L.D. 2023

(Filing No. H-1133)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "C" to S.P. 782, L.D. 2023, Bill, "An Act to Establish a Five-year Medical Liability Demonstration Project"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'**24 MRSA c. 21, sub-c. IX** is enacted to read:

SUBCHAPTER IX

MEDICAL LIABILITY DEMONSTRATION PROJECT

§2981. Medical liability demonstration project

The Bureau of Insurance and the Board of Registration in Medicine shall, by January 1, 1992, establish a medical liability demonstration project as provided in this subchapter.

§2982. Medical specialty advisory committees established

1. Medical specialty areas. The Medical Specialty Advisory Committee on Anesthesiology, in accordance with Title 5, section 12004-I, subsection 58-A; the Medical Specialty Advisory Committee on Emergency Medicine, in accordance with Title 5, section 12004-I, subsection 58-B; and the Medical Specialty Advisory Committee on Obstetrics and Gynecology, in accordance with Title 5, section 12004-I, subsection 58-C are established and shall develop practice parameters and risk management protocols for their respective medical specialty areas.

2. Membership. The medical specialty advisory committees are made up as follows.

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A. The Medical Specialty Advisory Committee on Anesthesiology consists of members with an interest in and knowledge of the specialty area. It consists of 6 members:

(1) One physician who practices in a teaching hospital, appointed by the Board of Registration in Medicine;

(2) One physician who practices in a medium-sized hospital, appointed by the Board of Registration in Medicine;

(3) One physician who practices primarily in a rural area, appointed by the Board of Registration in Medicine;

(4) One board-certified anesthesiologist, appointed by the Governor in consultation with the Maine Chapter of the American College of Anesthesiologists; and

(5) Two public members:

(a) One representing the interests of payors of medical costs, appointed by the President of the Senate; and

(b) One representing the interests of consumers, appointed by the Speaker of the House of Representatives;

B. The Medical Specialty Advisory Committee on Emergency Medicine consists of members with an interest in and knowledge of the specialty area. It consists of 9 members:

(1) One physician who practices in a teaching hospital, appointed by the Board of Registration in Medicine from nominations submitted by the Maine Medical Association;

(2) One physician, appointed by the Board of Osteopathic Examination and Registration from nominations submitted by the Maine Osteopathic Association;

(3) One physician who practices primarily in a rural area, appointed by the Board of Registration in Medicine from nominations submitted by the Maine Medical Association;

(4) One family practice physician, appointed by the Board of Registration in Medicine from nominations

submitted by the Maine Academy of Family Practice Physicians;

(5) Two physicians, appointed by the Governor, at least one of whom is board-certified in emergency medicine, appointed in consultation with the Maine Chapter of the American College of Emergency Medicine Physicians; and

(6) Three public members:

(a) One representing the interests of payors of medical costs, appointed by the President of the Senate;

(b) One representing the interests of consumers, appointed by the Speaker of the House of Representatives; and

(c) One representing allied health professionals, appointed by the Governor; and

C. The Medical Specialty Advisory Committee on Obstetrics and Gynecology consists of members with an interest in and knowledge of the specialty area. It consists of 9 members:

(1) One physician who practices in a tertiary hospital, appointed by the Board of Registration in Medicine from nominations submitted by the Maine Medical Association;

(2) One physician who practices in a medium-sized hospital appointed by the Board of Osteopathic Examination and Registration from nominations submitted by the Maine Osteopathic Association;

(3) One physician who practices primarily in a rural area, appointed by the Board of Registration in Medicine from nominations submitted by the Maine Medical Association;

(4) One physician who practices primarily in a rural area, appointed by the Board of Osteopathic Examination and Registration from nominations submitted by the Maine Osteopathic Association;

(5) One family practice physician, appointed by the Board of Registration in Medicine from nominations submitted by the Maine Academy of Family Practice Physicians;

(6) One board-certified physician appointed by the Governor in consultation with the Maine Chapter of the American College of Obstetricians and Gynecologists; and

(7) Three public members:

(a) One representing the interests of payors of medical costs, appointed by the President of the Senate;

(b) One representing the interests of consumers, appointed by the Speaker of the House of Representatives; and

(c) One representing allied health professionals, appointed by the Governor.

3. Terms. Each member serves a term of 3 years.

4. Proceedings. The medical specialty advisory committees shall conduct all proceedings pursuant to the Maine Administrative Procedure Act.

5. Board of Registration in Medicine; administration and funding. The Board of Registration in Medicine shall provide funding and administrative support to the medical specialty advisory committees. The Board of Registration in Medicine may accept funds from outside sources, including the Board of Osteopathic Examination and Registration, to help finance the operation of the medical specialty advisory committees.

§2983. Practice parameters; risk management protocols

Each medical specialty advisory committee shall develop practice parameters and risk management protocols in the medical specialty area relating to that committee. The practice parameters must define appropriate clinical indications and methods of treatment within that specialty. The risk management protocols must establish standards of practice designed to avoid malpractice claims and increase the defensibility of the malpractice claims that are pursued. The parameters and protocols must be consistent with appropriate standards of care and levels of quality. The Board of Registration in Medicine and the Board of Osteopathic Examination and Registration shall review the parameters and protocols, approve the parameters and protocols appropriate for each medical specialty area and adopt them as rules under the Maine Administrative Procedure Act.

§2984. Report to Legislature

By March 1, 1991, each medical specialty advisory committee shall provide a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Office of the Executive Director of the Legislative Council setting forth the parameters and protocols developed by that medical specialty advisory committee and adopted by the Board of Registration in Medicine and the Board of Osteopathic Examination and Registration. The medical specialty advisory committees also shall report the extent to which the risk management protocols reduce the practice of defensive medicine.

§2985. Application to professional negligence claims

1. Introduced by defendant. In any claim for professional negligence against a physician or the employer of a physician participating in the project established by this subchapter in which a violation of a standard of care is alleged, only the physician or the physician's employer may introduce into evidence, as an affirmative defense, the existence of the practice parameters and risk management protocols developed and adopted pursuant to section 2983 for that medical specialty area.

2. Burden of proof; parameters and protocols. Any physician or physician's employer who pleads compliance with the practice parameters and risk management protocols as an affirmative defense to a claim for professional negligence has the burden of proving that the physician's conduct was consistent with those parameters and protocols in order to rely upon the affirmative defense as the basis for a determination that the physician's conduct did not constitute professional negligence. If the physician or the physician's employer at trial introduces evidence of compliance with the parameters and protocols, then the plaintiff may introduce evidence on the issue of compliance. This subsection does not affect the plaintiff's burden to prove the plaintiff's cause of action by a preponderance of the evidence as otherwise provided by law.

3. No change in burden of proof. Nothing in this subchapter alters the burdens of proof in existence as of December 31, 1991, in professional negligence proceedings.

4. Application. This section applies to causes of action accruing between January 1, 1992 and December 31, 1996.

§2986. Physician participation

Any physicians practicing in a medical specialty area for which practice parameters and risk management protocols have been developed and adopted pursuant to section 2983, shall file notice with the Board of Registration in Medicine or the Board

of Osteopathic Examination and Registration prior to November 1, 1991, indicating whether they elect to participate in the project. The medical liability demonstration project authorized by this subchapter does not begin with respect to a medical specialty area unless at least 50% of the physicians licensed in the State and practicing in that specialty area elect to participate. Continuation of a project is not dependent on the level of participation.

§2987. Evidence; inadmissibility

Unless independently developed from a source other than the demonstration project, the practice parameters and risk management protocols are not admissible in evidence in a lawsuit against any physician who is not a participant in the demonstration project or against any physician participating in the project who is defending against a cause of action accruing before January 1, 1992 or after December 31, 1996.

§2988. Information and reports

1. Reports by insurers. Any insurance company providing professional, malpractice or any other form of liability insurance for any physician practicing in a medical specialty area described in section 2982 or for any hospital in which that practice has taken place shall provide to the Bureau of Insurance in a format established by the Superintendent of Insurance the following:

A. A report of each claim alleging malpractice during the 5-year period ending December 31, 1991, involving any physician practicing in a medical specialty area described in section 2982. Each report must include the name of the insured, policy number, classification of risk, medical specialty, date of claim and the results of the claim, including defense costs and indemnity payments as a result of settlement or verdict, as well as any awards paid in excess of policy limits. For any claim still open, the report must include the amount of any funds allocated as reserve or paid out. The insurance company shall annually report on any claims that have remained open;

B. For the 5-year period ending December 31, 1991, an annualized breakdown of the medical liability premiums earned for physicians practicing in the medical specialty areas described in section 2982. This information must be provided according to a schedule established by the Bureau of Insurance;

C. A report of each claim brought against any physician practicing in a medical specialty area described in section 2982, alleging malpractice as a result of incidents

occurring on or after January 1, 1992 and before January 1, 1997, that includes, but is not limited to, the name of the insured, policy number, classification of risk, medical specialty, date of claim and the results of each claim, including defense costs and indemnity payments as a result of settlement or verdict, any awards or amounts paid in excess of policy limits and any finding, if made, of whether the physician's practice was consistent with the parameters and protocols developed and adopted under section 2983. These reports must be provided not less than semiannually according to a schedule established by the Bureau of Insurance. At the discretion of the Bureau of Insurance, reports must be provided until all claims are closed; and

D. An annualized breakdown of the medical liability premiums earned, as of January 1, 1992, for physicians practicing in the medical specialty areas described in section 2982. This information must be provided according to a schedule established by the Bureau of Insurance.

2. Reports by Bureau of Insurance and Board of Registration in Medicine. The Bureau of Insurance and the Board of Registration in Medicine shall report the results of the project to the joint standing committees of the Legislature having jurisdiction over insurance and judiciary matters and to the Office of the Executive Director of the Legislative Council by December 1, 1997. The report must include the following.

A. The Bureau of Insurance shall report:

(1) The number of claims brought against physicians in the project alleging malpractice as a result of incidents occurring on or after January 1, 1992;

(2) The results of any closed claims described in this section, including defense costs and indemnity payments as a result of settlement or verdict;

(3) The status of all open claims described in this section, including defense costs, indemnity payments and any amounts held in reserve; and

(4) The effect of the project on the medical liability claims experience and premiums of those physicians in the project.

B. The Board of Registration in Medicine shall quantify and report on any identifiable impact of the project on the cost of the practice of defensive medicine.

(1) The Board of Registration in Medicine shall establish an economic advisory committee to establish the methodology for evaluating the effect of the project on the cost, utilization and the practice of defensive medicine. The economic advisory committee shall report the methodology developed to the Board of Registration in Medicine by January 1, 1992.

3. Immunity. All insurers reporting under this section and their agents or employees, the superintendent and the superintendent's representatives, the Board of Osteopathic Examination and Registration and its agents and employees and the Board of Registration in Medicine and its agents or employees, including members of the medical specialty advisory committees established under section 2982, are immune from liability for any action taken by them pursuant to this subchapter.

4. Confidentiality. Reports made to the superintendent and report records kept by the superintendent are not subject to discovery and are not admissible in any trial, civil or criminal, other than proceedings brought before or by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration. The superintendent shall maintain the reports filed in accordance with this section and all information derived from the reports that identifies or permits identification of the insured or the incident for which a claim was made as strictly confidential records. Information derived from reports filed in accordance with this section that does not identify or permit identification of any insured or incident for which a claim was made may be released by the superintendent or otherwise made available to the public.

5. Rules. The superintendent and the Board of Registration in Medicine may adopt rules necessary to implement this subchapter.'

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STATEMENT OF FACT

This amendment replaces the bill. This amendment authorizes the establishment of a 5-year medical liability demonstration project within the medical specialty areas of anesthesiology, emergency medicine and obstetrics and gynecology. As part of the project, the Board of Registration in Medicine and specialty advisory committees will develop practice parameters and risk management protocols that may be used by a physician as an affirmative defense in a claim for professional negligence.

Filed by Rep. Gwadosky of Fairfield
Reproduced and distributed under the direction of the Clerk of the House
4/13/90 (Filing No. H-1133)