128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document **No. 1406**

S.P. 484 In Senate, April 11, 2017

An Act To Promote Prescription Drug Price Transparency

Reference to the Committee on Health and Human Services suggested and ordered printed.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.
Cosponsored by Representative FOLEY of Wells and
Senators: CARPENTER of Aroostook, JACKSON of Aroostook, KEIM of Oxford, WHITTEMORE of Somerset, Representatives: MELARAGNO of Auburn, MOONEN of Portland, PRESCOTT of Waterboro, VACHON of Scarborough.

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

Sec. 1. 22 MRSA §2698, as enacted by PL 1999, c. 786, Pt. A, §3, is repealed and the following enacted in its place:

§2698. Investigation by Attorney General

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Course of treatment" means the prescribed regimen of health care treatment for the usual duration of treatment if treatment duration is typically limited, as approved for labeling by the United States Department of Health and Human Services, Food and Drug Administration;

B. "Qualifying prescription drug" or "drug" means a prescription drug that a manufacturer has made available in the State and that has created a substantial public interest in understanding the development of the drug's pricing because one or more of the following has occurred:

(1) The wholesale acquisition cost is $2,500 or more annually or for a course of treatment;

(2) The wholesale acquisition cost of the drug has increased by 50% or more over the previous 5 years; or

(3) The wholesale acquisition cost of the drug has increased by 15% or more over the previous 12 months.

C. "Wholesale acquisition cost" means the list price of a manufacturer of a prescription drug to a wholesaler or direct purchaser in the United States, not including prompt pay or other discounts, rebates or reductions in price, as reported in wholesale price guides or other publications of pharmaceutical pricing data or as estimated by the Maine Health Data Organization using the all-payer claims data and the ingredient cost and list price and dispensing fee information that is submitted to the Maine Health Data Organization.

2. Substantial public interest. The Attorney General shall identify annually qualifying prescription drugs.

3. Compilation of list; justification. The Attorney General shall compile a list of drugs identified pursuant to subsection 2 and shall list the drugs' percentage of wholesale acquisition cost increase, if any, and make the list available to the public on the publicly accessible website of the Attorney General. With regard to each drug included on the list, the Attorney General shall require the manufacturer of the drug to provide justification of the increase in wholesale acquisition cost, if any, and shall specify the format and content of the reporting, as determined by the Attorney General to be understandable and appropriate.

4. Required information. The Attorney General shall require the manufacturer of each drug identified pursuant to subsection 2 to provide to the Attorney General, in such

form and format and on a schedule determined by the Attorney General, the following information:

A. Total cost of production and total cost per dose of the drug;

B. Research and development costs of the drug, including those costs paid with public funds, those costs reported as after-tax costs and those costs paid by 3rd parties;

C. Marketing and advertising costs of the drug, including those costs directed to consumers, those costs directed to prescribers and the total of those costs directed to consumers and prescribers in the State;

D. The retail prices of the drug charged to purchasers outside the United States in countries that are members of the Organisation of Economic Co-operation and Development or successor organization;

E. The retail prices of the drug typically charged to purchasers in the State, including but not limited to pharmacies, pharmacy chains, pharmacy wholesalers and other direct purchasers; and

F. True net typical prices charged to pharmacy benefits managers for distribution in this State, net of any rebate or other payments from the manufacturer to the pharmacy benefits manager and from the pharmacy benefits manager to the manufacturer.

5. Report to the Speaker of the House of Representatives and the President of the Senate. By December 1st each year, the Attorney General shall provide a written report to the Speaker of the House of Representatives and the President of the Senate that provides information provided by prescription drug manufacturers pursuant to subsections 3 and 4 and shall post that information on the publicly accessible website of the Attorney General.

6. Investigation; enforcement. The Attorney General shall investigate suspected cases of violations of this section and may take action to enforce this section.

7. Required attendance and testimony. The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General related to any matter under investigation pursuant to subsection 6. The summons must be served in the same manner as summonses for witnesses in criminal cases, and all provisions of law related to criminal cases apply to summonses issued under this section so far as they are applicable. All investigations or hearings under this section to which witnesses are summoned or called upon to testify or to produce books, records or correspondence are public or private at the choice of the person summoned. The expense of the investigation must be paid from the appropriation provided in Title 5, section 203.

8. Order of the court. A Justice of the Superior Court may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony before the Attorney General in the same manner and to the same extent as before the Superior Court. Any failure to obey such an order may be punishable by that court as contempt.

SUMMARY

This bill amends the law governing profiteering in prescription drugs. The bill requires more disclosure of drug production, research and development costs, marketing and advertising costs and actual costs paid upon purchase. The bill allows investigations by the Attorney General of violations of these provisions. The bill adds a required written report from the Attorney General each year.