



Janet T. Mills
Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
BUREAU OF INSURANCE



Timothy N. Schott
Acting Superintendent

Anne L. Head
DPFR Commissioner

May 22, 2023

Senator Anne Carney, Senate Chair
Representative Matt Moonen, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Re: L.D. 1902, An Act to Protect Personal Health Data

Dear Senator Carney, Representative Moonen, and Members of the Committee:

The Bureau of Insurance supports the L.D. 1902's goal of protecting consumers' health care information but opposes the bill to the extent that it could conflict with consumer health information protections that already exist in Title 24-A, Chapter 24, the Insurance Information and Privacy Protection Act.

L.D. 1902 establishes consumers' rights to their health data and defines the obligations of regulated entities that collect, use, and share consumer health data. The bill defines a "regulated entity" to be any entity that does business in Maine or targets Maine consumers and collects, shares or sells consumer health data or determines the purpose and means of processing consumer health data." Prohibitions include selling consumer health data and erecting a geofence around certain health care entities. There is a private right of action and enforcement by the Office of the Attorney General. Violations are enforceable under the Maine Unfair Trade Practices Act. The bill would not apply to government agencies or to health care information subject to HIPAA and HITECH confidentiality requirements or to specified federal and state health care provider confidentiality laws.

The HIPAA/HITECH exemption at proposed 10 M.R.S. § 1350-X is broad but has implications for the Title 24-A law mentioned above. The Insurance Information and Privacy Protection Act establishes standards for collecting, using, and disclosing information relating to insurance transactions. This Act provides for limited private actions against insurance entities and criminal penalties. Because the Superintendent enforces Title 24-A we would recommend proposing an exception for consumer health data covered by the Insurance Information and Privacy Protection Act, should the Committee decide to move this bill forward.

We would be glad to work with the sponsor to come up with appropriate language.

Sincerely,

Timothy N. Schott
Acting Superintendent

Cc: Representative Margaret O'Neil

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