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Date: (Filing No. S- )

**LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 365, L.D. 1244, Bill, “An Act To Clarify Usual and Customary Charges under the Workers' Compensation Laws”

Amend the bill by striking out the title and substituting the following:

**'An Act Regarding Payment of Medical Fees in the Workers' Compensation System'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**Sec. 1. 39-A MRSA §206, sub-§14**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**14. Employer not liable.** An employer is not liable under this Act for charges for health care services to an injured employee in excess of those established under section ~~209 209-A~~, except upon petition as provided. The board shall allow charges in excess of those provided under section ~~209 209-A~~ against the employer if the provider satisfactorily demonstrates to the board that the services were extraordinary or that the provider incurred extraordinary costs in treating the employee as compared to those reasonably contemplated for the services provided.

**Sec. 2. 39-A MRSA §208, sub-§2, ¶E**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

E. A health care provider may not charge the insurer or self-insurer an amount in excess of the fees prescribed in section ~~209 209-A~~ for the submission of reports prescribed by this section and for the submission of any additional records.

**Sec. 3. 39-A MRSA §209**, as amended by PL 2007, c. 240, Pt. JJJ, §5 and c. 311, §2, is repealed.

**Sec. 4. 39-A MRSA §209-A** is enacted to read:

**COMMITTEE AMENDMENT**

1 **§209-A. Medical fee schedule**

2 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
3 following terms have the following meanings.

4 A. "Ancillary services and products" means those services and products that are  
5 necessary but peripheral to the medical procedure.

6 B. "Medical fee schedule" means a list of medical procedures and the medical codes  
7 used and fees charged for those medical procedures.

8 **2. Medical fee schedule.** In order to ensure appropriate limitations on the cost of  
9 health care services while maintaining broad access for employees to health care  
10 providers in the State, the board shall adopt rules that establish a medical fee schedule  
11 setting the fees for medical and ancillary services and products rendered by individual  
12 health care practitioners and health care facilities in accordance with the following:

13 A. The medical fee schedule for services rendered by individual health care  
14 practitioners must reflect the methodology underlying the federal Centers for  
15 Medicare and Medicaid Services resource-based relative value scale;

16 B. The medical fee schedule for services rendered by health care facilities must  
17 reflect the methodology and categories set forth in the federal Centers for Medicare  
18 and Medicaid Services severity-diagnosis related group system for inpatient services  
19 and the methodologies and categories set forth in the federal Centers for Medicare  
20 and Medicaid Services ambulatory payment classification system for outpatient  
21 services; and

22 C. The medical fee schedule must be consistent with the most current medical coding  
23 and billing systems, including the federal Centers for Medicare and Medicaid  
24 Services resource-based relative value scale, severity-diagnosis related group system,  
25 ambulatory payment classification system and healthcare common procedure coding  
26 system; the International Statistical Classification of Diseases and Related Health  
27 Problems report issued by the World Health Organization and the current procedural  
28 terminology codes used by the American Medical Association.

29 **3. Annual updates.** Notwithstanding Title 5, chapter 375, subchapter 2, the  
30 executive director of the board shall annually update the medical fee schedule developed  
31 pursuant to subsection 2. In order to facilitate the update, the executive director annually  
32 shall obtain from the Maine Health Data Organization the average total payments,  
33 including professional, facility, ancillary and patient cost-sharing contribution, across all  
34 providers in the Maine Health Data Organization database for the medical and ancillary  
35 services and products most commonly rendered during the immediately preceding  
36 calendar year under this Part.

37 **4. Reimbursement rate if medical fee schedule not established or updated.** If the  
38 board fails to adopt rules that establish a medical fee schedule in accordance with  
39 subsection 2 by December 31, 2011 or the executive director fails to annually update the  
40 medical fee schedule in accordance with subsection 3, the reimbursement rate for medical  
41 services is 105% of the private 3rd-party payor average payment rate for the provider or  
42 the amount agreed to in writing by the provider and the insurance company or self-  
43 insured employer prior to the rendering of service by the provider. For purposes of this

1 subsection, "reimbursement rate for medical services" means the total payment allowed  
2 for the medical and ancillary services and products, including any amount to be paid by a  
3 3rd-party payor and the amount to be paid by the patient to satisfy a copayment,  
4 deductible or coinsurance obligation.

5 **5. Periodic updates to the medical fee schedule.** In addition to the annual updates  
6 to the medical fee schedule required by subsection 3, the board shall undertake a  
7 comprehensive review of the medical fee schedule once every 3 years beginning in 2014.  
8 The board shall consider the following factors in setting or revising the medical fee  
9 schedule as required by this section:

10 A. The private 3rd-party payor average payment rates obtained from the Maine  
11 Health Data Organization pursuant to subsection 3;

12 B. Any material administrative burden imposed on providers by the nature of the  
13 workers' compensation system; and

14 C. The goal of maintaining broad access for employees to all individual health care  
15 practitioners and health care facilities in the State.

16 **6. Associated services fee schedule.** The board shall adopt rules that establish a fee  
17 schedule or other standards of reimbursement for providers regarding administrative, case  
18 management, medical and legal and other activities unique to the treatment of injured  
19 workers in the workers' compensation system.

20 **7. MaineCare reimbursement.** MaineCare must be paid 100% of any expenses  
21 incurred for the treatment of an injury of an employee under this Title.

22 **Sec. 5. Rulemaking; report to Legislature.** The Workers' Compensation  
23 Board shall adopt rules to establish a medical fee schedule addressing services provided  
24 by both individual health care practitioners and health care facilities no later than  
25 December 31, 2011. Rules adopted pursuant to this section are routine technical rules  
26 pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. The  
27 executive director of the board shall report to the Joint Standing Committee on Labor,  
28 Commerce, Research and Economic Development on the establishment of the medical  
29 fee schedule required by Title 39-A, section 209-A no later than February 15, 2012.'

## 30 SUMMARY

31 The amendment replaces the bill. It directs the Workers' Compensation Board to  
32 adopt rules to establish a medical fee schedule for services provided under the Maine  
33 Workers' Compensation Act of 1992 by individual health care practitioners and health  
34 care facilities based upon the Medicare payment methodologies that are the basis for most  
35 health care payment systems today. The amendment removes any reference in existing  
36 workers' compensation law to "usual and customary charge." The amendment requires an  
37 annual update of the medical billing and coding systems underlying the medical fee  
38 schedule and requires a more comprehensive review of the medical fee schedule every 3  
39 years beginning in 2014. It directs the executive director of the Workers' Compensation  
40 Board to obtain annually from the Maine Health Data Organization the private 3rd-party  
41 average payment rates across all private payors and all providers in the Maine Health  
42 Data Organization's database for the most common medical services rendered under the

1 Maine Workers' Compensation Act of 1992 during the previous year. The amendment  
2 requires the Workers' Compensation Board to complete its current medical fee  
3 rulemaking by December 31, 2011 and to report to the Joint Standing Committee on  
4 Labor, Commerce, Research and Economic Development regarding the status of the  
5 medical fee schedule not later than February 15, 2012.

6 **FISCAL NOTE REQUIRED**

7 **(See attached)**