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Date: (Filing No. S- )

**HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
132ND LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 135, L.D. 378, “An Act to Strengthen the Health Care System in Maine”

Amend the bill by striking out the title and substituting the following:

**'An Act to Clarify That Health Insurers Must Comply with Plan Sponsors' Statutory Rights to Audit Claims and Data Requests Related to Those Audits'**

Amend the bill by inserting after the title and before the enacting clause the following:

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

**Whereas,** current law requires 3rd-party administrators of health plans to grant plan sponsors certain audit rights and to provide the requisite medical and pharmacy data to conduct those audits; and

**Whereas,** this legislation clarifies that law to ensure that health insurers administering health plans on behalf of plan sponsors are considered administrators and must comply with a plan sponsor's statutory right to audit claims and data requests related to those audits; and

**Whereas,** this legislation needs to take effect without delay so that plan sponsors can include these audit rights in contracts with administrators that are being renewed, amended or entered into prior to the 2027 plan 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,'

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 24-A MRSA §1914, sub-§2,** as enacted by PL 2025, c. 487, §1, is amended to read:

**COMMITTEE AMENDMENT**

1           **2. Claims data; right to audit.** An administrator that contracts with a plan sponsor  
2 to provide health coverage shall permit a plan sponsor to perform a post-payment audit of  
3 all claims paid to ensure compliance with the contract at least once in a calendar year as  
4 long as the request is not earlier than 6 months following a previously requested audit.  
5 Upon request of a plan sponsor as part of an audit, an administrator shall disclose within  
6 30 business days to a plan sponsor that has certified its compliance with the use and  
7 disclosure requirements of 45 Code of Federal Regulations, Section 164.504(f) or, to the  
8 extent permitted by law and if requested by the plan sponsor, to the ~~plan sponsor's~~ plan's  
9 designated business associate the following information specific to the ~~plan sponsor~~  
10 sponsor's plans:

11           A. Claims data received by the administrator via electronic claims transactions on any  
12 current standardized claim form approved by the Federal Government for professional  
13 services or institutional services. The form or transaction may be modified only as  
14 necessary to comply with the federal Health Insurance Portability and Accountability  
15 Act of 1996, Public Law 104-191;

16           B. Claims payments, electronic funds transfers or remittance advice notices provided  
17 by the administrator as electronic files compliant with the federal Health Insurance  
18 Portability and Accountability Act of 1996, Public Law 104-191, including, but not  
19 limited to, electronic claims transactions for both the billed amount and the paid  
20 amount for professional services and both the billed amount and the paid amount for  
21 institutional services. The files may be modified only as necessary to comply with the  
22 federal Health Insurance Portability and Accountability Act of 1996, Public Law  
23 104-191, and the federal Health Information Technology for Economic and Clinical  
24 Health Act of 2009, Title XIII, Subtitle D, Public Law 111-5, and any regulations  
25 promulgated under those laws;

26           C. Any fees charged to the plan sponsor related to plan administration and claims  
27 processing, including renegotiation fees, access fees, repricing fees or enhanced review  
28 fees; and

29           D. Any out-of-network fees or out-of-network negotiated discounts, aligned incentive  
30 program fees, pay-for-performance payments and recoveries, cost-containment  
31 program fees, overpayment recovery program fees, subrogation fees and any other  
32 special program fees and discounts.

33           **Sec. 2. 24-A MRSA §1914, sub-§4**, as enacted by PL 2025, c. 487, §1, is amended  
34 to read:

35           **4. Nondisclosure and data use agreement.** An administrator may require that the  
36 plan sponsor and the plan sponsor's designated business associate execute a nondisclosure  
37 and data use agreement that protects the confidentiality of the administrator's trade secrets,  
38 proprietary information or information otherwise confidential by law, rule or regulation  
39 before data is provided in accordance with this section and that reasonably restricts the  
40 auditor's use of such data provided by the administrator to the sole purpose of conducting  
41 an audit on behalf of a plan sponsor. The coverage limits of any cybersecurity insurance or  
42 liability insurance policy required under the nondisclosure and data use agreement may not  
43 exceed the administrator's limit of liability under the services agreement between the plan  
44 sponsor and the administrator, if such limit applies. Except for the coverage limits of any  
45 cybersecurity insurance or liability insurance policy, this subsection is not intended to limit

1 the inclusion in a nondisclosure and data use agreement of reasonable requirements  
2 regarding notice, indemnification or liability for the unauthorized disclosure or security  
3 breach of data in the possession of the plan sponsor or its designated business associate  
4 pursuant to this section. In addition, an administrator is not required to provide data to an  
5 auditor selected by a plan sponsor if the auditor has previously breached a nondisclosure  
6 and data use agreement with that administrator or refuses to execute a nondisclosure and  
7 data use agreement.

8 **Sec. 3. 24-A MRSA §1914, sub-§4-A** is enacted to read:

9 **4-A. Liability for disclosure of protected information.** A plan sponsor or a plan  
10 sponsor's designated business associate who receives information from an administrator  
11 pursuant to this section shall notify the administrator of any unauthorized disclosure or  
12 security breach of the following information in the possession of the plan sponsor or its  
13 designated business associate immediately upon discovery of the unauthorized disclosure  
14 or security breach of:

15 A. Personal information as defined in Title 10, section 1347, subsection 6;

16 B. Protected health information in violation of any applicable requirements of the  
17 federal Health Insurance Portability and Accountability Act of 1996, Public Law  
18 104-191, and any regulations promulgated under that law;

19 C. Electronic protected health information as defined in the federal Health Information  
20 Technology for Economic and Clinical Health Act of 2009, Title XIII, Subtitle D,  
21 Public Law 111-5, and any regulations promulgated under that law; or

22 D. Nonpublic information as defined in section 2263, subsection 10.

23 **Sec. 4. 24-A MRSA §1914, sub-§5-A** is enacted to read:

24 **5-A. Certain persons acting as administrators included.** Notwithstanding section  
25 1901, subsection 1, paragraphs D and E, for the purposes of this section, an administrator  
26 subject to the requirements of this section includes any person who, on behalf of a plan  
27 sponsor, receives or collects charges, contributions or premiums for or adjusts or settles  
28 claims on residents of this State in connection with any type of health benefit.

29 **Sec. 5. 24-A MRSA §4347, sub-§1-A** is enacted to read:

30 **1-A. Administrator.** "Administrator" includes, notwithstanding section 1901,  
31 subsection 1, paragraphs D and E, any person who, on behalf of a plan sponsor, receives or  
32 collects charges, contributions or premiums for or adjusts or settles claims on residents of  
33 this State in connection with any type of health benefit.

34 **Sec. 6. 24-A MRSA §4347, sub-§18-A,** as enacted by PL 2025, c. 487, §2, is  
35 amended to read:

36 **18-A. Plan sponsor.** "Plan sponsor" has the same meaning as in section 1901,  
37 subsection 8, except that "plan sponsor" does not include ~~an employer~~ a person that offers  
38 or provides a health plan benefit that is fully insured by an insurer authorized to ~~do~~ transact  
39 insurance business in this State.

40 **Sec. 7. 24-A MRSA §4349-B, sub-§2,** as enacted by PL 2025, c. 487, §3 and  
41 reallocated by RR 2025, c. 1, Pt. A, §34, is amended to read:

1           **2. Claims data; right to audit.** Notwithstanding section 4350-C, a pharmacy benefits  
2 manager that contracts with a plan sponsor to provide prescription drug coverage shall  
3 permit a plan sponsor to perform a post-payment audit of claims paid to ensure compliance  
4 with the contract at least once in a calendar year as long as the request is not earlier than 6  
5 months following a previously requested audit. Upon request of a plan sponsor as part of  
6 an audit, a pharmacy benefits manager shall disclose within 30 business days to a plan  
7 sponsor who has certified its compliance with the use and disclosure requirements of 45  
8 Code of Federal Regulations, Section 164.504(f), or, to the extent permitted by law and if  
9 requested by the plan sponsor, to the ~~plan sponsor's plan's~~ designated business associate the  
10 following information specific to the ~~plan sponsor~~ sponsor's plans:

11           A. Rebate amounts, identified by the drug and therapeutic category, secured on  
12 prescription drugs provided by a pharmaceutical manufacturer that are generated by  
13 claims processed through the plan maintained by the plan sponsor and administered by  
14 the pharmacy benefits manager;

15           B. Prescription drug and device claims received by the pharmacy benefits manager via  
16 electronic claims transactions on any current standardized claim form approved by the  
17 Federal Government for these services. The form or transaction may be modified only  
18 as necessary to comply with the federal Health Insurance Portability and  
19 Accountability Act of 1996, Public Law 104-191, and the federal Health Information  
20 Technology for Economic and Clinical Health Act of 2009, Title XIII, Subtitle D,  
21 Public Law 111-5, and any regulations promulgated under those laws;

22           C. Prescription drug and device claims payments, electronic funds transfers or  
23 remittance advice notices provided by the pharmacy benefits manager as electronic  
24 files. The files may be modified only as necessary to comply with the federal Health  
25 Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the  
26 federal Health Information Technology for Economic and Clinical Health Act of 2009,  
27 Title XIII, Subtitle D, Public Law 111-5, and any regulations promulgated under those  
28 laws; and

29           D. Any other revenue and fees derived by the pharmacy benefits manager from the  
30 contract, including all direct or indirect remuneration from pharmaceutical  
31 manufacturers regardless of whether the remuneration is classified as a rebate, fee or  
32 other classification.

33           **Sec. 8. 24-A MRSA §4349-B, sub-§4,** as enacted by PL 2025, c. 487, §3 and  
34 reallocated by RR 2025, c. 1, Pt. A, §34, is amended to read:

35           **4. Nondisclosure and data use agreement.** A pharmacy benefits manager may  
36 require that the plan sponsor and the plan sponsor's designated business associate execute  
37 a nondisclosure and data use agreement that protects the confidentiality of the pharmacy  
38 benefits manager's trade secrets, proprietary information or information otherwise  
39 confidential by law, rule or regulation before data is provided in accordance with this  
40 section and that reasonably restricts the auditor's use of such data provided by the pharmacy  
41 benefits manager to the sole purpose of conducting an audit on behalf of a plan sponsor.  
42 The coverage limits of any cybersecurity insurance or liability insurance policy required  
43 under the nondisclosure and data use agreement may not exceed the pharmacy benefits  
44 manager's limit of liability under the services agreement between the plan sponsor and the  
45 pharmacy benefits manager, if such limit applies. Except for the coverage limits of any

1 cybersecurity insurance or liability insurance policy, this subsection is not intended to limit  
2 the inclusion in a nondisclosure and data use agreement of reasonable requirements  
3 regarding notice, indemnification or liability for the unauthorized disclosure or security  
4 breach of data in the possession of the plan sponsor or its designated business associate  
5 pursuant to this section. In addition, a pharmacy benefits manager is not required to provide  
6 data to an auditor selected by a plan sponsor if the auditor has previously breached a  
7 nondisclosure and data use agreement with that pharmacy benefits manager or refuses to  
8 execute a nondisclosure and data use agreement.

9 **Sec. 9. 24-A MRSA §4349-B, sub-§4-A** is enacted to read:

10 **4-A. Liability for disclosure of protected information.** A plan sponsor or a plan  
11 sponsor's designated business associate who receives information from a pharmacy benefits  
12 manager pursuant to this section shall notify the pharmacy benefits manager of any  
13 unauthorized disclosure or security breach of the following information in the possession  
14 of the plan sponsor or its designated business associate immediately upon discovery of the  
15 unauthorized disclosure or security breach of:

16 A. Personal information as defined in Title 10, section 1347, subsection 6;

17 B. Protected health information in violation of any applicable requirements of the  
18 federal Health Insurance Portability and Accountability Act of 1996, Public Law  
19 104-191, and any regulations promulgated under that law;

20 C. Electronic protected health information as defined in the federal Health Information  
21 Technology for Economic and Clinical Health Act of 2009, Title XIII, Subtitle D,  
22 Public Law 111-5, and any regulations promulgated under that law; or

23 D. Nonpublic information as defined in section 2263, subsection 10.

24 **Sec. 10. Effective date.** This Act takes effect July 1, 2026.

25 **Emergency clause.** In view of the emergency cited in the preamble, this legislation  
26 takes effect when approved.'

27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
28 number to read consecutively.

## 29 SUMMARY

30 This amendment replaces the bill, which is a concept draft, changes the title and adds  
31 an emergency preamble and an emergency clause. It clarifies current law to ensure that  
32 health insurers administering health plans on behalf of plan sponsors are considered  
33 administrators and must comply with a plan sponsor's statutory right to audit claims and  
34 data requests related to those audits. The amendment also clarifies the responsibilities of  
35 plan sponsors related to the security of data shared by an administrator for the purposes of  
36 an audit. The requirements take effect July 1, 2026.