

# MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

Reported by:

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STATE OF MAINE
SENATE
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to S.P. 395, L.D. 1310, Bill, "An Act to Amend the Maine Health Data Organization Laws"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Health Data Organization will be required to proceed with rulemaking in order to achieve the purposes of this Act, and action to begin the rulemaking is required promptly; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §8702, sub-§1-A is enacted to read:

1-A. Carrier. "Carrier" means an insurance company licensed in accordance with Title 24-A, including a health maintenance organization, a multiple employer welfare arrangement

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2 licensed pursuant to Title 24-A, chapter 81, a preferred provider  
3 organization, a fraternal benefit society or a nonprofit hospital  
4 or medical service organization or health plan licensed pursuant  
5 to Title 24. An employer exempted from the applicability of  
6 Title 24-A, chapter 56-A under the federal Employee Retirement  
7 Income Security Act of 1974, 29 United States Code, Sections 1001  
8 to 1461 (1988) is not considered a carrier.

9  
10 **Sec. 2. 22 MRSA §8702, sub-§2**, as enacted by PL 1995, c. 653,  
11 Pt. A, §2 and affected by §7, is amended to read:

12 **2. Clinical data.** "Clinical data" includes but is not  
13 limited to the data required to be submitted by providers,  
14 payors, 3rd-party administrators and carriers that provide only  
15 administrative services for a plan sponsor pursuant to sections  
16 8708 and 8711.

17  
18 **Sec. 3. 22 MRSA §8702, sub-§§8-A and 10-A** are enacted to read:

19  
20 **8-A. Plan sponsor.** "Plan sponsor" means any person, other  
21 than an insurer, who establishes or maintains a plan covering  
22 residents of this State, including, but not limited to, plans  
23 established or maintained by 2 or more employers or jointly by  
24 one or more employers and one or more employee organizations or  
25 the association, committee, joint board of trustees or other  
26 similar group of representatives of the parties that establish or  
27 maintain the plan.

28  
29 **10-A. Third-party administrator.** "Third-party  
30 administrator" means any person who, on behalf of a plan sponsor,  
31 health care service plan, nonprofit hospital or medical service  
32 organization, health maintenance organization or insurer,  
33 receives or collects charges, contributions or premiums for, or  
34 adjusts or settles claims on, residents of this State.

35  
36 **Sec. 4. 22 MRSA §8703, sub-§1**, as amended by PL 1999, c. 353,  
37 §2, is further amended to read:

38  
39 **1. Objective.** The purpose of the organization is to  
40 ~~improve the health of Maine citizens through the creation and~~  
41 ~~maintenance of~~ create and maintain a useful, objective, reliable  
42 and comprehensive health information database that is used to  
43 improve the health of Maine citizens. This database must be  
44 publicly accessible while protecting patient confidentiality and  
45 respecting providers of care. The organization shall collect,  
46 process and analyze clinical and financial data as defined in  
47 this chapter.  
48

2           **Sec. 5. 22 MRSA §8703, sub-§2**, as amended by PL 1999, c. 353,  
§§3 and 4, is further amended to read:

4           **2. Board of directors.** The organization operates under the  
supervision of a board of directors, which consists of ~~18~~ 20  
6 voting members.

8           A. The Governor shall appoint ~~16~~ 18 board members in  
accordance with the following requirements. Appointments by  
10 the Governor are not subject to review or confirmation.

12           (1) ~~Three~~ Four members must represent consumers. For  
the purposes of this section, "consumer" means a person  
14 who is not affiliated with or employed by a 3rd-party  
payor, a provider or an association representing those  
16 providers or those 3rd-party payors.

18           (2) Three members must represent employers. One  
member must be chosen from a list provided by a health  
20 management coalition in this State.

22           (3) Two members must represent 3rd-party payors.

24           (4) ~~Eight~~ Nine members must represent providers. Two  
provider members must represent hospitals chosen from a  
26 list of at least 5 current hospital representatives  
provided by the Maine Hospital Association. Two  
28 provider members must be physicians or representatives  
of physicians chosen from a list of at least 5 nominees  
provided jointly by the Maine Medical Association and  
30 the Maine Osteopathic Association. One provider  
32 member must be a chiropractor chosen from a list  
provided by a statewide chiropractic association. One  
34 provider member must be a representative, chosen from a  
list provided by the Maine Ambulatory Care Coalition,  
36 of a federally qualified health center. One provider  
member must be a pharmacist chosen from a list provided  
38 by the Maine Pharmacy Association. Two provider  
members must be representatives of other health care  
40 providers, at least one of whom is a current  
representative of a home health care company.

42           B. The commissioner shall appoint 2 members who are  
44 employees of the department to represent the State's  
interest in maintaining health data and to ensure that  
46 information collected is available for determining public  
health policy.

48           **Sec. 6. 22 MRSA §8703, sub-§3, ¶B**, as enacted by PL 1995, c.  
50 653, Pt. A, §2 and affected by §7, is amended to read:

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2 B. The terms of departmental board members are 2-year  
3 terms. Departmental board members may serve ~~2--full--terms~~  
4 consecutively an unlimited number of terms.

6 **Sec. 7. 22 MRSA §8704, sub-§1, ¶A,** as amended by PL 1999, c.  
7 353, §6, is further amended to read:

8  
9 A. The board shall develop and implement data collection  
10 policies and procedures for the collection, processing,  
11 storage and analysis of clinical, financial and  
12 restructuring data in accordance with this subsection for  
13 the following purposes:

14 (1) To use, build and improve upon and coordinate  
15 existing data sources and measurement efforts through  
16 the integration of data systems and standardization of  
17 concepts;

18 (2) To coordinate the development of a linked public  
19 and private sector information system;

20 (3) To emphasize data that is useful, relevant and is  
21 not duplicative of existing data;

22 (4) To minimize the burden on those providing data;

23 (5) To preserve the reliability, accuracy and  
24 integrity of collected data while ensuring that the  
25 data is available in the public domain; and

26 (6) To collect information from providers who were  
27 required to file data with the Maine Health Care  
28 Finance Commission. The organization may collect  
29 information from additional providers ~~and payers~~ only  
30 when a linked information system for the electronic  
31 transmission, collection and storage of data is  
32 reasonably available to providers.

33  
34 **Sec. 8. 22 MRSA §8704, sub-§2,** as amended by PL 1999, c. 353,  
35 §8, is further amended to read:

36  
37 **2. Contracts for data collection; processing.** The board  
38 ~~shall~~ may contract with one or more qualified, nongovernmental,  
39 independent 3rd parties for services necessary to carry out the  
40 data collection, processing and storage activities required under  
41 this chapter. For purposes of this subsection, a group or  
42 organization affiliated with the University of Maine System is  
43 not considered a governmental entity. Unless permission is  
44 specifically granted by the board, a 3rd party hired by the

organization may not release, publish or otherwise use any information to which the 3rd party has access under its contract and shall otherwise comply with the requirements of this chapter. ~~If an appropriate contract can not be entered into or is terminated, data collection, processing and storage activities required under this chapter may be performed by the organization for a period of up to 12 months.~~

**Sec. 9. 22 MRSA §8704, sub-§7**, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

**7. Annual report.** The board shall prepare and submit an annual report on the operation of the organization, including any activity contracted for by the organization, and on health care trends to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters no later than February 1st of each year. The report must include an annual accounting of all revenue received and expenditures incurred in the previous year and all revenue and expenditures planned for the next year. The report must include a list of persons or entities that requested data from the organization in the preceding year with a brief summary of the stated purpose of the request.

**Sec. 10. 22 MRSA §8704, sub-§10**, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

**10. Quality improvement foundations.** In order to conduct quality improvement research, including, but not limited to, monitoring of health care utilization, analyses of population-based care, analyses of cost effectiveness and patient-oriented outcomes of care, continuous quality improvement initiatives and the development and implementation of practice guidelines, the board may designate a quality improvement ~~foundation~~ foundations if the board finds the following:

A. That the ~~foundation~~ foundations conduct reliable and accurate research consistent with standards of health services and clinical effectiveness research; and

B. That the ~~foundation~~ foundations have acceptable, established protocols to safeguard confidential and privileged information.

**Sec. 11. 22 MRSA §8705, sub-§1**, as amended by PL 1999, c. 353, §9, is further amended to read:

**1. Rulemaking.** The board shall adopt rules setting a schedule of forfeitures for failure to file data as required and failure to pay assessments, and willful or negligent failure to

2 safeguard the identity of patients, or providers, ~~health-care~~  
3 ~~facilities-or-3rd-party-payers~~. The rules may contain procedures  
4 for monitoring compliance with this chapter.

6 **Sec. 12. 22 MRSA §8705, sub-§2**, as amended by PL 1999, c. 353,  
7 §9, is further amended to read:

8 **2. Forfeitures.** Except for circumstances beyond a person's  
9 or entity's control, a person or entity that violates the  
10 requirements of this chapter commits a civil violation for which  
11 a forfeiture may be adjudged not to exceed \$1000 per day for a  
12 health care facility, payor, 3rd-party administrator or carrier  
13 that provides only administrative services for a plan sponsor or  
14 \$100 per day for all other persons, entities and providers. A  
15 forfeiture imposed under this subsection may not exceed \$25,000  
16 for a health care facility, payor, 3rd-party administrator or  
17 carrier that provides only administrative services for a plan  
18 sponsor for any one occurrence or \$2,500 for any other person or  
19 entity for any one occurrence.

20 **Sec. 13. 22 MRSA §8706, sub-§2, ¶C**, as amended by PL 1999, c.  
21 353, §11, is further amended to read:

24 C. The operations of the organization must be supported  
25 from 3 sources as provided in this paragraph:

26 (1) Fees collected pursuant to paragraphs A and B;

28 (2) Annual assessments of not less than \$100 assessed  
29 against the following entities licensed under Titles 24  
30 and 24-A ~~on the basis of the total annual health care~~  
31 ~~premium:~~ nonprofit hospital and medical service  
32 organizations, health insurance carriers, and health  
33 maintenance organizations on the basis of the total  
34 annual health care premium; and 3rd-party  
35 administrators and carriers that provide only  
36 administrative services for a plan sponsor on the basis  
37 of ~~administration of health benefits plans administered~~  
38 ~~for employers~~ claims processed or paid for each plan  
39 sponsor. The assessments are to be determined on an  
40 annual basis by the board. Health care policies issued  
41 for specified disease, accident, injury, hospital  
42 indemnity, ~~Medicare supplement~~, disability, long-term  
43 care or other limited benefit health insurance policies  
44 are not subject to assessment under this subparagraph.  
45 The total dollar amount of assessments under this  
46 subparagraph must equal the assessments under  
47 subparagraph (3); and

2 (3) Annual assessments of not less than \$100 assessed  
3 by the organization against providers. The assessments  
4 are to be determined on an annual basis by the board.  
5 The total dollar amount of assessments under this  
6 subparagraph must equal the assessments under  
7 subparagraph (2).

8 The aggregate level of annual assessments under  
9 subparagraphs (2) and (3) must be an amount sufficient to  
10 meet the organization's expenditures authorized in the state  
11 budget established under Title 5, chapter 149. The annual  
12 assessment may not exceed ~~\$760,000 in fiscal year 1999-00~~  
13 \$1,346,904 in fiscal year 2002-03. In subsequent fiscal  
14 years, the annual assessment may increase above \$760,000  
15 \$1,346,904 by an amount not to exceed 5% per fiscal year.  
16 The board may waive assessments otherwise due under  
17 subparagraphs (2) and (3) when a waiver is determined to be  
18 in the interests of the organization and the parties to be  
19 assessed.

20 **Sec. 14. 22 MRSA §8707, sub-§1**, as amended by PL 1999, c. 353,  
21 §12, is further amended to read:

22 **1. Public access; confidentiality.** The board shall adopt  
23 rules making available to any person, upon request, information,  
24 except privileged medical information and confidential  
25 information, provided to the organization under this chapter as  
26 long as individual patients ~~or health care practitioners~~ are not  
27 directly or indirectly identified through a reidentification  
28 process. The board shall adopt rules governing public access in  
29 the least restrictive means possible to information that may  
30 indirectly identify a particular patient or health care  
31 practitioner. The board shall adopt rules to protect the  
32 identity of certain health care practitioners, as it determines  
33 appropriate, except that the identity of practitioners performing  
34 abortions as defined in section 1596 must be designated as  
35 confidential and must be protected. Rules adopted pursuant to  
36 this subsection are major substantive rules as defined in Title  
37 5, chapter 375, subchapter II-A.

38 **Sec. 15. 22 MRSA §8707, sub-§3**, as enacted by PL 1995, c. 653,  
39 Pt. A, §2 and affected by §7, is amended to read:

40 **3. Public health studies.** The rules may allow exceptions  
41 to the confidentiality requirements only to the extent authorized  
42 in this subsection.

43 **A.** The board may approve access to identifying information  
44 for patients ~~or health care practitioners~~ to the department  
45 and other researchers with established protocols that have  
46



COMMITTEE AMENDMENT "B" to S.P. 395, L.D. 1310

2           been approved by the board for safeguarding confidential or  
privileged information.

4           B. The rules must ensure that:

6                   (1) Identifying information is used only to gain  
access to medical records and other medical information  
8                   pertaining to public health;

10                   (2) Medical information about any patient identified  
by name is not obtained without the consent of that  
12                   patient except when the information sought pertains  
only to verification or comparison of health data and  
14                   the board finds that confidentiality can be adequately  
protected without patient consent;

16                   (3) Those persons conducting the research or  
18                   investigation do not disclose medical information about  
any patient identified by name to any other person  
20                   without that patient's consent;

22                   (4) Those persons gaining access to medical  
information about an identified patient use that  
24                   information to the minimum extent necessary to  
accomplish the purposes of the research for which  
26                   approval was granted; and

28                   (5) The protocol for any research is designed to  
preserve the confidentiality of all health care  
30                   information that can be associated with identified  
patients, to specify the manner in which contact is  
32                   made with patients ~~or health care practitioners~~ and to  
maintain public confidence in the protection of  
34                   confidential information.

36           C. The board may not grant approval under this subsection  
if the board finds that the proposed identification of or  
38           contact with patients ~~or health care practitioners~~ would  
violate any state or federal law or diminish the  
40           confidentiality of health care information or the public's  
confidence in the protection of that information in a manner  
42           that outweighs the expected benefit to the public of the  
proposed investigation.

44           **Sec. 16. 22 MRSA §8708, sub-§2**, as amended by PL 1999, c. 353,  
46           §14, is further amended to read:

48                   **2. Additional information on ambulatory services and**  
**surgery.** Pursuant to rules adopted by the board for form,  
50                   medium, content and time for filing, each provider shall file

2 with the organization a completed data set, comparable to data  
3 filed by health care facilities under subsection 1, paragraph B,  
4 ~~for each ambulatory service and surgery listed in rules adopted~~  
5 ~~pursuant to subsection 4, occurring after January 1, 1990.~~ This  
6 subsection may not be construed to require duplication of  
7 information required to be filed under subsection 1.

8 **Sec. 17. 22 MRSA §8708, sub-§4,** as amended by PL 1999, c. 353,  
9 §14, is repealed.

10 **Sec. 18. 22 MRSA §8708, sub-§6-A,** as enacted by PL 1999, c.  
11 353, §14, is amended to read:

12 **6-A. Additional data.** Subject to the limitations of  
13 section 8704, subsection 1, the board may adopt rules requiring  
14 the filing of additional clinical data from other providers and payors,  
15 3rd-party administrators and carriers that provide only  
16 administrative services for a plan sponsor. Data filed by  
17 payors, 3rd-party administrators or carriers that provide  
18 administrative services only for a plan sponsor must be provided  
19 in a format that does not directly identify the patient.

20 **Sec. 19. 22 MRSA §8711, sub-§1,** as enacted by PL 1995, c.  
21 653, Pt. A, §2 and affected by §7, is amended to read:

22 **1. Development of health care information systems.** In  
23 addition to its authority to obtain information to carry out the  
24 specific provisions of this chapter, the organization may require  
25 providers and payors, 3rd-party administrators and carriers  
26 that provide only administrative services for a plan sponsor to  
27 furnish information with respect to the nature and quantity of  
28 services or coverage provided to the extent necessary to develop  
29 proposals for the modification, refinement or expansion of the  
30 systems of information disclosure established under this  
31 chapter. The organization's authority under this subsection  
32 includes the design and implementation of pilot information  
33 reporting systems affecting selected categories or representative  
34 samples of payors and providers, payors, 3rd-party administrators  
35 and carriers that provide only administrative services for a plan  
36 sponsor.

37 **Sec. 20. 24-A MRSA §1906, sub-§4,** as enacted by PL 1989, c.  
38 846, Pt. D, §2 and affected by Pt. E, §4, is amended to read:

39 **4.** The administrator shall file with the superintendent the  
40 names and addresses of the insurers, health care service plans,  
41 health maintenance organizations and plan sponsors with whom the  
42 administrator has entered into written agreements. If an  
43 insurer, health care service plan, health maintenance  
44 organization or plan sponsor does not assume or bear the risk,

2 the administrator must disclose the name and address of the  
ultimate risk bearer. In addition, at the time of a license  
4 renewal, the administrator shall also file with the  
superintendent for the most recent complete calendar year for all  
6 covered individuals in the State the total number of claims paid  
by the administrator by each plan sponsor and the total dollar  
8 amount of claims paid by each plan sponsor. This subsection  
applies to the initial application for an administrator's license  
and any renewal of a license.

10 **Sec. 21. 24-A MRSA §2215, sub-§1, ¶¶O and P,** as enacted by PL  
12 1997, c. 677, §3 and affected by §5, are amended to read:

14 O. To a lienholder, mortgagee, assignee, lessor or other  
16 person shown on the records of a carrier or producer as  
having a legal or beneficial interest in a policy of  
insurance, only if:

18 (1) No health care information is disclosed unless the  
20 disclosure would otherwise be permitted by this  
section; and

22 (2) The information disclosed is limited to that which  
24 is reasonably necessary to permit that person to  
protect its interests in the policy; ~~or~~

26 P. To an affiliate whose only use of the information will  
28 be in connection with an audit of the regulated insurance  
entity or the marketing of a product or service of the  
30 affiliate, if the information disclosed for marketing  
purposes does not include health care information and if the  
32 affiliate agrees not to disclose the information for any  
other purpose or to unaffiliated persons; ~~or~~

34 **Sec. 22. 24-A MRSA §2215, sub-§1, ¶Q** is enacted to read:

36 O. In order to protect the public health and welfare, to  
38 state governmental entities only insofar as necessary to  
40 enable those entities to perform their duties when reporting  
is required or authorized by law.

42 **Sec. 23. 24-A MRSA §4302, sub-§4** is enacted to read:

44 4. Claims data. By February 1st of each year, a carrier  
46 that provides only administrative services for a plan sponsor  
shall annually file with the superintendent for the most recent  
48 complete calendar year for all covered individuals in the State  
the total number of claims paid for each plan sponsor and the  
total dollar amount of claims paid for each plan sponsor.

**Sec. 24. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2002-03

**MAINE HEALTH DATA ORGANIZATION**

**Maine Health Data Organization**

All Other \$467,109

Provides funds to increase the cap on the level of assessments authorized for the Maine Health Data Organization.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

2002-03

**APPROPRIATIONS/ALLOCATIONS**

Other Funds \$467,109

**REVENUES**

Other Funds \$467,109

The Maine Health Data Organization will incur some minor additional costs to adopt rules regarding the identification of patients and public access to data. These costs can be absorbed by the organization's existing budgeted resources.

This bill raises the cap on the amount of funds that may be collected through assessments by the Maine Health Data Organization to \$1,346,906 in fiscal year 2002-03. This bill includes an Other Special Revenue Fund allocation of \$467,109 in fiscal year 2002-03 to the Maine Health Data Organization to authorize the spending of the additional funds.

2 The additional workload and administrative costs associated  
with the minimal number of new cases filed in the court system  
4 can be absorbed within the budgeted resources of the Judicial  
Department. The collection of additional fines may increase  
6 General Fund revenue by minor amounts.'

8

### SUMMARY

10

This amendment replaces the bill and adds an emergency  
preamble and an emergency clause. It retains the provisions of  
12 the bill that make a number of technical corrections to the Maine  
Health Data Organization laws and repeal language that is  
14 outdated. In addition, this amendment retains the provision that  
keeps confidential the identification of patients and allows  
16 rulemaking regarding the identification of practitioners. It also  
provides for rulemaking regarding public access to data. Both of  
18 these types of rules are designated as major substantive rules.  
This amendment retains the provisions of the bill that require  
20 3rd-party administrators of health care plans to submit clinical  
and claims data that are currently required of all other health  
22 care providers and payors. This amendment retains the provisions  
of the bill that also modify the Department of Professional and  
24 Financial Regulation statutes to require 3rd-party administrators  
of health care plans to submit additional reporting information  
26 to the Bureau of Insurance. This amendment adds one consumer  
member and one provider member, and specifies that one provider  
28 member must be a pharmacist, to the board of the Maine Health  
Data Organization. The amendment requires the annual report to  
30 specify contracted operations undertaken by the organization and  
requires disclosure of persons and entities asking for data and  
32 the stated purposes of the requests. The amendment clarifies  
that a regulated insurance entity or organization may disclose  
34 personal information about a consumer to a state governmental  
entity only insofar as necessary for that entity to perform its  
36 duties when reporting is required or authorized by law. The  
amendment provides for penalties for negligent failure to  
38 safeguard the identity of patients or providers. The amendment  
adds an allocation section and a fiscal note to the bill.

40