

§4313. Carrier liability; cause of action

1. Duty of ordinary care; cause of action. An enrollee may maintain a cause of action against a carrier offering or renewing a health plan in accordance with the following.

A. A carrier has the duty to exercise ordinary care when making health care treatment decisions that affect the quality of the diagnosis, care or treatment provided to an enrollee and is liable for damages as provided in this section for harm to an enrollee proximately caused by the failure of the carrier or its agents to exercise such ordinary care. [PL 1999, c. 742, §19 (NEW).]

B. A carrier is also liable for damages as provided in this section for harm to an enrollee proximately caused by the health care treatment decisions made by its agents who are acting on the carrier's behalf and over whom the carrier exercised control or influence in the health care treatment decisions that result in the failure to exercise ordinary care. [PL 1999, c. 742, §19 (NEW).]
[PL 2007, c. 199, Pt. B, §18 (AMD).]

2. Exhaustion of internal and external review. An enrollee may not maintain a cause of action under this section unless the enrollee or the enrollee's representative:

A. Has exhausted all levels of the carrier's internal grievance procedure in accordance with this chapter; and [PL 1999, c. 742, §19 (NEW).]

B. Has completed the independent external review process required under section 4312. [PL 1999, c. 742, §19 (NEW).]
[PL 1999, c. 742, §19 (NEW).]

3. Limitation on cause of action. An action under this section must be initiated within 3 years from the earlier of the date of issuance of the written external review decision under section 4312 or the date of issuance of the underlying adverse first-level appeal or first-level grievance determination notice.
[PL 1999, c. 742, §19 (NEW).]

4. Jurisdiction; notice and filing. The Superior Court has original jurisdiction over a cause of action under this section. The requirements for notice and filing of a cause of action under this section are governed by the Maine Rules of Civil Procedure.
[PL 1999, c. 742, §19 (NEW).]

5. Corporate practice of medicine. Section 4222, subsection 3 or any other law in this State prohibiting a carrier from practicing medicine or being licensed to practice medicine may not be asserted as a defense by a carrier in any action brought pursuant to this section.
[PL 1999, c. 742, §19 (NEW).]

6. No obligation for benefits. This section does not create any obligation on the part of a carrier to provide an enrollee any health care treatment or service that is not covered by the enrollee's health plan policy or contract.
[PL 1999, c. 742, §19 (NEW).]

7. Admissibility of external review decision. An external review decision is admissible in an action under this section.
[PL 1999, c. 742, §19 (NEW).]

8. Affirmative defense. It is an affirmative defense to any action asserted against a carrier under this section that the carrier or any agent for whose conduct the carrier is liable did not control, influence or participate in the health care treatment decision.
[PL 1999, c. 742, §19 (NEW).]

9. Damages. In a cause of action under this section, the award of damages must be made in accordance with this subsection.

- A. Actual or compensatory damages may be awarded. [PL 1999, c. 742, §19 (NEW).]
 - B. Noneconomic damages awarded may not exceed \$400,000. [PL 1999, c. 742, §19 (NEW).]
 - C. Punitive damages may not be awarded. [PL 1999, c. 742, §19 (NEW).]
- [PL 1999, c. 742, §19 (NEW).]

10. Professional negligence. This section does not create any new or additional liability on the part of a carrier for harm caused to an enrollee that is attributable to the professional negligence of a treating physician or other health care practitioner.
[PL 1999, c. 742, §19 (NEW).]

11. Employer liability. This section does not create any liability on the part of an employer that assumes risk on behalf of its employees or an employer group purchasing organization.
[PL 1999, c. 742, §19 (NEW).]

12. Exemption. This section does not apply to workers' compensation, medical malpractice, fidelity, suretyship, boiler and machinery, property or casualty insurance.
[PL 1999, c. 742, §19 (NEW).]

13. Limitation on remedy. The cause of action under this section is the sole and exclusive private remedy under state law for an enrollee against a carrier for its health care treatment decisions that affect the quality of the diagnosis, care or treatment provided to an enrollee, except that this subsection may not be construed to prohibit an enrollee or an enrollee's authorized representative from seeking other remedies specifically available under other provisions of this Title.
[PL 1999, c. 742, §19 (NEW).]

14. Wrongful death action. Notwithstanding subsection 13, an enrollee or an enrollee's authorized representative may bring a cause of action against a carrier for its health care treatment decisions to seek a remedy under either this section or under Title 18-C, section 2-807, but may not seek remedies under both this section and Title 18-C, section 2-807.
[PL 2017, c. 402, Pt. C, §76 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 1999, c. 742, §19 (NEW). PL 2007, c. 199, Pt. B, §18 (AMD). PL 2017, c. 402, Pt. C, §76 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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