

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
S.P. 135 - L.D. 378

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

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,

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

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

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 plan's

designated business associate the following information specific to the plan ~~sponsor~~
sponsor's plans:

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

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

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

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

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

4. Nondisclosure and data use agreement. An administrator may require that the plan sponsor and the plan sponsor's designated business associate execute a nondisclosure and data use agreement that protects the confidentiality of the administrator's trade secrets, proprietary information or information otherwise confidential by law, rule or regulation before data is provided in accordance with this section and that reasonably restricts the auditor's use of such data provided by the administrator to the sole purpose of conducting an audit on behalf of a plan sponsor. The coverage limits of any cybersecurity insurance or liability insurance policy required under the nondisclosure and data use agreement may not exceed the administrator's limit of liability under the services agreement between the plan sponsor and the administrator, if such limit applies. Except for the coverage limits of any cybersecurity insurance or liability insurance policy, this subsection is not intended to limit the inclusion in a nondisclosure and data use agreement of reasonable requirements regarding notice, indemnification or liability for the unauthorized disclosure or security breach of data in the possession of the plan sponsor or its designated business associate pursuant to this section. In addition, an administrator is not required to provide data to an auditor selected by a plan sponsor if the auditor has previously breached a nondisclosure and data use agreement with that administrator or refuses to execute a nondisclosure and data use agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Claims data; right to audit. Notwithstanding section 4350-C, a pharmacy benefits manager that contracts with a plan sponsor to provide prescription drug coverage shall permit a plan sponsor to perform a post-payment audit of 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, a pharmacy benefits manager shall disclose within 30 business days to a plan sponsor who 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 plan's~~ designated business associate the following information specific to the ~~plan sponsor's~~ sponsor's plans:

- A. Rebate amounts, identified by the drug and therapeutic category, secured on prescription drugs provided by a pharmaceutical manufacturer that are generated by claims processed through the plan maintained by the plan sponsor and administered by the pharmacy benefits manager;
- B. Prescription drug and device claims received by the pharmacy benefits manager via electronic claims transactions on any current standardized claim form approved by the Federal Government for these services. The form or transaction may be modified only as necessary to comply with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the federal Health Information Technology for Economic and Clinical Health Act of 2009, Title XIII, Subtitle D, Public Law 111-5, and any regulations promulgated under those laws;
- C. Prescription drug and device claims payments, electronic funds transfers or remittance advice notices provided by the pharmacy benefits manager as electronic files. The files may be modified only as necessary to comply with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the federal Health Information Technology for Economic and Clinical Health Act of 2009, Title XIII, Subtitle D, Public Law 111-5, and any regulations promulgated under those laws; and
- D. Any other revenue and fees derived by the pharmacy benefits manager from the contract, including all direct or indirect remuneration from pharmaceutical manufacturers regardless of whether the remuneration is classified as a rebate, fee or other classification.

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

4. Nondisclosure and data use agreement. A pharmacy benefits manager may require that the plan sponsor and the plan sponsor's designated business associate execute a nondisclosure and data use agreement that protects the confidentiality of the pharmacy benefits manager's trade secrets, proprietary information or information otherwise confidential by law, rule or regulation before data is provided in accordance with this section and that reasonably restricts the auditor's use of such data provided by the pharmacy benefits manager to the sole purpose of conducting an audit on behalf of a plan sponsor. The coverage limits of any cybersecurity insurance or liability insurance policy required under the nondisclosure and data use agreement may not exceed the pharmacy benefits manager's limit of liability under the services agreement between the plan sponsor and the pharmacy benefits manager, if such limit applies. Except for the coverage limits of any cybersecurity insurance or liability insurance policy, this subsection is not intended to limit the inclusion in a nondisclosure and data use agreement of reasonable requirements regarding notice, indemnification or liability for the unauthorized disclosure or security breach of data in the possession of the plan sponsor or its designated business associate pursuant to this section. In addition, a pharmacy benefits manager is not required to provide data to an auditor selected by a plan sponsor if the auditor has previously breached a nondisclosure and data use agreement with that pharmacy benefits manager or refuses to execute a nondisclosure and data use agreement.

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

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

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

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

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

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

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

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