

# MAINE STATE LEGISLATURE

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A.O.S.

L.D. 554

DATE: 5-19-03

(Filing No. S-204)

**HEALTH AND HUMAN SERVICES**

Reported by: Majority

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**STATE OF MAINE  
SENATE  
121ST LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 194, L.D. 554, Bill, "An Act To Protect Against Unfair Prescription Drug Practices"

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

Sec. 1. 22 MRSA c. 603, sub-c. 4 is enacted to read:

**SUBCHAPTER 4**

**PRESCRIPTION DRUG PRACTICES**

**§2699. Prescription drug practices**

Pharmacy benefits managers shall and contracts for pharmacy benefits management must comply with the requirements of this section.

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Covered entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan or health maintenance organization licensed pursuant to Title 24 or 24-A; a health program administered by the department or the State in the capacity of provider of health coverage; or an employer, labor union or other group of persons

**COMMITTEE AMENDMENT**

R.O.S.

COMMITTEE AMENDMENT "A" to S.P. 194, L.D. 554

2 organized in the State that provides health coverage to  
3 covered individuals who are employed or reside in the  
4 State. "Covered entity" does not include a health plan that  
5 provides coverage only for accidental injury, specified  
6 disease, hospital indemnity, Medicare supplement, disability  
7 income, long-term care or other limited benefit health  
8 insurance policies and contracts.

9  
10 B. "Covered individual" means a member, participant,  
11 enrollee, contract holder or policy holder or beneficiary of  
12 a covered entity who is provided health coverage by the  
13 covered entity. "Covered individual" includes a dependent  
14 or other person provided health coverage through a policy,  
15 contract or plan for a covered individual.

16 C. "Generic drug" means a chemically equivalent copy of a  
17 brand-name drug with an expired patent.

18  
19 D. "Labeler" means an entity or person that receives  
20 prescription drugs from a manufacturer or wholesaler and  
21 repackages those drugs for later retail sale and that has a  
22 labeler code from the federal Food and Drug Administration  
23 under 21 Code of Federal Regulations, 270.20 (1999).

24  
25 E. "Pharmacy benefits management" means the procurement of  
26 prescription drugs at a negotiated rate for dispensation  
27 within this State to covered individuals, the administration  
28 or management of prescription drug benefits provided by a  
29 covered entity for the benefit of covered individuals or any  
30 of the following services provided with regard to the  
31 administration of pharmacy benefits:

32 (1) Mail service pharmacy;

33 (2) Claims processing, retail network management and  
34 payment of claims to pharmacies for prescription drugs  
35 dispensed to covered individuals;

36 (3) Clinical formulary development and management  
37 services;

38 (4) Rebate contracting and administration;

39 (5) Certain patient compliance, therapeutic  
40 intervention and generic substitution programs; and

41 (6) Disease management programs.

42  
43 F. "Pharmacy benefits manager" means an entity that  
44 performs pharmacy benefits management. "Pharmacy benefits  
45 management" means the procurement of prescription drugs at a  
46 negotiated rate for dispensation within this State to covered  
47 individuals, the administration or management of prescription  
48 drug benefits provided by a covered entity for the benefit of  
49 covered individuals or any of the following services provided  
50 with regard to the administration of pharmacy benefits:

manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes mail service pharmacy.

**2. Required practices.** A pharmacy benefits manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law.

A. A pharmacy benefits manager shall perform its duties with care, skill, prudence and diligence and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like character and with like aims.

B. A pharmacy benefits manager shall discharge its duties with respect to the covered entity for the primary purpose of providing benefits to covered individuals and defraying reasonable expenses of administering health plans.

C. A pharmacy benefits manager shall notify the covered entity in writing of any activity, policy or practice of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the duties imposed by this subsection.

D. A pharmacy benefits manager shall provide to a covered entity all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity. A pharmacy benefits manager providing information under this paragraph may designate that material as confidential. Information designated as confidential by a pharmacy benefits manager and provided to a covered entity under this paragraph may not be disclosed by the covered entity to any person without the consent of the pharmacy benefits manager, except that disclosure may be made in a court filing under the Maine Unfair Trade Practices Act or when authorized by that Act or ordered by a court of this State for good cause shown.

E. With regard to the dispensation of a substitute prescription drug for a prescribed drug to a covered individual the following provisions apply.

(1) The pharmacy benefits manager may substitute a lower-priced generic and therapeutically equivalent drug for a higher-priced prescribed drug.



COMMITTEE AMENDMENT "A" to S.P. 194, L.D. 554

H. of S.

- 2           1. It removes references to the Employee Retirement Income  
Security Act of 1974.
- 4
- 6           2. It removes the requirement that payments to the pharmacy  
benefits manager based on volume of sales be passed on to the  
covered individual and retains the requirement that they be  
8           passed on to covered entities.
- 10          3. It clarifies the procedural requirements for  
substituting a different drug for a prescribed drug.
- 12
- 14          4. It removes the fiduciary relationship between the  
pharmacy benefits manager and persons served by a covered entity.

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**FISCAL NOTE REQUIRED**  
(See attached)

**COMMITTEE AMENDMENT**



**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 554**

**An Act to Protect Against Unfair Prescription Drug Practices**

**LR 1315(02)**

**Fiscal Note for Bill as Amended by Committee Amendment "A" S-204**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

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**Fiscal Note**

Minor cost increase - General Fund

Minor revenue increase - General Fund

**Correctional and Judicial Impact Statements:**

Establishes a new violation of the Maine Unfair Trade Practices Act.

**Fiscal Detail and Notes**

Any additional costs to the office of the Attorney General can be absorbed utilizing existing budgeted resources.