

MAINE STATE LEGISLATURE

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L.D. 2023

(Filing No. S-685)

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STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT " B " 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 title and before the statement of fact and inserting in its place the following:

Sec. 1. 5 MRSA §12004-I, sub-§§58-A and 58-B are enacted to read:

58-A. Medicine Medical Expenses 24 MRSA
Specialty Only §2982
Advisory
Committee
on Anesthe-
siology

58-B. Medicine Medical Expenses 24 MRSA
Specialty Only §2982
Advisory
Committee
on Obstet-
rics and
Gynecology

Sec. 2. 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.

2 **§2982. Medical specialty advisory committees established**

4 **1. Medical specialty areas.** The Medical Specialty Advisory
Committee on Anesthesiology, in accordance with Title 5, section
6 12004-I, subsection 58-A, and the Medical Specialty Advisory
Committee on Obstetrics and Gynecology, in accordance with Title
8 5, section 12004-I, subsection 58-B, are established and shall
develop practice parameters and risk management protocols for
10 their respective medical specialty areas.

12 **2. Membership.** Each medical specialty advisory committee
consists of 7 members:

14 **A. One physician who practices in a tertiary teaching**
16 **hospital, appointed by the Board of Registration in Medicine;**

18 **B. One physician who practices in a tertiary nonteaching**
20 **hospital, appointed by the Board of Registration in Medicine;**

22 **C. One physician who practices in a medium-size hospital,**
appointed by the Board of Registration in Medicine;

24 **D. One physician whose practice is substantially in rural**
26 **areas, appointed by the Board of Registration in Medicine;**

28 **E. One family practice physician, appointed by the Board of**
Registration in Medicine; and

30 **F. Two public members, one appointed by the President of**
32 **the Senate and one appointed by the Speaker of the House of**
Representatives.

34 **3. Terms.** The term of each member is 3 years.

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

40 **5. Board of Registration in Medicine; administration and**
funding. The Board of Registration in Medicine shall provide
42 funding and administrative support to the medical specialty
advisory committees. The Board of Registration in Medicine may
44 accept funds from outside sources to help finance the operation
of the medical specialty advisory committees.

46 **§2983. Practice parameters; risk management protocols**

48 **Each medical specialty advisory committee shall develop**
50 **practice parameters and risk management protocols in the medical**
specialty area relating to that committee. The practice
52 **parameters must define appropriate clinical indications and**

2 methods of treatment within that specialty. The risk management
3 protocols must establish standards of practice designed to avoid
4 malpractice claims and increase the defensibility of the
5 malpractice claims that are pursued. The parameters and
6 protocols must be consistent with appropriate standards of care
7 and levels of quality. The Board of Registration in Medicine
8 shall review the parameters and protocols, approve the parameters
9 and protocols appropriate for each medical specialty area and
10 adopt them as rules under the Maine Administrative Procedure Act.

11 **§2984. Report to Legislature**

12
13 1. Initial report. By April 1, 1991, each medical
14 specialty advisory committee shall provide a report to the joint
15 standing committee of the Legislature having jurisdiction over
16 judiciary matters and the Office of the Executive Director of the
17 Legislative Council setting forth the parameters and protocols
18 developed by that medical specialty advisory committee and
19 adopted by the Board of Registration in Medicine. The medical
20 specialty advisory committees also shall report the extent to
21 which the risk management protocols reduce the practice of
22 defensive medicine.

23
24 2. Additional reports. Within 30 days of the effective
25 date of any proposed revision of the practice parameters and risk
26 management protocols for that medical specialty area, each
27 medical specialty advisory committee shall provide a report to
28 the joint standing committee of the Legislature having
29 jurisdiction over judiciary matters and the Office of the
30 Executive Director of the Legislative Council setting forth the
31 revisions in the parameters and protocols as developed and
32 adopted.

33 **§2985. Application to professional negligence claims**

34
35 1. Introduced by defendant. In any claim for professional
36 negligence against a physician or the employer of a physician
37 participating in the project established by this subchapter in
38 which a violation of a standard of care is alleged, the physician
39 or the physician's employer may introduce into evidence, as an
40 affirmative defense, the existence of the practice parameters and
41 risk management protocols developed and adopted pursuant to
42 section 2983 for that medical specialty area.

43
44 2. Burden of proof; parameters and protocols. Any
45 physician or physician's employer who pleads compliance with the
46 practice parameters and risk management protocols as an
47 affirmative defense to a claim for professional negligence has
48 the burden of proving that the physician's conduct was consistent
49 with those parameters and protocols which were introduced to rely
50 upon the affirmative defense as the basis for a determination
51 that the physician's conduct did not constitute professional
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2 negligence. This subsection does not affect the plaintiff's
3 burden to prove the plaintiff's cause of action by a
4 preponderance of the evidence as otherwise provided by law.

6 3. No change in burden of proof. Nothing in this
7 subchapter alters the burden of proof in existence as of December
8 31, 1991, in professional negligence proceedings.

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

12 **§2986. Participation**

14 1. Voluntary participation. Each physician practicing in
15 any of the medical specialty areas for which practice parameters
16 and risk management protocols have been developed and adopted
17 pursuant to section 2983 shall file notice with the Board of
18 Registration in Medicine before November 1, 1991, indicating
19 whether that physician elects to participate in the project.

20 2. Necessary level of participation. If less than 75% of
21 the physicians in a medical specialty area have filed notice with
22 the board indicating that they will participate in the project,
23 section 2985 does not apply to physicians practicing in that
24 medical specialty area.

25 3. Continued participation. A physician agreeing to
26 participate in the project shall continue to participate for the
27 duration of the project.

28 **§2987. Evidence; inadmissibility**

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

36 **§2988. Information and reports**

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

44 A. A report of each claim alleging malpractice during the
45 5-year period ending December 31, 1991, involving any

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2 physician practicing in a medical specialty area described
4 in section 2982. Each report must include the name of the
6 insured, policy number, classification of risk, medical
8 specialty, date of claim and the results of the claim,
10 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;

12 B. For the 5-year period ending December 31, 1991, an
14 annualized breakdown of the medical liability premiums
16 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;

18 C. A report of each claim brought against any physician
20 practicing in a medical specialty area described in section
22 2982, alleging malpractice as a result of incidents
24 occurring on or after January 1, 1992, and before January 1,
26 1997, that must include, but not be limited to, the name of
28 the insured, policy number, classification of risk, medical
specialty, date of claim, 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, as to
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

36 D. An annualized breakdown of the medical liability
38 premiums earned as of January 1, 1992, for physicians
40 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.

42 2. Reports by Bureau of Insurance and Board of Registration
44 in Medicine. The Bureau of Insurance and the Board of
46 Registration in Medicine shall report the results of the project
to the Legislature and the Office of the Executive Director of
the Legislative Council by December 1, 1997. The report must
include the following.

48 A. The Bureau of Insurance shall report:

50 (1) The number of claims brought against physicians in
52 the project alleging malpractice as a result of

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- 2 incidents occurring on or after January 1, 1992;
- 4 (2) The results of any closed claims described in this
section, including defense costs and indemnity payments
as a result of settlement or verdict;
- 6 (3) The status of all open claims described in this
section, including defense costs, indemnity payments
and any amounts held in reserve; and
- 8 (4) The effect of the project on the medical liability
claims experience and premiums of those physicians in
the project.
- 10 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.
- 12 (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, the 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.
- 14 3. Immunity. All insurers reporting under this section,
and their agents or employees; the superintendent and the
superintendent's representatives; 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.
- 16 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. 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.
- 18 5. Rules. The Superintendent of Insurance and the Board of
Registration in Medicine may adopt rules necessary to implement
this subchapter.

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Sec. 3. Medical Malpractice Liability Advisory Committee.

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1. The Medical Malpractice Liability Advisory Committee is established to review the Medical Liability Demonstration Project established by the Maine Revised Statutes, Title 24, chapter 21, subchapter IX and make recommendations to the 115th Legislature regarding improvements in the project and the program.

2. The Medical Malpractice Liability Advisory Committee consists of the following 9 members:

- A. The Chair of the Board of Registration in Medicine or a designee;
- B. The President of the Maine State Bar Association or a designee;
- C. The President of the Maine Trial Lawyers Association or a designee;
- D. The President of the Maine Medical Association or a designee;
- E. A representative of a tertiary teaching hospital, to be appointed by the Governor;
- F. A representative of an insurer providing medical malpractice insurance in the State, to be appointed by the President of the Senate;
- G. A representative of a nonprofit insurer, to be appointed by the Speaker of the House of Representatives; and
- H. Two public members, one to be appointed by the President of the Senate and one to be appointed by the Speaker of the House of Representatives.

The appointing authorities shall make the appointments no later than August 1, 1990, and shall report the names of the members to the Office of the Executive Director of the Legislative Council. The chair of the Legislative Council shall call the first meeting.

3. The committee shall elect a chair from among the members.

4. The committee may review Title 24, chapter 21, subchapter IX, consult with interested parties and develop recommendations to be submitted to the Legislature for improvements in the Medical Liability Demonstration Project.

5. The committee may submit any implementing legislation it prepares pursuant to this section to the Joint Standing Committee on Judiciary of the 115th Legislature and the Office of the

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2 Executive Director of the Legislative Council no later than
January 15, 1991. The committee members shall serve without
legislative staff assistance.

4

6 6. All members of the committee shall serve without
compensation and are not entitled to reimbursement for expenses.

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FISCAL NOTE

10 The Department of Human Services, the Bureau of Insurance
and the Board of Registration in Medicine will each incur some
12 additional costs that can be absorbed within the existing
budgeted resources of the respective agencies.'

14

16

STATEMENT OF FACT

18 This amendment replaces the bill and represents the majority
report of the Joint Standing Committee on Judiciary.

20

22 The original concept of a 5-year demonstration project is
retained from the bill and amended to clarify several
provisions. This amendment establishes 2 advisory committees for
24 the medical specialty areas of anesthesiology and obstetrics and
gynecology. These advisory committees will consist of 7 members,
26 5 appointed by the Board of Registration in Medicine to represent
an appropriate cross section of physicians, and 2 public
28 members. The committees will develop practice parameters and
risk management protocols applicable to each committee's medical
30 specialty area. The committees will present the parameters and
protocols to the Board of Registration in Medicine that has the
32 authority to approve appropriate practice parameters and risk
management protocols for these 2 medical specialty areas. The
34 advisory committees will also report to the Joint Standing
Committee on Judiciary and the Office of the Executive Director
36 of the Legislative Council regarding the parameters and protocols
before the demonstration project begins and again whenever they
38 revise the parameters and protocols.

40

42 Participation in the demonstration project is voluntary, but
at least 75% of the physicians practicing in the medical
specialty area must agree to participate in the project or the
44 benefits of the project will not apply to any of the physicians
in the medical specialty area.

46


48 Physicians and their employers benefit from participation in
the program if the physician or the physician's employer is sued
for professional negligence. The physician or the employer of
the physician participating in the program may offer as evidence
50 the existence of the practice parameters and risk management
protocols for that specialty. If the physician or the
52 physician's employer proves that the physician complied with the

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2 parameters and protocols, that will serve as the basis for a
determination that the physician's conduct did not constitute
professional negligence.

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6 The Bureau of Insurance and the Board of Registration in
Medicine will collect information and report to the Legislature
and the Office of the Executive Director of the Legislative
8 Council in 1997 regarding the reduction in medical malpractice
liability insurance costs under the demonstration project.

10
12 This amendment establishes the Medical Malpractice Liability
Advisory Committee to review the Demonstrating Project language
and report to the Legislature and the Office of the Executive
14 Director of the Legislative Council in 1991 regarding any
improvements that may be made in the law. The members of the
16 advisory committee will absorb the costs of these duties, making
state funding unnecessary.

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22 (Senator GAUVREAU)
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24 COUNTY: Androscoggin
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