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Bulletin 371

Medical Payments Subrogation

The Maine Legislature amended 24-A M.R.S.A. § 2910-A(1), effective September 12, 2009, to change the requirements for insurance policy provisions in medical payments coverage that authorize subrogation or priority of payment.¹ As amended, subsection 2910-A(1) does not allow subrogation against the insured unless an insured's awarded or settled damages exceed \$20,000. The purpose of this Bulletin is to clarify how the amended statute should be applied.

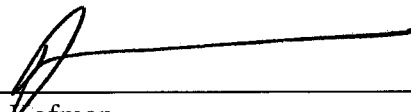
The 2009 legislation did not specify which claims are subject to the \$20,000 threshold. It is a basic rule of statutory construction that all statutes apply prospectively unless a contrary legislative intent is clearly expressed or necessarily implied from the language used. The Legislature did not express any intent, express or implicit, to apply the amendment before its effective date. Therefore, this amendment must apply prospectively.

Because the relevant provisions of section 2910-A regulate the terms of the insurance contract, prospectivity means that the new law does not apply to policies issued or renewed before September 12, 2009. The existing subrogation or priority language in any such policy will govern the insurer's subrogation and priority rights for any claims arising under the policy, as long as it complies with the law as it stood at the time of issuance or renewal.

The new law applies to all policies issued or renewed on or after September 12, 2009. A subrogation or priority clause in such a policy is valid only if it complies with the current version of the statute. In particular, the subrogation clause may not provide for subrogation against the insured or priority of payment over the insured if the insured's damages do not exceed \$20,000. Insurers and advisory organizations intending to exercise subrogation or priority rights in compliance with the new law should file updated policy language for the Superintendent's approval under 24-A M.R.S.A. § 2412.

Persons having questions about Maine's medical payments subrogation statute should contact the Bureau of Insurance at (207) 624-8475 or toll-free in Maine at (800) 300-5000.

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Mila Kofman
Superintendent of Insurance

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

¹ P.L. 2009, Chapter 222 (L.D. 754), amending 24-A M.R.S.A. § 2910-A(1).