

**STATUTE:** [24-A MRSA §2323, sub-§4](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Insurers must report their loss and countrywide expense experience so that the Bureau can determine whether their rates are excessive, inadequate, or unfairly discriminatory. The Bureau may designate rating certain third-parties to collect and compile this information. The Bureau may require any insurer not participating in or subscribing to an insurance rating or advisory organization to report data directly to the Bureau. The exception relates to this process. The exception makes confidential the experience report that an insurer files directly with the Bureau is confidential. This is because the Bureau would receive unaggregated information that includes detailed experience history with personal information.

All insurers report to an insurance rating or insurance advisory organization. Accordingly, the Bureau has no experience applying this exception.

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

The Bureau supports continuing this exception. It makes confidential the detailed personal information underlying an insurer's experience.

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 Bureau has not encountered problems in applying this exception. The records intended to be confidential are clearly described.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Maine Association of Insurance Companies (Charlie Soltan), American Insurance Association and American Property Casualty Insurance Association (Bruce Gerrity)

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

n/a

**STATUTE:** [24-A MRSA §2325-B, sub-§9](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 is in the mandatory property casualty insurance market assistance program law. This law allows the Bureau to establish a voluntary market assistance program in order to increase the availability of insurance for owner-occupied residential properties with four or fewer apartments and, if the voluntary program is insufficient, to establish a mandatory assistance program. The Bureau has not established a market assistance plan for property casualty insurance.

This provision would make confidential until approved any modified policy form and rate filing made by a member insurer under a market assistance program. This exception is similar to the protection afforded rate filings under § 2304-A(7) (see ref 116) and form filings under § 2412(8) (see ref 123).

To the best of our knowledge and belief, the Bureau has not received any FOAA requests applicable to this exception.

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

The Bureau supports continuing this exception because it provides similar protections to rate and form filings made in the voluntary property casualty insurance market.

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 Bureau has not encountered any problems in applying this statute because a market assistance program has not been established. The records described are intended to be confidential, and the language is sufficiently clear.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Maine Association of Insurance Companies (Charles Soltan), American Property Casualty Insurance Association (Bruce Gerrity)

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

n/a

**STATUTE:** [24-A MRSA §2384-B, sub-§8](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 is in the Workers' Compensation Competitive Rating Act and protects as confidential information relating to particular workers' compensation claims when insurers make their aggregate statistical reports. To the best of our knowledge and belief, the Bureau has not received any FOAA requests to which this exception relates.

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

The Bureau supports continuing this exception. Disclosure of information relating to specific claims is not necessary to an understanding of an insurer's overall workers' compensation experience. Workers' compensation claims files also include personal health information and identifying information that should be 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?

The Bureau has not encountered problems in applying this exception. The records intended to be confidential are clearly described.

4. Does your agency recommend changes to this exception?

The Bureau 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.

National Council on Compensation Insurance (Harold Pachios), MEMIC (Chris Howard), American Insurance Association and the Property/Casualty Insurance Association (Bruce Gerrity), Maine Workers' Compensation Board (John Rohde)

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

n/a

**STATUTE:** [24-A MRSA §2384-C, sub-§7](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 in the Workers' Compensation Competitive Rating Act protects as confidential information relating to individual workers' compensation claims that appears in aggregate data collection reports required of workers' compensation insurers. To the best of our knowledge and belief, the Bureau has not received any FOAA requests to which this exception relates.

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

The Bureau supports continuing this exception. Disclosure of information relating to specific claims is not necessary to an understanding of an insurer's overall workers' compensation experience. Workers' compensation claims files also include personal health information and identifying information that should be 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?

The Bureau has not encountered problems in applying this exception. The records intended to be confidential are clearly described.

4. Does your agency recommend changes to this exception?  
The Bureau 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.  
National Council on Compensation Insurance (Harold Pachios), MEMIC (Chris Howard), American Insurance Association and the Property/Casualty Insurance Association (Bruce Gerrity), Maine Workers' Compensation Board
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.  
n/a



**STATUTE:** [24-A MRSA §2393, sub-§2](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 certain information relating to workers' compensation self-insurance claims that was used in connection with the determination and collection of so-called "fresh start" surcharges collected to funding the workers' compensation residual market mechanism's deficit in the late 1980s. Fresh start surcharges are no longer collected, and the exception would appear to govern only any historical records that may still exist either at the Bureau or the Workers' Compensation Board. To the best of our knowledge and belief, we have not received a FOAA request that would be subject to this provision.

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

The Bureau supports continuing this exception. 39-A M.R.S. § 403(15) protection all records of workers' compensation self-insurers. Ending this exception would create a substantial inconsistency between Titles 24-A and 39-A.

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 Bureau has not encountered problems in applying this exception. The records intended to be confidential are clearly described

4. Does your agency recommend changes to this exception?

The Bureau 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.

Workers' Compensation Board (John Rohde), employers who self-insure for workers' compensation risks (various)

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

n/a

**STATUTE:** [24-A MRSA §2412, sub-§8](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 makes confidential insurer product form filings until they become effective. This happens on the later of the filing approval date or the date specified by the insurer.

The Bureau occasionally receives FOAA requests for form filings; we explain that unapproved filings are confidential, but that requestors may have access to approved filings through a portal on the Bureau's website.

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

The Bureau supports continuing this exception because it encourages open communication with filers during the review process and protects information about disapproved filings that might give other participants in the insurance market an unfair advantage over the filer whose program was disapproved or was withdrawn. We believe the exception is similar to provisions in most jurisdictions which, in the aggregate, encourage innovative products because the products can be protected by insurers until they are ready to put them in the market.

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 Bureau has not encountered problems in applying this exception. The records intended to be confidential are clearly described.

4. Does your agency recommend changes to this exception?

The Bureau 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.

American Council of Life Insurance (Ann Robinson), Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Maine Association of Insurance Companies (Charles Soltan), American Property Casualty Insurance Association (Bruce Gerrity), UNUM (Charles Piacentini), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §2479](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 is in the Interstate Insurance Product Regulation Compact (IIPRC) chapter. The IIPRC is a cooperative among 46 compacting states that develops uniform product standards for individual and group life, annuity, long-term care, and disability income products. The IIPRC Commission is the IIPRC governing body. Insurers may file these products for review and approval with the IIPRC or with the Bureau. The records of the IIPRC are housed at the IIPRC; they are not located at the Bureau.

Section 2479 provides that except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure do not relieve any IIPRC member of the duty to disclose any relevant records, data or information to the commission. Disclosure to the IIPRC is not a waiver and does not otherwise affect any confidentiality requirement. Except as otherwise expressly provided in this chapter, the IIPRC is not subject to the member's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in the IIPRC's possession. The IIPRC's confidential information remains confidential after the member receives it.

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

The Bureau supports continuing this exception because it is part of legislation adopted by 46 jurisdictions in the United States.

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 Bureau is not aware of any problems in applying this provision. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

IIPRC (c/o Karen Shutter, Executive Director, 444 North Capitol Street, NW, Hall of the States, Suite 701 Washington, DC 20001-1509. Phone: (202) 471-3962.

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

n/a

**STATUTE:** [24-A MRSA §2483, sub-§6](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 is in the Interstate Insurance Product Regulation Compact (IIPRC) chapter, which Maine and 45 other U.S. jurisdictions have entered into. See Ref. 124 (24-A M.R.S. § 2479). While internal accounts of the IIPRC are public, the exception provides that audit work papers and any information regarding the privacy of individuals as well as insurers' proprietary information including trade secrets is confidential. The IIPRC, not the Bureau, administers this provision. The Bureau has not relied on the exception to deny a FOAA request.

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

The Bureau supports continuing this exception because it is part of legislation adopted by 46 jurisdictions in the United States.

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 Bureau is not aware of any problems in applying this provision. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

IIPRC (c/o Karen Shutter, Executive Director, 444 North Capitol Street, NW, Hall of the States, Suite 701 Washington, DC 20001-1509. Phone: (202) 471-3962.

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

n/a



**STATUTE:** [24-A MRSA §2736, sub-§2](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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, enacted in 2009, expands access to filings made under the individual health insurance rate filing statute. It provides that these rate filings are public records, except for personal health information required to be kept confidential by state or federal statute and terms or conditions or reimbursement in a contract between an insurer and a third party.

The Bureau has cited this exception infrequently. In one proceeding, personal health information of an individual was redacted from the publicly available documents. In a rate proceeding, information regarding a third-party provider contract was redacted from the publicly available documents.

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

The Bureau supports continuing this exception. It fairly balances between public access to health rating information and the need to protect the private information of individuals.

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Office of Attorney General (Christina Moylan), Consumers for Affordable Health Care (Ann Woloson), Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Ann Robinson), UNUM (Charles Piacentini), Anthem (Kristine Ossenfort), Community Health Options (Kevin Lewis), United Health Care (Scott Sebastian), Harvard Pilgrim (Gillian Carcia), Aetna (Zachary Peters)

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

n/a

**STATUTE:** [24-A MRSA §2749, sub§3](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Like § 2736(2) (see Ref. 130), this exception applies to medical utilization review entities (MUREs) but in the context of individual health coverage. It requires MUREs yearly to file certain information with the agency regarding their activities in Maine. This information includes the number and type of evaluations performed, the results of evaluations, the number and results of appeals, and civil complaints. The exception prohibits the MUREs from identifying the names of patients in those filings.

The exception in this statute prohibits MURE annual filings from identifying patients by name.

To the best of our information, the Bureau has not denied any FOAA requests on the basis this exception.

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

The Bureau supports continuing this exception because it appropriately protects individuals' 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?

The Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Ann Robinson), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §2808-B, sub-§2-A](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Section 2808 establishes requirements for small group health insurance plans and requires that insurers offering these plans must file for review with the Bureau information relating to them. Subsection 2808(2-A) provides that this information is public, except for personal health information required to be kept confidential by state or federal statute and terms or conditions or reimbursement in a contract between an insurer and a third party.

To the best of our knowledge, no information subject to the exception has appeared in a filing and the entire filings are public.

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

The Bureau supports continuing this exception because it fairly balances the need for public access to small group health insurance rate filings and the need to protect individuals' 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?

The Bureau is not aware of any problems in applying this provision. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Office of Attorney General Christina Moylan), Consumers for Affordable Health Care (Ann Woloson), Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), UNUM (Charles Piacentini), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §2842, sub-§8](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 is in the group health insurance substance use disorder treatment mandated benefit law. It provides that substance use disorder treatment patient records are confidential.

To the best of our knowledge, we have not received a FOAA request that would be subject to this provision.

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

The Bureau supports continuing this exception because of the highly confidential nature of the described 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?

The Bureau is not aware of any problems in applying this provision. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), UNUM (Charles Piacentini), Anthem (Kristine Ossenfort)

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

n/a



**STATUTE:** [24-A MRSA §2847, sub-§3](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**RETURN BY:** September 30, 2022

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### 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).

Like § 2748(3) (see Ref. 127), this statute applies to medical utilization review entities (MUREs) but in the context of group and blanket health coverage. It requires MUREs yearly to file certain information with the agency regarding their activities in Maine. This information includes the number and type of evaluations performed, the results of evaluations, the number and results of appeals, and civil complaints. The exception prohibits the MUREs from identifying the names of patients in those filings.

To the best of our knowledge and belief, we have not received a FOAA request that would be subject to this provision.

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

The Bureau supports continuing this exception because it appropriately protects individuals' 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?

The Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §4204, sub-§2-A](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 statute requires applicants for health maintenance organization licensure to have an internal quality assurance program that, among other topics, addresses the HMO's confidentiality policies and procedures; to record proceedings of quality assurance program activities; and to document those proceedings in a confidential manner.

This requirement is not an exception to the definition of public records because it does not impose any requirements on the Bureau.

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

n/a

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

n/a

4. Does your agency recommend changes to this exception?  
n/a
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:** [24-A MRSA §4224, sub-§§1 and 2](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Subsection 1 requires a health maintenance organization (HMO) to hold information relating to the diagnosis, treatment or health of an enrollee or applicant in confidence except in limited circumstances, including discovery or production of evidence pursuant to statute or court order. This is not an exception to the definition of public records.

Subsection 2 provides makes confidential and not subject to subpoena or order to produce the information considered by and the records and proceedings of HMO quality assurance committees, except in proceedings before a state licensing or certifying agency or in an appeal from the committee's findings. This subsection also treats these records as confidential when used by a state licensing or certifying agency and are subject to the same provisions concerning discovery and use in legal actions as is the HMO quality assurance committee's original information.

To the best of its knowledge and belief, the Bureau has not received or denied a FOAA request on the basis of these exceptions.

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

The Bureau is not opposed to continuing the confidentiality language in subsection 1. The Bureau supports continuing the exception in subsection 2 because information reviewed by HMO quality assurance committees focuses on matters involving 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?

The Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Aetna Health, AMH Health, Arcadian, Empire, Harvard Pilgrim, Martin's Point, Meridian, Northeast Community Care, Taro, United Healthcare, Wellcare

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

n/a

**STATUTE:** [24-A MRSA §4228, sub-§3](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Like §§ 2748(3) and 2847(3) (see Ref. 127 and Ref. 130), this statute applies to medical utilization review entities (MUREs). It requires MUREs yearly to file certain information with the Bureau regarding their activities in Maine. This information includes the number and type of evaluations performed, the results of evaluations, the number and results of appeals, and civil complaints. The exception prohibits the MUREs from identifying the names of patients in those filings.

The exception in this statute prohibits MURE annual filings from identifying patients by name.

To the best of our information, the Bureau has not denied any FOAA requests on the basis this exception.

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

The Bureau supports continuing this exception because it appropriately protects individuals' 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?

The Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Anthem (Kristine Ossenfort)

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

n/a



**STATUTE:** [24-A MRSA §4233, sub-§2](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 exception allows the Bureau to review and copy the work papers of health Maintenance Organization (HMO) auditors and makes those papers confidential while they are in the Bureau's custody or control.

To the best of our knowledge, the Bureau has not denied a FOAA request on the basis of this exception.

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

The Bureau supports continuing this exception because it supports the Bureau's ability to oversee HMO solvency regulation. It is our understanding that accountant's underlying work papers are generally recognized as confidential.

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

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

The Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Aetna Health, AMH Health, Arcadian, Empire, Harvard Pilgrim, Martin's Point, Meridian, Northeast Community Care, Taro, United Healthcare, Wellcare

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

n/a

**STATUTE:** [24-A MRSA §4245, sub-§§1 and 3](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 statute allows the Bureau or DHHS to require that health maintenance organizations (HMOs) submit their National Committee for Quality Assurance (NCQA) accreditation survey reports. These agencies use the NCQA reports for examining HMOs. The exception makes these reports confidential, but allows information from the NCQA reports to be incorporated into Bureau or DHHS examination reports or used for regulatory or law enforcement purposes subject to 24-A M.R.S. §§ 216(5) (see Ref. 95) and 226(7) (see Ref. 226 for discussion of § 226(2)).

To the best of the Bureau's knowledge, we have not cited this exception in denying a request for the production of records.

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

The Bureau supports continuing this exception. NCQA reports are not filed with the Bureau except for examination purposes. We note that examination work papers are confidential under 24-A M.R.S. § 225(3) (see Ref. 98).

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Aetna Health, AMH Health (Kris Ossenfort), Arcadian, Empire, Harvard Pilgrim (William Whitmore), Martin's Point, Meridian, Northeast Community Care, Taro, United Healthcare (Scott Sebastian), Wellcare

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

n/a

**STATUTE:** [24-A MRSA §4312, sub-§7-A](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 became law in 2013 and makes confidential with limited exceptions the records of the Bureau or an external review organization relating to an external review request or proceeding. concerning a health carrier's adverse health care treatment decision. The exception allows parties to an external review proceeding the right to obtain a transcript or recording of the review hearing and copy of any evidence introduced by the opposing party.

The Bureau put forward the legislation that created this exception in order to make it clear that the personal information considered in external review proceedings should be confidential. To the best of our knowledge, we have not used this exception as the basis for denying a FOAA request.

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

The Bureau supports continuing this exception because external review proceedings involve personal health information that should be kept confidential. This statute requires the Bureau annually to report aggregate information concerning external reviews but makes it clear that the categories of external

review requests included in the annual reports may not include personally identifiable information or specific medical conditions.

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §4320-S, sub-§4](#) (Public Law 2021, chapter 638)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 exception was enacted as part of PL 2021, ch. 638, An Act To Improve Access to Behavioral Health Services by Limiting Cost Sharing by Insurers. Section 4320-R(4) requires health carriers to demonstrate to the Bureau their compliance with federal mental health parity laws and requires the Bureau, among other actions, to examine and report to the Legislature concerning their compliance. The information reported by carriers is public information under 24-A M.R.S. § 216 (see Ref. 95), however this exception makes confidential information that a carrier requests be designated confidential and the Bureau determines to be proprietary information. The exception defines proprietary information as trade secret, business or financial information whose disclosure would impair the carrier's competitive position or result in significant detriment to the carrier were it to become public.

This exception has only recently become effective, and the Bureau has not relied on it in denying a request for covered records.

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

The Bureau supports continuing this new exception because it appropriately balances between the public's need to know how carriers cover mental health treatment and carriers' need to protect proprietary information.

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

The Bureau is unaware of any problems related to this exception. The records intended to be confidential are clearly described.

4. Does your agency recommend changes to this exception?

The Bureau does not recommend changes to this exception.

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

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Anthem (Kristine Ossenfort)

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

n/a



**STATUTE:** [24-A MRSA §4406, sub-§3](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 statute relates to the conduct of summary judicial proceedings held for the purpose of determining whether the State should seize an insurance company. This statute would only be used in rare circumstances; other procedures exist that would apply to most delinquency proceedings against insurance companies. See 24-A M.R.S. §§ 4351-4386. The court may hold these proceedings privately in chambers and must do so at the insurer's request. The exception makes confidential the insurer's records, other records, the Bureau files, and court records that relate to or are part of the summary proceeding unless, among other circumstances, the insurer requests that they be made public.

To the best of the Bureau's knowledge, proceedings of this nature have never been held in Maine. No records exist to which this exception would apply, and the exception has not been used as a basis of denial of a FOAA request.

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

The Bureau supports continuing this exception. The statute protects the insurer from undue economic harm were the State unsuccessful in its effort to seize the

insurer on a summary basis. The exception gives the Court appropriate discretion in administering this statute.

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 Bureau is unaware of any problems related to this exception. The records intended to be confidential are clearly described.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Maine Judicial System, Maine Trial Lawyers Association (Susan Faunce), Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Maine Association of Insurance Companies (Charles Soltan), American Property Casualty Insurance Association (Bruce Gerrity), Maine Independent Agents Association and National Association of Insurance and Financial Advisors (Daniel Bernier), Unum (Charles Piacentini), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §4612-A, sub-§1](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Section 4612-A(1) requires that the Bureau furnish the Maine Life and Health Insurance Guaranty Association (MLHIGA) with the NAIC Insurance Regulatory Information System reports of ratios and listings of companies not included in the ratios. These ratios relate to the financial condition of insurers. The Bureau uses them in deciding how to allocate its resources to the companies that need regulatory attention and provides them to MLHIGA to support its solvency monitoring efforts. This exception requires MLHIGA to keep these reports confidential until they become public as outlined in the exception.

MLHIGA is not a state agency, and this statute is not an exception to the public records definition. Information that the Bureau receives from the Insurance Regulatory Information System is confidential under Section 414(4) (see Ref. 101).

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

n/a

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

n/a

4. Does your agency recommend changes to this exception?

n/a

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

Maine Life Health Insurance Guaranty Association (Don Sirois, )

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

The Bureau notes that section 4612-A(3)(B) requires the MLHIGA board of directors to report and recommend to the Bureau any matters related to the financial instability of any MLHIGA member or prospective member. This section requires that the Bureau treat these reports and recommendations as confidential.

To the best of our knowledge, the Bureau has not used this exception as a basis for denying a records request.

The Bureau would support continuing this exception because it relates to sensitive financial information of insurers that could be used to their detriment were it to become public.

The Bureau is not aware of any problems that have occurred in applying this section. The described records are intended to be confidential, and the exception describes them clearly.

**STATUTE:** [24-A MRSA §6458, sub-§1](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Risk-based capital standards provide a regulatory tool for insurance regulators to evaluate the financial condition of insurance companies. This exception provides that risk-based capital reports filed with the Bureau are confidential to the extent that they are not required to be in a publicly available annual statement. Risk-based capital plans which encompass corrective action plans of insurers whose risk-based capital falls below statutory thresholds are also confidential.

To the best of our knowledge, the Bureau has not received any FOAA requests for information that this exception protects.

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

The Bureau supports continuing this exception because it is a national accreditation standard and is consistent with the laws of other U.S. insurance regulators.

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

Maine Association of Health Plans (Katherine Pelletreau), America's Health Insurance Plans (Joseph Mackey), Maine Association of Insurance Companies (Charlie Soltan), American Property Casualty Insurance Association (Bruce Gerrity), Maine Insurance Agents Association and National Association of Insurance and Financial Advisors – ME (Daniel Bernier), Unum (Charles Piacentini), Anthem (Kristine Ossenfort)

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

n/a

**STATUTE:** [24-A MRSA §6708, sub-§2](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 exception provides that all examination reports and underlying documents of captive insurers are confidential. Pursuant to 24-A M.R.S. § 6718(2) and Bureau of Insurance Rule 165, this exception does not apply to captive insurers acting as federally authorized risk retention groups. The Bureau is unaware of any FOAA request for captive insurer examination reports.

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

The Bureau supports continuing this exception. With the exception of risk retention groups, which are outside the scope of this exception, captive insurers do not offer insurance to unrelated parties and therefore do not need to be subject to the same level of public transparency as commercial insurers. Other jurisdictions that regulate similar arrangements provide comparable confidentiality protections, so this exception is necessary to make Maine attractive to prospective captive insurers.

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

The principal stakeholders affected by this exception are current and prospective captive insurance sponsors. A list of current captive sponsors is not publicly available and the Bureau is unaware who represents the interests of prospective captive insurers.

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

In 2010, the Legislature enacted PL 2009, ch. 672, which included a provision to enhance Maine's status as a potential captive insurer domicile. This legislation declared the entire state to be a Pine Tree Development Zone for captive insurers.



**STATUTE:** [24-A MRSA §6715](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 exception provides that applications and financial statements filed with the Bureau with respect to captive insurers are confidential, with the exception of filings with respect to risk retention groups and other industrial insured captive insurers. No records subject to this exception exist with respect to any currently authorized captive insurers.

The Bureau is unaware of any FOAA request for captive insurer filings.

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

The Bureau supports continuing this exception. With the exception of risk retention groups, which are outside the scope of this exception, captive insurers do not offer insurance to unrelated parties and therefore do not need to be subject to the same level of public transparency as commercial insurers. Other jurisdictions that regulate similar arrangements provide comparable confidentiality protections, so this exception is necessary to make Maine attractive to prospective captive insurers

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

The principal stakeholders affected by this exception are current and prospective captive insurance sponsors. A list of current captive sponsors is not publicly available and the Bureau is unaware who represents the interests of prospective captive insurers.

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

In 2010, the Legislature enacted PL 2009, ch. 672, which included a provision to enhance Maine's status as a potential captive insurer domicile. This legislation declared the entire state to be a Pine Tree Development Zone for captive insurers.

**STATUTE:** [24-A MRSA §6807, sub-§7](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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 exception provides that all examination reports and underlying documents with respect to life settlement companies are confidential. The Bureau has not conducted any examinations of life settlement companies, and no records within the scope of this section exist. The exception has not been cited as the basis of denial of a FOAA request.

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

The Bureau supports continuing this exception because it protects the privacy interests of individuals.

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?  
The Bureau 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.  
American Council of Life Insurance (Pierce Atwood), Maine Insurance Agents Association and the National Association of Insurance and Financial Advisors-  
ME (Daniel Bernier)
  
6. Please provide any further information that you believe is relevant to the Advisory Committee's review.  
n/a

**STATUTE:** [24-A MRSA §6818, sub-§§6 and 8](#)

**AGENCY:** Bureau of Insurance

**CONTACT PERSON:** Ben Yardley

**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).

Section 6818 relates to fraud involving viatical and life settlements. Subsection 6 makes confidential information that the Bureau receives or obtains and not subject to subpoena or discovery. Subsection 8 makes confidential the antifraud plans that settlement providers submit to the Bureau and not subject to subpoena or discovery.

To the best of our knowledge, the Bureau has not denied a FOAA request based on this exception.

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

The Bureau supports continuing this exception because it protects the privacy interests of individuals.

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 Bureau has not experienced any problems in applying this exception. It is clear that the described records are confidential, and the exception's language is sufficiently clear in describing them.

4. Does your agency recommend changes to this exception?

The Bureau 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.

American Council of Life Insurance (Pierce Atwood), Maine Insurance Agents Association and the National Association of Insurance and Financial Advisors – ME (Daniel Bernier)

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

n/a