

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1651

S.P. 528

In Senate, March 15, 2001

An Act to Preserve Maine Pharmacies.

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 MITCHELL of Penobscot.
Cosponsored by Representative FULLER of Manchester and
Senators: ABROMSON of Cumberland, LaFOUNTAIN of York, TURNER of Cumberland,
Representative: LOVETT of Scarborough.

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

2
3 **Sec. 1. 22 MRSA §254, sub-§8,** as amended by PL 1999, c. 786,
4 Pt. B, §1, is further amended to read:

6 **8. Drug rebate program.** Effective May 1, 1992, payment
7 must be denied for drugs from manufacturers that do not enter
8 into a rebate agreement with the department for prescription
9 drugs included in the list of approved drugs under this
10 program. Each agreement must provide that the pharmaceutical
11 manufacturer make rebate payments for both the basic and
12 supplemental components of the program to the department
13 according to the following schedule.

14
15 B. For the quarters beginning October 1, 1992, the rebate
16 percentage is equal to the percentage recommended by the
17 federal Health Care Financing Administration of the
18 manufacturer's wholesale price for the total number of
19 dosage units of each form and strength of a prescription
20 drug that the department reports as reimbursed to providers
21 of prescription drugs, provided payments are not due until
22 30 days following the manufacturer's receipt of utilization
23 data supplied by the department, including the number of
24 dosage units reimbursed to providers of prescription drugs
25 during the period for which payments are due.

26
27 C. Beginning October 1, 1998, the department shall seek to
28 achieve an aggregate rebate amount from all rebate
29 agreements that is 6 percentage points higher than that
30 required by paragraph B of this subsection, provided such
31 rebates result in a net increase in the rebate revenue
32 available to the elderly low-cost drug program. In the
33 event the department is not able to achieve the rebate
34 amount required by this paragraph without compromising the
35 best interest of recipients of the elderly low-cost drug
36 program, it shall report to the joint standing committee of
37 the Legislature having jurisdiction over health and human
38 services matters and the joint standing committee of the
39 Legislature having jurisdiction over appropriations and
40 financial affairs in the First Regular Session of the 119th
41 Legislature.

42
43 Upon receipt of data from the department, the pharmaceutical
44 manufacturer shall calculate the quarterly payment. If a
45 discrepancy is discovered, the department may, at its expense,
46 hire a mutually agreed-upon independent auditor to verify the
47 pharmaceutical manufacturer's calculation. If a discrepancy is
48 still found, the pharmaceutical manufacturer shall justify its
49 calculation or make payment to the department for any additional
50 amount due. The pharmaceutical manufacturer may, at its expense,

2 hire a mutually agreed-upon independent auditor to verify the
accuracy of the utilization data provided by the department. If
4 a discrepancy is discovered, the department shall justify its
data or refund any excess payment to the pharmaceutical
6 manufacturer.

8 If the dispute over the rebate amount is not resolved, a request
for a hearing with supporting documentation must be submitted to
10 the Administrative Hearings Unit. Failure to resolve the dispute
may be cause for terminating the drug rebate agreement and
12 denying payment to the pharmaceutical manufacturer for any drugs.

14 Any prescription drug of a manufacturer that does not enter into
an agreement is not reimbursable unless the department determines
16 the prescription drug is essential.

18 All prescription drugs of a pharmaceutical manufacturer that
enters into an agreement pursuant to this subsection that appear
20 on the list of approved drugs under this program must be
immediately available and the cost of the drugs must be
22 reimbursed and is not subject to any restrictions or prior
authorization requirements, ~~---except---as---provided---in---this~~
24 ~~paragraph. If the commissioner establishes maximum retail prices~~
~~for prescription drugs pursuant to section 2693, the department~~
26 ~~shall adopt rules for the elderly low cost drug program requiring~~
~~the use of a drug formulary and prior authorization for the~~
28 ~~dispensing of certain drugs to be listed on a formulary. Rules~~
~~adopted pursuant to this paragraph are routine technical rules as~~
30 ~~defined in Title 5, chapter 375, subchapter II-A.~~

32 **Sec. 2. 22 MRSA §2681, first ¶,** as enacted by PL 1999, c. 786,
Pt. A, §3, is amended to read:

34 The Maine Rx Program, referred to in this subchapter as the
"program," is established to reduce prescription drug prices for
36 residents of the State. The program is designed for the State to
utilize manufacturer rebates and ~~pharmacy discounts~~ to reduce
38 prescription drug prices. In implementing the program, the State
shall serve as a pharmacy benefit manager in establishing rebates
40 and ~~discounts~~ on behalf of qualified residents.

42 **Sec. 3. 22 MRSA §2681, sub-§2, ¶B,** as enacted by PL 1999, c.
786, Pt. A, §3, is repealed.

44 **Sec. 4. 22 MRSA §2681, sub-§2, ¶G,** as enacted by PL 1999, c.
46 786, Pt. A, §3, is amended to read:

48 G. "~~Secondary-discounted~~ Discounted price" means a price
that is equal to or less than the ~~initial-discounted~~ retail

price minus the amount of any rebate paid by the State to the participating retail pharmacy.

Sec. 5. 22 MRSA §2681, sub-§5, ¶B, as enacted by PL 1999, c. 786, Pt. A, §3, is repealed.

Sec. 6. 22 MRSA §2681, sub-§5, ¶C, as enacted by PL 1999, c. 786, Pt. A, §3, is amended to read:

C. No later than October 1, 2001, a participating retail pharmacy shall offer the ~~seeendary~~ discounted price.

Sec. 7. 22 MRSA §2693, as enacted by PL 1999, c. 786, Pt. A, §3, is repealed.

Sec. 8. 22 MRSA §3173, 13th ¶, as repealed and replaced by PL 1979, c. 127, §144, is amended to read:

The Department of Human Services may establish fee schedules governing reimbursement for services provided under this chapter. In establishing the fee schedules, the department shall consult with individual providers and their representative associations. The fee schedules shall be are subject to annual review. The fee schedule for pharmacies must include, in addition to the reimbursement, payment of a dispensing fee in the amount of \$6.50 for each prescription filled. The amount of this dispensing fee must increase by \$1 for each percentage point reduction in the reimbursement for prescription drugs.

Sec. 9. 22 MRSA §3174-Y, as enacted by PL 1999, c. 786, Pt. B, §3, is repealed.

Sec. 10. 24 MRSA §2502, sub-§1-A, as enacted by PL 1985, c. 804, §§3 and 22, is amended to read:

1-A. Health care practitioner. "Health care practitioner" means physicians and all others certified, registered or licensed in the healing arts, including, but not limited to, nurses, podiatrists, optometrists, chiropractors, physical therapists, dentists, psychologists, pharmacists and physicians' assistants.

Sec. 11. 24-A MRSA §2703-A is enacted to read:

§2703-A. Identification card required

Every health insurer that issues a policy in this State that includes a prescription drug benefit shall provide an identification card to the policyholder that conforms to uniform content and format requirements determined by rule by the superintendent. Rules adopted pursuant to this section are

2 routine technical rules as defined in Title 5, chapter 375,
3 subchapter II-A.

4
5 **SUMMARY**

6
7 This bill makes the following changes to the laws governing
8 pharmacies.

9
10 1. It amends the Maine Rx Program to eliminate discounts
11 that are borne by pharmacies in this State, leaving the discounts
12 that are funded from rebates paid by drug manufacturers.

13
14 2. It requires the Department of Human Services to provide
15 a dispensing fee to pharmacies in a designated amount for
16 prescriptions that are filled for patients who participate in the
17 Medicaid program.

18
19 3. It specifically names pharmacists as health care
20 practitioners under the Maine Health Security Act.

21
22 4. It requires health insurers who provide a pharmacy
23 benefit to provide identification cards to their policyholders
24 that conform to a uniform format determined by the Superintendent
of Insurance.