Introduced by Representatives Sweaney of Windsor, Hubert of Milton and Martin of Wolcott

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 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.

* * *

(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 to a person authorized 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 subsection 6066a(h) of this title, 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 subsection 6066a(h) of this title.

* * *

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
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.