

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1453

H.P. 1036

House of Representatives, March 11, 1997

An Act to Provide Subrogation Equity.

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Bangor.
Cosponsored by Senator MURRAY of Penobscot and
Representatives: AHEARNE of Madawaska, CARLETON of Wells, DAVIDSON of
Brunswick, FARNSWORTH of Portland, SAXL of Portland, Senators: AMERO of
Cumberland, DAGGETT of Kennebec, PINGREE of Knox.

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

Sec. 1. 24-A MRSA §2729-B is enacted to read:

§2729-B. Subrogation clauses

1. Subrogation clauses regulated. A policy of health insurance offered, sold or issued to a resident of this State or to cover a resident of this State may not contain a subrogation, reimbursement or similar clause that provides subrogation, reimbursement or similar rights to the health carrier issuing the health plan, unless:

A. The clause provides that it applies only after the covered person has received a total recovery from another source that is at least as great as the covered person's total loss including both pecuniary and nonpecuniary losses; and

B. The clause provides that the health carrier's subrogation right is subject to subtraction to account for the pro rata share of the covered person's costs, disbursements, attorney's fees and other expenses incurred in obtaining the recovery from another source.

2. Retroactive amendment regulated. An addition of or amendment of a subrogation, reimbursement or similar clause in a health plan may not be applied to the disadvantage of a covered person with respect to benefits provided by the health carrier in connection with an injury, illness, condition or other covered situation that originated prior to the addition or amendment to the clause.

In the event of a dispute as to the application of any provision or the amount available for payment to those claiming payment for services or reimbursement, the 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.

Sec. 2. 24-A MRSA §2836-A is enacted to read:

§2836-A. Subrogation clauses

1. Subrogation clauses regulated. A policy of health insurance offered, sold or issued to a resident in this State or to cover a resident of this State may not contain a subrogation, reimbursement or similar clause that provides subrogation, reimbursement or similar rights to the health carrier issuing the health plan, unless:

2 A. The clause provides that it applies only after the
3 covered person has received a total recovery from another
4 source that is at least as great as the covered person's
5 total loss, including both pecuniary and nonpecuniary
6 losses; and

7 B. The clause provides that the health carrier's
8 subrogation right is subject to subtraction to account for
9 the pro rata share of the covered person's costs,
10 disbursements, attorney's fees and other expenses incurred
11 in obtaining the recovery from another source.

12 **2. Retroactive amendment regulated.** An addition of or
13 amendment of a subrogation, reimbursement or similar clause in a
14 health plan may not be applied to the disadvantage of a covered
15 person with respect to benefits provided by the health carrier in
16 connection with an injury, illness, condition or other covered
17 situation that originated prior to the addition or amendment to
18 the clause.

19 Sec. 3. 24-A MRSA §§2902-G and 2902-H are enacted to read:

20 **§2902-G. Subrogation**

21 A policy for motor vehicle insurance may not provide for
22 subrogation or priority over the insured of payment for any
23 hospital, nursing, medical or surgical services or of any
24 expenses paid or reimbursed under the policy, in the event the
25 insured is entitled to receive payment reimbursement from any
26 other person as a result of legal action or claim, except as
27 provided in this section.

28 A policy may contain a provision that allows the payments,
29 if that provision is approved by the superintendent and, if that
30 provision required the prior written approval of the insured and
31 allows the payments only on a just and equitable basis and not on
32 the basis of a priority lien. A just and equitable basis means
33 that any factors that diminish the potential value of the
34 insured's claim may likewise reduce the share in the claim for
35 those claiming payment for services or reimbursement. Such
36 factors include, but are not limited to:

37 **1. Legal defenses.** Questions of liability and comparative
38 negligence or other legal defenses;

39 **2. Exigencies of trial.** Exigencies of trial that reduce a
40 settlement or award in order to resolve the claim; and

41 **3. Limits of coverage.** Limits on the amount of applicable
42 insurance coverage that reduce the claim to an amount recoverable
43 by the insured.

§2902-H. Subrogation clauses

1. Subrogation clauses regulated. A policy of motor vehicle insurance offered, sold or issued to a resident of this State or to cover a resident of this State may not contain a subrogation, reimbursement or similar clause that provides subrogation, reimbursement or similar rights to the motor vehicle carrier issuing the motor vehicle plan, unless:

A. The clause provides that it applies only after the covered person has received a total recovery from another source that is at least as great as the covered person's total loss, including both pecuniary and nonpecuniary losses; and

B. The clause provides that the motor vehicle carrier's subrogation right is subject to subtraction to account for the pro rata share of the covered person's costs, disbursements, attorney's fees and other expenses incurred in obtaining the recovery from another source.

2. Retroactive amendment regulated. An addition of or amendment of a subrogation, reimbursement or similar clause in a motor vehicle plan may not be applied to the disadvantage of a covered person with respect to benefits provided by the motor vehicle carrier in connection with an injury, illness, condition or other covered situation that originated prior to the addition or amendment to the clause.

In the event of a dispute as to the application of any provision or the amount available for payment to those claiming payment for services or reimbursement, the dispute must be determined if the action is pending before the court in which it is pending; or if not action is pending, by filing an action in any court for determination of the dispute.

Sec. 4. 24-A MRSA §§4243 and 4343-A are enacted to read:

§4243. Subrogation

An individual or group coverage subject to this chapter may not provide for subrogation or priority over the enrollee of payment for any hospital, nursing, medical or surgical services or of any expenses paid or reimbursed under the coverage, in the event the enrollee is entitled to receive payment 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 allows such payments only on a just and equitable

basis and not on the basis of a priority lien. A just and equitable basis means that any factors that diminish the potential value of the enrollee's claim may likewise reduce the share in the claim for those claiming payment for services or reimbursement. Such factors include, but are not limited to:

1. **Legal defenses.** Questions of liability and comparative negligence or other legal defenses;

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

3. **Limits of coverage.** Limits on the amount of applicable insurance coverage that reduce the claim to an amount recoverable by the insured.

§4243-A. Subrogation clauses

1. **Subrogation clauses regulated.** An individual or group coverage subject to this chapter offered, sold or issued to a resident of this State or to cover a resident of this State may not contain a subrogation, reimbursement or similar clause that provides subrogation, reimbursement or similar rights to the health maintenance organization, unless:

A. The clause provides that it applies only after the covered person has received a total recovery from another source that is at least as great as the covered person's total loss, including both pecuniary and nonpecuniary losses; and

B. The clause provides that the health maintenance organization's subrogation right is subject to subtraction to account for the pro rata share of the covered person's costs, disbursements, attorney's fees and other expenses incurred in obtaining the recovery from another source.

2. **Retroactive amendment regulated.** An addition of or amendment of a subrogation, reimbursement or similar clause in an individual or group coverage subject to this chapter may not be applied to the disadvantage of a covered person with respect to benefits provided by the health maintenance organization in connection with an injury, illness, condition or other covered situation that originated prior to the addition or amendment to the clause.

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, the 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.

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SUMMARY

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This bill ensures that an insured person will obtain a full recovery from other sources before having to reimburse the insurance carrier for benefits paid under a health insurance or motor vehicle insurance policy.