



STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: House Health Care Committee
FROM: Ashley Johns, Staff Attorney, Agency of Human Services
DATE: March 11, 2025
SUBJECT: H. 80 – information sharing with the Office of the Health Care Advocate

The Agency of Human Services (AHS) appreciates the opportunity to provide input on H.80—proposed modifications to the roles and duties of the Office of the Health Care Advocate (HCA). AHS is committed to working with HCA to align the statute with current practice.

However, the proposed modifications to 18 V.S.A. §9604(b) and §9603(d) substantially expand the duties of state agencies to share otherwise protected information with HCA. As written, the language creates uncertainty around the obligations of state agencies; fails to adequately protect consumer’s private health information; and seeks to exempt HCS from all statutorily codified record protections in the Public Records Act (PRA).

HCA proposed modifications	AHS alternative proposed modifications
18 V.S.A. §9604(b) (b) All State agencies shall comply <u>facilitate the Office’s meaningful participation in health care policymaking by complying</u> with reasonable requests from the Office of the Health Care Advocate for information, and assistance, and access. <u>A request shall be considered reasonable if it relates to the Office’s statutory duties and authority.</u>	18 V.S.A. §9604(b) (b) All State agencies shall comply <u>facilitate the Office’s meaningful participation in health care policymaking by complying</u> with reasonable requests from the Office of the Health Care Advocate for information, and assistance, and access, <u>to the extent permitted by law.</u> <u>A request shall be considered reasonable if it relates to the Office’s statutory duties and authority.</u>
(1) <u>When appropriate, State agencies shall allow the Office to access confidential or proprietary information that is otherwise exempt from public inspection and copying under the Public Records Act and to participate in meetings, deliberations, and</u>	(1) <u>When a State agency deems appropriate, the State agency may, to the extent permitted by law, shall allow the Office to access confidential or proprietary information that is otherwise exempt from public inspection and copying under the Public Records Act and to</u>

<u>proceedings in which confidential or proprietary information is discussed.</u>	<u>participate in meetings, deliberations, and proceedings in which confidential or proprietary information is discussed.</u>
18 V.S.A. §9603(d) <u>(d) Health care providers and health insurers shall cooperate with the Office of the Health Care Advocate by providing relevant records and information when an individual or the individual’s guardian or legal representative has authorized the Office to act on the individual’s behalf.</u>	18 V.S.A. §9603(d) <u>(d) Health care providers and health insurers shall cooperate with the Office of the Health Care Advocate by providing relevant records and information, as permitted by law, when an individual or the individual’s guardian or legal representative has authorized the Office to act on the individual’s behalf. The provider or insurer may require written consent of the consumer to share the requested records or information.</u>

The inclusion of the phrase “as permitted by law” in each of the referenced sections enhances the protection of Vermonters private health information. AHS is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA) and must adhere to the HIPAA associated protections for Protected Health Information (PHI). HCA, while funded by AHS, is not a state entity nor a covered entity under HIPAA. Certain functions of HCA fall within a Business Associate Agreement (BAA), which allows AHS to share PHI under certain parameters that protect private health information. However, the BAA does not provide a categorical exemption for information sharing between AHS and HCA—there are limits to how shared PHI can be used and disclosed, and specific terms and conditions for compliance with HIPAA. The addition of language emphasizes the duty of AHS to comply with HIPAA regulations.

The modification of the phrase “when appropriate” in 18 V.S.A. §9604(b) provides clarity to the limited circumstances under which a state agency would share confidential or proprietary information with the HCA. Identifying the state agency as determining the appropriateness of sharing confidential or proprietary information provides needed clarity to this process. Additionally, while the Public Records Act (PRA) includes a variety of exemptions to information sharing, such as client confidentiality, attorney-client privilege, executive privilege, and ongoing litigation or negotiations, many of the outlined privileges and exemptions cannot be waived by the state agency. As the PRA does not specifically outline all instances of confidential or proprietary information and includes many exclusions that would require waiver, removal of reference to the PRA does not alter the purpose of this modification.

The modification permitting an insurer to require written consent from a consumer prior to sharing information aligns with HIPAA requirements for certain information. Written consent to share consumer information was previously outlined in 18 V.S.A. §9603(c) which has been struck from the statute in these proposed modifications. HIPAA compliance, and best practices, require written consent to share protected health information. As this modification implicates DVHA as a health insurer—AHS must ensure DVHA can comply with this statute, as well as state and federal law, including their obligations to protect PHI.