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Legislative Document

No. 681

H.P. 473

House of Representatives, February 26, 2013

**An Act To Improve Oversight of Insurance Rates and Ensure
Consistency with Federal Law**

(EMERGENCY)

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TREAT of Hallowell.
Cosponsored by Representative SAUCIER of Presque Isle, Senator JACKSON of Aroostook, Senator GRATWICK of Penobscot and Representatives: GOODE of Bangor, GRANT of Gardiner, LUCHINI of Ellsworth, MacDONALD of Boothbay, MORRISON of South Portland, STANLEY of Medway, Senator: MAZUREK of Knox.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** health insurance rates for individuals and small employers in certain areas
4 of the State have been significantly increased because of changes in rating laws made by
5 Public Law 2011, chapter 90; and

6 **Whereas,** individuals and small employers need relief from rising health insurance
7 premiums; and

8 **Whereas,** this bill rescinds changes made by Public Law 2011, chapter 90 and
9 requires prior approval and advance review of individual and small group health
10 insurance rates; and

11 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
12 the meaning of the Constitution of Maine and require the following legislation as
13 immediately necessary for the preservation of the public peace, health and safety; now,
14 therefore,

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

16 **PART A**

17 **Sec. A-1. 24-A MRSA §2736-C, sub-§2-B,** as amended by PL 2011, c. 364, §7,
18 is further amended to read:

19 **2-B. Optional guaranteed loss ratio.** ~~Notwithstanding section 2736, subsection 1~~
20 ~~and section 2736-A, at the carrier's option, rate~~ Rate filings for a carrier's credible block
21 of individual health plans ~~may~~ must be filed in accordance with this subsection. ~~Rates~~
22 ~~filed in accordance with this subsection are filed for informational purposes unless rate~~
23 ~~review is required pursuant to the federal Affordable Care Act.~~

24 A. A carrier's individual health plans are considered credible if the anticipated
25 average number of members during the period for which the rates will be in effect
26 meets standards for full or partial credibility pursuant to the federal Affordable Care
27 Act. The rate filing must state the anticipated average number of members during the
28 period for which the rates will be in effect and the basis for the estimate. ~~If the~~
29 ~~superintendent determines that the number of members is likely to be less than~~
30 ~~needed to meet the credibility standard, the filing is subject to section 2736,~~
31 ~~subsection 1 and section 2736-A.~~

32 B. On an annual schedule as determined by the superintendent, the carrier shall file a
33 report with the superintendent showing the calculation of rebates as required pursuant
34 to the federal Affordable Care Act, except that the calculation must be based on a
35 minimum medical loss ratio of 80% if the applicable federal minimum for the
36 individual market in this State is lower. If the calculation indicates that rebates must
37 be paid, the carrier must pay the rebates in the same manner as is required for rebates
38 pursuant to the federal Affordable Care Act.

1 superintendent shall either approve or disapprove the rate filing. If the superintendent
2 disapproves the rate filing, the superintendent shall establish the date on which the
3 filing is no longer effective, specify the filing the superintendent would approve and
4 authorize the insurer to submit a new filing in accordance with the terms of the order
5 or decision.

6 C. When a filing is not accompanied by the information upon which the carrier
7 supports the filing or the superintendent does not have sufficient information to
8 determine whether the filing meets the requirements that rates not be excessive,
9 inadequate or unfairly discriminatory, the superintendent shall require the carrier to
10 furnish the information upon which it supports the filing.

11 ~~D. A carrier that adjusts its rate shall account for the savings offset payment or any~~
12 ~~recovery of that savings offset payment in its experience consistent with this section~~
13 ~~and former section 6913.~~

14 **Sec. B-3. 24-A MRSA §2808-B, sub-§2-C**, as amended by PL 2011, c. 364,
15 §16, is repealed.

16 **PART C**

17 **Sec. C-1. 24-A MRSA §2736-C, sub-§2, ¶C-1**, as enacted by PL 2011, c. 90,
18 Pt. A, §2, is amended to read:

19 C-1. A carrier may vary the premium rate due to geographic area in accordance with
20 the limitation set out in this paragraph. For all policies, contracts or certificates that
21 are executed, delivered, issued for delivery, continued or renewed in this State ~~on or~~
22 ~~after~~ between July 1, 2012 and June 30, 2013, the rating factor used by a carrier for
23 geographic area may not exceed 1.5.

24 **Sec. C-2. 24-A MRSA §2736-C, sub-§2, ¶D**, as amended by PL 2011, c. 364,
25 §4, is further amended to read:

26 D. A carrier may vary the premium rate due to age and tobacco use in accordance
27 with the limitations set out in this paragraph.

28 (1) For all policies, contracts or certificates that are executed, delivered, issued
29 for delivery, continued or renewed in this State between December 1, 1993 and
30 July 14, 1994, the premium rate may not deviate above or below the community
31 rate filed by the carrier by more than 50%.

32 (2) For all policies, contracts or certificates that are executed, delivered, issued
33 for delivery, continued or renewed in this State between July 15, 1994 and July
34 14, 1995, the premium rate may not deviate above or below the community rate
35 filed by the carrier by more than 33%.

36 (3) For all policies, contracts or certificates that are executed, delivered, issued
37 for delivery, continued or renewed in this State between July 15, 1995 and June
38 30, 2012, the premium rate may not deviate above or below the community rate
39 filed by the carrier by more than 20%.

1 (5) For all policies, contracts or certificates that are executed, delivered, issued
2 for delivery, continued or renewed in this State between July 1, 2012 and
3 ~~December 31, 2013~~ June 30, 2013, the maximum rate differential due to age filed
4 by the carrier as determined by ratio is 3 to 1. The limitation does not apply for
5 determining rates for an attained age of less than 19 years of age or more than 65
6 years of age.

7 ~~(6) For all policies, contracts or certificates that are executed, delivered, issued~~
8 ~~for delivery, continued or renewed in this State between January 1, 2014 and~~
9 ~~December 31, 2014, the maximum rate differential due to age filed by the carrier~~
10 ~~as determined by ratio is 4 to 1 to the extent permitted by the federal Affordable~~
11 ~~Care Act. The limitation does not apply for determining rates for an attained age~~
12 ~~of less than 19 years of age or more than 65 years of age.~~

13 ~~(7) For all policies, contracts or certificates that are executed, delivered, issued~~
14 ~~for delivery, continued or renewed in this State on or after January 1, 2015, the~~
15 ~~maximum rate differential due to age filed by the carrier as determined by ratio is~~
16 ~~5 to 1 to the extent permitted by the federal Affordable Care Act. The limitation~~
17 ~~does not apply for determining rates for an attained age of less than 19 years of~~
18 ~~age or more than 65 years of age.~~

19 (8) For all policies, contracts or certificates that are executed, delivered, issued
20 for delivery, continued or renewed in this State ~~on or after~~ between July 1, 2012
21 and June 30, 2013, the maximum rate differential due to tobacco use filed by the
22 carrier as determined by ratio is 1.5 to 1.

23 **Sec. C-3. 24-A MRSA §2736-C, sub-§2, ¶D-1** is enacted to read:

24 D-1. A carrier may vary the premium rate due to age, geographic area and tobacco
25 use in accordance with the limitations set out in this paragraph. For all policies,
26 contracts or certificates that are executed, delivered, issued for delivery, continued or
27 renewed in this State on or after July 1, 2013, the maximum rate differential due to
28 age, geographic area and tobacco use filed by the carrier as determined by ratio is 3 to
29 1. The limitation does not apply for determining rates for an attained age of less than
30 19 years of age or more than 65 years of age. The superintendent shall adopt rules
31 regarding rating based on tobacco use setting forth rating methodologies and
32 standards that are consistent with the federal Affordable Care Act and do not permit
33 rate variation that would penalize an individual who participates in a smoking
34 cessation program offered or approved by the carrier or who is not provided the
35 opportunity to participate in a smoking cessation program by the carrier. Rules
36 adopted pursuant to this paragraph are routine technical rules as defined in Title 5,
37 chapter 375, subchapter 2-A.

38 **Sec. C-4. 24-A MRSA §2736-C, sub-§2, ¶I**, as amended by PL 2011, c. 364,
39 §5, is further amended to read:

40 I. A carrier that offered individual health plans prior to July 1, 2012 may close its
41 individual book of business sold prior to July 1, 2012 and may establish a separate
42 community rate for individuals applying for coverage under an individual health plan
43 on or after July 1, 2012. If a carrier closes its individual book of business as

1 permitted under this paragraph, the carrier may vary the premium rate for individuals
2 in that closed book of business only as permitted in this paragraph and paragraphs C
3 and C-1.

4 (1) For all policies, contracts or certificates that are executed, delivered, issued
5 for delivery, continued or renewed in this State between July 1, 2012 and
6 December 31, 2012, the maximum rate differential due to age filed by the carrier
7 as determined by ratio is 2 to 1. The limitation does not apply for determining
8 rates for an attained age of less than 19 years of age or more than 65 years of age.

9 (2) For all policies, contracts or certificates that are executed, delivered, issued
10 for delivery, continued or renewed in this State between January 1, 2013 and
11 ~~December 31, 2013~~ June 30, 2013, the maximum rate differential due to age filed
12 by the carrier as determined by ratio is 2.5 to 1. The limitation does not apply for
13 determining rates for an attained age of less than 19 years of age or more than 65
14 years of age.

15 (3) For all policies, contracts or certificates that are executed, delivered, issued
16 for delivery, continued or renewed in this State ~~between January 1, 2014 and~~
17 ~~December 31, 2014~~ on or after July 1, 2013, the maximum rate differential due to
18 age, geographic area and tobacco use filed by the carrier as determined by ratio is
19 3 to 1. The limitation does not apply for determining rates for an attained age of
20 less than 19 years of age or more than 65 years of age. The superintendent shall
21 adopt rules regarding rating based on tobacco use setting forth rating
22 methodologies and standards that are consistent with the federal Affordable Care
23 Act and do not permit rate variation that would penalize an individual who
24 participates in a smoking cessation program offered or approved by the carrier or
25 who is not provided the opportunity to participate in a smoking cessation
26 program by the carrier. Rules adopted pursuant to this subparagraph are routine
27 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

28 (4) ~~For all policies, contracts or certificates that are executed, delivered, issued~~
29 ~~for delivery, continued or renewed in this State between January 1, 2015 and~~
30 ~~December 31, 2015, the maximum rate differential due to age filed by the carrier~~
31 ~~as determined by ratio is 4 to 1 to the extent permitted by the federal Affordable~~
32 ~~Care Act. The limitation does not apply for determining rates for an attained age~~
33 ~~of less than 19 years of age or more than 65 years of age.~~

34 (5) ~~For all policies, contracts or certificates that are executed, delivered, issued~~
35 ~~for delivery, continued or renewed in this State on or after January 1, 2016, the~~
36 ~~maximum rate differential due to age filed by the carrier as determined by ratio is~~
37 ~~5 to 1 to the extent permitted by the federal Affordable Care Act. The limitation~~
38 ~~does not apply for determining rates for an attained age of less than 19 years of~~
39 ~~age or more than 65 years of age.~~

40 (6) For all policies, contracts or certificates that are executed, delivered, issued
41 for delivery, continued or renewed in this State ~~on or after~~ between July 1, 2012
42 and June 30, 2013, the maximum rate differential due to tobacco use filed by the
43 carrier as determined by ratio is 1.5 to 1.

1 The superintendent shall direct the Consumer Health Care Division, established in
2 section 4321, to work with carriers and health advocacy organizations to provide
3 information about comparable alternative insurance options to individuals in a
4 carrier's closed book of business.

5 **Sec. C-5. 24-A MRSA §2808-B, sub-§2, ¶C-1**, as enacted by PL 2011, c. 90,
6 Pt. A, §7, is amended to read:

7 C-1. A carrier may vary the premium rate due to geographic area in accordance with
8 the limitation set out in this paragraph. For all policies, contracts or certificates that
9 are executed, delivered, issued for delivery, continued or renewed in this State ~~on or~~
10 after between October 1, 2011 and June 30, 2013, the rating factor used by a carrier
11 for geographic area may not exceed 1.5.

12 **Sec. C-6. 24-A MRSA §2808-B, sub-§2, ¶D**, as amended by PL 2011, c. 638,
13 §2, is further amended to read:

14 D. A carrier may vary the premium rate due to age, group size and tobacco use only
15 under the following schedule and within the listed percentage bands.

16 (1) For all policies, contracts or certificates that are executed, delivered, issued
17 for delivery, continued or renewed in this State between July 15, 1993 and July
18 14, 1994, the premium rate may not deviate above or below the community rate
19 filed by the carrier by more than 50%.

20 (2) For all policies, contracts or certificates that are executed, delivered, issued
21 for delivery, continued or renewed in this State between July 15, 1994 and July
22 14, 1995, the premium rate may not deviate above or below the community rate
23 filed by the carrier by more than 33%.

24 (3) For all policies, contracts or certificates that are executed, delivered, issued
25 for delivery, continued or renewed in this State between July 15, 1995 and
26 September 30, 2011, the premium rate may not deviate above or below the
27 community rate filed by the carrier by more than 20%.

28 (4) For all policies, contracts or certificates that are executed, delivered, issued
29 for delivery, continued or renewed in this State between October 1, 2011 and
30 September 30, 2012, the maximum rate differential due to age filed by the carrier
31 as determined by ratio is 2 to 1. The limitation does not apply for determining
32 rates for an attained age of less than 19 years of age or more than 65 years of age.

33 (5) For all policies, contracts or certificates that are executed, delivered, issued
34 for delivery, continued or renewed in this State between October 1, 2012 and
35 ~~December 31, 2013~~ June 30, 2013, the maximum rate differential due to age and
36 group size filed by the carrier as determined by ratio is 2.5 to 1. The limitation
37 does not apply for determining rates for an attained age of less than 19 years of
38 age or more than 65 years of age.

39 ~~(6) For all policies, contracts or certificates that are executed, delivered, issued~~
40 ~~for delivery, continued or renewed in this State between January 1, 2014 and~~
41 ~~December 31, 2014, the maximum rate differential due to age and group size~~
42 ~~filed by the carrier as determined by ratio is 3 to 1 to the extent permitted by the~~

1 federal Affordable Care Act. The limitation does not apply for determining rates
2 for an attained age of less than 19 years of age or more than 65 years of age.

3 ~~(7) For all policies, contracts or certificates that are executed, delivered, issued~~
4 ~~for delivery, continued or renewed in this State between January 1, 2015 and~~
5 ~~December 31, 2015, the maximum rate differential due to age and group size~~
6 ~~filed by the carrier as determined by ratio is 4 to 1 to the extent permitted by the~~
7 ~~federal Affordable Care Act. The limitation does not apply for determining rates~~
8 ~~for an attained age of less than 19 years of age or more than 65 years of age.~~

9 ~~(8) For all policies, contracts or certificates that are executed, delivered, issued~~
10 ~~for delivery, continued or renewed in this State on or after January 1, 2016, the~~
11 ~~maximum rate differential due to age and group size filed by the carrier as~~
12 ~~determined by ratio is 5 to 1 to the extent permitted by the federal Affordable~~
13 ~~Care Act. The limitation does not apply for determining rates for an attained age~~
14 ~~of less than 19 years of age or more than 65 years of age.~~

15 (9) For all policies, contracts or certificates that are executed, delivered, issued
16 for delivery, continued or renewed in this State ~~on or after~~ between October 1,
17 2011 and June 30, 2013, the maximum rate differential due to tobacco use filed
18 by the carrier as determined by ratio is 1.5 to 1.

19 **Sec. C-7. 24-A MRSA §2808-B, sub-§2, ¶D-3** is enacted to read:

20 D-3. A carrier may vary the premium rate due to age, group size, geographic area
21 and tobacco use in accordance with the limitations set out in this paragraph. For all
22 policies, contracts or certificates that are executed, delivered, issued for delivery,
23 continued or renewed in this State on or after July 1, 2013, the maximum rate
24 differential due to age, group size, geographic area and tobacco use filed by the
25 carrier as determined by ratio is 3 to 1. The limitation does not apply for determining
26 rates for an attained age of less than 19 years of age or more than 65 years of age.
27 The superintendent shall adopt rules regarding rating based on tobacco use setting
28 forth rating methodologies and standards that are consistent with the federal
29 Affordable Care Act and do not permit rate variation that would penalize an
30 individual who participates in a smoking cessation program offered or approved by
31 the carrier or who is not provided the opportunity to participate in a smoking
32 cessation program by the carrier. Rules adopted pursuant to this paragraph are
33 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **Sec. C-8. 24-A MRSA §2808-B, sub-§2, ¶H**, as amended by PL 2011, c. 638,
35 §3, is further amended to read:

36 H. A carrier that offered small group health plans prior to October 1, 2011 may close
37 its small group book of business sold prior to October 1, 2011 and may establish a
38 separate community rate for eligible groups applying for coverage under a small
39 group health plan on or after October 1, 2011. If a carrier closes its small group book
40 of business as permitted under this paragraph, the carrier may vary the premium rate
41 for that closed book of business only as permitted in this paragraph and paragraphs C
42 and C-1.

1 (1) For all policies, contracts or certificates that are executed, delivered, issued
2 for delivery, continued or renewed in this State between October 1, 2011 and
3 September 30, 2012, the maximum rate differential due to age filed by the carrier
4 as determined by ratio is 2 to 1. The limitation does not apply for determining
5 rates for an attained age of less than 19 years of age or more than 65 years of age.

6 (2) For all policies, contracts or certificates that are executed, delivered, issued
7 for delivery, continued or renewed in this State between October 1, 2012 and
8 ~~December 31, 2013~~ June 30, 2013, the maximum rate differential due to age and
9 group size filed by the carrier as determined by ratio is 2.5 to 1. The limitation
10 does not apply for determining rates for an attained age of less than 19 years of
11 age or more than 65 years of age.

12 (3) For all policies, contracts or certificates that are executed, delivered, issued
13 for delivery, continued or renewed in this State ~~between January 1, 2014 and~~
14 ~~December 31, 2014~~ on or after July 1, 2013, the maximum rate differential due to
15 age, geographic area, tobacco use and group size filed by the carrier as
16 determined by ratio is 3 to 1 to the extent permitted by the federal Affordable
17 Care Act. The limitation does not apply for determining rates for an attained age
18 of less than 19 years of age or more than 65 years of age. The superintendent
19 shall adopt rules regarding rating based on tobacco use setting forth rating
20 methodologies and standards that are consistent with the federal Affordable Care
21 Act and do not permit rate variation that would penalize an individual who
22 participates in a smoking cessation program offered or approved by the carrier or
23 who is not provided the opportunity to participate in a smoking cessation
24 program by the carrier. Rules adopted pursuant to this subparagraph are routine
25 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

26 (4) ~~For all policies, contracts or certificates that are executed, delivered, issued~~
27 ~~for delivery, continued or renewed in this State between January 1, 2015 and~~
28 ~~December 31, 2015, the maximum rate differential due to age and group size~~
29 ~~filed by the carrier as determined by ratio is 4 to 1 to the extent permitted by the~~
30 ~~federal Affordable Care Act. The limitation does not apply for determining rates~~
31 ~~for an attained age of less than 19 years of age or more than 65 years of age.~~

32 (5) ~~For all policies, contracts or certificates that are executed, delivered, issued~~
33 ~~for delivery, continued or renewed in this State on or after January 1, 2016, the~~
34 ~~maximum rate differential due to age and group size filed by the carrier as~~
35 ~~determined by ratio is 5 to 1 to the extent permitted by the federal Affordable~~
36 ~~Care Act. The limitation does not apply for determining rates for an attained age~~
37 ~~of less than 19 years of age or more than 65 years of age.~~

38 (6) For all policies, contracts or certificates that are executed, delivered, issued
39 for delivery, continued or renewed in this State ~~on or after~~ between October 1,
40 2011 and June 30, 2013, the maximum rate differential due to tobacco use filed
41 by the carrier as determined by ratio is 1.5 to 1.

42 **Emergency clause.** In view of the emergency cited in the preamble, this
43 legislation takes effect when approved.

1 **SUMMARY**

2 Part A of this bill restores the statutory process for advance review and prior approval
3 of individual health insurance rates and repeals the changes to the rate review process for
4 individual health insurance made by Public Law 2011, chapter 90.

5 Part B of the bill extends the same process for advance review and prior approval for
6 small group health insurance rates.

7 Part C of the bill merges the rating bands for age, geographic area and tobacco use so
8 that the combined rate differential due to age, geographic area and tobacco use may not
9 exceed a ratio of 3 to 1 beginning July 1, 2013 for all individual and small group health
10 insurance policies. The bill authorizes the Superintendent of Insurance to adopt rules
11 regarding rating based on tobacco use that set appropriate methodologies and standards
12 that are consistent with the federal Patient Protection and Affordable Care Act, as
13 amended by the federal Health Care and Education Reconciliation Act of 2010, and do
14 not permit rate variation that would penalize an individual who participates in a smoking
15 cessation program or who is not provided the opportunity to participate in one.