

MAINE STATE LEGISLATURE

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M
R. of S.

L.D. 1884

DATE: 3.30.04

(Filing No. S-475)

HEALTH AND HUMAN SERVICES

Reported by:

MAJORITY

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STATE OF MAINE
SENATE
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 730, L.D. 1884, Bill, "An Act To Strengthen the Enforcement Provisions of the Maine Health Data Organization"

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

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 X, §2, is repealed.

Sec. 2. 22 MRSA §8705-A is enacted to read:

§8705-A. Enforcement

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

1. Definitions. As used in this section, unless the context otherwise indicates, the following definitions of "intentionally" and "knowingly" apply to this section.

A. 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.

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COMMITTEE AMENDMENT "A" to S.P. 730, L.D. 1884

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B. 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.

2. Rulemaking. The board shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The rules may contain procedures for monitoring compliance with this chapter. Rules adopted pursuant to this subsection must include a schedule of fines for:

- A. Failure to file data;
- B. Failure to pay assessments; and
- C. Intentionally or knowingly and without authorization using or disseminating health care information that directly or indirectly identifies patients or health care practitioners performing abortions as defined in section 1596.

3. Fines. The following provisions apply to enforcement actions under this section except for circumstances beyond a person's or entity's control.

- A. When a person or entity that is a health care facility, payor, 3rd-party administrator or carrier that provides only administrative services for a plan sponsor violates the requirements of this chapter, except for section 8707, that person or entity commits a civil violation for which a fine of not more than \$1,000 per day may be adjudged. A fine imposed under this paragraph may not exceed \$25,000 for any one occurrence.
- B. A person or entity that receives data or information under the terms and conditions of section 8707 and intentionally or knowingly uses, sells or transfers the data in violation of the board's rules for commercial advantage, pecuniary gain, personal gain or malicious harm commits a civil violation for which a fine not to exceed \$250,000 may be adjudged.
- C. A person or entity not covered by paragraph A or B that violates the requirements of this chapter, except for 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.

COMMITTEE AMENDMENT

R.O.S

2 4. Enforcement action. Upon a finding that a person or
3 entity has failed to comply with the requirements of this
4 chapter, including the payment of a fine determined under this
5 section, the board may undertake any or all of the following.

6 A. The board may refer the matter to the department or
7 board that issued a license to the provider for such action
8 as the department or board considers appropriate.

10 B. The board may refer the matter to the Department of
11 Professional and Financial Regulation, Bureau of Insurance
12 for such action against the payor as the bureau considers
13 appropriate.

14 C. The board may file a complaint with the Superior Court
15 in the county in which the person resides or the entity is
16 located or in Kennebec County seeking an order to require
17 that person or entity to comply with the requirements of
18 this chapter, seeking enforcement of a fine determined under
19 this section or seeking other relief from the court.

22 5. Injunctive relief. In the event of any violation of
23 this chapter or any rule adopted pursuant to this chapter, the
24 Attorney General may seek to enjoin a further violation and seek
25 any other appropriate remedy provided by this chapter.'

28 **SUMMARY**

30 This amendment is the majority report of the committee. The
31 amendment retains all of the provisions of the bill, designates
32 the enforcement rules as major substantive rules and makes
33 organizational changes to the section. The amendment retains the
34 purpose of the bill, which is to strengthen the enforcement
35 provisions of the Maine Health Data Organization statutes that
36 are outdated or inconsistent with other sections of the Maine
37 Revised Statutes, Title 22, chapter 1683. The amendment provides
38 that persons who intentionally or knowingly engage in the
39 unauthorized misuse of individually identifiable health
40 information or data obtained from the organization are subject to
41 civil fines up to \$250,000, an amount that is commensurate with
42 the provisions of the federal Health Insurance Portability and
43 Accountability Act of 1996 for the knowing wrongful disclosure of
44 individually identifiable health information. The amendment
45 allows the organization to refer failures to comply with the
46 requirements of the chapter to the appropriate department or
47 licensing board or to the Department of Professional and
48 Financial Regulation, Bureau of Insurance or to file a complaint
49 in Superior Court. The amendment allows the Attorney General to
50 pursue injunctions or other appropriate remedies for violations
of the chapter. **FISCAL NOTE REQUIRED**

(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1884

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

LR 2728(02)

**Fiscal Note for Bill as Amended by Committee Amendment *A*
Committee: Health and Human Services**

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new civil violations
Increases the number of civil suits

Fiscal Detail and Notes

Costs associated with seeking injunctive relief pursuant to this legislation can be absorbed by the Department of the Attorney General utilizing existing budgeted resources. Any additional administrative costs to the Department of Professional and Financial Regulation resulting from the adjudication of complaints filed by the board can be absorbed utilizing existing resources.