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No. 1155

H.P. 844

House of Representatives, March 7, 2019

An Act To Protect Patients and the Prudent Layperson Standard

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Speaker GIDEON of Freeport.
Cosponsored by Senator FOLEY of York and
Representatives: MASTRACCIO of Sanford, PERRY of Calais, SWALLOW of Houlton,
TEPLER of Topsham, TUELL of East Machias, Senators: CARPENTER of Aroostook,
MOORE of Washington, SANBORN, H. of Cumberland.

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

2 **Sec. 1. 24-A MRSA §4301-A, sub-§§4-A and 4-B** are enacted to read:

3 **4-A. Emergency medical condition.** "Emergency medical condition" means the
4 sudden and, at the time, unexpected onset of a physical or mental health condition
5 manifesting itself by symptoms of sufficient severity, regardless of the final diagnosis
6 that is given, that would lead a prudent layperson, possessing an average knowledge of
7 medicine and health, to believe:

8 A. That the absence of immediate medical attention for an individual could
9 reasonably be expected to result in:

10 (1) Placing the physical or mental health of the individual or, with respect to a
11 pregnant woman, the health of the pregnant woman or her unborn child in serious
12 jeopardy;

13 (2) Serious impairment of a bodily function;

14 (3) Serious dysfunction of any organ or body part; or

15 (4) Inadequately controlled pain; or

16 B. With respect to a pregnant woman who is having contractions, that there is:

17 (1) Inadequate time to effect a safe transfer of the woman to another hospital
18 before delivery; or

19 (2) A threat to the health or safety of the woman or unborn child if the woman
20 were to be transferred to another hospital.

21 **4-B. Emergency service.** "Emergency service" means a health care item or service
22 furnished or required to evaluate and treat an emergency medical condition that is
23 provided in an emergency facility or setting by a health care provider.

24 **Sec. 2. 24-A MRSA §4304, sub-§5,** as enacted by PL 1999, c. 742, §13, is
25 amended to read:

26 **5. Emergency services.** When conducting utilization review or making a benefit
27 determination for emergency services, a carrier shall provide benefits for emergency
28 services consistent with the requirements of this subsection and any applicable bureau
29 rule.

30 A. A carrier may not require prior authorization for emergency services.

31 B. Before a carrier denies benefits or reduces payment for an emergency service
32 based on a determination of the absence of an emergency medical condition or a
33 determination that a lower level of care was needed than is required for an emergency
34 medical condition, the carrier shall review the enrollee's medical record related to the
35 emergency medical condition subject to dispute. If a carrier requests records related
36 to a potential denial of or payment reduction for an enrollee's benefits when
37 emergency services were furnished to an enrollee, a provider has an affirmative duty
38 to respond to the carrier in a timely manner. A carrier's utilization review of

1 emergency services must be conducted by a clinical peer that is board certified in the
2 same specialty and licensed to practice in this State.

3 **Sec. 3. 24-A MRSA §4320-C**, as enacted by PL 2011, c. 364, §34, is amended to
4 read:

5 **§4320-C. Emergency services**

6 If a carrier offering a health plan subject to the requirements of the federal Affordable
7 Care Act provides or covers any benefits with respect to services in an emergency
8 department of a hospital, the plan must cover emergency services in accordance with the
9 requirements of the federal Affordable Care Act, including requirements that emergency
10 services be covered without prior authorization and that cost-sharing requirements,
11 expressed as a copayment amount or coinsurance rate, for out-of-network services are the
12 same as requirements that would apply if such services were provided in network. A
13 carrier offering a health plan in this State shall also comply with the requirements of
14 section 4304, subsection 5.

15 **SUMMARY**

16 This bill establishes a definition of "emergency medical condition" in the law
17 governing utilization review in the Maine Insurance Code and makes clear that the
18 determination of an emergency medical condition relies on the prudent layperson
19 standard regardless of the final diagnosis that is given. The bill also prohibits a carrier
20 from requiring prior authorization for emergency services and requires that utilization
21 review of benefit determinations for emergency services be conducted by a clinical peer,
22 who is a licensed provider in the same or similar specialty as typically manages the
23 medical condition, procedure or treatment under review.