

**RIGHT TO KNOW ADVISORY COMMITTEE:
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE
RECOMMENDATIONS & PROPOSED DRAFT STATUTORY CHANGES REFLECTING
SUBCOMMITTEE RECOMMENDATIONS**

The Public Records Exception Subcommittee is chaired by Kim Monaghan. Subcommittee members are Jonathan Bolton, Lynda Clancy, Julie Finn, Mal Leary and Cheryl Saniuk-Heinig.

The Subcommittee met 3 times: October 13, October 26 and November 16. The Subcommittee's charge was to review the existing public records exceptions in Titles 22, 23, 24 and 24-A. Pursuant to law, the Right to Know Advisory Committee's review of these existing exceptions must be completed by 2025. Given the timeline for review, the Subcommittee has deferred review of the exceptions in Title 22 until 2023. The Subcommittee has completed its review of the exceptions in Titles 23, 24 and 24-A and makes the following recommendations.

Recommendation One: Continue the following exceptions in Titles 23, 24 and 24-A without change:

- Title 23, section 63, relating to records regarding negotiations for and appraisals of property and engineering estimates held by the Department of Transportation and the Maine Turnpike Authority
- Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike
- Title 23, section 1982, relating to patrons of the Maine Turnpike
- Title 23, section 4244, subsections 3 and 4, relating to design-build contracting proposals
- Title 23, section 4251, subsection 10-A, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls
- Title 23, section 8115-A, relating to records of the Northern New England Passenger Rail Authority
- Title 24, section 2302-A, sub-§ 3, relating to utilization review data provided by nonprofit hospital or medical service organization
- Title 24, section 2307, subsection 3, relating to an accountant's work papers concerning nonprofit hospital or medical service organizations
- Title 24, section 2329, subsection 8, relating to alcoholism and drug treatment patient records of nonprofit hospitals and medical service organizations
- Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act
- Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act
- Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels
- Title 24, section 2986, subsection 2, relating to billing for forensic examinations for alleged victims of gross sexual assault
- Title 24, section 2986, subsection 3, relating to District Court hearings on storing or processing forensic examination kit of gross sexual assault
- Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance
- Title 24-A, section 222, subsection 13-A, paragraph A, subparagraph 2-A, relating to any group capital calculation or liquidity stress test and supporting information with respect to insurance holding company
- Title 24-A, section 225, subsection 3, relating to insurance examination reports

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- Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision
- Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports
- Title 24-A, section 414, subsections 4 and 5, relating to insurance certificate of authority audit work papers
- Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions
- Title 24-A, section 423-G, subsection 4, relating to corporate governance annual disclosure filings
- Title 24-A, section 731-B, subsection 1, paragraph B-2, relating to documents filed with BOI by an insurer assuming reinsurance
- Title 24-A, section 796-A, relating to proprietary business information of special purpose insurance vehicle filed with the Superintendent of Insurance
- Title 24-A, section 962, relating to protected valuation information filed by insurers
- Title 24-A, section 994, subsection 2, paragraph A, and subsection 4 relating to property and casualty actuarial report, work papers or actuarial opinion summary in possession or control of Bureau of Insurance
- Title 24-A, section 1420-N, subsection 6, relating to insurers and producers
- Title 24-A, section 1905, subsection 1, relating to credit and investigative reports concerning insurance administrator applicants
- Title 24-A, section 1911, relating to insurance audits and examinations
- Title 24-A, section 2169-B, subsection 6, insurance scoring model
- Title 24-A, section 2187, subsection 6, relating to insurance fraud reporting
- Title 24-A, section 2204, subsection 4, relating to insurance investigative information (definition)
- Title 24-A, section 2268, subsection 1, relating to documents, materials and other information provided to BOI about insurer's information security program
- Title 24-A, section 2304-A, subsection 7, relating to insurance rate filings
- Title 24-A, section 2323, subsection 4, relating to reports of insurers concerning loss and expense experience
- Title 24-A, section 2325-B, subsection 9, relating to modified policy forms and rate filings of the mandatory property and casualty insurance market assistance program
- Title 24-A, section 2384-B, subsection 8, relating to workers' compensation insurance rating concerning claims and self-insurance
- Title 24-A, section 2384-C, subsection 7, relating to workers' compensation insurance concerning claims and self-insurance
- Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges
- Title 24-A, section 2412, subsection 8, relating to insurance contracts and forms
- Title 24-A, section 2479, relating to records of the Interstate Insurance Product Regulation Commission

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- Title 24-A, section 2483, subsection 6, relating to the Interstate Insurance Product Regulation Commission work papers and information regarding privacy of individuals and proprietary information of insurers
- Title 24-A, section 2736, subsection 2, relating to rate filings on individual health insurance policies
- Title 24-A, section 2749, subsection 3, relating to utilization review data for health insurance contracts
- Title 24-A, section 2808-B, subsection 2-A, relating to rate filings for small group health plans
- Title 24-A, section 2842, subsection 8, relating to relating to alcoholism and drug treatment patient records for group and blanket health insurance
- Title 24-a, section 2847, subsection 3, relating to utilization review data for group and blanket health insurance
- Title 24-A, section 4204, subsection 2-A, relating to quality assurance programs of health maintenance organizations
- Title 24-A, section 4224, subsections 1 and 2, relating to quality assurance committees of health maintenance organizations
- Title 24-A, section 4228, subsection 3, relating to utilization review data for health maintenance organizations
- Title 24-A, section 4233, subsection 2, relating to health maintenance organizations work papers filed with the Superintendent of Insurance
- Title 24-A, section 4245, subsections 1 and 3, relating to health maintenance organizations accreditation survey report
- Title 24-A, section 4312, relating to independent external review requests and proceedings
- Title 24-A, section 4320-S, subsection 4, relating to proprietary information reported by health insurance carriers related to compliance with mental health parity requirements
- Title 24-A, section 4406, subsection 3, relating to delinquent insurers
- Title 24-A, section 4612-A, subsection 1, relating to information reported by the Superintendent of Insurance to the National Association of Insurance Commissioners Insurance Regulatory Information System board
- Title 24-A, section 6458, subsection 1, relating to risk-based capital standards for insurers
- Title 24-A, section 6708, subsection 2, relating to examination of documents relation to captive insurance companies
- Title 24-A, section 6715, relating to information submitted to the Superintendent of Insurance by captive insurance companies
- Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators
- Title 24-A, section 6818, subsections 6 and 8, relating to fraudulent viatical or life insurance settlements information provided for enforcement
- Title 24-A, section 6907, subsection 1, relating to personally identifiable financial information obtained by Dirigo Health

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Recommendation Two: Amend the following exceptions in Titles 23, 24 and 24-A:

- Title 24, section 2302-A, sub-§ 3, relating to utilization review data provided by nonprofit hospital or medical service organization
- Title 24, section 2510, subsection 1 and 2, relating to professional competence reports under the Maine Health Security Act
- Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act
- Title 24-A, section 6907, subsection 2, relating to health information obtained by Dirigo Health covered by the federal Health Insurance Portability and Accountability Act of 1996, or c. 24, or T.22 section 1711-C
- Title 24-A, section 6907, subsection 3, relating to practitioner-specific quality data collected, used, produced or maintained for measuring the professional performance of a health care practitioner by the Maine Quality Forum

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REF. # 85

Sec. 1. 24 MRSA §2302-A, sub-§ 3 is amended to read:

3. Confidentiality. Any information provided pursuant to this section shall not identify the names of patients. If patient names are identified in information provided pursuant to this section, the patient names are confidential.

Summary

This language clarifies the subsection to require that patient names contained in utilization review data reports filed by nonprofit hospitals and medical service organizations with the Superintendent of Insurance be kept confidential.

REF. # 88

Sec. 2. 24 MRSA §2510, sub-§§1 and 2 are amended to read:

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be is confidential, except for information and data that is developed or maintained by the board from reports or records received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

- A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;
- B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;
- C. As required by section 2509, subsection 5;
- D. Pursuant to an order of a court of competent jurisdiction;
- E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted;

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F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, ~~shall not be~~ **is not** confidential.

Summary

This language makes grammatical corrections.

REF. # 90

Sec. 3. 24 MRSA §2604 is amended to read:

§2604. Records of superintendent

For the purpose of evaluation of policy provisions, rate structures and the arbitration process and for recommendations of further legislation, the Superintendent of Insurance shall retain the information and maintain the files in the form and for such period as the superintendent determines necessary. The superintendent shall maintain the reports filed in accordance with this section, and all data or information derived therefrom that identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made, as ~~strictly~~ confidential records. Data and information derived from reports filed in accordance with this section that do not identify or permit identification of the insured or insureds or the incident or occurrence for which a claim was made may be released by the superintendent or otherwise made available to the public. Reports made to the superintendent and records thereof kept by the superintendent are not subject to discovery and are not admissible in any trial, civil or criminal, other than proceedings brought before or by the board.

Summary

This language removes the word “strictly” from the section of statute requiring confidentiality for all data or information that identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made contained in records of the superintendent maintained in accordance with the section

REF. # 145

Sec. 4. 24-A MRSA §6907, sub-§1 is amended as follows:

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1. Financial information. Any personally identifiable financial information, supporting data or tax return of any person obtained by Dirigo Health under this chapter is confidential **and not open to public inspection.**

Summary

This language amends the public records exception to remove unnecessary language.

REF. # 146

Sec. 5. **24-A MRSA §6907, sub-§2** is amended as follows:

2. Health information. Health information obtained by Dirigo Health under this chapter that is covered by the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 110 Stat. 1936 or information covered by chapter 24 or Title 22, section 1711-C is confidential **and not open to public inspection.**

Summary

This language amends the public records exception to remove unnecessary language.
