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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
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 747, L.D. 1906, “An Act to Improve Accountability and Understanding of Data in Insurance Transactions”

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

'Sec. 1. 24-A MRSA §1914 is enacted to read:

§1914. Plan sponsor access to claims data; right to audit

1. High-cost claims data. Upon request of a plan sponsor that has certified its compliance with the use and disclosure requirements of 45 Code of Federal Regulations, Section 164.504(f), an administrator shall provide data on a high-cost claim so that a plan sponsor may perform an audit to ensure compliance with the plan sponsor's contract prior to payment of the high-cost claim. The data must include any itemized billing statements and medical records associated with the claim in the possession of the administrator or the administrator's agents. The plan sponsor or the plan sponsor's designee shall make a request for data on a high-cost claim within 2 business days of receipt of the claim and the administrator must provide the requested information within 30 business days of the request. For the purposes of this subsection, "high-cost claim" means any claim related to an individual provided health coverage by a plan sponsor that exceeds \$100,000.

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

A. Claims data received by the administrator via electronic claims transactions on any current standardized claim form approved by the Federal Government for professional

COMMITTEE AMENDMENT

1 services or institutional services. The form or transaction may be modified only as
2 necessary to comply with the federal Health Insurance Portability and Accountability
3 Act of 1996, Public Law 104-191;

4 B. Claims payments, electronic funds transfers or remittance advice notices provided
5 by the administrator as electronic files compliant with the federal Health Insurance
6 Portability and Accountability Act of 1996, Public Law 104-191, including, but not
7 limited to, electronic claims transactions for both the billed amount and the paid
8 amount for professional services and both the billed amount and the paid amount for
9 institutional services. The files may be modified only as necessary to comply with the
10 federal Health Insurance Portability and Accountability Act of 1996, Public Law
11 104-191, and the federal Health Information Technology for Economic and Clinical
12 Health Act of 2009, Title XIII, Subtitle D, Public Law 111-5, and any regulations
13 promulgated under those laws;

14 C. Any fees charged to the plan sponsor related to plan administration and claims
15 processing, including renegotiation fees, access fees, repricing fees or enhanced review
16 fees; and

17 D. Any out-of-network fees or out-of-network negotiated discounts, aligned incentive
18 program fees, pay-for-performance payments and recoveries, cost-containment
19 program fees, overpayment recovery program fees, subrogation fees and any other
20 special program fees and discounts.

21 **3. No conditions or fees on audit.** An administrator may not impose on a plan
22 sponsor:

23 A. Any fees relating to an audit request under this section that exceed the direct
24 expenses properly and actually incurred by the administrator to provide the data; or

25 B. Any conditions that would restrict a plan sponsor's right to conduct an audit under
26 this section, including, but not limited to, restrictions on:

27 (1) The time period covered by the audit, except that a request pursuant to this
28 section must be made within 24 months of the end of each plan year to be audited;

29 (2) The number of claims analyzed;

30 (3) The type of analysis conducted;

31 (4) The data elements used in the analysis;

32 (5) The means by which an auditor is compensated by a plan sponsor; or

33 (6) The plan sponsor's choice of auditor as long as the plan sponsor certifies that
34 the auditor has adequate conflict of interest protection provisions to prevent
35 conflicts of interest from adversely affecting the outcome of the audit.

36 **4. Nondisclosure and data use agreement.** An administrator may require that the plan
37 sponsor and the plan sponsor's designated business associate execute a nondisclosure and
38 data use agreement that reasonably restricts the auditor's use of data provided by the
39 administrator to the sole purpose of conducting an audit on behalf of a plan sponsor. The
40 coverage limits of any cybersecurity insurance or liability insurance policy required under
41 the nondisclosure and data use agreement may not exceed the administrator's limit of
42 liability under the services agreement between the plan sponsor and the administrator, if

1 such limit applies. In addition, an administrator is not required to provide data to an auditor
2 selected by a plan sponsor if the auditor has previously breached a nondisclosure and data
3 use agreement with that administrator or refuses to execute a nondisclosure and data use
4 agreement.

5 **5. Compliance with federal law.** Information provided by an administrator to a plan
6 sponsor in accordance with this section must comply with any applicable requirements of
7 the federal Health Insurance Portability and Accountability Act of 1996, Public Law
8 104-191, and the federal Health Information Technology for Economic and Clinical Health
9 Act of 2009, Title XIII, Subtitle D, Public Law 111-5, and any regulations promulgated
10 under those laws.

11 **6. Application.** An administrator may not enter into, issue, amend or renew any
12 contract or network services agreement with a plan sponsor on or after January 1, 2026 that
13 contains any provision that violates this section.

14 **7. Exclusive enforcement; violation.** Notwithstanding section 12-A, a violation of this
15 section is subject to exclusive enforcement under the Maine Unfair Trade Practices Act,
16 including any of the remedies provided for in the Act. A violation is committed each time
17 a prohibited act under this section occurs. Investigations of violations by administrators
18 may include a 3rd party that may possess evidence supporting such investigation.

19 **Sec. 2. 24-A MRSA §4347, sub-§18-A** is enacted to read:

20 **18-A. Plan sponsor.** "Plan sponsor" has the same meaning as in section 1901,
21 subsection 8, except that "plan sponsor" does not include an employer that offers or
22 provides a health plan that is insured by an insurer authorized to do business in this State.

23 **Sec. 3. 24-A MRSA §4349-A** is enacted to read:

24 **§4349-A. Plan sponsor access to claims data; right to audit**

25 **1. Prescription drug data.** Within 30 business days of a request from a plan sponsor
26 that has certified its compliance with the use and disclosure requirements of 45 Code of
27 Federal Regulations, Section 164.504(f), a pharmacy benefits manager shall provide data
28 to the plan sponsor regarding the actual amounts directly or indirectly paid by the pharmacy
29 benefits manager to a pharmacy or pharmacist on behalf of the plan sponsor for a
30 prescription drug and any dispensing fee for a prescription drug.

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

41 A. Rebate amounts, identified by the drug and therapeutic category, secured on
42 prescription drugs provided by a pharmaceutical manufacturer that are generated by

1 claims processed through the plan maintained by the plan sponsor and administered by
2 the pharmacy benefits manager;

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

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

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

21 **3. No conditions or fees on audit.** A pharmacy benefits manager may not impose on
22 a plan sponsor:

23 A. Any fees relating to an audit request under this section that exceed the direct
24 expenses properly and actually incurred by the pharmacy benefits manager to provide
25 the data; or

26 B. Any conditions that would restrict a plan sponsor's right to conduct an audit under
27 this section, including, but not limited to, restrictions on:

28 (1) The time period covered by the audit, except that any request pursuant to this
29 section must be made within 24 months of the end of each plan year to be audited;

30 (2) The number of claims analyzed;

31 (3) The type of analysis conducted;

32 (4) The data elements used in the analysis;

33 (5) The means by which an auditor is compensated by a plan sponsor; or

34 (6) The plan sponsor's choice of auditor as long as the plan sponsor certifies that
35 the auditor has adequate conflict of interest protection provisions to prevent
36 conflicts of interest from adversely affecting the outcome of the audit.

37 **4. Nondisclosure and data use agreement.** A pharmacy benefits manager may
38 require that the plan sponsor and the plan sponsor's designated business associate execute
39 a nondisclosure and data use agreement that reasonably restricts the auditor's use of data
40 provided by the pharmacy benefits manager to the sole purpose of conducting an audit on
41 behalf of a plan sponsor. The coverage limits of any cybersecurity insurance or liability
42 insurance policy required under the nondisclosure and data use agreement may not exceed

1 the pharmacy benefits manager's limit of liability under the services agreement between
2 the plan sponsor and the pharmacy benefits manager, if such limit applies. In addition, a
3 pharmacy benefits manager is not required to provide data to an auditor selected by a plan
4 sponsor if the auditor has previously breached a nondisclosure and data use agreement with
5 that pharmacy benefits manager or refuses to execute a nondisclosure and data use
6 agreement.

7 **5. Compliance with federal law.** Information provided by a pharmacy benefits
8 manager to a plan sponsor in accordance with this section must comply with any applicable
9 requirements of the federal Health Insurance Portability and Accountability Act of 1996,
10 Public Law 104-191, and the federal Health Information Technology for Economic and
11 Clinical Health Act of 2009, Title XIII, Subtitle D, Public Law 111-5, and any regulations
12 promulgated under those laws.

13 **6. Application.** An administrator or pharmacy benefits manager may not enter into,
14 issue, amend or renew any contract or network services agreement with a plan sponsor on
15 or after January 1, 2026 that contains any provision that violates this section.

16 **7. Exclusive enforcement; violation.** Notwithstanding section 12-A, a violation of
17 this section is subject to exclusive enforcement under the Maine Unfair Trade Practices
18 Act, including any of the remedies provided for in the Act. A violation is committed each
19 time a prohibited act under this section occurs. Investigations of violations by pharmacy
20 benefits managers may include a 3rd party that may possess evidence supporting such
21 investigation.'

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

24 SUMMARY

25 This amendment replaces the bill. The amendment requires administrators and
26 pharmacy benefits managers that provide health coverage or prescription drug coverage
27 under a contract with a plan sponsor, including any person that offers health coverage or
28 prescription drug coverage to its employees or members through a self-funded health
29 benefit plan, to provide certain claims information to a plan sponsor upon request. The
30 amendment also gives a plan sponsor the right to request an audit to ensure compliance
31 with a contract at least once every calendar year as long as the request is at least 6 months
32 after a previously requested audit.

33 The amendment does the following.

34 1. It clarifies that claim forms or electronic claims transactions may be modified only
35 as necessary to comply with the federal Health Insurance Portability and Accountability
36 Act of 1996 and the federal Health Information Technology for Economic and Clinical
37 Health Act of 2009.

38 2. It clarifies that data to be provided to a plan sponsor must be in the possession of
39 the administrator or its agents.

40 3. It authorizes a plan sponsor to request information related to a high-cost claim that
41 exceeds \$100,000 and provides that a high-cost claim is any claim that exceeds the
42 threshold.

