

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1499

S.P. 517

In Senate, March 28, 2005

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### **An Act To Amend the Laws Related to Health Insurance and Confidentiality of Property and Casualty Filings**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator SULLIVAN of York.  
Cosponsored by Representative PERRY of Calais and  
Senator: MAYO of Sagadahoc, Representative: BRAUTIGAM of Falmouth.

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

4 **PART A**

6 **Sec. A-1. 24-A MRSA §6603, sub-§1, ¶F-1** is enacted to read:

8 F-1. Must comply with the requirements of section 2809-A,  
10 subsection 11, concerning continued coverage in the event of  
12 an employee's being temporarily laid off or losing  
14 employment because of an injury or disease that the employee  
16 claims to be compensable under workers' compensation;

18 **PART B**

20 **Sec. B-1. 24-A MRSA §2701, sub-§2, ¶C**, as amended by PL 2001,  
22 c. 258, Pt. E, §1, is further amended to read:

24 C. Sections 2736, 2736-A, 2736-B and 2736-C apply to:

26 (1) Association groups as defined by section 2805-A,  
28 except associations of employers; and

30 (1-A) Credit union groups as defined by section  
32 2807-A; and

34 (2) Other groups as defined by section 2808, except  
36 employee leasing companies registered pursuant to Title  
38 32, chapter 125.

40 **PART C**

42 **Sec. C-1. 24-A MRSA §2304-A, sub-§7**, as repealed and replaced  
44 by PL 1991, c. 377, §10, is amended to read:

46 7. Except as provided in section 2304-C, a rate filing and  
48 its supporting data are confidential until the filing ~~becomes~~  
50 ~~effective is approved.~~

**Sec. C-2. 24-A MRSA §2412, sub-§8**, as enacted by PL 1997, c.  
126, §4, is amended to read:

8. **Confidentiality of form filings.** Forms filed as  
required by this section and any supporting information are  
confidential until the filing ~~becomes effective. If an insurer~~  
~~does not provide an effective date for the filings, the forms and~~  
~~supporting information become public on the date the filing is~~  
approved.

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**PART D**

**Sec. D-1. 24 MRSA §2332-A, sub-§3** is enacted to read:

3. Credit toward deductible. When an insured is covered under more than one expense-incurred health plan, payments made by the primary plan, payments made by the insured and payments made from a health savings account or similar fund for benefits covered under the secondary plan must be credited toward the deductible of the secondary plan. This subsection does not apply if the secondary plan is designed to supplement the primary plan.

**Sec. D-2. 24-A MRSA §2723-A, sub-§3** is enacted to read:

3. Credit toward deductible. When an insured is covered under more than one expense-incurred health plan, payments made by the primary plan, payments made by the insured and payments made from a health savings account or similar fund for benefits covered under the secondary plan must be credited toward the deductible of the secondary plan. This subsection does not apply if the secondary plan is designed to supplement the primary plan.

**Sec. D-3. 24-A MRSA §2844, sub-§3** is enacted to read:

3. Credit toward deductible. When an insured is covered under more than one expense-incurred health plan, payments made by the primary plan, payments made by the insured and payments made from a health savings account or similar fund for benefits covered under the secondary plan must be credited toward the deductible of the secondary plan. This subsection does not apply if the secondary plan is designed to supplement the primary plan.

**Sec. D-4. 24-A MRSA §4222-B, sub-§21** is enacted to read:

21. Section 2723-A, subsection 3 and section 2844, subsection 3 apply to health maintenance organizations.

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**PART E**

**Sec. E-1. 24-A MRSA §2808-B, sub-§2-C, ¶A,** as enacted by PL 2003, c. 469, Pt. E, §16, is amended to read:

A. A block of small group health plans is considered credible if the anticipated average number of ~~member-months~~ members during the period for which the rates will be in effect is at least 1,000 or if it meets credibility standards adopted by the superintendent by rule. The rate filing must state the anticipated average number of ~~member~~

2 ~~months members during the period~~ for which the rates will be  
in effect and the basis for the estimate. If the  
superintendent determines that the number of ~~member-months~~  
4 ~~members~~ is likely to be less than 1,000 and the block does  
not satisfy any alternative credibility standards adopted by  
6 rule, the filing is subject to subsection 2-B, except as  
provided in paragraph A-1.

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10 **Sec. E-2. 24-A MRSA §2808-B, sub-§2-C, ¶A-1** is enacted to read:

11  
12 A-1. A carrier that elected to file rates in accordance with  
this subsection prior to September 1, 2004 may continue to  
13 file rates in accordance with this subsection as long as the  
14 anticipated number of member months for a 12-month period is  
15 at least 1,000.  
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18 **PART F**

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20 **Sec. F-1. 24-A MRSA §2839-A**, as enacted by PL 2001, c. 432,  
21 **§7**, is amended to read:

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23 **§2839-A. Notice of rate increase**

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25 **1. Notice of rate increase on existing policies.** An  
26 insurer offering group health insurance, except for accidental  
injury, specified disease, hospital indemnity, disability income,  
28 Medicare supplement, long-term care or other limited benefit  
group health insurance, must provide written notice by first  
class mail of a rate increase to all affected policyholders or  
30 others who are directly billed for group coverage at least 60  
31 days before the effective date of any increase in premium rates.  
An increase in premium rates may not be implemented until 60 days  
32 after the notice is provided. For small group health plan rates  
subject to section 2808-B, subsection 2-B, if the increase is  
33 pending approval at the time of notice, the disclosure must state  
34 that the increase is subject to regulatory approval.  
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38 **2. Notice of rate increase on new business.** When an  
insurer offering group health insurance, except for accidental  
injury, specified disease, hospital indemnity, disability income,  
40 Medicare supplement, long-term care or other limited benefit  
group health insurance, quotes a rate for new business, it must  
42 disclose any rate increase that the insurer anticipates  
implementing within the following 90 days. If the quote is in  
43 writing, the disclosure must also be in writing. If such  
disclosure is not provided, an increase may not be implemented  
44 until at least 90 days after the date the quote is provided. For  
45 small group health plan rates subject to section 2808-B,  
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2 subsection 2-B, if the increase is pending approval at the time  
3 of notice, the disclosure must state that the increase is subject  
4 to regulatory approval.

## 6 PART G

8 **Sec. G-1. 24-A MRSA §2850-B, sub-§5** is enacted to read:

10 **5. Association plans.** The requirements of this subsection  
11 apply to group contracts that are subject to this section and  
12 that are issued to association groups pursuant to section  
13 2805-A. Carriers shall renew coverage for association members if  
14 coverage through an association is terminated because the  
15 association ceases to exist, changes its membership eligibility  
16 criteria, fails to pay premiums, commits fraud or  
17 misrepresentation or voluntarily terminates the group policy.

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19 A. If coverage to an employer through an association is  
20 terminated, the carrier shall renew the coverage with the  
21 employer becoming the policyholder.

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23 B. If coverage to an individual member of an association is  
24 terminated, the carrier shall renew the coverage with the  
25 individual becoming the policyholder. A carrier that has  
26 been granted an exemption pursuant to section 2736-C,  
27 subsection 9 does not lose that exemption simply by virtue  
28 of renewing coverage to individuals under this paragraph.

29  
30 The requirements of this subsection do not apply if the employer  
31 or individual fails to pay premiums, commits fraud or  
32 misrepresentation, voluntarily terminates membership in the  
33 association or ceases to qualify for membership for reasons other  
34 than a change in the association's membership eligibility  
35 criteria.

## 38 PART H

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40 **Sec. H-1. 24-A MRSA §2848, sub-§1-B,** as amended by PL 2001, c.  
41 258, Pt. E, §5, is further amended to read:

42  
43 **1-B. Federally creditable coverage.** "Federally creditable  
44 coverage" is defined as follows.

45  
46 A. "Federally creditable coverage" means health benefits or  
47 coverage provided under any of the following:

- 48  
49 (1) An employee welfare benefit plan as defined in  
50 Section 3(1) of the federal Employee Retirement Income

2 Security Act of 1974, 29 United States Code, Section  
1001, or a plan that would be an employee welfare  
benefit plan but for the "governmental plan" or  
4 "nonelecting church plan" exceptions, if the plan  
provides medical care as defined in subsection 2-A, and  
6 includes items and services paid for as medical care  
directly or through insurance, reimbursement or  
8 otherwise;

10 (2) Benefits consisting of medical care provided  
directly, through insurance or reimbursement and  
12 including items and services paid for as medical care  
under a policy, contract or certificate offered by a  
14 carrier;

16 (3) Part A or Part B of Title XVIII of the Social  
Security Act, Medicare;

18 (4) Title XIX of the Social Security Act, Medicaid,  
20 other than coverage consisting solely of benefits under  
Section 1928 of the Social Security Act or a state  
22 children's health insurance program under Title XXI of  
the Social Security Act;

24 (5) The Civilian Health and Medical Program for the  
26 Uniformed Services, CHAMPUS, 10 United States Code,  
Chapter 55;

28 (6) A medical care program of the federal Indian  
30 Health Care Improvement Act, 25 United States Code,  
Section 1601 or of a tribal organization;

32 (7) A state health benefits risk pool;

34 (8) A health plan offered under the federal Employees  
36 Health Benefits Amendments Act, 5 United States Code,  
Chapter 89;

38 (9) A public health plan as defined in federal  
40 regulations authorized by the federal Public Health  
Service Act, Section 2701(c)(1)(I), as amended by  
42 Public Law 104-191; or

44 (10) A health benefit plan under Section 5(e) of the  
Peace Corps Act, 22 United States Code, Section 2504(e).

46 B. "Federally creditable coverage" does not include  
48 coverage consisting solely of one or more of the following:

- 2 (1) Coverage for accident or disability income insurance or any combination of those coverages;
- 4 (2) Liability insurance, including general liability insurance and automobile liability insurance;
- 6 (3) Coverage issued as a supplement to liability insurance;
- 8 (4) Workers' compensation or similar insurance;
- 10 (5) Automobile medical payment insurance;
- 12 (6) Credit insurance;
- 14 (7) Coverage for on-site medical clinics; or
- 16 (8) Other similar insurance coverage, specified in federal regulations issued pursuant to Public Law 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

22 C. "Federally creditable coverage" does not include the following benefits if those benefits are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

- 28 (1) Limited scope dental or vision benefits;
- 30 (2) Benefits for long-term care, nursing home care, home health care, community-based care or any combination of those benefits; and
- 32 (3) Other similar, limited benefits as specified in federal regulations issued pursuant to Public Law 104-191.

38 D. "Federally creditable coverage" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, and if no coordination exists between the provision of the benefits and any exclusion of benefits under a group health plan maintained by the same plan sponsor and those benefits are paid for an event without regard to whether benefits are provided for that event under a group health plan maintained by the same plan sponsor:

- 48 (1) Coverage only for a specified disease or illness; and

50



2 (2) Hospital indemnity or other fixed indemnity  
insurance.

4 E. "Federally creditable coverage" does not include the  
following if it is offered as a separate policy, certificate  
6 or contract of insurance:

8 (1) Medicare supplemental health insurance under the  
Social Security Act, Section 1882(g)(1);

10 (2) Coverage supplemental to the coverage provided  
12 under the Civilian Health and Medical Program of the  
Uniformed Services, CHAMPUS, 10 United States Code,  
14 Chapter 55; and

16 (3) Similar supplemental coverage under a group health  
plan.

18 For purposes of this subsection, a "period of continuing  
20 federally creditable coverage" means a period in which an  
individual has maintained federally creditable coverage through  
22 one or more plans or programs, with no break in coverage  
exceeding 63 days. In calculating the aggregate length of a  
24 period of continuing federally creditable coverage that includes  
one or more breaks in coverage, only the time actually covered is  
26 counted. A waiting period is not counted as a break in coverage  
if, but is not counted as a period of actual coverage unless the  
28 individual has other federally creditable coverage during this  
period. For purposes of this subsection and subsection 1-C,  
30 "group health plan" has the same meaning as specified in the  
federal Public Health Service Act, Title XXVII, Section 2791(a).

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## 34 PART I

36 **Sec. I-1. 24-A MRSA §2744, sub-§§1 and 2,** as amended by PL  
2003, c. 65, §1 and affected by §5, are further amended to read:

38 1. Notwithstanding any provision of a health insurance  
40 policy subject to this chapter, whenever the policy provides for  
payment or reimbursement for services that are within the lawful  
42 scope of practice of a ~~psychologist-licensed-to-practice-in-this~~  
~~State,-a-certified-social-worker-licensed-for-the-independent~~  
44 ~~practice-of-social-work-in-this-State-who-has-at-least-a-masters~~  
~~degree-in-social-work-from-an-accredited-educational-institution,~~  
46 ~~has-been-employed-in-social-work-for-at-least-2-years,-and-who,~~  
~~after-January-1,-1985,-must-be-licensed-as-a-clinical-social~~  
48 ~~worker-in-this-State,-a-licensed-clinical-professional-counselor~~  
~~licensed-for-the-independent-practice-of-counseling-who-has-at~~  
50 ~~least-a-masters-degree-in-counseling-from-an-accredited~~

2 educational institution, has been employed in counseling for at  
least 2 years and, after January 1, 2002, must be licensed as a  
4 clinical professional counselor in this State, or a licensed  
nurse who is certified by the American Nurses' Association as a  
6 clinical specialist in adult psychiatric and mental health  
nursing or as a clinical specialist in child and adolescent  
8 psychiatric and mental health nursing professional listed in  
subsection 2-A, any person covered by the policy is entitled to  
10 reimbursement for these services if the services are performed by  
a physician, a psychologist licensed to practice in this State, a  
12 certified social worker licensed for the independent practice of  
social work who has at least a masters degree in social work from  
14 an accredited educational institution, who has been employed in  
social work for at least 2 years, and who, after January 1, 1985,  
16 must be licensed as a clinical social worker in this State, a  
licensed clinical professional counselor licensed for the  
18 independent practice of counseling who has at least a masters  
degree in counseling from an accredited educational institution,  
20 has been employed in counseling for at least 2 years and, after  
January 1, 2002, must be licensed as a clinical professional  
22 counselor in this State, or a licensed nurse certified by the  
American Nurses' Association as a clinical specialist in adult or  
24 child and adolescent psychiatric and mental health nursing or a  
professional listed in subsection 2-A. Payment or reimbursement  
26 for services rendered by clinical social workers licensed in this  
State, licensed clinical professional counselors licensed in this  
28 State or licensed nurses certified by the American Nurses'  
Association as clinical specialists in adult or child and  
adolescent psychiatric and mental health nursing a professional  
30 listed in subsection 2-A, paragraph B, C or D may not be  
conditioned upon prior diagnosis or referral by a physician or  
32 other health care professional, except in cases where diagnosis  
of the condition for which the services are rendered is beyond  
34 the scope of their licensure.

36 2. Nothing in subsection 1 may be construed to require a  
health insurance policy subject to this chapter to provide for  
38 reimbursement of services that are within the lawful scope of  
practice of a psychologist licensed to practice in this State, a  
40 clinical social worker licensed in this State, a clinical  
professional counselor licensed to practice in this State, a  
42 certified social worker licensed to practice in this State, or a  
certified nurse licensed to practice in this State professional  
44 listed in subsection 2-A.

46 Sec. I-2. 24-A MRSA §2744, sub-§2-A is enacted to read:

48 2-A. Subsections 1 and 2 apply with respect to the following  
types of professionals:  
50

2 A. A psychologist licensed to practice in this State;

4 B. A certified social worker licensed for the independent  
6 practice of social work in this State who has at least a  
8 master's degree in social work from an accredited  
educational institution, who has been employed in social  
work for at least 2 years and who, after January 1, 1985, is  
licensed as a clinical social worker in this State;

10 C. A licensed clinical professional counselor licensed for  
12 the independent practice of counseling who has at least a  
14 master's degree in counseling from an accredited educational  
institution, who has been employed in counseling for at  
least 2 years and who, after January 1, 2002, is licensed as  
a clinical professional counselor in this State; and

16 D. A licensed nurse who is certified by the American  
18 Nurses' Association as a clinical specialist in adult  
20 psychiatric and mental health nursing or as a clinical  
22 specialist in child and adolescent psychiatric and mental  
health nursing.

24 **Sec. I-3. 24-A MRSA §2835, sub-§1.** as amended by PL 2003, c.  
517, Pt. B, §13, is further amended to read:

26 1. Notwithstanding any provision of a health insurance  
28 policy or certificate issued under a group policy subject to this  
chapter, whenever the policy provides for payment or  
30 reimbursement for services that are within the lawful scope of  
practice of a ~~psychologist-licensed-to-practice-in-this-State;-a~~  
32 ~~certified-social-worker-licensed-for-the-independent-practice-of~~  
~~social-work-in-this-State-who-has-at-least-a-masters-degree-in~~  
~~social-work-from-an-accredited-educational-institution,-has-been~~  
34 ~~employed-in-social-work-for-at-least-2-years,-and-who,-after~~  
~~January-1,-1985,-must-be-licensed-as-a-clinical-social-worker-in~~  
36 ~~this-State;-a-licensed-clinical-professional-counselor-licensed~~  
~~for-the-independent-practice-of-counseling-who-has-at-least-a~~  
38 ~~masters-degree-in-counseling-from-an-accredited-educational~~  
~~institution,-has-been-employed-in-counseling-for-at-least-2-years~~  
40 ~~and,-after-January-1,-2002,-must-be-licensed-as-a-clinical~~  
~~professional-counselor-in-this-State;-or-a-licensed-nurse-who-is~~  
42 ~~certified-by-the-American-Nurses'-Association-as-a-clinical~~  
~~specialist-in-adult-psychiatric-and-mental-health-nursing-or-as-a~~  
44 ~~clinical-specialist-in-child-and-adolescent-psychiatric-and~~  
~~mental-health-nursing professional listed in subsection 2-A, any~~  
46 person covered by the policy is entitled to reimbursement for  
these services if the services are performed by a physician, a  
48 ~~psychologist-licensed-to-practice-in-this-State;-a-certified~~  
~~social-worker-licensed-for-independent-practice-in-this-State-who~~  
50 ~~has-at-least-a-masters-degree-in-social-work-from-an-accredited~~

2 educational institution, who has been employed in social work for  
at least 2 years, and who, after January 1, 1985, must be  
4 licensed as a clinical social worker in this State; a licensed  
clinical professional counselor licensed for the independent  
6 practice of counseling who has at least a masters degree in  
counseling from an accredited educational institution, has been  
8 employed in counseling for at least 2 years and, after January 1,  
2002, must be licensed as a clinical professional counselor in  
10 this State; or a licensed nurse certified by the American Nurses'  
Association as a clinical specialist in adult or child and  
12 adolescent psychiatric and mental health nursing or a  
professional listed in subsection 2-A. Payment or reimbursement  
14 for services rendered by ~~clinical social workers licensed in this  
State, licensed clinical professional counselors licensed in this  
State or licensed nurses certified by the American Nurses'  
16 Association as clinical specialists in adult or child and  
adolescent psychiatric and mental health nursing~~ a professional  
18 listed in subsection 2-A, paragraph B, C or D may not be  
20 conditioned upon prior diagnosis or referral by a physician or  
other health care professional, except in cases where diagnosis  
22 of the condition for which the services are rendered is beyond  
the scope of their licensure.

24 **Sec. I-4. 24-A MRSA §2835, sub-§2,** as amended by PL 2003, c.  
65, §2 and affected by §5, is further amended to read:

26 2. Nothing in subsection 1 may be construed to require a  
28 health insurance policy subject to this chapter to provide for  
reimbursement of services that are within the lawful scope of  
30 practice of a ~~psychologist licensed to practice in this State, a  
clinical social worker licensed in this State, a clinical  
32 professional counselor licensed in this State, a certified social  
worker licensed to practice in this State, or a nurse certified  
34 and licensed to practice in this State~~ professional listed in  
subsection 2-A.

36 **Sec. I-5. 24-A MRSA §2835, sub-§2-A** is enacted to read:

38 2-A. Subsections 1 and 2 apply with respect to the following  
40 types of professionals:

42 A. A psychologist licensed to practice in this State;

44 B. A certified social worker licensed for the independent  
practice of social work in this State who has at least a  
46 master's degree in social work from an accredited  
educational institution, who has been employed in social  
48 work for at least 2 years and who, after January 1, 1985, is  
licensed as a clinical social worker in this State;

2 C. A licensed clinical professional counselor licensed for  
4 the independent practice of counseling who has at least a  
6 master's degree in counseling from an accredited educational  
8 institution, who has been employed in counseling for at  
10 least 2 years and who, after January 1, 2002, is licensed as  
12 a clinical professional counselor in this State; and

14 D. A licensed nurse who is certified by the American  
16 Nurses' Association as a clinical specialist in adult  
18 psychiatric and mental health nursing or as a clinical  
20 specialist in child and adolescent psychiatric and mental  
22 health nursing.

## 14 SUMMARY

16 This bill does the following.

18 1. It gives employees of employers with fewer than 20  
20 employees who have health coverage through a multiple employer  
22 welfare arrangement the same protection currently available to  
24 employees of employers with fewer than 20 employees who are  
26 covered by insurance carriers. This limited protection allows  
the employee to stay on the employer's health plan for up to a  
year only in the event of a workers' compensation claim or a  
temporary layoff.

28 2. It makes credit union groups subject to the requirements  
30 concerning guaranteed issue, rating and rate filing that  
32 currently apply to individual health insurance and certain  
association group health insurance.

34 3. It amends the law concerning filing of insurance forms,  
36 rates and rating rules to provide that forms and any supporting  
information become public on the date the filing is approved.  
Under current law, filings are confidential until the filing  
becomes effective.

38 4. It provides that when someone is covered under more than  
40 one health insurance policy, payments by the primary insurer must  
42 be counted toward the deductible by the secondary insurer.

44 5. It amends the law concerning the guaranteed loss ratio  
46 option for small group health insurers to change the minimum  
48 threshold for eligibility from 1,000 member months to 1,000  
members. This change does not apply to carriers already using  
this option.

50 6. It amends the law that requires group health carriers to  
notify policyholders 60 days in advance of any rate increase to

2 specify that the notice must state that the increase is subject  
to regulatory approval when that is the case.

4 7. It amends the laws concerning guaranteed renewal of  
health insurance to comply with federal law with respect to  
6 coverage through associations.

8 8. It amends the continuity of coverage law to clarify that  
a waiting period is not counted as a break in coverage nor is it  
10 counted as a period of actual coverage except in limited  
circumstances, consistent with federal law.

12 9. It clarifies the laws concerning categories of mental  
14 health providers that must be covered to the same extent as  
physicians for services within the scope of their licenses.