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Legislative Document

No. 410

H.P. 328

House of Representatives, February 8, 2011

An Act To Repeal the Provisions in the Insurance Laws Governing Guaranteed Issue and Community Rating

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

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative DAVIS of Sangerville.
Cosponsored by Senator SAVIELLO of Franklin and
Representatives: CRAFTS of Lisbon, FREDETTE of Newport, GIFFORD of Lincoln,
JOHNSON of Greenville, PRESCOTT of Topsham, TIMBERLAKE of Turner,
WATERHOUSE of Bridgton, Senator: THIBODEAU of Waldo.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§14-F**, as enacted by PL 2007, c. 629, Pt. A, §1,
3 is repealed.

4 **Sec. 2. 24-A MRSA §423-E**, as enacted by PL 2007, c. 629, Pt. A, §2, is repealed.

5 **Sec. 3. 24-A MRSA §2736-C, sub-§1, ¶B**, as enacted by PL 1993, c. 477, Pt. C,
6 §1 and affected by Pt. F, §1, is repealed.

7 **Sec. 4. 24-A MRSA §2736-C, sub-§2, ¶A**, as amended by PL 1993, c. 547, §3,
8 is further amended to read:

9 A. A carrier issuing an individual health plan after December 1, 1993 must file the
10 carrier's ~~community~~ rate and any formulas and factors used to adjust that rate with the
11 superintendent prior to issuance of any individual health plan.

12 **Sec. 5. 24-A MRSA §2736-C, sub-§2, ¶B**, as amended by PL 2007, c. 629, Pt.
13 A, §3, is further amended to read:

14 B. A carrier may not vary the premium rate due to the ~~gender, health status,~~
15 ~~occupation or industry~~, claims experience or policy duration of the individual.

16 **Sec. 6. 24-A MRSA §2736-C, sub-§2, ¶C**, as amended by PL 2001, c. 410, Pt.
17 A, §1 and affected by §10, is further amended to read:

18 C. A carrier may vary the premium rate due to gender, health status, age, occupation
19 or industry, geographic area, smoking status and family membership. A change in
20 the premium rate is not permitted on the basis of changes in health status after the
21 policy is issued. Renewal of an individual health plan is guaranteed pursuant to
22 section 2850-B. The superintendent may adopt rules setting forth appropriate
23 methodologies regarding rate discounts based on smoking status. Rules adopted
24 pursuant to this paragraph are routine technical rules as defined in Title 5, chapter
25 375, subchapter ~~H-A~~ 2-A.

26 **Sec. 7. 24-A MRSA §2736-C, sub-§2, ¶D**, as amended by PL 2007, c. 629, Pt.
27 A, §4, is repealed.

28 **Sec. 8. 24-A MRSA §2736-C, sub-§2, ¶E**, as amended by PL 1999, c. 44, §1
29 and affected by §2, is further amended to read:

30 E. A separate ~~community~~ premium rate may be established for individuals eligible
31 for Medicare Part A without paying a premium; however, this rate may not be applied
32 if both the Medicare eligibility date and the issue date are prior to July 1, 2000.

33 **Sec. 9. 24-A MRSA §2736-C, sub-§2, ¶F**, as amended by PL 2007, c. 629, Pt.
34 M, §4, is repealed.

35 **Sec. 10. 24-A MRSA §2736-C, sub-§2, ¶G**, as enacted by PL 2007, c. 629, Pt.
36 A, §5, is repealed.

1 **Sec. 11. 24-A MRSA §2736-C, sub-§2, ¶H**, as enacted by PL 2007, c. 629, Pt.
2 A, §6, is repealed.

3 **Sec. 12. 24-A MRSA §2736-C, sub-§2, ¶I** is enacted to read:

4 I. A carrier that offered individual health plans prior to January 1, 2012 may close its
5 individual book of business sold prior to January 1, 2012 and may establish a separate
6 rate for individuals applying for coverage under an individual health plan on or after
7 January 1, 2012.

8 **Sec. 13. 24-A MRSA §2736-C, sub-§2-A**, as enacted by PL 2007, c. 629, Pt. A,
9 §7, is repealed.

10 **Sec. 14. 24-A MRSA §2736-C, sub-§3**, as corrected by RR 2001, c. 1, §30, is
11 amended to read:

12 **3. Guaranteed renewal.** Carriers providing individual health plans must meet the
13 following requirements on ~~issuance and~~ renewal.

14 ~~A. Coverage must be guaranteed to all residents of this State other than those eligible~~
15 ~~without paying a premium for Medicare Part A. On or after January 1, 1998,~~
16 ~~coverage must be guaranteed to all legally domiciled federally eligible individuals, as~~
17 ~~defined in section 2848, regardless of the length of time they have been legally~~
18 ~~domiciled in this State. Except for federally eligible individuals, coverage need not~~
19 ~~be issued to an individual whose coverage was terminated for nonpayment of~~
20 ~~premiums during the previous 91 days or for fraud or intentional misrepresentation of~~
21 ~~material fact during the previous 12 months. When a managed care plan, as defined~~
22 ~~by section 4301 A, provides coverage a carrier may:~~

23 ~~(1) Deny coverage to individuals who neither live nor reside within the approved~~
24 ~~service area of the plan for at least 6 months of each year; and~~

25 ~~(2) Deny coverage to individuals if the carrier has demonstrated to the~~
26 ~~superintendent's satisfaction that:~~

27 ~~(a) The carrier does not have the capacity to deliver services adequately to~~
28 ~~additional enrollees within all or a designated part of its service area because~~
29 ~~of its obligations to existing enrollees; and~~

30 ~~(b) The carrier is applying this provision uniformly to individuals and~~
31 ~~groups without regard to any health related factor.~~

32 ~~A carrier that denies coverage in accordance with this paragraph may not enroll~~
33 ~~individuals residing within the area subject to denial of coverage or groups or~~
34 ~~subgroups within that area for a period of 180 days after the date of the first~~
35 ~~denial of coverage.~~

36 B. Renewal is guaranteed, pursuant to section 2850-B.

37 ~~C. A carrier is exempt from the guaranteed issuance requirements of paragraph A~~
38 ~~provided that the following requirements are met.~~

1 ~~(1) The carrier does not issue or deliver any new individual health plans on or~~
2 ~~after the effective date of this section;~~

3 ~~(2) If any individual health plans that were not issued on a guaranteed~~
4 ~~renewable basis are renewed on or after December 1, 1993, all such policies must~~
5 ~~be renewed by the carrier and renewal must be guaranteed after the first such~~
6 ~~renewal date; and~~

7 ~~(3) The carrier complies with the rating practices requirements of subsection 2.~~

8 D. ~~Notwithstanding paragraph A, carriers~~ Carriers offering supplemental coverage
9 for the Civilian Health and Medical Program for the Uniformed Services,
10 CHAMPUS, are not required to issue this coverage if the applicant for insurance does
11 not have CHAMPUS coverage.

12 **Sec. 15. 24-A MRSA §2736-C, sub-§9**, as enacted by PL 1995, c. 570, §7, is
13 amended to read:

14 **9. Exemption for certain associations.** The superintendent may exempt a group
15 health insurance policy or group nonprofit hospital or medical service corporation
16 contract issued to an association group, organized pursuant to section 2805-A, from the
17 requirements of ~~subsection 3, paragraph A;~~ subsection 6, paragraph A; and subsection 8
18 if:

19 A. ~~Issuance and renewal~~ Renewal of coverage under the policy or contract is
20 guaranteed to all members of the association who are residents of this State and to
21 their dependents;

22 B. Rates for the association comply with the premium rate requirements of
23 subsection 2 or are established on a nationwide basis and substantially comply with
24 the purposes of this section, except that exempted associations may be rated
25 separately from the carrier's other individual health plans, if any;

26 C. The group's anticipated loss ratio, as defined in subsection 5, is at least 75%;

27 D. The association's membership criteria do not include age, health status, medical
28 utilization history or any other factor with a similar purpose or effect;

29 E. The association's group health plan is not marketed to the general public;

30 F. The association does not allow insurance agents or brokers to market association
31 memberships, accept applications for memberships or enroll members, except when
32 the association is an association of insurance agents or brokers organized under
33 section 2805-A;

34 G. Insurance is provided as an incidental benefit of association membership and the
35 primary purposes of the association do not include group buying or mass marketing
36 of insurance or other goods and services; and

37 H. Granting an exemption to the association does not conflict with the purposes of
38 this section.

39 **Sec. 16. 24-A MRSA §2808-B, sub-§1, ¶B**, as enacted by PL 1991, c. 861, §2,
40 is repealed.

1 **Sec. 17. 24-A MRSA §2808-B, sub-§2, ¶B**, as amended by PL 1993, c. 477, Pt.
2 B, §1 and affected by Pt. F, §1, is further amended to read:

3 B. A carrier may not vary the premium rate due to the ~~gender, health status~~, claims
4 experience or policy duration of the eligible group or members of the group.

5 **Sec. 18. 24-A MRSA §2808-B, sub-§2, ¶C**, as amended by PL 2001, c. 410, Pt.
6 A, §3 and affected by §10, is further amended to read:

7 C. A carrier may vary the premium rate due to gender, health status, age, occupation
8 or industry, geographic area, family membership, smoking status, participation in
9 wellness programs and group size. A change in the premium rate is not permitted on
10 the basis of changes in health status after the policy is issued. Renewal of a small
11 group health plan is guaranteed pursuant to section 2850-B. The superintendent may
12 adopt rules setting forth appropriate methodologies regarding rate discounts pursuant
13 to this paragraph. Rules adopted pursuant to this paragraph are routine technical
14 rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

15 **Sec. 19. 24-A MRSA §2808-B, sub-§2, ¶D**, as amended by PL 2001, c. 410, Pt.
16 A, §4 and affected by §10, is repealed.

17 **Sec. 20. 24-A MRSA §2808-B, sub-§2, ¶D-1**, as amended by PL 2001, c. 410,
18 Pt. A, §5 and affected by §10, is repealed.

19 **Sec. 21. 24-A MRSA §2808-B, sub-§2, ¶D-2**, as reallocated by RR 1997, c. 1,
20 §22, is amended to read:

21 D-2. ~~Notwithstanding the requirements of paragraph D, rates~~ Rates with respect to
22 employees whose work site is not in this State may be based on area adjustment
23 factors appropriate to that location.

24 **Sec. 22. 24-A MRSA §2808-B, sub-§2, ¶E**, as amended by PL 2001, c. 258, Pt.
25 E, §4, is further amended to read:

26 E. The superintendent may authorize a carrier to establish a separate ~~community~~
27 premium rate for an association group organized pursuant to section 2805-A or a
28 trustee group organized pursuant to section 2806, as long as association group
29 membership or eligibility for participation in the trustee group is not conditional on
30 health status, claims experience or other risk selection criteria and all small group
31 health plans offered by the carrier through that association or trustee group:

32 (1) Are otherwise in compliance with the premium rate requirements of this
33 subsection; and

34 (2) Are offered on a guaranteed issue basis to all eligible employers that are
35 members of the association or are eligible to participate in the trustee group
36 except that a professional association may require that a minimum percentage of
37 the eligible professionals employed by a subgroup be members of the association
38 in order for the subgroup to be eligible for issuance or renewal of coverage
39 through the association. The minimum percentage must not exceed 90%. For

1 purposes of this subparagraph, "professional association" means an association
2 that:

3 (a) Serves a single profession that requires a significant amount of education,
4 training or experience or a license or certificate from a state authority to
5 practice that profession;

6 (b) Has been actively in existence for 5 years;

7 (c) Has a constitution and bylaws or other analogous governing documents;

8 (d) Has been formed and maintained in good faith for purposes other than
9 obtaining insurance;

10 (e) Is not owned or controlled by a carrier or affiliated with a carrier;

11 (g) Has a least 1,000 members if it is a national association; 200 members if
12 it is a state or local association;

13 (h) All members and dependents of members are eligible for coverage
14 regardless of health status or claims experience; and

15 (i) Is governed by a board of directors and sponsors annual meetings of its
16 members.

17 Producers may only market association memberships, accept applications for
18 membership or sign up members in the professional association where the individuals
19 are actively engaged in or directly related to the profession represented by the
20 professional association.

21 **Sec. 23. 24-A MRSA §2808-B, sub-§2, ¶H** is enacted to read:

22 H. A carrier that offered small group health plans prior to January 1, 2012 may close
23 its small group book of business sold prior to January 1, 2012 and may establish a
24 separate rate for small groups applying for coverage under a small group health plan
25 on or after January 1, 2012.

26 **Sec. 24. 24-A MRSA §2808-B, sub-§2-A**, as amended by PL 2009, c. 244, Pt.
27 C, §7 and c. 439, Pt. D, §1, is further amended to read:

28 **2-A. Rate filings.** A carrier offering small group health plans shall file with the
29 superintendent the ~~community~~ rates for each plan and every rate, rating formula and
30 classification of risks and every modification of any formula or classification that it
31 proposes to use.

32 A. Every filing must state the effective date of the filing. Every filing must be made
33 not less than 60 days in advance of the stated effective date, unless the 60-day
34 requirement is waived by the superintendent. The effective date may be suspended
35 by the superintendent for a period of time not to exceed 30 days.

36 B. A filing and all supporting information, except for protected health information
37 required to be kept confidential by state or federal statute and except for descriptions
38 of the amount and terms or conditions or reimbursement in a contract between an
39 insurer and a 3rd party, are public records notwithstanding Title 1, section 402,

1 subsection 3, paragraph B and become part of the official record of any hearing held
2 pursuant to subsection 2-B, paragraph B or F.

3 C. Rates for small group health plans must be filed in accordance with this section
4 and subsections 2-B and 2-C for premium rates effective on or after July 1, 2004;
5 ~~except that the filing of rates for small group health plans are not required to account~~
6 ~~for any payment or any recovery of that payment pursuant to subsection 2-B,~~
7 ~~paragraph D and former section 6913 for rates effective before July 1, 2005.~~

8 **Sec. 25. 24-A MRSA §2808-B, sub-§2-B, ¶D**, as amended by PL 2007, c. 629,
9 Pt. M, §8, is repealed.

10 **Sec. 26. 24-A MRSA c. 54**, as amended, is repealed.

11 **Sec. 27. 24-A MRSA §4202-A, sub-§10, ¶B**, as amended by PL 1993, c. 645,
12 Pt. A, §5, is further amended to read:

13 B. Is compensated, except for reasonable copayments, for basic health care services
14 to enrolled participants solely on a predetermined periodic rate basis, except that the
15 organization is not prohibited from having a provision in a group contract allowing an
16 adjustment of premiums based upon the actual health services utilization of the
17 enrollees covered under the contract, and except that such a contract may not be sold
18 to an eligible group subject to the ~~community~~ rating requirements of section 2808-B;

19 **Sec. 28. 24-A MRSA §4212, sub-§2, ¶C**, as enacted by PL 1995, c. 332, Pt. O,
20 §6, is amended to read:

21 C. When the provisions of the State's ~~community~~ rating law are applicable, as
22 provided by section 2736-C, subsection 3, paragraph B and section 2808-B,
23 subsection 4, paragraph B; or

24 **Sec. 29. 24-A MRSA §4222-B, sub-§3**, as enacted by PL 1995, c. 332, Pt. O, §8,
25 is amended to read:

26 **3.** The requirements of sections 2736-C and 2808-B, ~~community~~ rating law, apply
27 to health maintenance organizations, except that a health maintenance organization is not
28 required to offer coverage or accept applications from an eligible group or individual
29 located outside the health maintenance organization's approved service area.

30 **Sec. 30. Application.** The requirements of this Act apply to all policies, contracts
31 and certificates executed, delivered, issued for delivery, continued or renewed in this
32 State on or after January 1, 2012. For purposes of this Act, all contracts are deemed to be
33 renewed no later than the next yearly anniversary of the contract date.

34 SUMMARY

35 This bill repeals the laws governing guaranteed issue and community rating for
36 individual health insurance. The bill also repeals the laws governing community rating in
37 the small group health insurance market.

1 The bill applies to all individual and small group health insurance policies,
2 certificates and contracts issued or renewed on or after January 1, 2012.