

# MAINE STATE LEGISLATURE

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L.D. 2599

DATE: 4/8/2000

(Filing No. S-687)

**HEALTH AND HUMAN SERVICES**

Reported by:

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

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

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

**'An Act to Increase Prescription Drug Coverage and Establish the Blue Ribbon Commission on Prescription Drug Access'**

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

**PART A**

**Sec. A-1. Blue Ribbon Commission on Prescription Drug Access.** The Blue Ribbon Commission on Prescription Drug Access, referred to in this section as the "commission," is established to study and make recommendations on multiple initiatives to lower the cost of drugs.

**1. Membership.** The commission consists of 3 members who must be appointed by the Governor no later than August 1, 2000. The Governor shall designate one member to serve as chair. Members must have experience in business, the delivery of social services, health or financial management.

**2. Duties.** The commission shall study and make recommendations on multiple initiatives to bring prescription drugs to the people of Maine in a cost-effective manner. The commission shall study the pricing and distribution of prescription drugs; the role of Medicaid, Medicare and insurance;

**COMMITTEE AMENDMENT**

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options for maximizing the benefits of pharmaceutical assistance from pharmaceutical manufacturers; and regional alliances and bulk purchasing.

3. Meetings. The chair shall call and convene the first meeting by September 10, 2000. The commission shall meet at least once per month until its report is submitted, at which time it terminates.

4. Staffing. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the commission.

5. State agency cooperation. Agencies and departments of the State, including, but not limited to, the Department of Administrative and Financial Services, the Department of Human Services, the State Planning Office and the Department of Administrative and Financial Services, State Employee Health Program, shall provide information and assistance as needed by the commission.

6. Reimbursement; budget. Commission members are entitled to receive reimbursement for necessary expenses and per diem equal to the legislative per diem for attendance at authorized meetings of the commission. The Executive Director of the Legislative Council shall administer the budget of the commission.

7. Report. The commission shall submit a report containing its recommendations, with plans for implementation, planning information and necessary implementing legislation, to the First Regular Session of the 120th Legislature by April 1, 2001.

Sec. A-2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Part.

2000-01

LEGISLATURE

Blue Ribbon Commission on Prescription Drug Access

Personal Services	\$1,320
All Other	1,700

Provides funds for the per diem and expenses of members of the Blue Ribbon Commission on Prescription Drug Access and to print the required report.

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**LEGISLATURE  
TOTAL**

\$3,020

**PART B**

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

**1. Recovery procedures.** When benefits are provided or will be provided to a beneficiary under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX, or under the ~~Maine--Health Program,--section-3189~~ elderly low-cost drug program under section 254, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the reasonable value of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a beneficiary under the Medicaid program or under the ~~Maine--Health Program~~ elderly low-cost drug program under section 254. For Medicaid recipients who participated in the Medicaid managed care program, "reasonable value" means the total value of coverable medical services provided measured by the amount that Medicaid would have paid to providers directly for such services, were it not for the managed care system. The Medicaid program and ~~Maine Health--Program~~ the elderly low-cost drug program under section 254 are the payors of last resort and ~~should~~ shall provide medical coverage only when there are no other available resources. The Attorney General, or counsel appointed by the Attorney General, may, to enforce this right, institute and prosecute legal proceedings directly against the 3rd party in the appropriate court in the name of the commissioner.

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

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2 The commissioner's right to recover the reasonable value of  
4 benefits provided constitutes a statutory lien on the proceeds of  
6 an award or settlement from a 3rd party if recovery for Medicaid  
8 costs was or could have been included in the recipient's claim  
10 for damages from the 3rd party. The commissioner is entitled to  
12 recover the amount of the benefits actually paid out or, with  
14 regard to Medicaid recipients who participated in the managed  
16 care program when the commissioner has determined that collection  
18 will be cost-effective, the reasonable value of benefits provided  
20 to the extent that there are proceeds available for such recovery  
22 after the deduction of reasonable attorney's fees and litigation  
24 costs from the gross award or settlement. In determining whether  
26 collection will be cost-effective, the commissioner shall  
28 consider all factors that diminish potential recovery by the  
department, including but not limited to questions of liability  
and comparative negligence or other legal defenses, exigencies of  
trial that reduce a settlement or award in order to resolve the  
recipient's claim and limits on the amount of applicable  
insurance coverage that reduce the claim to the amount  
recoverable by the recipient. The department's statutory lien  
may not be reduced to reflect an assessment of a pro rata share  
of the recipient's attorney's fees or litigation costs. The  
commissioner may compromise, or settle and execute a release of,  
any claim or waive any claim, in whole or in part, if the  
commissioner determines the collection will not be cost-effective  
or that the best possible outcome requires compromise, release or  
settlement.

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

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34 **2-A. Assignment of rights of recovery.** The receipt of  
36 benefits under the Medicaid program administered by the  
department pursuant to the United States Social Security Act,  
Title XIX, or under the ~~Maine--Health--Program,--section--3189~~  
38 elderly low-cost drug program under section 254, constitutes an  
40 assignment by the recipient or any legally liable relative to the  
department of the right to recover from 3rd parties for the  
42 medical cost of injury, disease, disability or similar occurrence  
for which the recipient receives medical benefits. The  
44 department's assigned right to recover is limited to the amount  
of medical benefits received by the recipient and does not  
operate as a waiver by the recipient of any other right of  
recovery against a 3rd party that a recipient may have.

46  
48 The recipient is also deemed to have appointed the commissioner  
50 as the recipient's attorney in fact to perform the specific act  
of submitting claims to insurance carriers or endorsing over to  
the department any and all drafts, checks, money orders or any

2 other negotiable instruments connected with the payment of  
3rd-party medical claims.

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

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8 **2-B. Direct reimbursement to health care provider.** When an  
insured is eligible under the Medicaid program administered by  
the Department of Human Services, pursuant to the United States  
10 Social Security Act, Title XIX, or under the ~~Maine--Health  
Program,--section-3189~~ elderly low-cost drug program under section  
12 254, for the medical costs of injury, disease, disability or  
similar occurrence for which an insurer is liable, and the  
14 insured's claim is payable to a health care provider as provided  
or permitted by the terms of a health insurance policy or  
16 pursuant to an assignment of rights by an insured, the insurer  
shall directly reimburse the health care provider to the extent  
18 that the claim is honored.

20 **2-C. Direct reimbursement to the Department of Human  
Services.** When an insured is eligible under the Medicaid program  
22 administered by the Department of Human Services, pursuant to the  
United States Social Security Act, Title XIX, or under the ~~Maine  
Health-Program,--section-3189~~ elderly low-cost drug program under  
24 section 254, for the medical costs of injury, disease, disability  
or similar occurrence for which an insurer is liable, and the  
26 claim is not payable to a health care provider under the terms of  
the health insurance policy, the insurer shall directly reimburse  
28 the Department of Human Services, upon request, for any medical  
services paid by the department on behalf of a recipient under  
30 Medicaid or Maine-Health-Program-recipient the elderly low-cost  
32 drug program under section 254 to the extent that those medical  
services are payable under the terms of the health insurance  
34 policy.

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

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40 **2-D. Notification of claim.** A recipient under Medicaid or  
Maine-Health-Program-recipient the elderly low-cost drug program  
42 under section 254, or any attorney representing a recipient under  
Medicaid or Maine-Health-Program-recipient the elderly low-cost  
44 drug program under section 254, who makes a claim to recover the  
medical cost of injury, disease, disability or similar occurrence  
46 for which the party received medical benefits under the Medicaid  
program, pursuant to the United States Social Security Act, Title  
48 XIX, or the ~~Maine-Health-Program,--section-3189~~ elderly low-cost  
drug program under section 254, shall advise the department in  
writing with information as required by the department of the  
50 existence of the claim.

2           **2-E. Notification of pleading.** In any action to recover  
3 the medical cost of injury, disease, disability or similar  
4 occurrence for which the party received medical benefits under  
5 the Medicaid program or ~~Maine-Health-Program~~ the elderly low-cost  
6 drug program under section 254, the party bringing the action  
7 shall notify the department of that action at least 10 days prior  
8 to filing the pleadings. Department records indicating medical  
9 benefits paid by the department on behalf of the recipient are  
10 prima facie evidence of the medical expenses incurred by the  
11 recipient for the related medical services.

12           **Sec. B-5. 22 MRSA §14, sub-§2-H**, as enacted by PL 1991, c.  
13 815, §1, is amended to read:

14           **2-H. Honoring of assignments.** The following provisions  
15 apply to claims for payment submitted by the department or a  
16 health care provider.

17           A. Whenever a participating health care provider or the  
18 department submits claims to an insurer, as defined in Title  
19 24-A, section 4, or to a health maintenance organization on  
20 behalf of a recipient under Medicaid or Maine-Health-Program  
21 recipient the elderly low-cost drug program under section  
22 254 for whom an assignment of rights has been received, or  
23 whose rights have been assigned by the operation of law, the  
24 insurer or health maintenance organization doing business in  
25 the State must respond within 60 days of receipt of a claim  
26 by forwarding payment or issuing a notice of denial directly  
27 to the submitter of the claim.

28           B. Whenever a nonparticipating health care provider or the  
29 department on behalf of a nonparticipating provider submits  
30 claims to an insurer, as defined in Title 24-A, section 4,  
31 or a health maintenance organization that operates through a  
32 series of participation agreements on behalf of a recipient  
33 under Medicaid or Maine-Health-Program-recipient the elderly  
34 low-cost drug program under section 254 for whom an  
35 assignment of rights has been received or whose rights have  
36 been assigned by the operation of law, the insurer or health  
37 maintenance organization doing business in the State must  
38 respond within 60 days of receipt of a claim by forwarding  
39 payment, issuing a notice of denial or issuing a copy of the  
40 explanation of benefits directly to the submitter of the  
41 claim.

42           **Sec. B-6. 22 MRSA §14, sub-§3**, as amended by PL 1997, c. 795,  
43 §4, is further amended to read:

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

"Liable party," "potentially liable party" or "3rd party" also includes the trustee or trustees of any mortuary trust established by the recipient or on the recipient's behalf in which there is money remaining after the actual costs of the funeral and burial have been paid in accordance with the terms of the trust and in which there is no provision that the excess be paid to the decedent's estate. "Liable party," "potentially liable party" or "3rd party" may also include the recipient of the benefits under Medicaid or Maine-Health-Program-benefits the elderly low-cost drug program under section 254.

## PART C

**Sec. C-1. 22 MRSA §254, sub-§4-A,** as amended by PL 1999, c. 401, Pt. KKK, §1 and affected by §10 and c. 531, Pt. F, §2, is further amended to read:

**4-A. Payment for drugs provided.** The commissioner may establish the amount of payment to be made by recipients toward the cost of prescription or nonprescription drugs, medication and medical supplies furnished under this program provided that, for persons at or below 185% of the federal poverty line, the total cost for any covered purchase of a prescription or nonprescription drug or medication provided under the basic component of the program or the total costs of any covered purchase of a generic prescription drug or medication under the supplemental component of the program does not exceed 20% of the price allowed for that prescription under program rules or \$2, whichever is greater. For the supplemental component of the program except for the covered price of a generic prescription drug or medication, the total cost paid by the program for any covered purchase of a prescription drug or medication may not exceed \$2. For the supplemental component of the program, the total cost paid by the individual for any covered purchase of a prescription drug or medication may not exceed the cost of the



program for that drug or medication minus the \$2 paid by the program. After 2001, the commissioner shall establish an annual limit on the costs paid by the eligible persons for covered prescriptions or nonprescription drugs or medications, after which the program must pay 80% of the costs of all covered prescriptions or nonprescription drugs or medications. The annual limit for 2001 is \$1,000. The commissioner may adjust the annual limit as necessary to operate the program within the program budget;

**Sec. C-2. 22 MRSA §254, sub-§10, ¶B,** as amended by PL 1999, c. 551, §1, is further amended to read:

B. Nineteen years of age or older and determined to be disabled by the standards of the federal social security program; and

**Sec. C-3. 22 MRSA §254, sub-§11,** as enacted by PL 1999, c. 551, §2, is amended to read:

**11. Retention of eligibility.** A person who was eligible for the program at any time from August 1, 1998 to July 31, 1999 and who does not meet the requirements of subsection 10 retains eligibility for the program until February 28, 2001 if that person is a member of a household of an eligible person; and

**Sec. C-4. 22 MRSA §254, sub-§12** is enacted to read:

**12. Funds not to lapse.** Funds appropriated from the General Fund to carry out the purpose of this section may not lapse, but must carried forward.

**Sec. C-5. 22 MRSA §3174-G, sub-§1-B,** as enacted by PL 1999, c. 401, Pt. KKK, §3 and affected by §10, is amended to read:

**1-B. Funding.** State funds necessary to implement subsection 1-A must include state-funds-appropriated General Fund appropriations and Other Special Revenue allocations from the Fund for a Healthy Maine to the elderly low-cost drug program operated pursuant to section 254, including rebates received in that program from pharmaceutical manufacturers, that are no longer needed in that program as a result of the Medicaid waiver obtained pursuant to subsection 1-A; ~~and, effective in fiscal year 2000-01, no less than \$5,000,000 received from the tobacco settlement in State of Maine, v. Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134.~~

**Sec. C-6. PL 1999, c. 401, Pt. KKK, §§8 and 9** are repealed.

**Sec. C-7. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Part.

**2000-01**

**HUMAN SERVICES,  
DEPARTMENT OF**

**Low-cost Drugs to Maine's  
Elderly**

All Other \$10,000,000

Provides for the allocation of funds from the Fund for a Healthy Maine to expand the supplemental program to cover 80% of the cost of generic drugs not covered in the basic program and to institute a catastrophic component whereby the department would establish an annual limit on the total costs to be paid by eligible persons in the program.'

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

**FISCAL NOTE**

**2000-01**

**APPROPRIATIONS/ALLOCATIONS**

General Fund \$3,020  
Other Funds 10,000,000

This bill includes an Other Special Revenue funds allocation of \$10,000,000 from the Fund for a Healthy Maine in fiscal year 2000-01 for the Department of Human Services to expand access to drugs and medicines under the Elderly Low-cost Drug Program. This bill also repeals an allocation of Other Special Revenue funds from the Fund for a Healthy Maine of \$5,000,000 authorized in PL 1999, c. 401, Pt KKK, subsection 8.

This bill also includes a General Fund appropriation of \$3,020 in fiscal year 2000-01 for the Legislature for the per diem and expenses of members of the Blue Ribbon Commission on Prescription Drug Access and to print the required report.

COMMITTEE AMENDMENT "B" to S.P. 1026, L.D. 2599

2 The additional costs associated with providing staffing  
assistance to the commission during the interim between  
4 legislative sessions can be absorbed by the Legislature utilizing  
existing budgeted resources. If the commission requires staffing  
6 assistance during the legislative session, the Legislature may  
require an additional General Fund appropriation to contract for  
staff services.

8  
10 The additional costs associated with providing information  
and assistance to the commission can be absorbed by the  
12 Department of Administrative and Financial Services, the  
Department of Human Services and the State Planning Office  
utilizing existing budgeted resources.

14  
16 The additional costs associated with 3rd party recoveries  
can be absorbed by the Department of the Attorney General  
utilizing existing budgeted resources.'

18  
**SUMMARY**

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22 This amendment is the minority report of the committee.  
This amendment creates the Blue Ribbon Commission on Prescription  
24 Drug Access to study and make recommendations on initiatives or  
multiple initiatives to lower the cost of drugs. The commission  
is required to report to the joint standing committee of the  
26 Legislature having jurisdiction over health and human services  
matters by April 1, 2001, including necessary planning  
28 information and implementing legislation. This amendment  
provides for 3rd-party liability to the benefit of the elderly  
30 low-cost drug program and deletes outdated references to the  
Maine Health Program. This amendment expands access to drugs and  
32 medicines under the elderly low-cost drug program through a  
benefit for generic drugs and a limit on out-of-pocket expenses  
34 in the supplemental component after which the program will begin  
to pay 80% of the costs. This amendment provides that balances  
36 in the elderly low-cost drug program do not lapse but carry  
forward to the next year. This amendment adds an appropriation  
38 and allocation and a fiscal note to the bill.