

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 916

S.P. 335

In Senate, March 21, 1995

An Act to Improve the Function of the Maine Health Security Act.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "May M. Ross", is positioned above the printed name of the Secretary of the Senate.

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.
Cosponsored by Representative: LaFOUNTAIN of Biddeford.

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

Sec. 1. 9-A MRSA §4-202, as enacted by PL 1973, c. 762, §1, is amended to read:

§4-202. Amount of insurance

The provisions of Title 24-A, section 2855 2855-A, shall apply to insurance provided or to be provided in relation to a consumer credit transaction.

Sec. 2. 24 MRSA §2853, sub-§10 is enacted to read:

10. Termination. If the panel hearing procedure has not been concluded by a panel finding within 9 months of service of the claimant's notice of claim under this section, the claimant is permitted, but not required, to bypass further panel proceedings and to commence a lawsuit. Upon motion by an aggrieved party, the court may impound the suit and remand it to the panel for further proceedings if it can be shown that the claimant caused unnecessary delay in concluding panel proceedings.

Sec. 3. 24 MRSA §2855, as amended by PL 1991, c. 505, §5, is repealed.

Sec. 4. 24 MRSA §2855-A is enacted to read:

§2855-A. Findings by panel

1. Negligence and causation. Within 30 days after presentations are complete, the panel shall issue a written decision determining whether there is competent and credible evidence to support a finding that:

A. The health care provider has failed to comply with a relevant parameter or protocol establishing the applicable standard of care, to be answered only if the health care provider is a participant in the medical liability demonstration project established under subchapter IX and has raised as an affirmative defense compliance with the practice parameters or risk management protocols adopted under section 2973;

B. The health care provider was guilty of fault that was a proximate cause of injury or damage to the claimant; and

C. The claimant was not guilty of contributory fault that was equal to or greater than any fault of the health care provider in causing the injury or damage.

2 If all applicable questions are answered in the affirmative, the
3 panel shall determine whether the evidence in support of each
4 finding is clear and convincing.

5 2. Burden of proof. The plaintiff has the burden of
6 proving the defendant's negligence and proximate causation. The
7 defendant has the burden of proving the plaintiff's contributory
8 fault and the defendant's own compliance with any applicable
9 health care parameter or protocol raised as an affirmative
10 defense.

11 Sec. 5. 24 MRSA §2857, sub-§1, as enacted by PL 1985, c. 804,
12 §§12 and 22, is amended to read:

13 1. Proceedings before panel confidential. Except as
14 otherwise provided in this section and section 2858, all
15 proceedings before the panel, including its final determinations,
16 shall must be treated in every respect as private and
17 confidential by the panel and the parties to the claim. No
18 findings Findings or other writings of the panel, nor or any
19 evidence or statements made by any party or his the party's
20 representative during a panel hearing may not be admissible or
21 otherwise submitted or used in any way for any purpose in any
22 subsequent court action or any other public disclosure made,
23 unless otherwise agreed by the party who made the statement or
24 presented the evidence. If-the The findings of the panel are+
25 admissible in subsequent court actions, if the following
26 conditions are met.

27 A. As-to-both-questions If the findings of the panel as to
28 a question under section 2855, 2855-A are unanimous and
29 unfavorable to the person accused of professional
30 negligence,-the and if the panel further finds unanimously
31 that the evidence is clear and convincing, then those
32 findings,-without-explanation,-shall-be that are so found to
33 be supported by clear and convincing evidence are admissible
34 in any subsequent court action for professional negligence
35 against that person by the claimant based on the same set of
36 facts upon which the notice of claim was filed,-and.

37 B. As If the findings of the panel as to either a question
38 under section 2855, 2855-A are unanimous and unfavorable to
39 the claimant, the findings, without explanation, shall--be
40 are admissible in any subsequent court action for
41 professional negligence against the person accused of
42 professional negligence by the claimant based on the same
43 set of facts upon which the notice of claim was filed.

44 Under paragraphs A and B, the findings shall-be are admissible
45 only against the party against whom they were made. The

confidentiality provisions of this section do not apply if the findings were influenced by fraud.

Sec. 6. 24 MRSA §2858, sub-§§1 and 2, as enacted by PL 1985, c. 804, §§12 and 22, are amended to read:

1. Payment of claim; determination of damages. If the unanimous findings of the panel as to section 2855 ~~2855-A~~, ~~subsections subsection~~ 1 and 2 are in the affirmative, the person accused of professional negligence must promptly enter into negotiations to pay the claim or admit liability. If liability is admitted, the claim may be submitted to the panel, upon agreement of the claimant and person accused, for determination of damages. If suit is brought to enforce the claim, the findings of the panel are admissible as provided in section 2857.

2. Release of claim without payment. If the unanimous findings of the panel as to ~~either~~ section 2855 ~~2855-A~~, subsection 1 ~~or--2~~, are in the negative, the claimant must release the claim or claims based on the findings without payment or be subject to the admissibility of those findings under section 2857, subsection 1, paragraph B.

STATEMENT OF FACT

This bill makes the following changes to the law governing mandatory prelitigation screening and mediation panels.

1. It provides that if a panel motion hearing has not concluded within 9 months of service of the notice of claim, the claimant may bypass panel proceedings and commence a lawsuit.

2. It revises the specific findings on negligence and causation required by the panel at the conclusion of its deliberations.

3. It amends the conditions under which the findings of the panel are admissible in subsequent court actions.