

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1248

S.P. 463

In Senate, April 19, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator RANDALL of Washington.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act to Encourage the Continuation of Obstetrical Services in the Medicaid Program.

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1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 5 MRSA §1728-A, sub-§1, as amended by PL 1987, c. 778,**  
5 **§1, is further amended to read:**

7 **1. Duties.** The director shall provide insurance advice and  
9 services for the State Government and any department or agency  
11 thereof for all forms of insurance, except for those departments  
13 or agencies and those types of insurance otherwise provided for  
15 by law. The director shall provide insurance advice and services  
17 for family foster homes, as defined in Title 22, section 8101,  
19 subsection 3, and respite care providers, as defined in Title  
21 34-B, section 6201, subsection 2-A. The director shall provide  
23 insurance advice and services for physicians participating in the  
25 Medicaid program, but such insurance shall cover only medical  
27 services for patients enrolled in the Medicaid program. The  
physician shall pay for the cost of the insurance. The director  
shall be responsible for the acquisition and administration of  
all insurance purchased by the State, including the authority to  
purchase, on a competitive bid basis, insurance for the State for  
automobile, fire, liability and any other type of coverage which  
may be necessary to protect the State from financial loss. The  
director may enter into contracts for various types of claims  
management services in order to insure the most economically  
advantageous insurance protection in the operation of the State's  
insurance coverage program. In these regards, the director has  
the following duties:

29 A. To review annually the entire subject of insurance as it  
31 applies to all state property and activities and other  
33 persons pursuant to this section, and to provide to the  
commissioner a statement of its activities during the year  
ending the preceding June 30th. This report shall include:

- 35 (1) An evaluation of the state insurance program;
- 37 (2) A complete statement of all types and costs of  
insurance in effect;
- 39 (3) Names of agents and companies of record; and
- 41 (4) Such other matters as the director determines to  
43 be appropriate and necessary or as the commissioner may  
45 request;

47 B. To recommend to the commissioner such insurance  
49 protection as the director may deem necessary or desirable  
for the protection of all state property or activities or  
other insureds under this section;

51 C. Pursuant to programs approved by the commissioner, to  
provide insurance protection for state property and

1 liability insurance in accordance with the Maine Tort Claims  
3 Act, Title 14, section 8116, and premises liability, when  
5 required by a state lease or private property approved by  
7 the Attorney General, by self-insured retention, as  
9 provided, or purchase of insurance from companies or agents  
11 licensed to do business in this State, or by both, to effect  
the best possible contracts as to services, coverages and  
costs. The purchase of insurance under this section normally  
shall be made upon competitive bidding, except that the  
director may, in appropriate circumstances, purchase  
insurance by negotiation.

13 In the event of the purchase of insurance upon competitive  
15 bidding by qualified insurers, the director shall announce  
the low bid at a meeting advertised for the opening of bids,  
17 which, when approved by the commissioner, shall constitute  
an award of a contract of insurance;

19 D. To determine and review the values of property in which  
21 the State has an insurable or legal interest and recommend  
limits and types of insurance protection for that property;

23 E. To establish and promote safety and other loss  
prevention programs;

25 F. To receive and, with the assistance of the Attorney  
27 General, administer all claims for personal injury and  
property damage against the State; and

29 G. With the assistance of the Attorney General, to pursue  
31 all claims against 3rd parties in all cases in which the  
33 State may be subrogated to the rights of injured employees  
or where damage to state property may have resulted from the  
negligence of a 3rd party.

35 Sec. 2. 22 MRSA §3189 is enacted to read:  
37

39 §3189. Physician insurance; claims

41 Physicians participating in the department's Medicaid  
43 program are eligible for insurance pursuant to Title 5, section  
45 1728-A. In any action for damages against a physician insured  
47 pursuant to Title 5, section 1728-A, for damages covered under  
49 the policy, the claim for and award of those damages, including  
51 costs and interest, shall not exceed \$300,000 for any and all  
claims arising out of a single occurrence. When the amount  
awarded to or settled for multiple claimants exceeds the limit  
imposed by this section, any party may apply to the Superior  
Court for the county in which either party is located to allocate  
to each claimant an equitable share of the total, limited as  
required by this section. Any award by the court in excess of

1 the maximum liability limit shall be automatically abated by  
3 operation of this section to the maximum limit of liability.

5 **STATEMENT OF FACT**

7 The purpose of this bill is to provide physicians seeing  
9 Medicaid patients with the protection of the Maine Tort Claims  
11 Act when they treat a patient enrolled in the Medicaid program.  
13 Because of the high cost of Medicaid liability insurance,  
15 Medicaid patients are having difficulty finding physicians to  
treat them. By providing physicians with the liability  
protection of the Maine Tort Claims Act, thus limiting their  
liability to \$300,000 for Medicaid patients, the State will give  
a strong incentive to providers to continue to participate in the  
Medicaid program.