

TESTIMONY OF STACY BERGENDAHL
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DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
In opposition to L.D. 1470
An Act to Create a Liaison Program to Self-insured Entities and Consumers
Presented by Rep. Poirier
Before the Joint Standing Committee on Health Coverage,
Insurance & Financial Services
April 22, 2025 at 1:00pm

Senator Bailey, Representative Mathieson, and members of the Committee, I am Stacy Bergendahl, Senior Staff Attorney at the Bureau of Insurance. I am here today to testify in opposition to LD 1470. This bill directs the Bureau of Insurance to establish a liaison program, including a complaint process, to provide assistance to consumers seeking coverage or reimbursement of claims from a self-insured entity.

The bill requires the program to be available for the following classes of self-insured risk: health; workers' compensation; property; and automobile or general liability. The structure and scope of the bill largely mirror the provider assistance program that was established in 2023 pursuant to 24-A M.R.S. § 4329.

The Bureau has many concerns with this bill, including:

In order to resolve a complaint, an agency needs regulatory authority over the entity against whom the complaint is made. Jurisdiction is necessary to request documents and information, and to impose remedies for violations. With the exception of workers' compensation, the Bureau of Insurance has no jurisdiction over self-insured entities, and therefore has no authority to request documents, let alone impose remedies. Even for workers' compensation, the Bureau's regulatory authority is limited to financial matters. The Maine Workers' Compensation Board has authority over claims, and has its own well-established legal procedures for the resolution of eligibility and claim issues. The Board also has a troubleshooter program and an employee advocate program to provide assistance when there are problems.

For most types of self-insurance, there is no regulator at all to whom we could refer a complaint. Even when self-insurance is subject to some legal requirements, and is not simply another name for the decision not to buy insurance, the regulator with jurisdiction may have no oversight of the claims process. For example, an individual or business entity that self-insures for motor vehicle liability must post a deposit or bond with the Secretary of State, but that is not a fund from which claims are routinely paid.

Regarding self-insured health entities, most self-insured private employer health plans fall under the jurisdiction of Employee Retirement Income Security Act ("ERISA"). ERISA is federal law that is enforced by the U.S. Department of Labor, Employee Benefits Security Administration (EBSA), and preempts state law as applied to these employer-sponsored health benefit plans. Thus, the Bureau has no authority to request documents, let alone impose remedies. The Bureau

does provide assistance in helping people contact their employer's benefit plan administrator, and if necessary, the Boston office of the EBSA. Our consumer health division has standard language to explain why it is an employer issue – how the insurance works, why it is NOT insurance, how premiums are used, why the carrier is involved, etc. The Bureau does regulate multiple employer welfare arrangement (MEWA) health plans and handles them through our established complaint process, though complaints are rare for these entities.

Regarding motor vehicle liability, 29-A M.R.S. Chapter 13 “Financial Responsibility and Insurance” assigns financial responsibility jurisdiction to the Secretary of State. No provision of law provides a process for claims adjustment against self-insurers. The only remedy available is judicial. The Bureau would be unable to help in a court case related to recovery against a self-insurer for auto, truck, or bus liability.

The situation is the same for nearly all self-insured property and liability risks, and in most cases there is not even a financial responsibility mechanism. The one exception is that local governmental entities in Maine are authorized by 30-A M.R.S. Chapter 117 to form self-funded property and casualty risk pools, but section 2254 of that chapter expressly states that these pools are not insurance. Thus, they do not fall under the regulatory authority of the Bureau, nor is there any other regulator with oversight over the claims process.

As to the provisions of the bill that require the Bureau to refer a consumer to the appropriate entity, Bureau staff already do this, as I described for ERISA plans. We do not simply turn consumers away, and we do connect them with the appropriate agency if one exists. Regarding the provision to post information

about the state and federal rules and regulations relating to self-insurance, these are areas (particularly ERISA plans) where we do not have expertise, and this would be a large burden on staff with limited benefit to consumers.

Although this bill appears to be modeled after the provider assistance program, that program is limited to the Bureau's investigation of potential violations of Title 24-A, over which we have jurisdiction. Extending this concept to non-licensees will not be effective, and may in fact lead to more consumer confusion, as consumers spend time communicating with Bureau staff who have no authority to assist them, rather than dealing directly with the appropriate agency or entity that has legal authority to assist them.

In addition to the Bureau's lack of jurisdiction to perform the tasks described in this bill, the Bureau does not have sufficient staffing to take on these additional responsibilities.

Thank you, I would be glad to answer any questions now or at the work session.