

Proposed Committee  
Amendment



Rep. Sanderson

1.29.16

# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

Legislative Document

No. 1311

H.P. 889

House of Representatives, April 9, 2015

### An Act To Establish the Patient Compensation System Act

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

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

Presented by Representative SANDERSON of Chelsea.

Changes on pages:  
2, 3, 4, 6, 7, 8, 9, 10, 11, 12 & 13

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

2 Sec. 1. 5 MRSA §12004-G, sub-§21-C is enacted to read:

3 21-C.

4 <u>Insurance</u>	<u>Patient</u>	<u>Legislative Per</u>	<u>24 MRSA §2994</u>
5	<u>Compensation</u>	<u>Diem and Expenses</u>	
6	<u>Board</u>	<u>Only</u>	

7 Sec. 2. 24 MRSA c. 21, sub-c. 11 is enacted to read:

8 SUBCHAPTER 11

9 PATIENT COMPENSATION SYSTEM ACT

10 §2991. Short title

11 This subchapter may be known and cited as "the Patient Compensation System Act."

12 §2992. Definitions

13 As used in this subchapter, unless the context otherwise indicates, the following  
14 terms have the following meanings.

15 1. Applicant. "Applicant" means a person who files an application.

16 2. Application. "Application" means a request for investigation by the system of an  
17 alleged occurrence of a medical injury.

18 3. Board. "Board" means the Patient Compensation Board established in section  
19 2994.

20 4. Collateral source. "Collateral source" means any payment made to an applicant  
21 or on the applicant's behalf by or pursuant to:

22 A. The federal Social Security Act; any federal, state or local income disability act;  
23 or any other public program providing payment for medical expenses, disability  
24 payments or other similar benefits;

25 B. Any health, sickness or income disability insurance; any automobile accident  
26 insurance that provides health benefits or income disability coverage; or any other  
27 similar insurance benefits, except life insurance benefits, available to the applicant,  
28 whether purchased by the applicant or provided by others;

29 C. Any contract or agreement of any group, organization, partnership or corporation  
30 to provide, pay for or reimburse the costs of hospital, medical, dental or other health  
31 care services; or

32 D. Any contractual or voluntary wage continuation plan provided by employers or  
33 any other program intended to provide wages during a period of disability.

1        **5. Compensation Committee.** "Compensation Committee" means the committee  
2 created pursuant to section 2995.

3        **6. Compensation schedule.** "Compensation schedule" means a schedule of  
4 damages for medical injuries.

5        **7. Department.** "Department" means the Department of Professional and Financial  
6 Regulation.

7        **8. Independent medical review panel.** "Independent medical review panel" or  
8 "panel" means a panel convened under section 2996.

**9. Medical injury.** "Medical injury" means a personal injury or wrongful death  
due to medical treatment, including a missed diagnosis, where all of the following exist:

A. The physician performed a medical treatment on the applicant;

B. The applicant suffered a medical injury with damages;

C. The medical treatment was the proximate cause of the damages; and

D. Based on the facts at the time of medical treatment, one or both of the  
following occurred:

(1) An accepted method of medical services was not used for  
treatment; or

(2) An accepted method of medical services was used for treatment,  
but executed in a substandard fashion.

"Medical injury" does not include an injury or wrongful death caused by a product  
defect in a drug or a device used during the medical treatment.

28        **10. Medical Review Committee.** "Medical Review Committee" means the  
29 committee created pursuant to section 2995.

30        **11. Office of Compensation.** "Office of Compensation" means the office  
31 established in section 2994, subsection 6, paragraph B.

32        **12. Office of Medical Review.** "Office of Medical Review" means the office  
33 established in section 2994, subsection 6, paragraph A.

34        **13. Office of Quality Improvement.** "Office of Quality Improvement" means the  
35 office established in section 2994, subsection 6, paragraph C.

36        **14. Participating provider.** "Participating provider" means a provider that, at the  
37 time of a medical injury, has paid the contribution required for participation in the system  
38 for the year in which the medical injury occurred.

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3           **15. Physician.** "Physician" means a natural person authorized to  
4           practice allopathic or osteopathic medicine within this State.

5           **16. System.** "System" means the Patient Compensation System established in  
6           section 2993.

7           **§2993. Patient Compensation System**

8           The Patient Compensation System is established to provide a method for patients to  
9           be compensated for medical injuries. The system is administered by the department.

10           **§2994. Patient Compensation Board**

11           The Patient Compensation Board is established to govern the system.

12           **1. Membership.** The board is composed of 11 members who represent the medical,  
13           legal, patient and business communities from diverse geographic areas throughout the  
14           State. Members of the board are appointed by the Governor as follows:

15           **A. One member who is an allopathic or osteopathic physician who actively practices**  
16           in this State;

17           **B. One member who is an executive in the business community who works in this**  
18           State;

19           **C. One member who is a hospital administrator who works in this State;**

20           **D. One member who is a certified public accountant who actively practices in this**  
21           State;

22           **E. One member who is licensed to practice law in this State who actively practices in**  
23           this State;

24           **F. Three members selected from a list of persons recommended by the President of**  
25           the Senate, one of whom is an allopathic or osteopathic physician who actively  
26           practices in this State and one of whom is a patient advocate who resides in this State;  
27           and

28           **G. Three members selected from a list of persons recommended by the Speaker of**  
29           the House of Representatives, one of whom is an allopathic or osteopathic physician  
30           who actively practices in this State and one of whom is a patient advocate who  
31           resides in this State.

32           The board shall annually elect from its membership one member to serve as chair of the  
33           board and one member to serve as vice-chair.

34           **2. Terms.** A member of the board is appointed for a 4-year term. If a vacancy  
35           occurs on the board before the expiration of a term, the Governor shall appoint a  
36           successor to serve the remainder of the term.

37           **3. Meetings.** The board shall meet at least quarterly upon the call of the chair. A  
38           majority of the board members constitutes a quorum. Meetings may be held by  
39           teleconference, Internet-based conference or other electronic means.

1 4. Compensation. Members of the board serve without compensation but are  
2 entitled to the legislative per diem and travel expenses under Title 3, section 2 for  
3 required attendance at board meetings.

4 5. Powers and duties. The board has the following powers and duties:

5 A. Ensuring the operation of the system in accordance with applicable federal and  
6 state laws, rules and regulations;

7 B. Entering into contracts as necessary to administer this subchapter;

8 C. Employing an executive director and other staff as necessary to perform the  
9 functions of the system, except that the Governor shall appoint the initial executive  
10 director;

11 D. Approving the hiring of a chief compensation officer and chief medical officer, as  
12 recommended by the executive director;

13 E. Approving a compensation schedule, as recommended by the Compensation  
14 Committee pursuant to section 2995, subsection 7, paragraph B;

15 F. Approving independent medical review panels as recommended by the Medical  
16 Review Committee pursuant to section 2995, subsection 7, paragraph A;

17 G. Approving an annual budget; and

18 H. Annually approving participating provider fees under section 2999-C, subsection  
19 1.

20 6. Offices. The following offices are established within the system.

21 A. The Office of Medical Review is established and shall evaluate and, as necessary,  
22 investigate all applications in accordance with this subchapter. For the purpose of an  
23 investigation of an application, the office has the power to administer oaths, take  
24 depositions, issue subpoenas, compel the attendance of witnesses and the production  
25 of papers, documents and other evidence and obtain patient records pursuant to the  
26 applicant's release of protected health information. The office staff must include  
27 individuals representing multidisciplinary clinical expertise to facilitate the review of  
28 applications.

29 B. The Office of Compensation is established and shall allocate compensation for  
30 each application in accordance with the compensation schedule as approved pursuant  
31 to subsection 5, paragraph E.

32 C. The Office of Quality Improvement is established and shall regularly review  
33 application data to conduct root cause analyses and develop and disseminate best  
34 practices based on the reviews. The office shall capture and record safety-related  
35 data obtained during an investigation conducted by the Office of Medical Review,  
36 including the cause of, the factors contributing to and any interventions that may have  
37 prevented the medical injury.

38 7. Powers and duties of staff. The executive director shall oversee the operation of  
39 the system in accordance with this subchapter. The following staff report directly to and  
40 serve at the pleasure of the executive director.

physician

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1 A. The advocacy director shall ensure that each applicant is provided high-quality  
2 individual assistance throughout the application process, from initial filing to  
3 disposition of the application. The advocacy director shall assist each applicant in  
4 determining whether to retain an attorney, including an explanation of possible fee  
5 arrangements and the advantages and disadvantages of retaining an attorney. If an  
6 applicant seeks to file an application without an attorney, the advocacy director shall  
7 assist the applicant in filing the application. The advocacy director shall regularly  
8 provide status reports to an applicant regarding an application.

9 B. The chief compensation officer shall manage the Office of Compensation. The  
10 chief compensation officer shall recommend to the Compensation Committee a  
11 compensation schedule for each type of medical injury. The chief compensation  
12 officer may not be a licensed physician or an attorney.

13 C. The chief financial officer is responsible for overseeing the financial operations of  
14 the system, including the development of an annual budget.

15 D. The chief legal officer shall represent the system in all contested applications,  
16 oversee the operation of the system to ensure compliance with established procedures  
17 and ensure adherence to all applicable federal and state laws, rules and regulations.

18 E. The chief medical officer must be a physician licensed under Title 32, chapter 36  
19 or 48 and shall manage the Office of Medical Review. The chief medical officer  
20 shall prepare for the Medical Review Committee a list of qualified panelists from  
21 multiple disciplines for independent medical review panels. The chief medical  
22 officer shall convene independent medical review panels as necessary to review  
23 applications.

24 F. The chief quality officer shall manage the Office of Quality Improvement.

25 **§2995. Committees**

26 The board shall create a Medical Review Committee and a Compensation  
27 Committee. The board may create additional committees as necessary to assist in the  
28 performance of its duties and responsibilities. Each committee is composed of 3 board  
29 members chosen by a majority vote of the board.

30 **1. Medical Review Committee.** The Medical Review Committee is composed of 2  
31 physicians who are licensed in this State and a board member who is not an attorney and  
32 who resides in this State. The board shall designate a physician committee member as  
33 chair of the committee.

34 **2. Compensation Committee.** The Compensation Committee is composed of a  
35 certified public accountant who practices in this State and 2 board members who are not  
36 physicians or attorneys and who reside in this State. The certified public accountant shall  
37 serve as chair of the committee.

38 **3. Terms of appointment.** Members of each committee serve 2-year terms  
39 concurrent with their respective terms as board members. If a vacancy occurs on a  
40 committee, the board shall appoint a successor to serve the remainder of the term. A

1 committee member who is removed or resigns from the board must be removed from the  
2 committee.

3 **4. Vice-chair.** The board annually shall designate a vice-chair of each committee.

4 **5. Meetings.** Each committee shall meet at least quarterly or at the specific direction  
5 of the board. Meetings may be held by teleconference, Internet-based conference or other  
6 electronic means.

7 **6. Compensation.** Members of the committees serve without compensation but are  
8 entitled to the legislative per diem and travel expenses under Title 3, section 2 for  
9 required attendance at committee meetings.

10 **7. Committee powers and duties.** The committees have the following powers and  
11 duties.

12 A. The Medical Review Committee, in consultation with the chief medical officer  
13 pursuant to section 2994, subsection 7, paragraph E, shall prepare for the board a  
14 comprehensive list of qualified panelists from multiple disciplines to serve on  
15 independent medical review panels as needed.

16 B. The Compensation Committee, in consultation with the chief compensation  
17 officer pursuant to section 2994, subsection 7, paragraph B, shall recommend to the  
18 board:

19 (1) A compensation schedule, formulated so that the aggregate cost of medical  
20 malpractice and the aggregate of participating ~~provider~~ fees are equal to or less  
21 than the prior fiscal year's aggregate cost of medical malpractice. Compensation  
22 awards for each injury must be no less than the average indemnity payment  
23 reported by the Physician Insurers Association of America or a successor  
24 organization for similar medical injuries with similar severity. The committee  
25 shall annually review the compensation schedule and, if necessary, recommend a  
26 revised schedule so that a projected increase in the upcoming fiscal year's  
27 aggregate cost of medical malpractice does not exceed the percentage change  
28 from the prior year in the medical care component of the Consumer Price Index  
29 for All Urban Consumers as compiled by the Bureau of Labor Statistics, United  
30 States Department of Labor;

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31 (2) Guidelines for the payment of compensation awards through periodic  
32 payments; and

33 (3) Guidelines for the apportionment of the cost of compensation among  
34 multiple ~~providers~~, which must be based on the historical apportionment among  
35 multiple ~~providers~~ for similar injuries with similar severity.

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36 **§2996. Independent medical review panels**

37 The chief medical officer of the system shall convene an independent medical review  
38 panel to evaluate each application to determine whether a medical injury occurred. Each  
39 panel must be composed of an odd number of at least 3 panelists chosen from a list of  
40 panelists that represent the same or a similar specialty as the ~~provider~~ and convenes,

Physician

1 either in person or by teleconference, at the call of the chief medical officer. Each  
2 panelist must be paid a stipend as determined by the board for service on the panel. In  
3 order to expedite the review of applications, the chief medical officer may, whenever  
4 practicable, group related applications together for consideration by a single panel.

5 **§2997. Conflict of interest**

6 A board member, panelist of an independent medical review panel or employee of the  
7 system may not engage in any conduct that constitutes a conflict of interest. For purposes  
8 of this section, "conflict of interest" means a situation in which the private interest of a  
9 board member, panelist or employee could influence that person's judgment in the  
10 performance of that person's duties under this subchapter. A board member, panelist or  
11 employee shall immediately disclose in writing the presence of a conflict of interest when  
12 the board member, panelist or employee knows or reasonably should have known that the  
13 factual circumstances surrounding a particular application constitute or constituted a  
14 conflict of interest. A board member, panelist or employee who violates this section is  
15 subject to disciplinary action as determined by the board. "Conflict of interest" includes,  
16 but is not limited to:

17 **1. Bias.** Conduct that would lead a reasonable person having knowledge of all of the  
18 circumstances to conclude that a board member, panelist or employee is biased against or  
19 in favor of an applicant; and

20 **2. Financial interest.** Participation in an application in which the board member,  
21 panelist or employee or the parent, spouse or child of a board member, panelist or  
22 employee has a financial interest.

23 **§2998. Rulemaking**

24 The board shall adopt routine technical rules pursuant to Title 5, chapter 375,  
25 subchapter 2-A to implement and administer this subchapter, including rules addressing:

26 **1. Applications.** The application process, including forms necessary to collect  
27 relevant information from applicants;

28 **2. Disciplinary procedures.** Disciplinary procedures for a board member, panelist  
29 of an independent medical review panel or employee of the system who violates the  
30 conflict of interest provisions of section 2997;

31 **3. Stipends.** Stipends paid pursuant to section 2996 to panelists, which may be  
32 adjusted in accordance with the relative scarcity of the panelist's specialty, if applicable;

33 **4. Compensation.** Payment of compensation awards through periodic payments and  
34 the apportionment of the cost of compensation among multiple providers, as  
35 recommended by the Compensation Committee; and

36 **5. Opt-out process.** The opt-out process for providers under section 2999-C,  
37 subsection 5.

physicians

1 **§2999. Filing of applications**

2 **1. Content.** In order to obtain compensation for a medical injury, an applicant or the  
3 applicant's legal representative must file an application with the system. The application  
4 must include the following:

5 A. The name and address of the applicant and the applicant's legal representative and  
6 the basis of the representation;

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7 B. The name and address of any participating provider who provided medical  
8 treatment allegedly resulting in the medical injury;

9 C. A brief statement of the facts and circumstances surrounding the medical injury;

10 D. An authorization for release to the Office of Medical Review of all protected  
11 health information that is potentially relevant to the application;

12 E. Any other information that the applicant believes will be beneficial to the  
13 investigatory process, including the names of potential witnesses; and

14 F. Documentation of any applicable collateral source relative to the medical injury.

15 **2. Incomplete applications.** If an application is not complete, the system shall,  
16 within 30 days after the receipt of the initial application, notify the applicant in writing of  
17 any errors or omissions. An applicant has 30 days after receipt of the notice in which to  
18 correct the errors or omissions in the initial application.

19 **3. Time limit on applications.** An application must be filed within the time period  
20 specified in section 2902 for professional negligence actions.

21 **4. Supplemental information.** After the filing of an application, the applicant may  
22 supplement the initial application with additional information that the applicant believes  
23 may be beneficial in the resolution of the application.

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24 **5. Legal counsel.** This section does not prohibit an applicant or participating  
25 provider from retaining an attorney to represent the applicant or participating provider in  
26 the review and resolution of an application.

27 **§2999-A. Disposition of applications**

28 **1. Initial medical review.** The Office of Medical Review shall, within 10 days after  
29 the receipt of a completed application, determine whether the application, prima facie,  
30 constitutes a medical injury.

31 A. If the Office of Medical Review determines that the application, prima facie,  
32 constitutes a medical injury, the office shall immediately notify by registered or  
33 certified mail each participating provider named in the application and, for  
34 participating providers that are not self-insured, the insurer that provides coverage for  
35 the participating provider. The notification must inform the participating provider  
36 that the participating provider may support the application to expedite the processing  
37 of the application. A participating provider has 15 days after the receipt of  
38 notification of an application to support the application. If the participating provider

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1 supports the application, the office shall review the application in accordance with  
2 subsection 2.

3 B. If the Office of Medical Review determines that the application does not, prima  
4 facie, constitute a medical injury, the office shall send a rejection letter to the  
5 applicant by registered or certified mail informing the applicant of the right to appeal  
6 the determination of the office. The applicant has 15 days after the receipt of the  
7 letter in which to appeal the determination of the office pursuant to section 2999-B.

8 2. Expedited medical review. An application that is supported by a participating  
9 provider in accordance with subsection 1 must be reviewed by the Office of Medical  
10 Review within 30 days after notification of the participating provider's support of the  
11 application to determine the validity of the application. If the Office of Medical Review  
12 finds that the application is valid, the Office of Compensation shall determine a  
13 compensation award in accordance with subsection 4. If the Office of Medical Review  
14 finds that the application is not valid, the office shall immediately notify the applicant by  
15 registered or certified mail of the rejection of the application and the right to appeal the  
16 determination of the office. In the case of suspected fraud, the Office of Medical Review  
17 shall immediately notify relevant law enforcement authorities.

18 3. Formal medical review. If the Office of Medical Review determines that the  
19 application, prima facie, constitutes a medical injury and the participating provider does  
20 not elect to support the application, the office shall complete a thorough investigation of  
21 the application within 60 days after the determination by the office. The investigation  
22 must include a thorough investigation of all available documentation, witnesses and other  
23 information. Within 15 days after the completion of the investigation, the chief medical  
24 officer shall allow the applicant and the participating provider to access records,  
25 statements and other information obtained in the course of the investigation, in  
26 accordance with relevant state and federal laws, rules and regulations.

27 Within 30 days after the completion of the investigation under this subsection, the chief  
28 medical officer shall convene an independent medical review panel to determine whether  
29 the application constitutes a medical injury. The independent medical review panel must  
30 have access to all information, with names redacted, obtained by the office in the course  
31 of the investigation of the application and shall make a written determination, which must  
32 be immediately provided to the applicant and the participating provider.

33 A. If the independent medical review panel determines that:

34 (1) The medical treatment conformed to national practice standards for the care  
35 and treatment of patients, then the application must be dismissed and the  
36 participating provider is not held responsible for the applicant's medical injury; or

37 (2) All of the following criteria exist by a preponderance of the evidence, then  
38 the panel shall report that the application constitutes a medical injury:

39 (a) The participating provider performed a medical treatment on the  
40 applicant;

41 (b) The applicant suffered a personal injury or wrongful death;

1 (c) The medical treatment was the proximate cause of the personal injury or  
2 wrongful death; and

3 (d) One or more of the following has occurred:

4 (i) An accepted medical treatment was not used;

5 (ii) An accepted medical treatment was used but was executed in a  
6 substandard fashion; and

7 (iii) An accepted medical treatment was used, but, as determined by a  
8 prospective analysis, personal injury or wrongful death could have been  
9 avoided by using a less hazardous but equally effective medical  
10 treatment.

11 B. If the independent medical review panel determines that the application  
12 constitutes a medical injury, the Office of Medical Review shall immediately notify  
13 the participating provider, by registered or certified mail of the right to appeal the  
14 determination of the panel. The participating provider has 15 days after the receipt of  
15 the letter in which to appeal the determination of the panel pursuant to section  
16 2999-B.

17 C. If the independent medical review panel determines that the application does not  
18 constitute a medical injury, the Office of Medical Review shall immediately notify  
19 the applicant by registered or certified mail of the right to appeal the determination of  
20 the panel. The applicant has 15 days from the receipt of the letter to appeal the  
21 determination of the panel pursuant to section 2999-B.

22 **4. Compensation review.** If the Office of Medical Review finds that an application  
23 under expedited medical review under subsection 2 is valid, or if an independent medical  
24 review panel finds that an application constitutes a medical injury under subsection 3 and  
25 all appeals of that finding have been exhausted by the participating provider pursuant to  
26 section 2999-B, the Office of Compensation shall, within 30 days after the finding or the  
27 exhaustion of all appeals of that finding, whichever occurs later, make a written  
28 determination of a compensation award in accordance with the compensation schedule  
29 and the finding. The office shall notify the applicant and the participating provider by  
30 registered or certified mail of the amount of the compensation award and shall also  
31 explain to the applicant the process to appeal the determination of the office. The  
32 applicant has 15 days from the receipt of the letter to appeal the determination of the  
33 office pursuant to section 2999-B.

34 **5. Limitation on compensation.** Compensation for each application must be offset  
35 by any past and future collateral source payments. Compensation may be paid by periodic  
36 payments as determined by the Office of Compensation in accordance with rules adopted  
37 by the board under section 2998.

38 **6. Payment of compensation.** Within 14 days after the acceptance of a  
39 compensation award by the applicant or the conclusion of all appeals pursuant to section  
40 2999-B, whichever occurs later, the participating provider, or the insurer for a  
41 participating provider who has insurance coverage, shall remit the compensation award to  
42 the system, which shall immediately provide compensation to the applicant. Beginning 45  
43 days after the acceptance of a compensation award by the applicant or the conclusion of

1 all appeals pursuant to section 2999-B, whichever occurs later, an unpaid award begins to  
2 accrue interest at the rate of 18% per year.

3 7. Professional board notice. The system shall provide the department with  
4 electronic access to applications for which a medical injury was determined to exist  
related to a participating provider licensed under Title 32, chapter 36 or 48 when the  
5 participating provider represents an imminent risk of harm to the public. The department  
6 shall review such applications to determine whether any of the incidents that resulted in  
7 the application potentially involved conduct by the licensee that is subject to disciplinary  
8 action, in which case chapter 36 or 48 applies as appropriate.  
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10 **§2999-B. Review by Superior Court; appellate review; extensions of time**

11 1. Review by Superior Court. The Superior Court shall hear and determine appeals  
12 filed under this subchapter. The Superior Court is limited to determining whether the  
13 Office of Medical Review, the independent medical review panel or the Office of  
14 Compensation, as appropriate, has faithfully followed the requirements of this subchapter  
15 and rules adopted under this subchapter in reviewing applications. If the Superior Court  
16 determines that such requirements were not followed in reviewing an application, the  
17 court shall require the office to perform another initial medical review or shall require the  
18 chief medical officer to either reconvene the original independent medical review panel  
19 or convene a new independent medical review panel or shall require the Office of  
20 Compensation to redetermine the compensation amount, in accordance with the  
21 determination of the court.

22 2. Appellate review. A determination by the Superior Court under subsection 1  
23 regarding the award or denial of compensation under this subchapter is conclusive and  
24 binding as to all questions of fact and must be provided to the applicant and the  
25 participating provider. An applicant may appeal the compensation award or the denial of  
26 compensation to the Supreme Judicial Court. Appeals must be filed in accordance with  
27 rules of procedure adopted by the Supreme Judicial Court.

28 3. Extensions of time. Upon a written petition by either the applicant or the  
29 participating provider, the Superior Court may grant, for good cause, an extension of any  
30 of the time periods specified in this subchapter. The relevant time period is tolled from  
31 the date of the written petition until the date the Superior Court issues a determination.

32 **§2999-C. <sup>Fees</sup> Expenses of administration; opt out**

33 1. Fees. The board annually shall determine a fee that must be paid by each  
34 provider, unless the provider opts out of participation in the system pursuant to subsection  
35 5. The fee amount must be determined by July 1st of each year and must be based on the  
36 anticipated expenses of the administration of this subchapter for the next fiscal year.

37 2. Schedule. The fee determined under this section must be payable by each  
38 provider upon notice delivered by July 1st each year. Each provider shall pay the fee  
39 within 30 days after the date the notice is delivered to the provider. If a provider fails to  
40 pay the fee determined under this section within 30 days after notice, the board shall

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payment of damages for medical injuries and

for the payment of damages for medical injuries and for the administration of this subchapter

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notify the ~~provider~~ by certified or registered mail that the ~~provider's~~ license is subject to revocation if the fee is not paid within 60 days from the date of the original notice.

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**3. Licensure revocation.** A ~~provider~~ that has not opted out of participation in the system pursuant to subsection 5 that fails to pay the fee determined under this section within 60 days after receipt of the original notice is subject to a licensure revocation action by the department.

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**4. Account.** All fees collected under this section must be paid into the Patient Compensation System Fund established in section 2999-F.

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**5. Opt out.** A ~~provider~~ may elect to opt out of participation in the system. The election to opt out must be made in writing no later than 15 days before the due date of the fee required under this section. A ~~provider~~ that opts out may subsequently elect to participate by paying the appropriate fee for the current year.

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**§2999-D. Notice to patients of participation in the system**

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**1. Notice.** Each participating ~~provider~~ shall provide notice to the participating ~~provider's~~ patients that the participating ~~provider~~ is participating in the system. The notice must be provided on a form furnished by the system and include a concise explanation of a patient's rights and benefits under the system.

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**2. Exceptions.** Notice under subsection 1 is not required to be given to a patient when the patient has a medical emergency, as defined in Title 32, section 1525-A, subsection 2, or when notice is not practicable.

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**§2999-E. Annual report**

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The board annually, beginning on October 1, 2016, shall submit to the Department of Professional and Financial Regulation, the Governor and the joint standing committee of the Legislature having jurisdiction over insurance matters a report that describes the filing and disposition of applications in the preceding fiscal year. The report must include, in the aggregate, the number of applications, the disposition of the applications and the compensation awarded.

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**§2999-F. Patient Compensation System Fund**

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The Patient Compensation System Fund, referred to in this section as "the fund," is established within the department as a nonlapsing fund for the purposes specified in this subchapter. The fund is funded from the fees collected under section 2999-C and from other funds accepted by the department or allocated or appropriated by the Legislature. Allocations from the fund must be made for expenses of the administration of this subchapter, including the costs the board may incur for staff, administrative support services, legal representation and contracted services.

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Payment of damages for medical injuries and

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**§2999-G. Exclusive remedy**

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The rights and remedies granted by this subchapter due to a personal injury or wrongful death exclude all other rights and remedies of the applicant and the applicant's

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The total compensation paid to injured patients shall not exceed the funds

generated pursuant to this section.

1 personal representative, parents, dependents and next of kin against any participating  
2 provider directly involved in providing the medical treatment resulting in the injury or  
3 death, arising out of or related to a professional negligence claim, whether in tort or in  
4 contract, with respect to the injury or death. Notwithstanding any other law, this  
5 subchapter applies exclusively to applications submitted under this subchapter.

6 **§2999-H. Early offer**

7 This subchapter does not prohibit a self-insured provider or an insurer from providing  
8 an early offer of settlement or apology in satisfaction of a medical injury. A person who  
9 accepts a settlement or apology offer under this section may not file an application under  
10 this subchapter for the same medical injury. If an application has been filed before the  
11 offer of settlement or apology, the acceptance of the settlement or apology offer by the  
12 applicant results in the withdrawal of the application.

13 **§2999-I. Wrongful death**

14 Compensation may not be provided under this subchapter for an application that  
15 requests an investigation of an alleged wrongful death due to medical treatment if that  
16 application is filed by an adult child on behalf of the adult child's parent or by a parent on  
17 behalf of the parent's adult child.

18 **Sec. 3. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 24,  
19 section 2994, subsection 2, of the initial appointments to the Patient Compensation  
20 Board, the 5 members appointed by the Governor under Title 24, section 2994, subsection  
21 1, paragraphs A to E are appointed to 2-year terms, and the remaining 6 members are  
22 appointed to 3-year terms.

23 **Sec. 4. Application.** This Act applies to medical incidents for which a notice of  
24 intent to initiate litigation has not been mailed before July 1, 2016. 2017

## PROPOSED AMENDMENT SUMMARY

This amendment proposes the following changes to the original bill:

1. It limits the scope of the Patient Compensation System to physicians who do not choose to opt-out of the System in accordance with the procedures set forth in the bill. Other health care providers would not fall within the scope of the system;
2. It replaces the definition of "medical injury" in the original bill with a new definition;
3. It clarifies that the fund into which participating physicians pay their fees may be allocated to pay damages for medical injuries and to pay administrative expenses of the system; and
4. It provides that payments made to injured patients cannot exceed the amount of funds collected from participating physicians.