

# MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 1026, L.D. 2599, Bill, "An Act to Establish Fairer Pricing for Prescription Drugs"

Amend the bill in Part A by striking out all of section 1 and inserting in its place the following:

'Sec. A-1. 5 MRSA §12004-E, sub-§4 is enacted to read:

4. Fair Drug Pricing Board Expenses: 22 MRSA §2682 \$35 per day for nonstate employees'

Further amend the bill in Part A in section 2 in that part designated "\$2682." by striking out all of subsection 1 and inserting in its place the following:

'1. Membership. The board consists of the following 9 members:

A. Three members of the public appointed jointly by the President of the Senate and the Speaker of the House, one each representing the interests of the following:

- (1) Senior citizens;
(2) Disabled citizens; and
(3) Low-income citizens.

Members appointed pursuant to this paragraph must be residents of this State and be at least 21 years of age;

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2 B. Two members of the medical community, one of whom must  
4 be a member from the nursing community, appointed jointly by  
6 the President of the Senate and the Speaker of the House,  
8 representing the interests of senior citizens;

10 C. Two pharmacists, appointed by the Governor. Neither  
12 pharmacist may be a member of the Maine Board of Pharmacy.  
14 To be appointed to and remain on the board, each pharmacist  
16 must:

18 (1) Be licensed to practice pharmacy in this State and  
20 in good standing to do so;

22 (2) Be engaged in the practice of pharmacy in this  
24 State;

26 (3) Have at least 5 years of experience in this State  
28 as a licensed pharmacist; and

30 (4) Be a resident of this State; and

32 D. The Director of the Bureau of Health within the  
34 department and the Commissioner of Professional and  
36 Financial Regulation, who serve as ex officio, nonvoting  
38 members.'

40 Further amend the bill in Part A by striking out all of  
42 section 7 and inserting in its place the following:

44 'Sec. A-7. Appropriation. The following funds are  
46 appropriated from the General Fund to carry out the purposes of  
48 this Act.

2000-01

**ATTORNEY GENERAL, DEPARTMENT OF THE**

**Administration - Attorney General**

40	Positions - Legislative Count	(1.000)
42	Personal Services	\$46,745
44	All Other	5,340
46	TOTAL	<u>\$52,085</u>

48 Provides funds for one Assistant Attorney  
General position and related costs due to

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2 the establishment of the Maine Prescription  
Drug Fair Pricing Act.

4 **Fair Drug Pricing Contingent Account**

6 All Other \$200,000

8 Provides one-time funds to support  
10 litigation costs associated with the Maine  
Prescription Drug Fair Pricing Act. Any  
12 balance remaining at the end of each fiscal  
year may not lapse but must be carried  
14 forward to be used for the same purpose.

16 **DEPARTMENT OF THE ATTORNEY GENERAL  
TOTAL**

\$252,085

18 **HUMAN SERVICES, DEPARTMENT OF**

20 **Fair Drug Pricing Board**

22 Positions - Legislative Count (1,000)  
Personal Services \$37,500  
24 All Other 7,500

26 **TOTAL** \$45,000

28 Provides funds to establish the position of  
30 Director of the Fair Drug Pricing Board and  
related operating costs.

32 **Fair Drug Pricing Board**

34 All Other \$500,000

36 Provides funds to allow the Fair Drug  
38 Pricing Board to perform a survey of  
prescription drug prices and publish the  
40 results of that survey.

42 **Bureau of Medical Services**

44 Positions - Legislative Count (1,000)  
Personal Services \$17,069  
46 All Other 2,750

48 **TOTAL** \$19,819

50

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2 Provides funds to establish one Planning and  
Research Associate position and related  
4 costs associated with maintaining a  
prescription drug pricing database.

6 **DEPARTMENT OF HUMAN SERVICES**  
7 **TOTAL** \_\_\_\_\_  
8 \$564,819

10 **SECTION**  
11 **TOTAL APPROPRIATIONS** \_\_\_\_\_  
12 \$816,904

12 **Sec. A-8. Allocation.** The following funds are allocated from  
13 the Federal Expenditures Fund to carry out the purposes of this  
14 Act.

16 2000-01  
17 **HUMAN SERVICES, DEPARTMENT OF**

18 **Bureau of Medical Services**  
19  
20 Personal Services \$17,069  
21 All Other 2,750

24 Provides funds for the federal match  
25 associated with the establishment of one  
26 Planning and Research Associate position and  
27 maintaining a prescription drug pricing  
28 database.

30 **DEPARTMENT OF HUMAN SERVICES**  
31 **TOTAL** \_\_\_\_\_  
32 \$19,819

34 Further amend the bill in Part B by striking out all of  
section 1 and inserting in its place the following:

36 'Sec. B-1. 22 MRSA §14, sub-§1, as amended by PL 1999, c. 483,  
37 §1, is further amended to read:

38  
39 **1. Recovery procedures.** When benefits are provided or will  
40 be provided to a beneficiary under the Medicaid program  
41 administered by the department pursuant to the United States  
42 Social Security Act, Title XIX, or under the ~~Maine--Health~~  
43 ~~Program,--section-3189~~ elderly low-cost drug program under section  
44 254, for the medical costs of injury, disease, disability or  
45 similar occurrence for which a 3rd party is, or may be, liable,  
46 the commissioner may recover from that party the reasonable value  
47 of the benefits provided. This right of recovery is separate and  
48 independent from any rights or causes of action belonging to a  
49 beneficiary under the Medicaid program or under the ~~Maine--Health~~  
50 ~~Program~~ elderly low-cost drug program under section 254. For

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2 Medicaid recipients who participated in the Medicaid managed care  
3 program, "reasonable value" means the total value of coverable  
4 medical services provided measured by the amount that Medicaid  
5 would have paid to providers directly for such services, were it  
6 not for the managed care system. The Medicaid program and ~~Maine  
7 Health-Program~~ the elderly low-cost drug program under section  
8 254 are the payors of last resort and ~~should~~ shall provide  
9 medical coverage only when there are no other available  
10 resources. The Attorney General, or counsel appointed by the  
11 Attorney General, may, to enforce this right, institute and  
12 prosecute legal proceedings directly against the 3rd party in the  
13 appropriate court in the name of the commissioner.

14 In addition to the right of recovery set forth in this  
15 subsection, the commissioner must also be subrogated, to the  
16 extent of any benefits provided under the Medicaid program or  
17 under the ~~Maine-Health-Program~~ elderly low-cost drug program  
18 under section 254, to any cause of action or claim that a  
19 beneficiary has against a 3rd party who is or may be liable for  
20 medical costs incurred by or on behalf of the beneficiary. The  
21 Attorney General, or counsel appointed by the Attorney General,  
22 to enforce this right may institute and prosecute legal  
23 proceedings in the name of the injured person, beneficiary,  
24 guardian, personal representative, estate or survivor. If  
25 necessary to enforce the commissioner's right of recovery, the  
26 Attorney General, or counsel appointed by the Attorney General,  
27 may institute legal proceedings against any beneficiary who has  
28 received a settlement or award from a 3rd party.

30 The commissioner's right to recover the reasonable value of  
31 benefits provided constitutes a statutory lien on the proceeds of  
32 an award or settlement from a 3rd party if recovery for Medicaid  
33 costs was or could have been included in the recipient's claim  
34 for damages from the 3rd party. The commissioner is entitled to  
35 recover the amount of the benefits actually paid out or, with  
36 regard to Medicaid recipients who participated in the managed  
37 care program when the commissioner has determined that collection  
38 will be cost-effective, the reasonable value of benefits provided  
39 to the extent that there are proceeds available for such recovery  
40 after the deduction of reasonable attorney's fees and litigation  
41 costs from the gross award or settlement. In determining whether  
42 collection will be cost-effective, the commissioner shall  
43 consider all factors that diminish potential recovery by the  
44 department, including but not limited to questions of liability  
45 and comparative negligence or other legal defenses, exigencies of  
46 trial that reduce a settlement or award in order to resolve the  
47 recipient's claim and limits on the amount of applicable  
48 insurance coverage that reduce the claim to the amount  
49 recoverable by the recipient. The department's statutory lien  
50 may not be reduced to reflect an assessment of a pro rata share

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2 of the recipient's attorney's fees or litigation costs. The  
3 commissioner may compromise, or settle and execute a release of,  
4 any claim or waive any claim, in whole or in part, if the  
5 commissioner determines the collection will not be cost-effective  
6 or that the best possible outcome requires compromise, release or  
7 settlement.

8 **Sec. B-2. 22 MRSA §14, sub-§2-A**, as amended by PL 1991, c. 9,  
9 Pt. N, §2, is further amended to read:

10 **2-A. Assignment of rights of recovery.** The receipt of  
11 benefits under the Medicaid program administered by the  
12 department pursuant to the United States Social Security Act,  
13 Title XIX, or under the ~~Maine--Health--Program,--section--3189~~  
14 elderly low-cost drug program under section 254, constitutes an  
15 assignment by the recipient or any legally liable relative to the  
16 department of the right to recover from 3rd parties for the  
17 medical cost of injury, disease, disability or similar occurrence  
18 for which the recipient receives medical benefits. The  
19 department's assigned right to recover is limited to the amount  
20 of medical benefits received by the recipient and does not  
21 operate as a waiver by the recipient of any other right of  
22 recovery against a 3rd party that a recipient may have.

23  
24 The recipient is also deemed to have appointed the commissioner  
25 as the recipient's attorney in fact to perform the specific act  
26 of submitting claims to insurance carriers or endorsing over to  
27 the department any and all drafts, checks, money orders or any  
28 other negotiable instruments connected with the payment of  
29 3rd-party medical claims.

30  
31 **Sec. B-3. 22 MRSA §14, sub-§§2-B and 2-C**, as amended by PL  
32 1991, c. 9, Pt. N, §3, are further amended to read:

33 **2-B. Direct reimbursement to health care provider.** When an  
34 insured is eligible under the Medicaid program administered by  
35 the Department of Human Services, pursuant to the United States  
36 Social Security Act, Title XIX, or under the ~~Maine--Health~~  
37 ~~Program,--section--3189~~ elderly low-cost drug program under section  
38 254, for the medical costs of injury, disease, disability or  
39 similar occurrence for which an insurer is liable, and the  
40 insured's claim is payable to a health care provider as provided  
41 or permitted by the terms of a health insurance policy or  
42 pursuant to an assignment of rights by an insured, the insurer  
43 shall directly reimburse the health care provider to the extent  
44 that the claim is honored.

45  
46  
47 **2-C. Direct reimbursement to the Department of Human**  
48 **Services.** When an insured is eligible under the Medicaid program  
49 administered by the Department of Human Services, pursuant to the  
50

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2 United States Social Security Act, Title XIX, or under the ~~Maine~~  
3 ~~Health-Program,--section-3189~~ elderly low-cost drug program under  
4 section 254, for the medical costs of injury, disease, disability  
5 or similar occurrence for which an insurer is liable, and the  
6 claim is not payable to a health care provider under the terms of  
7 the health insurance policy, the insurer shall directly reimburse  
8 the Department of Human Services, upon request, for any medical  
9 services paid by the department on behalf of a recipient under  
10 Medicaid or ~~Maine-Health-Program-recipient~~ the elderly low-cost  
11 drug program under section 254 to the extent that those medical  
12 services are payable under the terms of the health insurance  
13 policy.

14 **Sec. B-4. 22 MRSA §14, sub-§§2-D and 2-E**, as amended by PL  
15 1991, c. 9, Pt. N, §4, are further amended to read:

16 **2-D. Notification of claim.** A recipient under Medicaid or  
17 ~~Maine-Health-Program-recipient~~ the elderly low-cost drug program  
18 under section 254, or any attorney representing a recipient under  
19 Medicaid or ~~Maine-Health-Program-recipient~~ the elderly low-cost  
20 drug program under section 254, who makes a claim to recover the  
21 medical cost of injury, disease, disability or similar occurrence  
22 for which the party received medical benefits under the Medicaid  
23 program, pursuant to the United States Social Security Act, Title  
24 XIX, or the ~~Maine-Health-Program,--section-3189~~ elderly low-cost  
25 drug program under section 254, shall advise the department in  
26 writing with information as required by the department of the  
27 existence of the claim.

28 **2-E. Notification of pleading.** In any action to recover  
29 the medical cost of injury, disease, disability or similar  
30 occurrence for which the party received medical benefits under  
31 the Medicaid program or ~~Maine-Health-Program~~ the elderly low-cost  
32 drug program under section 254, the party bringing the action  
33 shall notify the department of that action at least 10 days prior  
34 to filing the pleadings. Department records indicating medical  
35 benefits paid by the department on behalf of the recipient are  
36 prima facie evidence of the medical expenses incurred by the  
37 recipient for the related medical services.

38 **Sec. B-5. 22 MRSA §14, sub-§2-H**, as enacted by PL 1991, c.  
39 815, §1, is amended to read:

40 **2-H. Honoring of assignments.** The following provisions  
41 apply to claims for payment submitted by the department or a  
42 health care provider.

43 A. Whenever a participating health care provider or the  
44 department submits claims to an insurer, as defined in Title  
45 24-A, section 4, or to a health maintenance organization on

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2 behalf of a recipient under Medicaid or Maine-Health-Program  
3 recipient the elderly low-cost drug program under section  
4 254 for whom an assignment of rights has been received, or  
5 whose rights have been assigned by the operation of law, the  
6 insurer or health maintenance organization doing business in  
7 the State must respond within 60 days of receipt of a claim  
8 by forwarding payment or issuing a notice of denial directly  
9 to the submitter of the claim.

10 B. Whenever a nonparticipating health care provider or the  
11 department on behalf of a nonparticipating provider submits  
12 claims to an insurer, as defined in Title 24-A, section 4,  
13 or a health maintenance organization that operates through a  
14 series of participation agreements on behalf of a recipient  
15 under Medicaid or Maine-Health-Program-recipient the elderly  
16 low-cost drug program under section 254 for whom an  
17 assignment of rights has been received or whose rights have  
18 been assigned by the operation of law, the insurer or health  
19 maintenance organization doing business in the State must  
20 respond within 60 days of receipt of a claim by forwarding  
21 payment, issuing a notice of denial or issuing a copy of the  
22 explanation of benefits directly to the submitter of the  
23 claim.

24 **Sec. B-6. 22 MRSA §14, sub-§3**, as amended by PL 1997, c. 795,  
25 §4, is further amended to read:

26 **3. Definitions.** For purposes of this section, "3rd party"  
27 or "liable party" or "potentially liable party" means any entity,  
28 including, but not limited to, an insurance carrier that may be  
29 liable under a contract to provide health, automobile, workers'  
30 compensation or other insurance coverage that is or may be liable  
31 to pay all or part of the medical cost of injury, disease,  
32 disability or similar occurrence of an applicant or recipient of  
33 benefits under Medicaid or Maine-Health-Program-benefits the  
34 elderly low-cost drug program under section 254. For purposes of  
35 this section and sections 18 and 19, an "insurance carrier"  
36 includes health insurers, group health plans as defined in 29  
37 United States Code, Section 1167(1), service benefit plans and  
38 health maintenance organizations.

39 "Liable party," "potentially liable party" or "3rd party" also  
40 includes the trustee or trustees of any mortuary trust  
41 established by the recipient or on the recipient's behalf in  
42 which there is money remaining after the actual costs of the  
43 funeral and burial have been paid in accordance with the terms of  
44 the trust and in which there is no provision that the excess be  
45 paid to the decedent's estate. "Liable party," "potentially  
46 liable party" or "3rd party" may also include the recipient of

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2 the benefits under Medicaid or Maine-Health-Program-benefits the  
3 elderly low-cost drug program under section 254.'

4 Further amend the bill in Part B by striking out all of  
5 section 3.

6 Further amend the bill by relettering or renumbering any  
7 nonconsecutive Part letter or section number to read  
8 consecutively.

9 Further amend the bill by inserting at the end before the  
10 summary the following:

11 **FISCAL NOTE**

12 **2000-01**

13 **APPROPRIATIONS/ALLOCATIONS**

14	General Fund	\$816,904
15	Other Funds	19,819

16 **REVENUES**

17	Other Funds	\$19,819
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18 This bill includes General Fund appropriations totaling  
19 \$816,904 and Federal Expenditures Fund allocations of \$19,819 in  
20 fiscal year 2000-01 for the costs associated with establishing  
21 and operating the Fair Drug Pricing Board and conducting a survey  
22 of prescription drug prices. Of this amount, \$564,819 is  
23 provided in fiscal year 2000-01 for the Department of Human  
24 Services for one Director position to staff the Fair Drug Pricing  
25 Board, one Planning and Research Associate position and related  
26 operating costs associated with maintaining a prescription drug  
27 pricing database and funds to contract for the collection,  
28 compilation, and evaluation of prescription drug pricing data.  
29 The estimated future costs in fiscal years 2001-02 and 2002-03  
30 will be approximately \$64,054 and \$65,788, respectively.

31 This bill also includes a Federal Expenditures Fund  
32 allocation of \$19,819 in fiscal year 2000-01 for the Department  
33 of Human Services for the associated federal match. The  
34 estimated future costs in fiscal year 2001-02 and 2002-03 will be  
35 approximately \$20,429 and \$21,005, respectively.

36 A General Fund appropriation of \$252,085 in fiscal year  
37 2000-01 is included for the Department of the Attorney General  
38 for one Assistant Attorney General position and related costs,  
39

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2 including a one-time appropriation of \$200,000 to establish a  
non-lapsing contingent account to cover the costs of litigation.  
4 The estimated General Fund appropriations that will be required  
for the costs of the position will be approximately \$56,920  
6 beginning in fiscal year 2001-02. Future General Fund  
appropriations may also be required for future litigation  
expenses when the \$200,000 is expended.

8  
10 The Department of Human Services and the Department of  
Professional and Financial Regulation may incur some minor  
12 additional costs associated with participating on the Fair Drug  
Pricing Board. These costs can be absorbed within each  
14 respective department's existing budgeted resources.

16 This bill may increase the number of civil suits filed in  
the court system. The additional workload and administrative  
18 costs associated with the minimal number of new cases filed can  
be absorbed within the budgeted resources of the Judicial  
20 Department. The collection of additional filing fees may also  
increase General Fund revenue by minor amounts.'

22  
24 **SUMMARY**

26 This amendment is the majority report of the committee.  
This amendment removes the Senate and House members of the Fair  
28 Drug Pricing Board because of limitations imposed by the  
Constitution of Maine. This amendment preserves the provisions  
30 of the bill, corrects cross-references in the 3rd-party liability  
provisions and removes the expansion of the supplemental  
32 component of the elderly low-cost drug program. The amendment  
also adds an appropriation and a fiscal note to the bill.