

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 108

H.P. 95

House of Representatives, January 11, 1999

An Act to Protect Enrollees of Managed Care Plans.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BROOKS of Winterport.
Cosponsored by Senator PINGREE of Knox and
Representatives: COWGER of Hallowell, HATCH of Skowhegan, KANE of Saco,
McGLOCKLIN of Embden, SAXL of Bangor, WILLIAMS of Orono, Senator: RUHLIN of
Penobscot.

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

2 **Sec. 1. 24-A MRSA §4301, sub-§§2-A, 4-A and 4-B** are enacted to
4 read:

6 **2-A. Health care treatment decision.** "Health care
8 treatment decision" means a determination made when medical
10 services are provided by the managed care plan or a decision that
affects the quality of the diagnosis, care or treatment provided
to an enrollee of the managed care plan.

12 **4-A. Medically appropriate care.** "Medically appropriate
14 care" means care that meets the standards of care for health care
16 services as determined by health care providers in accordance
with the prevailing practices and standards of the medical
profession and community.

18 **4-B. Ordinary care.** "Ordinary care" means, in the case of
20 a carrier, the degree of care that a carrier of ordinary prudence
would use under the same or similar circumstances. For a person
22 who is an employee, agent, ostensible agent or representative of
a carrier, "ordinary care" means the degree of care that a person
24 of ordinary prudence in the same profession, specialty or area of
practice would use in the same or similar circumstances.

26 **Sec. 2. 24-A MRSA §4310** is enacted to read:

28 **§4310. Duty of care**

30 **1. Carrier duty; liability.** A carrier has the duty to
32 exercise ordinary care when making health care treatment
decisions and is liable for damages for harm to an enrollee
34 proximately caused by the failure of the carrier to exercise
ordinary care.

36 **2. Carrier liability for others.** A carrier is liable for
38 damages for harm to an enrollee proximately caused by the health
care treatment decisions made by any of its:

40 **A. Employees;**

42 **B. Agents;**

44 **C. Ostensible agents; or**

46 **D. Representatives who are acting on behalf of the carrier**
48 **and over whom the carrier has the right to exercise**
influence or control or has actually exercised influence or
50 **control when that influence or control results in the**
failure to exercise ordinary care.

