

MAINE STATE LEGISLATURE

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10/18

L.D. 1897

DATE: 3-4-04

(Filing No. S-416)

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STATE OF MAINE
SENATE
121ST LEGISLATURE
SECOND SPECIAL SESSION

SENATE AMENDMENT "A" to H.P. 1404, L.D. 1897, Bill, "An Act To Make Emergency Changes to Recent Law"

Amend the bill by inserting after section 6 the following:

Sec. 7. 22 MRSA §2699, sub-§2, ¶¶D and G, as enacted by PL 2003, c. 456, §1, are amended to read:

D. A pharmacy benefits manager shall provide to a covered entity all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity. A pharmacy benefits manager providing information under this paragraph may designate that material as confidential. Information designated as confidential by a pharmacy benefits manager and provided to a covered entity under this paragraph may not be disclosed by the covered entity to any person without the consent of the pharmacy benefits manager, except that disclosure may be made--in--a--court--filing--under--the--Maine--Unfair--Trade Practices--Act--or--when--authorized--by--that--Act--or ordered by a court of this State for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. Nothing in this paragraph limits the Attorney General's use of civil investigative demand authority under the Maine Unfair Trade Practices Act to investigate violations of this section.

SENATE AMENDMENT

R. of S.

2 G. A pharmacy benefits manager shall disclose to the
4 covered entity all financial terms and arrangements for
6 remuneration of any kind that apply between the pharmacy
8 benefits manager and any prescription drug manufacturer or
10 labeler, including, without limitation, formulary management
12 and drug-switch programs, educational support, claims
14 processing and pharmacy network fees that are charged from
16 retail pharmacies and data sales fees. A pharmacy benefits
18 manager providing information under this paragraph may
20 designate that material as confidential. Information
designated as confidential by a pharmacy benefits manager
and provided to a covered entity under this paragraph may
not be disclosed by the covered entity to any person without
the consent of the pharmacy benefits manager, except that
disclosure may be ordered by a court of this State for good
cause shown or made in a court filing under seal unless or
until otherwise ordered by a court. Nothing in this
paragraph limits the Attorney General's use of civil
investigative demand authority under the Maine Unfair Trade
Practices Act to investigate violations of this section.

22 **Sec. 8. 22 MRS §2699, sub-§5** is enacted to read:

24 **5. Application.** This section applies to contracts executed
26 or renewed on or after September 13, 2003. For the purposes of
this subsection, a contract executed pursuant to a memorandum of
28 agreement executed prior to September 13, 2003 is deemed to have
been executed prior to September 13, 2003 even if the contract
was executed after that date.

30 **Sec. 9. Retroactivity.** Those sections of this Act that amend
32 the Maine Revised Statutes, Title 22, section 2699, subsection 2,
paragraphs D and G and enact Title 22, section 2699, subsection 5
34 apply retroactively to September 13, 2003.'

36 Further amend the bill by relettering or renumbering any
38 nonconsecutive Part letter or section number to read
consecutively.


40 **SUMMARY**

42 This amendment clarifies that documents that pharmacy
44 benefits managers are routinely required to provide to covered
46 entities may be designated confidential by the pharmacy benefits
48 managers and must be treated as such by the covered entity.
These reporting requirements are routine reporting requirements
and are not intended to displace the rules of discovery in the
context of litigation. It is made expressly clear that the

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2 confidentiality of these documents as between the pharmacy
benefits managers and the covered entities does not affect the
Attorney General's ability to investigate under the Maine Unfair
4 Trade Practices Act. The confidentiality of the Attorney
General's investigations is governed by the Maine Revised
6 Statutes, Title 5, section 211.

8 The new pharmacy benefits management law was enacted by
Public Law 2003, chapter 456. It took effect as nonemergency
10 legislation on September 13, 2003. This amendment clarifies that
the new law applies to contracts executed or renewed on or after
12 September 13, 2003. A contract executed pursuant to a memorandum
of agreement that was executed prior to September 13, 2003 is
14 deemed a contract executed prior to September 13, 2003 even if
the contract itself was executed at a later date.

16
18 SPONSORED BY: 
20 (Senator PENDLETON)

22 COUNTY: Cumberland
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