

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 996

S.P. 313

March 2, 2007

An Act To Support Medical Practice Protocols in Patient Care

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PERRY of Penobscot.

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

2 **Sec. 1. 24 MRSA c. 21, sub-c. 9-A** is enacted to read:

3 **SUBCHAPTER 9-A**

4 **MEDICAL PRACTICE PROTOCOLS**

5 **§2981. Practice protocols; presumption that the standard of medical care has been**
6 **met**

7 **1. Establishment of practice protocols.** The Maine Quality Forum, established in
8 Title 24-A, section 6951, may develop practice protocols in any medical specialty area.
9 The practice protocols must define appropriate clinical indications and methods of
10 treatment within the medical specialty area and must be consistent with appropriate
11 standards of care and levels of quality. The Maine Quality Forum shall consult with the
12 Maine Quality Forum Advisory Council established in Title 24-A, section 6952, the
13 Board of Licensure in Medicine, the Board of Osteopathic Licensure and other relevant
14 medical licensing boards in development of the practice protocols. The Maine Quality
15 Forum shall adopt the practice protocols as major substantive rules under the Maine
16 Administrative Procedure Act.

17 **2. Application to professional negligence claims.** In any claim for professional
18 negligence against a health care practitioner or a health care provider in which a violation
19 of the standard of care has been alleged, the defendant may introduce into evidence, as a
20 presumption that the applicable standard of care has been met, practice protocols
21 developed and adopted pursuant to subsection 1. A defendant who pleads compliance
22 with the practice protocols as a presumption that the applicable standard of care has been
23 met and as the basis for a determination that the health care practitioner's or health care
24 provider's conduct did not constitute professional negligence has the burden of proving
25 compliance with those practice protocols by a preponderance of the evidence. If a
26 defendant introduces at trial evidence of compliance with the practice protocols, the
27 plaintiff may introduce evidence on the issue of compliance and to rebut the presumption
28 that the applicable standard of care has been met. This subsection does not affect the
29 plaintiff's burden to prove the plaintiff's cause of action by a preponderance of the
30 evidence as otherwise provided by law.

31 **Sec. 2. 24-A MRSA §2762** is enacted to read:

32 **§2762. Coverage may be declined for treatment not consistent with practice**
33 **protocols**

34 An insurer that issues an individual insurance policy or contract may decline to
35 provide coverage for treatment that is not consistent with practice protocols adopted as
36 rules by the Maine Quality Forum pursuant to Title 24, section 2981 and that is not
37 documented as a reasonable deviation from those practice protocols by a health care
38 practitioner or a health care provider.

1 **Sec. 3. 24-A MRSA §2847-M** is enacted to read:

2 **§2847-M. Coverage may be declined for treatment not consistent with practice**
3 **protocols**

4 An insurer that issues a group insurance policy or contract may decline to provide
5 coverage for treatment that is not consistent with practice protocols adopted as rules by
6 the Maine Quality Forum pursuant to Title 24, section 2981 and that is not documented as
7 a reasonable deviation from those practice protocols by a health care practitioner or a
8 health care provider.

9 **Sec. 4. 24-A MRSA §4253** is enacted to read:

10 **§4253. Coverage may be declined for treatment not consistent with practice**
11 **protocols**

12 A carrier or insurer that issues a health maintenance organization individual or group
13 policy, contract or certificate may decline to provide coverage for treatment that is not
14 consistent with practice protocols adopted as rules by the Maine Quality Forum pursuant
15 to Title 24, section 2981 and that is not documented as a reasonable deviation from those
16 practice protocols by a health care practitioner or a health care provider.

17 **SUMMARY**

18 This bill authorizes the Maine Quality Forum to develop practice protocols in any
19 medical specialty area and permits compliance with those practice protocols to be
20 asserted in medical malpractice actions as a presumption that the applicable standard of
21 care has been met.

22 The bill also allows an insurer to decline to provide coverage for treatment that is not
23 consistent with those practice protocols and that is not documented as a reasonable
24 deviation from those practice protocols by a health care practitioner or a health care
25 provider.