

STATE OF MINNESOTA

**OFFICE OF THE ATTORNEY GENERAL**

---

TO: PDAB Board Members

DATE: July 18, 2025

FROM: JAMES W. CANADAY  
Deputy Attorney General  
445 Minnesota St., #600  
St. Paul, MN 55101-2131  
james.canaday@ag.state.mn.us

PHONE: (651) 757-1421  
FAX: (651) 296-9663  
MN RELAY: (800) 627-3529

SUBJECT: **PDAB: Revisions to Proprietary and Trade Secret Information Policy**

Attached for consideration at the August 12, 2025 Board meeting are proposed revisions to the Board's Proprietary and Trade Secret Information Policy, based on discussion at the July meeting. The adoption of the policy will be considered at the August meeting.

The following revisions were made to the attached policy:

1. **Submission Procedures.** Existing provisions of the policy requiring (1) certification of the protected status of information claimed for protection, and (2) identification of a third-party if the information claimed for protection does not belong to the submitting party, were moved to separate paragraphs for clarity. The provisions were not otherwise edited.

~~If making such a designation, the submitting person or entity must certify and attest to its knowledge that the information so designated is not otherwise publicly available and that it has been handled and maintained to preserve its confidential, trade secret, or proprietary nature. ¶~~

~~¶  
The submitting person or entity must also designate if the information belongs to it or to a third party; if the information belongs to a third party, the third party must be identified along with the nature of the agreements for handling of the information between the submitting person or entity and the third party. ¶~~

2. **Minn. Stat. § 62J.91, subd. 3b.** The policy was edited to remove references to the word "drug" in relation to provisions about heightened consideration of claims of proprietary information for situations where FDA approval has not been obtained.

~~"Provisions for Matters Without FDA Approval." A person or entity submitting information for the Board's consideration as part of a cost review shall be instructed to clearly designate if FDA approval has been obtained. For any information related to a matter where FDA approval has not been obtained, the Board shall apply standards for heightened consideration of proprietary information for such submissions in accordance with the provisions of Minnesota Statutes, section 62J.91, subdivision 3(b). The submitting party may be asked to provide additional information regarding the nature and status of the claims of confidential, trade secret, or proprietary designations."~~

3. **Publicly Available Information.** An additional provision was added to clarify that the Board can challenge the designation of information as confidential, trade secret, or proprietary in accordance with Section IV of the policy if that information is publicly available.

~~"In addition, any information submitted to the Board and designated as confidential, trade secret, or proprietary, but which is available from a public source, is subject to challenge pursuant to the provisions of Section IV."~~