

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 2026

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H.P. 1522

House of Representatives, December 26, 2001

**An Act to Transfer Responsibility for Determining Eligibility for the Elderly Low-cost Drug Program from the Department of Administrative and Financial Services to the Department of Human Services.**

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Submitted by the Department of Human Services pursuant to Joint Rule 204.

Received by the Clerk of the House on December 19, 2001. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative O'BRIEN of Lewiston.  
Cosponsored by Senator TURNER of Cumberland and  
Representatives: FULLER of Manchester, KANE of Saco.

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

4 **Sec. 1. 22 MRSA §254**, as amended by PL 2001, c. 293, §§1 to  
6 4; c. 405, §1 and affected by §3; and amended by c. 439, Pt. HH,  
8 §§1 to 3 and affected by §4, is further amended to read:

10 **§254. Elderly low-cost drug program**

12 As part of the Healthy Maine Prescription Program  
14 established under section 258, the Department of Human Services  
16 may conduct a program, referred to in this section as the  
18 "program," to provide low-cost prescription and nonprescription  
20 drugs, medication and medical supplies to disadvantaged, elderly  
22 and disabled individuals.

24 The commissioner shall provide for sufficient personnel to  
26 ensure efficient administration of the program. The extent and  
28 the magnitude of the program must be determined by the  
30 commissioner on the basis of the calculated need of the recipient  
32 population and the available funds. The department may not spend  
34 more on this program than is available through appropriations  
36 from the General Fund, dedicated revenue, federal or other grants  
38 and other established and committed funding sources. The  
40 commissioner may accept, for the purposes of carrying out this  
42 program, federal funds appropriated under any federal law  
44 relating to the furnishing of free or low-cost drugs to  
46 disadvantaged, elderly and disabled individuals and may take such  
48 action as is necessary for the purposes of carrying out that  
50 federal law and may accept from any other agency of government,  
individual, group or corporation such funds as may be available  
to carry out this chapter.

The commissioner shall make available suitable applications  
with instructions for applicants.

36 The commissioner may adopt rules relating to the conduct of  
38 this program. These rules must be adopted in accordance with the  
40 Maine Administrative Procedure Act, Title 5, chapter 375, and  
42 must be related to the following aspects of this program:

44 **1. Prescription and nonprescription drugs.** The kinds of  
46 prescription and nonprescription drugs, medications and medical  
48 supplies that may be made available through the operation of this  
50 program. Drugs and medications must be provided for the  
conditions and illnesses provided in this subsection.

A. The basic component of the program must provide drugs  
and medications for cardiac conditions and high blood  
pressure, diabetes, arthritis, anticoagulation,  
hyperlipidemia, osteoporosis, chronic obstructive pulmonary

2 disease and asthma, incontinence, thyroid diseases,  
3 glaucoma, parkinson's disease, multiple sclerosis and  
4 amyotrophic lateral sclerosis. The basic component must  
5 also provide over-the-counter medications that are  
6 prescribed by a health care provider and approved as  
7 cost-effective by the department.

8 B. In the supplemental component of the program, drugs and  
9 medications must include all prescription drugs and  
10 medications provided under the Medicaid program under this  
11 Title with the exception of drugs and medications provided  
12 by the basic component of the program under paragraph A;

13 1-A. Eligibility. An individual is eligible for the  
14 program if that individual meets the eligibility criteria set  
15 forth in this section and the following additional conditions.

16 A. An individual must be a legal resident of the State.

17 B. An individual does not receive full MaineCare  
18 pharmaceutical benefits;

19 ~~2-A.--Income-eligibility.--Individuals-are-eligible-for-this~~  
20 ~~program-if-the-household-income,-as-defined-in-subsection-9,-is~~  
21 ~~not-more-than-the-amount-set-by-this-subsection.--In-calculating~~  
22 ~~income-eligibility,-the-cost-of-drugs-provided-to-a-household~~  
23 ~~under--this--section--is--considered--a--cost--incurred--by--the~~  
24 ~~household.--The-income-eligibility-limit-is-determined-as-follows:~~

25 ~~A.--Calculate-the-applicable-poverty-level-by-reference-to~~  
26 ~~185%-of-the-federal-nonfarm-income-official-poverty-level,~~  
27 ~~as-defined-by-the-Office-of-Management-and-Budget,-that-was~~  
28 ~~in-effect-on-January-1,-2001;~~

29 ~~B.--Calculate-the-income-eligibility-limit-for-calendar-year~~  
30 ~~2001-by-multiplying-the-poverty-level-figure-from-paragraph~~  
31 ~~A-by-the-result-of-one-plus-the-annualized-cost-of-living~~  
32 ~~adjustment--used--to--determine--Social--Security--retirement~~  
33 ~~benefits-issued-during-calendar-year-2001;~~

34 ~~C.--For-each-program-year-after-2001,-calculate-the-income~~  
35 ~~eligibility-limit-for-the-year-for-which-relief-is-requested~~  
36 ~~by-multiplying-the-income-eligibility-limit-for-the-previous~~  
37 ~~program-year-as-calculated-by-paragraph-B-by-one-plus-the~~  
38 ~~annualized-cost-of-living-adjustment-applicable-to-Social~~  
39 ~~Security--retirement-benefits-issued-during-the-year-for~~  
40 ~~which-relief-is-requested,-and~~

2 ~~D. For individuals in households that spend at least 40% of~~  
3 ~~income on unreimbursed direct medical expenses for~~  
4 ~~prescription medications, the income eligibility limit is~~  
5 ~~increased by 25%.~~

6 **2-B. Income eligibility.** Income eligibility of individuals  
7 must be determined by this subsection and by reference to the  
8 federal nonfarm income official poverty level, as defined by the  
9 federal Office of Management and Budget and revised annually in  
10 accordance with the United States Omnibus Budget Reconciliation  
11 Act of 1981, Section 673, Subsection 2. If the household income,  
12 as defined in subsection 9, is not more than 185% of the federal  
13 poverty line applicable to the household, the individual is  
14 eligible for the basic program and the supplemental program.  
15 Individuals are also eligible for the basic and the supplemental  
16 program if the household spends at least 40% of its income on  
17 unreimbursed direct medical expenses for prescription drugs and  
18 medications and the household income is not more than 25% higher  
19 than the levels specified in this subsection. For the purposes  
20 of this subsection, the cost of drugs provided to a household  
21 under this section is considered a cost incurred by the household  
22 for eligibility determination purposes;

23 **3. Specifications for administration of program.**  
24 Specifications for the administration and management of the  
25 program, which may include, but not be limited to, program  
26 objectives, accounting and handling practices, supervisory  
27 authority and evaluation methodology;

28 **4. Method of prescribing or ordering drugs.** The method of  
29 prescribing or ordering the drugs under subsection 1, which may  
30 include, but is not limited to, the use of standard or larger  
31 prescription refill sizes so as to minimize operational costs and  
32 to maximize economy. Unless the prescribing physician indicates  
33 otherwise, the use of generic or chemically equivalent drugs is  
34 required, ~~provided that~~ as long as these drugs are of the same  
35 quality and have the same mode of delivery as is provided to the  
36 general public, consistent with good pharmaceutical practice;

37 **4-A. Payment for drugs provided.** The commissioner may  
38 establish the amount of payment to be made by recipients toward  
39 the cost of prescription or nonprescription drugs, medication and  
40 medical supplies furnished under this program ~~provided that~~ as  
41 long as, for persons at or below 185% of the federal poverty  
42 line, the total cost for any covered purchase of a prescription  
43 or nonprescription drug or medication provided under the basic  
44 component of the program or the total cost of any covered  
45 purchase of a generic prescription drug or medication under the  
46 supplemental component of the program does not exceed 20% of the  
47  
48

price allowed for that prescription under program rules or \$2, whichever is greater. For the supplemental component of the program except as otherwise provided in this subsection, 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. The commissioner shall establish annual limits on the costs incurred by eligible household members for prescriptions or nonprescription drugs or medications covered under the program on or prior to May 31, 2001, after which the program must pay 80% of the cost of all prescriptions or nonprescription drugs or medications covered by the supplemental component of the program on May 31, 2001. The limits must be set by the commissioner by rule as necessary to operate the program within the program budget;

**4-C. Appeals.** The eligibility determination made by the department ~~based on information provided by the State Tax Assessor pursuant to Title 36, section 6162-B~~ is final, subject to appeal in accordance with the appeal process established in the Medicaid MaineCare program;

**5. Other rules.** Such other rules as may be necessary to efficiently and effectively manage and operate a program within the intent of this section;

**7. Wholesale price.** "Wholesale price" means the average price paid by a wholesaler to a pharmaceutical manufacturer for a product distributed for retail sale. "Wholesale price" includes a deduction for any customary prompt payment discounts;

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

B. For the quarters beginning October 1, 1992, the rebate percentage is equal to the percentage recommended by the federal ~~Health-Care-Financing-Administration~~ Center for Medicare and Medicaid Services of the manufacturer's wholesale price for the total number of dosage units of each form and strength of a prescription drug that the department reports as reimbursed to providers of prescription drugs, provided payments are not due until 30 days following the manufacturer's receipt of utilization data supplied by the department, including the number of dosage units reimbursed

2 to providers of prescription drugs during the period for  
which payments are due.

4 C. Beginning October 1, 1998, the department shall seek to  
6 achieve an aggregate rebate amount from all rebate  
8 agreements that is 6 percentage points higher than that  
10 required by paragraph B of this subsection, provided such  
12 rebates result in a net increase in the rebate revenue  
14 available to the elderly low-cost drug program. In the  
16 event the department is not able to achieve the rebate  
18 amount required by this paragraph without compromising the  
best interest of recipients of the elderly low-cost drug  
program, ~~it~~ the department shall report to the joint  
standing committee of the Legislature having jurisdiction  
over health and human services matters and the joint  
standing committee of the Legislature having jurisdiction  
over appropriations and financial affairs in the First  
Regular Session of the 119th Legislature.

20 Upon receipt of data from the department, the pharmaceutical  
22 manufacturer shall calculate the quarterly payment. If a  
24 discrepancy is discovered, the department may, at its expense,  
26 hire a mutually agreed-upon independent auditor to verify the  
28 pharmaceutical manufacturer's calculation. If a discrepancy is  
30 still found, the pharmaceutical manufacturer shall justify its  
32 calculation or make payment to the department for any additional  
amount due. The pharmaceutical manufacturer may, at its expense,  
hire a mutually agreed-upon independent auditor to verify the  
accuracy of the utilization data provided by the department. If  
a discrepancy is discovered, the department shall justify its  
data or refund any excess payment to the pharmaceutical  
manufacturer.

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

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

44 All prescription drugs of a pharmaceutical manufacturer that  
46 enters into an agreement pursuant to this subsection that appear  
48 on the list of approved drugs under this program must be  
immediately available and the cost of the drugs must be  
reimbursed ~~and is not subject to any restrictions or prior~~  
50 authorization requirements, except as provided in this paragraph  
subsection. If the commissioner establishes maximum retail

2 prices for prescription drugs pursuant to section 2693, the  
3 department shall adopt rules for the elderly low-cost drug  
4 program requiring the use of a drug formulary and prior  
5 authorization for the dispensing of certain drugs to be listed on  
6 a formulary. Rules adopted pursuant to this ~~paragraph~~ subsection  
7 are routine technical rules as defined in Title 5, chapter 375,  
8 subchapter II-A.;

9  
10 **8-A. Participation requirement.** Beginning January 1, 2001,  
11 all manufacturers and labelers of drugs that participate in the  
12 Medicaid MaineCare program under this Title must participate in  
13 the drug rebate program under subsection 8. For the purposes of  
14 this subsection, "labeler" means an entity or person that  
15 receives prescription drugs from a manufacturer or wholesaler and  
16 repackages those drugs for later retail sale and that has a  
17 labeler code from the federal Food and Drug Administration under  
18 21 Code of Federal Regulations, 207.20 (1999).;

19  
20 **8-B. Action with regard to nonparticipating manufacturers  
21 and labelers.** The names of manufacturers and labelers who do and  
22 do not enter into rebate agreements pursuant to subsection 8 are  
23 public information. The department shall release this  
24 information to health care providers and the public on a regular  
25 basis and shall publicize participation by manufacturers and  
26 labelers that is of particular benefit to the public.;

27  
28 **9. Household income.** "Household income," for the purposes  
29 of this section, means ~~all income, as defined in Title 36,  
30 section 6201, subsection 9, received by all persons of a  
31 household in a calendar year while members of the household~~  
32 family income as that term is defined for purposes of the Healthy  
33 Maine Prescription Program established in section 258;

34  
35 **10. Eligible individuals.** To be eligible for the program,  
36 an individual must be:

37 A. At least 62 years of age; or

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

41  
42 ~~**11. Retention of eligibility.** A person who was eligible  
43 for the program at any time from August 1, 1998 to July 31, 1999  
44 and who does not meet the requirements of subsection 10 retains  
45 eligibility for the program if that person is a member of a  
46 household of an eligible person.~~

47  
48 ~~**11. Retention of eligibility.** A person who was eligible  
49 for the program at any time from August 1, 1998 to July 31, 1999  
50 and who does not meet the requirements of subsection 10 retains~~



eligibility-for-the-program-if-that-person-is-a-member-of-a  
household-of-an-eligible-person-and

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

**Sec. 2. 22 MRSA §254-A**, as enacted by PL 1997, c. 643, Pt. RR, §3, is amended to read:

**§254-A. Elderly low-cost drug program information**

The department shall produce and provide educational materials about the availability of benefits under and application process for the elderly low-cost drug program established under section 254. These materials must include brochures ~~for the Bureau of Revenue Services to mail to eligible residents with drug cards~~, posters for pharmacies and flyers for pharmacists to include with prescription drug purchases.

**Sec. 3. 36 MRSA §191, sub-§2, ¶X**, as amended by PL 2001, c. 439, Pt. L, §6, is repealed.

**Sec. 4. 36 MRSA c. 905**, as amended, is repealed.

**Sec. 5. Appropriations and allocations.** The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

**Revenue Services, Bureau of**

New Initiative: Deappropriates funds from savings resulting from the transfer of certain administrative responsibilities for the elderly low-cost drug program from the Department of Administrative and Financial Services, Bureau of Revenue Services to the Department of Human Services, Bureau of Family Independence effective January 1, 2003.

<b>General Fund</b>	<b>2002-03</b>
Positions - Legislative Count	(-3.0)
Positions - FTE Count	(-3.0)
Personal Services	(\$88,827)
All Other	(106,963)
Total	<u>(\$195,790)</u>

**HUMAN SERVICES, DEPARTMENT OF**

2 **Family Independence, Bureau of**

4 New Initiative: Appropriates funds resulting from the transfer  
6 of certain administrative responsibilities for the elderly  
8 low-cost drug program from the Department of Administrative and  
10 Financial Services, Bureau of Revenue Services to the Department  
of Human Services, Bureau of Family Independence effective  
January 1, 2003. The funds for this program may not lapse but  
must be carried forward to be used for the same purpose.

12	<b>General Fund</b>	<b>2002-03</b>
12	Positions - Legislative Count	(3.0)
14	Positions - FTE Count	(3.0)
14	Personal Services	\$88,827
16	All Other	106,963
18	Total	<hr/> \$195,790

20 **Sec. 6. Effective date.** This Act takes effect January 1, 2003.

22 **SUMMARY**

24 This bill transfers the responsibility for determining  
26 eligibility for the low-cost drug program from the Department of  
Administrative and Financial Services, Bureau of Revenue Services  
28 to the Department of Human Services, Bureau of Family  
Independence in order to better coordinate the program with the  
Healthy Maine Prescription Program and the Maine Rx Program.  
30 Transfer of the program would be completed by January 1, 2003.