

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1884

S.P. 730

In Senate, February 26, 2004

An Act To Strengthen the Enforcement Provisions of the Maine Health Data Organization

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRENNAN of Cumberland. (GOVERNOR'S BILL)
Cosponsored by Representative EARLE of Damariscotta and
Senators: President DAGGETT of Kennebec, EDMONDS of Cumberland, GAGNON of
Kennebec, HALL of Lincoln, MAYO of Sagadahoc, TREAT of Kennebec, Representatives:
CRAVEN of Lewiston, KANE of Saco.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 22 MRSA §8705**, as amended by PL 2003, c. 452, Pt. K,
§§28 and 29 and affected by Pt. X, §2, is repealed and the
6 following enacted in its place:

8 **§8705. Enforcement**

10 The board shall adopt rules to ensure that payors and
12 providers file data as required by section 8704, subsection 1,
14 that users that obtain health data and information from the
16 organization safeguard the identification of patients and health
18 care practitioners as required by section 8707, subsections 1 and
20 3 and that payors and providers pay all assessments as required
22 by section 8706, subsection 2.

24 1. Rulemaking. The board shall adopt rules setting a
26 schedule of fines for failure to file data; failure to pay
28 assessments; and the intentional or knowing unauthorized use or
30 dissemination of health care information that directly or
indirectly identifies patients or health care practitioners
performing abortions as defined in section 1596. The rules may
contain procedures for monitoring compliance with this chapter.
For purposes of this subsection, a person acts intentionally with
respect to a result of that person's conduct when it is that
person's conscious object to produce such a result. For
purposes of this subsection, a person acts knowingly with respect
to a result of that person's conduct when the person is aware
that it is practically certain that that person's conduct will
cause such a result.

32 2. Fines. Except for circumstances beyond a person's or
34 entity's control:

36 A. When a person or entity that is a health care facility,
38 payor, 3rd-party administrator or carrier that provides only
40 administrative services for a plan sponsor violates the
42 requirements of this chapter, other than section 8707, that
44 person or entity commits a civil violation for which a fine
46 of not more than \$1,000 per day may be adjudged. A fine
48 imposed under this paragraph may not exceed \$25,000 for any
50 one occurrence; or

B. A person or entity not covered by paragraph A that
violates the requirements of this chapter, other than
section 8707, commits a civil violation for which a fine of
not more than \$100 per day may be adjudged. A fine imposed
under this paragraph may not exceed \$2,500 for any one
occurrence.

2 2-A. Unauthorized use or disclosure of individually
3 identifiable data. A person or entity that receives data or
4 information under the terms and conditions of section 8707 and
5 intentionally and knowingly uses, sells or transfers the data in
6 violation of the board's rules for commercial advantage,
7 pecuniary gain, personal gain or malicious harm commits a civil
8 violation for which a fine not to exceed \$250,000 may be adjudged.

9
10 3. Enforcement action. Upon a finding that a person or
11 entity has failed to comply with the requirements of this
12 chapter, including the payment of a fine determined under this
13 section, the board may:

14 A. File a complaint with the licensing board of the
15 provider, seeking disciplinary action against the provider;

16
17 A-1. File a complaint with the Department of Professional
18 and Financial Regulation, Bureau of Insurance, seeking
19 disciplinary action against the payor; or

20
21 B. File a complaint with the Superior Court in the county
22 in which the person resides or the entity is located or in
23 Kennebec County, seeking an order to require that person or
24 entity to comply with the requirements of this chapter,
25 enforcement of a fine determined under this section or for
26 other relief from the court.

27
28 4. Injunctive relief. In the event of any violation of
29 this chapter or any rule pursuant to this chapter, the Attorney
30 General may seek to enjoin a further violation in addition to any
31 other remedy provided by this chapter.

34 SUMMARY

35
36 The purpose of this bill is to strengthen the enforcement
37 provisions of the Maine Health Data Organization statutes that
38 are outdated or inconsistent with other sections of the Maine
39 Revised Statutes, Title 22, chapter 1683. The bill provides that
40 persons who intentionally or knowingly engage in the unauthorized
41 misuse of individually identifiable health information or data
42 obtained from the organization are subject to civil fines up to
43 \$250,000, an amount that is commensurate with the provisions of
44 the federal Health Insurance Portability and Accountability Act
45 of 1996 for the knowing wrongful disclosure of individually
46 identifiable health information. This bill would also allow the
47 organization to file a complaint with the Department of
48 Professional and Financial Regulation, Bureau of Insurance
49 seeking disciplinary action against any payor who violates the
50 provisions of Title 22, chapter 1683. Furthermore, the Attorney

2 General is granted authority to seek injunctive relief for
violations of the Maine Health Data Organization statutes or
4 rules, in addition to any other remedies the Board of Directors
of the Maine Health Data Organization may pursue.