specified in Chapter 4 of 10-146 Department rule.

Right to Know Advisory Committee
13 State House Station Augusta, Maine 04333
Telephone: (207) 287-1670

Subsections of 22 MRS §2706 provide how vital records are registered and filed for a child not born of marriage, data used for statistical research, reporting data and the release of the data, furnishing copies or data as required for national statistics, records that may be disclosed to authorized individuals, restriction of access of records according to the procedures for the Address Confidentiality Program, the length of time for a record to become a public record, and genealogical research.

Chapter 4 of 10-146 Department rule regulates the disclosure of vital statistics data, reports, and records as well as the release of and access to vital statistics data, reports, and records; including when, where, what conditions apply, what version is accessed, and how that is done.

DRVS receives requests (written, online, in person) for copies of vital records daily. The typical day consists of at least 100 or more requests for copies of vital records with at least 10 administrative denials due to absence of application, identification, the direct and legitimate interest or in the record (or lineage) and the required fee.

De-identified birth, death and fetal death data are shared with the U.S. CDC National Center for Health Statistics to be used in national statistics. Other U.S. Government agencies receive data with personal identifiers in order for the agency to conduct their administrative duties such as SSA for death benefits and to stop the issuances of monthly SSA payments or the State Department and TSA in issuing passports. The Maine Health Data Organization receives annual birth and death files to link with their hospital utilization and provider files and conduct analysis. The linked file is given a unique identifier and identifying information is protected by their disclosure and release policy. Vital records are provided to State agencies to conduct their official business. Only the minimum needed is provided. Some of the agencies are DHHS Child Support and Recovery, the Maternal, Infant and Fetal Mortality Review (MIFMR) Committee and several of Maine CDC's surveillance programs.

Researchers conducting health, medical and social research that could potentially reduce morbidity and mortality, furthering scientific understanding of disease processes or for improving health and social service may access vital records data only after an application, protocol of their study is submitted, approved or exempt from research documentation from their Institutional Review Board (IRB), approval from DHHS IRB, and a signed data sharing agreement.

Genealogists can apply for a researcher card to access records for purposes of their genealogic research only. There is an application with several criteria they must meet. To protect and preserve the integrity of the records from excessive handling. Genealogists can no longer have hands on access to the records but have access to birth, death, and marriage indexes. They can request up to three records weekly from DRVS.

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

DRVS supports the continuation of this exception. The confidentiality of these records safeguard against identity fraud and misuse and protects an individual's personal 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?

Maine CDC DRVS has not experienced any problems, because the law is clear. There are individuals or companies attempting to secure that information, but if they are not entitled to the record or a government agency, genealogist, or researcher with approved protocols, then they are not able to obtain the records.

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

STATUTE: [22 MRSA §2706-A, sub-§6](#)

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).

Data, Research, and Vital Statistics (DRVS) maintains files of the names and addresses of adopted persons and their adoptive and genetic parents, as well as relatives, who have registered, known as the "Adoption Reunion Registry". These files are confidential and not open to public inspection.

The only exception to the law is when the state registrar has received requests for contact from a person who has been adopted and is now 18 years of age or older, an adoptive parent if the adopted person is deceased, or if the adopted person is determined by a court to be incapacitated. The request must be related to the same adoption and both persons must indicate, at the time of registration, that contact with the other person is desired, as specified by 22 MRS §2706-A, sub-§5.

On average, DRVS has received approximately 10 requests per year over the past 5 years for the release of the files and the exception is granted by administrative procedure, only if persons submitting the request comply with the standards specified by 22 MRS §2706-A, sub-§5.

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

DRVS supports continuation of this exception, to ensure accurate identification of the registrant and assist in identifying the other party, without the biological parent who placed their child into adoption worrying about being revealed.

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 in the application of this exception besides the requests received without the accurate identification of either party. Requests received without accurate identification are rejected and are provided with the opportunity to resubmit the requests with the accurate identification, but this issue does not pertain to the wording of § 2706-A(6), which is clear.

§2706-A(5) adequately provides the avenue to provide this data in certain circumstances, as described in Paragraph 1 above.

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. Contact preference and medical history forms are not always provided to the biological parents by the courts. DRVS plans to work with the courts going forward to ensure the forms are provided prior to the final adoption.

STATUTE: [22 MRSA §2769, sub-§4](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: [Tera Pare](#), Maine CDC

RETURN BY: September 30, 2022

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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).

Data, Research, and Vital Statistics (DRVS) maintains contact preference and medical history forms for children who are adopted only if completed and provided by the birth parents. A birth parent may use the forms to describe their medical history and contact preference as to whether they would like to be contacted. The birth parents may update the forms as needed. The forms are placed in a sealed file, along with the original birth certificate of the adoptee.

The completed contact preference form and medical history form have the same level of confidentiality as the original birth certificate as specified by 22 MRS §2769, sub-§4. Access to an original birth certificate by adopted person is governed by 22 MRS §2768. An adopted person, the adopted person's attorney or, if the adopted person is deceased, the adopted person's descendants may obtain a copy of that person's original certificate of birth from the State Registrar of Vital Statistics.

The exception to law requires the adopted person, the adopted person's attorney or, if the adopted person is deceased, the adopted person's descendants to submit a written application, proof of identification, and may require a waiting period and impose a fee for the noncertified copy of the unaltered original certificate of birth to the applicant. If a

contact preference or medical history form has been completed and submitted to the state registrar, the state registrar also must provide that information.

DRVS has received approximately 79 requests this past year for access to an original birth certificate by adopted person. Administrative denials are given frequently to persons not entitled to receive access to the original birth certificate or to applicants who failed to provide identification and/or payment of the required fee. In 2017, one denial was in response to an FOA request.

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

DRVS supports continuation of this exception to ensure that the release of information is only provided to entitled persons by requiring a written application and identification to protect the integrity of vital records and to ensure their proper use.

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 in the application of this exception. It is clear that the records described in this section are intended to be confidential and FOAA would not apply, which is appropriate for this sensitive matter.

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

STATUTE: [22 MRSA §3034, sub-§2](#)

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 has not had any requests for missing person information. Most information regarding a missing person is released by the investigating law enforcement agency.

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

Supports continuation of exception.

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.

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.

STATUTE: [22 MRSA §3109, sub-§2-A](#)

AGENCY: Department of Health and Human Services

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 public records exception found in sub-§2-A of the above-referenced legislation has not yet been applied. The required survey has not yet been administered, and thus there have been no requests for production of records related to the required survey.

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

Response: The Office for Family Independence strongly supports this exception in State statute, as it is consistent with numerous federal statutes and regulations requiring confidentiality of information pertaining to participation in assistance programs.

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: N/A.

4. Does your agency recommend changes to this exception?

Response: No.

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 pertaining specifically to the exception cited above.

STATUTE: [22 MRSA §3188, sub-§4](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: [William Logan](#)

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 records subject to the statutory exception are A) protected health information related to beneficiaries and B) financial information about businesses and business owners applying for enrollment in the program. The Department is unaware of any requests for records covered by this exception over the past several years, so it has not cited this exception as a basis for the records.**
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. **Supports. The information related to the persons who applied for coverage under the program constitutes protected individual information (PII) and protected health information (PHI). The information about the businesses likely contains proprietary/confidential financial information about the businesses.**
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. The language is sufficient.**
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. **None known.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review. **This appears to be a program/initiative that has not been active for several years**

STATUTE: [22 MRSA §3192, sub-§13](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: [William Logan](#)

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 records covered by the exception would be medical records of individual persons. The Department is unaware of any requests for records covered by this exception over the past several years, so it has not cited this exception as a basis for the records.**
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. **Supports. The records covered contain the medical information about individual persons and thus should remain protected.**
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. The statutory language is clear on the records covered and that those records are intended to be confidential.**
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. **None known.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review. **This appears to be a program/initiative that has not been active for several years**

STATUTE: [22 MRSA §3292](#)

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 a central Complaint Office, to process and facilitate review of complaints against licensees.

The cited statutory exception, 22 M.R.S. § 3292, permits the Department of Health and Human Services ("DHHS") to share otherwise confidential information with a licensing board. 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>.

At this time, OPOR does not have a record of the frequency of the provision's application, or how frequently it is cited in denying a request for production of records. As it would be DHHS applying this provision in determining whether to release information to OPOR board staff, DHHS staff would be in a better position to speak to its application. OPOR staff is unaware of any instance in which confidential information subject to this provision has not been provided to an OPOR board in response to a valid request.

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 operation of the exception – the information that may be disclosed 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: To date, OPOR staff has not encountered problems in application of this section.

4. Does your agency recommend changes to this exception?

Response: OPOR does not recommend any changes to the 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 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.

STATUTE: [22 MRSA §3292](#)

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

CONTACT PERSON: Brianna Gutierrez, William Montejo, and Erin Salvo, DHHS 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).

The Division of Licensing & Certification (DLC) frequently receives requests from the Maine State Board of Nurses and occasional requests from the Maine State Board of Nursing Home Administrators and the Maine Board of Medicine for records of its investigations into licensed facilities and agencies that were substantiated for abuse, neglect, quality of care, and substandard quality of care. DLC estimates that it provides approximately 12-15 relevant case records to professional licensing boards a year and while DLC has limited some records provided to be consistent with the Professional Boards review of their respective licensee, DLC has not denied a request.

The Office of Child and Family Services (OCFS) receives occasional requests from boards of professional licensure, most frequently the Board of Social Work for child protective records relevant to their investigation. OCFS would estimate this happens 1-2 times per year. All records are reviewed by the Child Protective Division of The Office of the Attorney General before submission to the Board through their assigned AAG.

The Office of Aging and Disability Services – Adult Protective Services (APS) receives occasional requests from boards of professional licensure, typically following a report by APS to a board reporting substantiated allegations against a licensed professional identified in an APS investigation. APS estimates that it provides such records in response to these requests 4-5 times per year.

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

DLC does support continuing this exception so that professional licensing Boards can obtain relevant information on the conduct and performance of their respective Licensee as part of their own investigation.

OCFS also supports continuation of this exception as it provides OCFS with the ability to provide information that would otherwise be confidential for the purpose of completing licensing investigations. Often these records are a critical part of such investigations.

OADS – APS also supports continuation of this exception for the reasons noted above.

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?

DLC did experience a situation in which the professional licensing board disclosed complainant information, and this was addressed with that Board.

OCFS has not had any concerns.

OADS – APS does not have concerns regarding this exception.

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.

The Maine State Board of Nurses, The Maine State Board of Nursing home Administrators, The Maine State Board of Medicine, and The Maine Board of Social Work

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

STATUTE: [22 MRSA §3292](#)

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

CONTACT PERSON: Brianna Gutierrez, William Montejo, and Erin Salvo, DHHS and [Kristin Racine](#)

RETURN BY: September 30, 2022

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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 Division of Licensing & Certification (DLC) frequently receives requests from the Maine State Board of Nurses and occasional requests from the Maine State Board of Nursing Home Administrators and the Maine Board of Medicine for records of its investigations into licensed facilities and agencies that were substantiated for abuse, neglect, quality of care, and substandard quality of care. DLC estimates that it provides approximately 12-15 relevant case records to professional licensing boards a year and while DLC has limited some records provided to be consistent with the Professional Boards review of their respective licensee, DLC has not denied a request.

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OCFS also supports continuation of this exception as it provides OCFS with the ability to provide information that would otherwise be confidential for the purpose of completing licensing investigations. Often these records are a critical part of such investigations.

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DLC did experience a situation in which the professional licensing board disclosed complainant information, and this was addressed with that Board.

OCFS has not had any concerns.

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.

The Maine State Board of Nurses, The Maine State Board of Nursing home Administrators, The Maine State Board of Medicine, and The Maine Board of Social Work

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

STATUTE: [22 MRSA §3474, sub-§1](#)

AGENCY: Department of Health and Human Services, Office of Aging and Disability Services

CONTACT PERSON: [Erin Salvo](#)

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).

Adult Protective Services regularly receives requests for APS investigation records. APS records contain information about specific clients (including demographics and personally identifiable information), case notes outlining APS activities and substantiation determinations (including details of interviews with client, alleged perpetrators, and other collateral contacts), and the PII related to the person who made the report to APS. The above statute describes the types of entities and individuals who fall into optional and mandatory disclosure categories when seeking Adult Protective Services investigation records.

As a matter of policy, APS generally will share investigation records with those in the optional category (with redactions related to relevance and reporter identity) unless the person making the request is an alleged perpetrator named in the investigation or seeking the records in connection with litigation or anticipated litigation that does not involve the Department directly (e.g., family/probate disputes). In those cases, APS sends a denial letter, noting that the person may seek a court order that will result in disclosure of the records (as a mandatory disclosure) if deemed relevant and appropriate by the court. In addition to private individuals requesting APS records, requests regularly come in from

law enforcement, other offices within the Department, the Office of the Chief Medical Examiner, and the Mortality Review Panel.

APS receives approximately 12 record requests per month. Of those, approximately 2 per month result in a denial to produce the records. APS consults with the OAG when unique situations arise that do not fall clearly into an optional or mandatory disclosure category.

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

OADS supports the continuation of this exception. APS investigation records are regularly shared with entities to facilitate coordination on investigations that supports clients. At the same time, APS needs to deny access to these records in some instances to 1) protect the identity of reporters when that information cannot be adequately protected via redaction, 2) to protect clients' sensitive information that would be inappropriate to share with an alleged perpetrator or someone seeking the records with an ulterior motive or 3) when it is unclear if the records would be relevant in a pending court case that does not directly involve APS involvement.

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 generally no problems that occur in the application of this exception given that the statute allows for flexibility with respect to the "optional" category.

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.

Law enforcement (local and state; Office of the Attorney General)
Office of the Chief Medical Examiner
Disability Rights Maine

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

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 FOIA 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.

STATUTE: [22 MRSA §4007, sub-§1-A](#)

AGENCY: Department of Health and Human Services; State of Maine Judicial Branch, State Courts

CONTACT PERSON: Brianna Gutierrez and Julie Finn, Esq.

RETURN BY: September 30, 2022

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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).

This is not an exception. Sub-§1 states (in relevant part) "All proceedings and records shall be closed to the public, unless the court orders otherwise.", thus the court proceedings discussed under sub-§1-A are already closed to any public disclosure. Sub-§1-A has to do with disclosure of information to parties involved in the case. For example, if parent A has a protection from abuse order against parent B there may be information in the court records that needs to be protected in order to ensure parent B doesn't know where parent A is living, receiving services, etc.

Any request for nondisclosure of records under this sub-§1-A by the State is done in court by counsel representing the Department in child protection litigation (the Child Protection Division of the Office of the Attorney General), but ultimately it is the court that would order nondisclosure and any request for that order to be lifted would be directed to the court.

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

Supports, each child protection case is unique and there are certainly situations in which a court should be permitted to order nondisclosure of records in order to protect a party in the proceeding.

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 known to us, but again this statute primarily involves the court ordering nondisclosure, which may occur at the request of the State's counsel.

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 Commission on Indigent Legal Services, Justin Andrus
(justin.andrus@maine.gov); Office of the Attorney General, Child Protection Division
(ariel.gannon@maine.gov)*

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

N/A

STATUTE: [22 MRSA §4008, sub-§§1 and 3-A](#)

AGENCY: Department of Health and Human Services, The Office of Child and Family Services

CONTACT PERSON: Brianna Gutierrez

RETURN BY: September 30, 2022

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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).

Sub-§1 provides for blanket confidentiality of all child protective records. These are all records prepared and gathered related to a child protective reports, investigation, and cases and include sensitive information regarding individuals' physical health, mental health, substance use, etc., as well as information about specific circumstances of child abuse and/or neglect experienced by children. Sub-§§2 and 3 provide circumstances in which the Department may or must make an exception to the blanket confidentiality provided in sub-§1. Sub-§3-A provides confidentiality for the proceedings of Maine's Child Death and Serious Injury Review Panel. The panel reviews records (including those of the Department, law enforcement, the courts, medical providers, and others) related to serious injuries and fatalities.

Sub-§1 is used nearly daily to deny requests for production of records in a variety of settings (FOA, individual requests, litigation, etc.) Sub-§§2 and 3 are not used to deny requests for production of records but instead to grant access to records in the limited circumstances outlined in these sub-sections. Sub-§3-A is not used by the Department, but the panel itself uses this sub-section to deny requests for specific information, which to the Department's knowledge are infrequent requests.

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

Supports, child protective records contain highly sensitive personal information regarding children and parents that should not be readily available. Sub-§§2 and 3 lay out a variety of exceptions, mostly related to the health and safety of children and families and the Department believes these limited exceptions provide an appropriate balance between maintaining confidentiality and allowing for disclosure (often limited disclosure) in particular circumstances.

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 very broad and thus it is clear that all records containing personally identifying information are considered confidential. The Department does receive several FOA requests per year where individuals are requesting their own child protective records, but this seems to stem more from a misunderstanding of the FOA process than a defect in the statute. Such requests are denied, and the individual is directed to the District office that holds their records for a review in accordance with §4008.

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.

Office of the Attorney General, Child Protective Division, as they frequently advise us on interpretation of this statute. The Division Chief is Ariel Gannon (ariel.gannon@maine.gov).

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

N/A

STATUTE: [22 MRSA §4018, sub-§4](#)

AGENCY: Department of Health and Human Services, The Office of Child and Family Services

CONTACT PERSON: Brianna Gutierrez

RETURN BY: September 30, 2022

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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 Department has no experience administering or applying this public records exception as it directs safe haven providers (as defined in sub-§1) on confidentiality. Department staff are not included in the definition of safe haven providers. Records subject to this statute would be those gathered by a safe haven provider from the person giving the provider the child. To our knowledge the Department has never cited this exception in denying a request for records.

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

Supports, confidentiality is a key part of the safe haven process.

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 Department has not had to apply this exception, so we are unaware of any issues regarding it.

4. Does your agency recommend changes to this exception?

Right to Know Advisory Committee
13 State House Station Augusta, Maine 04333
Telephone: (207) 287-1670

No

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

Those who fit the definition of safe haven provider in sub-§1

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

N/A

STATUTE: [22 MRSA §4019, sub-§9](#)

AGENCY: Department of Health and Human Services, The Office of Child and Family Services

CONTACT PERSON: Brianna Gutierrez

RETURN BY: September 30, 2022

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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).

This exception covers records produced in child advocacy centers (CACs) which are organizations that conduct forensic interviews of children related to alleged child abuse and/or neglect and provide supportive services to families around these allegations. Sub-§9 specifies that the records produced by CACs are confidential and may only be disclosed in very limited circumstances. Most commonly these records are DVDs or other electronic versions of video recordings of child interviews regarding alleged sexual abuse. To the Department's knowledge this provision has never been invoked by the Department as these records, when in OCFS' possession fall under the broad confidentiality provisions contained in 22 MRSA §4008. To the Department's knowledge we have never received a FOA request for case-specific files from a CAC.

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

Supports, confidentiality is a key part of the CAC process given the sensitivity of the information discussed during CAC 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?

The Department has not had to apply this exception, so we are unaware of any issues regarding it.

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 Maine Network of Children's Advocacy Centers
[\(<https://www.cacmaine.org/maines-cacs.html>\)](https://www.cacmaine.org/maines-cacs.html)

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

N/A

STATUTE: [22 MRSA §4021, sub-§3](#)

AGENCY: Department of Health and Human Services, The Office of Child and Family Services

CONTACT PERSON: Brianna Gutierrez

RETURN BY: September 30, 2022

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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).

We presume that this request is specific to paragraph (5) of sub-§3 which specifies that the Department's intent to interview a child is confidential information. To the Department's knowledge, the Department has not had to cite this exception in order to deny a request for records. Any such request is likely to be posed to the school which is also limited by state and federal privacy laws regarding what they may disclose. The Department believes the overall effect of this sub-§ is to provide notice to school staff who are aware of the Department's intent to interview a child that this fact is confidential information.

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

Supports, the ability to interview children without the parents' knowledge or consent is key in certain circumstances.

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 Department has not had to apply this exception, so we are unaware of any issues regarding it.

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.

Department of Education and schools/school personnel

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

N/A

STATUTE: [22 MRSA §4036, sub-§1-A](#)

AGENCY: Department of Health and Human Services, The Office of Child and Family Services; State of Maine Judicial Branch, State Courts

CONTACT PERSON: Brianna Gutierrez and Julie Finn, Esq.

RETURN BY: September 30, 2022

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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).

This provision makes confidential information regarding a parental rights and responsibilities order (which is typically a non-confidential family matters or FM order) in situations where such an order is being entered in order to protect a child from jeopardy and serve to dispose of any pending protective custody (PC) litigation. This statute protects the PC records related to this FM order from public disclosure in accordance with 22 MRSA §4007. To the Department's knowledge we have never invoked this exception as this primarily governs the court process and records retained by the court.

If the Department needed to make a specific request for nondisclosure of records, it would be done in court by counsel representing the Department in protective custody litigation (the Child Protection Division of the Office of the Attorney General).

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

Supports, this statute protects the confidential child protection information from becoming a matter of public record in an FM proceeding used to dispose of PC litigation.

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 Department has not had to apply this exception, so we are unaware of any issues regarding it.

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.

*Office of the Attorney General, Child Protection Division
(ariel.gannon@maine.gov)*

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

N/A

STATUTE: [22 MRSA §4087-A, sub-§6](#)

AGENCY: Department of Health and Human Services, Child Welfare Services Ombudsman

CONTACT PERSON: Brianna Gutierrez and the [Child Welfare Services Ombudsman](#)

RETURN BY: September 30, 2022

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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).

This sub-§ provides for the confidentiality of the Child Welfare Ombudsman's records and reports. To the Department's knowledge this provision has never been invoked by the Department as these records, when in OCFS' possession, fall under the broad confidentiality provisions contained in 22 MRSA §4008. To the Department's knowledge we have never received a FOA request for records or files held by the Child Welfare Ombudsman.

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

Supports, confidentiality from public disclosure is a key part of the Ombudsman's process given the sensitivity of the information reviewed by Ombudsman staff and written in their reports.

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 Department has not had to apply this exception, so we are unaware of any issues regarding it.

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.

None known

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

N/A

STATUTE: [22 MRSA §4306](#)

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

CONTACT PERSON: Sara Denson, Maine DHHS, OFI

RETURN BY: September 30, 2022

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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).

Our agency applies this public records exception approximately once per year. In response to a FOA request from an outside agency, or a data request from media sources, our agency will cite this exception as reason for denying a public records request when the records requested will include specific client data that would breach the client's right to privacy.

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

Our agency supports the continuation of this exception in order to secure the privacy and safety of our clients.

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?

Our agency has not experienced any problems in the application of this exception. It is clear that the records described are intended to be confidential and the language is clear in describing the covered records.

4. Does your agency recommend changes to this exception?

Our agency does not recommend any 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.

Stakeholders whose input should be considered may include representatives from:
The Maine Municipal Association – Kate Dufour, kdufour@memun.org
The Maine Welfare Director's Association – Rindy Fogler,
rindy.fogler@bangormaine.gov or Kristen Barth, kbarth@southportland.org
Maine Equal Justice – Frank D'Alessandro, frank@mejp.org

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

No further information.

STATUTE: [22 MRSA §5307, sub-§2](#)

AGENCY: Department of Health and Human Services and Department of Public Safety, Bureau of State Police

CONTACT PERSON: [William Logan](#) and [Anthony Winslow](#)

RETURN BY: September 30, 2022

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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 records subject to this exemption are FBI criminal background check results. This is a newly created exemption. There have been zero requests submitted to DHHS for this type of record. At present, there are no records as the Department is still working to obtain approval from the FBI to obtain access to its criminal records database.**
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. **Supports. The Department believes that the continued confidentiality of these records is essential to obtaining and maintaining access to the FBI's criminal records database. Removing the exemption would likely result in the FBI not releasing these records to the Department.**
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. The language is sufficiently clear about the records covered and their confidentiality.**
4. Does your agency recommend changes to this exception? **No.**

Right to Know Advisory Committee
13 State House Station Augusta, Maine 04333
Telephone: (207) 287-1670

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available. **The Department worked closely with the State Bureau of Identification on drafting the statutory language, which mirrors other statutes related to fingerprint-based criminal background check results. Amy McCollett was the primary contact at SBI.**

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

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

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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 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.

STATUTE: [22 MRSA §7250, sub-§1](#)

AGENCY: Department of Health and Human Services, The Office of Behavioral Health

CONTACT PERSON: Amy Heino

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 records contain the controlled substances, schedules II, II, and IV, prescribed to an individual. The exception has been cited in response to FOAA requests, as well as to more general data requests.**
2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position. **Supports. The records subject to this exception are not public record and are subject to other confidentiality laws, such as HIPAA and 42 C.F.R. Part 2.**
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? **Problems have occurred due to the language of 22 MRSA §7250, sub-§3 which states "the department may provide prescription monitoring information for public research, policy or education purposes..." The statute does not clearly define what constitutes public research, policy, or education, and further, the Department has a separate research process that is not referenced in the language of this statute. Although, the "may" still allows the Department to maintain discretion.**

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. **Margaret Machaiek, Assistant Attorney General, Health and Human Services Division, OAG.**
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

STATUTE: [22 MRSA §7703, sub-§2](#)

AGENCY: Department of Health and Human Services

CONTACT PERSON: Brianna Gutierrez

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).

Sub-§2 provides for confidentiality of certain portions of records related to the licensing and oversight of facilities that provide care for children and adults. Note that sub-§3 does allow for optional disclosure of confidential information in limited circumstances. The Office of Child and Family Services cites this provision when denying requests for records infrequently (no more than a few times a year) and only when the specific information requested falls into one of the confidentiality provisions provided in sub-§2, since in general all records regarding licensing and oversight of facilities that provide care to children and adults are public information under sub-§1.

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

Supports, these provision protect personally identifiable information regarding individuals, including those who are served in these facilities. The mere fact that one is served in such a facility could reveal confidential health information regarding that individual.

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?

None known.

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.

Providers licensed under this chapter.

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

N/A

STATUTE: [22 MRSA §8110, sub-§5](#)

AGENCY: Department of Health and Human Services and Department of Public Safety, Maine State Police, State Bureau of Identification

CONTACT PERSON: Brianna Gutierrez and [Anthony Winslow](#)

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).

Sub-§5 provides for the confidentiality of criminal history information obtained by the Department in conducting background checks (including fingerprint-based checks) on employees of facilities that serve children, including residential care facilities and shelters. To the Department's knowledge we have never received a request for specific information obtained during one of these checks and thus this provision has not been cited. The confidentiality of this information is required by the federal systems that the Department queries in conducting these checks.

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

Supports. As noted above, confidentiality is a requirement in order for the Department to continue to access these federal systems in conducting background checks which are federally required under Title IV-E of the Social Security Act.

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 Department has not had to apply this exception, so we are unaware of any issues regarding it.

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 providers whose staff are subject to these background checks

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

N/A

STATUTE: [22 MRSA §8302-C, sub-§1](#)

AGENCY: Department of Health and Human Services and Department of Public Safety, Bureau of State Police, State Bureau of Identification

CONTACT PERSON: Brianna Gutierrez and [Anthony Winslow](#)

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).

Sub-§1, paragraph F provides for the confidentiality of criminal history information obtained by the Department in conducting background checks (including fingerprint-based checks) on employees of child care facilities. To the Department's knowledge we have never received a request for specific information obtained during one of these checks and thus this provision has not been cited. The confidentiality of this information is required by the federal systems that the Department queries in conducting these checks.

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

Supports. As noted above, confidentiality is a requirement in order for the Department to continue to access these federal systems in conducting background checks which are federally required under the requirements of the federal Child Care & Development Block Grant.

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 Department has not had to apply this exception, so we are unaware of any issues regarding it.

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 providers whose staff are subject to these background checks

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

N/A

STATUTE: [22 MRSA §8754](#)

AGENCY: Department of Health and Human Services, Division of Licensing and Certification

CONTACT PERSON: Bill Montejo, Division of Licensing and Certification

RETURN BY: September 30, 2022

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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).

DLC applies this exemption to confidential patient and hospital records for hospital self-reports of significant medical errors or healthcare sentinel events approximately 5-10 times out of 225 recorded incidents and records obtained, most often in regard to litigation.

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 to allow for hospitals to freely report incidents and evidence of a thorough root cause analysis in an effort to apply a culture of safety and application of significant quality changes to reduce event reoccurrence.

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 or issues and it is clear that the records are confidential in regard to FOA.

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 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.

The Sentinel Event Unit does provide an annual report to the Legislature on its program and does provide aggregated data regarding cases reviewed.

STATUTE: [22 MRSA §8824, sub-§2](#)

AGENCY: Department of Health and Human Services, Center for Disease Control & Prevention, Division of Disease Prevention

CONTACT PERSON: [Tera Pare](#), Maine CDC

RETURN BY: September 30, 2022

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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).

[Although the Hearing Screening Program does not have any experience in responding to FOA requests, we see the value of this important provision to protect newborn infant and young children's health data that are tracked.](#)

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 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?

[The program has not encountered any problems in the application of this exception.](#)

4. Does your agency recommend changes to this exception?

Right to Know Advisory Committee
13 State House Station Augusta, Maine 04333
Telephone: (207) 287-1670

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.

N/A

STATUTE: [22 MRSA §8943](#)

AGENCY: Department of Health and Human Services, Center for Disease Control & Prevention, Division of Disease Prevention

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 program has not been involved with any FOA request or in administrative or other litigation related to the Maine CDC's central registry for cases of birth defects.](#)

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 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?

[The program has not encountered any problems in the application of this exception.](#)

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.

N/A

STATUTE: [22 MRSA §9061](#)

AGENCY: Department of Health and Human Services, Division of Licensing and Certification and Department of Public Safety, Maine State Police, State Bureau of Identification

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).

This exemption applies to the results of criminal background checks done as a condition of hire for hire to work with vulnerable individuals in health and homecare settings. We have less than 5 requests for this information annually and it is usually in regard to FOA requests.

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

We support continuance of the exemption to ensure there is not misuse of the results without affording an individual their due process for appeal of exclusion decisions based on the report received. For example a record of positive convictions that may be the result of ID theft.

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 experienced any problems and the language is clear in describing what records this applies to.

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 and the Maine Health Care Association, Angela Westhoff at AWesthoff@mehca.org.

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 8, 2023

RE: Consideration of potential exceptions for certain information submitted with grant applications under the Emergency Medical Services Stabilization and Sustainability Program

As you know, the subcommittee was asked to consider whether to recommend a public records exception for certain information filed with grant applications under the Emergency Medical Services Stabilization and Sustainability Program. The law establishing the program became effective October 25, 2023 and is in the process of being implemented.

For your review, we have attached the following materials:

1. Public Law 2023, chapter 412, Part GGGGG establishing the Emergency Medical Services Stabilization and Sustainability Program; and
2. Three examples of statutory exceptions that protect as confidential proprietary information or certain financial information:
 - Title 5, section 13119-A related to information submitted to the Department of Economic and Community Development or a municipality included in a grant application or business or marketing plan that has to do with a program of assistance;
 - Title 10, section 945-J related to information submitted to the Maine International Trade Center in a business or marketing plan; and
 - Title 10, section 975-A related to a written application or proposal submitted to the Finance Authority of Maine.

for the School Revolving Renovation Fund established in the Maine Revised Statutes, Title 30-A, section 6006-F.

PART GGGGG

Sec. GGGGG-1. 32 MRSA §98 is enacted to read:

§98. Emergency Medical Services Stabilization and Sustainability Program

The Emergency Medical Services Stabilization and Sustainability Program, referred to in this section as "the program," is established within the department, to be administered by Maine Emergency Medical Services in consultation with the board and the Department of Health and Human Services, to provide financial assistance to emergency medical services entities based in the State that are facing immediate risk of failure, to increase the sustainability, efficiency and resiliency of emergency medical services throughout the State and to help ensure that all residents of the State continue to have access to high-quality, out-of-hospital clinical care provided by the emergency medical services system.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Community" means a municipality, group of municipalities or other area of the State served by an emergency medical services entity.

B. "Emergency medical services entity" means a nonprofit or for-profit ambulance service or nontransporting emergency medical service or emergency medical services training center licensed under this chapter or a regional council.

C. "Historical activations" means the number of times an emergency medical services entity was dispatched by the E-9-1-1 system within a defined period of time.

D. "Rurality" means a community's score established by the United States Department of Agriculture that indicates the rural nature of the community.

2. Purpose and use of funding. The purpose of the program is to provide financial assistance, in accordance with subsection 3, to emergency medical services entities at immediate risk of failing and leaving their communities without access to adequate emergency medical services and to provide grants to assist emergency medical services entities with long-term sustainability and resiliency planning and programming within the emergency medical services system in accordance with subsection 4.

3. Funding requirements. This subsection provides requirements for financial assistance to emergency medical services entities at immediate risk of failing and leaving their communities without access to adequate emergency medical services. Financial assistance under this subsection must be provided through the program.

A. Using a form developed and made available by the board, an emergency medical services entity applying for funding under this subsection must demonstrate that the entity:

(1) Is at immediate risk of failing and leaving its community without access to adequate emergency medical services due to employee recruitment or retention issues or an inability to finance daily operations. The entity must submit a financial statement covering its most recent fiscal year;

(2) Provided ambulance services or nontransporting emergency medical services to its community during the prior calendar year;

(3) Is providing and intends to continue to provide ambulance services or nontransporting emergency medical services to its community; and

(4) In the case of an applicant that is an ambulance service only, is participating in the MaineCare program and maintains an electronic funds transfer account with the Department of Health and Human Services.

B. As a condition of receiving funding under this subsection, an emergency medical services entity meeting the requirements of paragraph A must enter into an agreement with Maine Emergency Medical Services requiring the entity to:

(1) Use all funding received to support only those activities as specified by the board in the application, which must include, but are not limited to:

(a) Supplementing wages, benefits, stipends and incentives for emergency medical services persons;

(b) Supporting training directly related to the provision of clinical care, leadership or management of emergency medical services;

(c) Supplementing wages, benefits, stipends and incentives for administrative support staff;

(d) Implementation of programming directly related to a strategic plan for the emergency medical services system developed by the board; and

(e) Investment in capital expenditures not to exceed \$50,000 in the aggregate;

(2) Submit a report to the board no later than December 31st of the year in which the entity receives the funding identifying how the funding was expended; and

(3) If the board determines, based on the report, that the funding was used to support activities not identified in the application as authorized expenditures, repay all such unauthorized expenditures for redistribution in accordance with this subsection.

(a) For the purposes of this subparagraph, a funding expenditure by an entity is deemed to be unauthorized and subject to repayment if the board determines the expenditure was used to supplant the entity's existing emergency medical services funding sources, except for funding sources originating from in-kind donations, fund-raisers or volunteer labor.

(b) To the extent permissible under applicable federal laws and regulations and state laws and rules, the Department of Health and Human Services may withhold future payments or reimbursements under the MaineCare program that are due to an entity that is an ambulance service and that is required to repay unauthorized expenditures under this subparagraph until such unauthorized expenditures are repaid in full. Payments withheld under this paragraph must be transferred to the program established in this section.

C. The board shall establish an allocation algorithm for maximum and minimum funding distributions to emergency medical services entities under this subsection

based on the rurality of a community and historical activations for emergency medical services.

D. The board may establish reasonable deadlines by which an emergency medical services entity seeking funding under this subsection must enter into an agreement pursuant to paragraph B.

4. Sustainability grant requirements. This subsection provides requirements for grants to emergency medical services entities to increase support and develop a plan for sustainability, collaboration and enhancement of efficiency in the delivery of emergency medical services in the State. The board shall adopt rules establishing requirements for grants under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. Using a form developed and made available by the board, an emergency medical services entity may apply for and be awarded a grant under this subsection upon a determination by the board that the applicant meets all applicable requirements for the grant as established by the board by rule.

B. Upon the recommendation of the director after consultation with the board, the board shall establish an allocation algorithm for maximum and minimum funding distributions to emergency medical services entities under this subsection, which may, as applicable, be based on the rurality of the community and historical activations for emergency medical services.

Sec. GGGGG-2. Transfer from General Fund unappropriated surplus; Emergency Medical Services Stabilization and Sustainability Program. Notwithstanding any provision of law to the contrary, on or before June 30, 2023, the State Controller shall transfer \$31,000,000 from the unappropriated surplus of the General Fund to the Department of Public Safety, Emergency Medical Services Stabilization and Sustainability Program, Other Special Revenue Funds account to provide financial assistance to emergency medical services entities at immediate risk of failing and leaving their service areas and community without access to adequate emergency medical services as well as assisting emergency medical services entities with long-term sustainability and resiliency planning and programming within the emergency medical services system.

Sec. GGGGG-3. Report. The Emergency Medical Services' Board shall submit a report regarding the Emergency Medical Services Stabilization and Sustainability Program established under the Maine Revised Statutes, Title 32, section 98 to the Joint Standing Committee on Criminal Justice and Public Safety no later than January 12, 2024. The report must also include, at a minimum, the actual and planned expenditures and encumbrances and applications submitted and accepted under the program.

PART HHHHH

Sec. HHHHH-1. Transfer for one-time cost-of-living benefit increase. Notwithstanding any provision of law to the contrary, on or before June 30, 2023, the State Controller shall transfer \$19,800,000 from the unappropriated surplus of the General Fund to the Retirement Allowance Fund within the Maine Public Employees Retirement System for the purpose of providing the resources to fund an additional one-time cost-of-living increase of 3.0% of the established 2022 maximum benefit subject to an increase for retirees from the state-sponsored retirement plans. The additional 3.0% applies to

§13119-A. Records confidential

The following records are confidential for purposes of Title 1, section 402, subsection 3, paragraph A and are not open for public inspection: [PL 1991, c. 368 (NEW).]

1. Proprietary information. Information that is provided to or developed by the department or a municipality that has to do with a program of assistance and is included in a business or marketing plan or a grant application or provided or developed to fulfill reporting requirements, as long as:

A. The person to whom the information belongs or pertains requests that it be designated as confidential; and [PL 1991, c. 368 (NEW).]

B. The department or municipality determines that the information gives the person making the request opportunity to obtain business or competitive advantage over another person who does not have access to that information or will result in loss of business or other significant detriment to the person making the request if access is provided to others; [PL 1991, c. 368 (NEW).]
[PL 1991, c. 368 (NEW).]

2. Tax or financial information. Any financial statement, supporting data or tax return of any person;
[PL 1991, c. 368 (NEW).]

3. Monitoring. Any financial statement, supporting data or tax return obtained or developed by the department or the municipality in connection with any monitoring or servicing activity by the department or the municipality pertaining to any program of assistance provided or to be provided;
[PL 1991, c. 368 (NEW).]

4. Credit assessment. Any record obtained by the department or the municipality that contains an assessment of the credit worthiness, credit rating or financial condition of any person or project; and
[PL 1991, c. 368 (NEW).]

5. Potential investors. Any record, including any financial statement or supporting data, business plan or tax return obtained or developed by the department or municipality in connection with the matching of potential investors with businesses in the State by the department or the municipality through its maintenance of a data base or other record-keeping system.
[PL 1991, c. 368 (NEW).]

Nothing in this section prevents the disclosure of any records, correspondence or other materials to authorized officers and employees of municipal government, State Government or Federal Government for authorized use. [PL 1991, c. 368 (NEW).]

SECTION HISTORY

PL 1991, c. 368 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular and First Special Session of the 131st Maine Legislature and is current through November 1, 2023. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

§945-J. Confidential records

The records and proceedings of the center are public for the purposes of Title 1, chapter 13, except as otherwise provided in this section. [PL 2009, c. 567, §2 (AMD).]

1. Proprietary information; other information. Information provided to or developed by the center and included in a business or marketing plan is public unless the person to whom the information belongs or pertains requests that it be designated as confidential and the center has determined it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the center or the person submitting the information and would make available information not otherwise publicly available. [PL 2009, c. 567, §3 (AMD).]

2. Tax or financial information. Any financial statement, supporting data or tax return of any person is confidential. [PL 1995, c. 648, §5 (NEW).]

3. Credit assessment. Any record obtained by the center that contains an assessment of the credit worthiness, credit rating or financial condition of any person is confidential. [PL 1995, c. 648, §5 (NEW).]

This section does not prohibit the disclosure of information that is otherwise available in the public domain. [PL 1995, c. 648, §5 (NEW).]

SECTION HISTORY

PL 1995, c. 648, §5 (NEW). PL 2009, c. 567, §§2, 3 (AMD).

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§975-A. Disclosure and confidentiality of records

1. Disclosure required. Notwithstanding subsections 2 and 3 and except as provided in paragraph F, the following shall be made available to any person upon request reasonably describing the records to which access is sought or, if no request is made, in any manner and at any time which the authority may determine:

A. After filing of a written application or proposal for financial assistance or property transfer, in form specified by or acceptable to the authority:

- (1) Names of recipients of or applicants for financial assistance, including principals, where applicable;
- (2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;
- (3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;
- (4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;
- (5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;
- (6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and
- (7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance; [PL 2003, c. 537, §17 (AMD); PL 2003, c. 537, §53 (AFF).]

B. Any information pursuant to waiver deemed satisfactory by the authority; [PL 1985, c. 344, §25 (NEW).]

C. Information which, as determined by the authority, has already been made available to the public; [PL 1985, c. 344, §25 (NEW).]

D. Any information necessary to carry out section 1043 or 1063; [PL 1985, c. 344, §25 (NEW).]

E. Information necessary to comply with Title 1, section 407, subsection 1; [PL 1985, c. 344, §25 (NEW).]

F. Information or records specified in a written request signed by the chairmen of a legislative committee shall be provided to the legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it; and [PL 1985, c. 344, §25 (NEW).]

G. The annual report of the authority required pursuant to section 974. [PL 1985, c. 344, §25 (NEW).]

[PL 2003, c. 537, §17 (AMD); PL 2003, c. 537, §53 (AFF).]

2. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the authority prior to receipt of a written application or proposal, in form specified by or acceptable to the authority, for financial assistance to be provided by or with the assistance of the authority or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the

application or proposal shall not be considered confidential unless it meets the requirements of other paragraphs of this subsection; [PL 1985, c. 344, §25 (NEW).]

B. Any record obtained or developed by the authority which fulfills the following requirements:

(1) A person, including the authority, to whom the record belongs or pertains has requested that the record be designated confidential; and

(2) The authority has determined that information in the record gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through authority records, or that access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the authority, in the case of a person other than the authority, to any person to whom the record belongs or pertains; [PL 1985, c. 344, §25 (NEW).]

C. Any financial statement or tax return of an individual or any other record obtained or developed by the authority the disclosure of which would constitute an invasion of personal privacy, as determined by the authority; [PL 1985, c. 344, §25 (NEW).]

D. Any record including any financial statement or tax return obtained or developed by the authority in connection with any monitoring or servicing activity by the authority pertaining to any financial assistance provided or to be provided by or with the assistance of the authority; [PL 1985, c. 344, §25 (NEW).]

E. Any record obtained or developed by the authority which contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project; [PL 1989, c. 552, §10 (AMD).]

F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the authority pursuant only to subchapter 3 or 4, except section 1053, subsection 5, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and [PL 2021, c. 676, Pt. A, §15 (AMD).]

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance. [PL 1989, c. 552, §11 (NEW).]

[PL 2021, c. 676, Pt. A, §15 (AMD).]

3. Wrongful disclosure prohibited. No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

A. Impersonal, statistical or general information; [PL 1985, c. 344, §25 (NEW).]

B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property; [PL 1985, c. 344, §25 (NEW).]

C. To a financing institution or credit reporting service; [PL 1985, c. 344, §25 (NEW).]

D. Information necessary to comply with any federal or state law, including section 979, or rule or with any agreement pertaining to financial assistance; [PL 1987, c. 697, §3 (AMD).]

E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State; [PL 1985, c. 344, §25 (NEW).]

F. If necessary to assure collection of any obligation in which it has or may have an interest; [PL 1985, c. 344, §25 (NEW).]

G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and [PL 1985, c. 344, §25 (NEW).]

H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority. [PL 1985, c. 344, §25 (NEW).]

[PL 1987, c. 697, §3 (AMD).]

4. Records on effective date. Whether any record in the possession of the authority on the effective date of this section is confidential shall be determined pursuant to this section and not pursuant to the law in effect when the authority or any of its predecessors obtained any such record and any such record shall or may be disclosed or divulged to the extent required or permitted by this section.

[PL 1985, c. 344, §25 (NEW).]

SECTION HISTORY

PL 1985, c. 344, §25 (NEW). PL 1987, c. 697, §3 (AMD). PL 1989, c. 552, §§10,11 (AMD). PL 2003, c. 537, §17 (AMD). PL 2003, c. 537, §53 (AFF). PL 2021, c. 676, Pt. A, §15 (AMD).

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