

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

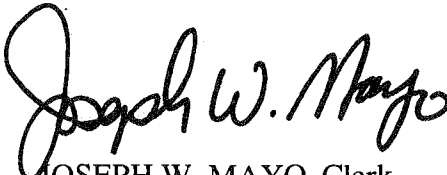
No. 1784

H.P. 1257

House of Representatives, April 14, 1997

**An Act to Expedite the Operation of Prelitigation Screening Panels under
the Maine Health Security Act.**

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.

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

2
3 **Sec. 1. 24 MRSA §2853, sub-§4**, as amended by PL 1995, c. 571,
4 §1, is further amended to read:

6 **4. Filing of records and admissible evidence; time for**
7 **hearing; extensions.** Within 20 days of entry of appearance, the
8 person or persons accused shall ~~contact the claimant's counsel~~
9 ~~and by agreement shall designate a timetable for filing~~ file all
10 the relevant medical and provider records necessary to a
11 determination of the panel and ~~for completing discovery.~~ If the
12 parties are unable to agree on a timetable within 60 days of the
13 entry of appearance, ~~the claimant shall notify the chair of the~~
14 ~~panel. The chair shall then establish a timetable for the filing~~
15 ~~of all relevant records and reasonable discovery, which must be~~
16 ~~filed at least 30 days before any hearing date.~~ Within 40 days
17 of filing of the medical and provider records, each party shall
18 file any additional admissible evidence, including, but not
19 limited to, statements by experts without the necessity of the
20 experts appearing at the hearing. The hearing may not be later
21 than 6 4 months from the service of the notice of claim upon the
22 clerk, except when the time period has been extended by the panel
23 chair in accordance with this subchapter.

24
25 **Sec. 2. 24 MRSA §2853, sub-§5**, as amended by PL 1991, c. 505,
26 §3, is further amended to read:

27 **5. Lawsuits.** The pretrial screening may be bypassed if all
28 parties agree upon a resolution of the claim by lawsuit or if the
29 hearing has not been held within 4 months from the service of the
30 notice of claim and the plaintiff has not requested that the time
31 period be extended. All parties to a claim may, by written
32 agreement, submit a claim to the binding determination of the
33 panel, either prior to or after the commencement of a lawsuit.
34 Both parties may agree to bypass the panel and commence a lawsuit
35 for any reason, or may request that certain preliminary legal
36 affirmative defenses or issues be litigated prior to submission
37 of the case to the panel. The panel has no jurisdiction to hear
38 or decide, absent the agreement of the parties, dispositive legal
39 affirmative defenses, except: compliance with practice parameters
40 or risk management protocols adopted under section 2973 if the
41 defendant is a participant in the medical liability demonstration
42 project established under subchapter IX and intends to introduce
43 evidence of compliance at trial; and comparative negligence. The
44 panel chair may require the parties to litigate, by motion,
45 dispositive legal affirmative defenses in the Superior Court
46 prior to submission of the case to the panel. Any such defense,
47 as well as any motion relating to discovery that the panel chair
48 has chosen not to rule on may be presented, by motion, in

2 Superior Court without the necessity of a complaint having first
been filed.

4 **Sec. 3. 24 MRSA §2853, sub-§7**, as amended by PL 1991, c. 505,
§4, is further amended to read:

6
7. **Extensions of time.** All requests for extension of time
8 under this subchapter must be made to the panel chair. The chair
may extend any time period under this subchapter for good cause,
10 except that the chair may not extend any time period that would
12 result in the hearing being held more than ~~one-year~~ 6 months from
the filing of notice of claim upon the clerk unless good cause is
shown.

14
16 **Sec. 4. 24 MRSA §2854**, as amended by PL 1989, c. 361, §§7 and
10, is further amended to read:

18 **§2854. Presentation of case**

20 **1. Procedure.** The chair may require that the parties
22 present the case in writing and that oral presentation be
permitted only to supplement or refute the written submissions.
The claimant or a representative of the claimant shall present
24 the case before the panel, in writing or orally as required by
the chair. The person accused of professional negligence or his
26 that person's representative shall make a responding
presentation. Wide When a hearing is held, the panel shall
28 afford the parties wide latitude ~~shall be afforded the parties by~~
~~the panel~~ in the conduct of the hearing including, but not
30 limited to, the right of examination and cross-examination by
attorneys. The ~~chairman~~ chair shall make all procedural rulings
32 ~~and his rulings shall be, which are~~ final. The panel shall
maintain a tape recorded record ~~shall be maintained by the panel~~
34 for its purpose only. The record shall must be maintained until
30 days after ~~its~~ the panel's decision and then destroyed
36 pursuant to section 2856. The record shall may not be made
public and the hearings are may not ~~be~~ be public without the
38 consent of both or all parties. The Maine Rules of Evidence
shall do not apply. Evidence shall must be admitted if it is the
40 kind of evidence upon which reasonable persons are accustomed to
rely in the conduct of serious affairs. The panel shall make
42 such the findings upon such the evidence as that is presented in
written presentations at the hearing, the records and any expert
44 opinions provided by or sought by the panel or the parties.

46 After presentation by the parties, as provided in this section,
the panel may request from either party additional facts, records
48 or other information to be submitted in writing or at a continued
hearing, which continued hearing shall must be held as soon as
50 possible. ~~The continued hearings shall be attended by the same~~

2 members of the panel who have sat on all prior hearings in the
3 same claim shall attend the continued hearings, unless otherwise
4 agreed by all parties.

6 **2. Settlement; mediation.** The chairman chair of the panel
7 shall attempt to mediate any differences of the parties before
8 proceeding to findings.

10 **3. Failure to comply.** Failure of a party, without good
11 cause, to submit written presentations, to attend a properly
12 scheduled hearing, to participate in authorized discovery, or to
13 otherwise substantially comply with this subchapter, ~~shall result~~
14 results in a finding made by a majority of the panel against that
15 party and that finding shall ~~have~~ has the same effect as a
16 finding against that party under section 2857.

18 **Sec. 5. 24 MRSA §2855, sub-§1**, as amended by PL 1991, c. 505,
19 §5, is further amended to read:

20 **1. Negligence and causation.** At the conclusion of the
21 presentations, the panel shall make its findings in writing
22 within 30 days by answering the following questions:

24 A. Whether the evidence presented, including any
25 stipulations by the parties, permits a reasonable inference
26 that the acts or omissions complained of ~~ex-found-by-the~~
27 panel ~~to exist, or as agreed by the parties,~~ constitute a
28 deviation from the applicable standard of care by the health
29 care practitioner or health care provider charged with that
30 care;

32 A-1. If the defendant is a participant in the medical
33 liability demonstration project established under subchapter
34 IX and has raised as an affirmative defense compliance with
35 the practice parameters or risk management protocols adopted
36 under section 2973, whether the evidence presented permits a
37 reasonable inference that the defendant ~~complied~~ did not
38 comply with an applicable parameter or protocol establishing
39 the applicable standard of care;

40 B. Whether the evidence presented, including any
41 stipulation by the parties, permits a reasonable inference
42 that the acts or omissions complained of proximately caused
43 the injury complained of ~~ex-as-found-by-the-panel-or-as~~
44 agreed-by-the-parties; and

46 C. If a reasonable inference of negligence on the part of
47 the health care practitioner or health care provider is
48 found raised, whether the evidence presented permits a
49 reasonable inference that any negligence on the part of the
50

2 patient was equal to or greater than the negligence on the
part of the practitioner or provider.

4 **Sec. 6. 24 MRSA §2855, sub-§2**, as repealed and replaced by PL
1989, c. 361, §§8 and 10, is repealed.

6 **Sec. 7. 24 MRSA §2855, sub-§2-A** is enacted to read:

8 2-A. Standard of proof. The standard of proof used by the
10 panel must be whether, in viewing the evidence and all reasonable
12 inferences from the evidence most favorably to the plaintiff, a
jury could reasonably find for the plaintiff on the issues of
negligence and causation.

14 **Sec. 8. 24 MRSA §2858, sub-§§1 and 2**, as enacted by PL 1985, c.
16 804, §§12 and 22, are amended to read:

18 **1. Payment of claim; determination of damages.** If the
unanimous findings of the panel as to section 2855, subsections 1
20 and 2 2-A are in the affirmative, the person accused of
professional negligence must promptly enter into negotiations to
22 pay the claim or admit liability. If liability is admitted, the
claim may be submitted to the panel, upon agreement of the
24 claimant and person accused, for determination of damages. If
suit is brought to enforce the claim, the findings of the panel
26 are admissible as provided in section 2857.

28 **2. Release of claim without payment.** If the unanimous
findings of the panel as to either section 2855, subsection 1 or
30 2 2-A, are in the negative, the claimant must release the claim
or claims based on the findings without payment or be subject to
32 the admissibility of those findings under section 2857,
subsection 1, paragraph B.

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SUMMARY

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The purpose of this bill is to expedite and reduce costs
40 related to the operation of prelitigation screening panels under
the Maine Health Security Act. The bill requires that, unless
42 the plaintiff has requested that a time period be extended, the
hearing be bypassed completely if it has not been held within 4
44 months. This bill shortens certain time periods and requires
that experts submit written statements rather than testify in
46 person. It allows the panel chair to require the parties to make
their presentations of the case in writing. This bill also
48 clarifies the role of the prelitigation screening panels by
changing the standard of proof used by the panel. Under this
bill, the panel must determine whether the evidence presented to
50 it and the permissible inferences from the evidence raise issues

2 of fact as to negligence and causation. This bill also corrects cross-references.