

# MAINE STATE LEGISLATURE

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L.D. 1728

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STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 571, L.D. 1728, Bill, "An Act to Promote Professional Competence and Improve Patient Care"

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 §2502, sub-§§1-C and 1-D are enacted to read:

1-C. Adverse professional competence review action.  
"Adverse professional competence review action" means an action based upon professional competence review activity to reduce, restrict, suspend, deny, revoke or fail to grant or renew a physician's:

A. Membership, clinical privileges, clinical practice authority or professional certification in a hospital or other health care entity; or

B. Participation on a health care entity's provider panel.

1-D. Health care entity. "Health care entity" means:

A. An entity that provides or arranges for health care services and that follows a written professional competence review process;

B. An entity that furnishes the services of physicians to another health care entity or to individuals and that follows a written professional competence review process; or

C. A professional society or professional certifying organization when conducting professional competence review activity.

**Sec. 2. 24 MRSA §2502, sub-§4,** as enacted by PL 1977, c. 492, §3, is repealed and the following enacted in its place:

**4. Professional competence committee.** "Professional competence committee" means any of the following when engaging in professional competence review activity:

A. A health care entity;

B. An individual or group, such as a medical staff officer, department or committee, to which a health care entity delegates responsibility for professional competence review activity;

C. Entities and persons, including contractors, consultants, attorneys and staff, who assist in performing professional competence review activities; or

D. Joint committees of 2 or more health care entities.

**Sec. 3. 24 MRSA §2502, sub-§4-B** is enacted to read:

**4-B. Professional competence review activity.** "Professional competence review activity" means study, evaluation, investigation, recommendation or action, by or on behalf of a health care entity and carried out by a professional competence committee, necessary to:

A. Maintain or improve the quality of care rendered in, through or by the health care entity or by physicians;

B. Reduce morbidity and mortality; or

C. Establish and enforce appropriate standards of professional qualification, competence, conduct or performance.

**Sec. 4. 24 MRSA §2502, sub-§§8 and 9** are enacted to read:

**8. Professional competence review records.** "Professional competence review records" means the minutes, files, notes, records, reports, statements, memoranda, data bases, proceedings,

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findings and work product prepared at the request of or generated by a professional competence review committee relating to professional competence review activity. Records received or considered by a professional competence committee during professional competence review activity are not "professional competence review records" if the records are individual medical or clinical records or any other record that was created for purposes other than professional competence review activity and is available from a source other than a professional competence committee.

**9. Written professional competence review process.**  
"Written professional competence review process" means a process that is reduced to writing and includes:

A. Written criteria adopted by the health care entity that are designed to form the primary basis for granting membership, privileges or participation in or through the health care entity. The health care entity shall furnish or make available for inspection and photocopying to a requesting physician the written criteria used by the entity; and

B. A mechanism through which an individual physician can:

(1) Be informed in writing of the basis of any adverse professional competence review action;

(2) Participate in a meeting or hearing with representatives of the health care entity at which time the facts upon which an adverse action is based and the basis for the adverse action can be discussed and reconsidered; and

(3) Receive a written explanation of any final adverse professional competence review action.

**Sec. 5. 24 MRSA §2506**, as amended by PL 1997, c. 271, §3, is further amended to read:

**§2506. Provider, entity and carrier reports**

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes a description of the adverse action, the

date, the location and a description of the event or events giving rise to the adverse action. Upon request, the following information must be released to the board or authority: medical records relating to the event or events; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the practitioner and the provider or entity. The report must include situations in which employment or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of disciplinary proceedings, and it also must include situations where employment or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider or health care entity terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section must be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. The failure of any health care provider or health care entity to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Carriers providing managed care plans are subject to the reporting requirements of this section when they take adverse actions against a practitioner's credentials or employment for reasons related to clinical competence or unprofessional conduct that may adversely affect the health or welfare of the patient.

Sec. 6. 24 MRSA §2508, as enacted by PL 1977, c. 492, §3, is amended to read:

**§2508. Effect of filing**

The filing of a report with the board pursuant to this chapter, investigation by the board or any disposition by the board shall may not, in and of itself, preclude any action by a hospital or other health care facility or health care entity or professional society comprised primarily of physicians to suspend, restrict or revoke the privileges or membership of the physician.

Sec. 7. 24 MRSA §§2510-A and 2510-B are enacted to read:

**§2510-A. Confidentiality of professional competence review records**

Except as otherwise provided by this chapter, all professional competence review records are privileged and confidential and are not subject to discovery, subpoena or other

means of legal compulsion for their release to any person or entity and are not admissible as evidence in any civil, judicial or administrative proceeding. Information contained in professional competence review records is not admissible at trial or deposition in the form of testimony by an individual who participated in the written professional competence review process. Nothing in this section may be read to abrogate the obligations to report and provide information under section 2506, nor the application of Title 32, sections 2599 and 3296.

**1. Protection; waiver.** This chapter's protection may be invoked by a professional competence committee or by the subject of professional competence review activity in any civil, judicial or administrative proceeding. This section's protection may be waived only by a written waiver executed by an authorized representative of the professional competence committee.

**2. Adverse professional competence review action.** Subsection 1 does not apply in a proceeding in which a physician contests an adverse professional competence review action against that physician, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in any other or subsequent proceedings seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

**3. Defense of professional competence committee.** Subsection 1 does not apply in a proceeding in which a professional competence committee uses professional competence review records in its own defense, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in the same or other proceeding seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

**4. Waiver regarding individual.** Waiver of subsection 1 in a proceeding regarding one physician does not constitute a waiver of subsection 1 as to other physicians.

**§2510-B. Release of professional competence review records**

Nothing in this section may be read to abrogate the obligations to report and provide information under section 2506.

**1. Release to other review bodies, agencies, accrediting bodies.** A professional competence committee may furnish professional competence review records or information to other professional review bodies, state or federal government agencies

and national accrediting bodies without waiving any privilege against disclosure under section 2510-A.

2. Release to physician. A professional competence committee may furnish professional competence review records to the physician who is the subject of the professional competence review activity and the physician's attorneys, agents and representatives without waiving any privilege against disclosure under section 2510-A.

3. Release of directory information. A professional competence committee may furnish directory information showing membership, clinical privileges, provider panel or other practice status of a physician with the health care entity to anyone without waiving the privilege against disclosure under section 2510-A.

Sec. 8. 24 MRSA §2511, first ¶, as amended by PL 1997, c. 271, §4, is further amended to read:

Any person acting without malice, any physician, podiatrist, health care provider, health care entity or professional society, any member of a professional competence committee or professional review committee, any board or appropriate authority and any entity required to report under this chapter are immune from civil liability.'

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

#### **FISCAL NOTE**

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

#### **SUMMARY**

This amendment replaces the bill. It amends the Maine Health Security Act to recognize that new health care entities have arisen since the adoption of the Act. This amendment makes the Act and its obligations and protections applicable to these new types of health care entities.

New terms are included in the Health Security Act: adverse professional competence review action; health care entity;

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professional competence review activity, professional competence review records, professional competence committee and written professional competence review process.

The amendment provides confidentiality for written professional competence review records. The records cannot be released except by the professional competence committee, or by the physician when the physician challenges the committee's action. If a physician uses the records to contest an adverse action, the protection is not waived for other proceedings, including actions for professional negligence. If the professional competence committee uses the records in its own defense, the protection is not waived for other proceedings, including actions for professional negligence.

A professional competence committee may release professional competence review records to other professional review bodies, state and federal agencies, accrediting bodies and the physician who is the subject of the records without waiving the protection. The committee may release directory information to anyone without waiving the protection.

The amendment also adds a fiscal note to the bill.