

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested.

**5. Consent.** The court may not order a person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test unless the employee exposed to the blood or body fluids of that person has consented to and obtained a blood-borne pathogen test immediately following that documented exposure.

**6. Costs.** The employer of the person exposed is responsible for the petitioner's reasonable costs related to obtaining the results of a blood-borne pathogen test pursuant to this section, including the payment of the petitioner's attorney's fees.

**7. Appeals.** A person required to undergo a blood-borne pathogen test may appeal the order to Superior Court. The appeal is limited to questions of law. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

**8. Subsequent testing.** Subsequent testing arising out of the same incident of occupational exposure must be conducted in accordance with this section.

### **§833. Confidentiality**

No other disclosure of HIV test results may be made without written authorization from both the person tested and the person exposed.

### **§834. Counseling for HIV**

If an HIV test, as defined in Title 5, section 19201, is conducted as a result of a court order pursuant to section 832, both the person tested and the person exposed must be offered counseling pursuant to Title 5, section 19204-A.

### **§835. Rulemaking**

Rules adopted by the Bureau of Health pursuant to this subchapter are routine technical rules under Title 5, chapter 375, subchapter II-A.

See title page for effective date.

## **CHAPTER 369**

### **H.P. 1036 - L.D. 1453**

#### **An Act to Provide Subrogation Equity**

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

**Sec. 1. 24 MRSA §2316**, as amended by PL 1981, c. 205, §1, is further amended to read:

#### **§2316. Certificates or contracts; approval by superintendent**

~~No~~ A nonprofit hospital and medical service organization ~~shall may not~~ issue or deliver in this State any certificate or other evidence of any contract unless and until the form ~~thereof used~~, together with the form of application and all riders or endorsements for use in connection ~~therewith~~, shall with the certificate or other evidence of a contract, have been filed with and approved by the superintendent ~~and approved by him~~ as conforming to reasonable rules and regulations from time to time made by ~~him~~ the superintendent and as ~~not inconsistent~~ consistent with any other provisions of law ~~applicable thereto~~. The superintendent shall, within a reasonable time after the filing of any such form, notify the organization filing the ~~same form~~ either of ~~his~~ the approval or of ~~his~~ the disapproval of ~~such~~ the form. The superintendent may approve any ~~such~~ form ~~which that~~ in ~~his~~ the superintendent's opinion contains provisions on any one or more of the several requirements made by ~~him~~ which the superintendent that are more favorable to the subscribers than the one or ones ~~so~~ required. The superintendent ~~shall have power, from time to time, is~~ authorized to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in ~~such any~~ contracts, and such regulations ~~shall must~~ conform, as far as practicable, to Title 24-A, chapters 33 and 35. ~~Where~~ If the superintendent ~~deems~~ determines those chapters to be inapplicable, either in part or in their entirety, ~~the foregoing chapters, he~~ the superintendent may prescribe the portions or summary ~~thereof~~ of the contract to be printed on the certificate issued to the subscriber. ~~No contracts~~ A contract may not be delivered or issued for delivery in this State ~~unless they meet~~ it meets the requirements of Title 24-A, sections 2438 to 2445, ~~section 2729-A~~ and section 2747. Any filing made ~~hereunder shall be~~ in accordance with this section is deemed approved unless disapproved within 60 days from the date of ~~such~~ the filing.

**Sec. 2. 24-A MRSA §2910-A** is enacted to read:

#### **§2910-A. Subrogation; medical payments coverage**

**1. Policy requirements.** A casualty insurance policy subject to this chapter may not provide for subrogation or priority over the insured of payment for any hospital, nursing, medical or surgical services or of any expenses paid or reimbursed under the medical payments coverage in the policy in the event the insured is entitled to receive payment or reimbursement from any other person as a result of legal action or claim, except as provided in this section.

The coverage may contain a provision that allows the payments if that provision is approved by the superintendent and if that provision required the prior written approval of the insured and provides that the insurer's subrogation right is subject to subtraction to account for the pro rata share of the insured's attorney's fees incurred in obtaining the recovery from another source.

**2. Dispute resolution.** In the event of a dispute as to the application of any such provision or the amount available for payment to those claiming payment for services or reimbursement, that dispute must be determined, if the action is pending, before the court in which it is pending; or if no action is pending, by filing an action in any court for determination of the dispute.

**3. Exception.** Nothing in this section prevents an insurer from exercising its subrogation rights directly against any person legally responsible for the insured's injury. In the event that the insurer pursues its subrogation rights directly against such a person, the insurer's subrogation right is not subject to any subtraction to account for attorney's fees and the insurer is entitled to full recovery.

**Sec. 3. 24-A MRSA §4243** is enacted to read:

**§4243. Limits on priority liens; subrogation**

An individual or group contract subject to this chapter may not provide for subrogation or priority over the enrollee of payment for any hospital, nursing, medical or surgical services or of any expenses paid or reimbursed under the coverage, in the event the enrollee is entitled to receive payment or reimbursement from any other person as a result of legal action or claim, except as provided in this section.

The coverage may contain a provision that allows the payments, if that provision is approved by the superintendent and if that provision required the prior written approval of the insured and allows such payments only on a just and equitable basis and not on the basis of a priority lien. A "just and equitable basis" means that any factors that diminish the potential value of the enrollee's claim may likewise reduce the share in the claim for those claiming

payment for services or reimbursement. Such factors include, but are not limited to:

**1. Legal defenses.** Questions of liability and comparative negligence or other legal defenses:

**2. Exigencies of trial.** Exigencies of trial that reduce a settlement or award in order to resolve the claim; and

**3. Limits of coverage.** Limits on the amount of applicable insurance coverage that reduce the claim to an amount recoverable by the insured.

In the event of a dispute as to the application of any such provision or the amount available for payment to those claiming payment for services or reimbursement, that dispute must be determined, if the action is pending, before the court in which it is pending; or if no action is pending, by filing an action in any court for determination of the dispute.

See title page for effective date.

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## CHAPTER 370

H.P. 1084 - L.D. 1521

### An Act to Amend the Laws Concerning Health Insurance

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

#### PART A

**Sec. A-1. 24-A MRSA §1954, sub-§2, ¶B,** as enacted by PL 1995, c. 673, Pt. A, §3, is amended to read:

B. Notwithstanding any other provision of this Title or Title 24 that requires coverage for outpatient benefits, the alliance ~~shall~~ may offer at least one health plan providing catastrophic coverage for inpatient hospital benefits only, ~~in accordance with rules developed by the superintendent.~~ The catastrophic plan must offer a range of deductibles, including a \$1,000 deductible plan. This paragraph is repealed on January 1, 2000;.

**Sec. A-2. 24-A MRSA §1954, sub-§2, ¶C,** as enacted by PL 1995, c. 673, Pt. A, §3, is repealed.

#### PART B

**Sec. B-1. 24-A MRSA §2155-A** is enacted to read:

**§2155-A. Dumping prohibited**