

1 H.54

2 Introduced by Representative Sweaney of Windsor

3 Referred to Committee on

4 Date:

5 Subject: Government operations; Administrative Procedure Act; Public

6 Records Act; exemptions

7 Statement of purpose of bill as introduced: This bill proposes to:

- 8 (1) amend the Administrative Procedure Act to specify that the cover  
9 sheet required to be filed with a proposed rule identify whether the rule adopts  
10 an exemption to the Public Records Act;
- 11 (2) repeal an annual survey of municipalities relating to public records  
12 required to be conducted by the Secretary of State; and
- 13 (3) delete or amend multiple exemptions to the inspection or copying of  
14 public records.

15 An act relating to Public Records Act exemptions

16 It is hereby enacted by the General Assembly of the State of Vermont:

1                   \* \* \* Administrative Procedure Act – Cover Sheet \* \* \*

2           Sec. 1. 3 V.S.A. § 838 is amended to read:

3           § 838. FILING OF PROPOSED RULES

4           (a) Proposed rules shall be filed with the ~~secretary of state~~ Secretary of  
5           State. The filing shall include the following:

6                   (1) a cover sheet;

7                   (2) an economic impact statement;

8                   (3) an incorporation by reference statement, if the proposed rule

9           includes an incorporation by reference;

10                   (4) an adopting page;

11                   (5) the text of the proposed rule;

12                   (6) an annotated text showing changes from existing rules;

13                   (7) an explanation of the strategy for maximizing public input on the

14           proposed rule as prescribed by the ~~interagency committee on administrative~~

15           ~~rules~~ Interagency Committee on Administrative Rules; and

16                   (8) a brief summary of the scientific information upon which the

17           proposed rule is based to the extent the proposed rule depends on scientific

18           information for its validity.

19           (b) The cover sheet shall be on a form prepared by the ~~secretary of state~~

20           Secretary of State containing at least the following information:

21                   (1) the name of the agency;

- 1           (2) the title or subject of the rule;
- 2           (3) a concise summary explaining the effect of the rule;
- 3           (4) the specific statutory authority for the rule, and, if none exists, the  
4 general statutory authority for the rule;
- 5           (5) an explanation of why the rule is necessary;
- 6           (6) an explanation of the people, enterprises, and government entities  
7 affected by the rule;
- 8           (7) a brief summary of the economic impact of the rule;
- 9           (8) the name, address, and telephone number of an individual in the  
10 agency able to answer questions and receive comments on the proposal;
- 11           (9) a proposed schedule for completing the requirements of this chapter,  
12 including, if there is a hearing scheduled, the date, time, and place of that  
13 hearing; and a deadline for receiving comments; ~~and~~
- 14           (10) whether the rule adopts an exemption from inspection and copying  
15 of public records or otherwise designates information confidential and, if so,  
16 the asserted statutory authority for the exemption or designated confidentiality  
17 and a brief summary of the need for the exemption or confidentiality; and
- 18           (11) a signed and dated statement by the adopting authority approving  
19 the contents of the filing.

20

\* \* \*





1 ~~such documents does not otherwise violate any provision of Title 32;~~

2 [Repealed.]

3 (23) any data, records, or information ~~developed, discovered, collected,~~  
4 ~~or received~~ produced or acquired by or on behalf of faculty, staff, employees,  
5 or students of the University of Vermont or the Vermont ~~state colleges~~ State  
6 Colleges in the conduct of study, research, or creative efforts on medical,  
7 scientific, technical, scholarly, or artistic matters, whether such activities are  
8 sponsored alone by the institution or in conjunction with a governmental body  
9 or private entity, until such data, records, or information ~~are~~ is published,  
10 disclosed in an issued patent, or publicly released by the institution or its  
11 authorized agents. This subdivision applies to, ~~but is not limited to,~~ research  
12 notes and laboratory notebooks, lecture notes, manuscripts, creative works,  
13 correspondence, research proposals and agreements, methodologies, protocols,  
14 and the identities of or any personally identifiable information about  
15 participants in research. This subdivision shall not apply to records, other than  
16 research protocols, produced or acquired by an institutional animal care and  
17 use committee regarding the committee's compliance with state law or federal  
18 law regarding or regulating animal care;

19 \* \* \*

20 (30) all ~~code and machine readable structures of state funded and~~  
21 ~~controlled~~ state-controlled database ~~applications~~ structures and application

1 code, including the vermontvacation.com website and Travel Planner  
2 application, which are known only to certain state departments engaging in  
3 marketing activities and which give the ~~state~~ State an opportunity to obtain a  
4 marketing advantage over any other state, regional, or local governmental or  
5 nonprofit quasi-governmental entity, or private sector entity, unless any such  
6 state department engaging in marketing activities determines that the license or  
7 other voluntary disclosure of such materials is in the ~~state's~~ State's best  
8 interests;

9 \* \* \*

10 (38) ~~records held by the agency of human services, which include~~  
11 ~~prescription information containing prescriber identifiable data, that could be~~  
12 ~~used to identify a prescriber, except that the records shall be made available~~  
13 ~~upon request for medical research, consistent with and for purposes expressed~~  
14 ~~in 18 V.S.A. §§ 4621, 4631, 4632, 4633, and 9410 and 18 V.S.A. chapter 84,~~  
15 ~~or as provided for in 18 V.S.A. chapter 84A and for other law enforcement~~  
16 ~~activities; [Repealed.]~~

17 \* \* \*

18 (40) records of genealogy provided in an application or in support of an  
19 application for tribal recognition pursuant to chapter 23 of this title;

20 \* \* \*

1 Sec. 4. 8 V.S.A. § 4089a is amended to read:

2 § 4089a. MENTAL HEALTH CARE SERVICES REVIEW

3 \* \* \*

4 (g) ~~Members of the independent panel of mental health care providers shall~~  
5 ~~be compensated as provided in 32 V.S.A. § 1010(b) and (c). [Repealed.]~~

6 (h) A review agent shall pay a license fee for the year of registration and a  
7 renewal fee for each year thereafter of \$200.00. In addition, a review agent  
8 shall pay any additional expenses incurred by the ~~commissioner~~ Commissioner  
9 to examine and investigate an application or an amendment to an application.

10 (i) The confidentiality of any health care information acquired by or  
11 provided to ~~the~~ an independent panel of mental health professionals or to an  
12 independent review organization pursuant to section 4089f of this title shall be  
13 maintained in compliance with any applicable state or federal laws. ~~The~~  
14 ~~independent panel shall not constitute a public agency 1 V.S.A. § 317(a), or a~~  
15 ~~public body under section 310 of Title 1.~~ Records of, and internal materials  
16 prepared for, specific reviews under this section shall be exempt from public  
17 disclosure under 1 V.S.A. § 316.

18 Sec. 5. 8 V.S.A. § 4089f is amended to read:

19 § 4089f. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE

20 SERVICE DECISIONS

21 (a) ~~For the purposes of~~ As used in this section:



1 (c) The Vermont ~~commissioner of taxes~~ Commissioner of Taxes, when  
2 requested by the ~~corporation~~ Corporation, shall compare any certificate filed  
3 pursuant to this subchapter with the state income tax returns filed by the  
4 persons making such certificate and shall report any instances of discrepancy  
5 to the ~~corporation~~ Corporation.

6 (d) ~~Except as otherwise provided in this subchapter or other applicable law~~  
7 ~~or court order, or by agreement of the applicant, certificates and reports made~~  
8 ~~to the corporation under this section shall be confidential, and it shall be~~  
9 ~~unlawful for anyone to divulge the amount of income or any particulars set~~  
10 ~~forth in a certificate or any report made to an applicant or the corporation~~  
11 Incentive grant applications and other records received by the Corporation  
12 under this section are confidential under 1 V.S.A. § 317(c)(7) and are exempt  
13 from public inspection and copying under the Public Records Act. Nothing  
14 ~~herein shall be construed to prevent the publication of~~ However, statistical data  
15 may be publicly released as long as the ~~identification~~ identities and the  
16 applications, certificates, and reports of particular individuals, ~~certificates, and~~  
17 reports is ~~prevented~~ are not released.

18 Sec. 7. 18 V.S.A. § 1099 is amended to read:

19 § 1099. REPORTS AND RECORDS CONFIDENTIAL

20 All information and reports in connection with persons suffering from  
21 venereal diseases shall be regarded as ~~absolutely confidential and for the sole~~

1 ~~use of the board in the performance of its duties hereunder, and such records~~  
2 ~~shall not be accessible to the public nor shall such records be deemed public~~  
3 ~~records; and such board shall not disclose the names or addresses of persons so~~  
4 ~~reported or treated except to a prosecuting officer or in court in connection~~  
5 ~~with a prosecution under sections 1105 or 1106 of this title. The foregoing~~  
6 ~~shall not constitute a restriction on the board in the performance of its duties in~~  
7 ~~controlling the above communicable diseases~~ a confidential public health  
8 record under section 1001 of this title.

9 Sec. 8. 18 V.S.A. § 9418f is amended to read:

10 § 9418f. RENTAL NETWORK CONTRACTS

11 (a) Definitions. As used in this section:

12 (1) “Health care services” means services for the diagnosis, prevention,  
13 treatment, or cure of a health condition, illness, injury, or disease.

14 (2)(A) “Provider” means a physician, a physician organization, or a  
15 physician hospital organization that is acting exclusively as an administrator on  
16 behalf of a provider to facilitate the provider’s participation in health care  
17 contracts.

18 (B) “Provider” does not include a physician organization or physician  
19 hospital organization that leases or rents the physician organization’s or  
20 physician hospital organization’s network to a covered entity.

1           (3) “Provider network contract” means a contract between a contracting  
2           entity and a provider specifying the rights and responsibilities of the  
3           contracting entity and provider for the delivery of and payment for health care  
4           services to covered individuals.

5           (b) Scope. This section shall not apply to:

6           (1) Provider network contracts for services provided to Medicaid,  
7           Medicare, or the ~~state children’s health insurance program~~ State Children’s  
8           Health Insurance Program (SCHIP) beneficiaries.

9           (2) Circumstances in which access to the provider network contract is  
10          granted to an entity operating under the same brand licensee program as the  
11          contracting entity.

12          (c)(1) Registration. Any person not otherwise licensed or registered by the  
13          ~~commissioner~~ Commissioner that intends to conduct business as a contracting  
14          entity shall register with the ~~commissioner~~ Commissioner prior to commencing  
15          business. Each person not licensed or registered by the ~~commissioner~~  
16          Commissioner as a contracting entity upon the effective date of this section  
17          shall have 30 days within which to register with the ~~commissioner~~  
18          Commissioner.

19          (2) Registration shall consist of the submission of the following  
20          information:

21                 (A) the official name of the contracting entity;

1 (B) the mailing address and main telephone number for the  
2 contracting entity's main headquarters; and

3 (C) the name and telephone number of the contracting entity's  
4 representative who shall serve as the primary contact with the ~~commissioner~~  
5 Commissioner.

6 (3) The information required by this subsection shall be submitted in  
7 written or electronic format, as prescribed by the ~~commissioner~~ Commissioner.  
8 Information submitted to the Commissioner under this section or rules adopted  
9 by the Commissioner to implement this section shall not be confidential unless  
10 otherwise exempt from inspection and copying under the Public Records Act.

11 \* \* \*

12 (d)(1) Contracting entity rights and responsibilities. A contracting entity  
13 may not grant access to a provider's health care services and contractual  
14 discounts pursuant to a provider network contract unless:

15 \* \* \*

16 (5)(A) All information made available to providers in accordance with  
17 the requirements of this section shall be confidential and shall not be disclosed  
18 to any person or entity not involved in the provider's practice or the  
19 administration thereof without the prior written consent of the contracting  
20 entity.

1 (B) Nothing in this section shall be construed to prohibit a  
2 contracting entity from requiring the provider to execute a reasonable  
3 confidentiality agreement to ensure that confidential or proprietary information  
4 disclosed by the contracting entity is not used for any purpose other than the  
5 provider's direct practice management or billing activities.

6 (C) Nothing in this subsection shall be construed to prevent the  
7 inspection and copying, as provided under the Public Records Act, of  
8 information acquired by the Commissioner under this section or rules  
9 implementing this section.

10 (e) Rental by third parties prohibited. A covered entity, having itself been  
11 granted access to a provider's health care services and contractual discounts  
12 pursuant to a provider network contract, may not further lease, rent, or  
13 otherwise grant access to the contract to any other person.

14 ~~(f)(1) Unauthorized access to provider network contracts. It is a violation of~~  
15 ~~this subchapter subject to enforcement under section 9418g of this title to~~  
16 ~~access or utilize a provider's contractual discount pursuant to a provider~~  
17 ~~network contract without a contractual relationship with the provider,~~  
18 ~~contracting entity, or covered entity, as specified in this section. [Repealed.]~~

19 (2) Contracting entities and third parties are obligated to comply with  
20 subdivision (d)(2)(B) of this section concerning the services referenced on a  
21 remittance advice or explanation of payment. A provider may refuse the

1 discount taken on the remittance advice or explanation of payment if the  
2 discount is taken without a contractual basis or in violation of these sections.  
3 However, an error in the remittance advice or explanation of payment may be  
4 corrected within 30 days following notice by the provider.

5 (3) A contracting entity may not lease, rent, or otherwise grant a covered  
6 entity access to a provider network contract unless the covered entity accessing  
7 the health care contract is:

8 (A) a payer, a third party administrator, or another entity that  
9 administers or processes claims on behalf of the payer;

10 (B) a preferred provider organization or preferred provider network,  
11 including a physician organization or physician hospital organization; or

12 (C) an entity engaged in the electronic claims transport between the  
13 contracting entity and the payer that does not provide access to the provider's  
14 services and a discount to any other covered entity.

15 Sec. 9. 18 V.S.A. § 7103 is amended to read:

16 § 7103. DISCLOSURE OF INFORMATION

17 (a) All certificates, applications, records, and reports, other than an order of  
18 a court made for the purposes of this part of this title, and directly or indirectly  
19 identifying a patient or former patient or an individual whose hospitalization or  
20 care has been sought or provided under this part, together with clinical

1 information relating to such persons, shall be kept confidential and shall not be  
2 disclosed by any person except insofar:

3 (1) as the individual identified, the individual's ~~health care agent under~~  
4 ~~subsection 5264~~ section 9701 of this title, ~~or~~ the individual's legal guardian, if  
5 any ~~(or, or,~~ if the individual is an unemancipated minor, his or her parent or  
6 legal ~~guardian~~), guardian shall consent in writing; or

7 (2) as disclosure may be necessary to carry out any of the provisions of  
8 this part; or

9 (3) as a court may direct upon its determination that disclosure is  
10 necessary for the conduct of proceedings before it and that failure to make  
11 disclosure would be contrary to the public interest.

12 (b) Nothing in this section shall preclude disclosure, ~~upon proper inquiry,~~  
13 of information concerning an individual's medical condition ~~the individual's~~  
14 ~~family, clergy, physician, attorney, the individual's health care agent under~~  
15 ~~section 5264 of this title, a person to whom disclosure is authorized by a~~  
16 ~~validly executed durable power of attorney for health care, or to an interested~~  
17 ~~party~~ to a person authorized by law.

18 \* \* \*

1 Sec. 10. 30 V.S.A. § 206 is amended to read:

2 § 206. INFORMATION TO BE FURNISHED DEPARTMENT

3 On request by the ~~department of public service~~ Department of Public  
4 Service, a company owning or operating a plant, line, or property subject to  
5 supervision under this chapter shall furnish the ~~department~~ Department  
6 information required by it concerning the condition, operation, management,  
7 expense of maintenance and operation, cost of production, rates charged for  
8 service or for product, contracts, obligations, and the financial standing of such  
9 company. It shall also inform the ~~department~~ Department of the salaries of, the  
10 pensions, option, or benefit programs affecting, and the expenses reimbursed  
11 to, its officers or directors, or both. ~~Such information shall be open to public~~  
12 ~~inspection at reasonable times and any person shall be entitled to copies~~  
13 ~~thereof. Information exacted for use by the department in a particular instance~~  
14 ~~shall not be made public, except in the discretion of the department.~~

15 Sec. 11. 33 V.S.A. § 105(c) is amended to read:

16 (c) In addition to other duties imposed by law, the ~~commissioner~~  
17 Commissioner shall:

18 (1) Administer the laws assigned to the ~~department~~ Department.

19 (2) Fix standards and issue regulations necessary to administer those  
20 laws and for the custody and preservation of records of the ~~department~~  
21 Department. ~~Those regulations shall contain provisions restricting the use or~~

1 ~~disclosure of information contained in the records to purposes directly~~  
2 ~~connected with the administration of the department. As used in this~~  
3 ~~subdivision, the word "records" includes records, papers, files and~~  
4 ~~communications.~~

5 \* \* \*

6 Sec. 12. 33 V.S.A. § 111 is amended to read:

7 § 111. RECORDS, RESTRICTIONS, PENALTIES

8 ~~(a) The names of or information pertaining to applicants for or recipients of~~  
9 ~~assistance or benefits, including information obtained under section 112 of this~~  
10 ~~title, shall not be disclosed to anyone, except for the purposes directly~~  
11 ~~connected with the administration of the department or when required by law.~~

12 ~~(b) A person shall not:~~

13 ~~(1) Publish, use, disclose or divulge any of those records for purposes~~  
14 ~~not directly connected with the administration of programs of the department,~~  
15 ~~or contrary to regulations issued by the commissioner; or~~

16 ~~(2) Use any records of the department of any kind or description for~~  
17 ~~political or commercial purposes, or purposes not authorized by law.~~

18 [Repealed.]

19 Sec. 13. 33 V.S.A. § 304(b) is amended to read:

20 (b) In addition to other duties imposed by law, the ~~commissioner~~  
21 Commissioner shall:

1 (1) Administer the laws assigned to the ~~department~~ Department.

2 (2) Fix standards and issue regulations necessary to administer those  
3 laws and for the custody and preservation of records of the ~~department~~  
4 Department. ~~Those regulations shall contain provisions restricting the use or~~  
5 ~~disclosure of information contained in the records to purposes directly~~  
6 ~~connected with the administration of the department. As used in this~~  
7 ~~subdivision, the word "records" includes records, papers, files, and~~  
8 ~~communications.~~

9 (3) Appoint all necessary assistants, prescribe their duties, and issue  
10 regulations necessary to assure that the assistants shall hold merit system status  
11 while in the employ of the ~~department~~ Department, unless otherwise  
12 specifically provided by law.

13 Sec. 14. 33 V.S.A. § 908 is amended to read:

14 § 908. POWERS AND DUTIES

15 (a) Each nursing home or other provider shall file with the ~~division~~  
16 Division, on request, such data, statistics, schedules, or information as the  
17 ~~division~~ Division may require to enable it to carry out its function.

18 Information received from a nursing home under this section shall be available  
19 to the public, except that unless disclosure is required under 1 V.S.A. § 317(b),  
20 the specific salary and wage rates of employees, other than the salary of an  
21 administrator, shall not be disclosed.

1 (b) The ~~division~~ Division shall have the power to examine books and  
2 accounts of any nursing home or other provider caring for state-assisted  
3 persons, to subpoena witnesses and documents, to administer oaths to  
4 witnesses and to examine them on all matters of which the ~~division~~ Division  
5 has jurisdiction.

6 (c) The ~~secretary~~ Secretary shall adopt all rules and regulations necessary  
7 for the implementation of this chapter.

8 Sec. 15. 33 V.S.A. § 2010(e) is amended to read:

9 (e) Notwithstanding any provision of law to the contrary, information  
10 submitted to the ~~department~~ Department under this section ~~is confidential and~~  
11 ~~is not a public record as defined in 1 V.S.A. § 317(b)~~ shall be confidential and  
12 shall be exempt from public inspection and copying under the Public Records  
13 Act. Disclosure may be made by the ~~department~~ Department to an entity  
14 providing services to the ~~department~~ Department under this section; however,  
15 that disclosure does not change the confidential status of the information. The  
16 information may be used by the entity only for the purpose specified by the  
17 ~~department~~ Department in its contract with the entity. Data compiled in  
18 aggregate form by the ~~department~~ Department for the purposes of reporting  
19 required by this section are public records as defined in 1 V.S.A. § 317(b),  
20 provided they do not reveal trade information protected by state or federal law.

1 Sec. 16. 33 V.S.A. § 7112 is amended to read:

2 § 7112. CONFIDENTIAL INFORMATION

3 (a) Information received by the licensing agency through filed reports,  
4 inspection, or as otherwise authorized under this chapter, except information  
5 that pertains to unsubstantiated complaints or the identity of residents and  
6 complainants, shall be made available to the public.

7 (b) Prior to release of information, the ~~commissioner~~ Commissioner shall  
8 consult with representatives from the nursing home industry and the ~~office of~~  
9 ~~state long term care ombudsman~~ Office of State Long-Term Care Ombudsman  
10 to develop:

11 ~~(1) Guidelines for the release of information to the public that ensure the~~  
12 ~~confidentiality and privacy of complainants and individuals who are receiving~~  
13 ~~or have received care or services in nursing facilities in conformance with state~~  
14 ~~and federal requirements.~~

15 ~~(2) Indicators~~ indicators, derived from information databases maintained  
16 by the licensing agency and the ~~division of rate setting~~ Division of Rate  
17 Setting, which shall be disseminated to consumers in a readily understandable  
18 format designed to facilitate consumers' ability to compare the quality of care  
19 provided by nursing facilities. The ~~commissioner~~ Commissioner shall  
20 continually update quality indicators and refine and improve the information  
21 disseminated to consumers.

1       Sec. 17. EFFECTIVE DATES

2           (a) This section and Sec. 2 of this act shall take effect on passage.

3           (b) All other sections shall take effect on July 1, 2013, except that in Sec. 3,

4           1 V.S.A. § 317(c)(7) (personal records exemption) shall take effect on July 1,

5           2015.