

STATE OF RHODE ISLAND



Department of Behavioral Healthcare, Developmental Disabilities & Hospitals

OFFICE OF THE DIRECTOR

14 Harrington Road
Cranston, RI 02920-3080

TEL: (401) 462-3201

FAX: (401) 462-3204

TDD: (401) 462-6087

March 19, 2024

The Honorable Evan P. Shanley, Chair
House Committee on State Government & Elections
State House
Providence, RI 02903

RE: 2024 – H 7181 – An Act Relating To Public Records – Access To Public Records

Dear Chair Donovan:

Please accept this letter of opposition for **H 7181** which makes changes to the access to public records act, including clarifying various provisions, increasing the sanctions for knowing and willful violations of the law, and making certain traffic accident data and preferred license plate information public.

BHDDH opposes H 7181 for numerous substantive reasons, especially for the unreasonable burden this would place on agencies and the unintended intrusion into the privacy of medical patients whose records may be in possession of the State.

BHDDH receives many subpoenas for various reasons, some of which include responding to ongoing law enforcement investigations. While the outcome of those investigations may well be worthy of release to the public, making public the fact that an investigative agency is looking into BHDDH records might likely impede an ongoing investigation, either of an employee or of a consumer served by BHDDH. And if the name of the subject on the subpoena is a BHDDH consumer, their privacy interests will be invaded by such release, as would the description of the requested content in the subpoenaed records. BHDDH receives subpoenas for medical records when a BHDDH consumer is involved in litigation as a party or witness, so almost all such subpoenas contain confidential information.

By using the term “privilege log,” this bill adds an enormous amount of agency staff work and time that will accomplish little when compared to the end result of the Attorney General reviewing appeals of redacted information. The term “privilege log” is also not precise or defined to identify the descriptions and itemization of such redacted information that should be contained within such logs. The current penalty and the proposed significantly increased penalty puts the reviewer in a situation of defending that a redaction was not a knowing and willful violation. The fine is so high as to be on par with a felony fine that reviewers may choose to hire an attorney if the State exercises its option to forego representing the reviewer. H 7181 provides no attorney’s fees for such employee if the Attorney General or reviewing court turns sides with the reviewer, further adding to the unfairness of the inclusion of the “official.”

Due to these reasons, BHDDH urges the Honorable Members of this Committee to not recommend H 7181 for passage.

Sincerely,

A handwritten signature in cursive script that reads "Louis A. Cerbo".

Louis A. Cerbo, Ed.D.
Deputy Director

cc: **The Honorable Members of the House Committee on State Government & Elections**
 The Honorable Patricia A. Serpa
 Nicole McCarty, Esquire, Chief Legal Counsel to the Speaker of the House
 Lynne Urbani, Director of House Policy