

## **Vermont Department of Financial Regulation**

**April 23, 2012**

### **Insurance Division Bulletin 168**

#### **CONFIDENTIALITY REQUESTS IN MANAGED CARE FILINGS**

The purpose of this bulletin is to notify managed care organizations as defined in Reg. H-2009-03 §1.4(GG) and Reg. H-2011-01 §3(O) how the Department handles confidentiality requests included with managed care filings.

Generally, all reports filed with the Department are public records subject to public disclosure. Vermont law defines public records and public documents to include “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business” 1 V.S.A. § 317(b). Only records and documents fitting into the specific statutory exemptions of 1 V.S.A. § 317(c) are exempt from disclosure under Vermont law.

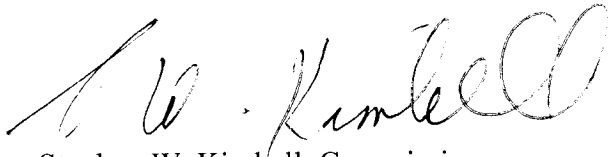
If a party contends that material submitted to the Department is proprietary or otherwise exempt from disclosure it must designate the specific section or document claimed as exempt. Broad claims of confidentiality and claims that are addressed to entire records or documents, such as data sets, are not likely to be sufficiently specific to support requests for exemption. Under no circumstances should an entire filing be marked as confidential.

Along with a clear designation of the specific material claimed to be exempt from disclosure, the party submitting the materials must provide a detailed explanation supporting its claim for exemption, including reference to the specific section(s) of 1 V.S.A. § 317(c) (or other law) claimed applicable. Conclusory descriptions that materials are “proprietary” or otherwise exempt under 1 V.S.A. § 317(c) are discouraged. For example, consistent with Vermont case law, materials claimed as exempt from disclosure under 1 V.S.A. § 317(c)(9) should be accompanied with a detailed explanation of the prospective harm to the competitive position of the party if the identified material were to be disclosed.

If a filing includes a request for confidentiality that does not comply with the requirements of this bulletin, such filing will be disapproved. If a sufficiently detailed request for confidential treatment has been provided, the Commissioner will determine if such designated information meets the statutory requirements pertaining to materials exempted from Vermont’s public records law. Pending a determination by the Commissioner as to confidentiality, the records or documents identified by the party will be held out of the public file.

Questions relating to the filings should be directed to David Martini, Director Health Insurance Policy.

Dated at Montpelier, Vermont this 23<sup>rd</sup> day of April, 2012.

A handwritten signature in cursive script, appearing to read "S. W. Kimbell". The signature is written in black ink and is positioned above the printed name.

Stephen W. Kimbell, Commissioner