

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
July 16, 2012
Meeting Summary

Convened 1:08 p.m., Room 438, State House, Augusta

Present:
Rep. Joan Nass
Shenna Bellows
Joe Brown
AJ Higgins
Linda Pistner

Absent:
Perry Antone

Staff:
Peggy Reinsch
Colleen McCarthy Reid

Introductions

Shenna Bellows, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

Issues remaining from 2011

- Title 22, section 8754, reporting of sentinel events

Staff provided a summary of the 2011 discussions about the confidentiality provisions in the sentinel event reporting statute, and distributed a copy of the most recent report submitted by the Department of Health and Human Services. Ms. Bellows stated that she would prefer to repeal the confidentiality provisions completely, although she knew it would cause a lot of concern and require a public hearing and thorough discussion involving many people. Other members agreed that a thorough process would be required, but either full Advisory Committee or the Judiciary Committee of the Legislature could host that process.

Jeff Austin of the Maine Hospital Association was in the audience and indicated that the staff summary mischaracterized his comments last year; if the confidentiality protections were no longer law, he said hospitals would still report because such reporting is mandatory, but it would be much hard for DHHS and the facilities to collect candid information from those who may have something to share if individuals were not protected by confidentiality. The purpose of the sentinel event reporting, he said, is for hospitals to get to the whole truth – the underlying cause of the event – and would that be possible if people with information are reluctant or refuse to come forward? Confidentiality, he said, helps provide the full truth.

AJ Higgins identified the tension between the public's right to get full information and therefore be able to make informed decisions and the hospitals benefiting from full

information, plus fairness to the facility. Ms. Bellows expressed her concern that the public doesn't get full information, so there needs to be an external source of accountability.

The Subcommittee voted 5-0 to repeal the confidentiality provisions. Mr. Higgins said it was hard for him to come down on either side, which made it an appropriate case for the Judiciary Committee to take up and hold a public hearing. Ms. Bellows suggested that the recommendation for repeal include a recommendation that the Judiciary Committee take up this public records exception separately so it can receive appropriate attention.

Staff will provide draft language for the proposed repeal at the next meeting.

- Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act

The "Community Right-to-Know Act" was enacted in 1985 to give individuals more control over exposure to hazardous substances in their communities. It purported to require reporting of the presence of hazard substances to the Department of Health and Human Services. It is unclear whether any part of the program was ever implemented. The confidentiality provisions are broad and ambiguous about the public's right to access information collected by the Department. Trade secrets are completely protected.

The Right to Know Advisory Committee asked for guidance from two joint standing committees of the Legislature: Environment and Natural Resources (which oversees other toxic and hazardous substances programs) and Health and Human services (which oversees the Department of Health and Human Services). HHS responded by deferring to ENR, which did not respond before the 125th Legislature, Second Regular Session adjourned.

Ms. Pistner move to amend the statute to make the language protecting trade secrets clear and consistent. Ms. Bellows noted that she would repeal all of the confidentiality provisions. The Subcommittee voted 4-1 to support Ms. Pistner's motion; Ms. Bellows supports a minority report as described.

Staff will provide draft language for the majority and minority at the next meeting.

- Title 22, section 3188, related to the Maine Managed Care Insurance Plan
- Title 22, section 3192, related to the Community Health Access Program

Two programs that were enacted and never implemented are the Maine Managed Care Insurance Plan and the Community Health Access Program. The Right to Know Advisory Committee requested assistance from the Health and Human Services Committee on both of these programs. In a letter to the Advisory Committee in January 2012, HHS recommended that both programs be repealed. The Judiciary Committee

chose not to include the repeal in LD 1804, An Act to Implement the recommendations of the right to Know Advisory Committee Concerning Public records Exceptions because the proposed repeals had not had a public hearings.

Ms. Bellows expressed her concern that the Subcommittee's charge is about public records exceptions, not repealing programs. She suggested that the report keep the confidentiality but note that the programs had never been implemented. She thinks it is important to tread carefully because of the controversy over health care access.

The Subcommittee voted 5-0 to keep the confidentiality provision while sending a letter to the Department of Health and Human Services about the programs, with the suggestion that if the Department believes the statutory language is not necessary, then perhaps the Department is best situation to propose repeal in departmental legislation.

Review of Existing Exceptions –Titles 26 through 39-A

Binders including all the statutes subject to review this biennium were distributed to subcommittee members. Subcommittee members did not have enough time to review the initial packet of agency questionnaire responses before the meeting, so the members agreed to start the review at the next meeting with those provisions.

Public Comments on Existing Public Records Exceptions

Ms. Bellows explained that a couple of people had contacted the Advisory Committee with concerns about an existing public records exception that was reviewed during the last cycle. Ms. Bellows and Advisory Committee Chair Senator Hastings had discussed the concerns, and agreed that it was appropriate to provide an opportunity for any member of the public to come forward with comments about existing public records exceptions. The remainder of the meeting was devoted to public comments on existing public records exceptions.

All but one of the commenters expressed concerns about the confidentiality provisions included in the statute concerning public-private partnerships for transportation projects (Title 23, section 4251). The "East-West Highway/Corridor" may be the first project that falls under the public-private partnership law, and residents of the counties affected by the potential routes expressed their frustration at being unable to access any information about the project, its pathway and its impacts. They appealed to the Subcommittee to assist in accessing information. Subcommittee members made clear that even if the Advisory Committee recommended changes to the confidentiality provisions, no changes would be made unless and until the Legislature takes action.

One member of the public expressed concern about the need to have more health data accessible to the public. He provided examples of the usefulness of different sets of data, and expressed his support for making more information about sentinel events available.

Future Meetings

The Subcommittee agreed to meet next on Wednesday, August 8, 2012, starting at 1:00 p.m.

Other scheduled meetings:

The Encryption Subcommittee will meet Wednesday, August 8, 2012, starting at 9:00 a.m.

The Legislative Subcommittee will meet on Thursday, August 23, 2012, starting at 9:00 a.m.

The Bulk records Subcommittee will meet on Thursday, August 23, 2012, starting at 11:00 a.m.

The Advisory Committee will meet:

- Thursday, October 11, 2012 at 1:00 pm, Room 438, State House;
- Thursday, November 15, 2012 at 1:00 pm, Room 438, State House; and
- Thursday November 29, 2012 at 1:00 pm, Room 438, State House.

Ms. Bellows adjourned the meeting at 3:10 p.m.

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid

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