

MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

Reported by:

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 732, L.D. 2082, Bill, "An Act to Reduce the Cost of Prescription Drugs to Residents of the State"

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

'An Act to Reduce the Cost of Prescription Drugs to Qualifying Residents of the State'

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

'Sec. 1. 22 MRSA §254-B is enacted to read:

§254-B. Maine resident low-cost prescription drug program

The department shall conduct a program, referred to in this section as the "Maine resident low-cost prescription drug program" or the "program," to provide low-cost prescription drugs to qualifying residents of this State.

1. Agreement. A drug manufacturer that sells prescription drugs in this State may voluntarily elect to enter into a rebate agreement with the department. The agreement must be modeled after Section 1927 of the United States Social Security Act and must include the requirement that the manufacturer make rebate payments to the State each calendar quarter or according to a schedule established by the department.

COMMITTEE AMENDMENT

2 2. Rebate amount. The rebate amount required from a
3 manufacturer to the State is equivalent to the rebate amount
4 calculated under the Medicaid Rebate Program pursuant to 42
5 United States Code, Section 1396r-8.

6 3. Discount to qualifying residents. Any participating
7 retail pharmacy that sells drugs covered by an agreement pursuant
8 to subsection 1 shall discount the retail price of those drugs
9 sold to qualifying residents. The department shall adopt rules
10 to establish discounts for covered drugs and rules that promote
11 the use of efficacious and lower-cost drugs. The amount of the
12 discount for covered drugs must be determined by considering an
13 average of all rebates provided pursuant to subsection 2,
14 weighted by sales of drugs subject to these rebates over the most
15 recent 12-month period for which the information is available.
16 The total aggregate discount amount for all covered drugs must be
17 equivalent to the total aggregate rebate amount for all covered
18 drugs sold, less the administrative costs of the program pursuant
19 to subsection 6.

20 4. Operation of program. Participating retail pharmacies
21 shall submit claims to the department to verify the amount of
22 discount due the resident. The department may not impose charges
23 on retail pharmacies that submit claims or receive payments under
24 the program. The retail pharmacies shall charge residents the
25 current retail price charged by each retail pharmacy for that
26 prescription drug to persons purchasing that drug who are not
27 covered by insurance or 3rd-party payor plans, less the discount
28 amount, pursuant to subsection 3.

29 The amount of the discount must be indicated on the resident's
30 receipt. On a weekly or biweekly basis, the retail pharmacy must
31 be reimbursed by the department for drug discounts provided to
32 residents. The department shall collect the necessary
33 utilization data from the retail pharmacies submitting claims in
34 order to comply with 42 United States Code, Section 1396r-8. The
35 department shall protect the confidentiality of all information
36 subject to confidentiality protection under state and federal
37 law, rule or regulation.

38 5. Discrepancies in rebate amounts. Discrepancies in
39 rebate amounts must be resolved using the process established in
40 this subsection.

41 A. If there is a discrepancy in the manufacturer's favor
42 between the amount claimed by a pharmacy and the amount
43 rebated by the manufacturer, the department, at the
44 department's expense, may hire a mutually agreed-upon
45 independent auditor. Following the audit, if a discrepancy
46 still exists, the manufacturer shall justify the reason for
47 the discrepancy.

A of 6

2 the discrepancy or make payment to the department for any
additional amount due.

4 B. If there is a discrepancy against the interest of the
manufacturer in the information provided by the department
to the manufacturer regarding the manufacturer's rebate, the
manufacturer, at the manufacturer's expense, may hire a
mutually agreed-upon independent auditor to verify the
accuracy of the data supplied to the department. Following
the audit, if a discrepancy still exists, the department
shall justify the reason for the discrepancy or refund to
the manufacturer any excess payment made by the manufacturer.

14 C. Following the procedures established in paragraph A or
B, either the department or the manufacturer may request a
hearing before the Administrative Hearings Unit. Supporting
documentation must accompany the request for a hearing.

18 6. Administrative and associated computer costs for
program. Administrative and computer costs for the program must
be funded solely from the rebates received from the
pharmaceutical manufacturers. The department may not spend more
for the administrative costs and associated computer costs of
this program than it spends on the elderly low-cost drug program.

26 7. Obligation of retail pharmacies in State. The
obligation of retail pharmacies to discount drugs to qualifying
residents begins 3 months after the drug manufacturer begins to
pay the rebate to the department.

30 8. Dedicated fund. There is established the Prescription
Drug Dedicated Fund, referred to in this section as the "fund,"
to receive revenue from manufacturers who pay rebates as provided
in subsection 1, to reimburse retail pharmacies for discounts
provided to residents pursuant to subsections 3 and 4, to
reimburse the department for administrative and associated
computer costs and to pay other reasonable program costs. The
fund is a nonlapsing dedicated fund. Interest on fund balances
accrues to the fund. Surplus funds in the fund must be used to
increase the amount of discounts given to residents under the
program.

42 9. Annual summary report. The department shall report the
status of the program to the Legislature on an annual basis. The
report must include information on changes in 3rd-party
prescription drug coverage and the financial status of the
program.

48 10. Qualifying resident. Qualifying resident, also
referred to in this section as a "resident," means a legal

COMMITTEE AMENDMENT

A of 8

2 resident of this State who does not have 3rd-party prescription
3 drug coverage.

4 11. Participating retail pharmacy. Participating retail
5 pharmacy, also referred to in this section as a "retail
6 pharmacy," means a retail pharmacy located in this State, or
7 another business licensed to dispense prescription drugs in this
8 State, that voluntarily elects to participate in the program and
9 that provides discounts to residents as provided in subsection 3.

10 12. Rulemaking. The department shall adopt rules to
11 implement the provisions of this section. Rules adopted pursuant
12 to this subsection are major substantive rules as defined in
13 Title 5, chapter 375, subchapter II-A.

14
15 **Sec. 2. Authorization.** The Department of Human Services is
16 authorized to receive rebates from drug manufacturers under the
17 Maine resident low-cost prescription drug program, Maine Revised
18 Statutes, Title 22, section 254-B, beginning February 1, 2000 or
19 as soon thereafter as rules are adopted to implement the program.

20
21 **Sec. 3. Allocation.** The following funds are allocated from
22 Other Special Revenue funds to carry out the purposes of this Act.

	1999-00	2000-01
HUMAN SERVICES, DEPARTMENT OF		
Prescription Drug Dedicated Fund		
All Other	\$2,500,000	\$10,000,000
Provides funds to establish a program to provide low-cost prescription drugs to Maine residents who are not covered by 3rd-party prescription drug plans.'		

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39 Further amend the bill by inserting at the end before the
40 summary the following:

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42
43
44 **FISCAL NOTE**

	1999-00	2000-01
APPROPRIATIONS/ALLOCATIONS		
Other Funds	\$2,500,000	\$10,000,000

2 **REVENUES**

4 Other Funds \$2,500,000 \$10,000,000

6 This bill includes Other Special Revenue funds allocations
of \$2,500,000 and \$10,000,000 in fiscal years 1999-00 and
8 2000-01, respectively, for the Department of Human Services to
establish a program to provide low-cost prescription drugs to
10 Maine residents who are not covered by third-party prescription
drug plans. The collection of rebates from prescription drug
12 manufacturers will increase dedicated revenue to the Department
of Human Services. The estimated increases are \$2,500,000 and
14 \$10,000,000 in fiscal years 1999-00 and 2000-01, respectively.

16 The Department of Human Services will incur some minor
additional costs to adopt rules and to submit an annual report to
18 the Legislature. These costs can be absorbed within the
department's existing budgeted resources.'

20

22 **SUMMARY**

24 This amendment is the report of the Joint Standing Committee
on Health and Human Services. It replaces the bill. It retains
26 the provisions of the bill that establish a program to provide
low-cost prescription drugs to Maine residents who are not
28 covered by 3rd-party prescription drug plans by giving
prescription drug manufacturers the option of entering into a
30 voluntary drug rebate agreement. The program is modeled after
the rebate agreement used in the State's Medicaid and elderly
32 low-cost drug programs. Rebates must be applied to the costs of
the program and to reimbursement to retail pharmacies for
34 discounts provided to residents of the State. The amendment
prohibits the Department of Human Services from imposing a charge
36 on pharmacies that submit claims or receive payments under the
program.

38

40 The amendment requires rulemaking to establish discounts for
efficacious and lower-cost drugs. The amendment specifies how
42 the discounts must be calculated, according to either the
provisions of the Act or rules adopted by the department. The
44 amendment creates a nonlapsing, dedicated fund to receive
revenues generated by the rebates paid by pharmaceutical
46 manufacturers and to pay program costs and reimbursement to
retail pharmacies for discounts provided to residents. Surplus
48 funds must be used to increase the amount of discounts provided
to residents under the program.

COMMITTEE AMENDMENT "A" to S.P. 732, L.D. 2082

2 The amendment defines "participating retail pharmacy" and
"qualifying resident." The amendment requires rulemaking by the
4 Department of Human Services and designates those rules as major
substantive rules. The amendment provides that the rebates from
6 drug manufacturers may be collected beginning February 1, 2000 or
as soon thereafter as rules are adopted to implement the
8 program. The amendment requires an annual report from the
Department of Human Services that must include information on
10 changes in 3rd-party prescription drug coverage and the financial
status of the program. The amendment also adds an allocation
12 section and a fiscal note.