

MAINE STATE LEGISLATURE

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DATE: 4-25-00

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "D" to COMMITTEE AMENDMENT "A" to H.P. 543, L.D. 750, Bill, "An Act to Establish a Patient's Bill of Rights"

Amend the amendment in section 3 in that part designated "~~§4301-A.~~" by striking out all of subsection 12 and inserting in its place the following:

'12. Ordinary care. "Ordinary care" means, in the case of a carrier, the degree of care that a carrier of ordinary prudence would use under the same or similar circumstances. For a person who is an agent of a carrier, "ordinary care" means the degree of care that a person of ordinary prudence would use under the same or similar circumstances.'

Further amend the amendment in section 19 by striking out all of that part designated "~~§4313.~~" and inserting in its place the following:

'§4313. Carrier liability; cause of action

1. Duty of ordinary care; cause of action. An enrollee may maintain a cause of action against a carrier offering a health plan in accordance with the following.

A. A carrier has the duty to exercise ordinary care when making health care treatment decisions that affect the quality of the diagnosis, care or treatment provided to an enrollee and is liable for damages as provided in this section for harm to an enrollee proximately caused by the failure of the carrier or its agents to exercise such ordinary care.

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2 B. A carrier is also liable for damages as provided in this
4 section for harm to an enrollee proximately caused by the
6 health care treatment decisions made by its agents who are
8 acting on the carrier's behalf and over whom the carrier
 exercised control or influence in the health care treatment
 decisions that result in the failure to exercise ordinary
 care.

10 2. Exhaustion of internal and external review. An enrollee
12 may not maintain a cause of action under this section unless the
 enrollee or the enrollee's representative:

14 A. Has exhausted all levels of the carrier's internal
16 grievance procedure in accordance with this chapter; and

18 B. Has completed the independent external review process
 required under section 4312.

20 3. Limitation on cause of action. An action under this
22 section must be initiated within 3 years from the earlier of the
24 date of issuance of the written external review decision under
 section 4312 or the date of issuance of the underlying adverse
 first-level appeal or first-level grievance determination notice.

26 4. Jurisdiction; notice and filing. The Superior Court has
28 original jurisdiction over a cause of action under this section.
30 The requirements for notice and filing of a cause of action under
 this section are governed by the Maine Rules of Civil Procedure.

32 5. Corporate practice of medicine. Section 4222,
34 subsection 3 or any other law in this State prohibiting a
 carrier from practicing medicine or being licensed to practice
 medicine may not be asserted as a defense by a carrier in any
 action brought pursuant to this section.

36 6. No obligation for benefits. This section does not
38 create any obligation on the part of a carrier to provide an
40 enrollee any health care treatment or service that is not covered
 by the enrollee's health plan policy or contract.

42 7. Admissibility of external review decision. An external
44 review decision is admissible in an action under this section.

46 8. Affirmative defense. It is an affirmative defense to
48 any action asserted against a carrier under this section that the
 carrier or any agent for whose conduct the carrier is liable did
 not control, influence or participate in the health care
 treatment decision.

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2 9. Damages. In a cause of action under this section, the
award of damages must be made in accordance with this subsection.

4 A. Actual or compensatory damages may be awarded.

6 B. Noneconomic damages awarded may not exceed \$400,000.

8 C. Punitive damages may not be awarded.

10 10. Professional negligence. This section does not create
any new or additional liability on the part of a carrier for harm
caused to an enrollee that is attributable to the professional
negligence of a treating physician or other health care
practitioner.

16 11. Employer liability. This section does not create any
liability on the part of an employer that assumes risk on behalf
of its employees or an employer group purchasing organization.

20 12. Exemption. This section does not apply to workers'
compensation, medical malpractice, fidelity, suretyship, boiler
and machinery, property or casualty insurance.

24 13. Limitation on remedy. The cause of action under this
section is the sole and exclusive private remedy under state law
for an enrollee against a carrier for its health care treatment
decisions that affect the quality of the diagnosis, care or
treatment provided to an enrollee, except that this subsection
may not be construed to prohibit an enrollee or an enrollee's
authorized representative from seeking other remedies
specifically available under other provisions of this Title.

32 14. Wrongful death action. Notwithstanding subsection 13,
an enrollee or an enrollee's authorized representative may bring
a cause of action against a carrier for its health care treatment
decisions to seek a remedy under either this section or under
Title 18-A, section 2-804, but may not seek remedies under both
this section and Title 18-A, section 2-804.'

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42 **SUMMARY**

44 This amendment adds clarifying language to the right-to-sue
46 provision and adds language giving carriers an affirmative
defense.

HOUSE AMENDMENT "D" to COMMITTEE AMENDMENT "A" to H.P. 543, L.D.
750

2 The amendment also adds language making the right-to-sue
3 provision the sole and exclusive remedy against a carrier except
4 for statutory causes of action under the Maine Insurance Code.
5 It also allows a cause of action to be brought seeking remedies
6 under either the right-to-sue provision or under wrongful death,
7 but not both.

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SPONSORED BY: 
(Representative J. SAXL)

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