

MAINE STATE LEGISLATURE

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OF R.

STATE OF MAINE
SENATE
108TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 205, L.D. 727, Bill, "AN ACT to Implement the Recommendations of the Pomeroy Commission on Medical and Hospital Malpractice Insurance."

Amend the bill by inserting after the enacting clause the following:

'Sec. 1. 14 MRSA §853 is amended to read:

§853. Persons under disability may bring action when disability removed

If a person entitled to bring any of the actions under sections 752 to 754, 851 and, 852 and Title 24, section 2902 is a minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed.'

Further amend the bill in the first line after the enacting clause by inserting at the beginning 'Sec. 2.'

Further amend the bill in that part designated "§2505." by inserting after the last sentence the following:

'The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.'

Further amend the bill by striking out all of that part designated "§2506." and inserting in its place the following:

'§2506. Provider reports

A health care provider shall, within 60 days, report in writing to the appropriate board the name of any member of the medical staff or any other physician practicing in the facility whose privileges have been revoked, limited or terminated, or who has been otherwise formally disciplined by the provider or the provider's medical staff, together with pertinent information relating to such action, if such revocation, limitation, termination or discipline is the result of negligence, habitual drunkenness, addiction to the use of drugs, professional incompetence or repeated acts of professional incompetence. Any reversal, modification or change of action reported pursuant to this section shall be reported immediately to the board together with a brief statement of the reasons for such reversal, modification or change. The failure of any such health care provider to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.'

Further amend the bill by striking out all of that part designated "§2507." and inserting in its place the following:

'§2507. Society reports

Any professional society within this State which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, moral turpitude, or drug or alcohol abuse shall, within 60 days of the action, report in writing to the appropriate board the name of the member, together with pertinent information relating to the action. The failure of any such society to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.'

Further amend the bill in that part designated "§2509." in subsection 7 in the first and 7th lines (first and 6th lines in L.D.) by striking out the underlined figure "2" and inserting in its place the underlined figure '5'

Further amend the bill in that part designated "§2510." by striking out the ^{first paragraph of} subsection 1 and inserting in its place the following:

'1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from re-

ports or records received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only.'

Further amend the bill in that part designated "§2510." by striking out all of subsection 2 and inserting in its place the following:

'2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.'

Further amend the bill in that part designated "§2510." by striking out all of subsection 4 and inserting in its place the following:

'4. Penalty. Any person who unlawfully discloses such / ^{confidential} information possessed by the board shall be guilty of a class E crime.'

Further amend the bill in that part designated "§2604." by striking out all of the 2nd and 3rd sentences and inserting in their place the following:

'The superintendent shall maintain the reports filed in accordance with this section, and all data or information derived therefrom that identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made, as strictly confidential records. Data and information derived from reports filed in accordance with this section that do not identify or permit identification of the insured or insureds or

the incident or occurrence for which a claim was made may be released by the Superintendent or otherwise made available to the public.'

Further amend the bill in that part designated "§2702." in subsection 1 in paragraph C by striking out all of the first sentence and inserting in its place the following:

'An agreement executed pursuant to this subsection may be revoked by the person receiving health care or treatment within 30 days of discharge by or departure from the health care provider and shall be deemed to have been revoked by the person's death occurring within the period of revocability.'

Further amend the bill in that part designated "§2702." in subsection 1 in paragraph C by striking out all of the 3rd sentence and inserting in its place the following:

'Revocation shall be effected by written notice to the health care provider delivered, properly addressed, by certified mail.'

Further amend the bill in that part designated "§2702." in subsection 2 in paragraph A by inserting at the end the following paragraph:

'UNLESS YOU ARE PARTY TO AN EXISTING ARBITRATION AGREEMENT IN CONNECTION WITH MEMBERSHIP IN A NONPROFIT HOSPITAL OR MEDICAL SERVICE ORGANIZATION, YOU MAY CANCEL THIS AGREEMENT WITHIN 60 DAYS OF YOUR SIGNING IT. TO EFFECT SUCH CANCELLATION, YOU MUST NOTIFY (Name and address of physician) IN WRITING BY CERTIFIED MAIL.'

Further amend the bill in that part designated "§2702." in subsection 2 by striking out all of paragraph B and inserting in its place the following:

'B. An agreement executed pursuant to this subsection may be revoked by the person receiving health care or treatment within 60 days of the date of execution of the agreement and shall be deemed to have been revoked by the person's death occurring within the period of revocability. Such an agreement may be revoked by the physician within 60 days of the date of execution of the agreement. No agreement may be revoked after commencement of arbitration proceedings. Revocation shall be effected by written notice to the other party, delivered, properly addressed, by certified mail.'

This paragraph shall not preclude the inclusion of irrevocable provisions for arbitration pursuant to this chapter in contracts of nonprofit hospital or medical service organizations with their members or hospitals.'

Further amend the bill by striking out all of that part designated "§2705." and inserting in its place the following:

'§2705. Arbitrators

1. Panel of arbitrators; membership; selection. An arbitration under this chapter shall be heard by a panel of 3 arbitrators. Within 5 days of the commencement of arbitration proceedings, the patient shall select one arbitrator and the health care provider or physician or both shall select one arbitrator. The parties shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from such request, agree upon and select and name a neutral arbitrator. If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within that 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator. As soon as possible after receipt of such request, the neutral arbitrator will be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making such selection.

2. Agreements of parties concerning arbitrators. Notwithstanding subsection 1, the parties may agree upon arbitrators or any method of selecting arbitrators or the number of arbitrators, provided the agreement is made after the commencement of arbitration proceedings.'

OF R.

Further amend the bill in that part designated "§2706." by striking out all of subsection 1 and inserting in its place the following:

'1. Depositions; discovery. After the selection of the panel of arbitrators, the parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration and, to that end, use and exercise the same rights, remedies and procedures, and be subject to the same duties, liabilities and obligations in the arbitration with respect to the subject matter thereof, as if the subject matter of the arbitration were pending in a civil action in the Superior Court.'

Further amend the bill in that part designated "§2707." in subsection 4 in the first sentence by striking out the underlined words "a party to the proceeding and may" and inserting in their place the underlined words 'a party, and may'

Further amend the bill by striking out all of that part designated "§2713."

Further amend the bill by renumbering that part designated "§2714." to be '§2713.'

Further amend the bill in that part designated "§2802." by striking out all of subsection 1 and inserting in its place the following:

'1. Membership. There is created and established a panel of 18 persons of whom 6 shall be attorneys admitted to practice in this State, 6 shall be physicians licensed by the Board of Osteopathic Examination and Registration and 6 shall be physicians licensed by the Board of Registration in Medicine. The panel shall be known as the Professional Malpractice Advisory Panel. The chairman of the panel shall be an attorney-member elected by the vote of a majority of the panel members.'

Further amend the bill in that part designated "\$2902." in the 2nd line (same in L.D.) by inserting after the underlined word "against" the underlined words, figures and punctuation 'any nurse licensed under Title 32, chapter 31.'

Statement of Fact

The amendment contains several substantive and technical changes to the bill.

The new Section 1 includes a reference to the new statute of limitations for certain malpractice claims within a general provision which covers several similar statutes and provides that the time periods in these statutes do not run in specified circumstances. The omission of such a reference was an oversight in the bill.

The amendments to / ^{sections} 2505, 2506 and 2507 clarify the wording of these sections and add civil penalties for failure to make the required reports of incidents of malpractice.

R. The amendment to /2509, ^{section} / ^{subsection} 7, allows records of information on which no action is taken to be destroyed by the appropriate medical board only after 5 years, not 2 years as in the bill.

The amendments to /2510, ^{section} / ^{subsections} 1 and 2, and to /2604 ^{section} clarify and slightly limit the provisions on confidentiality of those reports, of action of the medical boards on such reports and of the records of the Superintendent of Insurance on such cases.

The amendment to /2510, ^{section} / ^{subsection} 4, corrects the wording.

The provision on revocation of arbitration agreements (between patients and hospitals), in section 2702, ^{subsection 1, paragraph C,} / is amended to provide that death within the period of revocability automatically revokes an arbitration agreement. The wording on delivery of notice of revocation in the same paragraph is clarified. Similar changes are contained in the new version of /2702, ^{section} / ^{subsection} 2.

Section ^{subsection} /2702, / 2, is amended to provide that arbitration agreements between patient and physician may be revoked within 60 days of signing, a major change from the bill which did not allow for revocation of these agreements.

Sections ^{subsection} /2705 and 2706, / 1, are revised to provide a different method of selection of arbitrators, based on labor arbitration agreements.

sections
The amendments to /2707, 2713 and 2802 are intended to clarify
the wording.

Section
/2902, the statute of limitations for hospitals and employees,
is amended to include nurses. Their status under the existing mal-
practice statute of limitations and under this provision when they
are not acting as hospital employees is unclear.

Reported by the Committee on Judiciary.

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