

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No: 1755

6
7 H.P. 1245

House of Representatives, December 30, 1985

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

10 Received by the Clerk of the House on December 30, 1985. Referred to
the Committee on Business and Commerce and 1,600 ordered printed
pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk

11 Presented by Representative Brannigan of Portland.
Cosponsored by Senator Clark of Cumberland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Insure Fair Practices in the Sale of
18 Health Insurance Policies to Elderly Consumers.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 24 MRSA §2321, sub-§1, as amended by PL
23 1979, c. 558, §1, is further amended to read:

24 1. Filing of rate information. Every nonprofit
25 hospital and medical service organization shall file
26 with the superintendent, except as to group subscrib-
27 er and membership contracts, other than group
28 Medicare supplement contracts and nursing home care
29 contracts, as defined in Title 24-A, chapter 67, ev-
30 every rate, rating formula and every modification of
31 any of the foregoing which it proposes to use. Every
32 such filing shall state the effective date thereof.
33 Every such filing shall be made not less than 60 days
34 in advance of the stated effective date unless such
35 60-day requirement is waived by the superintendent
36 and the effective date may be suspended by the super-

1 intendent for a period of time not to exceed 30 days.
2 In the case of Medicare supplement and nursing home
3 care contracts, rates filed prior to October 1, 1985,
4 shall be effective until no later than October 1,
5 1988. Rates filed on or after October 1, 1985, for
6 these types of contracts shall be effective for no
7 more than 3 years.

8 Sec. 2. 24 MRSA §2327, as enacted by PL 1979, c.
9 558, §5, is amended to read:

10 §2327. Group rates

11 No group health care contract ~~shall~~ may be issued
12 by a nonprofit hospital or medical service organiza-
13 tion in this State until a copy of the group manual
14 rates to be used in calculating the rates for these
15 contracts have been filed for informational purposes
16 with the superintendent. Notwithstanding this sec-
17 tion, rates for group Medicare supplement and group
18 nursing home care contracts must be filed in accord-
19 ance with section 2321.

20 Sec. 3. 24 MRSA §2328, as enacted by PL 1981, c.
21 234, §1, is amended to read:

22 §2328. Health care contracts; supplementing
23 Medicare; compliance with Title 24-A, chapter
24 67

25 Every nonprofit hospital or medical service orga-
26 nization or nonprofit health care plan which issues
27 group or individual health care contracts which are
28 designed primarily to provide nursing home care bene-
29 fits or to supplement coverage provided to residents
30 of this State under the "United States Health Insur-
31 ance for the Aged Act," Title XVIII of the Social Se-
32 curity Amendments of 1965, Public Law 89-97, as
33 amended, shall be subject to the requirements of Ti-
34 tle 24-A, chapter 67, and any rules promulgated by
35 the superintendent under that chapter. Any such re-
36 quirements shall be in addition to any requirements
37 of this Title.

38 Sec. 4. 24-A MRSA §2151, as enacted by PL 1969,
39 c. 132, §1, is amended to read:

1 §2151. Purpose

2 The purpose of ~~sections 2151 to 2167~~ this chapter
3 is to regulate trade practices in the business of in-
4 surance in accordance with the intent of Congress as
5 expressed in the Act of Congress of March 9, 1945,
6 Public Law 15, 79th Congress, by defining or provid-
7 ing for the determination of all such practices in
8 this State which constitute unfair methods of compe-
9 tition or unfair or deceptive acts or practices, by
10 defining or providing for the determination of all
11 such practices in other states by residents of this
12 State which constitute unfair methods of competition
13 or unfair or deceptive acts or practices, and by pro-
14 hibiting the trade practices so defined or deter-
15 mined.

16 Sec. 5. 24-A MRSA §2151-B is enacted to read:

17 §2151-B. Rules

18 Subject to the applicable requirements and proce-
19 dures of the Maine Administrative Procedure Act, Ti-
20 tle 5, chapter 375, subchapter II, the superintendent
21 may promulgate rules defining, limiting or prescrib-
22 ing acts and practices which are deemed to be in vio-
23 lation of this chapter.

24 Sec. 6. 24-A MRSA §2165, sub-§1, as amended by
25 PL 1973, c. 585, §12, is further amended to read:

26 1. If, after a hearing thereon of which notice
27 of such hearing and of the charges against him were
28 given such person, the superintendent finds that any
29 person in this State has engaged or is engaging in
30 any act or practice defined in or prohibited under
31 this chapter or rules promulgated under this chapter,
32 or that a resident of this State has so engaged or is
33 so engaging in another state, the superintendent
34 shall order such person to desist from such acts or
35 practices.

36 Sec. 7. 24-A MRSA §2165, sub-§5, as enacted by
37 PL 1969, c. 132, §1, is amended to read:

38 5. Violation of any such desist order shall be
39 deemed to be and shall be punishable as a violation

1 of this Title. The Superior Court shall assess a
2 civil penalty, payable to the Bureau of Insurance to
3 be applied toward the administration of this Title,
4 against any person who violates a cease and desist
5 order issued by the superintendent or an injunction
6 issued by a court pursuant to this chapter. The
7 amount of the civil penalty shall not exceed \$10,000
8 for each violation.

9 Sec. 8. 24-A MRSA §2166, sub-§1, as amended by
10 PL 1973, c. 585, §12, is further amended to read:

11 1. If the superintendent believes that any per-
12 son engaged in the insurance business is engaging in
13 this State, or that any resident of this State en-
14 gaged in the insurance business is engaging in another
15 state, in any method of competition or in any act
16 or practice not defined in this chapter or in rules
17 promulgated under this chapter, in the conduct of
18 such business, which is unfair or deceptive and that
19 a proceeding by him in respect thereto would be in
20 the public interest, he shall, after a hearing of
21 which notice of the hearing and of the charges
22 against him are given such person, make a written re-
23 port of his findings of fact relative to such charges
24 and serve a copy thereof upon such person and any in-
25 tervenor at the hearing.

26 Sec. 9. 24-A MRSA §2183 is enacted to read:

27 §2183. Private remedies

28 1. Court action. Any person who is aggrieved as
29 a result of the use or employment by another person
30 of any act or practice declared unlawful by this
31 chapter or by any rule issued pursuant to this chap-
32 ter may bring an action in the Superior Court seeking
33 one or more of the following:

34 A. Recovery of damages;

35 B. Restitution;

36 C. Injunctive relief; and

37 D. Such other relief as the court may deem prop-
38 er.

1 2. Fees and costs. If the court finds, in any
2 action commenced under this section, that there has
3 been a violation of this chapter, the plaintiff shall,
4 in addition to other relief provided for by this sec-
5 tion and irrespective of the amount in controversy,
6 be awarded reasonable attorney's fees and costs in-
7 curring in connection with the action.

8 3. Notice to Superintendent of Insurance. Upon
9 commencement of any action brought under subsection
10 1, the plaintiff shall mail a copy of the complaint
11 or other initial pleading to the Superintendent of
12 Insurance and, upon entry of any judgment or decree
13 in the action, shall mail a copy of that judgment or
14 decree to the superintendent.

15 Sec. 10. 24-A MRSA §2413, sub-§1, ¶F, as enacted
16 by PL 1981, c. 234, §3, is amended to read:

17 F. As to Medicare supplement or nursing home
18 care policies or contracts, as defined in chapter
19 67, if the policy cannot be anticipated, as esti-
20 imated for the entire period for which rates are
21 to be computed to provide coverage, on the basis
22 of incurred claims experience and earned premiums
23 for that period and in accordance with accepted
24 actuarial principles and practices, to return to
25 policyholders in the form of aggregate benefits
26 provided under the policy at least 60% of the ag-
27 gregate amount of premiums collected in the case
28 of individual policies and at least 75% of the
29 aggregate amount of premiums collected in the
30 case of group policies. The superintendent may
31 permit adjustments to these standards for nursing
32 home care policies or contracts which he deems to
33 have low premium payment levels that are not suf-
34 ficient to maintain compliance with these stan-
35 dards according to generally accepted principles
36 of insurance rating.

37 Sec. 11. 24-A MRSA §2701, sub-§2, as enacted by
38 PL 1969, c. 132, §1, is amended to read:

39 2. Any group or blanket policy, except that sec-
40 tions 2736, 2736-A and 2736-B shall apply to group
41 Medicare supplement policies and group nursing home
42 care policies, as defined in chapter 67;

1 Sec. 12. 24-A MRSA §2736, sub-§1, as amended by
2 PL 1979, c. 558, §6, is repealed and the following
3 enacted in its place:

4 1. Filing of rate information. Every insurer
5 shall file with the superintendent, except as to
6 group policy rates other than those for group
7 Medicare supplement policies and nursing home care
8 policies, as defined in chapter 67, every rate rating
9 formula, classification of risks and every modifica-
10 tion of any formula or classification which it pro-
11 poses to use. Every such filing must state the effec-
12 tive date of the filing. Every such filing shall be
13 made not less than 60 days in advance of the stated
14 effective date unless the 60-day requirement is
15 waived by the superintendent, and the effective date
16 may be suspended by the superintendent for a period
17 of time not to exceed 30 days. In the case of
18 Medicare supplement policies and nursing home care
19 policies, rates filed prior to October 1, 1985, shall
20 be effective until no later than October 1, 1988.
21 Rates filed on or after October 1, 1985, for these
22 types of policies shall be effective for no more than
23 3 years.

24 Sec. 13. 24-A MRSA §2839, as reallocated by PL
25 1979, c. 663, §149, is amended to read:

26 §2839. Rates filed

27 No policy of group ~~accident and sickness~~ health
28 insurance shall may be delivered in this State until
29 a copy of the group manual rates to be used in calcu-
30 lating the premium for these policies have has been
31 filed for informational purposes with the superin-
32 tendent. Notwithstanding this section, rates for
33 group Medicare supplement and group nursing home care
34 contracts must be filed in accordance with section
35 2736.

36 Sec. 14. 24-A MRSA c. 67, first 2 lines are re-
37 pealed and the following enacted in their place:

38 CHAPTER 67

39 MEDICARE SUPPLEMENT AND NURSING
40 HOME CARE INSURANCE POLICIES

1 Sec. 15. 24-A MRSA §5001, sub-§§4-A and 4-B are
2 enacted to read:

3 4-A. Nursing home. "Nursing home" means any fa-
4 ility located in this State which is licensed by the
5 Department of Human Services as a skilled nursing fa-
6 ility or intermediate care facility and any equiva-
7 lent facility located in another state or country and
8 licensed according to the laws of that jurisdiction.

9 4-B. Nursing home care policy. "Nursing home
10 care policy" means a group or individual policy of
11 health insurance or a subscriber contract of a non-
12 profit hospital or medical service organization or
13 nonprofit health care plan which is advertised, mar-
14 keted or designed primarily to provide benefits on
15 either an expense-incurred or indemnity basis for
16 confinements or costs associated with such confine-
17 ments of a covered person in a nursing home. For
18 purposes of this definition, a policy is deemed to
19 primarily provide nursing home benefits if 50% or
20 more of benefits payable or anticipated to be payable
21 under the policy are related to nursing home confine-
22 ments.

23 Sec. 16. 24-A MRSA §5002-A is enacted to read:
24 §5002-A. Standards for policy provisions; nursing
25 home care policies

26 1. Specific standards. The superintendent may
27 promulgate rules to establish specific standards for
28 policy provisions of nursing home care policies. The
29 standards shall be in addition to and in accordance
30 with applicable laws of this State, including chap-
31 ters 33 and 35, and may include, but are not limited
32 to:

33 A. Terms of renewability;

34 B. Initial and subsequent conditions of eligi-
35 bility;

36 C. Nonduplication of coverage;

37 D. Probationary periods;

1 E. Benefit limitations, exceptions and reduc-
2 tions;

3 F. Elimination periods;

4 G. Requirements for replacement;

5 H. Recurrent confinements; and

6 I. Definition of terms.

7 2. Prohibited policy provision. The superin-
8 tendent may promulgate rules that specify prohibited
9 provisions not otherwise specifically authorized by
10 statute which, in the opinion of the superintendent,
11 are unjust, unfair, inequitable or unfairly discrimi-
12 natory to any person insured or proposed for coverage
13 under a nursing home care policy.

14 Sec. 17. 24-A MRSA §5004, as enacted by PL 1981,
15 c. 234, §4, is amended to read:

16 §5004. Medicare supplement policy rates

17 Any Medicare supplement or nursing home care pol-
18 icy or contract is subject to the minimum loss ratio
19 standards of section 2413, subsection 1, paragraph F,
20 as well as any other laws of this State as apply to
21 rate filings with respect to health insurance and
22 nonprofit hospital and medical service organizations
23 and nonprofit health care plan contracts.

24 Sec. 18. 24-A MRSA §5005, sub-§5 is enacted to
25 read:

26 5. Nursing home care policies. The superintend-
27 ent may promulgate reasonable rules to govern the
28 full and fair disclosure of information in connection
29 with the sale of nursing home care policies and con-
30 tracts and the replacement of these policies or con-
31 tracts.

1

STATEMENT OF FACT

2 In the past years, Medicare health insurance benef-
3 fits have steadily decreased while at the same time
4 the cost of medical and nursing home care has
5 steadily increased. This has placed increasing pres-
6 sure on Maine's elderly to purchase affordable health
7 and nursing home insurance. The elderly thus have
8 become easy targets for a well-known range of decep-
9 tive trade practices, such as:

10 1. The switch. The agent sells the client one
11 policy, but then switches and provides another for
12 signature at the time of closing;

13 2. Pie in the sky or "fine print." The agent
14 misrepresents policy content with words like "no
15 waiting periods" or "this policy will pay for your
16 nursing home;"

17 3. Wolf in sheep's clothing. The agent fails on
18 initial contacts with clients to disclose that he
19 represents a for-profit insurance company. He may
20 say he is from Medicare and wants to help seniors
21 with any problems they may have;

22 4. Overselling. The agent sells the client more
23 coverage than he needs or can pay for, also known as
24 "stacking." If you have 2 or more policies offering
25 the same benefit, you only get paid once;

26 5. Clean sheeting or "failure to report material
27 conditions." The agent fails to report preexisting
28 health conditions of clients to the company, ulti-
29 mately leading to a preexisting condition disqualifi-
30 cation of coverage when claims are filed; or

31 6. Scare tactics. The agent employs scare lan-
32 guage in closing the sale, like "buy now because you
33 may not be able to be insured later."

34 While the State's Medicare supplemental insurance
35 laws do provide some protection from these abuses, it
36 is more and more common to find that the nursing home
37 insurance being sold does not fall within the
38 Medicare rules and therefore is free from the

1 Medicare disclosure laws. This bill provides 4 ap-
2 proaches to combating this problem.

3 1. Nursing home care insurance policies offered
4 to the elderly must meet the loss-ratio standards es-
5 tablished for Medicare supplemental insurance poli-
6 cies. This assures our elderly consumers that insur-
7 ance policies offered to them will provide a fair re-
8 turn for their premium dollars.

9 2. In order to insure that Medicare and nursing
10 home insurance policies are meeting the mandated
11 loss-ratio requirements, insurance companies will be
12 required to file new rate information every 3 years.
13 This periodic filing will enable the Bureau of Insur-
14 ance to judge whether the different insurance poli-
15 cies are generally returning to Maine consumers the
16 required amount.

17 3. Elderly consumers are provided private legal
18 remedies if they have been victims of deceptive sale
19 practices.

20 4. The Superintendent of Insurance may issue
21 rules that require sellers of nursing home policies
22 to make the same disclosure currently required to be
23 made by sellers of Medicare policies.

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