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J.S. McCarthy Company
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CHAPTER 353

H.P. 1003 - L.D. 1401

An Act to Amend the Maine Health Data Organization Statutes

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

Whereas, amendment to the budget provisions of the Maine Health Data Organization is required prior to the end of the current fiscal year; and

Whereas, without emergency legislative authorization, such amendment can not be accomplished prior to the end of the fiscal year; 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. 22 MRSA §8702, sub-§4, as amended by PL 1997, c. 525, §1, is further amended to read:

4. Health care facility. "Health care facility" means a public or private, proprietary or not-for-profit entity or institution providing health services, including, but not limited to, a radiological facility licensed under chapter 160, a health care facility licensed under chapter 405 or certified under chapter 405-D, a federally qualified health center or rural health clinic certified by the Division of Licensing and Certification within the Department of Human Services, a home health care provider licensed under chapter 419, a residential care facility licensed under chapter 1665, a hospice provider licensed under chapter 1681, a community rehabilitation program licensed under Title 20-A, chapter 701, a state institution as defined under Title 34-B, chapter 1 and a mental health facility licensed under Title 34-B, chapter 1.

Sec. 2. 22 MRSA §8703, sub-§1, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

1. Objective. The purpose of the organization is to ~~create and maintain an objective, accurate and comprehensive health information data base for the State built upon existing clinical and financial data bases administered and maintained by the Maine Health Care Finance Commission~~ improve the health of Maine citizens through the creation and maintenance of a useful, objective, reliable and comprehensive health information database. This database must be publicly accessible while protecting patient confidentiality and respecting providers of care. The ~~Maine Health Care Finance Commission~~ organization shall collect, process and analyze clinical and financial data as defined in this ~~section until such time as the Maine Health Data Organization becomes operational, as determined by the board, or December 31, 1996, whichever is earlier~~ chapter.

Sec. 3. 22 MRSA §8703, sub-§2, ¶A, as amended by PL 1997, c. 568, §1, is further amended to read:

A. The Governor shall appoint 16 board members in accordance with the following requirements. Appointments by the Governor are not subject to review or confirmation.

(1) Three members must represent consumers. For the purposes of this section, "consumer" means a person who is not affiliated with or employed by a 3rd-party payor, a provider or an association representing those providers or those 3rd-party payors.

(2) Three members must represent employers. One member must be chosen from a list provided by a health management coalition in this State.

(3) Two members must represent 3rd-party payors.

(4) Eight members must represent providers. Two provider members must represent hospitals chosen from a list of at least 5 current hospital representatives provided by the Maine Hospital Association. Two provider members must be physicians or representatives of physicians chosen from a list of at least 5 nominees provided jointly by the Maine Medical Association and the Maine Osteopathic Association. ~~One provider member must be a dentist chosen from a list of at least 3 nominees provided by the Maine Dental Association.~~ One provider member must be a chiropractor chosen from a list provided by a statewide chiropractic association. One provider member must be a representative, chosen from a list provided by the Maine Ambulatory Care Coalition, of a federally qualified health center. Two provider members must be representatives of other health care providers, at least one of whom is a current representative of a home health care company.

Sec. 4. 22 MRSA §8703, sub-§2, ¶C, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is repealed.

Sec. 5. 22 MRSA §8703, sub-§4, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

4. Meetings; officers. ~~By June 1, 1996, the Governor shall convene the first meeting of the board, at which the~~ Board members shall elect a chair and a ~~cochair~~ vice-chair from among the membership to serve 2-year terms. All meetings of the board are public proceedings within the meaning of the Freedom of Access Law, Title 1, chapter 13, subchapter I.

Sec. 6. 22 MRSA §8704, sub-§1, ¶A, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

A. The board shall develop and implement data collection policies and procedures for the collection, processing, storage and analysis of clinical, financial and restructuring data in accordance with this subsection for the following purposes:

(1) To use, build and improve upon and coordinate existing data sources and measurement efforts through the integration of data systems and standardization of concepts;

(2) To coordinate the development of a linked public and private sector information system;

(3) To emphasize data that is useful, relevant and is not duplicative of existing data;

(4) To minimize the burden on those providing data;

(5) To preserve the reliability, accuracy and integrity of collected data while ensuring that the data is available in the public domain; and

(6) To collect information from providers who were required to file data with the Maine Health Care Finance Commission ~~on July 1, 1996, data that is substantially similar to the data that was required to be filed with the commission~~. The organization may collect ~~additional information from the same providers and~~ information from additional providers and payors only when a linked information system for the electronic transmission, collection and storage of data is reasonably available to providers.

Sec. 7. 22 MRSA §8704, sub-§1, ¶E is enacted to read:

E. The board shall exempt from reporting by a provider data regarding a person who informs the provider of the person's objection, or the objection of a parent of a minor, to inclusion in data collection based on a sincerely held religious belief.

Sec. 8. 22 MRSA §8704, sub-§2, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

2. Contracts for data collection; processing. The board shall contract with one or more qualified, nongovernmental, independent 3rd parties for services necessary to carry out the data collection, processing and storage activities required under this chapter. For purposes of this subsection, a group or organization affiliated with the University of Maine System is not considered a governmental entity. Unless permission is specifically granted by the board, a 3rd party hired by the organization may not release, publish or otherwise use any information to which the 3rd party has access under its contract and shall otherwise comply with the requirements of this chapter. If an appropriate contract can not be entered into or is terminated, data collection, processing and storage activities required under this chapter may be performed by the organization for a period of up to 12 months.

Sec. 9. 22 MRSA §8705, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

§8705. Enforcement

The board shall adopt rules to ensure that providers file data as required by section 8704, subsection 1, ~~and~~ that users that obtain from the organization health data and information safeguard the identification of patients and providers 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. Rulemaking. The board shall adopt rules setting a schedule of forfeitures for ~~willful~~ failure to file data as required and failure to pay assessments, and willful failure to safeguard the identity of patients, providers, health care facilities or 3rd-party payors. The rules may contain procedures for monitoring compliance with this chapter.

2. Forfeitures. ~~A~~ Except for circumstances beyond a person's or entity's control, a person or entity that violates the requirements of ~~section 8704, subsection 1 or section 8707, subsections 1 and 3~~ this chapter commits a civil violation for which a forfeit-

ure may be adjudged not to exceed $1000 per day for a health care facility or ~~$25~~ $100 per day for all other persons, entities and providers. A forfeiture imposed under this subsection may not exceed $25,000 for a health care facility for any one occurrence or ~~$250~~ $2,500 for any other person or entity for any one occurrence.

3. Enforcement action. Upon a finding that a person or entity has ~~willfully refused~~ failed to comply with the requirements of this chapter, including the payment of a forfeiture determined under this section, the board may take any of the following actions.

A. The board may file a complaint with the licensing board of the provider seeking disciplinary action against the provider.

B. The board may file a complaint with the Superior Court in the county in which the person resides or the entity is located, or in Kennebec County, seeking an order to require that person or entity to comply with the requirements of this chapter, enforcement of a forfeiture determined under this section or for other relief from the court.

Sec. 10. 22 MRSA §8706, sub-§1, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is repealed.

Sec. 11. 22 MRSA §8706, sub-§2, ¶C, as repealed and replaced by PL 1997, c. 525, §3, is amended to read:

C. ~~Beginning in fiscal year 1997-98, the~~ The operations of the organization must be supported from 3 sources as provided in this paragraph:

(1) Fees collected pursuant to paragraphs A and B;

(2) Annual assessments of not less than $100 assessed against the following entities licensed under Titles 24 and 24-A on the basis of the total annual health care premium: nonprofit hospital and medical service organizations, health insurance carriers, health maintenance organizations and 3rd-party administrators on the basis of administration of health benefits plans administered for employers. The assessments ~~may not exceed $319,000 for fiscal year 1997-98 and $325,000 for fiscal year 1998-99~~ are to be determined on an annual basis by the board. Health care policies issued for specified disease, accident, injury, hospital indemnity, Medicare supplement, disability, long-term care or other limited benefit health insurance policies are not subject to assessment under this subparagraph. ~~Assessments~~ The total dollar amount of assessments under this subparagraph must equal the assessments under subparagraph ~~3~~ (3); and

(3) Annual assessments of not less than $100 assessed by the organization against providers. The assessments ~~may not exceed $320,000 for fiscal year 1997-98 and $326,000 for fiscal year 1998-99~~ are to be determined on an annual basis by the board. ~~Assessments~~ The total dollar amount of assessments under this subparagraph must equal the assessments under subparagraph ~~2~~ (2).

The aggregate level of annual assessments under subparagraphs (2) and (3) ~~must be based on the difference between the authorized allocation for the fiscal year and the beginning cash balance in the account established pursuant to section 8706, subsection 6~~ must be an amount sufficient to meet the organization's expenditures authorized in the state budget established under Title 5, chapter 149. The annual assessment may not exceed $760,000 in fiscal year 1999-00. In subsequent fiscal years, the annual assessment may increase above $760,000 by an amount not to exceed 5% per fiscal year. The board may waive assessments otherwise due under subparagraphs (2) and (3) when a waiver is determined to be in the interests of the organization and the parties to be assessed.

Sec. 12. 22 MRSA §8707, sub-§1, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

1. Public access; confidentiality. The board shall adopt rules making available to any person, upon request, information, except privileged medical information and confidential ~~commercial~~ information, provided to the organization under this chapter as long as individual patients or health care practitioners are not directly identified. The board shall adopt rules governing public access in the least restrictive means possible to information that may indirectly identify a particular patient~~,~~ or health care practitioner ~~or provider or payor~~.

Sec. 13. 22 MRSA §8707, sub-§4, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

4. Confidential or privileged designation. The rules must determine to be confidential or privileged information all data designated or treated as confidential or privileged by the Maine Health Care Finance Commission. Information regarding discounts off charges, including capitation and other similar agreements, negotiated between a payor or purchaser

and a provider of health care that was designated as confidential only for a limited time under the rules of the Maine Health Care Finance Commission is confidential to the organization, notwithstanding the termination date for that designation specified under the prior rules. The board may determine financial data submitted to the organization under section 8709 to be confidential information if the public disclosure of the data will directly result in the provider of the data being placed in a competitive economic disadvantage. This section may not be construed to relieve the provider of the data of the requirement to disclose such information to the organization in accordance with this chapter and rules adopted by the board.

Sec. 14. 22 MRSA §8708, as amended by PL 1997, c. 525, §4, is further amended to read:

§8708. Clinical data

Clinical data must be filed, stored and managed as follows.

1. Information required. Pursuant to rules adopted by the board for form, medium, content and time for filing, each health care facility shall file with the organization the following information:

~~A. Scope of service information, including bed capacity, by service provided, special services, ancillary services, physician profiles in the aggregate by clinical specialties, nursing services and such other scope of service information as the organization determines necessary for the performance of its duties;~~

B. A completed uniform hospital discharge data set, or comparable information, for each patient discharged from the facility after June 30, 1983~~; for each major ambulatory service listed in rules adopted by the organization pursuant to subsection 4, occurring after January 1, 1990;~~ and for each hospital outpatient service occurring after June 30, 1996; and

C. In addition to any other requirements applicable to specific categories of health care facilities ~~or payors~~, the organization may require the filing of data as set forth in this chapter or in rules adopted pursuant to this chapter.

2. Additional information on ambulatory services and surgery. Pursuant to rules adopted by the board for form, medium, content and time for filing, each provider shall file with the organization a completed data set, comparable to data filed by health care facilities under subsection 1, ~~paragraphs A and~~ paragraph B, for each ambulatory service and surgery listed in rules adopted pursuant to subsection 4, ~~paragraph A,~~ occurring after January 1, 1990. This subsection may not be construed to require duplication of information required to be filed under subsection 1. ~~Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.~~

3. More than one licensed health care facility or location. When more than one licensed health care facility is operated by the reporting organization, the information required by this chapter must be reported for each health care facility separately. When a provider of health care operates in more than one location, the organization may require that information be reported separately for each location.

4. Data lists. The ~~scope of clinical data to be collected must be defined and regulated by preparation of lists in accordance with this~~ board shall adopt rules establishing a list of major ambulatory services and surgeries for which data is to be collected. The board shall review the list annually to determine if any additions or deletions are necessary. The organization shall distribute the most current list to those providers of health care that are required to file information under subsection 2.

~~A. By December 31, 1996, and at least annually thereafter, the board shall adopt rules establishing a list of major ambulatory services and surgeries for which data is to be collected. The organization shall distribute the lists to those providers of health care that are required to file information under subsection 1 or 2.~~

~~B. In addition to lists prepared pursuant to paragraph A, and subject to the limitations of section 8704, subsection 1, the board may adopt rules requiring the filing of data for other outpatient services by health care facilities, providers and 3rd-party payors. In proposing a rule under this paragraph, the board shall consider the scope of information previously collected by the Maine Health Care Finance Commission and shall determine if or to what extent the collection of data on hospital outpatient services is appropriate after considering the costs and benefits to hospitals and the public of preparing, submitting and maintaining these data.~~

5. Medical record abstract data. In addition to the information required to be filed under subsections 1 and 2 and pursuant to rules adopted by the organization for form, medium, content and time of filing, each health care facility shall file with the organization such medical record abstract data as the organization may require.

6. Merged data. The board may require the discharge data submitted pursuant to subsection 1 and any medical record abstract data required pursuant to subsection 5 to be merged with associated billing data.

6-A. Additional data. Subject to the limitations of section 8704, subsection 1, the board may adopt rules requiring the filing of additional clinical data from other providers and payors.

7. Authority to obtain information. Nothing in this section may be construed to limit the board's authority to obtain information that it considers necessary to carry out its duties.

Sec. 15. 22 MRSA §8709, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

§8709. Financial data; scope of service data

Financial data and scope of service data must be filed, stored and managed as follows.

1. Financial data. Each health care facility shall file with the organization, in a form specified by rule pursuant to section 8704, financial information including costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges and units of services, except to the extent that the board specifies by rule that portions of this information are unnecessary.

2. Certification required. The board may require certification of such financial reports and attestation from responsible officials of the health care facility that such reports have to the best of their knowledge and belief been prepared in accordance with the requirements of the board.

3. Scope of service data. Each health care facility shall file with the organization scope of service information, including bed capacity by service provided, special services, ancillary services, physician profiles in the aggregate by clinical specialties, nursing services and such other scope of service information as the organization determines necessary for the performance of its duties.

Sec. 16. 22 MRSA §8711, sub-§2, as enacted by PL 1995, c. 653, Pt. A, §2 and affected by §7, is amended to read:

2. Information on mandated services. The organization is authorized and directed to require providers of mammography services to furnish information with respect to those services for the purpose of assisting in the evaluation of the social and financial impact and the efficacy of the mandated benefit for screening mammograms under Title 24, section 2320-A and Title 24-A, sections 2745-A and 2837-A. The information that may be collected includes the location of mammography units, the purchase of new mammography units, the number of screening and diagnostic mammograms performed, the charge per mammogram and the method and amount of payment, and the number of cancers detected by screening mammograms. ~~To the extent practicable, the organization shall collect information consistent with that collected by the Maine Health Care Finance Commission in cooperation with the Department of Human Services, Bureau of Health for prior periods.~~

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

Effective May 28, 1999.

CHAPTER 354

S.P. 364 - L.D. 1067

An Act to Amend the Workers' Compensation Laws

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

Sec. 1. 2 MRSA §6-E, sub-§5, as enacted by PL 1993, c. 145, §1, is repealed and the following enacted in its place:

5. Deputy directors. The salary of the deputy directors is within the following salary ranges:

A. Deputy Director of Medical/Rehabilitation Services, Range 85;

B. Deputy Director of Business Services, Range 85; and

C. Deputy Director of Benefits Administration, Range 85.

Sec. 2. 39-A MRSA §153, sub-§9, as enacted by PL 1997, c. 486, §3, is amended to read:

9. Audit and enforcement. The executive director shall establish an audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359. The functions of the audit and enforcement program include, but are not limited to, auditing timeliness of payments and claims handling practices of insurers, self-insurers and 3rd-party administrators; determining whether insurers, self-insurers and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. The program must be coordinated with the abuse investigation unit established by section 153, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule developed by the deputy director of benefits administration. Audit