

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" 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 (page 4, lines 10 to 16 in amendment) 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.'

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

2 section for harm to an enrollee directly caused by the
3 failure of the carrier or its agents to exercise such
4 ordinary care.

5 B. Harm to an enrollee directly caused by the failure to
6 exercise ordinary care only occurs if such harm is
7 reasonably related to the enrollee's medical condition.

8
9 2. Exhaustion of internal and external review. An enrollee
10 may not maintain a cause of action under this section unless the
11 enrollee or the enrollee's representative:

12
13 A. Has exhausted all levels of the carrier's internal
14 grievance procedure in accordance with this chapter; and

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

17
18 3. Limitation on cause of action. An action under this
19 section must be initiated within one year after the date of
20 issuance of the written external review decision under section
21 4312.

22
23 4. Jurisdiction; notice and filing. The Superior Court has
24 original jurisdiction over a cause of action under this section.
25 The requirements for notice and filing of a cause of action under
26 this section are governed by the Maine Rules of Civil Procedure.

27
28 5. Corporate practice of medicine. Section 4222,
29 subsection 3 or any other law in this State prohibiting a
30 carrier from practicing medicine or being licensed to practice
31 medicine may not be asserted as a defense by a carrier in any
32 action brought pursuant to this section.

33
34 6. No obligation for benefits. This section does not
35 create any obligation on the part of a carrier to provide an
36 enrollee any health care treatment or service that is not covered
37 by the enrollee's health plan policy or contract.

38
39 7. Admissibility of external review decision. An external
40 review decision is admissible in an action under this section.

41
42 8. Affirmative defense. It is an affirmative defense to
43 any action asserted against a carrier under this section that the
44 carrier or any agent for whose conduct the carrier is liable did
45 not control, influence or participate in the health care
46 treatment decision.

47
48 9. Damages. In a cause of action under this section, the
49 award of damages must be made in accordance with this subsection.
50

2 A. Actual or compensatory damages may be awarded.

4 B. Noneconomic damages awarded may not exceed \$150,000.

6 C. Punitive damages may not be awarded.

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

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

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

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

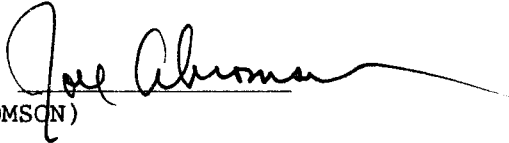
SUMMARY

32 This amendment requires an enrollee to exhaust the internal
34 and external review processes before bringing a cause of action
36 and must initiate the action within one year after the issuance
38 of an external review decision; Committee Amendment "A" requires
40 that the action be brought within 3 years. Under this amendment,
42 the right-to-sue provision allows an enrollee to recover actual
damages and limits the recovery of noneconomic damages to a
maximum of \$150,000 and precludes the recover of punitive
damages. Committee Amendment "A" allows a maximum recovery for
noneconomic damages of \$400,000.

44 Under this amendment, a carrier has an affirmative defense
46 against a cause of action that the carrier or its agents did not
48 influence, participate in or control the health care treatment
50 decision. Committee Amendment "A" does not provide for an
affirmative defense. This amendment also limits an enrollee's
remedy against a carrier for its health care treatment decisions
to the statutory cause of action except for other remedies

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

specifically available under other provisions of the Maine
Revised Statutes, Title 24-A.

SPONSORED BY: 
(Senator ABROMSON)

COUNTY: Cumberland