

MAINE INSURANCE UPDATE

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The following legislative summaries are not meant to explain the full complexity of these enacted bills. While we have attempted to include the most significant changes to the Maine Insurance Code, this listing is not intended to be all inclusive. Readers interested in complete information on enacted laws may contact the state's Engrossing Division at (207) 287-1324 or (207) 287-1689 to request a copy of the law or visit <http://janus.state.me.us/legis/ros/lom/LOM124th/LOM124Directory.htm>. The Insurance Code may be found online at <http://www.mainelegislature.org/legis/statutes/24-A/title24-Ach0sec0.html>, although as of this writing (October 19, 2009), it has not yet been updated to reflect the most recent amendments.

Unless specifically stated in the summary, laws enacted in the First Regular Session are effective September 12, 2009.

P.L. Chapter 13 (L.D. 157) – *An Act to Enhance Oversight of Fraternal Benefit Societies* – Makes the Superintendent's administrative and enforcement authority over fraternal benefit societies similar to the authority the Superintendent currently has over insurers, health maintenance organizations, and multiple employer welfare arrangements. The law also makes the insurance fraud act applicable to fraternal benefit societies. These changes make Maine law more consistent with the regulation of fraternal benefit societies in other states. Before the enactment of this law, the Superintendent's authority over authorized fraternal benefit societies was significantly restricted and inadequate to ensure their compliance with Maine law.

P.L. Chapter 14 (L.D. 123) – *An Act Regarding the Electronic Submission of Filings* – Amends the Maine Insurance Code to require that rate and form filings be made electronically in a format required by the Superintendent of Insurance. The Maine Bureau of Insurance uses the System for Electronic Rates and Form Filings (SERFF), available at <http://www.serff.com/>.

P.L. Chapter 32 (L.D. 606) – *An Act to Enable Maine Employers' Mutual Insurance Company To Better Serve the Needs of All Employers* – Allows the Maine Employers' Mutual Insurance Company to offer employment practices liability insurance to all policyholders. Previous law limited availability of this coverage to employers that have an average of 100 or fewer employees.

Resolve, Chapter 59 (L.D. 1084) – *Resolve, To Improve Continuity of Coverage for Participants in Medicare Advantage Plans* – Requires the Bureau of Insurance to amend its rules to extend from one year to three years the period during which a Medicare beneficiary who is enrolled in a Medicare Advantage Plan may return to original Medicare and enroll in a standardized Medicare supplemental plan. [Bureau of Insurance Rule Chapter 275](#) has been amended, effective Sept. 14, 2009, to implement the changes required by the Resolve.

P.L. Chapter 77 (L.D. 688) – *An Act to Equalize Annuity and Structured Settlement Annuity Benefits with Life Insurance* – **emergency measure effective May 4, 2009** – Increases the maximum benefit the Maine Life and Health Insurance Guaranty Association may be obligated to cover from \$100,000 to \$250,000 for annuity benefits and structured settlement annuities.

Resolve, Chapter 104 (L.D. 1358) – *Resolve, To Study Implementation of Shared Decision Making to Improve Quality of Care and Reduce Unnecessary Use of Medical Services* – Requires the Maine Quality Forum to convene an advisory group of stakeholders to develop a plan for implementation of shared decision making as a strategy for improving the quality of medical care and for controlling the unnecessary use of preference-sensitive health care services. The law requires the Maine Quality Forum to submit a preliminary report on February 1, 2010 and a final report by February 1, 2011 to the joint standing committees of the Legislature having jurisdiction over health and human services matters and insurance and financial services matters.

P.L. Chapter 116 (L.D. 616) – *An Act to Strengthen the Board of the Maine Insurance Guaranty Association* – Provides that at least three of the members of the Maine Insurance Guaranty Association board represent Maine-domiciled property and casualty companies. The law also requires a board member to resign if the member insurer ceases writing new business in the State.

P.L. Chapter 118 (L.D. 390) – *An Act to Clarify Guaranteed Fund Protections for Deferred Compensation Accounts* – **emergency measure effective May 11, 2009** – Provides that certain fixed account options available to individuals participating in governmental retirement benefit plans are protected against insurer insolvency through the Maine Life and Health Insurance Guaranty Association whether those accounts are allocated or unallocated.

Resolve, Chapter 135 (L.D. 1002) – *Resolve, to Conduct an Updated Study of the Feasibility of Establishing a Single-payor Health Care System in the State and the Impact of Any Federal Health Care Reform* – Requires the Legislative Council to contract for an update to a 2002 study of the feasibility of establishing a single-payor health plan in the State. The updated study must include a preliminary analysis of the impact of any federal health care reform legislation on state legislation to establish a single-payor health care system or other mechanism for universal health care. The update is contingent on successful securing of outside funding by Oct. 1, 2009. The updated study must be submitted by Jan. 15, 2010 to the Second Regular Session of the 124th Legislature. As of this writing on Oct. 19, 2009, outside funding had not been secured.

P.L. Chapter 169 (L.D. 1073) – *An Act to Provide for Insurance Coverage of Telemedicine Services* – Requires a health insurance carrier to cover services provided through telemedicine in a manner consistent with coverage for services provided through in-person consultation. Any deductible, copayment, or coinsurance for telemedicine may not exceed the deductible, copayment, or coinsurance applicable to an in-person consultation.

P.L. Chapter 185 (L.D. 896) – *An Act to Ensure Adequate Insurance Coverage for Family Child Care Providers* – Prohibits an insurer from terminating or refusing to issue a homeowner's policy if the insured can demonstrate satisfactory evidence of liability coverage for the operations of the family child care business. The law makes it clear when insurers issuing homeowners policies are not liable under those policies for losses or defense costs arising out of the family child care business.

The law also requires the insurer to disclose to family child care providers that the failure to maintain separate insurance coverage for business liability may result in the cancellation or nonrenewal of the homeowner's insurance policy. For further information, see [Bureau of Insurance Bulletin 364](#).

P.L. Chapter 189 (L.D. 979) – *An Act to Require the Disclosure of Insurance Policy Limits to an Injured Party* – Requires an insurer to disclose the liability coverage limits of its insured to a claimant upon written demand.

P.L. Chapter 222 (L.D. 754) – *An Act Regarding Subrogation of Medical Payments Coverage* – Adds additional requirements on subrogation clauses in the medical payments coverage in a casualty insurance policy. Subrogation or priority of payment over the insured is now permitted for medical payments coverage only when the damages exceed \$20,000 and the insured has given written approval to including the subrogation clause in the policy.

P.L. Chapter 232 (L.D. 1004) – *An Act Relating to Self-insurance* – Authorizes individual self-insurers authorized under Maine law to participate in a group self-insurance reinsurance account. The law also authorizes the formation of a protected cell mechanism under which workers' compensation group self-insurers authorized under the laws of other states may participate in a reinsurance account without exposing Maine self-insurers to their liabilities.

P.L. Chapter 244 (L.D. 1180) – *An Act to Clarify and Update the Laws Related to Life and Health Insurance* – **Emergency measure, effective June 3, 2009** – This law makes the following changes to clarify and update the Maine Insurance Code related to life and health insurance:

1. Protects those who switch from one Medicare supplement plan to another from losing protection against medical underwriting or preexisting condition exclusions just because they were covered at some time in the past under a Medicare Advantage plan rather than traditional Medicare with a Medicare supplement plan.
2. Expands the current law regarding notice to parents regarding coverage of dependent children to apply to adult children as well as minors, as long as the adult child consents. It also makes the requirement applicable to health maintenance organizations.
3. Repeals the provisions for special rate hearings on individual, small group, and Medicare supplement insurance. These provisions provided for shifting the burden of proof as to whether rates are excessive from the insurer to the Bureau of Insurance or other party asserting they are excessive if certain conditions are met. Under the new law, the burden of proof remains with the insurer.
4. Strengthens the law prohibiting discrimination in insurance based on genetic information. The changes conform state law to the federal Genetic Information Nondiscrimination Act of 2008.
5. Amends the State's continuity of coverage law to conform to the federal Health Insurance Portability and Accountability Act of 1996. The current law waives medical underwriting and preexisting condition exclusions in group policies only to the extent that benefits would have been payable under a prior contract or policy. As amended, medical underwriting and preexisting condition exclusions in group health insurance policies are waived entirely in most cases as long as there was some prior coverage. This law also specifies, consistent with the federal Health Insurance Portability and Accountability Act of 1996, that when a group policy

is replaced by another group policy, the “look-back” period for preexisting exclusions is measured from the date of enrollment in the first policy. In addition, this law adds a provision to the Maine Insurance Code to require compliance with the federal Children’s Health Insurance Program Reauthorization Act of 2009, Section 311.

6. Clarifies the applicability of individual and small group rating laws to group health insurance policies issued to associations and other groups. Coverage of employees of small employers, including those covered through employee leasing companies, is subject to small group rating laws. Coverage of individuals not covered through employment is subject to individual rating laws.
7. Clarifies that rates for individual health insurance and certain small group health insurance are subject to approval by the Superintendent of Insurance. Current law provides for disapproval of rates but does not explicitly refer to approval of rates.
8. Clarifies that the period of time after which interest is payable on an individual life insurance claim is two months.
9. Clarifies that the Standard Nonforfeiture Law for Individual Deferred Annuities applies to certain group annuities.
10. Provides for a second election period for state law continuation coverage, comparable to that provided to persons who are eligible for continuation coverage under COBRA.

P.L. Chapter 307 (L.D. 234) – *An Act to Expand Access to Oral Health Care* – Requires dental insurers, and health insurers and health maintenance organizations that include dental benefits in their coverage, to provide coverage for dental services lawfully performed by an independent practice dental hygienist if those services would be covered under the policy or contract. The law applies to all individual and group health insurance policies and contracts issued or renewed on or after January 1, 2010.

The law also requires the Bureau of Insurance to submit a report by February 1, 2013 on the experience of carriers with this mandate.

P.L. Chapter 335 (L.D. 1436) – *An Act to Create Economic Development in the State by Modernizing the Captive Insurance Laws* – Makes changes to the State’s laws regulating captive insurance companies to encourage the formation of new captive insurance companies in the State. The changes in the law are modeled after laws relating to captive insurance companies in Vermont, which has the highest number of captive insurance companies in the United States.

P.L. Chapter 350 (L.D. 1444) – *An Act to Protect Consumers and Small Business Owners from Rising Health Care Costs* – does the following.

1. Part A directs the Advisory Council on Health Systems Development to develop recommendations on payment reform.
2. Part B directs the Superintendent of Insurance to adopt rules for physician performance measurement, reporting, and tiering programs. The Superintendent may consult with the advisory council.
3. Part C requires that the Maine Department of Health and Human Services post on its publicly accessible website the federal Internal Revenue Service Form 990 and forms already filed by hospitals with the department within 30 days of the effective date of the bill, as amended.

P.L. Chapter 357 (L.D. 1397) – *An Act to Allow Efficient Health Insurance Coverage* – Allows carriers to provide financial incentives to members to use designated providers and gives the Superintendent of Insurance the authority to approve a financial incentive pilot program similar to the pilot program used by the State Employee Health Plan, which allows companies to offer products in which consumers can choose to travel further for improved quality, patient safety, and efficiency without adversely affecting quality of care. This law also extends indefinitely language previously scheduled to be repealed July 1, 2009 regarding limits, including geographic access requirements, on the incentives used by health plans to encourage in-network designated providers.

P.L. Chapter 359 (L.D. 1264) – *An Act to Stabilize Funding and Enable DirigoChoice to Reach More Uninsured* – Replaces the savings offset payment, currently assessed at a variable rate up to 4% of paid claims, determined each year depending on savings, with a fixed 2.14% access payment on paid claims paid monthly. The law clarifies that access payments apply to claims paid on or after September 1, 2009 and establishes the payment date as 30 days after the end of each month. This law also requires the Board of Trustees of Dirigo Health to consider making changes to focus on coverage of uninsured and underinsured individuals through a more affordable DirigoChoice product and to report to the Joint Standing Committee on Insurance and Financial Services regarding those changes by January 1, 2010.

P.L. Chapter 376 (L.D. 1063) – *An Act to Provide Consumer Disclosures and Protect Consumer Options in Life Insurance* – Requires additional disclosures to consumers considering viatical and life settlement transactions. The law also requires the Superintendent of Insurance to develop a brochure informing consumers about their rights as owners of life insurance policies, including the alternatives to the lapse of a life insurance policy. The law requires life insurance companies to provide the brochure to consumers who are 60 years of age or have a chronic or terminal illness under certain circumstances.

P.L. Chapter 439 (L.D. 1205) – *An Act to Establish a Health Care Bill of Rights* – This law does the following:

1. Part A requires carriers to provide a toll-free telephone number that certificate holders can call to determine if the policy has been cancelled or reinstated after payment of the premium. It requires carriers to provide notice to plan enrollees regarding any exclusions or limits of coverage for childhood immunizations. Part A also requires carriers to post at least five individual and five small group health plans on its publicly accessible Web site for comparison purposes and sets minimum standards for explanation of benefits documents used by carriers.
2. Part B establishes standards for provider profiling programs used by carriers in managed care plans.
3. Part C permits the Attorney General to request a rate hearing regarding proposed rate increases for individual health plans.
4. Parts C and D clarify that all rate filings and supporting information filed by carriers are public records except for certain health information protected by state or federal law and information related to the terms and conditions of contracts between carriers and third parties, including provider reimbursement.
5. Part D authorizes the Superintendent of Insurance to adopt rules requiring small group health carriers to offer standardized small group health plans. Part D also authorizes the Superintendent to study possible ways to improve the availability and affordability of the State's individual health insurance market, including increases in the minimum loss ratio and

the consideration of losses in all health insurance markets when reviewing rate filings.

6. Part E requires the Superintendent of Insurance to undertake market conduct examinations of health insurance companies at least once every 5 years, beginning in 2010.
7. Part F keeps authorizations for prescription drugs in place for a limited time after insurance coverage has been replaced, and requires insurance policies to notify enrollees of this right. If the covered person is undergoing a course of treatment, the new insurance carrier must honor any prior authorization until it conducts a review of that prior authorization with the enrollee's prescribing provider. The provider may request that the authorization be kept in force for an additional period, not to exceed six months. The carrier is not required to provide benefits for conditions or services not otherwise covered under the replacement policy, and cost sharing may be based on the copayments and coinsurance requirements of the replacement policy.