

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2599

S.P. 1026

In Senate, March 3, 2000

An Act to Establish Fairer Pricing for Prescription Drugs.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PINGREE of Knox.

Cosponsored by Speaker ROWE of Portland and

Senators: BERUBE of Androscoggin, CAREY of Kennebec, CATHCART of Penobscot, DOUGLASS of Androscoggin, FERGUSON of Oxford, GOLDTHWAIT of Hancock, KILKELLY of Lincoln LaFOUNTAIN of York, President LAWRENCE of York, MICHAUD of Penobscot, MURRAY of Penobscot, NUTTING of Androscoggin, O'GARA of Cumberland, PARADIS of Aroostook, PENDLETON of Cumberland, RAND of Cumberland, RUHLIN of Penobscot, TREAT of Kennebec, Representatives: AHEARNE of Madawaska, ANDREWS of York, BERRY of Livermore, BOLDUC of Auburn, BROOKS of Winterport, BULL of Freeport, CLARK of Millinocket, COLWELL of Gardiner, COWGER of Hallowell, DESMOND of Mapleton, DUDLEY of Portland, DUGAY of Cherryfield, DUPLESSIE of Westbrook, ETNIER of Harpswell, FULLER of Manchester, GAGNON of Waterville, GREEN of Monmouth, HATCH of Skowhegan, KANE of Saco, KNEELAND of Easton, LEMOINE of Old Orchard Beach, LINDAHL of Northport, LORING of Penobscot Nation, LOVETT of Scarborough, MAILHOT of Lewiston, MARTIN of Eagle Lake, MATTHEWS of Winslow, MAYO of Bath, McALEVEY of Waterboro, McDONOUGH of Portland, McGLOCKLIN of Embden, McKEE of Wayne, McNEIL of Rockland, MITCHELL of Vassalboro, MURPHY of Berwick, NORBERT of Portland, of Lewiston, O'NEAL of

Limestone, O'BRIEN of Lewiston, PIEH of Bremen, POWERS of Rockport, RICHARD of Madison, RICHARDSON of Brunswick, SAVAGE of Union, SAXL of Bangor, SAXL of Portland, SHIAH of Bowdoinham, SIROIS of Caribou, STANLEY of Medway, SULLIVAN of Biddeford, TESSIER of Fairfield, THOMPSON of Naples, TOWNSEND of Portland, TRACY of Rome, TRIPP of Topsham, TWOMEY of Biddeford, VOLENIK of Brooklin, WATSON of Farmingdale, WHEELER of Eliot, WILLIAMS of Orono.

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

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PART A

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

<u>4. Fair Drug Pricing Board</u>	<u>Expenses:</u>	<u>22 MRSA §2682</u>
	<u>Legislative</u>	
	<u>per diem for</u>	
	<u>Legislators;</u>	
	<u>\$35 per day for</u>	
	<u>nonstate</u>	
	<u>employees</u>	

Sec. A-2. 22 MRSA c. 603 is enacted to read:

CHAPTER 603

MAINE PRESCRIPTION DRUG FAIR PRICING ACT

§2681. Short title

This chapter may be known and cited as the "Maine Prescription Drug Fair Pricing Act."

§2682. Fair Drug Pricing Board

The Fair Drug Pricing Board, referred to in this chapter as the "board," is established.

1. Membership. The board consists of the following 11 members:

- A. One Senator, appointed by the President of the Senate;
- B. One Representative, appointed by the Speaker of the House;
- C. 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;

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

6 E. Two pharmacists, appointed by the Governor. The
7 pharmacists must meet the following qualifications in order
8 to be appointed to and remain on the board. Neither
9 pharmacist may be a member of the Maine Board of Pharmacy.
10 Each pharmacist must:

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

13 (2) Be engaged in the practice of pharmacy in this
14 State;

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

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

18 F. The Director of the Bureau of Health within the
19 department and the Commissioner of Professional and
20 Financial Regulation, who serve as ex officio, nonvoting
21 members.

22 2. Terms. Members of the board serve for terms of 3 years
23 and may be reappointed. With the exception of the pharmacist
24 members, if the profession or qualifications of a board member
25 change during the term of board membership, the member may
26 continue to serve in the capacity for which the appointment was
27 made.

28 3. Meetings. The board shall meet at least once per month.

29 4. Director; staffing. The board shall appoint a director
30 who shall perform the duties delegated by the board. If the
31 board determines that additional staff is needed, the board may
32 hire such staff with approval and appropriate funding by the
33 Legislature.

34 5. Cooperation. In performing its duties, the board shall
35 cooperate and work with the department, the Maine Board of
36 Pharmacy and the Department of Professional and Financial
37 Regulation.

38 §2683. Prescription drug pricing

2 Beginning January 10, 2001, and each January 10th
3 thereafter, the board shall adopt rules establishing the maximum
4 prices for prescription drugs.

5 1. Manufacturers. The board shall establish the price
6 schedule of maximum manufacturer prices for prescription drugs
7 sold in the State after consideration of the prices charged for
8 prescription drugs in Canada, the prices listed on the federal
9 supply schedule for pharmaceuticals and drugs maintained by the
10 United States Department of Veterans Affairs and any other
11 relevant information. The maximum manufacturer price of a
12 prescription drug may not exceed the manufacturer price for that
13 drug sold in Canada. If a prescription drug is not sold in
14 Canada, the maximum manufacturer price may not exceed the maximum
15 price for all other prescription drugs within the same
16 classification of drugs.

17 2. Wholesalers. The maximum wholesaler price for a
18 prescription drug sold in the State by a wholesaler is the
19 maximum manufacturer price under subsection 1 plus any reasonable
20 and customary cost of doing business and profit markup by the
21 wholesaler, as determined by the wholesaler, as long as that
22 wholesale price does not constitute an unfair and deceptive act
23 or practice in commerce as determined by the Attorney General
24 upon review of a complaint.

25 3. Retailers. The maximum retailer price for a prescription
26 drug sold in the State by a retailer is the maximum wholesaler
27 price under subsection 2, plus any usual and customary cost of
28 doing business and profit markup by the retailer, as determined
29 by the retailer, as long as that retail price does not constitute
30 an unfair and deceptive act or practice in commerce as determined
31 by the Attorney General upon review of a complaint.

32 4. Effective date of maximum prices. The maximum prices
33 for prescription drugs established under subsections 1, 2 and 3
34 take effect on October 1st of the same year in which the prices
35 are established beginning October 1, 2001, unless by September
36 1st of that same year the board determines, after a public
37 hearing, that prescription drug prices are less than or equal to
38 the maximum prices set pursuant to this section or that
39 alternative, nonregulatory mechanisms have been implemented to
40 ensure that prescription drugs are sold in this State at prices
41 that do not exceed the maximum prices established pursuant to
42 subsections 1, 2 and 3. In making a determination under this
43 subsection, the board shall consider the effect of nonregulatory
44 initiatives undertaken by the State and other factors, including,
45 but not limited to:

2 A. The implementation and effect of the Medicaid drug
rebate program pursuant to sections 254 and 3174-R;

4 B. The implementation and effect of the Medicaid elderly
prescription drug program pursuant to section 3174-G,
6 subsection 1-A;

8 C. The implementation and effect of the Maine resident
low-cost prescription drug program pursuant to section 254-B;

10 D. The report of the Maine Ambulatory Care Coalition
regarding access to lower priced prescription drugs;

14 E. The effect on prescription drug prices of the physician
directed drug initiative program for Maine Medicaid patients
16 established in the Bureau of Medical Services within the
department;

18 F. The effect on prescription drug prices of patient access
to pharmaceutical manufacturer patient assistance programs;
20 and

22 G. The effect on prescription drug prices of any regional
strategies and regional purchasing alliances implemented in
24 the State.

26 5. Exception. The provisions of this section establishing
28 maximum prices for prescription drugs do not apply to prices
subject to legally binding contracts entered into before the
30 effective date of this chapter.

32 **§2684. Prescription drug survey**

34 The board, to assist in the development of maximum drug
prices and the determinations required pursuant to section 2683,
36 shall conduct a semiannual survey of prescription drugs. The
board shall adopt rules to implement this section. Rules adopted
38 pursuant to this section are routine technical rules as defined
in Title 5, chapter 375, subchapter II-A.

40 1. Survey information. The survey must include the
42 following information:

44 A. Current manufacturer, wholesaler and retailer maximum
prices of prescription drugs in the State, as set by the
46 board;

48 B. Manufacturer, wholesaler and retailer maximum prices for
prescription drugs for the previous 5 years at 6-month
50 intervals;

2 C. The federal supply schedule for pharmaceuticals and
4 drugs maintained by the United States Department of Veterans
 Affairs;

6 D. The drug formulary maintained by the Province of Quebec;

8 E. Current data regarding the elderly low-cost drug program
10 conducted pursuant to section 254; and

12 F. Any other information concerning prescription drug
 prices in the State that the board considers appropriate.

14 2. Reports. Semiannually, the board shall provide copies of
16 the results of the survey performed pursuant to subsection 1 to
 the Legislature, the department, the Maine Board of Pharmacy and
18 the Department of Professional and Financial Regulation.

20 3. Internet site. The board shall maintain a publicly
 accessible site on the Internet containing the results of the
22 survey conducted pursuant to subsection 1.

24 **§2685. Powers of board**

26 In carrying out its duties, the board has all the powers
 necessary to carry out the purposes of this chapter, including,
28 but not limited to:

30 1. Rulemaking. The power to adopt rules, in accordance
 with Title 5, chapter 375, including the adoption of emergency
32 rules to implement the provisions of this chapter. Rules adopted
 pursuant to this chapter are major substantive rules as defined
34 in Title 5, chapter 375, subchapter II-A, unless specifically
 designated otherwise;

36 2. Collection of information. The power to collect from
 any manufacturer, wholesaler or retailer of prescription drugs
38 sold in Maine such information as is necessary for the board to
 carry out its duties under this chapter. The following
40 provisions apply with regard to the collection of data,
 statistics, information, books, accounts and documents by the
42 board pursuant to this subsection.

44 A. A manufacturer, wholesaler or retailer of prescription
 drugs sold in this State shall file with the board, on
46 request, such data, statistics, schedules or information as
 the board may require to enable it to carry out its duties.

48 B. The board may examine books, accounts and documents of
50 any manufacturer, wholesaler or retailer of prescription

2 drugs sold in this State, subpoena witnesses and documents,
3 administer oaths to witnesses and examine those witnesses
4 and documents on all matters over which the board has
5 jurisdiction.

6 C. For the purpose of supporting fair and effective
7 competition and pricing that reflects actual costs in the
8 market of prescription drugs, the board shall adopt rules
9 for the designation of information collected by the board as
10 public information or as proprietary information that may
11 not be disclosed to any person other than the board and its
12 staff or to the Attorney General for law enforcement
13 purposes; and

14 **3. Explore regional strategies and purchasing alliances.**

15 The power to explore regional strategies and purchasing alliances
16 to benefit the people of the State. The board shall report on
17 the results of those efforts to the department, the Governor and
18 the Legislature, including making recommendations for entering
19 into such regional strategies.

20 **§2686. Emergency measures**

21 The board shall draft a plan that includes emergency
22 measures to be implemented in the event that the board determines
23 that there is a severe limitation or shortage of or loss of
24 access to prescription drugs in the State that is threatening or
25 endangering the health or welfare of the public. If the board
26 determines that such an event is occurring, the board shall
27 provide the Governor with the plan and petition the Governor to
28 implement the emergency measures.

29 **§2687. Appeals**

30 A manufacturer of prescription drugs may appeal the maximum
31 price of a prescription drug established pursuant to section
32 2683, subsection 1 to the board. The board may grant an
33 exemption from the board's price schedule on its own initiative
34 or upon appeal of the manufacturer. If the manufacturer appeals
35 the maximum price, the manufacturer bears the burden of proof in
36 demonstrating the need for an exemption.

37 **1. Factors in appeal.** Factors to be considered by the
38 board in an appeal include:

39 **A. Changed circumstances since the price schedule was**
40 **established;**

41 **B. Reasonable costs of production, distribution, marketing**
42 **and research;**

2 C. The profit through sale and the price charged in other
3 markets for the prescription drug;

4
5 D. The availability of prescription drugs essential to the
6 health of the State's citizens, or any other factor related
7 to the health and safety of the State's citizens; and

8 E. Other relevant information.

10
11 2. Appeals to Superior Court. Rulings on appeals by the
12 board may be appealed to the Superior Court in Kennebec County.

14 3. Disclosure. If a manufacturer of prescription drugs
15 appeals a price set by the board, the manufacturer shall fully
16 disclose to the board information regarding the production costs
17 of the drug and any other information pertinent to the appeal
18 requested by the board, notwithstanding any law protecting the
19 manufacturer from having to disclose such information.

20
21 4. Effect of appeal. The filing of an appeal does not
22 delay the implementation or effective dates of maximum prices
23 imposed by the board.

24 **§2688. Violation**

25
26 A violation of this chapter is a violation of the Maine
27 Unfair Trade Practices Act.

28 **§2689. Agreements with other entities**

29
30 The board may enter into agreements with other states in the
31 Northeast and with Canadian provinces for the purpose of
32 maintaining fair and uniform prescription drug prices and
33 ensuring maximum access to affordable prescription drugs.

34 **§2690. Patient assistance programs**

35
36 Health care providers licensed by the State shall examine
37 the applicability of pharmaceutical manufacturer patient
38 assistance programs and prescription drug assistance programs
39 provided by the State to the patients of the health care provider
40 and, if those programs would be of assistance to the health care
41 provider's patients, provide appropriate information to the
42 patients with the goal of increasing access to reasonably priced
43 prescription drugs and lowering the cost to the patients.

44 **§2691. Fund established**

2 The Maine Prescription Drug Fair Pricing Fund, referred to
3 in this section as the "fund," is established. An amount equal
4 to any savings that are realized as a result of the
5 implementation of this Act due to a decrease in the costs of the
6 prescription drug insurance plan provided to state employees and
7 retirees, as recommended by the State Employee Health Commission
8 pursuant to Title 5, chapter 13, subchapter II, must be placed in
9 the fund and used to increase the funding levels of the Medicaid
10 elderly prescription drug program established in section 3174-G,
11 subsection 1-A. Any unexpended amounts in the fund do not lapse
12 but must be carried forward to be used for the same purpose.

13 **Sec. A-3. Findings; intent; purpose.**

14 **1. Findings.** The Legislature makes the following findings.

15 A. Pharmaceutical companies are charging the citizens of
16 Maine excessive prices for prescription drugs, denying Maine
17 citizens access to medically necessary health care and
18 thereby threatening their health and safety.

19 B. Citizens of Maine and other Americans pay the highest
20 prices in the world for prescription drugs, prices that
21 result in extremely high profits for pharmaceutical
22 companies.

23 C. Lack of affordable access to medically necessary
24 prescription drugs results in the denial of health care, the
25 likelihood of serious illness and death and the inability to
26 lead a life of good health for many Maine citizens. Many
27 Maine citizens are admitted to or treated at hospitals each
28 year because they can not afford the drugs prescribed for
29 them. Many others are forced into expensive institutional
30 care settings because they can not afford their necessary
31 prescription drugs. All Maine citizens are threatened by
32 the possibility that when they need medically necessary
33 prescription drugs most they will be unable to afford their
34 doctor's recommended treatment.

35 D. Prescription drug costs represent the fastest growing
36 item in health care and are a driving force in rapidly
37 increasing hospital costs and insurance rates. Excessive
38 pricing for prescription drugs threatens Maine government's
39 ability to assist with the health care costs of Maine
40 citizens, undermines the financial capacity of Maine
41 communities to meet the educational needs of Maine children,
42 hurts the ability of the Maine business community to provide
43 health insurance coverage to Maine's workforce and has a
44 negative effect on Maine's economy.

2 **2. Intent.** It is the intent of the Legislature to
3 implement a series of nonregulatory programs as intermediate
4 steps designed to achieve the legislative purpose of providing
5 affordable access to medically necessary prescription drugs for
6 all Maine citizens. If these nonregulatory programs do not
7 succeed in ensuring that prescription drugs are sold in Maine at
8 fair and nondiscriminatory prices, the Legislature finds that a
9 fair pricing program, one that prohibits excessive and
10 discriminatory pricing in transactions that take place in Maine,
11 is the most effective and timely alternative to lower drug prices
12 for all Maine citizens and thereby protect the health and safety
13 of Maine citizens.

14 **3. Purpose.** The purpose of this Act is the promotion of
15 health and safety of all Maine citizens by providing them with
16 affordable access to prescription drugs at the lowest possible
17 prices through nonregulatory means or, if necessary, through a
18 regulatory system that ensures that prices charged to Maine
19 citizens for medically necessary prescription drugs are fair and
20 nondiscriminatory but not excessive.

21 **Sec. A-4. Initial appointments to Fair Drug Pricing Board; initial**
22 **meeting.** All initial appointments to the Fair Drug Pricing
23 Board, as established in the Maine Revised Statutes, Title 22,
24 section 2682, must be made no later than August 15, 2000. The
25 Director of the Bureau of Health within the Department of Human
26 Services shall call the first meeting of the board no later than
27 September 1, 2000.

28 **Sec. A-5. Initial rules.** The Fair Drug Pricing Board
29 established in the Maine Revised Statutes, Title 22, section 2682
30 shall submit all initial rules adopted pursuant to Title 22,
31 chapter 603, including the schedule of prices for prescription
32 drugs, to the joint standing committee of the Legislature having
33 jurisdiction over health and human services matters by January
34 11, 2001. All initial rules are provisionally adopted, effective
35 May 1, 2001, pending action by the Legislature.

36 **Sec. A-6. Report.** The Maine Ambulatory Care Coalition shall
37 investigate the ability of the federally qualified health
38 centers, as defined in 42 United States Code, Section 1395x,
39 subsection (aa) (1993), to obtain lower priced prescription drugs
40 under Section 340B of the federal Public Health Service Act,
41 investigate any barriers in state or federal law to obtaining
42 lower cost drugs through that Act and report its findings by
43 April 1, 2001 to the Fair Drug Pricing Board established in the
44 Maine Revised Statutes, Title 22, section 2682.

45

2 **Sec. A-7. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Act.

4		2000-01
6	ATTORNEY GENERAL, DEPARTMENT OF THE	
8		
10	Administration - Attorney General	
12	All Other	\$500,000
14	Provides a one-time appropriation for	
16	increased staffing and other costs related	
18	to enforcement of the Maine Prescription	
20	Drug Fair Pricing Act, as established in the	
	Maine Revised Statutes, Title 22, chapter	
	603.	
22	DEPARTMENT OF THE ATTORNEY GENERAL TOTAL	<u>\$500,000</u>
24	HUMAN SERVICES, DEPARTMENT OF	
26	Fair Drug Pricing Board	
28	Positions - Legislative Count	(1,000)
30	Personal Services	\$37,500
32	All Other	7,500
34	TOTAL	<u>\$45,000</u>
36	Provides for the appropriation of funds to	
38	establish the position of Director of the	
40	Fair Drug Pricing Board and related staffing	
	pursuant to the Maine Revised Statutes,	
	Title 22, section 2682, subsection 4.	
42	Fair Drug Pricing Board	
44	All Other	\$5,000
46	Provides funds to allow the Fair Drug	
48	Pricing Board to perform a survey of	
	prescription drug prices and publish the	
	results of that survey pursuant to the Maine	
	Revised Statutes, Title 22, section 2684.	

2 extent of any benefits provided under the Medicaid program or
3 under the ~~Maine-Health-Program~~ basic component of the elderly
4 low-cost drug program under section 254, subsection 1, paragraph
5 B, to any cause of action or claim that a beneficiary has against
6 a 3rd party who is or may be liable for medical costs incurred by
7 or on behalf of the beneficiary. The Attorney General, or
8 counsel appointed by the Attorney General, to enforce this right
9 may institute and prosecute legal proceedings in the name of the
10 injured person, beneficiary, guardian, personal representative,
11 estate or survivor. If necessary to enforce the commissioner's
12 right of recovery, the Attorney General, or counsel appointed by
13 the Attorney General, may institute legal proceedings against any
14 beneficiary who has received a settlement or award from a 3rd
15 party.

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

44 **2-A. Assignment of rights of recovery.** The receipt of
45 benefits under the Medicaid program administered by the
46 department pursuant to the United States Social Security Act,
47 Title XIX, or under the ~~Maine-Health-Program, section 3189~~ basic
48 component of the elderly low-cost drug program under section 254,
49 subsection 1, paragraph B, constitutes an assignment by the
50 recipient or any legally liable relative to the department of the

2 right to recover from 3rd parties for the medical cost of injury,
4 disease, disability or similar occurrence for which the recipient
6 receives medical benefits. The department's assigned right to
8 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.

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

16 **2-B. Direct reimbursement to health care provider.** When an
18 insured is eligible under the Medicaid program administered by
the Department of Human Services, pursuant to the United States
20 Social Security Act, Title XIX, or under the ~~Maine--Health
Program,--section--3189~~ basic component of the elderly low-cost
drug program under section 254, subsection 1, paragraph B, for
22 the medical costs or injury, disease, disability or similar
occurrence for which an insurer is liable, and the insured's
24 claim is payable to a health care provider as provided or
permitted by the terms of a health insurance policy or pursuant
26 to an assignment of rights by an insured, the insurer shall
directly reimburse the health care provider to the extent that
28 the claim is honored.

30 **2-C. Direct reimbursement to the Department of Human
32 Services.** When an insured is eligible under the Medicaid program
administered by the Department of Human Services, pursuant to the
United States Social Security Act, Title XIX, or under the ~~Maine
34 Health--Program,--section--3189~~ basic component of the elderly
low-cost drug program under section 254, subsection 1, paragraph
36 B, for the medical costs of injury, disease, disability or
similar occurrence for which an insurer is liable, and the claim
38 is not payable to a health care provider under the terms of the
health insurance policy, the insurer shall directly reimburse the
40 Department of Human Services, upon request, for any medical
services paid by the department on behalf of a Medicaid or ~~Maine
42 Health--Program~~ basic component of the elderly low-cost drug
program under section 254, subsection 1, paragraph B recipient to
44 the extent that those medical services are payable under the
terms of the health insurance policy.

46 **2-D. Notification of claim.** A Medicaid or ~~Maine--Health
48 Program~~ basic component of the elderly low-cost drug program
under section 254, subsection 1, paragraph B recipient, or any
50 attorney representing a Medicaid or ~~Maine--Health--Program~~ basic

2 component of the elderly low-cost drug program under section 254,
3 subsection 1, paragraph B recipient, who makes a claim to recover
4 the medical cost of injury, disease, disability or similar
5 occurrence for which the party received medical benefits under
6 the Medicaid program, pursuant to the United States Social
7 Security Act, Title XIX, or the ~~Maine-Health-Program~~,--~~section~~
8 3189 basic component of the elderly low-cost drug program under
9 section 254, subsection 1, paragraph B, shall advise the
10 department in writing with information as required by the
11 department of the existence of the claim.

12 **2-E. Notification of pleading.** In any action to recover
13 the medical cost of injury, disease, disability or similar
14 occurrence for which the party received medical benefits under
15 the Medicaid program or ~~Maine-Health-Program~~ basic component of
16 the elderly low-cost drug program under section 254, subsection
17 1, paragraph B, the party bringing the action shall notify the
18 department of that action at least 10 days prior to filing the
19 pleadings. Department records indicating medical benefits paid
20 by the department on behalf of the recipient are prima facie
21 evidence of the medical expenses incurred by the recipient for
22 the related medical services.

24 **2-F. Disbursement.** Except as otherwise provided in this
25 subsection, a disbursement of any award, judgment or settlement
26 may not be made to a recipient without the recipient or the
27 recipient's attorney first paying to the department the amount of
28 the statutory lien from the award, judgment or settlement or
29 obtaining from the department a release of any obligation owed to
30 it for medical benefits provided to the recipient. If a dispute
31 arises between the recipient and the commissioner as to the
32 settlement of any claim that the commissioner may have under this
33 section, the 3rd party or the recipient's attorney shall withhold
34 from disbursement to the recipient an amount equal to the
35 commissioner's claim. Either party may apply to the Superior
36 Court or the District Court in which an action based upon the
37 recipient's claim could have been commenced for an order to
38 determine a reasonable amount in satisfaction of the statutory
39 lien, consistent with federal law, considering whether an
40 independent action by the commissioner would have been
41 cost-effective.

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

46 A. Whenever a participating health care provider or the
47 department submits claims to an insurer, as defined in Title
48 24-A, section 4, or to a health maintenance organization on
49 behalf of a Medicaid or ~~Maine-Health-Program~~ basic component
50

2 of the elderly low-cost drug program under section 254,
3 subsection 1, paragraph B recipient for whom an assignment
4 of rights has been received, or whose rights have been
5 assigned by the operation of law, the insurer or health
6 maintenance organization doing business in the State must
7 respond within 60 days of receipt of a claim by forwarding
8 payment or issuing a notice of denial directly 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 Medicaid
15 or ~~Maine--Health--Program~~ basic component of the elderly
16 low-cost drug program under section 254, subsection 1,
17 paragraph B recipient for whom an assignment of rights has
18 been received or whose rights have been assigned by the
19 operation of law, the insurer or health maintenance
20 organization doing business in the State must respond within
21 60 days of receipt of a claim by forwarding payment, issuing
22 a notice of denial or issuing a copy of the explanation of
23 benefits directly to the submitter of the claim.

24 **2-I. Claims against estates of Medicaid recipients.** Claims
25 against the estates of Medicaid recipients are governed by this
26 subsection.

28 A. The department has a claim against the estate of a
29 Medicaid recipient when, after the death of the recipient:

32 (1) Property or other assets are discovered that
33 existed and were owned by the recipient during the
34 period when Medicaid benefits were paid for the
35 recipient and disclosure of the property or assets at
36 the time benefits were being paid would have rendered
37 the recipient ineligible to receive the benefits;

38 (2) It is determined that the recipient was 55 years
39 of age or older when that person received Medicaid
40 assistance; or

42 (3) It is determined that the recipient has received
43 or is entitled to receive benefits under a long-term
44 care insurance policy in connection with which assets
45 or resources are disregarded and medical assistance was
46 paid on behalf of the recipient for nursing facility or
47 other long-term care services.

2 B. The amount of Medicaid benefits paid and recoverable
under this subsection is a claim against the estate of the
4 deceased recipient.

6 (1) As to assets of the recipient included in the
probated estate, this claim may be enforced pursuant to
8 Title 18-A, Article III, Part 8.

10 (2) As to assets of the recipient not included in the
probated estate, this claim may be enforced by filing a
12 claim in any court of competent jurisdiction.

14 C. A claim may not be made under paragraph A, subparagraph
(2) or (3) until:

16 (1) The recipient has no surviving spouse; and

18 (2) The recipient has no surviving child who is under
age 21 or who is blind or permanently and totally
20 disabled as defined in 42 United States Code, Section
1382c.

22 D. Paragraph A, subparagraphs (2) and (3) apply only to a
24 recipient who died on or after October 1, 1993 for Medicaid
payments made on or after October 1, 1993.

26 E. A claim under paragraph A, subparagraph (2) must be
28 waived if enforcement of the claim would create an undue
hardship under criteria developed by the department.

30 F. As used in this subsection, unless the context otherwise
32 indicates, the term "estate" means:

34 (1) All real and personal property and other assets
included in the recipient's estate, as defined in Title
36 18-A, section 1-201; and

38 (2) Any other real and personal property and other
assets in which the recipient had any legal interest at
40 the time of death, to the extent of that interest,
including assets conveyed to a survivor, heir or assign
42 of the deceased recipient through tenancy in common,
survivorship, life estate, living trust, joint tenancy
44 in personal property or other arrangement.

46 **3. Definitions.** For purposes of this section, "3rd party"
or "liable party" or "potentially liable party" means any entity,
48 including, but not limited to, an insurance carrier that may be
liable under a contract to provide health, automobile, workers'
50 compensation or other insurance coverage that is or may be liable

2 to pay all or part of the medical cost of injury, disease,
3 disability or similar occurrence of an applicant or recipient of
4 Medicaid or ~~Maine Health Program~~ basic component of the elderly
5 low-cost drug program under section 254, subsection 1, paragraph
6 B benefits. For purposes of this section and sections 18 and 19,
7 an "insurance carrier" includes health insurers, group health
8 plans as defined in 29 United States Code, Section 1167(1),
9 service benefit plans and health maintenance organizations.

10 "Liable party," "potentially liable party" or "3rd party" also
11 includes the trustee or trustees of any mortuary trust
12 established by the recipient or on the recipient's behalf in
13 which there is money remaining after the actual costs of the
14 funeral and burial have been paid in accordance with the terms of
15 the trust and in which there is no provision that the excess be
16 paid to the decedent's estate. "Liable party," "potentially
17 liable party" or "3rd party" may also include the recipient of
18 the Medicaid or ~~Maine Health Program~~ basic component of the
19 elderly low-cost drug program under section 254, subsection 1,
20 paragraph B benefits.

21 **Sec. B-2. 22 MRSA §254, sub-§1, ¶A,** as enacted by PL 1999, c.
22 401, Pt. KKK, §1 and affected by §10 and c. 531, Pt. F, §2, is
23 amended to read:
24

25 A. The basic component of the program must provide drugs
26 and medications for cardiac conditions and high blood
27 pressure, diabetes, arthritis, anticoagulation,
28 hyperlipidemia, osteoporosis, chronic obstructive pulmonary
29 disease and asthma, incontinence, thyroid diseases,
30 glaucoma, parkinson's disease, multiple sclerosis and
31 amyotrophic lateral sclerosis. Drugs and medications for
32 additional conditions may be provided in the basic component
33 of the program if sufficient funds are available.
34

35 **Sec. B-3. 22 MRSA §254, sub-§2,** as amended by PL 1999, c. 401,
36 Pt. KKK, §1 and affected by §10 and c. 531, Pt. F, §2, is further
37 amended to read:
38

39 **2. Income eligibility.** Income eligibility of individuals
40 must be determined by this subsection and by reference to the
41 federal nonfarm income official poverty level, as defined by the
42 federal Office of Management and Budget and revised annually in
43 accordance with the United States Omnibus Budget and
44 Reconciliation Act of 1981, Section 673, Subsection 2. If the
45 household income, as defined in subsection 9, is less than 185%
46 of the federal poverty line applicable to the household, the
47 individual is eligible for the basic ~~and--the--supplemental~~
48 program. Individuals are also eligible for the basic program ~~and~~
49 ~~the-supplemental-program~~ if the household spends at least 40% of
50

2 its income on unreimbursed direct medical expenses for
prescription drugs and medications and the household income is
4 not more than 25% higher than the levels specified in this
subsection. For the purposes of this subsection, the cost of
6 drugs provided to a household under this section is considered a
cost incurred by the household for eligibility determination
8 purposes. If the household income is less than 300% of the
federal poverty line applicable to the household, the individual
is eligible for the supplemental program;

12 SUMMARY

14 In order to protect the public health and safety through the
establishment of prescription drug prices that more adequately
16 reflect the actual costs of those prescription drugs, Part A of
this bill establishes the Maine Prescription Drug Fair Pricing
18 Act. The Maine Prescription Drug Fair Pricing Act and Part A of
this bill accomplish that purpose by doing the following:

20 1. It establishes the Fair Drug Pricing Board. The board,
22 with the approval of the Legislature, sets the maximum prices for
prescription drugs based upon a specific formula. The maximum
24 price schedule established by the board takes effect only if:

26 A. The board determines that the prices of prescription
drugs in Maine are above the prices set in the schedule; and

28 B. Other nonregulatory programs enacted by the Legislature,
30 such as the Medicaid drug rebate program and the Maine
resident low-cost prescription drug program, will not reduce
32 the price of prescription drugs in Maine to or below the
prices set in the schedule.

34 The board is required to work with the Department of Human
36 Services, the Department of Professional and Financial Regulation
and the Maine Board of Pharmacy and to report regularly to those
38 entities and the Legislature. Prices established by the board
may be appealed by a manufacturer. The board may enter into
40 agreements with other states or Canadian provinces to ensure
uniform prices for prescription drugs. The board is also
42 required to maintain an Internet site to give the public access
to the price schedule established by the board.

44 2. It sets forth the purpose and intent of the Legislature
46 in enacting the Maine Prescription Drug Fair Pricing Act, which
is to provide affordable access to medically necessary
48 prescription drugs to Maine citizens by nonregulatory means. If
such nonregulatory programs do not succeed in ensuring that
50 prescription drugs are sold in Maine at fair and

2 nondiscriminatory prices, a fair pricing program that prohibits
3 excessive and discriminatory pricing is the most effective and
4 timely alternative to lower drug prices for all Maine citizens
and the protection of the health and safety of citizens.

6 3. It requires Maine health care providers, if appropriate,
7 to inform their patients of pharmaceutical manufacturer patient
8 assistance programs and state programs and measures that provide
those patients with affordable access to prescription drugs.
10 These programs and measures include the Medicaid prescription
11 drug waiver, the Medicaid drug rebate program, exploration of
12 regional strategies and purchasing alliances, the Maine resident
low-cost prescription drug program, a report from the Maine
14 Ambulatory Care Coalition on possibilities for lowering drug
prices and the Medicaid program physician directed drug
16 initiative established in the Department of Human Services,
Bureau of Medical Services.

18 4. It gives specific enforcement power of the Maine
20 Prescription Drug Fair Pricing Act to the Attorney General
through the Maine Unfair Trade Practices Act and appropriates
22 \$500,000 for that purpose.

24 5. It directs the Maine Ambulatory Care Coalition to
investigate lower prices under the federal Public Health Services
26 Act.

28 6. It appropriates \$50,000 for the purposes of the Fair
Drug Pricing Board.

30 Part B of this bill modernizes Medicaid recovery procedures
32 and increases the eligibility level for the supplemental
component of the elderly low-cost drug program established in the
34 Maine Revised Statutes, Title 22, section 254.