

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1636

S.P. 531

In Senate, March 24, 1997

An Act to Make Mediation Mandatory in Medical Malpractice Proceedings.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

4 Sec. 1. 24 MRSA c. 21, sub-c. IV-A, as amended, is repealed.

6 Sec. 2. 24 MRSA c. 21, sub-c. IV-B is enacted to read:

8 **SUBCHAPTER IV-B**

10 **MANDATORY PRELITIGATION MEDIATION**

12 **§2871. Panel of medical malpractice mediators**

14 The Chief Justice of the Superior Court shall prepare and maintain a list of persons qualified to serve as mediators in claims under this chapter.

16 **§2872. Submission of claims**

18 **1. Notice of claim.** A person may commence an action for professional negligence by serving a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, on the person accused of professional negligence. The notice of claim must be accompanied by pertinent medical records and a report of the medical expert for the person making the claim when an expert opinion is necessary to support the claim. The notice of claim must be filed simultaneously with the Superior Court. Service must be made in accordance with the Maine Rules of Civil Procedure, Rule 4.

20 **2. Selection of mediator.** The Superior Court shall order the parties to agree on a mediator from the list prepared under section 2871. If the court finds that the parties are unable to agree, the court shall select a mediator.

22 **3. Confidentiality.** The notice of claim and all other documents filed with the Superior Court in the action for professional negligence during the prelitigation mediation process are confidential. If the claim is settled, the fact of settlement is confidential.

24 **4. Appearance.** Within 20 days of receipt of notice of claim under subsection 1, the person or persons accused of professional negligence in the notice or the person's representative shall serve an answer on the claimant or file an appearance before the Superior Court with a copy to the claimant.

26 **5. Additional information.** The parties shall meet within 30 days after the notice of claim is filed to determine if additional information is required and the timing of the defense report.

2 6. Meeting with mediator. The parties shall schedule a
4 meeting with the mediator within 45 days of the filing of the
notice of claim.

6 7. Waiver of fees and costs. Any party may, at the time of
8 filing, apply to the Superior Court for a waiver of the filing
fee and payment of costs. The court shall grant the waiver if:

10 A. The party is indigent under guidelines contained in the
12 Maine Rules of Civil Procedure, Rule 44(b);

14 B. The party is or was an employee of another party and
16 that other party stipulates that the employee at the time of
the claimed injury was acting in the course and scope of
employment with that other party; or

18 C. The waiver is necessary to avoid requiring an individual
20 who is a party to the case from paying 2 or more filing fees
22 because a professional association or other business entity
24 of which the individual is a member is also named as a party
and has substantially the same interests as the individual
in the case.

26 8. Fees; costs. The Supreme Judicial Court shall establish
28 fees for mediation under this section. The costs of mediation,
including the cost of the mediator, must be borne equally by the
plaintiff and defendants.

30 9. Statute of limitations. The applicable statute of
32 limitations concerning actions for professional negligence is
34 tolled from the date upon which notice of claim is served or
filed in Superior Court until 30 days following the day upon
which the claimant receives written notice of the finding of the
mediator that mediation has failed.

36 10. Failure to proceed. If the mediator determines that
38 one or both of the parties have not proceeded diligently with
mediation, the mediator shall inform the Superior Court, which
40 may order sanctions including involuntary dismissal of the case.

42 11. Failure of mediation. If the mediator determines,
44 after 90 days after the notice of claim was filed, that the
parties are unable to reach an agreement, the case may proceed to
46 trial. The Superior Court may, for good cause, extend the time
for mediation.

2 12. Rules. The Supreme Judicial Court shall adopt rules to
3 implement this section. These rules may provide for extension of
4 the time periods specified in this section if the extension will
5 further the possibility of settling the case.

6 **Sec. 3. 24 MRSA §2903**, as amended by PL 1991, c. 505, §6, is
7 further amended to read:

8 **§2903. Notice of claim before suit**

9
10 **1. Commencement of action.** No An action for professional
11 negligence may not be commenced until the plaintiff has:

12
13 A. Served and filed written notice of claim in accordance
14 with section ~~2853~~ 2872;

15
16 B. Complied with the provisions of subchapter IV-A ~~IV-B~~; and

17
18 C. Determined that the time periods provided in section
19 ~~2859~~ 2872 have expired.

20
21 **2. Statute of limitations.** Any applicable statute of
22 limitations ~~shall-be~~ is tolled under section ~~2859~~ 2872.

23
24 **Sec. 4. Application.** This Act applies to claims of
25 professional negligence filed on or after October 1, 1997.
26 Claims of professional negligence filed before October 1, 1997
27 are covered by the provisions of the Maine Revised Statutes,
28 Title 24, chapter 21, subchapter IV-A as they existed at the time
29 the claim was filed.

30
31 **Sec. 5. Effective date.** This Act takes effect October 1, 1997.

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33

34 **SUMMARY**

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36 This bill repeals the mandatory prelitigation screening
37 panel process for medical malpractice panels. It replaces that
38 process with a mandatory mediation process that must be completed
39 within 90 days of filing a claim unless the court extends the
40 time for good cause. Expenses of mediation would be borne
41 equally by both plaintiffs and defendants. The statute of
42 limitations would be suspended during mediation. Discovery is
43 limited to medical records and experts. Confidentiality is
44 provided for the claim during mediation and if a settlement is
45 reached.