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## HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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### 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**

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.

**(See attached)**