

Public Records Study Committee 2012 Interim Report

Pursuant to No. 59 of the Acts of 2011

January 2012

Legislative Council
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**Public Records Study Committee
Interim Report**

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**Public Records Study Committee
Members**

Three members of the House of RepresentativesRep. Donna Sweaney (co-chair)
Rep. Ronald Hubert
Rep. Linda Martin

Three members of the Senate.....Sen. Jeanette White (co-chair)
Sen. Claire Ayer
Sen. Peg Flory

Public Records Study Committee Charge

No. 59 of the Acts of 2011

Sec. 11. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house;
and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

- (1) Whether the public records act requires revision;
- (2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible, including the need to clarify the term “personal documents” referenced in 1 V.S.A. § 317(c)(7) in order to ensure that it does not unintentionally limit access to public records that are not personnel records; and

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function;

(5) Whether or not to authorize a public agency to charge for staff time associated with responding to a request to inspect or copy a public record, including whether an agency should be authorized to charge for the staff time incurred in locating, reviewing, or redacting a public record; and

(6) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public’s interest in the public record protected by the exemption.

(7) Whether a municipality and how a municipality shall appoint or designate an official, officer, or employee responsible for advising municipal employees and any agency, board, committee, department, instrumentality, commission, or authority of the municipality regarding the requirements of the public records act and proper management of public records. As used in this subdivision, “municipality” shall mean a city, town, village or school district.

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a

meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet three times each year during the interim between sessions of the general assembly, provided that the speaker of the house and the committee on committees may authorize the study committee to hold additional meetings during the interim between sessions so that the committee may accomplish its charge.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and, when necessary for the performance of its duties, the Vermont state archives and records administration.

I. Overview

Sec. 11 of No 59 of the 2011 Acts of the Vermont General Assembly (Act No. 59) established a legislative study committee to meet over three years to review the requirements of the Vermont Public Records Act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. In fulfilling this charge, the Public Records Study Committee (Study Committee) is required to review the exemptions to inspection and copying of public records as set forth in 1 V.S.A. § 317 of the Vermont Public Records Act¹ and elsewhere in the Vermont Statutes Annotated. Prior to each legislative session, the Study Committee is required to submit to the House and Senate Committees on Government Operations and the House and Senate Committees on Judiciary recommendations concerning whether the Public Records Act and exemptions under the act should be repealed or amended or should remain unchanged. This report is the first of three reports to the General Assembly in fulfillment of the Study Committee's charge under Section 11 of Act No. 59.

A summary of how the Study Committee responded to its statutory charge is set forth in Section II of this report. In fulfilling its charge, the Study Committee prioritized review of certain categories of exemptions to the Public Records Act and also addressed certain individual exemptions to or requirements of the act. Specifically, the Study Committee reviewed the public records act exemptions related to tax records and health care records. Similarly, the Study Committee reviewed the exemption for personal information and the exemption for university research. The Study Committee's specific recommendations with regard to these exemptions are set forth in Sections III, IV, V, and VI of this report.

¹ See 1 V.S.A. chapter 5, subchapter 3, for the full text of the Vermont Public Records Act.

II. Public Records Study Committee Response to Statutory Charge

This section reviews the specific charge under Act No. 59 for action by the Public Records Study Committee and how the study committee responded to each component of the statutory charge.

A. Act No. 59, Sec. 11(b) Review of Exemptions to Public Records Act

Under Act No. 59, Sec. 11(b), the Public Records Study Committee is required to “review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3.” Prior to each legislative session, Act No. 59, Sec. 11(b) requires the Study Committee to submit to the House and Senate Committees on Government Operations and the House and Senate Committees on Judiciary “recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged.”

To fulfill this statutory charge, the Study Committee updated the list of exemptions to the Public Records Act and identified 239 exemptions to inspection and copying under the act.² The Study Committee subsequently asked interested parties to comment on these identified exemptions and to provide input as to whether any of the exemptions should be revised, clarified, or deleted. After receiving public input, the Study Committee identified exemptions that it concluded should be retained, highlighted exemptions the review of which should be prioritized, and designated other exemptions as those the review of which could be delayed.

Once the priority exemptions were identified, the study committee organized the priority exemptions into subject matter categories and chose to review two categories of exemptions,

² See 2011 Table of Public Records Act Exemptions, available at <http://www.leg.state.vt.us/WorkGroups/PubRec/271256.pdf>

those addressing tax records and those addressing health care records. The Study Committee reviewed these exemptions to determine if they are necessary, antiquated, or in need of revision. A summary of the review of these categories is provided in Sections III and IV of this report, and the specific recommendations of the study committee are included in Appendices A and B.

The committee also reviewed and took testimony on the exemption under 1 V.S.A. § 317(c)(23) for data, records, or information produced or acquired in the course of university research or creative efforts on medical, scientific, technical, scholarly, or artistic matters. After consideration of a request to repeal the exemption in its entirety, the Study Committee voted instead to recommend retention of the exemption with an amendment providing that certain records regarding the care of animals used for research or scientific testing be available for inspection and copying. The Study Committee's recommendations regarding 1 V.S.A. § 317(c)(23) are discussed more fully in Section VI of this report, and the specific recommendation of the study committee is included in Appendix D.

The Study Committee also reviewed the criminal investigation exemptions under the Public Records Act. The Study Committee recognized the criminal investigation exemptions involve significant issues that would benefit from additional testimony and review by the relevant jurisdictional committees. Section VII of the report summarizes this recommendation.

A list of the exemptions that the committee reviewed and those that it concluded should be retained is included in Appendix F of this report.

B. Act No. 59, Sec. 11(c): Review of Specific Issues Related to Public Records Act

In addition to the Act No. 59 Sec. 11(b) mandatory review of all of the exemptions to the Public Records Act, Act No. 59 also authorizes but does not require the Study Committee to address additional specific issues related to the interpretation and administration of the Public Records

Act. Although Act No. 59 clearly provides that the Study Committee “may” review these issues, the Study Committee elected to address each issue over the course of its three-year term. A summary of how the Study Committee addressed each issue is set forth below.

1. *Act No. 59, Sec. 11(c)(1): Whether the Public Records Act Requires Revision*

Sec. 11(c)(1) authorizes the Study Committee to review whether the Public Records Act requires revision. In its initial meetings, the Study Committee heard testimony from interested parties regarding whether the Study Committee should propose repeal of the Public Records Act in its entirety and in its stead propose a substitute. Generally, witnesses agreed that the framework of the Public Records Act regarding inspection, access, and procedure was satisfactory and did not require wholesale repeal or amendment. The testimony focused on the need to review and revise the number of exemptions to inspection and copying under the act. As such, the Study Committee recommended that the Public Records Act not be revised in its entirety. Instead the Study Committee recommends that the act be revised consistent with the Study Committee recommendation under Act No. 59, Sec. 11(b), discussed above.

2. *Act No. 59, Sec. 11(c)(2): Whether an Exemption to Inspection or Copying under the Public Records Act Is Necessary, Antiquated, or in Need of Revision*

In reviewing the exemptions to the Public Records Act as required by Act No. 59, Sec. 11(b) in order to determine if an amendment should be repealed or amended or should remain unchanged, the Study Committee is evaluating each reviewed exemption as to whether it is necessary, antiquated, or in need of revision. As the Study Committee continues its review of exemptions, each reviewed exemption will be evaluated according to this standard.

3. *Act No. 59, Sec. 11(c)(3): Whether an Exemption to Inspection or Copying under the Public Records Act Is as Narrowly Tailored as Possible, Including the Need to Clarify the Term “Personal Documents” Referenced in 1 V.S.A. § 317(c)(7) in order to Ensure that it Does Not Unintentionally Limit Access to Public Records that Are Not Personnel Records*

In reviewing the exemptions to the Public Records Act as required by Act No. 59, Sec. 11(b), the Study Committee evaluated whether each reviewed exemption is as narrowly tailored as possible. In addition, the Study Committee reviewed whether the personal documents exemption in 1 V.S.A. § 317(c)(7) is as narrowly tailored as possible in order to ensure that it does not unintentionally limit access to public records that are not personnel records. The Study Committee recommends amendment of 1 V.S.A. § 317(c)(7) in order to clarify application of the exemption and to potentially allow for repeal or amendment of other exemptions related to personal information. The recommendation of the Study Committee is discussed in Section V of this report and the specific legislative proposal is included in Appendix C of the report.

4. *Act No. 59, Sec. 11(c)(4): Whether the Public Records Act Should Be Amended to Clarify Application of the Act to Contracts between a Public Agency and a Private Entity for the Performance of a Governmental Function*

The Study Committee heard significant testimony on whether the Public Records Act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function. The recommendations of the Study Committee are set forth in Section VI of this report.

5. *Act No. 59, Sec. 11(c)(5): Whether or Not to Authorize a Public Agency to Charge for Staff Time Associated with Responding to a Request to Inspect or Copy a Public Record, Including Whether an Agency Should be Authorized to Charge for the Staff Time Incurred in Locating, Reviewing, or Redacting a Public Record*

Act No. 59, Sec. 14 requires the secretary of state, after consultation with the Vermont League of Cities and Towns, to annually survey municipalities in the state regarding whether municipalities

are receiving an increased number of requests to inspect records, whether requests for inspection of public records are being used to circumvent copying of a record by a municipality, and whether requests to inspect records pose any administrative burdens on municipalities. On or before January 15, 2012 and annually thereafter, the secretary of state is required to submit the results of the survey to the Senate and House Committees on Government Operations. Because the secretary of state has not yet submitted the results of the survey and because the results of the survey will inform the Study Committee's recommendations regarding the authority of a public agency to charge for staff time associated with a request to inspect or copy a record, the Study Committee chose to review this provision in its second year after the survey results have been made public.

6. *Act No. 59, Sec. 11(c)(6): Any Other Criteria that Assist the Review Committee in Determining the Value of an Exemption as Compared to the Public's Interest in the Public Record Protected by the Exemption*

The Study Committee has sought and has heard testimony from all interested parties, including members of the public, and will continue to do so as it completes its statutory charge. Interested parties are encouraged to provide testimony on any aspect of an exemption and are not limited to specific criteria. Through this process, the Study Committee is able to hear testimony on any aspect of an exemption and how it relates to balancing the public interest in access versus any potential interest in confidentiality.

7. *Act No. 59, Sec. 11(c)(7): Whether a Municipality and How a Municipality Shall Appoint or Designate an Official, Officer, or Employee Responsible for Advising Municipalities Regarding the Requirements of the Public Records Act and Proper Management of Public Records*

As discussed above, Act No. 59, Sec. 14 requires the secretary of state, after consultation with the Vermont League of Cities and Towns, to annually survey municipalities in the state

regarding whether municipalities are receiving an increased number of requests to inspect records, whether requests for inspection of public records are being used to circumvent copying of a record by a municipality, and whether requests to inspect records pose any administrative burdens on municipalities. The Study Committee believes that the results of this survey will play a part in its analysis of whether municipalities have a need for an official, officer, or employee responsible for advising municipalities regarding the requirements of the Public Records Act. Consequently, the Study Committee chose to review this provision in its second year.

III. Tax Records; Property Tax Adjustment Information

The Study Committee reviewed seven statutory provisions that exempted certain tax records from inspection and copying under the Public Records Act. Among the exemptions reviewed were 1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102 related to the disclosure of tax return information. The study committee heard significant testimony regarding how 1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102 can be interpreted to reach varying results. Specifically, the study committee heard testimony from officials from the town of Manchester regarding how these exemptions applied to property tax adjustment information provided by a municipality to a taxpayer and how the town was currently involved in the litigation *In re: H.S. 122*³ before the Vermont Supreme Court regarding disclosure of the information. The study committee also heard that the Vermont Attorney General and the Department of Taxes previously had advised that property tax adjustment information provided by a municipality is public and subject to inspection and copying.

Because of the dispute in the interpretation of 1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102, the Study Committee voted at a December 15 meeting of the committee to recommend that the

³ In re: H.A. 122 (Vt. Dec 22, 2011).

statutes be clarified. Before the Study Committee finalized its recommendation, the Vermont Supreme Court, on December 22, 2011, issued its decision in the *In re: H.S. 122* litigation. The Court determined that the property tax adjustment information was confidential tax return information under 32 V.S.A. §§ 3102(a) and (b) and that the municipalities were agents of the Department of Taxes under 32 V.S.A. § 3102(h). Consequently, the Court held that property tax adjustment information in the possession of town clerks is exempt from public inspection and copying under the Public Records Act.

In its decision, the Supreme Court stated that the plain meaning of the statute renders the property tax adjustment information “not publicly accessible.” The court further provided that “policy choice is for the Legislature, not this Court” and that “[i]n 32 V.S.A. § 3102, the Legislature has chosen a policy of broad confidentiality for income tax information, which we must implement.” The Study Committee as a whole agrees with the Supreme Court in its recognition of the General Assembly as the policy maker regarding access to records such as the property tax adjustment information. However, the Study Committee did not unanimously agree on a policy recommendation regarding the public nature of property tax adjustment information.

The Study Committee voted 3-2-1 to recommend that the policy of the state should be that property tax adjustment information should be public. Senator White, Senator Ayer, and Representative Sweaney voted to recommend that the General Assembly supersede the Vermont Supreme Court decision in *In re H.S. 122* and enact legislation providing that property tax adjustment information is public. Draft legislation specifying that property tax adjustment information is public is attached in Appendix A of this report.

In contrast, Senator Flory and Representative Hubert voted to recommend that property tax adjustment information remain confidential. Senator Flory and Representative Hubert

support the conclusion of the Vermont Supreme Court in *In re: H.S. 122* that property tax adjustment information should be confidential. A short minority report to this effect is attached in Appendix A of this report.

Representative Martin voted to recommend that the issue of the public nature of property tax adjustment information be referred to the House Committee on Ways and Means and the Senate Committee on Finance as the committees of jurisdiction for tax issues. A short minority report to this effect is also attached in Appendix A of this report.

The Vermont Supreme Court decision in *In re: H.S. 122* raised questions as to whether and to what liability public agencies would be subject for disclosure of property tax adjustment information prior to the Court's decision. The Study Committee heard that public agencies and individual employees of public agencies could be subject to criminal and civil penalties or damages. Because many public agencies and town clerks were acting on advice of the Department of Taxes and the Vermont Attorney General in disclosing property tax adjustment information, the Study Committee voted unanimously to recommend statutory language holding public agencies and their employees harmless for the disclosure of the property tax adjustment information prior to the issuance of mandate for the Vermont Supreme Court decision. The study committee has included proposed language to this effect in Appendix A of this report.

The study committee also voted to remove from the list of Public Records Act exemptions 32 V.S.A. § 5901. This exemption related to the duty of a preparer of income taxes to keep tax return information confidential. The Study Committee recommends deletion of this provision from the list of records exemptions because the provision would not apply to a public agency.

IV. Health Care Records Exemptions

The Study Committee reviewed 22 statutory provisions that exempted certain health care records from inspection and copying under the Public Records Act. The Study Committee heard significant testimony from interested parties regarding these exemptions, including from government regulators, health care advocates, and representatives of health care insurance providers. The Study Committee recommends that 11 of the reviewed health care exemptions be amended or reviewed for necessity or amendment by the relevant committees of jurisdiction. The recommendations of the Study Committee are summarized below, and draft legislation implementing the recommendations is attached in Appendix B of this report.

A. 1 V.S.A. § 317(c)(38)—AHS Records Which Include Prescription Information

In *Sorrell v. IMS Health Care, Inc.*,⁴ the U.S. Supreme Court held that the prohibition in 18 V.S.A. § 4631 on the sale, licensing, or exchange of records containing prescriber-identifiable information violated the First Amendment of the U.S. Constitution. Consequently, 18 V.S.A. § 4631 has been invalidated, and the exemption in 1 V.S.A. § 317(c)(38), which relates to the requirements of 18 V.S.A. § 4631, is no longer necessary. Thus, the Public Records Study Committee recommends that 1 V.S.A. § 317(c)(38) be deleted as set forth in Appendix B.

B. 8 V.S.A. § 4089a—Mental Health Care Services Review and 8 V.S.A. § 4089f—External Review of a Health Care Services Decision

8 V.S.A. § 4089a addresses mental health care services review. Subsections 4089a(g) and (i) reference an independent panel of mental health care providers that conducts reviews of mental health care services and the confidentiality of the information the panel acquires. This panel has been repealed. Reviews of mental health care services are now conducted according to the

⁴ 131 S.Ct. 2653 (U.S. 2011).

independent external review process set out in 8 V.S.A. § 4089f. Thus, the Public Records Study Committee recommends that the exemption in 8 V.S.A. § 4089a be deleted and 8 V.S.A. § 4089f be amended to reference mental health care services. The proposed amendments are set forth in Appendix B of this report.

C. 18 V.S.A. §§ 1094 and 1099—Venereal Disease Restraining Order; Venereal Disease Reports

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 of health. Under 18 V.S.A. § 1099, the reports of venereal disease examination are confidential and for the sole use of the board. Under 18 V.S.A. § 1094, the Vermont Supreme Court or a Vermont superior court can issue a restraining order to a person subject to a board of health-required venereal disease examination, and a petition for such a restraining order is not a public record.

The Public Records Study Committee recommends that the Senate Committee on Health and Welfare and the House Committee on Human Services review the need for mandated venereal disease testing under 18 V.S.A. §§ 1091–1099. This 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, the committee recommends review by the relevant committees of jurisdiction.

The Public Records Study Committee does recommend that the public records exemption under 18 V.S.A. § 1099 be amended. Venereal diseases are communicable diseases and are subject to the Department of Health reporting requirements under 18 V.S.A. § 1001 and

department rule.⁵ Communicable disease reports under 18 V.S.A. § 1001 and department rule are confidential. As such, the public records exemption in 18 V.S.A. § 1099 is duplicative, and, if mandated venereal disease testing remains, the Public Records Study Committee recommends that 18 V.S.A. § 1099 be amended as set forth in Appendix B of this report to reference the communicable disease reporting requirements of 18 V.S.A. § 1001.

D. 18 V.S.A. § 8713—Confidentiality of Sterilization Proceedings

18 V.S.A. chapter 204 addresses the requirements for voluntary and involuntary sterilizations of a “mentally retarded adult.”⁶ Under 18 V.S.A. § 8709, a mentally retarded 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.⁷

During the testimony provided to the Public Records Study Committee regarding the exemption in 18 V.S.A. § 8713 for records of sterilization proceedings, questions were posed regarding whether sterilizations of persons 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. However, because review of such an issue likely would address issues outside the scope of the charge of the Public Records

⁵ Vermont Department of Health Communicable Disease Regulations, available at http://healthvermont.gov/regs/communicable_disease_regs.pdf

⁶ “Mentally retarded adult” is no longer acceptable terminology under state law, but this is the term used in 18 V.S.A. chapter 204.

⁷ The statute provides that the “respondent” may request reopening of the records.

Study Committee, the committee recommends that the House and Senate Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services 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.

E. 18 V.S.A. § 9409a—Health Care Insurance Reimbursement Survey

Under 18 V.S.A. § 9409a, the commissioner of banking, insurance, securities, and health care administration (BISHCA) annually surveys health insurers to determine the reimbursement paid for the 10 most common billing codes for two broad categories of primary health care services. 18 V.S.A. § 9409a requires BISHCA to aggregate the data for public reporting to ensure that no provider-specific or facility-specific reimbursement information is included in public survey reports available through public records requests.

The Public Records Study Committee heard significant testimony regarding the issue and recommends that the exemption be deleted. An argument was presented that the exemption was necessary in order to retain some competitive anonymity and to prevent all providers from increasing reimbursement to the maximum reported rate. However, because what is reported is the average reimbursement paid for a specific service and not the highest or lowest rate, the committee concluded that disclosure of the information would not provide a significant competitive advantage or disadvantage. Consequently, the committee voted to recommend deletion of the exemption. Draft legislation affecting this deletion is attached in Appendix B of this report.

F. 18 V.S.A. § 9418f—Rental of Health Plan Networks

18 V.S.A. § 9418f regulates the rental of a health plan’s network or providers to another health plan. Under this section, an entity contracting with a health plan network must notify providers in that network of certain information, including third parties, that the contracting entity has identified that will have access to the provider’s services, discounts, and other conditions and terms that may have been negotiated in contracting for rental of the network. This information reported to providers must also be reported to BISHCA. Section 9418f of Title 18 specifies that the information submitted to the provider by the contracting entity is confidential and shall not be disclosed to anyone outside the provider’s practice.

The Public Records Study Committee heard testimony regarding how this exemption was necessary to prevent competing health plan networks from obtaining proprietary business information from their competitors through the use of the public records act. Others argued that the disclosure would provide transparency into the market and allow for competitive pricing or additional negotiated conditions. The Public Records Study Committee recommends that the exemption be deleted in order to allow transparency into the market and to allow other existing public records exemptions to be asserted to protect proprietary information. Draft legislation affecting this deletion is attached in Appendix B of this report.

G. 18 V.S.A. § 7103—Disclosure of Patient Information

18 V.S.A. § 7103 addresses the release of information concerning a patient’s medical condition 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.” The Public Records Study 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). In addition, the section contains an outdated cross-reference to health care agents under a health care power of attorney. Thus, the Public Records Study Committee recommends that 18 V.S.A. § 7103 be amended as set forth in Appendix B of this report.

H. 1 V.S.A. § 317(c)(37)—Records of Department of Health Pursuant to Patient Surveillance and Improvement System and 18 V.S.A. § 1917(a)—Information Received as Part of the Patient Surveillance and Improvement System

The patient surveillance and improvement system is a comprehensive patient safety surveillance and improvement system created and administered by the department of health for the purpose of improving patient safety, eliminating adverse events in Vermont hospitals, and supporting and facilitating quality improvement efforts by hospitals. Under the system, 18 V.S.A. § 1913 requires the department to, among other tasks: “(1) collect data concerning the occurrence of reportable adverse events; (2) aggregate and analyze data for the purpose of developing and implementing strategies to target and eliminate specific adverse events; (3) verify that hospitals are in compliance with all the requirements of this chapter and regulations adopted hereunder; [and] (4) for reportable adverse events, verify that hospitals are conducting causal analyses and developing corrective action plans consistent with standards set by the department, current patient safety science, and relevant clinical standards; . . .” An “adverse event” is defined under 18 V.S.A. § 1912 as “any untoward incident, therapeutic misadventure, iatrogenic injury, or other undesirable occurrence directly associated with care or services provided by a health care provider or health care facility.” A “reportable adverse event” is defined under 18 V.S.A. § 1912 as “those adverse events a hospital is required to report to the department pursuant to regulations

adopted under this chapter” and means the current list of 28 serious reportable events and specifications published and periodically amended by the National Quality Forum.

Under 1 V.S.A. § 317(c)(37), records provided to the department of health pursuant to the patient surveillance and improvement system established by 18 V.S.A. chapter 43a are exempt from inspection and copying under the Public Records Act. Similarly, under 18 V.S.A. § 1917(a), all information made available to the department of health and its designees under the patient surveillance system is confidential and privileged, exempt from the public access to records law, and immune from subpoena or other disclosure or introduction into evidence in any civil or administrative action against a health care provider. The department does aggregate certain reportable adverse events in a format which prevents identification of a relevant hospital where a reportable adverse event occurred or of a patient who experienced a reportable adverse event. However, because of the requirements of the federal Health Insurance Portability and Accountability Act and state statute, the department does not aggregate certain reportable adverse events when, due to the infrequency of the event, disclosure of the information even in the aggregate could lead to identification of the patient to whom the reportable adverse event occurred.

The Public Records Study Committee reviewed these exemptions, and certain committee members expressed concern that the public was not being informed of reportable adverse events occurring at hospitals due to the HIPAA limitation on disclosure of events when the nature or infrequency could lead to the identity of the patient. The committee questioned the department as to whether and how information could be disclosed regarding the occurrence of a certain category of reportable adverse events at a hospital without divulging information that might identify a patient. Interested parties recommended a potential solution, but, after review by the

department, it was determined that the proposed solution would also potentially violate the disclosure limitations of HIPAA.

The Public Records Study Committee requests that the Senate Committee on Health and Welfare and the House Committee on Health Care review 1 V.S.A. § 317(c)(37) and 18 V.S.A. § 1917(a) and, after consultation with the department of health, propose or develop a method for disclosure of reportable adverse events in a manner that allows prospective patients to be informed of the general adverse event history of a hospital without violating HIPAA and the privacy of past patients.

V. Personal Information Exemption

Act No. 59 requires the Public Records Study Committee to review whether the exemption in 1 V.S.A. § 317(c)(7) for “personal documents” is narrowly drafted in a manner so that it does not unintentionally limit access to public records that are not personnel records. In reviewing 1 V.S.A. § 317(c)(7), the committee reviewed how 15 other states addressed personal information or identifying information deemed to be protected by a right to privacy.⁸ After review of these other state provisions, the study committee requested draft legislative language amending 1 V.S.A. § 317(c)(7) to clarify its application to “personnel records” and to clarify what constitutes “personal information.” That language is attached in Appendix C of this report.

In clarifying what constitutes “personal information,” the Study Committee recommends listing certain categories of information that should be considered “personal documents” and, therefore, confidential.⁹ However, it is the intent of the Study Committee that as 1 V.S.A.

⁸ See Vermont Legislative Council, Right to Privacy and the Public Records Act, Examples from Other States (2011) (on file with Legislative Council).

⁹ Although the Public Records Study Committee did review draft language that would have exempted certain categories of pension records from inspection and copying, the study committee voted not to recommend such an amendment and recommends leaving pension records public.

§ 317(c)(7) is proposed for amendment, the balancing test employed by the Vermont Supreme Court in *Trombley v. Bellows Falls Union High School*¹⁰ for review of “personal documents” would still apply to documents not listed in the recommended language. In *Trombley*, the Supreme Court utilized a test balancing the public interest in disclosure against the potential harm to an individual’s right to privacy. Thus, as 1 V.S.A. § 317(c)(7) is proposed for amendment by the Study Committee, if a public agency asserted that a document not listed in a category proposed by the committee was not subject to inspection or copying because it is a personal document, a court could still find that the document is confidential because the potential harm to an individual’s right to privacy outweighs the public benefit in disclosure.

If the amendment to 1 V.S.A. § 317(c)(7) as proposed by the Study Committee is enacted and the personal documents exemption is clarified, the study committee believes that this will allow the deletion or revision of multiple public records exemptions that would be rendered superfluous or duplicative. In addition, if the proposed amendment is enacted, future legislation addressing the disclosure of personal information can simply incorporate the exemption in 1 V.S.A. § 317(c)(7) by reference instead of enacting a new exemption. To facilitate review of the existing statutes and to avoid unintended consequences, the Study Committee recommends that the proposed personal information exemptions go into effect in 2014. In the two years between assumed enactment in 2012 and the effective date of 2014, the office of legislative council would be tasked with reviewing public records exemptions that reference personal information and recommending to the General Assembly whether such exemptions in light of the proposed personal information exemption could be repealed, amended, or clarified as remaining confidential. Draft legislation tasking legislative council with this review is included in Appendix C of this report.

¹⁰ 160 Vt. 101 (Vt. 1993).

VI. University Research Exemption

The Study Committee reviewed and took testimony on the exemption under 1 V.S.A. § 317(c)(23) for data, records, or information produced or acquired in the course of university research or creative efforts on medical, scientific, technical, scholarly, or artistic matters. Several witnesses testified that other states do not have such an exemption, other exemptions under the Public Records Act would protect intellectual property rights, and the exemption is overly broad. This testimony focused on the records produced or acquired by the institutional animal care and use committee at the University of Vermont and whether records regarding care of animals used in research or scientific testing should be public. The Study Committee also heard from representatives of the University of Vermont regarding the need for the research records exemption, how it protects the intellectual property rights of university professors and researchers that potentially would not be covered by other Public Records Act exemptions, and how repeal of the exemption could dissuade professors and researchers from conducting work at Vermont universities.

The Study Committee considered the request to repeal the exemption under 1 V.S.A. § 317(23) in its entirety, but committee members expressed concern regarding the potential unintended consequences of such a repeal and how it might affect certain types of university research. Consequently, the Study Committee elected not to recommend deletion of the exemption in its entirety. Instead, the Study Committee voted to recommend retention of the exemption with an amendment providing that certain records regarding the care of animals used for research or scientific testing shall be available for inspection and copying. Draft legislation affecting the proposed amendment to 1 V.S.A. § 317(c)(23) is attached in Appendix D of the report.

VII. Recommended Review by Committee of Jurisdiction

A. Application of Public Records Act to Contractors

Act No. 59 authorizes the Study Committee to review whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function.¹¹ The Public Records Study Committee heard testimony regarding the application of the Public Records Act to government contractors. Because the application of the Public Records Act to contractors has significant implications on other areas of government and law, such as corrections and health care, the study committee took no final position regarding the application of the act to contractors, but recommended that the House and Senate Committees on Government Operations review the issue further in coordination with other jurisdictional committees.

B. Criminal Investigations Records

In the preliminary identification and review of the exemptions to inspection and copying under the Public Records Act, the Study Committee identified exemptions for which interested parties expressed concern or need for revision. The Study Committee determined that review of several of these exemptions would be more appropriate for the standing committees of jurisdiction. In addition to several health care records exemptions discussed in Section IV of this report, the Public Records Study Committee recommends that the House and Senate Committees on Judiciary review 1 V.S.A. § 317(c)(5) (exemption for records of criminal investigations) and 1 V.S.A. § 317(c)(18) (exemption for records related to department of public safety investigations). These two categories of exemptions involve public policy issues related to

¹¹ Act No. 59, 2011, § 11(c)(4).

crimes and criminal investigations that are more appropriately addressed by the Committees on
Judiciary.

Appendix A

Public Records Study Committee

Property Tax Adjustment: Legislative Alternatives for Clarification

i. Property Tax Adjustment Information is Public

Sec. X. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

(a) ~~No~~ Except as provided for in 32 V.S.A. § 6066a(h), no present or former officer, employee or agent of the department of taxes shall disclose any return or return information to any person who is not an officer, employee or agent of the department of taxes except in accordance with the provisions of this section. A person who violates this section shall be fined not more than \$1,000.00 or imprisoned for not more than one year, or both; and if the offender is an officer or employee of this state, he or she shall in addition be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

(b) The following definitions shall apply for purposes of this section:

(1) “Person” shall include any individual, firm, partnership, association, joint stock company, corporation, trust, estate or other entity.

(2) “Return” means any tax return, declaration of estimated tax, license application, report or similar document, including attachments, schedules and transmittals, filed with the department of taxes.

(3) “Return information” includes a person’s name, address, date of birth, social security or federal identification number or any other identifying number; information as to whether or not a return was filed or required to be filed; the nature, source or amount of a person’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liabilities,

tax payments, deficiencies or over-assessments; and any other data, from any source, furnished to or prepared or collected by the department of taxes with respect to any person.

(4) “Tax administration” means the verification of a tax return or claim for credit, rebate or refund; the investigation, assessment, determination, litigation or collection of a tax liability of any person; the investigation or prosecution of a tax-related crime; or the enforcement of a tax statute.

(5) “Commissioner” means the commissioner of taxes appointed under section 3101 of this title or any officer, employee or agent of the department of taxes authorized by the commissioner (directly or indirectly by one or more redelegations of authority) to perform any function of the commissioner.

(6) “State” means any sovereign body politic, including, but not limited to, the United States, any state or territory thereof, and any foreign country or state or province thereof.

(7) “Authorized representative” means any person who would be considered a designee of the taxpayer under 26 U.S.C. § 6103(c). The signature of a notary public shall not be required for a person to be considered an “authorized representative.”

* * *

(h)(1) ~~¶~~ Except as set forth in subdivision (2) of this subsection, if any provision of Vermont law authorizes or requires the commissioner to divulge or make known in any manner any return or return information, the person or persons receiving such return or return information (other than information disclosed under subsection (i) of this section) shall be subject to the provisions of subsection (a) of this section as if such person were the agent of the commissioner. Nothing in this subsection shall be construed to restrict the disclosure of a return or return information by the person to whom it relates.

(2) Subdivision (1) of this subsection shall not apply to property tax adjustment information disclosed pursuant to 32 V.S.A. § 6066a(h).

* * *

Sec. X. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

(a) Annually, the commissioner shall determine the property tax adjustment amount under section 6066 of this title, related to a homestead owned by the claimant. The commissioner shall notify the municipality in which the housesite is located of the amount of the property tax adjustment for the claimant for homestead property tax liabilities, on July 1 for ~~timely-filed~~ timely filed claims and on September 15 for late claims filed by September 1. The tax adjustment of a claimant who was assessed property tax by a town which revised the dates of its fiscal year, however, is the excess of the property tax which was assessed in the last 12 months of the revised fiscal year, over the adjusted property tax of the claimant for the revised fiscal year as determined under section 6066 of this title, related to a homestead owned by the claimant.

* * *

(e) At the time of notice to the municipality, the commissioner shall notify the taxpayer of the property tax adjustment amount determined under subdivision 6066(a)(1) of this title; the amount determined under subdivision 6066(a)(3) of this title; any additional adjustment amounts due the homestead owner under section 6066 of this title; the amount of income tax refund, if any, allocated to payment of homestead property tax liabilities; and any late-claim reduction amount.

(f) Property tax bills.

(1) For amounts stated in the notice to towns on July 1, municipalities shall include on the homestead property tax bill notice to the taxpayer of the total amount allocated to payment of homestead education property tax liabilities and notice of the balance due. Municipalities shall apply the amount allocated under this chapter to current-year property taxes in equal amounts to each of the taxpayers' property tax installments that include education taxes.

(2) For property tax adjustment amounts for which municipalities receive notice on or after September 15, municipalities shall issue a new homestead property tax bill with notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due.

* * *

(g) Annually, on August 1 and on September 15, the commissioner of taxes shall pay to each municipality the amount of property tax adjustment of which the municipality was notified on July 1 for the August 1 transfer, or September 15 for the September 15 transfer, related to municipal property tax on homesteads within that municipality, as determined by the commissioner of taxes.

(h) The property tax adjustment information determined by the commissioner under subsection (a) of this section and reported to a municipality and taxpayer under subsections (a) and (e) respectively of this section shall be available for inspection and copying as a public record, and the provisions of this section requiring municipalities to include on the homestead property tax bill notice of the adjusted property tax liability shall override any confidentiality provisions of section 3102 of this title.

ii. Clarification of Municipal Liability for Disclosure of Property Tax Adjustment Information

The Vermont Supreme Court held in the case of *In re: H.S. 122* (Vt. Dec. 22, 2011), that property tax adjustment information is confidential. Because municipalities had been advised by the Department of taxes and others that such adjustment information was public, statutory language may be needed to clarify that municipalities are not and should not be held liable for the disclosure of the property tax adjustment information prior to the Vermont Supreme Court decision in *In re: H.S. 122*. Such language could take the form of the following:

Sec. X. PUBLIC AGENCY; DISCLOSURE OF PROPERTY TAX ADJUSTMENT
INFORMATION

The Vermont Supreme Court held in *In re: H.S. 122* (Vt. Dec. 22, 2011) that property tax adjustment information on municipal property tax bills is confidential under 32 V.S.A. § 3102 and not subject to inspection and copying under the Vermont Public Records Act. Prior to the Vermont Supreme Court ruling in *In re: H.S. 122*, the Vermont attorney general and the Vermont department of taxes advised public agencies that property tax adjustment information was public and subject to inspection and copying under the Public Records Act. Consequently, notwithstanding 1 V.S.A. § 214 or any other provision in law, a public agency or an employee or agent of a public agency shall not be held liable for a violation of the Public Records Act, for violation of 32 V.S.A. § 3102, or for a claim based on invasion of privacy as a result of disclosure of property tax adjustment information prior to the issuance of the mandate pursuant to Rule 41 of Vermont Rules of Appellate Procedure of the Vermont Supreme Court in *In re: H.S. 122*. As used in this section, “public agency” shall have the same meaning as defined in 1 V.S.A. § 317(b).

iii. Minority Report of Senator Flory and Representative Hubert

Senator Flory and Representative Hubert voted to recommend that property tax adjustment information remain confidential and the Vermont Supreme Court decision in *In re H.S. 122* not be superseded. The Vermont Supreme Court and the Town of Manchester properly concluded that property tax adjustment information is tax return information. The information is prepared by the Department of Taxes from income and other information provided to the Department in an individual's tax return. Moreover, representatives of the Town of Manchester testified before the Study Committee and during that testimony demonstrated how, with a basic knowledge of the adjustment factors, adjustment information could be used to determine almost exactly an individual's income. Disclosure of an individual personal or household income is not necessary for government accountability or transparency and should not be disclosed simply due to a person's eligibility for a property tax adjustment. Consequently, property tax adjustment information should remain confidential and the Vermont Supreme Court decision in *In re: H.S. 122* should not be superseded.

iv. Minority Report of Representative Linda Martin

Representative Martin voted to recommend that the issue of the public nature of property tax adjustment information be referred to the House Committee on Ways and Means and the Senate Committee on Finance as the committees of jurisdiction for tax issues. The Vermont Supreme Court decision in *In re: H.S. 122* does not sufficiently address what information may be disclosed on a property tax bill issued by a municipality. It remains unclear whether certain categories of information, such as household income, are confidential. The House Committee on Ways and Means and the Senate Committee on Finance, as the committees of jurisdiction, are

the appropriate committees to address these issues and any attendant consequences of any resulting policy decision.

Appendix B

Public Records Study Committee of Health Care Exemptions: Recommendations for Draft Legislation

i. 1 V.S.A. § 317(c)(38)—AHS records which include prescription information

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

(c) The following public records are exempt from public inspection and copying:

* * *

~~(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 9410 and chapter 84 of Title 18, or as provided for in chapter 84A of Title 18 and for other law enforcement activities;~~

[Repealed.]

* * *

ii. 8 V.S.A. § 4089a—mental health care services review; 8 V.S.A. § 4089f—external review of health care services decision

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

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

* * *

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

(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 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 under subsection 317(a) of Title 1, 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.

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

§ 4089F. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE SERVICE

DECISIONS

(a) For the purposes of 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 term 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 jurisdiction which has voluntarily agreed to use the external review process provided under this section.

* * *

iii. 18 V.S.A. § 1099—Venereal Disease Restraining Order; Venereal Disease Reports

Sec. X. 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 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~~ as a confidential public health record under section 1001 of this title.

iv. 18 V.S.A. § 9409a—Health Care Insurance Reimbursement Survey

Sec. X. 18 V.S.A. § 9409a is amended to read:

§ 9409a. HEALTH CARE INSURANCE REIMBURSEMENT SURVEY

In order to understand the impact of reimbursement on access to health care, the cost shift, the workforce shortages, and recruitment and retention of health care professionals, the commissioner shall annually survey health insurers to determine the reimbursement paid for the ten most common billing codes for primary care health services within the current procedural terminology category of Evaluation and Management Services and the ten most common billing codes outside the category of Evaluation and Management, excluding routine venipuncture. Each insurer shall report the average reimbursement paid for a specific service. The survey shall be managed by the department of banking, insurance, securities, and health care administration, ~~and any public reports shall be sufficiently aggregated so that they would not enable readers to~~

~~determine the amount of reimbursement paid for specific services to any particular provider or facility. No provider specific or facility specific reimbursement information shall be included in the public survey reports, or be available through public records requests. When published, survey data will be at least 90 days old. Only the department will have access to the underlying survey responses.~~ The department shall provide a copy of the survey results to the house committee on health care and the senate committee on health and welfare.

v. 18 V.S.A. § 9418f—Rental of Health Plan Networks

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

§ 9418f. RENTAL NETWORK CONTRACTS

(a) Definitions. As used in this section:

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

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

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

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

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

(1) Provider network contracts for services provided to Medicaid, Medicare, or the state children's health insurance program (SCHIP) beneficiaries.

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

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

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

(A) the official name of the contracting entity;

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

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

(3) The information required by this subsection shall be submitted in written or electronic format, as prescribed by the commissioner. Information submitted to the commissioner under this section or rules adopted by the commissioner to implement this section shall not be confidential unless otherwise exempt from inspection and copying under 1 V.S.A. chapter 5, subchapter 3.

* * *

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

* * *

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

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

(C) Nothing in this subsection shall be construed to prevent the inspection and copying as provided under 1 V.S.A. chapter 5, subchapter 3, of information acquired by the commissioner under this section or rules implementing this section.

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

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

(2) Contracting entities and third parties are obligated to comply with subdivision (d)(2)(B) of this section concerning the services referenced on a remittance advice or explanation of payment. A provider may refuse the discount taken on the remittance advice or explanation of payment if the discount is taken without a contractual basis or in violation of these sections. However, an error in the remittance advice or explanation of payment may be corrected within 30 days following notice by the provider.

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

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

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

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

vi. 18 V.S.A. § 7103—Disclosure of Patient Information

Sec. X. 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 directly or indirectly identifying 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 individual identified, the individual's ~~health care agent under subsection 5264~~ section 9701 of this title, or 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; 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 by law.~~

* * *

Appendix C

Public Records Study Committee

Personal Information: Legislative Recommendations for Clarification

Sec. X. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

(a) As used in this subchapter,:

(1) “Business day” means a day that a public agency is open to provide services.

(2) “Public agency” or “agency” means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(b) As used in this subchapter, “public record” or “public document” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. 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.

(c) The following public records are exempt from public inspection and copying:

* * *

(7) ~~personal documents relating to an individual, including: information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an~~

~~individual employee of any public agency shall be made available to that individual employee or his or her designated representative;~~

(A) unique identifying information of a person, including a person's Social Security number, employee identification number, biometric identifiers, passwords or other access codes, medical records, home or personal telephone number, and personal e-mail addresses;

(B) the race, age, or gender of an individual employee of a public agency; provided that aggregate data related to the race, age, or gender of all employees of a public agency may be disclosed if presented in a form which does not reveal the identity of an individual employee;

(C) information related to personal finances;

(D) medical or psychological facts concerning a person;

(E) information in any files maintained to hire, evaluate, promote, or discipline an employee of a public agency; provided that all information in personnel files of an individual employee of a public agency shall be made available to that individual employee or his or her designated representative;

* * *

Appendix D

Public Records Study Committee

University Research Exemption: Legislative Recommendations for Amendment

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

(c) The following public records are exempt from public inspection and copying:

* * *

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

* * *

Appendix E

Public Records Study Committee Legislative Recommendations of Committee as a Draft Bill

Introduced by <Sponsor>

Referred to Committee on

Date:

Subject: Government operations; public records act; health care; property tax; personal information; exemptions

Statement of purpose: This bill proposes to delete or amend multiple exemptions to inspection or copying of public records. The bill also clarifies that property tax adjustment information reported by a municipality to a taxpayer is a public record subject to public inspection and copying.

An act relating to public records act exemptions

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

Sec. 1. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND
DOCUMENTS

(a) As used in this subchapter,:

- (1) “Business day” means a day that a public agency is open to provide services.
- (2) “Public agency” or “agency” means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee,

department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(b) As used in this subchapter, “public record” or “public document” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. 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.

(c) The following public records are exempt from public inspection and copying:

* * *

(7) ~~personal documents relating to an individual, including: information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;~~

(A) unique identifying information of a person, including a person’s Social Security number, employee identification number, biometric identifiers, passwords or other access codes, medical records, home or personal telephone number, and personal e-mail addresses;

(B) the race, age, or gender of an individual employee of a public agency; provided that aggregate data related to the race, age, or gender of all employees of a public agency may be disclosed if presented in a form which does not reveal the identity of an individual employee;

(C) information related to personal finances;

(D) medical or psychological facts concerning a person;

(E) information in any files maintained to hire, evaluate, promote, or discipline an employee of a public agency; provided that all information in personnel files of an individual employee of a public agency shall be made available to that individual employee or his or her designated representative;

* * *

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

* * *

(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 9410 and chapter 84 of Title~~

~~18, or as provided for in chapter 84A of Title 18 and for other law enforcement activities;~~

[Repealed.]

* * *

Sec. 2. 8 V.S.A. § 4089a is amended to read:

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

* * *

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

(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 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 under subsection 317(a) of Title 1, 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 ~~section 1 V.S.A. § 316 of Title 1.~~

Sec. 3. 8 V.S.A. § 4089f is amended to read:

§ 4089f. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE

SERVICE DECISIONS

(a) For the purposes of 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 term 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 jurisdiction which has voluntarily agreed to use the external review process provided under this section.

* * *

Sec. 4. 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 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~~ as a confidential public health record under section 1001 of this title.

Sec. 5. 18 V.S.A. § 9409a is amended to read:

§ 9409a. HEALTH CARE INSURANCE REIMBURSEMENT SURVEY

In order to understand the impact of reimbursement on access to health care, the cost shift, the workforce shortages, and recruitment and retention of health care professionals, the

commissioner shall annually survey health insurers to determine the reimbursement paid for the ten most common billing codes for primary care health services within the current procedural terminology category of Evaluation and Management Services and the ten most common billing codes outside the category of Evaluation and Management, excluding routine venipuncture.

Each insurer shall report the average reimbursement paid for a specific service. The survey shall be managed by the department of banking, insurance, securities, and health care administration, ~~and any public reports shall be sufficiently aggregated so that they would not enable readers to determine the amount of reimbursement paid for specific services to any particular provider or facility. No provider specific or facility specific reimbursement information shall be included in the public survey reports, or be available through public records requests.~~ When published, survey data will be at least 90 days old. ~~Only the department will have access to the underlying survey responses.~~ The department shall provide a copy of the survey results to the house committee on health care and the senate committee on health and welfare.

Sec. 6. 18 V.S.A. § 9418f is amended to read:

§ 9418f. RENTAL NETWORK CONTRACTS

(a) Definitions. As used in this section:

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

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

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

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

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

(1) Provider network contracts for services provided to Medicaid, Medicare, or the state children’s health insurance program (SCHIP) beneficiaries.

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

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

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

(A) the official name of the contracting entity;

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

(C) the name and telephone number of the contracting entity’s representative who shall serve as the primary contact with the commissioner.

(3) The information required by this subsection shall be submitted in written or electronic format, as prescribed by the commissioner. Information submitted to the commissioner under this section or rules adopted by the commissioner to implement this section shall not be confidential unless otherwise exempt from inspection and copying under 1 V.S.A. chapter 5, subchapter 3.

* * *

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

* * *

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

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

(C) Nothing in this subsection shall be construed to prevent the inspection and copying as provided under 1 V.S.A. chapter 5, subchapter 3, of information acquired by the commissioner under this section or rules implementing this section.

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

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

(2) Contracting entities and third parties are obligated to comply with subdivision (d)(2)(B) of this section concerning the services referenced on a remittance advice or explanation of payment. A provider may refuse the discount taken on the remittance advice or explanation of payment if the discount is taken without a contractual basis or in violation of these sections. However, an error in the remittance advice or explanation of payment may be corrected within 30 days following notice by the provider.

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

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

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

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

Sec. 7. 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 directly or indirectly identifying 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 individual identified, the individual's ~~health-care agent under subsection 5264~~ section 9701 of this title, or 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; 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 by law.~~

* * *

Sec. 8. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

(a) ~~No~~ Except as provided for in 32 V.S.A. § 6066a(h), no present or former officer, employee or agent of the department of taxes shall disclose any return or return information to any person who is not an officer, employee or agent of the department of taxes except in accordance with the provisions of this section. A person who violates this section shall be fined not more than \$1,000.00 or imprisoned for not more than one year, or both; and if the offender is an officer or employee of this state, he or she shall in addition be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

(b) The following definitions shall apply for purposes of this section:

(1) "Person" shall include any individual, firm, partnership, association, joint stock company, corporation, trust, estate or other entity.

(2) "Return" means any tax return, declaration of estimated tax, license application, report or similar document, including attachments, schedules and transmittals, filed with the department of taxes.

(3) "Return information" includes a person's name, address, date of birth, social security or federal identification number or any other identifying number; information as to whether or not a return was filed or required to be filed; the nature, source or amount of a person's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liabilities, tax payments, deficiencies or over-assessments; and any other data, from any source, furnished to or prepared or collected by the department of taxes with respect to any person.

(4) "Tax administration" means the verification of a tax return or claim for credit, rebate or refund; the investigation, assessment, determination, litigation or collection of a tax liability of

any person; the investigation or prosecution of a tax-related crime; or the enforcement of a tax statute.

(5) “Commissioner” means the commissioner of taxes appointed under section 3101 of this title or any officer, employee or agent of the department of taxes authorized by the commissioner (directly or indirectly by one or more redelegations of authority) to perform any function of the commissioner.

(6) “State” means any sovereign body politic, including, but not limited to, the United States, any state or territory thereof, and any foreign country or state or province thereof.

(7) “Authorized representative” means any person who would be considered a designee of the taxpayer under 26 U.S.C. § 6103(c). The signature of a notary public shall not be required for a person to be considered an “authorized representative.”

* * *

(h)(1) ¶ Except as set forth in subdivision (2) of this subsection, if any provision of Vermont law authorizes or requires the commissioner to divulge or make known in any manner any return or return information, the person or persons receiving such return or return information (other than information disclosed under subsection (i) of this section) shall be subject to the provisions of subsection (a) of this section as if such person were the agent of the commissioner. Nothing in this subsection shall be construed to restrict the disclosure of a return or return information by the person to whom it relates.

(2) Subdivision (1) of this subsection shall not apply to property tax adjustment information disclosed pursuant to 32 V.S.A. § 6066a(h).

* * *

Sec. 9. 32 V.S.A. § 6066a is amended to read:

§ 6066a. DETERMINATION OF PROPERTY TAX ADJUSTMENTS

(a) Annually, the commissioner shall determine the property tax adjustment amount under section 6066 of this title, related to a homestead owned by the claimant. The commissioner shall notify the municipality in which the housesite is located of the amount of the property tax adjustment for the claimant for homestead property tax liabilities, on July 1 for ~~timely filed~~ timely filed claims and on September 15 for late claims filed by September 1. The tax adjustment of a claimant who was assessed property tax by a town which revised the dates of its fiscal year, however, is the excess of the property tax which was assessed in the last 12 months of the revised fiscal year, over the adjusted property tax of the claimant for the revised fiscal year as determined under section 6066 of this title, related to a homestead owned by the claimant.

* * *

(e) At the time of notice to the municipality, the commissioner shall notify the taxpayer of the property tax adjustment amount determined under subdivision 6066(a)(1) of this title; the amount determined under subdivision 6066(a)(3) of this title; any additional adjustment amounts due the homestead owner under section 6066 of this title; the amount of income tax refund, if any, allocated to payment of homestead property tax liabilities; and any late-claim reduction amount.

(f) Property tax bills.

(1) For amounts stated in the notice to towns on July 1, municipalities shall include on the homestead property tax bill notice to the taxpayer of the total amount allocated to payment of homestead education property tax liabilities and notice of the balance due. Municipalities shall apply the amount allocated under this chapter to current-year property taxes in equal amounts to each of the taxpayers' property tax installments that include education taxes.

(2) For property tax adjustment amounts for which municipalities receive notice on or after September 15, municipalities shall issue a new homestead property tax bill with notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due.

* * *

(g) Annually, on August 1 and on September 15, the commissioner of taxes shall pay to each municipality the amount of property tax adjustment of which the municipality was notified on July 1 for the August 1 transfer, or September 15 for the September 15 transfer, related to municipal property tax on homesteads within that municipality, as determined by the commissioner of taxes.

(h) The property tax adjustment information determined by the commissioner under subsection (a) of this section and reported to a municipality and taxpayer under subsections (a) and (e) respectively of this section shall be available for inspection and copying as a public record, and the provisions of this section requiring municipalities to include on the homestead property tax bill notice of the adjusted property tax liability shall override any confidentiality provisions of section 3102 of this title.

Sec. 10. PUBLIC AGENCY; DISCLOSURE OF PROPERTY TAX ADJUSTMENT
INFORMATION

The Vermont Supreme Court held in *In re: H.S. 122* (Vt. Dec. 22, 2011) that property tax adjustment information on municipal property tax bills is confidential under 32 V.S.A. § 3102 and not subject to inspection and copying under the Vermont Public Records Act. Prior to the Vermont Supreme Court ruling in *In re: H.S. 122*, the Vermont attorney general and the Vermont department of taxes advised public agencies that property tax adjustment information was public

and subject to inspection and copying under the Public Records Act. Consequently, notwithstanding 1 V.S.A. § 214 or any other provision in law, a public agency or an employee or agent of a public agency shall not be held liable for a violation of the Public Records Act, for violation of 32 V.S.A. § 3102, or for a claim based on invasion of privacy as a result of disclosure of property tax adjustment information prior to the issuance of the mandate pursuant to Rule 41 of Vermont Rules of Appellate Procedure of the Vermont Supreme Court in *In re: H.S. 122*. As used in this section, “public agency” shall have the same meaning as defined in 1 V.S.A. § 317(b).

Sec. 11. LEGISLATIVE COUNCIL REVIEW OF EXEMPTIONS

RELATED TO PERSONAL INFORMATION

The office of legislative council shall review the Vermont Statutes Annotated in order to identify public records act exemptions that reference personal or identifying information and that may be deleted or amended on the effective date of the amendment to 1 V.S.A. § 317(c)(7) set forth in Sec. 1 of this act. The office of legislative council shall also identify statutory sections that may require amendment in order to provide that personal information deemed confidential shall remain confidential on the effective date of the amendment to 1 V.S.A. § 317(c)(7) set forth in Sec. 1 of this act. On or before January 15, 2013, the office of legislative council shall submit to the house and senate committees on government operations its findings under this section, including draft legislation proposing amendments consistent with the requirements of this section.

Sec. 12. EFFECTIVE DATES

(a) This section and Secs. 2 (independent panel of mental health care providers), 3 (external review of health care service decisions), 4 (venereal disease report), 5 (health care insurance

reimbursement survey), 6 (rental network contracts), 7 (disclosure of patient information), 8 (property tax adjustment information), 9 (liability of public agency; disclosure of property tax adjustment information), and 10 (legislative council review of Vermont Statutes Annotated related to personal information) of this act shall take effect July 1, 2012.

(b) Sec. 1 (amendments to 1 V.S.A. § 317 public records acts exemptions) shall take effect on July 1, 2012, except that 1 V.S.A. § 317(c)(7) shall take effect on July 1, 2014.

Appendix F

Public Records Study Committee

List of Exemptions Reviewed by Public Records Study Committee

	Statutory Citation	Summary of Statute	Action
1.	1 V.S.A. § 317(c)(1)	Records otherwise confidential by law	Recommend retaining exemption in present form
2.	1 V.S.A. § 317(c)(2)	Records which by law may only be disclosed to specifically designated persons	Recommend retaining exemption in present form
3.	1 V.S.A. § 317(c)(3)	Records, the disclosure of which would violate professional ethics or conduct	Recommend retaining exemption in present form
4.	1 V.S.A. § 317.(c)(4)	Records, the disclosure of which would violate statutory/common law privilege	Recommend retaining exemption in present form
5.	1 V.S.A. § 317(c)(5)	Records of detection and investigation of crime	Recommend that the Committees on Judiciary review the exemption
6.	1 V.S.A. § 317(c)(6)	Tax return or tax records in possession of department of taxes or other agency	Recommend retaining exemption in present form, but clarify public nature of property tax adjustment information
7.	1 V.S.A. § 317(c)(7)	Personal documents relating to an individual	Recommend amendment and review of exemptions that could be deleted or amended as a result of recommended amendment
8.	1 V.S.A. § 317(c)(8)	Test questions and exams for licensees, employment, or academic examination	Recommend retaining exemption in present form
9.	1 V.S.A. § 317(c)(9)	Trade secrets	Recommend review of the exemption in subsequent years of committee
10.	1 V.S.A. § 317(c)(10)	Lists of names, disclosure of which violates a right to privacy or produces gain	Recommend review of the exemption in subsequent years of committee
11.	1 V.S.A. § 317(c)(11)	Student records	Recommend retaining exemption in present form
12.	1 V.S.A. § 317(c)(12)	Records concerning formulation of policy, if disclosure would	Recommend review of the exemption in

	Statutory Citation	Summary of Statute	Action
		violate a right to privacy	subsequent years of committee
13.	1 V.S.A. § 317(c)(13)	Real estate information prior to state development	Recommend retaining exemption in present form
14.	1 V.S.A. § 317(c)(14)	Records relevant to litigation	Recommend review of the exemption in subsequent years of committee
15.	1 V.S.A. § 317(c)(15)	Records relating to contract negotiations	Recommend review of the exemption in subsequent years of committee
16.	1 V.S.A. § 317(c)(16)	Voluntary information submitted by corporations to public agencies prior to enactment of Public Records Act	Recommend retaining exemption in present form
17.	1 V.S.A. § 317(c)(17)	Municipal inter- and intra-departmental communications preliminary to a policy determination	Recommend review of the exemption in subsequent years of committee
18.	1 V.S.A. § 317(c)(18)	Department of public safety internal investigations	Recommended that the Committees on Judiciary review the exemption
19.	1 V.S.A. § 317(c)(19)	Identity of library patrons	Recommend retaining exemption in present form
20.	1 V.S.A. § 317(c)(20)	Information regarding location of archaeological sites	Recommend retaining exemption in present form
21.	1 V.S.A. § 317(c)(21)	Lists of names compiled by <i>Vermont Life</i>	Recommend retaining exemption in present form
22.	1 V.S.A. § 317(c)(22)	Records received by Agency of Commerce and Community development related to new jobs and manufacturer's tax credits	Recommend review of the exemption in subsequent years of committee; exemption likely can be repealed
23.	1 V.S.A. § 317(c)(23)	UVM and state colleges research records	Recommend amendment to provide that certain records are public
24.	1 V.S.A. § 317(c)(24):	Deliberations of agencies acting in judicial or quasi-judicial capacity	Recommend review of the exemption in subsequent years of committee
25.	1 V.S.A. § 317(c)(25)	Passwords and security codes, disclosure of which would pose a safety risk	Recommend retaining exemption in present form, but may be repealed if personal information exemption is amended as recommended
26.	1 V.S.A. § 317(c)(26)	Information submitted to BISHCA in dispute re BISHCA regulated	Recommend retaining exemption in present form

	Statutory Citation	Summary of Statute	Action
		entity	
27.	1 V.S.A. § 317(c)(27)	Info submitted to dep't. of public service re dispute with a DPS regulated utility	Recommend retaining exemption in present form, but may be reviewed in subsequent years
28.	1 V.S.A. § 317(c)(28)	Records of external review of health care and mental health service decisions	Recommend retaining exemption in present form
29.	1 V.S.A. § 317(c)(29)	Records of participant in address confidentiality program	Recommend retaining exemption in present form, but may be further reviewed in subsequent years
30.	1 V.S.A. § 317(c)(30)	State marketing databases	Recommend retaining exemption in present form
31.	1 V.S.A. § 317(c)(31)	Voter information: DOB, license number, SSN, and street address if it varies from mailing address on voter checklist	Recommend retaining exemption in present form, but may be amended if personal information exemption is amended as recommended
32.	1 V.S.A. § 317(c)(32)	State building plans and layouts	Recommend retaining exemption in present form
33.	1 V.S.A. § 317(c)(33):	Account numbers for bank, credit, or debit cards held by a public agency	Recommend retaining exemption in present form, but may be amended or repealed if personal information exemption is amended as recommended
34.	1 V.S.A. § 317(c)(34)	Family court income affidavits	Recommend retaining exemption in present form
35.	1 V.S.A. § 317(c)(36)	Anti-fraud plans	Recommend retaining exemption in present form
36.	1 V.S.A. § 317(c)(37)	Patient surveillance and improvement system records	Recommend that the Senate Committee on Health and Welfare and the House Committee on Health Care review this exemption to determine if certain information can be reported in an aggregate form without violating HIPAA
37.	1 V.S.A. § 317(c)(38)	Records held by AHS, which include prescription information containing prescriber-identifiable data, that could be used to identify a prescriber	Recommend repeal of the exemption
38.	1 V.S.A. § 317(c)(39)	Records held by AHS or BISHCA, which include prescription information containing patient-identifiable data, that could be used	Recommend retaining exemption in present form

	Statutory Citation	Summary of Statute	Action
		to identify a patient	
39.	1 V.S.A. § 317(c)(40)	Records of genealogy provided in support of an application for tribal recognition	Recommend review of the exemption in subsequent years of committee to address questions regarding ambiguous language
40.	8 V.S.A. § 4089a	Mental health care services review	Recommend amendment of exemption
41.	8 V.S.A. § 4089f	External review of health care services decision	Recommend amendment of exemption
42.	18 V.S.A. § 1094	Restraining order; venereal diseases	Recommend that Senate Committee on Health and Welfare and House Committee on Human Services review the need for the authority underlying the exemption
43.	18 V.S.A. § 1099	Venereal disease reports	Recommend amendment of exemption
44.	18 V.S.A. § 1554	Maternal mortality review panel records and opinions	Recommend retaining exemption in present form
45.	18 V.S.A. § 1852(a)(7)	Patients' bill of rights; patient information	Recommend retaining exemption in present form
46.	18 V.S.A. § 1910	Identifying information in hospital license applications	Recommend retaining exemption in present form
47.	18 V.S.A. § 1917(a)	Information received as part of the patient surveillance and improvement system	Recommend that Senate Committee on Health and Welfare and House Committee on Health Care review method for reporting certain patient surveillance data in an aggregate form without violating HIPAA
48.	18 V.S.A. § 4474f(a)(2)	Department of public safety rules for medical marijuana dispensaries shall not compromise the confidentiality of registered patients and caregivers	Recommend retaining exemption in present form, but may be amended or repealed if personal information exemption is amended as recommended
49.	18 V.S.A. § 5205	Autopsy reports	Recommend retaining exemption in present form, but may be amended by vital records bill that passed the House and is before the Senate
50.	18 V.S.A. § 7103	Disclosure of patient information	Recommend amendment to be consistent with HIPAA and state law

	Statutory Citation	Summary of Statute	Action
51.	18 V.S.A. § 8713	Sterilization of persons with intellectual disability	Recommend Senate and House Committees on Judiciary, Senate Committee on Health and Welfare, and House Committee on Human Service review the requirements for involuntary sterilization and discuss with the judiciary a method for tracking the number of such proceedings
52.	18 V.S.A. § 8728(a)	Developmental disability patient rights	Recommend retaining exemption in present form
53.	18 V.S.A. § 9333(c)	Genetic testing information	Recommend retaining exemption in present form, but may be amended or repealed if personal information exemption is amended as recommended
54.	18 V.S.A. § 9391	Records of proceedings of Green Mountain Care board nominating committee and information submitted by board candidates	Recommend retaining exemption in present form
55.	18 V.S.A. § 9409a	Insurer survey responses regarding reimbursement of most common bill codes	Recommend repeal of the exemption
56.	18 V.S.A. § 9414(f)(3)	Identifying information made available in quality review of managed care organizations	Recommend retaining exemption in present form, but may be amended or repealed if personal information exemption is amended as recommended
57.	18 V.S.A. § 9418f	Information provided to health care providers in the performance of health care provider network contracts	Recommend repeal of the exemption
58.	18 V.S.A. § 9457	Hospital financial services reporting	Recommend retaining exemption in present form
59.	32 V.S.A. § 983	State treasurer's books of registry	Recommend retaining exemption in present form
60.	32 V.S.A. § 3102	Tax records	Recommend retaining exemption in present form, but recommend amending 32 V.S.A. § 6066a to

	Statutory Citation	Summary of Statute	Action
			clarify that property tax adjustment information provided by town to taxpayer is public
61.	32 V.S.A. § 3411(4)	Property valuation and review division; local information	Recommend retaining exemption in present form, but recommend amending 32 V.S.A. § 6066a to clarify that property tax adjustment information provided by town to taxpayer is public
62.	32 V.S.A. § 4009	Tax lister inventories	Recommend retaining exemption in present form
63.	32 V.S.A. § 5901)	Tax returns; information collected by tax preparer	Recommend removal of exemption from list, since likely never could be asserted by public agency
64.	32 V.S.A. § 5930a(h)	Vermont economic progress council; business information	Recommend retaining exemption in present form