

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

nonprofit service organizations, 3rd-party administrators, health maintenance organizations, preferred provider organizations or employers, shall apply for licensure by the Bureau of Insurance and pay an application fee of not more than \$400 and an annual license fee of not more than \$100. ~~No~~ A person, partnership or corporation, other than an insurer, or nonprofit service organization, health maintenance organization, preferred provider organization or the employees of exempt organizations, may not perform utilization review services or medical utilization review services unless the person, partnership or corporation has received a license to perform those activities.

Sec. 5. 24-A MRSA §2772, sub-§1, as enacted by PL 1989, c. 556, Pt. C, §2, is amended to read:

1. Notification of adverse decisions. Notification of an adverse decision by the utilization review agent must be provided to the insured or other party designated by the insured within a time period to be determined by the superintendent through rulemaking and must include the name of the utilization review agent who made the decision.

Sec. 6. 24-A MRSA §2772, sub-§5 is enacted to read:

5. Prohibited activities. A medical utilization review entity shall ensure that an employee does not perform medical utilization review services involving a health care provider or facility in which that employee has a financial interest.

Sec. 7. 24-A MRSA §2773, first ¶, as enacted by PL 1989, c. 556, Pt. C, §2, is amended to read:

As used in this chapter, unless the context indicates otherwise, "utilization review services" or "medical utilization review services" means ~~any~~ a program or process by which a person, partnership or corporation, on behalf of an insurer, nonprofit service organization, 3rd-party administrator, health maintenance organization, preferred provider organization or employer ~~which that~~ is a payor for or ~~which that~~ arranges for payment of medical services, seeks to review the utilization, appropriateness or quality of medical services provided to a person whose medical services are paid for, partially or entirely, by that insurer, nonprofit service organization, 3rd-party administrator, health maintenance organization, preferred provider organization or employer. The terms include these programs or processes whether they apply prospectively or retrospectively to medical

services. Utilization review services include, but are not limited to, the following:

See title page for effective date.

CHAPTER 603

H.P. 829 - L.D. 1115

An Act Regarding Assumption Reinsurance

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

24-A MRSA c. 9, sub-c. V is enacted to read:

SUBCHAPTER V

ASSUMPTION REINSURANCE

§761. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assuming insurer. "Assuming insurer" means the insurer that acquires an insurance obligation or risk from the transferring insurer pursuant to an assumption reinsurance agreement.

2. Assumption reinsurance agreement. "Assumption reinsurance agreement" means a contract that both:

A. Transfers insurance obligations or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and

B. Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under the contracts are extinguished.

3. Contract of insurance. "Contract of insurance" means a written agreement between an insurer and policyholder pursuant to which the insurer, in exchange for premium or other consideration, agrees to assume an obligation or risk of the policyholder or to make payments on behalf of, or to, the policyholder or its beneficiaries. Contract of insurance may include property, casualty, life, health, accident, surety, title and annuity business authorized to be written pursuant to the insurance laws of this State.

4. Home service business. "Home service business" means insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.

5. Notice of transfer. "Notice of transfer" means the written notice to policyholders required by section 764, subsection 1.

6. Policyholder. "Policyholder" means an individual or entity that has the right to terminate or otherwise alter the terms of a contract of insurance. It includes a certificateholder whose certificate is in force on the proposed effective date of the assumption, if the certificateholder has the right to keep the certificate in force without change in benefit following termination of the group policy.

The right to keep the certificate in force referred to in this section does not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, of the Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1161 to 1168.

7. Transferring insurer. "Transferring insurer" means the insurer that transfers an insurance obligation risk to an assuming insurer pursuant to an assumption reinsurance agreement.

§762. Scope

1. Application. This subchapter applies to an insurer authorized in this State that either assumes or transfers the obligations or risks on contracts of insurance pursuant to an assumption reinsurance agreement.

2. Exceptions. This subchapter does not apply to the following:

A. A reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the contracts of insurance subject to the reinsurance agreement;

B. The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;

C. The transfer of contracts of insurance pursuant to mergers or consolidations of 2 or more insurers to the extent that those transactions are regulated by law;

D. An insurer subject to a judicial order of liquidation or rehabilitation;

E. A reinsurance agreement or transaction to which a state insurance guaranty association is a party, except that policyholders do not lose any rights or claims afforded under their original policies pursuant to chapter 57, subchapter III and chapter 62; or

F. The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder, unless the certificateholder pays all or substantially all of the premium.

§763. Notice requirements of intent to transfer insurance contract

1. Notice to policyholders, agents and brokers. Notice to policyholders, agents and brokers is required as follows.

A. The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer must also be sent to the transferring insurer's agents or brokers of record on the affected policies.

B. The notice of transfer must state or provide:

(1) The date the transfer and novation of the policyholder's contract of insurance is proposed to take place;

(2) The names and addresses and telephone numbers of the assuming and transferring insurers;

(3) That the policyholder has the right to either consent to or reject the transfer and novation;

(4) The procedures and time limit for consenting to or rejecting the transfer and novation;

(5) A summary of an effect that consenting to or rejecting the transfer and novation has on the policyholder's rights;

(6) A statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides or is otherwise authorized, as provided in this subchapter, to assume the business;

(7) The name and address of the person at the transferring insurer to whom the policyholder should send a written statement of acceptance or rejection of the transfer and novation;

(8) The address and phone number of the Bureau of Insurance so that the policyholder may write or call for further information regarding the financial condition of the assuming insurer; and

(9) The following financial data for both companies:

(a) Ratings for the last 5 years if available or for a lesser period as are available from 2 nationally recognized insurance rating services acceptable to the superintendent including the rating service's explanation of the meaning of the ratings. If ratings are unavailable for a year of the 5-year period, this must also be disclosed;

(b) A balance sheet as of December 31st for the previous 3 years if available or for a lesser period as is available and as of the date of the most recent quarterly statement;

(c) A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and

(d) An explanation of the reason for the transfer.

C. Notice must be given in a manner that conforms to the following form:

NOTICE OF TRANSFER

**IMPORTANT: THIS NOTICE AFFECTS
YOUR CONTRACT RIGHTS.
PLEASE READ IT CAREFULLY.**

Transfer of Policy

The [name of assuming insurer] has agreed to replace us as your insurer under [policy or certificate name and number] effective [date]. The [name of assuming insurer] principal place of business is [address]. Certain financial information concerning both companies is attached, including (1) ratings for the time period required by the Bureau of Insurance from 2 nationally recognized insurance rating services; (2)

balance sheets for the time period required by the Bureau of Insurance and as of the date of the most recent quarterly statement; (3) a copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and (4) an explanation of the reason for the transfer. You may obtain additional information concerning [name of assuming insurer] from reference materials in your local library or by contacting the Superintendent of Insurance at [address and phone number].

The [name of assuming insurer] is licensed to write this coverage in your state. The Superintendent of Insurance in your state has reviewed the potential effect of the proposed transaction and has approved the transaction.

Your Rights

You may choose to consent to or reject the transfer of your policy to [name of assuming insurer]. If you want your policy transferred, you may notify us in writing by signing and returning the enclosed preaddressed, postage-paid card or by writing to us at:

[name, address and facsimile number of contact person]

Payment of your premium to the assuming company constitutes acceptance of the transaction. A method is provided to allow you to pay the premium while reserving the right to reject the transfer.

If you reject the transfer, you may keep your policy with us or exercise an option under your policy. If we do not receive a written rejection you have, as a matter of law, consented to the transfer. Before this consent is final you will be provided a second notice of the transfer 24 months from now. After the second notice is provided, you have one month to reply. If you have paid your premium to the [name of assuming insurer], without reserving your right to reject the transfer, you will not receive a second notice.

() This is your first notice. Please respond within 24 months.

() This is your second notice. You must respond within one month to reject the transfer of your policy. If we do not hear from you by [date], your policy will be transferred to [name of assuming insurer].

Effect of Transfer

If you accept this transfer, [name of assuming insurer] will be your insurer. The insurer has direct responsibility to you for the payment of all claims, benefits and for all other policy obligations. We no longer have an obligation to you.

If you accept this transfer, you must make all premium payments and claims submissions to [name of assuming insurer] and direct all questions to [name of assuming insurer].

For your convenience, we have enclosed a preaddressed postage-paid response card. Please take time now to read the enclosed notice and complete and return the response card to us.

If you have further questions about this agreement, you may contact [name of transferring insurer] or [name of assuming insurer].

Sincerely,

[name of transferring insurer]
address
phone]

[name of assuming insurer]
address
phone]

[Notice Date]

RESPONSE CARD

- Yes, I accept the transfer of my policy from [name of transferring insurer] to [name of assuming insurer].
- No, I reject the proposed transfer of my policy from [name of transferring insurer] to [name of assuming insurer] and wish to retain my policy with [name of transferring insurer].

Date: Signature:

Name:

Address:

D. The notice of transfer must include a preaddressed, postage-paid response card that a policyholder may return as the written statement of acceptance or rejection of the transfer and novation.

E. The notice of transfer must be filed as part of the prior approval requirement set forth in subsection 2, paragraph A.

2. Notification and prior approval. The requirements for notification and prior approval are as follows:

A. Prior approval by the superintendent is required for a transaction when an insurer domiciled in this State assumes or transfers obligations or risks on contracts of insurance under an assumption reinsurance agreement. An insurer licensed in this State may not transfer obligations or risks on contracts of insurance issued to or owned by residents of this State to an insurer that is not licensed in this State. An insurer domiciled in this State may not assume obligations or risks on contracts of insurance issued to or owned by policyholders residing in another state unless it is licensed in the other state or the insurance regulatory official of that state has approved the assumption.

B. A licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on contracts of insurance issued to or owned by residents of this State shall file or cause to be filed the assumption certificate with the superintendent a copy of the notice of transfer and an affidavit that the transaction is subject to substantially similar requirements in the state of domicile of both the transferring and assuming insurer.

C. A licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on contracts of insurance issued to or owned by residents of this State shall obtain prior approval of the superintendent and be subject to all other requirements of this subchapter unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by law or rule in the jurisdiction of their domicile, which are substantially similar to those contained in this subchapter.

D. The following factors, along with such factors as the superintendent determines appropriate under the circumstances, must be considered by the superintendent in reviewing a request for approval:

(1) The financial condition of the transferring and assuming insurers and the effect the transaction has on the financial condition of each company;

(2) The competence, experience and integrity of those persons who control the operation of the assuming insurer;

(3) The plans or proposals the assuming party has with respect to the administration of the policies subject to the proposed transfer;

(4) Whether the transfer is fair and reasonable to the policyholders of both companies; and

(5) Whether the notice of transfer to be provided by the insurer is fair, adequate and not misleading.

§764. Rights of policyholder

1. Right to reject. Every policyholder has the right to reject the transfer and novation of the contracts of insurance. A policyholder electing to reject the assumption transaction shall return to the transferring insurer the preaddressed, postage-paid response card or other written notice and indicate on the response card that the assumption is rejected.

2. Payment of premium. Payment of the next premium to the assuming company after notice is received is determined to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation is determined to have been effected if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice must also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to a home service business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by section 763, subsection 1, paragraph A and in the assumption certificate.

3. Additional notice. No fewer than 24 months after the mailing of the initial notice of transfer required under section 763, if positive consent to the transfer and assumption has not been received or consent has not been determined to have occurred under subsection 1, the transferring company shall send to the policyholder a 2nd and final notice of transfer as specified in section 763, subsection 1. If the policyholder does not reject the transfer during the one-month period immediately following the date on which the transferring insurer mailed the 2nd and final notice of transfer, the policyholder's consent is determined to have occurred and novation of the contract is effected. With respect to the home service business, the 24 and one-month periods must be measured from the date of delivery of the notice of transfer pursuant to section 763, subsection 1, paragraph A.

4. Response cards. The transferring insurer is deemed to have received the response card on the date

it is postmarked. A policyholder may also send a response card by facsimile or other electronic transmission or by registered mail, express delivery or courier service, in which case the response card is determined to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

§765. Effect of consent by the policyholder

If a policyholder consents to the transfer pursuant to section 764 or if the transfer is effected under section 766, there is a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer is relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks.

§766. Authority of the insurance regulatory official

1. Transfer in the best interest of the policyholders. If an insurer domiciled in this State or in a jurisdiction having a substantially similar law is determined by the domiciliary insurance regulatory official to be in hazardous financial condition or an administrative proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the contracts of insurance is in the best interest of the policyholders, as determined by the domiciliary insurance regulatory official, a transfer and novation may be effected notwithstanding the provisions of this subchapter. This may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the insurance regulatory official.

2. Protection. Notwithstanding any other provision of law, in the event that a transfer and novation is effected by a decision of a domiciliary insurance regulatory official under this section, the residents of this State whose policies are transferred to an unlicensed insurer are entitled to full protection under chapter 57, subchapter III and chapter 62.

See title page for effective date.

CHAPTER 604

H.P. 973 - L.D. 1304

**An Act Concerning
Commercial Divers**