

MAINE STATE LEGISLATURE

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DATE: 5-19-97

(Filing No. H-524)

BANKING AND INSURANCE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1036, L.D. 1453, Bill, "An Act to Provide Subrogation Equity"

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

Sec. 1. 24 MRSA §2316, as amended by PL 1981, c. 205, §1, is further amended to read:

§2316. Certificates or contracts; approval by superintendent

No A nonprofit hospital and medical service organization shall may not issue or deliver in this State any certificate or other evidence of any contract unless and until the form thereof used, together with the form of application and all riders or endorsements for use in connection therewith,--shall with the certificate or other evidence of a contract, have been filed with and approved by the superintendent and--approved--by--him as conforming to reasonable rules and regulations from time to time made by him the superintendent and as not--inconsistent consistent with any other provisions of law applicable--thereto. The superintendent shall, within a reasonable time after the filing of any such form, notify the organization filing the same form either of his the approval or of his the disapproval of such the form. The superintendent may approve any such form which that in his the superintendent's opinion contains provisions on any one or more of the several requirements made by him--which the superintendent

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that are more favorable to the subscribers than the one or ones
se required. The superintendent ~~shall have power, from time to time,~~ is authorized to make, alter and supersede reasonable
regulations prescribing the required, optional and prohibited
provisions in such any contracts, and such regulations shall must
conform, as far as practicable, to Title 24-A, chapters 33 and
35. Where If the superintendent deems determines those chapters
to be inapplicable, either in part or in their entirety, the
~~foregoing chapters, he~~ the superintendent may prescribe the
portions or summary thereof of the contract to be printed on the
certificate issued to the subscriber. ~~No contracts~~ A contract may
not be delivered or issued for delivery in this State unless they
meet it meets the requirements of Title 24-A, sections 2438 to
2445, section 2729-A and section 2747. Any filing made ~~hereunder~~
shall be in accordance with this section is deemed approved
unless disapproved within 60 days from the date of such the
filing.

Sec. 2. 24-A MRS §2910-A is enacted to read:

§2910-A. Subrogation; medical payments coverage

1. Policy requirements. A casualty insurance policy
subject to this chapter may not provide for subrogation or
priority over the insured of payment for any hospital, nursing,
medical or surgical services or of any expenses paid or
reimbursed under the medical payments coverage in the policy in
the event the insured is entitled to receive payment or
reimbursement from any other person as a result of legal action
or claim, except as provided in this section.

The coverage may contain a provision that allows the payments if
that provision is approved by the superintendent and if that
provision required the prior written approval of the insured and
provides that the insurer's subrogation right is subject to
subtraction to account for the pro rata share of the insured's
attorney's fees incurred in obtaining the recovery from another
source.

2. Dispute resolution. In the event of a dispute as to the
application of any such provision or the amount available for
payment to those claiming payment for services or reimbursement,
that dispute must be determined, if the action is pending, before
the court in which it is pending; or if no action is pending, by
filing an action in any court for determination of the dispute.

3. Exception. Nothing in this section prevents an insurer
from exercising its subrogation rights directly against any
person legally responsible for the insured's injury. In the
event that the insurer pursues its subrogation rights directly

2 against such a person, the insurer's subrogation right is not
3 subject to any subtraction to account for attorney's fees and the
4 insurer is entitled to full recovery.

5 Sec. 3. 24-A MRSA §4243 is enacted to read:

6 **§4243. Limits on priority liens; subrogation**

7
8 An individual or group contract subject to this chapter may
9 not provide for subrogation or priority over the enrollee of
10 payment for any hospital, nursing, medical or surgical services
11 or of any expenses paid or reimbursed under the coverage, in the
12 event the enrollee is entitled to receive payment or
13 reimbursement from any other person as a result of legal action
14 or claim, except as provided in this section.

15
16 The coverage may contain a provision that allows the
17 payments, if that provision is approved by the superintendent and
18 if that provision required the prior written approval of the
19 insured and allows such payments only on a just and equitable
20 basis and not on the basis of a priority lien. A "just and
21 equitable basis" means that any factors that diminish the
22 potential value of the enrollee's claim may likewise reduce the
23 share in the claim for those claiming payment for services or
24 reimbursement. Such factors include, but are not limited to:

25
26 1. Legal defenses. Questions of liability and comparative
27 negligence or other legal defenses;

28
29 2. Exigencies of trial. Exigencies of trial that reduce a
30 settlement or award in order to resolve the claim; and

31
32 3. Limits of coverage. Limits on the amount of applicable
33 insurance coverage that reduce the claim to an amount recoverable
34 by the insured.

35
36 In the event of a dispute as to the application of any such
37 provision or the amount available for payment to those claiming
38 payment for services or reimbursement, that dispute must be
39 determined, if the action is pending, before the court in which
40 it is pending; or if no action is pending, by filing an action in
41 any court for determination of the dispute.'

42
43 Further amend the bill by inserting at the end before the
44 summary the following:

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46
47 **FISCAL NOTE**

48
49 This bill may increase the number of civil suits filed in

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2 the court system. The additional workload and administrative
costs associated with the minimal number of new cases filed can
4 be absorbed within the budgeted resources of the Judicial
Department. The collection of additional filing fees may also
increase General Fund revenue by minor amounts.

6
8 The Bureau of Insurance within the Department of
Professional and Financial Regulation will incur some minor
10 additional costs to review additional filings. These costs can
be absorbed within the bureau's existing budgeted resources.

12
14 **SUMMARY**

16 This amendment replaces the bill and expands the current
statutory provisions pertaining to limits on priority liens under
18 individual and group health insurance policies to health
maintenance organization contracts. It adds a cross-reference to
20 the current statutory provisions in the Maine Revised Statutes,
Title 24. It also requires that subrogation provisions in
22 casualty insurance policies account for the pro rata share of the
insured's attorney's fees incurred in obtaining the recovery from
another source.

24 The amendment also adds a fiscal note to the bill.