

§8705-A. Enforcement**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

(TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2013, c. 528, §12) The board shall adopt rules to ensure that payors, providers, prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers file data as required by section 8704, subsection 1; that users that obtain health data and information from the organization safeguard the identification of patients and health care practitioners as required by section 8707, subsections 1 and 3; and that payors, providers, prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers pay all assessments as required by section 8706, subsection 2. [PL 2019, c. 470, §3 (AMD).]

(TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) The board shall adopt rules to ensure that payors, providers, prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers file data as required by section 8704, subsection 1; that users that obtain health data and information from the organization safeguard the identification of patients and health care practitioners as required by section 8714, subsections 2, 3 and 4; and that payors, providers, prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers pay all assessments as required by section 8706, subsection 2. [PL 2019, c. 470, §4 (AMD).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following definitions of "intentionally" and "knowingly" apply to this section.

A. A person acts intentionally with respect to a result of that person's conduct when it is that person's conscious object to produce such a result. [PL 2003, c. 659, §2 (NEW).]

B. A person acts knowingly with respect to a result of that person's conduct when the person is aware that it is practically certain that that person's conduct will cause such a result. [PL 2003, c. 659, §2 (NEW).]

[PL 2003, c. 659, §2 (NEW).]

2. Rulemaking. The board shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The rules may contain procedures for monitoring compliance with this chapter. Rules adopted pursuant to this subsection must include a schedule of fines for:

A. Failure to file data; [PL 2003, c. 659, §2 (NEW).]

B. Failure to pay assessments; and [PL 2003, c. 659, §2 (NEW).]

C. Intentionally or knowingly and without authorization using or disseminating health care information that directly or indirectly identifies patients or health care practitioners performing abortions as defined in section 1596. [PL 2003, c. 659, §2 (NEW).]

[PL 2003, c. 659, §2 (NEW).]

3. (TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2013, c. 528, §12) Fines. The following provisions apply to enforcement actions under this section except for circumstances beyond a person's or entity's control.

A. When a person or entity that is a health care facility, payor, prescription drug manufacturer, wholesale drug distributor or pharmacy benefits manager violates the requirements of this chapter, except for section 8707, that person or entity commits a civil violation for which a fine of not more than \$1,000 per day may be adjudged. A fine imposed under this paragraph may not exceed \$25,000 for any one occurrence. [PL 2019, c. 470, §5 (AMD).]

B. A person or entity that receives data or information under the terms and conditions of section 8707 and intentionally or knowingly uses, sells or transfers the data in violation of the board's rules

for commercial advantage, pecuniary gain, personal gain or malicious harm commits a civil violation for which a fine not to exceed \$500,000 may be adjudged. [PL 2005, c. 565, §6 (AMD).]

C. A person or entity not covered by paragraph A or B that violates the requirements of this chapter, except for section 8707, commits a civil violation for which a fine of not more than \$100 per day may be adjudged. A fine imposed under this paragraph may not exceed \$2,500 for any one occurrence. [PL 2003, c. 659, §2 (NEW).]

[PL 2019, c. 470, §5 (AMD).]

3. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2013, c. 528, §12) Fines. The following provisions apply to enforcement actions under this section except for circumstances beyond a person's or entity's control.

A. When a person or entity that is a health care facility, payor, prescription drug manufacturer, wholesale drug distributor or pharmacy benefits manager violates the requirements of this chapter, except for section 8714, that person or entity commits a civil violation for which a fine of not more than \$1,000 per day may be adjudged. A fine imposed under this paragraph may not exceed \$25,000 for any one occurrence. [PL 2019, c. 470, §6 (AMD).]

B. A person or entity that receives data or information under the terms and conditions of section 8714 and intentionally or knowingly uses, sells or transfers the data in violation of the board's rules for commercial advantage, pecuniary gain, personal gain or malicious harm commits a civil violation for which a fine not to exceed \$500,000 may be adjudged. [PL 2013, c. 528, §7 (AMD); PL 2013, c. 528, §12 (AFF).]

C. A person or entity not covered by paragraph A or B that violates the requirements of this chapter, except for section 8714, commits a civil violation for which a fine of not more than \$100 per day may be adjudged. A fine imposed under this paragraph may not exceed \$2,500 for any one occurrence. [PL 2013, c. 528, §7 (AMD); PL 2013, c. 528, §12 (AFF).]

[PL 2019, c. 470, §6 (AMD).]

4. Enforcement action. Upon a finding that a person or entity has failed to comply with the requirements of this chapter, including the payment of a fine determined under this section, the board may undertake any or all of the following.

A. The board may refer the matter to the department or board that issued a license to the provider for such action as the department or board considers appropriate. [PL 2003, c. 659, §2 (NEW).]

B. The board may refer the matter to the Department of Professional and Financial Regulation, Bureau of Insurance for such action against the payor as the bureau considers appropriate. [PL 2003, c. 659, §2 (NEW).]

C. The board may file a complaint with the Superior Court in the county in which the person resides or the entity is located or in Kennebec County seeking an order to require that person or entity to comply with the requirements of this chapter, seeking enforcement of a fine determined under this section or seeking other relief from the court. [PL 2003, c. 659, §2 (NEW).]

[PL 2003, c. 659, §2 (NEW).]

5. Injunctive relief. In the event of any violation of this chapter or any rule adopted pursuant to this chapter, the Attorney General may seek to enjoin a further violation and seek any other appropriate remedy provided by this chapter.

[PL 2003, c. 659, §2 (NEW).]

6. Exception.

[PL 2009, c. 613, §7 (NEW); MRSA T. 22 §8705-A, sub-§6 (RP).]

SECTION HISTORY

PL 2003, c. 659, §2 (NEW). PL 2005, c. 565, §6 (AMD). PL 2007, c. 136, §4 (AMD). PL 2009, c. 613, §7 (AMD). PL 2013, c. 528, §§6, 7 (AMD). PL 2013, c. 528, §12 (AFF). PL 2019, c. 470, §§3-6 (AMD).

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