

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1254

S.P. 458

In Senate, April 11, 1995

An Act to Strengthen Oversight of Medical Malpractice Insurance and Stabilize Premiums.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.
Cosponsored by Representative: JONES of Bar Harbor.

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

4 **Sec. 1. 24-A MRSA §2302, sub-§3-A** is enacted to read:

6 3-A. Medical malpractice insurance is first subject to
8 subchapter III, but any provisions of this subchapter not
10 inconsistent with subchapter III also apply.

12 **Sec. 2. 24-A MRSA §2303, sub-§1, ¶J** is enacted to read:

14 J. In the case of medical malpractice insurance rates,
16 rates must reflect investment income and potential income
18 from unearned premiums, loss reserves and all cash flows.

20 **Sec. 3. 24-A MRSA c. 25, sub-c. III** is enacted to read:

22 **SUBCHAPTER III**

24 **MEDICAL MALPRACTICE LIABILITY INSURANCE**

26 **§2391. Medical malpractice liability insurance rates**

28 Medical malpractice liability insurance rates and
30 classifications must be approved, modified or disapproved by the
32 superintendent subject to this chapter. Rates determined by the
34 superintendent are maximum rates. Premium rates up to 5% higher
36 or lower than those approved may be used if filed with the
38 superintendent within 5 days after commencing use. If the
40 superintendent has reason to believe that the filing produces
42 rates that are excessive, inadequate or unfairly discriminatory,
44 the superintendent may disapprove them under chapter 23 and
46 chapter 25, subchapter I.

48 **§2392. Approval of rates**

50 The following provisions apply to medical malpractice
52 insurance rates.

1. **Determination of rates.** Every insurer that issues
2. medical malpractice liability insurance policies and that
3. provides more than 10% of the medical malpractice coverage in
4. this State shall file with the superintendent its classification
5. of risks and maximum premium rates, which may not take effect
6. until the superintendent has approved them. The superintendent
7. shall apply the procedures and standards of this section in
8. investigating, reviewing and determining just and reasonable
9. rates.

10. **2. Contents of filing.** The superintendent shall require
11. every insurance company subject to this subchapter to file with
12. the bureau the data, statistics, schedules or information
13. necessary to determine just and reasonable rates. The

2 superintendent may not approve a rate filing until the
3 information has been submitted. The required information
4 includes, but is not limited to:

5
6 A. Financial records showing the amount of profit or loss
7 made on every classification of medical malpractice
8 insurance during the previous year;

9
10 B. Records showing profits from investment income,
11 including investment income on net realized capital gains,
12 loss reserves and unearned premiums;

13
14 C. Data reflecting conformity with the investment model
15 developed under section 2393 or an explanation of
16 nonconformity with the model; and

17
18 D. Records showing the utilization of adequate programs to
19 control costs and expenses, in accordance with standards to
20 be determined and approved by the superintendent. At a
21 minimum, the program must be designed to have a material
22 impact on premium charges by reducing costs and expenses.

23
24 3. Additional information. The superintendent may require,
25 at any time, any additional information the superintendent
26 determines necessary.

27
28 4. Standard for approval. This subsection applies to
29 determination of just and reasonable rates for a filing.

30
31 A. The superintendent shall establish rates, based on the
32 filing and sworn testimony, which are, in addition to any
33 other requirements:

34 (1) Just and reasonable and not excessive, inadequate
35 or unfairly discriminatory; and

36 (2) Based only on a just and reasonable profit.

37
38 B. In establishing just and reasonable rates, the
39 superintendent shall consider:

40
41 (1) The reasonableness of any return on capital and
42 surplus allocated to the coverage of risks in this
43 State;

44
45 (2) The reasonableness of the amounts of capital and
46 surplus allocable to the coverage of risks in this
47 State;

48
49 (3) The reported investment income earned or realized
50 from funds generated from business in this State;

51
52

2 (4) The reported loss reserves, including the methods
4 and the interest rates used in determining the present
 value for reported reserves and the use of those
 reserves in the determination of the proposed rates;

6 (5) The reported annual losses and loss adjustment
 expenses; and

8 (6) The measures taken to contain costs.

10 C. The justness and reasonableness of rates must be
12 determined for the period in which the rates are in effect.

14 D. The filer shall have the burden of proving that the
16 rates meet the requirements of this chapter and chapter 23.

18 E. The superintendent may not approve an increase or
20 decrease in rates unless the superintendent finds that the
 information supplied in the filing and sworn testimony is
22 accurate and sufficient to meet the requirements of this
 section.

24 5. Market disruption. In determining whether a rate is
 reasonable, the superintendent shall consider the market
26 disruption that may be caused by substantial and immediate
 increases or decreases in rates. If the superintendent
28 determines that a requested rate is unreasonable because it would
 cause undue market disruption, the superintendent may take such
30 reasonable action as necessary to avoid or minimize disruption,
 including limiting the amount that class relativities may be
32 changed at any one time or spreading the requested adjustments
 over a period not to exceed 3 years, to the extent that the
34 action does not threaten the financial security of the insurer.

36 6. Public record. A rate filing is a public record and
 must be available for public review and inspection.

38 7. Public Advocate participation. The Public Advocate
40 shall participate as follows.

42 A. The Public Advocate, as appointed under Title 35-A,
 section 1701, shall be a party to the hearing mandated in
44 this section. The commissioner may serve a copy of the
 filing on the Public Advocate. The Public Advocate may make
46 timely and appropriate requests for data necessary to
 participate in the decision.

48 B. A party filing for a rate increase under this section
50 shall pay to the superintendent at the time of filing a
 filing fee of \$10,000 which the superintendent shall
52 immediately credit to the Public Advocate. That fee must be
 segregated and expended for the purpose of employing outside

2 consultants and of paying other expenses to fulfill the
3 requirements of this subchapter. Any portion of the fee not
4 so expended must be returned to the filer.

6 8. Public hearing. The superintendent shall hold a public
7 hearing as provided in sections 229 to 235 on each filing. The
8 public hearing must be conducted no sooner than 30 days and no
9 later than 60 days after the date the rate filing is determined
10 complete by the superintendent. The superintendent shall
11 establish just and reasonable rates and state the findings in a
12 written order issued within 90 days from the date the hearing is
13 completed. If the superintendent denies or dismisses a filing
14 any further filing is deemed to be a new filing subject to the
15 public hearing requirement.

16 9. Procedures; rules. Subject to the applicable
17 requirements of the Maine Administrative Procedure Act, the
18 superintendent may adopt rules establishing procedures for the
19 administration of this section.

20 **§2393. Investment income model**

21
22 The superintendent shall develop and periodically update a
23 model for estimating investment income earned in the business of
24 medical malpractice. The model must take into account both risk
25 and market rates of return.

26
27 **§2394. Closed claims study**

28
29 1. Model. The superintendent shall prepare and forward to
30 the Legislature, by July 1, 1996, a model for collecting data in
31 a closed claims study of medical malpractice claims. The model
32 must be developed after a public hearing process and must provide
33 sufficient information to serve as a basis for comparison with
34 rate filings. The superintendent shall also develop a model for
35 collecting data on claims made in the State on an ongoing basis
36 using the same public hearing process.

37
38 2. Study contents. The study must include information
39 regarding:

40
41 A. The number of claims opened;

42
43 B. The history of each claim;

44
45 C. Demographic characteristics of the plaintiffs and
46 defendants;

47
48 D. Types of injuries;

49
50 E. Policies in effect;

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52

