

MAINE STATE LEGISLATURE

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MAJORITY
HUMAN RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 558, L.D. 755, Bill, "An Act to Improve Access to Pharmaceuticals for Rural Health Center Patients"

Amend the bill by striking out the title and substituting the following:

'An Act to Improve Access to Pharmaceuticals'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 32 MRSA §13702, sub-§25-A is enacted to read:

25-A. Rural health center. "Rural health center" means an incorporated nonprofit health facility that provides comprehensive primary health care to citizens in rural areas.

Sec. 2. 32 MRSA §13761, sub-§1, as enacted by PL 1987, c. 710, §5, is amended to read:

1. Pharmacy provider. "Pharmacy provider" means a pharmacy licensed in this State participating with a rural community health center under this subchapter.

Sec. 3. 32 MRSA §13761, sub-§2, as enacted by PL 1987, c. 710, §5, is repealed.

Sec. 4. 32 MRSA §13762, sub-§§1 and 3, as enacted by PL 1987, c. 710, §5, are amended to read:

COMMITTEE AMENDMENT

1. **License required.** A rural community health center that desires to contract for pharmaceutical services with a pharmacy must be licensed by the board and shall abide by the rules of the board. These rules may be no more restrictive than those regulating private pharmacy practice in the State. A rural health center is eligible for licensure under this subchapter if:

A. It serves a rural area without a pharmacy;

B. It is located in a community where available pharmacy services can not meet the documented need; or

C. It requires a license in order to receive pharmaceutical discounts authorized by the federal Veterans' Health Care Act of 1992, Title VI.

3. **Notice.** Any rural community health center wishing to be licensed under this subchapter shall notify the board of its intent to establish such a contract with a pharmacy for pharmaceutical services and shall apply for a license, submit floor plans of the physical plant and pay the same fee required for a pharmacy under section 13723. The application shall must include the name, address and registration number of the provider of pharmaceutical services.

Sec. 5. 32 MRSA §13763, as enacted by PL 1987, c. 710, §5, is amended to read:

§13763. Scope of license

A licensee under this subchapter shall comply with ~~sections~~ section 13784; section 13785, subsections 1 to 7; and any applicable rules ~~promulgated~~ adopted by the board. No licensee may refill a prescription and all orders shall must be treated as new orders. In all other respects, notwithstanding any other provision of law, a licensee may provide pharmaceutical services under this subchapter subject to section 13764. A licensee may purchase drugs.

Sec. 6. 32 MRSA c. 117, sub-c. X is enacted to read:

SUBCHAPTER X

NONDISCRIMINATION IN PHARMACEUTICALS PRICING

§13801. Definitions

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

2 1. Purchaser. "Purchaser" means any person who purchases
4 prescription drugs for resale or dispensing directly to consumers.

6 **§13802. Price discrimination prohibited**

8 1. Best price required. A manufacturer shall offer
10 prescription drugs to every wholesaler or purchaser to which it
12 sells in this State with all rights and privileges offered or
14 accorded by the manufacturer to the most favored wholesaler or
16 purchaser, including, but not limited to, any transaction in
18 which a manufacturer sells to a purchaser through a contractual
20 arrangement implemented by one or more wholesalers.

22 A. A manufacturer must offer rebates, free merchandise,
24 samples and similar trade concessions on proportionally
26 equal terms to every purchaser and wholesaler. This
28 paragraph does not prohibit discounts for volume purchases
30 if the discounts are justified by the economies or
32 efficiencies resulting from the volume purchases and the
34 discounts are made available to all purchasers and
36 wholesalers on proportionally equal terms.

38 2. Class-of-trade discounts prohibited. A manufacturer may
40 not provide discounts to any purchaser or wholesaler based on the
42 class of trade to which the purchaser or wholesaler belongs.

44 **§13803. Purchases by State**

46 To the extent permitted under federal law, a state
48 department or other state entity may not purchase any drugs from
50 a manufacturer that violates this subchapter.

52 A manufacturer selling drugs within the State shall submit a
54 sworn affidavit to the board promising that the manufacturer will
56 not violate this subchapter.

58 **§13804. Exceptions**

60 1. State. For the purposes of this subchapter, the State
62 and any political subdivision of the State are not wholesalers or
64 purchasers.

66 2. Hospitals. For the purposes of this subchapter, a
68 hospital licensed under Title 22 is not a wholesaler or purchaser.

70 3. Federal discounts and rebates. This subchapter does not
72 apply to discounts required by federal law or rebates authorized
74 by federal law.

4. Charitable organizations. For the purposes of this subchapter, an organization that is exempt from federal income taxation because it meets the requirements of the United States Internal Revenue Code, section 501 (c)(3), is not a wholesaler or purchaser.

§13805. Enforcement

1. Civil penalty. Notwithstanding section 13731, subsection 3, a person that violates this subchapter is subject to a civil penalty of not less than \$1,000 or more than \$50,000, payable to the State, to be recovered in a civil action.

2. Treble damages. Any purchaser or wholesaler injured by violation of this subchapter may bring an action against the violator to recover treble damages.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

A broadening of the pharmaceutical requirements for rural health centers is likely to increase dedicated revenues collected by the Board of Commissioners of the Profession of Pharmacy from licensure fees. The amounts can not be determined at this time.

The Department of Human Services will realize some minor savings in the Medicaid program as a result of pharmaceutical discounts received by rural health centers.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

STATEMENT OF FACT

This is the majority report of the Joint Standing Committee on Human Resources.

The original bill waived the Maine Pharmacy Act to ensure that rural health centers could enjoy pharmaceutical discounts authorized by the federal Veterans Health Care Act of 1992. Rather than a complete waiver, the amendment makes specific amendments to the Maine Pharmacy Act to clarify that rural health centers may receive those discounts.

COMMITTEE AMENDMENT "A" to H.P. 558, L.D. 755

2 The amendment also prohibits a drug manufacturer from
engaging in price discrimination based on the class of trade of
the purchaser. Manufacturers are required to offer their
4 so-called "best price" to all classes.

6 The amendment also adds a fiscal note to the bill.