

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

(2) The American Hospital Formulary Service Drug Information or information published by its successor organization.

2. Required coverage for off-label use. All health maintenance organization individual and group contracts that provide coverage for prescription drugs must provide coverage for off-label use in accordance with the following.

A. Health maintenance organization individual and group contracts that provide coverage for prescription drugs may not exclude coverage of any such drug used for the treatment of HIV or AIDS on the grounds that the drug has not been approved by the federal Food and Drug Administration for that indication, as long as that drug is recognized for the treatment of that indication in one of the standard reference compendia or in peer-reviewed medical literature.

B. Coverage of a drug required by this subsection also includes medically necessary services associated with the administration of the drug.

C. This subsection may not be construed to require coverage for a drug when the federal Food and Drug Administration has determined its use to be contraindicated for treatment of the current indication.

D. A drug use that is covered pursuant to paragraph A may not be denied coverage based on a "medical necessity" requirement except for a reason that is unrelated to the legal status of the drug use.

E. A contract that provides coverage of a drug as required by this subsection may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the same extent that these provisions are applicable to coverage of all prescription drugs and are not inconsistent with the requirements of this subsection.

3. Application. The requirements of this section apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 1999. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

CHAPTER 702

H.P. 1494 - L.D. 2093

**An Act Relating to the Protection of
Maine Consumers in the
Telecommunications Market**

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

Whereas, it is necessary that the State immediately prohibit misleading and abusive market practices by telecommunications carriers; and

Whereas, the Public Utilities Commission lacks authority to take effective consumer protection measures to protect Maine telecommunications consumers; 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. 35-A MRSA §7106 is enacted to read:

§7106. Consumer protection

1. Unauthorized change of carrier. This subsection governs the initiation of a change in a customer's local or intrastate interexchange carrier that is not authorized by that consumer.

A. Except as otherwise provided by the commission by rule adopted pursuant to subsection 3, no local or intrastate interexchange carrier may initiate the change of a customer's local or intrastate carrier unless the change is verified by one of the following methods:

- (1) Written authorization from the customer;
- (2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization obtained by an independent 3rd party.

B. When a customer's service is changed to a new local or intrastate interexchange carrier, the new local or intrastate interexchange carrier shall maintain for 12 months a record of nonpublic

customer-specific information that establishes that the customer authorized the change.

C. If a local or intrastate interexchange carrier initiates a change that is not made or verified consistent with this section or commission rules adopted under this section, that carrier, upon request by the customer, shall reverse the change within a time period established by commission rule.

D. A local or intrastate interexchange carrier that has initiated an unauthorized customer change shall:

(1) Pay all usual and customary charges associated with returning the customer to the customer's original local or intrastate interexchange carrier;

(2) Return to the customer any amount paid to that carrier by the customer or on the customer's behalf;

(3) Pay any access charges and related charges to access providers or to an underlying carrier when applicable; and

(4) Upon request, provide all billing records to the original local or intrastate interexchange carrier from which the customer was changed to enable the original local or intrastate interexchange carrier to comply with this section and any commission rules adopted under this section.

E. Except as otherwise provided by the commission by rule in accordance with subsection 3, a customer subjected to an unauthorized change of local or intrastate interexchange carrier is responsible for charges of the authorized carrier for the customer's usage during the period the customer was served by the unauthorized carrier unless:

(1) The customer has paid the unauthorized carrier for the usage; and

(2) The amount paid by the customer has not been returned by the unauthorized carrier to the customer in accordance with paragraph D, subparagraph (2).

If the unauthorized carrier has not returned to the customer the amount paid by the customer to the unauthorized carrier in accordance with paragraph D, subparagraph (2), the unauthorized carrier shall pay to the authorized carrier the charges of the authorized carrier for the customer's usage during the period the customer was served by the unauthorized carrier.

2. Penalty. A local or intrastate interexchange carrier that violates this section is subject to penalty in accordance with this subsection.

A. The commission may impose an administrative penalty against any person who violates this section or any rule or order adopted pursuant to this section. In determining whether to impose a penalty, the commission may consider whether the violation was intentional. The penalty for a violation may be in an amount not to exceed \$5,000 for each day the violation continues, up to a maximum of \$40,000 for a first offense and a maximum of \$110,000 for subsequent offenses. The amount of the penalty must be based on:

(1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;

(2) The history of previous violations; and

(3) The amount necessary to deter future violations.

B. If the commission finds that a local or intrastate interexchange carrier has repeatedly violated this section or rules adopted under this section, the commission shall order the utility to take corrective action as necessary. In addition, the commission, if consistent with the public interest, may suspend, restrict or revoke the registration or certificate of the local or intrastate interexchange carrier, so as to deny the local or intrastate interexchange carrier the right to provide service in this State.

C. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

3. Rules. The commission shall adopt nondiscriminatory and competitively neutral rules to further implement this section.

A. Except as otherwise provided in this subsection, rules adopted by the commission under this subsection, including rules regarding customer verification of a change of carrier, must be consistent with the rules adopted by the Federal Communications Commission governing the initiation of a change of a customer's interstate carrier, except that the commission's rules on customer verification need not conform to the customer verification method involving a customer information package as defined in 47 Code of Federal Regulations, Section 64.1100(d).

B. The commission, in adopting rules governing customer verification of a change of carrier, shall consider whether customer verification is necessary in the case of customer-initiated calls.

C. The commission shall adopt by rule a definition of those actions that constitute initiation of a change of carrier under this section and a definition of actions that do not constitute the initiation of a change of carrier. The commission shall consider whether actions not constituting the initiation of a change of a customer's carrier include actions of a local exchange carrier to change a customer's carrier:

(1) Undertaken at the direction of a carrier to which the customer's service is changed or with the oral or written authorization of the customer; and

(2) That do not result in the customer being changed to the service of the carrier undertaking the actions or to an affiliate of the carrier undertaking the actions.

D. Notwithstanding subsection 1, paragraph E, if the Federal Communications Commission provides by rule that customers are not responsible for charges of an authorized interstate carrier for the customer's usage during the period the customer was served by an unauthorized interstate carrier, the commission by rule may provide that a customer is not responsible for charges of an authorized local or intrastate carrier for the customer's usage during the period the customer was served by an unauthorized local or intrastate carrier.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before the court.

5. Notice to the Attorney General. If the commission has reason to believe that any carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the Commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

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

Effective April 3, 1998.

CHAPTER 703

H.P. 1514 - L.D. 2136

An Act to Ensure Access to Confidential Records

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

Sec. 1. 5 MRSA §244-C is enacted to read:

§244-C. Access to confidential records

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

A. "Audit working paper" means all documentary and other information acquired, prepared or maintained by the State Auditor during the conduct of an audit or investigation, including all intraagency and interagency communications relating to an audit or investigation and includes draft reports or any portion of a draft report.

B. "Auditor" means the State Auditor or an agent of the State Auditor who is an employee of the Department of Audit.

2. Information available to the Auditor. Notwithstanding any state law relating to the confidentiality of information, all information in the files of any department, commission or agency of the State subject to an audit or investigation by the Auditor must be made available when necessary to the Auditor for performance of the Auditor's official duties.

A. Before beginning an audit or investigation that may require access to records containing confidential or privileged information, the Auditor shall consult with representatives of the department, commission or agency to discuss methods of identifying and protecting privileged or confidential information in those records. During that consultation, the department, commission or agency shall inform the Auditor of all standards and procedures set forth in department, commission or agency policies or agreements to protect information considered by the department, commission or agency to be confidential or privileged. The Auditor shall limit access to information that is privileged or confidential by appropriate methods, which may