

MAINE ASSOCIATION
OF
HEALTH PLANS

October 17, 2023

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

Neither For Nor Against
L.D. 1977, An Act to Create the Data Privacy and Protection Act
L.D. 1902, An Act to Protect Personal Health Data

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

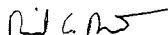
The Maine Association of Health Plans consists of licensed health insurance carriers operating in Maine and providing or administering coverage for approximately 600,000 Mainers. We appreciate this opportunity to be heard on L.D. 1977, An Act to Create the Data Privacy and Protection Act and L.D. 1902, An Act to Protect Personal Health Data.

Health insurers are heavily regulated in their use of personally identifiable information and personal health information. The Maine Bureau of Insurance enforces Maine's existing Insurance Information and Privacy Protection Act found in Title 24-A, Chapter 24. Acting Superintendent Timothy Schott notes in a May 22, 2023, letter to the Committee that provisions of L.D. 1902 could conflict with existing law.

We urge the Committee to include the Bureau's proposed exception for consumer health data covered by the Insurance Information and Privacy Protection Act if it decides to move forward with these bills.

Thank you for your consideration.

Sincerely,



Dan Demeritt
Executive Director



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



Janet T. Mills
Governor

Anne L. Head
DPFR Commissioner

Timothy N. Schott
Acting Superintendent

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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