

## I. Recommendations to Amend Health and Human Services Related Exemptions

\* \* \* Health Care-related Exemptions \* \* \*

Sec. #. 1 V.S.A. § 317(c)(38) is amended to read:

(38) records ~~held by the agency of human services,~~ which include prescription information containing ~~prescriber identifiable~~ data; that could be used to identify a prescriber, except that the records shall be made available upon request ~~for medical research,~~ consistent with and for purposes expressed in 18 V.S.A. §§ ~~4621, 4631, 4632, 4633, and 4622~~ or 9410, and 18 V.S.A. chapter 84, or ~~as provided for in~~ 18 V.S.A. chapter 84A, and for other law enforcement activities;

**Description:** 1 V.S.A. § 317(c)(38) is structured to (a) generally exempt from public inspection and copying records including prescription information containing prescriber-identifiable data, and (b) to provide exceptions to this general exemption. The changes in cross-references in this section ensures that only exceptions to the general exemption are listed. More specifically, the amendments to this section:

1. Strike “agency of human services” so that this exemption applies to whichever public agency comes into possession of prescriber-identifiable information.
2. Strike “prescriber-identifiable” because it is redundant with the phrase “records ... which include prescription information containing ... data that could be used to identify a prescriber.”
3. Strike the reference to 18 V.S.A. § 4621 and replace it with a reference to 18 V.S.A. § 4622. Sec. 4621 is just a definition section. Sec. 4622 is an appropriate cross-reference because it contemplates a public agency sharing prescriber identifiable data with other public entities for education purposes.
4. Delete the reference to 18 V.S.A. § 4631. This section is not relevant to 1 V.S.A. § 317(c)(38): the only information a public agency receives under this section is a consent form from prescribers who have consented to the sharing of their information. The public agency does not receive prescription information.
5. Delete the reference to 18 V.S.A. § 4632, which addresses disclosure of allowable expenditures and gifts by pharmaceutical manufacturers. Although the AG receives prescriber identifiable prescription data under this section, § 4632(a)(1)(B), (a)(2)(A), and (a)(5)(A) only authorize the AG to disclose it in a manner that does not identify prescribers.
6. Delete the reference to 18 V.S.A. § 4633, which requires pharmaceutical marketers to disclose to prescribers the average wholesale price of drugs being marketed, because this section does not address records received by a public agency.
7. Keep the reference to 18 V.S.A. § 9410 (health care database) because it is written broadly enough that it may include prescriber identifiable prescription data and may authorize the sharing of prescriber identifiable prescription data.

**8. Keep the exceptions for data shared in administration of laws related to regulated drugs (ch. 84), prescription monitoring (ch. 84a), and for law enforcement purposes.**

**Agency position: AAGs Allan Ruggles, Bessie Weiss, and Kate McCabe were sent this amendment to 1 V.S.A. § 317(c)(38), and none objected to it. I believe Kate responded for Bridget Asay and Wendy Morgan, who were sent the language as well.**

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

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

\* \* \*

(c) Any person who approves or denies payment, or who recommends approval or denial of payment for mental health care services, or whose review results in approval or denial of payment for mental health services on a case-by-case basis, may not review such services in this State unless the Commissioner has granted the person a review agent's license. On or before January 1, 1995, the Commissioner shall adopt rules to implement the provisions of this section, including the procedures and standards for licensure. The rules shall differentiate between health maintenance organizations licensed to do business within this State and other forms of utilization review. The rules shall establish:

\* \* \*

(7) A procedure for clients or patients, or both, mental health professionals, or hospitals to seek prompt reconsideration before an independent review organization pursuant to section 4089f of this title of an adverse decision by a review agent. The external reviewer engaged by the independent review organization shall have training and expertise at least comparable to that of the treating clinician.

\* \* \*

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

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

(i) The confidentiality of any health care information acquired by or provided to ~~the~~ an independent panel of mental health professionals or to an independent review organization

pursuant to section 4089f of this title shall be maintained in compliance with any applicable state or federal laws. ~~The independent panel shall not constitute a public agency 1 V.S.A. § 317(a), or a public body under section 310 of Title 1.~~ Records of, and internal materials prepared for, specific reviews under this section shall be exempt from public disclosure under 1 V.S.A. § 316.

**Description:** This section would amend 8 V.S.A. § 4089a(g) and (i) to reflect that the independent panel of mental health professionals no longer exists.

**Agency position:** DFR does not object to the amendments to this section.

**Background:** Sec. 14 of Act 21 of 2011 amended 8 V.S.A. § 4089a(c)(7) to replace “independent panel of mental health professionals” with “independent review organization pursuant to section 4089f of this title.” Adverse utilization decisions for mental health services are reviewed by independent review organizations, and the independent panel of mental health professionals no longer exists. However, subsecs. (g) and (i) of § 4089a were not updated to reflect this change.

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

§ 4089f. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE  
SERVICE DECISIONS

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

(1) “Health benefit plan” means a policy, contract, certificate, or agreement entered into, offered, or issued by a health insurer, as defined in 18 V.S.A. § 9402, to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including mental health care services as that phrase is defined in subdivision 4089a(b)(3) of this title.

(2) “Insured” means the beneficiary of a health benefit plan, including the subscriber and all others covered under the plan, and shall also mean a member of a health benefit plan not otherwise subject to the ~~department’s~~ Department’s jurisdiction which has voluntarily agreed to use the external review process provided under this section.

\* \* \*

**Description:** 8 V.S.A. § 4089f establishes the right of an individual to an external review of a health benefit plan’s decision to deny coverage or payment for health services. Consistent with 8 V.S.A. § 4089a, which provides for independent review organizations to review adverse utilization decisions for mental health services, the amendment to this section clarifies that the phrase “health care services” within the definition of “health benefit plan” includes “mental health care services.”

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

§ 1099. REPORTS AND RECORDS CONFIDENTIAL

All information and reports in connection with persons suffering from venereal diseases ~~shall be regarded as absolutely confidential and for the sole use of the board in the performance of its duties hereunder, and such records shall not be accessible to the public nor shall such records be deemed public records; and such board shall not disclose the names or addresses of persons so reported or treated except~~ are confidential public health records under section 1001 of this title and may only be used as provided in that section or disclosed to a prosecuting officer or in court in connection with a prosecution under sections 1105 or 1106 of this title. ~~The foregoing shall not constitute a restriction on the board in the performance of its duties in controlling the above communicable diseases.~~

**Description:** This section replaces confidentiality language for a specific type of communicable disease report (reports of venereal diseases) with a cross-reference to the more specific confidentiality provisions for communicable disease reports generally at 18 V.S.A. § 1001.

**Agency position:** AHS does not object to cross-referencing 18 V.S.A. § 1001. (AHS representatives reviewed a prior version of this section in which the reference to sections 1105 or 1106 of this title had been struck).

**Background:** 18 V.S.A. § 1093 authorizes the Vermont Board of Health to require a person suspected of having a venereal disease to undergo an examination and to have the results of the examination reported to the Board. Under 18 V.S.A. § 1099, the reports of venereal disease examinations are confidential and for the sole use of the Board, except for disclosure to prosecutors or the court in prosecutions for the crime of marrying a person while knowing that you are infected or have been diagnosed with a VD, or having intercourse while knowingly infected.

Venereal diseases are communicable diseases and have been interpreted to fall within the general communicable disease reporting requirements and confidentiality provisions of 18 V.S.A. § 1001 and Department rule. The confidentiality provisions of 18 V.S.A. § 1001 are more specific than the language of 18 V.S.A. § 1099, and § 1001 provides a criminal penalty for knowing disclosure of communicable disease reports. For clarity and consistency, 18 V.S.A. § 1099 should be amended to cross-reference 18 V.S.A. § 1001.

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

§ 7103. DISCLOSURE OF INFORMATION

(a) All certificates, applications, records, and reports, other than an order of a court made for the purposes of this part of this title, ~~and~~ which directly or indirectly ~~identifying~~ identifies a patient or former patient or an individual whose hospitalization or care has been sought or

provided under this part, together with clinical information relating to such persons, shall be kept confidential and shall not be disclosed by any person except insofar:

(1) as the following persons have consented to disclosure in writing:

(A) the individual identified, in the records;

(B) the individual's health care agent under subsection 5264 an advance directive that has become effective under section 9706 of this title, or a person specifically authorized by the individual to receive health care information under an advance directive that has become effective under section 9706 of this title;

(C) the individual's legal guardian, if any (or, if the individual is an unemancipated minor, his or her parent or legal guardian), shall consent in writing guardian; or

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

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

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

\* \* \*

**Description:** This section reorganizes 18 V.S.A. § 7103(a) and corrects an outdated cross-reference to health care agents, and amends the language of 18 V.S.A. § 7103(b) to allow disclosure of mental health patient information to persons authorized by law.

**Agency position:** AHS does not object to these amendments.

**Background:** In its current form, 18 V.S.A. § 7103 allows the release of mental health patient information to “the individual's family, clergy, physician, attorney, the individual's health care agent under section 5264 of this title, a person to whom disclosure is authorized by a validly executed durable power of attorney for health care, or to an interested party.” During the 2011 interim meetings of the Public Records Study Committee, the Committee noted that the cross reference to 18 V.S.A. § 5264 was outdated (this section was repealed in 2005), and the Committee and interested parties concluded that the range of entities to which information could be released was too broad and potentially in conflict with Vermont law and the release of information requirements of the federal Health Insurance Portability and Accountability Act (HIPAA).

\* \* \* Human Services-related Exemptions\* \* \*

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

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

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

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

\* \* \*

**Description:** This section deletes unnecessary language related to the scope of the DCF’s rulemaking authority and an unnecessary definition of “records.”

**Background:** In its Jan. 2013 annual report, the Study Committee noted that DCF should have the authority to fix standards and issue regulations necessary to administer law and for the custody and preservation of records. However, the Study Committee also found that the language of 33 V.S.A. § 105(c)(2) granting DCF rulemaking authority to restrict the use or disclosure of information in DCF records was ambiguous and appeared overly broad, and recommended that it be deleted. AHS’s then General Counsel Sue Harritt agreed. In addition, 33 V.S.A. § 105(c)(2) provides that “[a]s used in this subdivision, the word ‘records’ includes records, papers, files and communications.” This definition of “records” is unnecessary and potentially conflicts with the definition of “public records” under the Public Records Act. To avoid ambiguity, the Study Committee recommended that the definition of records included in 33 V.S.A. § 105(c)(2) be deleted.

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

§ 111. RECORDS, RESTRICTIONS, PENALTIES

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

(b) A person shall not:

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

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

**Description:** This section deletes an unnecessary and constitutionally problematic provision related to use of records related to recipients of public assistance.

**Agency position:** AHS does not object to these amendments.

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

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

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

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

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

**Description:** See description on p. 6 above of identical provision.

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

§ 908. POWERS AND DUTIES

(a) Each nursing home or other provider shall file with the ~~division~~ Division, on request, such data, statistics, schedules, or information as the ~~division~~ Division may require to enable it to carry out its function. Information received from a nursing home under this section shall be available to the public, except that, unless disclosure is required under 1 V.S.A. § 317(b), the specific salary and wage rates of employees, other than the salary of an administrator, shall not be disclosed.

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

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

**Description:** This section reconciles a provision concerning the confidentiality of wages of nursing home employees with the general requirement under 1 V.S.A. § 317(b), a provision of the Public Records Act, that salary information of public agency officials and employees is public.

**Agency position:** AHS stated that it did not object to the concept of this language, but that it was considering and might propose alternative language.

**Background:** The State of Vermont operates one nursing home, the Vermont Veterans' Home. Under 1 V.S.A. § 317(b), "individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying." Thus, 33 V.S.A. § 908 and 1 V.S.A. § 317(b) appear to conflict with regard to salary information of employees of the Vermont Veterans' Home. To eliminate this conflict, the Study Committee recommended that 33 V.S.A. § 908 be amended to clarify that the requirements of 1 V.S.A. § 317(b) apply to nursing home employees who are employees of a public agency.

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

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

**Description:** This is a technical correction intended to correct a misuse of terminology. Pharmaceutical company rebate and price discount information acquired by the Department is a public record, even though it is exempt from public inspection and copying.

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

§ 7112. CONFIDENTIAL INFORMATION



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

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

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

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

**Description: This section deletes a reference to the development of guidelines regarding the release of information to ensure the confidentiality and privacy of complainants and individuals and individuals receiving nursing home care.**

**Background: A representative of AHS indicated that the Agency, generally, was unaware of any guidelines related to release of information to the public. In addition, AHS noted that the federal Nursing Home Reform Act likely controlled the disclosure of information related to patients. Because AHS was unaware of any guidelines and because federal law controls, the Study Committee recommended that 33 V.S.A. § 7112(b)(1) be amended to delete the reference to guidelines for disclosure of information.**

## II. Recommendations to Standing Committees to Review Exemptions

| Exemption Citation     | Recommendation   | Explanation of Recommendation   |
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| 15 V.S.A. § 307(a)     | Request that committees of jurisdiction review the exemption for voluntary acknowledgement of parentage forms and consider its repeal.   | <p>Under 15 V.S.A. § 307, in any case in which the parents of a child are not married, the parents may acknowledge parentage by signing a Voluntary Acknowledgement of Parentage Form. Under 15 V.S.A. § 307(a), the Voluntary Acknowledgement of Parentage Form is designated confidential and, as such, is not subject to inspection or copying under the PRA.</p> <p>In the fall of 2012, the Study Committee heard testimony regarding whether there is a need for confidentiality of the acknowledgement forms and how other states have been repealing confidentiality for the forms. Committee members acknowledged that confidentiality of forms may provide an incentive for some parents to acknowledge parentage when they otherwise would not if the form was public. Because the policy decision related to the necessity of the Voluntary Acknowledgement of Parentage Form extended beyond the Study Committee’s jurisdiction, it recommended that the committees of jurisdiction review 15 V.S.A. § 307(a) to determine if Voluntary Acknowledgement of Parentage Forms should remain confidential.</p> |
| 18 V.S.A. §§ 1091–1099 | Request that committees of jurisdiction review the need for mandated venereal disease testing and the accompanying public records exemption.   | In the fall of 2011, the Study Committee heard testimony that the authority of the Board of Health to require venereal disease testing may be antiquated and no longer necessary. Because the authority to recommend repeal of such authority is not within the scope of this Committee’s charge, it recommended review by the relevant committees of jurisdiction.   |
| 18 V.S.A. ch. 204      | Request that committees of jurisdiction review the requirements in 18 V.S.A. ch. 204 regarding the voluntary and involuntary sterilizations of mentally retarded <sup>1</sup> persons to consider whether the chapter is necessary or whether such proceedings are | <p>Under 18 V.S.A. § 8709, a person denied voluntary sterilization or a parent, guardian, or relative may petition the superior court on the basis that the person is mentally retarded and in need of sterilization. 18 V.S.A. §§ 8711 and 8712 govern the proceedings of such a hearing and the court’s finding and order. 18 V.S.A. § 8713 provides that all such sterilization proceedings are closed to the public and the records sealed unless requested to be opened by the person subject to the proceedings.</p> <p>In the fall of 2011, during testimony on this exemption, questions were posed regarding whether sterilizations of persons</p>   |

<sup>1</sup> “Mentally retarded adult” is no longer acceptable terminology under state law, but this is the term used in 18 V.S.A. chapter 204.

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|                         | <p>tracked in an aggregate manner.</p>  | <p>under 18 V.S.A. chapter 204 still occur and, if so, how such proceedings are monitored and tracked. Because the records are sealed, Committee members were concerned that the State lacked the information necessary to determine if sterilization proceedings remained a necessary or useful authority. Because review of such an issue likely would address issues outside the scope of the charge of the Committee, it recommended that the committees of jurisdiction review the requirements of 18 V.S.A. chapter 204 regarding sterilization to consider the extent to which this chapter is still needed and to discuss with the judiciary a method for tracking or accounting for the number and type of sterilization proceedings in the State.</p>  |
| <p>33 V.S.A. § 4105</p> | <p>Request that committees of jurisdiction review this section to address the language and scope of the prohibition on use of information furnished to the Office of Child Support.</p> | <p>Under 33 V.S.A. § 4105, except for certain limitations, information furnished to the Office of Child Support shall be made available only to the person requesting the Office’s services or to the person’s attorney, the person to whom the information relates, and the Family Division of the Superior Court. “Any other use of the information shall be prohibited.” The Study Committee recognized the potential policy need for some confidentiality for information submitted to the Office of Child Support, but stated that the blanket prohibition on all other uses of the information appeared overbroad. Because the policy of whether and how much child support information should be confidential extended into subject matter beyond the scope of the Study Committee’s jurisdiction, it requested that the committees of jurisdiction review 33 V.S.A. § 4105 to determine whether the scope of the confidentiality provision is overbroad or requires other amendment.</p>                                 |
| <p>33 V.S.A. § 4913</p> | <p>Request that committees of jurisdiction review to consider how to address bad faith reports of child abuse.</p>  | <p>Under 33 V.S.A. § 4913, the name and identifying information of a person reporting the abuse of a child or any person mentioned in the report shall be confidential, unless the person consents to disclosure, a judicial proceeding results from the report, a court finds that the report was not made in good faith, or a review has been requested under 33 V.S.A. § 4916a and safety will not be compromised. The Study Committee acknowledged the need for the confidentiality of such information, but also noted that 33 V.S.A. § 4913 may not sufficiently address bad faith reports of abuse, including the process and remedy that a person subject to a bad faith report may follow. Thus, it recommended review of 33 V.S.A. § 4913 by the committees of jurisdiction to determine whether it should be amended to include a clear process by which a person subject to a bad faith claim of abuse may seek to clear his or her name or may seek a remedy against the person who filed the bad faith report.</p> |

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| <p>33 V.S.A. chapter 49</p> | <p>Request that committees of jurisdiction review this chapter to clarify and streamline the language of the exemptions in this chapter and possibly create one section in the chapter to address the confidentiality of child abuse registry information.</p> |   |
| <p>33 V.S.A. § 6321</p>     | <p>Request that committees of jurisdiction review in order to address the appropriate scope of the exemption for records related to attendant care services.</p>   | <p>Under 33 V.S.A. § 6321, information received by DAIL with respect to an individual using attendant care services is confidential. The Study Committee acknowledged that some information related to individuals using attendant care should be confidential. Moreover, as noted in communications from AHS staff, federal law may require some of the information related to persons receiving attendant care to be confidential. However, as currently drafted, the Committee stated that 33 V.S.A. § 6321 appears overbroad and may unnecessarily extend confidentiality to documents not requiring this protection, and recommended its review by the committees of jurisdiction.</p>   |
| <p>33 V.S.A. § 6903</p>     | <p>Request that committees of jurisdiction review to consider how to address bad faith reports of abuse of the elderly or disabled.</p>  | <p>Under 33 V.S.A. § 6903, the name of a person reporting abuse of an elderly or disabled person shall be confidential unless the person consents to disclosure, a judicial proceeding results from the report, or a court finds that the report was not made in good faith. The Study Committee acknowledged the need for the confidentiality of such information, but also noted that 33 V.S.A. § 6903 may not sufficiently address bad faith reports of abuse, including the process and remedy that a person subject to a bad faith report may follow. Thus, it recommended review of 33 V.S.A. § 6903 by the committees of jurisdiction to determine whether it should be amended to include a clear process by which a person subject to a bad faith claim of abuse may seek to clear his or her name or may seek a remedy against the person who filed the bad faith report.</p> |