

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
SECOND REGULAR SESSION

(Filing No. H-1120)

COMMITTEE AMENDMENT " A " to H.P. 1964, L.D. 2051, Bill,
"AN ACT to Lower the Costs of Medical Malpractice Arbitration."

Amend the Bill by striking out all of the emergency
preamble.

Further amend the Bill in section 1 in the 7th line (6th and
7th lines in L.D.) by striking out the following: "~~A-PANEL-OF
ARBITRATORS AN ARBITRATOR~~" and inserting in its place the
following: 'AN ARBITRATOR OR A PANEL OF ARBITRATORS'

Further amend the Bill in section 2 in the 7th and 8th lines
(6th line in L.D.) by striking out the following: "~~A-PANEL-OF
ARBITRATORS AN ARBITRATOR~~" and inserting in its place the
following: 'AN ARBITRATOR OR A PANEL OF ARBITRATORS'

Further amend the Bill by striking out all of section 4 and
inserting in its place the following:

'Sec. 4. 24 MRSA §2705, as enacted by PL 1977, c. 492,
§3, is repealed and the following enacted in its place:
§2705. Arbitrators

1. Claim of \$40,000 or less. When the claim or potential
claim in the demand for arbitration is \$40,000 or less, an
arbitration shall be heard by a neutral arbitrator. Within 5 days
of the commencement of arbitration proceedings, the patient shall
agree in writing with the health care provider or physician, or
both, upon the selection of a neutral arbitrator, and the

agreement shall state the name and address of the person so selected. If, within 10 days from the commencement of arbitration proceedings, the parties do not agree upon the selection of a neutral arbitrator, either party may request the American Arbitration Association to assist in selection of or to select the neutral arbitrator. As soon as possible after the receipt of this request, the neutral arbitrator shall be selected in accordance with the provisions of subsection 3 and the rules and procedures prescribed by the American Arbitration Association for making such a selection.

2. Claim of more than \$40,000. When the claim or potential claim in the demand for arbitration is more than \$40,000, an arbitration 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 names shall, within 10 days from the 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 assist in selection of or to select the neutral arbitrator. As soon as possible after receipt of that request, the neutral arbitrator shall be selected in accordance with the provisions of subsection 3 and the rules and procedures prescribed by the American Arbitration Association for making that selection.

3. Neutral arbitrator; method of selection. If the American Arbitration Association is requested to assist in selection of or to select a neutral arbitrator, the following procedure shall apply.

A. The association shall send simultaneously to each party an identical list of 5 neutral arbitrator candidates, together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference and return the list to the association. When the lists are returned, they shall be compared by the association and the first mutually agreeable candidate shall be invited to serve.

B. If no mutually agreed upon neutral arbitrator is selected, then a 2nd list shall be sent in the same manner.

C. If no mutually agreed upon neutral arbitrator is selected from the 2nd list, then a 3rd list shall be sent to each party. Beginning with the physician or health care provider and alternating between the parties, one party shall strike one name from the list and return the list to the Association. The Association shall then send the list, including the struck out names, to the other party, who shall strike out one name. When only one name remains on the list, that person shall be appointed as the neutral arbitrator.

4. Agreements of parties concerning arbitrators.

Notwithstanding the other provisions of this section, 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.'

Further amend the Bill in section 5 in subsection 1 in the 2nd line (1st and 2nd lines in L.D.) by striking out the following: "~~panel-of-arbitrators~~ neutral arbitrator" and inserting in its place the following: 'neutral arbitrator or panel of arbitrators'

Further amend the Bill in section 5 in subsection 2 in the first line (same in L.D.) by striking out the following: "~~panel~~ neutral arbitrator" and inserting in its place the following 'neutral arbitrator or panel'

Further amend the Bill in section 6 in paragraph A in the 3rd line (2nd line in L.D.) by striking out the following: "~~panel~~ neutral arbitrator" and inserting in its place the following: 'neutral arbitrator or panel'

Further amend the Bill in section 6 in paragraph B by striking out all of the last sentence and inserting in its place the following: 'The cost of any transcription ordered by the neutral arbitrator or panel for its own use shall be deemed part of the cost of the proceedings.'

Further amend the Bill in section 6 by striking out all of paragraph F and inserting in its place the following:

'F. The neutral arbitrator or panel shall accord such weight and probative worth to expert evidence as it deems appropriate. The neutral arbitrator or panel may call a neutral expert on its own motion, which expert witness shall be subject to cross-examination by the parties. The cost of the expert shall be deemed a cost of the proceeding.'

Further amend the Bill in section 7 by striking out everything after the amending clause and inserting in its place the following:

'The panel or its chairman ~~in-the-arbitration-proceeding~~ or the arbitrator shall, upon application by a party, and may upon its own determination, issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the proceeding and to produce books, records or papers pertinent to the proceeding. In case of disobedience to the subpoena, the panel chairman ~~or~~, a majority of the ~~arbitration~~ panel ~~in-the arbitration-proceeding~~ or the arbitrator may petition the Superior Court in the county in which the hearing is being held to require the attendance and testimony of the witness and the production of books, papers and documents.'

Further amend the Bill in section 8 by striking out everything after the amending clause and inserting in its place the following: 'The fee and mileage of a witness subpoenaed solely upon the determination of the arbitrator or the majority of a panel ~~of arbitrators~~ shall be paid in the manner provided for the payment of the arbitrator's expenses.'

Further amend the Bill by striking out all of section 9.

Further amend the Bill in section 10 by striking out all of that part designated "§2709." and inserting in its place the following:

'§2709. Awards

1. Majority of panel; relief. A majority of the panel ~~of arbitrators~~ or the arbitrator may grant any relief deemed equitable and just, including money damages, provision for hospitalization, medical or rehabilitative procedures, support or any combination thereof.

2. Submission of written briefs. The panel or arbitrator may order submission of written briefs within 30 days after the close of hearings. In written briefs, each party may summarize the evidence in testimony and may propose a comprehensive award of remedial or compensatory elements.

3. Rendering panel award and opinion; time. The panel or arbitrator shall render its award and opinion within 30 days after the close of the hearing or the receipt of briefs, if ordered.

4. Written award; signature; determination of question. The award in the arbitration proceedings shall be in writing and shall be signed by the chairman or by the majority of a panel of arbitrators or arbitrator. The award shall include a determination of all the questions submitted to arbitration by each party, the resolution of which is necessary to determine the dispute, controversy or issue.'

Further amend the Bill in section 11 by striking out everything after the amending clause and inserting in its place the following:

1. Written opinion; dissenting opinion. In addition to the award, the panel or arbitrator shall render a written opinion which states its reasoning for the finding of liability or nonliability and the reasoning for the amount and kind of award, if any. A panel member who disagrees with the majority may write a dissenting opinion.

2. Determination of degree of party fault. The panel or arbitrator shall determine the degree to which each respondent party was at fault for the total damages accruing to any other party to the arbitration.'

Further amend the Bill in section 12 in the 6th line (3rd and 4th lines in L.D.) by striking out the following: "~~panel~~ arbitrator" and inserting in its place the following: 'panel or arbitrator'

Further amend the Bill by renumbering sections 10 to 12 to be sections 9 to 11.

Further amend the Bill by striking out all of the emergency clause.

Statement of Fact

This amendment provides for 2 separate schemes for arbitration in medical malpractice arbitrations: When the claim is for \$40,000 or less, $\leftarrow\rightarrow$ a single neutral arbitrator is to be appointed. When the claim is for more than \$40,000, a panel of 3 arbitrators is to be appointed. In both cases, the parties may mutually agree on another number of arbitrators.

The amendment also establishes a specific procedure for choosing the neutral arbitrator and retains the provision in the bill that allows the use of District Court space for these arbitrations. The emergency clause is also deleted by this amendment.

Reported by Report A from the Committee on Judiciary.

Reproduced and distributed under the direction of the Clerk of the House.
3/6/78

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