



125th MAINE LEGISLATURE

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Legislative Document

No. 1551

H.P. 1138

House of Representatives, May 5, 2011

**An Act To Clarify and Update the Laws Related to Health
Insurance, Insurance Producer Licensing and Surplus Lines
Insurance**

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative RICHARDSON of Warren.
Cosponsored by Senator WHITTEMORE of Somerset.

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

2 **PART A**

3 **Sec. A-1. 24-A MRSA §4303, sub-§8-A** is enacted to read:

4 **8-A. Protection from balance billing by participating providers.** An enrollee's
5 responsibility for payment under a managed care plan must be limited as provided in this
6 subsection.

7 A. The terms of a managed care plan must provide that the enrollee's responsibility
8 for the cost of covered health care rendered by participating providers is limited to
9 the cost-sharing provisions expressly disclosed in the contract, such as deductibles,
10 copayments and coinsurance, and that if the enrollee has paid the enrollee's share of
11 the charge as specified in the plan, the carrier shall hold the enrollee harmless from
12 any additional amount owed to a participating provider for covered health care.

13 B. Every provider agreement with a participating provider must be in writing and
14 must set forth that if the carrier fails to pay for health care services as set forth in the
15 contract, the enrollee is not liable to the provider for any sums owed by the carrier.

16 C. A participating provider may not collect or attempt to collect any charge from an
17 enrollee for covered health care beyond the amount permitted by the terms of the
18 plan, notwithstanding the carrier's insolvency, the carrier's failure to pay the amount
19 owed by the carrier, any other breach by the carrier of the provider agreement or the
20 failure of the provider agreement to include the written hold harmless provision
21 required by paragraph B.

22 **PART B**

23 **Sec. B-1. 24-A MRSA §2813**, as enacted by PL 1969, c. 132, §1 and amended by
24 PL 1973, c. 585, §12, is further amended by adding at the end a new paragraph to read:

25 Policies that otherwise meet the description of group policies pursuant to section
26 2804, 2805, 2805-A, 2806, 2807, 2807-A or 2808-B are not blanket policies.

27 **PART C**

28 **Sec. C-1. 24-A MRSA §2839**, as amended by PL 2009, c. 14, §5, is further
29 amended to read:

30 **§2839. Rates filed**

31 A policy of group or blanket health insurance may not be delivered in this State until
32 a copy of the ~~group~~ rates to be used in calculating the premium for these policies has been
33 filed for informational purposes with the superintendent. The filing must include the base
34 rates and a description of any procedures to be used to adjust the base rates to reflect
35 factors including but not limited to age, gender, health status, claims experience, group
36 size and coverage of dependents. Notwithstanding this section, rates for group Medicare
37 supplement, nursing home care or long-term care insurance contracts and for certain

1 association groups and other groups specified in section 2701, subsection 2, paragraph C
2 must be filed in accordance with section 2736. Rates for small group health insurance
3 subject to section 2808-B are subject to the additional filing requirements specified in that
4 section. A filing required under this section must be made electronically in a format
5 required by the superintendent unless exempted by rule adopted by the superintendent.
6 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
7 chapter 375, subchapter 2-A.

8 **PART D**

9 **Sec. D-1. 24-A MRSA §2736-C, sub-§1, ¶C**, as amended by PL 1995, c. 332,
10 Pt. J, §2, is further amended to read:

11 C. "Individual health plan" means any hospital and medical expense-incurred policy
12 or health, hospital or medical service corporation plan contract. It includes both
13 individual contracts and certificates issued under group contracts specified in section
14 2701, subsection 2, paragraph C. "Individual health plan" does not include the
15 following types of insurance:

- 16 (1) Accident;
- 17 (2) Credit;
- 18 (3) Disability;
- 19 (4) Long-term care or nursing home care;
- 20 (5) Medicare supplement;
- 21 (6) Specified disease;
- 22 (7) Dental or vision;
- 23 (8) Coverage issued as a supplement to liability insurance;
- 24 (9) Workers' compensation;
- 25 (10) Automobile medical payment; ~~or~~
- 26 (11) Insurance under which benefits are payable with or without regard to fault
27 and that is required statutorily to be contained in any liability insurance policy or
28 equivalent self-insurance; or
- 29 (12) Short-term policies, as described in section 2849-B, subsection 1.

30 **PART E**

31 **Sec. E-1. 24-A MRSA §2848, sub-§1-B, ¶A**, as amended by PL 1999, c. 256,
32 Pt. L, §2, is further amended to read:

33 A. "Federally creditable coverage" means health benefits or coverage provided under
34 any of the following:

- 35 (1) An employee welfare benefit plan as defined in Section 3(1) of the federal
36 Employee Retirement Income Security Act of 1974, 29 United States Code,
37 Section 1001, or a plan that would be an employee welfare benefit plan but for

- 1 the "governmental plan" or "nonelecting church plan" exceptions, if the plan
 2 provides medical care as defined in subsection 2-A, and includes items and
 3 services paid for as medical care directly or through insurance, reimbursement or
 4 otherwise;
- 5 (2) Benefits consisting of medical care provided directly, through insurance or
 6 reimbursement and including items and services paid for as medical care under a
 7 policy, contract or certificate offered by a carrier;
- 8 (3) Part A or Part B of Title XVIII of the Social Security Act, Medicare;
- 9 (4) Title XIX of the Social Security Act, Medicaid, other than coverage
 10 consisting solely of benefits under Section 1928 of the Social Security Act ~~or a~~
 11 ~~state children's health insurance program under Title XXI of the Social Security~~
 12 ~~Act;~~
- 13 (4-A) A state children's health insurance program under Title XXI of the Social
 14 Security Act;
- 15 (5) The Civilian Health and Medical Program for the Uniformed Services,
 16 CHAMPUS, 10 United States Code, Chapter 55;
- 17 (6) A medical care program of the federal Indian Health Care Improvement Act,
 18 25 United States Code, Section 1601 or of a tribal organization;
- 19 (7) A state health benefits risk pool;
- 20 (8) A health plan offered under the federal Employees Health Benefits
 21 Amendments Act, 5 United States Code, Chapter 89;
- 22 (9) A public health plan as defined in federal regulations authorized by the
 23 federal Public Health Service Act, Section 2701(c)(1)(I), as amended by Public
 24 Law 104-191; or
- 25 (10) A health benefit plan under Section 5(e) of the Peace Corps Act, 22 United
 26 States Code, Section 2504(e).

27 **PART F**

28 **Sec. F-1. 24-A MRSA §2850-B, sub-§3, ¶G**, as amended by PL 2003, c. 428,
 29 Pt. A, §1, is further amended to read:

30 G. When the carrier ceases offering a product and meets the following requirements:

- 31 (1) In the large group market:
- 32 (a) The carrier ~~must provide~~ provides notice to the policyholder and to the
 33 ~~insureds~~ certificate holders at least 90 days before termination;
- 34 (b) The carrier ~~must offer~~ offers to each policyholder the option to purchase
 35 any other product currently being offered in the large group market; and
- 36 (c) In exercising the option to discontinue the product and in offering the
 37 option of coverage under division (b), the carrier ~~must act~~ acts uniformly
 38 without regard to the claims experience of the policyholders or the health

1 status of the ~~insureds~~ certificate holders or their dependents or prospective
2 ~~insureds~~ certificate holders or their dependents;

3 (2) In the small group market:

4 (a) The carrier ~~shall replace~~ replaces the product with a product that
5 complies with the requirements of this section, including renewability, and
6 with section 2808-B;

7 (b) The superintendent ~~shall find~~ finds that the replacement is in the best
8 interests of the policyholders; and

9 (c) The carrier ~~shall provide~~ provides notice of the replacement to the
10 policyholder and to the ~~insureds~~ certificate holders at least 90 days before
11 replacement, including notice of the policyholder's right to purchase any
12 other product currently being offered by that carrier in the small group
13 market pursuant to section 2808-B, subsection 4; or

14 (3) In the individual market:

15 (a) The carrier ~~shall replace~~ replaces the product with a product that
16 complies with the requirements of this section, including renewability, and
17 with section 2736-C;

18 (b) The superintendent ~~shall find~~ finds that the replacement is in the best
19 interests of the policyholders; and

20 (c) The carrier ~~shall provide~~ provides notice of the replacement to the
21 policyholder and, if a group policy subject to section 2736-C, to the insureds
22 a certificate holder at least 90 days before replacement, including notice of
23 the policyholder's or certificate holder's right to purchase any other product
24 currently being offered by that carrier in the individual market pursuant to
25 section 2736-C, subsection 3;

26 PART G

27 **Sec. G-1. 24-A MRSA §2803**, as amended by PL 1993, c. 171, Pt. C, §2, is
28 further amended to read:

29 §2803. Requirements

30 A policy of group health insurance may not be delivered in this State, nor may any
31 certificate of group health insurance that derives from a policy issued in another state be
32 delivered in this State unless the group policyholder conforms to one of the descriptions
33 set forth in sections 2804 to ~~2809~~ 2808.

34 PART H

35 **Sec. H-1. 24-A MRSA §601, sub-§5, ¶F**, as amended by PL 1997, c. 592, §16,
36 is further amended to read:

37 F. Issuance fee for resident agency license, \$30;

38 Biennial fee, \$30;

1 Biennial fee for appointment, each insurer, health maintenance organization, fraternal
2 benefit society, nonprofit hospital or medical service organization, viatical settlement
3 provider or risk retention group, \$30; and

4 **Sec. H-2. 24-A MRSA §601, sub-§5, ¶G**, as amended by PL 1997, c. 592, §16,
5 is further amended to read:

6 G. Issuance fee for nonresident agency license, \$70;

7 Biennial fee, \$70;

8 Biennial fee for appointment, each insurer, health maintenance organization, fraternal
9 benefit society, nonprofit hospital or medical service organization, viatical settlement
10 provider or risk retention group, \$70; ~~and.~~

11 **Sec. H-3. 24-A MRSA §601, sub-§5, ¶H**, as enacted by PL 1997, c. 457, §18
12 and affected by §55, is repealed.

13 **Sec. H-4. 24-A MRSA §1415, sub-§1**, as amended by PL 2001, c. 259, §16, is
14 further amended to read:

15 **1. Producer authorities.** An individual resident or nonresident insurance producer
16 may receive any of the full license authorities pursuant to section 1420-F, subsection 1,
17 paragraphs A to F, ~~in addition to independent producer authority in accordance with~~
18 ~~section 1450~~, and surplus lines authority in accordance with chapter 19.

19 **Sec. H-5. 24-A MRSA §1450, sub-§2**, as enacted by PL 1997, c. 457, §23 and
20 affected by §55, is amended to read:

21 **2. Shared commissions.** If an insurance producer does not have an appointment
22 with an insurer, the insurance producer may place with that insurer, through a duly
23 licensed and appointed producer of such insurer, an insurance coverage necessary for the
24 adequate protection of a subject of insurance and share in the commission on that
25 insurance, if each producer is licensed as to the kinds of insurance involved. ~~If an~~
26 ~~insurance producer does not have an appointment with an insurer, the insurance producer~~
27 ~~may place an insurance coverage with that insurer without placing through an agent of the~~
28 ~~insurer, and accept or share in the commission as long as:~~

29 ~~A. The producer represents the insured and does not represent the insurer;~~

30 ~~B. The producer has the authority under the license to act as an independent~~
31 ~~producer;~~

32 ~~C. The producer does not, on a regular basis, normally place business with that~~
33 ~~insurer;~~

34 ~~D. The producer does not also receive a fee from the insured for the service; and~~

35 ~~E. The producer is licensed as to the kinds of insurance involved.~~

36 SUMMARY

37 This bill makes the following changes to the laws governing insurance.

1 It provides protection to enrollees from balance billing by participating providers in
2 all managed care plans.

3 It clarifies that a policy meeting both the definition of a group health policy and the
4 description of a blanket policy is a group policy.

5 It clarifies that rates for blanket health policies must be filed for informational
6 purposes.

7 It clarifies that short-term health insurance policies are not subject to guaranteed
8 issue, guaranteed renewal or community rating.

9 It amends the definition of "federally creditable coverage" to eliminate a syntax
10 problem that created an ambiguity.

11 It amends the guaranteed renewability laws to clarify that when a carrier ceases
12 offering an individual or small group product, policyholders, and in some cases certificate
13 holders, are offered the opportunity to purchase any other product the carrier offers to that
14 market.

15 It corrects a cross-reference.

16 It eliminates the independent producer authority for resident and nonresident
17 insurance producers.