

Right to Know Advisory Committee
Legislative Subcommittee
July 29, 2009
Meeting Summary

Convened 12:35 pm in Room 438, State House, Augusta.

Present:

Chris Spruce, Chair
Karla Black
Robert Devlin
Suzanne Goucher
Rep. Dawn Hill
Linda Pistner
Harry Pringle

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Subcommittee Chair Chris Spruce convened the Legislative Subcommittee and explained that the focus of the meeting was to begin the subcommittee's review of LD 757 and LD 1353.

Discussion of the other issues before the Legislative subcommittee will be continued at future subcommittee meetings. Mr. Spruce explained his intent for the subcommittee to meet one more time in early September so that the subcommittee has the opportunity to make recommendations to the full Advisory Committee at its meeting on September 23rd.

Review of LD 757, An Act to Improve the Transparency of Certain Hospitals

LD 757, as drafted, would make public any meetings, including board meetings and subcommittee meetings, of organizations that receive more than \$250,000 annually in public funds for medical services or that provide medical services as its primary function. The bill has been carried over by the Health and Human Services Committee and that committee has asked the Advisory Committee for its opinion on the bill, including an opinion on any unintended consequences of expanding the FOA laws to non-governmental entities.

At the invitation of the subcommittee, Rep. Adam Goode, the sponsor of LD 757, and other stakeholders who testified on LD 757 before the Health and Human Services Committee provided comments to the subcommittee on the bill. Rep. Goode explained that the bill was suggested by a constituent and is intended to apply to hospitals so that hospital board meetings would be required to have board meetings open to the public. He also noted that he understands the need to protect the confidentiality of individually-identifying health information and for hospital boards to have the ability to meet in executive session for discussions of appropriate issues. He expressed his willingness to work with the subcommittee and stakeholders to clarify the bill's language.

Mr. Nick Bearce, the constituent who suggested the legislation, spoke about his rationale. He explained that Eastern Maine Medical Center and Eastern Maine Health System are the providers of health care in his area and the public has an interest in the operations of the hospital. He noted EMMC does not pay property taxes to the City of Bangor because of its nonprofit status. Rep. Hill inquired about the definition of "public funds" as used in the bill asking whether the intent

was to mean funds for health care services provided by hospitals and other medical organizations and paid for with public funds. Rep, Goode and Mr. Bearce answered that that particular issue did not get much focus in the HHS Committee, but that they understood “public funds” to include funds paid for health care services, program funding or even the amount saved in property taxes.

Harry Pringle noted that LD 757 does not apply to records of hospitals, but asked Mr. Bearce if there were certain records or specific information about EMMC that he is seeking and unable to obtain. Mr. Bearce noted the public availability of the hospital’s annual report and Form 990 filed with the Internal Revenue Service, but stated the information does not include audited financial statements or auditor’s notes and the Form 990 is 9 months old when the information is made available to the public. Mr. Pringle asked Mr. Bearce if access to meetings would be adequate for him since the bill does not address records in any way. Mr. Bearce commented that he wasn’t sure.

Charles Soltan and Sandra Parker offered comments on LD 757 on behalf of the Maine Hospital Association. Mr. Soltan stressed the intent of the FOA laws to make the operations of public entities transparent and cautioned about the unintended consequences of extending the law to private entities. Mr. Soltan stated that hospitals and other private entities have an expectation of privacy. Mr. Soltan mentioned that other private entities who contract with the state and federal government like Bath Iron Works or Pike Industries receive substantial public funds and questioned why hospitals are the only focus of the bill. Mr. Soltan also explained that the Law Court decision, Town of Burlington v. HAD No. 1, can be distinguished and that in response to the decision hospitals have taken steps to protect the privacy of records and meetings. Mr. Soltan also noted the enactment of federal and state laws since the decision to protect the privacy of personal health information.

Ms. Parker focused on the broad language of LD 757 as drafted and noted that bill would apply to physician groups, medical supply companies, nursing homes and other entities. Ms. Parker also noted that hospitals would be put at a competitive disadvantage if strategic and business planning discussions were required to be conducted in public meetings. Ms. Parker also explained that there are many areas where hospital records are transparent, including annual financial reports, Form 990 filings and cost and quality data. Chris Spruce agreed that many hospital records are accessible to the public, but he asked how hospitals provide access to the community to its board proceedings. Ms. Parker explained Cary Medical Center in Caribou is municipally-owned and the Dover-Foxcroft hospital is operated under a hospital administrative district. Although those hospitals do not have public board meeting, hospital leadership in Caribou has regular quarterly meetings with municipal leaders and that each town in the hospital administrative district has a member on the Dover-Foxcroft hospital board.

Mr. Pringle asked Ms. Parker about her position on the bill if it were limited to board meetings and amended to permit executive sessions as appropriate since arguably the provision of medical services is a matter of public interest. Ms. Parker answered that the entire statute would have to be rewritten since the current language relating to executive sessions was written for public entities, not private entities like a hospital. Mr. Pringle inquired about the types of issues that would need confidentiality and suggested that the language could be drafted to address those issues. Mr. Soltan and Ms. Parker explained that the issues might be hard to distinguish as hospital boards have regular discussions related to contractual arrangements with insurers, reimbursement of doctors and staff, long-range planning and purchase of property, etc. Ms. Parker also noted the volunteer nature of board membership and stated that the willingness to serve on boards might be diminished if meetings were made public.

Lisa Harvey-McPherson representing Eastern Maine Medical Center distributed written materials. Ms. Harvey-McPherson highlighted the many records and data made available to the public and noted that EMMC voluntarily provides patient satisfaction and other quality data on its website. EMMC also responds to the community it serves through the use of regular meetings with community advisory councils. Finally, Ms. Harvey-McPherson explained that, to her knowledge, independent nonprofit hospitals in other states are not subject to FOA laws.

Staff also distributed written comments on LD 757 provided by Phil Saucier of the Governor's Office of Health Policy and Finance.

Review of LD 1353, An Act Regarding Salary Information for Public Employees

LD 1353, as drafted, provides that salary information as it relates to an individual state, county, municipal, school, university or community college employee is confidential; salary information related to positions is public information. The impetus for the bill was the posting of public employee names, positions and salaries on a private organization's website. The bill has been carried over by the Judiciary Committee and that committee has asked the Advisory Committee for its opinion on the bill, including any recommended changes that may be needed to balance the public interest with privacy interest of public employees.

Tarren Bragdon of the Maine Heritage Policy Center, the organization that created the website, provided comments to the subcommittee. Mr. Bragdon noted that salary information regarding public employees is already public record and expressed his opposition to the bill as drafted. Mr. Bragdon stated that he is willing to work with the Secretary of State to determine if any individual participating in the Address Confidentiality Program is a public employee or otherwise included on the website and to remove that information. Linda Pistner asked if Mr. Bragdon felt it was necessary to include the individual's name on the website along with the salary information. Mr. Bragdon responded that the public will not be able to determine if patronage or other unfair treatment of individuals is occurring if an individual's name is not included. Ms. Pistner also inquired about information related to employee benefits, specifically amounts attributed to the unfunded liability of the retirement system that are not benefits received by the employee, and whether the website has a responsibility to explain how employee benefits are attributed to individual employees. Mr. Bragdon explained that the information posted on the website reflects how it has been received by them from the Department of Administrative and Financial Services and other sources.

Bruce Hodsdon, president of the Maine State Employees-SEIU, provided comments as well. Mr. Hodsdon stated that state employees are concerned about the posting of the information on the website, but understand that the information is a matter of public record. Mr. Hodsdon proposed a compromise to the bill and suggested amending the bill to protect information of those individuals in the Address Confidentiality Program or others concerned about the release of information about the geographic location of their work. Mr. Hodsdon also suggested law enforcement and corrections employees may also have a legitimate interest in privacy. Harry Pringle reminded the subcommittee that personal contact information of state employees is already confidential by law. Mr. Bragdon noted his willingness to address participants in the Address Confidentiality Program, but stated that information related to law enforcement personnel should not be protected as that information is already public information. The subcommittee directed staff to draft proposed language for review at the next meeting to reflect the interest in protecting information about participants in the Address Confidentiality

Program. The subcommittee will also invite the Secretary of State to provide more information about the program and how it is administered.

Matt Dunlap, Secretary of State, joined the meeting and offered comments on the Address Confidentiality Program. Mr. Dunlap explained that possibly 3 employees of a school SAD unit are participants in the program; 59 adults and 26 children are currently participating. Mr. Dunlap also briefly explained the application process and the determination of eligibility for the program, which is currently focused on personal safety. Mr. Dunlap noted the willingness of the Maine Heritage Policy Center to remove information from the website if an individual is in the program. Mr. Pringle asked how the program related to the issues in the bill since the program is not limited to public employees. Mr. Spruce noted again that the information is public and that the only difference is the publication of the information on the website. Rep. Hill asked what notice public employees may have received about the website and that salary information is public record. Mr. Dunlap explained that employees did get email communications when the website was first online, but that employees do not receive general notice at the time of hiring. Mr. Dunlap also noted that he has not received any phone calls related to Secretary of State employees since the website went online and suggested it has had little impact on the general public.

Next Meeting

The subcommittee decided to meet again on Wednesday, September 16th at 12:30 pm in Room 438, State House. The agenda will include the continuation of the discussion of LD 757 and LD 1353 along with the initial review of the public notice requirements related to LD 1271 (PL 2009, c. 256) and the transparency issues associated with the American Recovery and Reinvestment Act website.

The subcommittee meeting adjourned at 2:35 pm.

Prepared by Peggy Reinsch and Colleen McCarthy Reid, Right to Know Advisory Committee staff