

Chapter 100: ENFORCEMENT PROCEDURES

SUMMARY: As required under 22 M.R.S.~~A.~~ §8705-A, this Chapter establishes a schedule of fines and other enforcement actions for failure to file clinical, quality, financial, ~~and restructuring,~~ health care claims and prescription drug price data; failure to pay the annual assessment; and for intentional or knowing failure to protect the disclosure of confidential or privileged data.

1. **Applicability.** This rule is applicable to all activities and processes described under 22 M.R.S.~~A.~~ Chapter 1683 including but not limited to the activities required of health care providers, payers, other persons and/or data users in the filing, acquisition, and use of Maine Health Data Organization data.

2. **Definitions.**
 - A. **Carrier.** "Carrier" means an insurance company licensed in accordance with 24-A M.R.S.A., including a health maintenance organization, a multiple employer welfare arrangement licensed pursuant to Title 24-A, chapter 81, a preferred provider organization, a fraternal benefit society, or a nonprofit hospital or medical service organization or health plan licensed pursuant to 24 M.R.S.~~A.~~ An employer exempted from the applicability of 24-A M.R.S.~~A.~~, chapter 56-A under the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461 (1988) is not considered a carrier.

 - B. **Entity.** "Entity" means an assessed, commercial, educational, or non-profit entity as defined by the MHDO Prices for Data Sets, Fees for Programming and Report Generation, and Duplication Rates Rule (90-590 C.M.R. Chapter 50).

 - C. **Health care facility.** "Health care facility" means a public or private, proprietary or not-for-profit entity or institution providing health services including, but not limited to an independent radiological services center licensed under 22 M.R.S.~~A.~~, chapter 160, a health care facility licensed under 22 M.R.S.~~A.~~, chapter 405 or certified under chapter 405-D, a rural health clinic certified by the Division of Licensing and Certification within the Department of Human Services, a home health care provider licensed under 22 M.R.S.~~A.~~, chapter 419, a hospice provider licensed under 22 M.R.S.~~A.~~, chapter 1681, a community rehabilitation program licensed under 20-A M.R.S.~~A.~~, chapter 701, a state institution as defined under 34-B M.R.S.~~A.~~, chapter 1 and a mental health facility licensed under 34-B M.R.S.~~A.~~, chapter 1.

 - D. **Health care practitioner.** "Health care practitioner" means physicians and all others certified, registered or licensed in the healing arts, including but not limited to, nurses, podiatrists, optometrists, chiropractors, physical therapists, dentists, psychologists and physicians' assistants as defined in 24 M.R.S.~~A.~~, chapter 21. "Health care practitioner"

also includes licensed clinical social workers as defined in 32 M.R.S.~~A.~~, chapter 83 and marriage and family therapists and licensed clinical professional counselors as defined in 32 M.R.S.~~A.~~, chapter 119.

- E. **Health care provider.** "Health care provider" means a health care facility, health care practitioner, health product manufacturer, health product vendor or pharmacy.
- F. **Hospital.** "Hospital" means any acute care institution required to be licensed pursuant to 22 M.R.S.~~A.~~, chapter 405.
- ~~G.~~ **Manufacturer.** **"Manufacturer" means a manufacturer of prescription drugs that are distributed in the State.**
- ~~GH.~~ **MHDO.** "MHDO" means the Maine Health Data Organization ~~or its predecessor agencies.~~
- ~~H.~~ **M.R.S.~~A.~~** "M.R.S.~~A.~~" means Maine Revised Statutes Annotated.
- ~~I.~~ **Parent entity.** "Parent entity" means the organization or corporation that has control, directly or indirectly through majority ownership, affiliation, contract or membership of a hospital and/or any affiliated health care facility. A parent entity may be an individual hospital or, as a parent of a health care facility, considered a health care facility.
- ~~JK.~~ **Payer.** "Payer" means a third-party payer or third-party administrator.
- ~~KL.~~ **Person.** "Person" means an individual, trust, estate, partnership, corporation including associations, joint stock companies and insurance companies, the State or any political subdivision or instrumentality, including a municipal corporation of the State, or any other legal entity recognized by State law.
- ~~M.~~ **Pharmacy Benefits Manager (PBM).** **"Pharmacy benefits manager (PBM)" means an entity that performs pharmacy benefits management, as defined in 24-A M.R.S. §1913.**
- ~~LN.~~ **Third-party administrator.** "Third-party administrator" means any person who, on behalf of a plan sponsor, health care service plan, nonprofit hospital or medical service organization, health maintenance organization or insurer, receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State.
- ~~MO.~~ **Third-party payer.** "Third-party payer" means a health insurance carrier, nonprofit hospital, medical services organization, or managed care organization licensed in the State of Maine. "Third-party payer" does not include carriers licensed to issue limited benefit health policies or accident, specified disease, vision, disability, long-term care or nursing home care policies.
- ~~P.~~ **Wholesale drug distributor.** **"Wholesale drug distributor" means an entity licensed by the State to engage in the sale of prescription drugs to persons other than a consumer or patient.**

3. Penalties—; fines.

The MHDO Board may assess fines pursuant to 22 M.R.S. ~~A.~~ § 8705-A in accordance with the following schedules:

A. A hospital that fails to file inpatient and outpatient service data and/or to meet the standards for data and the provisions for compliance as set forth in 90-590 C.M.R Chapter 241 is considered in civil violation under 22 M.R.S. ~~A.~~ §8705-A for which fines may be adjudged as follows:

1. \$100 per day for the first week of non-compliance;
2. \$250 per day for the second week of non-compliance;
3. \$500 per day for the third week of non-compliance; and
4. \$1,000 per day for the fourth week of non-compliance and each week thereafter, not to exceed a maximum of \$25,000 per any one occurrence.

B. A payer that fails to file health care claims data and/or to meet the standards for data and the provisions for compliance as set forth in 90-590 C.M.R Chapter 243 is considered in civil violation under 22 M.R.S. ~~A.~~ §8705-A for which fines may be adjudged as follows:

1. \$100 per day for the first week of non-compliance;
2. \$250 per day for the second week of non-compliance;
3. \$500 per day for the third week of non-compliance; and
4. \$1,000 per day for the fourth week of non-compliance and each week thereafter, not to exceed a maximum of \$25,000 per any one occurrence.

C. A payer or health care provider, excluding health care practitioners, that fails to file quality data and/or to meet the standards for data and the provisions for compliance as set forth in 90-590 C.M.R Chapter 270 is considered in civil violation under 22 M.R.S. ~~A.~~ §8705-A for which fines may be adjudged as follows:

1. \$100 per day for the first week of non-compliance;
2. \$250 per day for the second week of non-compliance;
3. \$500 per day for the third week of non-compliance; and
4. \$1,000 per day for the fourth week of non-compliance and each week thereafter, not to exceed a maximum of \$25,000 per any one occurrence.

A health care practitioner that fails to file quality data and/or to meet the standards for data and the provisions for compliance as set forth in 90-590 C.M.R Chapter 270 is considered in civil violation under 22 M.R.S. ~~A.~~ §8705-A for which fines may be adjudged as follows:

1. \$50 per day for the first week of non-compliance;
2. \$75 per day for the second week of non-compliance;
3. \$100 per day for the third week of non-compliance; and each week thereafter, not to exceed a maximum of \$2,500 per any one occurrence.

D. A parent entity, health care facility, and/or hospital that fails to file financial data ~~within five months of the close of its individual fiscal year and/or to meet the standards for data and the provisions for compliance~~ as set forth in 90-590 C.M.R Chapter 300, is considered in civil violation under 22 M.R.S. ~~A~~ Sec. 8705-A for which fines may be adjudged as follows:

1. \$100 per day for the first week of non-compliance;
2. \$250 per day for the second week of non-compliance;
3. \$500 per day for the third week of non-compliance; and
4. \$1,000 per day for the fourth week of non-compliance and each week thereafter, not to exceed a maximum of \$25,000 per any one occurrence.

E. A prescription drug manufacturer, wholesale drug distributor or PBM that fails to file prescription drug price data and/or to meet the standards for data and the provisions for compliance as set forth in 90-590 C.M.R Chapter 570 Section 2 is considered in civil violation under 22 M.R.S. §8705-A for which fines may be adjudged as follows:

1. \$100 per day for the first week of non-compliance;
2. \$250 per day for the second week of non-compliance;
3. \$500 per day for the third week of non-compliance; and
4. \$1,000 per day for the fourth week of non-compliance and each week thereafter, not to exceed a maximum of \$25,000 per any one occurrence.

F. A prescription drug manufacturer, wholesale drug distributor or PBM that fails to file prescription drug price data and/or to meet the standards for data and the provisions for compliance as set forth in 90-590 C.M.R Chapter 570 Section 4 is considered in civil violation under 22 M.R.S. §8705-A for which a fine of \$30,000 may be adjudged for each day of the violation.

1. **Certification of Accuracy.** A notification or report to the MHDO by a reporting entity shall include a signed, written certification of the notification or report's accuracy.
2. **Audit.** With a 30-day notice, the MHDO may audit the finalized data submitted by a reporting entity, and that entity shall pay for the costs of the audit.

3. **Corrective Action Plan.** The MHDO may require a reporting entity to develop a corrective action plan to correct any deficiencies in compliance discovered during an audit.

~~E. A health care facility, parent entity, or payer that fails to submit restructuring information as set forth in 90-590 C.M.R Chapter 630, is considered in civil violation under 22 M.R.S.A. Sec. 8705-A for which fines may be adjudged as follows:~~

~~1. \$100 per day for the first week of non-compliance;~~

~~2. \$250 per day for the second week of non-compliance;~~

~~3. \$500 per day for the third week of non-compliance; and~~

~~4. \$1,000 per day for the fourth week of non-compliance and each week thereafter, not to exceed a maximum of \$25,000 per any one occurrence.~~

GF. A health care facility, ~~or~~ payer, prescription drug manufacturer, wholesale drug distributor or PBM that fails to pay the annual assessment levied for the operational costs of the MHDO as set forth in 90-590 C.M.R Chapter 10, is considered in civil violation under 22 M.R.S.A. §8705-A for which fines may be adjudged at \$1,000 per day of non-compliance, not to exceed a maximum of \$25,000 per any one occurrence.

HG. Any person or entity, as defined under section 2, that receives data or information pursuant to 90-590 C.M.R Chapter 120, and intentionally or knowingly uses, sells or transfers the data in violation of the rules for commercial advantage, pecuniary gain, personal gain or malicious harm is considered in civil violation under 22 M.R.S.A., §8705-A for which a fine not to exceed \$500,000 may be adjudged.

The MHDO Board may, in its discretion, suspend, in whole or in part, any of the above-mentioned fines.

4. Additional disciplinary action.

Upon a finding that a person or entity has failed to comply with the requirements of 22 M.R.S.A., Chapter 1683 and any rules adopted by the MHDO Board, the Board may undertake any or all of the following:

- A. 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.
- B. Refer the matter to the Department of Professional and Financial Regulation, Bureau of Insurance for such action against the payer as the bureau considers appropriate.
- C. 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 in non-compliance to comply with the requirements for which adjudication is being

sought, and for the enforcement of any fine determined by the Board or for other relief from the court.

5. Injunctive relief.

In the event of any violation of 22 M.R.S.~~A.~~, Chapter 1683 and any rules adopted by the MHDO Board, the Attorney General may seek to enjoin a further violation and seek any other appropriate remedy provided by this Chapter.

6. Petition for review; fair hearing; judicial review.

Any person affected by any determination made under this rule by the MHDO may petition the MHDO Board for review of the decision. The petition must be filed within fifteen business days, in accordance with 5 M.R.S.~~A.~~ Chapter 375.

STATUTORY AUTHORITY: 22 M.R.S.~~A.~~ §8705-A

EFFECTIVE DATE:
May 1, 2000

NON-SUBSTANTIVE CORRECTIONS:
November 26, 2000 - Sections 5 and 6 renumbered to 4 and 5

AMENDED:
August 6, 2005 – filing 2005-277
July 29, 2007 - filing 2007-277, major substantive