

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

SECTION _____
 TOTAL ALLOCATIONS \$-0- \$-0-

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

Effective April 2, 1998.

CHAPTER 675

H.P. 1545 - L.D. 2174

An Act to Implement the Recommendations of the Commission to Study Insurance Fraud

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

Sec. 1. 24-A MRSA §2183, as amended by PL 1997, c. 341, §§1 and 2, is repealed.

Sec. 2. 24-A MRSA §§2186 and 2187 are enacted to read:

§2186. Insurance fraud prevention

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Fraudulent insurance act" means any of the following acts or omissions when committed knowingly and with intent to defraud:

(1) Presenting, or causing to be presented, or preparing any information containing false representations as to a material fact with knowledge or belief that the information will be presented by or on behalf of an insured, claimant or applicant to an insurer, insurance producer or other person engaged in the business of insurance concerning any of the following:

(a) An application for the issuance or renewal of an insurance policy;

(b) The rating of an insurance policy;

(c) A claim for payment or benefit pursuant to an insurance policy;

(d) Payments made in accordance with an insurance policy; or

(e) Premiums paid on an insurance policy;

(2) Presenting, or causing to be presented, or preparing any information containing false representations as to a material fact with knowledge or belief that the information will be presented to or by an insurer, insurance producer or other person engaged in the business of insurance concerning any of the following:

(a) A document filed with the superintendent or the insurance regulatory official or agency of another jurisdiction;

(b) The financial condition of an insurer;

(c) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance in all or part of this State by an insurer;

(d) The issuance of written evidence of insurance; or

(e) The reinstatement of an insurance policy;

(3) Soliciting or accepting new or renewal insurance risks on behalf of an insurer or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;

(4) Removing, concealing, altering or destroying the assets or records of an insurer or other person engaged in the business of insurance;

(5) Embezzling, abstracting, purloining or converting money, funds, premiums, credits or other property of an insurer or other person engaged in the business of insurance;

(6) Transacting the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance; or

(7) Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions described in this subsection.

B. "Insurer" means a reinsurer, surplus lines insurer, unauthorized insurer, nonprofit hospital and medical service organization, health mainte-

nance organization, risk retention group or multiple employer welfare organization. "Insurer" also includes an insurance producer or other person acting on the behalf of an insurer. For the purposes of this section, "insurer" also means the state Medicaid program.

2. Fraudulent insurance acts prohibited. A person may not commit a fraudulent insurance act.

3. Fraud warning required. Fraud warnings are required in accordance with the following.

A. All applications and claim forms for insurance used by insurers in this State, regardless of the form of transmission, must contain the following statement or a substantially similar statement permanently affixed to the application or claim form: "It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits."

B. The lack or omission of the statement required in paragraph A does not constitute a defense in any criminal prosecution or civil action for a fraudulent insurance act.

C. This subsection applies to all insurers except reinsurers. The statement required in paragraph A must be included in all applications and claim forms filed and approved for use by the superintendent on or after January 1, 1999.

4. Reporting of fraudulent insurance acts. Fraudulent insurance acts must be reported in accordance with this subsection.

A. An insurer shall, annually on or before March 1st or within any reasonable extension of time granted by the superintendent, file with the superintendent a report relating to fraudulent insurance acts that the insurer knew or reasonably believed had been committed during the previous calendar year. The report must contain information required by the superintendent in the manner prescribed by the superintendent. The information must be reported on an aggregate basis and may not contain any information identifying any individuals or entities. The superintendent shall adopt by January 1, 1999 rules necessary to define the information that must be reported. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

B. On the July 1st following the filing of the initial reports required by paragraph A, and annually thereafter, the superintendent shall report to

the joint standing committee of the Legislature having jurisdiction over insurance matters. The report must include aggregate information detailing the fraudulent insurance activity experienced by insurers in this State.

5. Insurer antifraud plans. Within 6 months of the effective date of this Act, every insurer writing direct insurance shall prepare and implement an antifraud plan. This subsection does not apply to any agency, producer or other person acting on behalf of an insurer. The superintendent may review an insurer's antifraud plan to determine if the plan complies with the requirements of this subsection. The antifraud plan must outline specific procedures, appropriate to the lines of insurance the insurer writes in the State, to:

A. Prevent, detect and investigate all forms of insurance fraud;

B. Educate appropriate employees on the anti-fraud plan and fraud detection;

C. Provide for the hiring of or contracting for fraud investigators; and

D. Report insurance fraud to appropriate law enforcement and regulatory authorities in the investigation and prosecution of insurance fraud.

6. Civil penalties. Any violation of this section is subject to civil penalties and other remedies as provided in section 12-A. Notwithstanding section 2165-A, subsection 1, the superintendent may issue emergency cease and desist orders on the basis of conduct involving fraudulent insurance acts.

7. Recovery costs. In a civil action in which it is proven that a person committed a fraudulent insurance act, the court may award reasonable attorney's fees and costs to the insurer. In a civil action in which the insurer alleges that a party committed a fraudulent insurance act that is not established at trial, the court may award reasonable attorney's fees and costs to the party if the allegation is not supported by any reasonable basis of law or fact.

§2187. Insurance fraud reporting immunity

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Action" includes nonaction or the failure to take action.

B. "Authorized agency" or "authorized agencies" means:

- (1) The Attorney General;

(2) A district attorney responsible for prosecution in the municipality where the fraud occurred;

(3) The Federal Bureau of Investigation, or any other federal agency, only for the purposes of subsection 2;

(4) The State Fire Marshal;

(5) The Superintendent of Insurance;

(6) The Superintendent of Banking;

(7) The United States Attorney's office when authorized or charged with investigation or prosecution of the insurance fraud in question, only for the purposes of subsection 2;

(8) The State Police or local law enforcement officials; or

(9) The National Association of Insurance Commissioners.

C. "Fraudulent insurance act" has the same meaning as in section 2186, subsection 1, paragraph A.

D. "Insurer" has the same meaning as in section 2186, subsection 1, paragraph B.

2. Information disclosed. An authorized agency investigating insurance fraud may, in writing, require the insurance company at interest to release to the requesting agency any relevant information or evidence determined to be important to the authorized agency that the company may have in its possession relating to the insurance fraud in question. This information includes, but is not limited to:

A. A history of previous claims made by the insured;

B. Insurance policy information relevant to fraud under investigation and any application for that policy;

C. Material relating to the investigation of the loss including statements and proof of loss; and

D. Policy premium payment records.

3. Exchange of information. An authorized agency or insurer provided with information pursuant to this section may release or provide that information to any other authorized agency or insurer with an interest in the insurance fraud under investigation.

4. Right to receive upon request. Any insurer providing information to an authorized agency pursuant to this section has the right, upon request, to

receive other information relevant to the fraud from that authorized agency within 30 days.

5. Immunity. In the absence of fraud, malice or bad faith, any person, including, but not limited to, an insurer or authorized agency, that furnished information relating to suspected, anticipated or completed fraudulent insurance acts is not liable for any damages in any civil action for furnishing the information if that information is furnished to or received from an authorized agency. Nothing in this subsection is intended to abrogate or modify in any way any common law or statutory privilege or immunity previously enjoyed by any person.

6. Confidentiality. An authorized agency or insurer that receives any information pursuant to this section shall hold it in confidence and may not release the information, except to another authorized agency, until its release is required for a criminal or civil proceeding.

See title page for effective date.

CHAPTER 676

H.P. 1621 - L.D. 2251

An Act to Permit Direct Contracting with State Governmental Entities for the Provision of Services to Eligible Participants in Government Health Programs

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

Whereas, the State administers state and federally sponsored health programs; and

Whereas, it is in the best interests of the people of the State for the State to encourage maximum participation by managed care entities in these programs; and

Whereas, it is in the best interests of the people of the State for the State to manage the health care of program recipients and clients while offering reasonable choice within a competitive and cost-effective environment; 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,