

MAINE STATE LEGISLATURE

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L.D. 1593

(Filing No. H-967)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 1093, L.D. 1593, Bill, "An Act to Amend the Maine Health Security Act"

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

'Sec. 1. 24 MRSA §2852, sub-§6, as amended by PL 1989, c. 361, §§3 and 10, is repealed and the following enacted in its place:

6. Discovery. The Chief Justice of the Superior Court may issue administrative orders governing discovery that take into consideration the purposes of this subchapter. Pursuant to the administrative orders, the chair may rule on requests regarding discovery or either party may seek a ruling in Superior Court in accordance with section 2853, subsection 5.

Sec. 2. 24 MRSA §2853, sub-§5, as amended by PL 1991, c. 505, §3, is further amended to read:

5. **Lawsuits.** The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by lawsuit. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel, either prior to or after the commencement of a lawsuit. Both parties may agree to bypass the panel and commence a lawsuit for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel has no jurisdiction to hear or decide, absent the agreement of the parties, dispositive legal affirmative defenses, except: compliance with practice parameters or risk management protocols adopted under section 2973 if the defendant is a participant in the medical liability demonstration project established under subchapter IX and intends to introduce evidence of compliance at trial; and comparative negligence. The panel chair may require

COMMITTEE AMENDMENT

2 the parties to litigate, by motion, dispositive legal affirmative
3 defenses in the Superior Court prior to submission of the case to
4 the panel. Any such defense, as well as any motion relating to
5 discovery ~~that the panel chair has chosen not to rule on~~, may be
6 presented, by motion, in Superior Court without the necessity of
7 a complaint having first been filed.

8 Sec. 3. 24 MRSA §2853-A is enacted to read:

10 §2853-A. Prehearing mediation

12 Before the claimant or a representative of the claimant
13 presents the case before the panel, the panel chair may refer the
14 parties to a different panel chair for mediation of the case.
15 The parties and the chair mediating the case shall report back
16 the results of the mediation to the presiding panel chair.

18 Sec. 4. 24 MRSA §2854, sub-§2, as enacted by PL 1985, c. 804,
19 §§12 and 22, is amended to read:

20 2. Settlement; mediation. The chairman ~~chair~~ of the panel
21 shall may attempt to mediate any differences of the parties
22 before proceeding to findings at any time.

24 Sec. 5. Report; legislation. The joint standing committee of the
25 Legislature having jurisdiction over judiciary matters may report
26 out a bill during the First Regular Session of the 116th
27 Legislature regarding medical malpractice prelitigation screening
28 panels.

30 1. The following may submit written reports to the joint
31 standing committee of the Legislature having jurisdiction over
32 judiciary matters by February 1, 1993:

- 34 A. Maine State Bar Association;
36 B. Maine Medical Association;
38 C. Maine Trial Lawyers Association;
40 D. Medical Mutual Insurance Company of Maine; and
42 E. Any other interested person.

44 2. Reports submitted to the committee must include:

- 46 A. Information regarding: the number of cases;
48 dispositions; use of mediation; sizes of claims; claims

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proceeding to court; and the shortest, longest and average length of time for cases, including length of time before the hearing;

B. Conclusions regarding the success of the panels;

C. Any recommendations for changes; and

D. Any other information and comments.

3. The Judicial Department is invited to provide assistance and any relevant information and recommendations.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1992-93

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative

All Other \$11,050

Provides for the appropriation of funds to compensate panel chairs for mediation of medical malpractice cases.

FISCAL NOTE

1992-93

APPROPRIATIONS/ALLOCATIONS

General Fund \$11,050

This bill provides a General Fund appropriation to the Judicial Department in the amount of \$11,050 in fiscal year 1992-93 for costs associated with mediation.

The additional workload and administrative costs associated with providing assistance and information to various interest groups and parties will be absorbed within the budgeted resources of the Judicial Department.

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STATEMENT OF FACT

This amendment replaces the bill and amends the Maine Health Security Act to make the following changes.

1. The Chief Justice of the Superior Court is authorized to issue administrative orders regarding discovery at the prelitigation screening panel phase of a medical malpractice claim. This is to address the concern that parties and their representatives are engaging in full discovery at the screening panel stage, which increases the costs of the dispute. The administrative orders will allow for consistent discovery limitations that apply to all parties in all cases. This amendment also allows discovery requests to go directly to the Superior Court, rather than first requiring a refusal to rule on the request by the panel chair.

2. This amendment authorizes the screening panel chair presiding over a medical malpractice case to refer the parties to mediation prior to the hearing of the case before the whole panel. The persons to whom the case may be referred for mediation are other panel chairs. The parties and the panel chair handling the mediation must report back to the presiding panel chair regarding the results of the mediation. The purposes of this change are to reduce the issues in dispute between the parties, increase the number of settlements early in the process and provide an opportunity for smaller claims to be presented. This amendment also allows for mediation at any time.

3. This amendment also allows the various interest groups and parties interested in medical malpractice claim resolution to review panel operations, collect information and report back to the Joint Standing Committee on Judiciary by February 1, 1993.

Reported by the Minority of the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the House
2/21/92 (Filing No. H-967)