

**PROPOSED BY REP. BRYANT  
FOR CONSIDERATION BY IFS COMMITTEE  
SCHEDULED FOR PUBLIC HEARING ON 3/21**

**Proposed Committee Amendment to LD 1845:  
An Act to Increase Access to Health Insurance Products**

**Amend the sponsor's bill by striking out everything after the enacting clause and inserting in its place the following:**

**Sec. 1. 24-A MRSA § 6904**, as enacted by PL 2003, c. 469, Pt. A, §8, is amended to read:

**§6904. Board of ~~Directors~~ Trustees of Dirigo Health**

Dirigo Health operates under the supervision of a Board of ~~Trustees~~Directors established in accordance with this section.

**1. Appointments.** The board consists of 59 voting members and 34 ex officio, nonvoting members as follows.

A. The 59 voting members of the board must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over health insurance matters and confirmation by the Senate.

B. The 34 ex officio, nonvoting members of the board are:

(1) The Commissioner of Professional and Financial Regulation or the commissioner's designee;

(2) The director of the Governor's Office of Health Policy and Finance or the director of a successor agency; and

(3) The Commissioner of Administrative and Financial Services or the commissioner's designee.

(4) The Treasurer of State or the Deputy Treasurer of State.

**2. Qualifications of voting members.** Voting members of the board:

A. ~~Six of the trustees~~ Must have knowledge of and experience in one or more of the following areas:

(1) Health care purchasing;

(2) Health insurance;

(3) MaineCare;

(4) Health policy and law;

(5) State management and budget; or

(6) Health care financing; ~~and~~

(7) labor / consumer advocacy;

(8) marketing; and

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B. Three of the trustees must have knowledge of and experience in one or more of the following areas:

- (1) Accounting;
- (2) Banking;
- (3) Financial management and investment; and

BC. Except as provided in this paragraph, may not be:

- (1) A representative or employee of an insurance carrier authorized to do business in this State;
- (2) A representative or employee of a health care provider operating in this State;  
~~or~~
- (3) Affiliated with a health or health-related organization regulated by State Government; or
- (4) A representative or employee of the Dirigo Health Agency.

A nonpracticing health care practitioner, retired or former health care administrator or retired or former employee of a health insurance carrier is not prohibited from being considered for board membership as long as that person is not currently affiliated with a health or health-related organization.

**3. Terms of office.** Voting members serve 3-year terms. Voting members may serve up to 2 consecutive terms. Of the initial appointees, one member serves an initial term of one year, 2 members serve initial terms of 2 years and 2 members serve initial terms of 3 years. The Governor shall fill any vacancy for an unexpired term in accordance with subsections 1 and 2. Members reaching the end of their terms may serve until replacements are named. The 4 new voting members shall be staggered with one member serving an initial term of 1 year, one member serving an initial term of 2 years and two members serving initial terms of 3 years.

**4. Chair.** The Governor shall appoint one of the voting members as the chair of the board.

**5. Quorum.** ~~Five~~Three voting members of the board constitute a quorum.

**6. Affirmative vote.** An affirmative vote of 3 members is required for any action taken by the board.

**7. Compensation.** A member of the board must be compensated according to the provisions of Title 5, section 12004-G, subsection 14-D; a member must receive compensation whenever that member fulfills any board duties in accordance with board bylaws.

**8. Meetings.** The board shall meet monthly ~~at least 4 times a year at regular intervals~~ and may also meet at other times at the call of the chair or the executive director. All meetings of the board are public proceedings within the meaning of Title 1,

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chapter 13, subchapter 1.

**Sec. 2. 24-A MRSA § 6905**, as enacted by PL 2003, c. 469, Pt. A, §8, is amended to read:

**§6905. Limitation on liability**

A. Dirigo Health Employees: ~~A member of the board or a~~An employee of Dirigo Health is not subject to any personal liability for having acted within the course and scope of membership or employment to carry out any power or duty under this chapter. Dirigo Health shall indemnify any member of the board and any employee of Dirigo Health against expenses actually and necessarily incurred by that member or employee in connection with the defense of any action or proceeding in which that member or employee is made a party by reason of past or present authority with Dirigo Health.

B. Board of Trustees: The Trustees of Dirigo Health are subject to the personal liability provisions of Title 18-B section 1010.

**Sec. 3. 24-A MRSA §6910, sub-§1**, as enacted by PL 2005, c. 400, Pt. C, §8, is amended to read:

**1. Dirigo Health Program.** Dirigo Health shall arrange for the provision of health benefits coverage through the Dirigo Health Program not later than October 1, 2004. The Dirigo Health Program must comply with all relevant requirements of this Title. Dirigo Health Program coverage may be provided through a self-administered plan, or may be offered by health insurance carriers that apply to the board and meet qualifications described in this section and any additional qualifications set by the board.

**Sec. 4. 24-A MRSA §6910, sub-§2-A**, is enacted to read:

2-A. Notwithstanding Title 24-A section 6910 (2), the board may have Dirigo Health provide access to health insurance by establishing the Dirigo Health Self-administered Plan pursuant to section 24-A MRSA §6910-A.

**Sec. 5. 24-A MRSA §6910-A** is enacted to read as follows:

§6910-A. Dirigo Health Self-administered Plan

**1. Establishment.** The board may have Dirigo Health provide access to health coverage through a Dirigo Health Self-administered Plan. Dirigo Health may enter into cooperative agreements with public purchaser(s) for purchasing purposes and administrative functions; however, the Dirigo Health Self-administered Plan and public purchaser(s) will maintain separate and distinct risk pools and reserves that shall under no circumstances be commingled.

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**2. Additional Responsibilities of the Dirigo Health Board of Trustees.** In addition to the duties and responsibilities set out in §§6908 and 6910 the board may have the authority to do the following:

A. Monitor statistics generated by staff, including the number of plan members, working rates, utilization of benefits, operating costs, reimbursement for losses related to excess or stop loss coverage.

B. Establish operating budget for submission to the Governor and Legislature;

C. Develop financial statements that are consistent with Generally Accepted Accounting Principles (GAAP);

D. Develop, maintain and modify a business plan as appropriate based in consultation with the executive director;

E. Assure the ongoing fiscal integrity and stability of the plan;

F. Obtain necessary contracts for services including, but not limited to, an actuary, accountant, auditor, investment counsel and custodian;

G. Assure the necessary measures are taken to comply with Medicaid rules in consultation with MaineCare; and

H. Take necessary measures to comply with Medicaid managed care organization contract requirements as provided in 42 CFR Part 438.

**3. Powers of the Board.** The board shall have additional powers necessary and appropriate to carry out the board's functions.

**4. Services.** Services for which the board shall contract:

A. Actuary. When the self-administered plan is first established, the board shall secure the services of a qualified actuary for a period of 3 years through a sole source contract arrangement who shall be the technical advisor to the board on matters regarding the operation of the funds created by this chapter. After the initial 3 year sole source contract expires, the board shall secure such services through a competitive bid process every 3 years. The actuary must be a Fellow of the Society of Actuaries. The Actuary shall have the following duties:

i. Act as a technical advisor to the board on matters regarding the operation of funds created by this section;

ii. Certify the amounts of the benefits paid and payable under this section;

iii. Analyze the year's operations and results and the experience of the plan;

v. Determine actuarial assumptions to be recommended by the Board; and

vi. Determine the appropriate level of reserves needed to sustain the plan and pay benefits.

B. Investment counsel. The board shall secure the services with one or more fiduciaries or registered investment advisors through negotiated contractual arrangements. The fiduciary or registered investment advisor shall have the following duties:

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i. Invest and reinvest the funds in accordance with appropriate financial and trust standards;

ii. Advise the board as to reasonable investment philosophy; and

iii. Submit regular reports of investments and changes to the board.

C. Custodian of assets including securities. The board shall contract with the appropriate financial institution for custodial services for the securities and other assets of the program. The custodian shall be required to give an assurance of financial safeguards. In addition, the custodian will implement restrictions on how and by whom withdrawals and deposits of funds can be completed.

D. Purchase of policies. When the self-administered plan is first established, the board shall purchase through sole source contracts from one or more 3<sup>rd</sup>-party administrators or any organization necessary to administer and provide a health plan, a policy or policies or contract, to provide the benefits specified by this section. The purchase of policies by the board must be accomplished by use of a written contract. After the initial sole source contract expires, the board shall secure such services through a competitive bid process.

E. Additional services. Any other applicable services that is necessary in order to comply with federal law.

**5. Administration. Administering the program.**

A. The assets and liabilities are solely the assets and liabilities of the Dirigo Health Agency.

B. The actuary under contract with the board shall determine the following:

i. The appropriate level of reserves estimated to be sufficient to pay claims and administrative costs for a certain number of months;

ii. Whether the program is operating on an actuarially sound basis and any recommendations based on that determination;

iii. A rate structure for the program including working rates actuarially sufficient to pay anticipated claims for the current claims year as well as provide sufficient reserves for incurred but not reported claims;

iv. Recommendations as to the purchase of excess or stop-loss insurance including suggested attachment levels and limits; and

v. Annually determine and present information to the board on the above items as well as the method of distribution of any accumulations above those reserves including use of excess reserves to moderate the working rates.

C. A certified public accounting firm must prepare annual audited financial statements.

**6. Audits.** The board shall contract annually with an independent certified public accounting firm.

**7. Public Entity.** The Dirigo Health Self-administered Plan is a public entity for the purposes of 42 CFR § 438.116.

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**8. Benefit Design.** The Dirigo Health Self-administered Plan shall provide for coverage that meets the same level of benefits as those that would be required by state law if the coverage was provided by a health insurance plan governed by Title 24 or Title 24-A.

**9. Dirigo Health Self-administered Plan not insurer.** Dirigo Health is not an insurer, reciprocal insurer, or joint underwriting association under the laws of the State. The administration of such a program by the board does not constitute doing the business of insurance.

**10. Reserves.**

A. The Dirigo Health Reserve is created as an account within the Dirigo Health Enterprise Fund, as established pursuant to section 6915, for the deposit of reserves as required by section 6910-A(9)(B).

B. The Dirigo Health Self-administered Plan shall maintain a reserve at least equal to the sum of:

i. An amount estimated to be necessary to pay claims and administrative costs for the assumed risk for 2 months; and

ii. The amount determined annually by a qualified actuary to be necessary to fund the unpaid portion of ultimate expected losses, including incurred but not reported claims, and related expenses incurred in the provision of benefits for eligible participants, less any credit, as determined by a qualified actuary, for excess or stop-loss insurance.

C The reserve account shall be adjusted on a quarterly basis in order to maintain a reserve at least equal to the amount determined in paragraph B of this subsection.

D. The reserve account is capitalized by money from the any remaining fund advanced for initial operating expenses, savings offset payments, monthly member payments, any funds received from any public or private source, legislative appropriations, payments from state departments and agencies, and by such other means as the Legislature may approve. All money in the reserve account is deemed to be the commingled assets of all covered members and must be used only for the purposes of this section.

**11. Stop-Loss Insurance.** The board may purchase excess or stop-loss insurance for the Dirigo Health Self-administered Plan, with attachment levels and limits as recommend by a qualified actuary.

**SUMMARY**

This amendment replaces the sponsor's bill. The amendment establishes the Dirigo Health Self-administered Plan. The Plan provides the board with the authority to create a self-administered plan through which health insurance coverage will be provided. In

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order to create a self-administered plan the board's composition is amended in order for it to act in a fiduciary capacity with greater independence and management oversight. Oversight from independent sources has been included in the draft as well in order to provide management accountability.

- **Sec. 1** makes the board a board of trustees rather than a board of directors because of the fiduciary obligations the board will have in regard to the financial management of the plan. A quorum will consist of 5 members and the board will meet monthly.
- **Sec. 2** provides that the board in its fiduciary capacity is subject to the personal liability provisions of Title 18-B section 1010.
- **Sec. 3** authorizes Dirigo Health Program coverage to be provided through a self-administered plan in addition to health insurance carriers.
- **Sec. 4** authorizes the board to have Dirigo Health provide access to health insurance by establishing a self-administered plan.
- **Sec. 5** enacts the self-administered plan, and authorizes the board to enter into cooperative agreements with public purchaser(s) in order to leverage the ability to negotiate for purchasing and administrative functions only. The risk pools and reserves of the Dirigo Health Self-administered Plan and the public purchases are prohibited from being commingled.
  - The board's duties and responsibilities are expanded in order to manage the self-administered plan as necessary and appropriate, including developing a business plan, establishing an operating budget, monitoring the plan, assuring ongoing fiscal integrity and stability of the plan, obtaining the necessary contracts and services, and assuring compliance with Medicaid rules.
  - The board is authorized to contract for services from actuaries, investment counsel, financial institutions, 3<sup>rd</sup> party administrators and any other organization necessary to administer the plan.
  - The assets and liabilities of the plan are solely those of the Dirigo Health Agency, i.e. the full faith and credit of the State is not provided.
  - The actuary under contract is required to determine the appropriate level of reserves and administrative costs for the plan, the amount of stop-loss insurance necessary, provide opinions regarding the actuarially soundness of the program, develop a rate structure for the program, including working rates actuarially sufficient to pay anticipated claims and reserves, and report annually to the board on the above as well as the method of distribution of funds above the required reserves.
  - A certified public accounting firm must prepare annual audited financial statements.
  - An independent, certified public accounting firm must audit the plan on an annual basis.
  - The plan is a public entity for the purposes of complying with CMS managed care organization requirements.
  - The reserve account is created within the Dirigo Health Enterprise Fund. The plan must maintain reserves at least equal to the sum of the amount

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necessary to pay claims and administrative costs for the assumed risk for 2 months and the amount determined annually by a qualified actuary to be necessary to fund the unpaid portion of ultimate expected losses and related expenses incurred in the provision of benefits. The reserve account will be adjusted on a quarterly basis and can be capitalized by money from the initial start-up funds, savings offset payments, monthly member payments, any funds received from any public or private source, legislative appropriations, payments from any state departments or agencies, and by any other means approved by the Legislature. The reserve account is deemed to be the commingled assets of all covered members.

- The board is authorized to purchase reinsurance (stop-loss insurance) for the plan at a level recommended by a qualified actuary.