

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1634

S.P. 590

In Senate, June 11, 2003

An Act To Improve the Maine Rx Program

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 TREAT of Kennebec. (GOVERNOR'S BILL)
Cosponsored by Representative KANE of Saco and
Senators: BRENNAN of Cumberland, MAYO of Sagadahoc, TURNER of Cumberland,
Representatives: LEMOINE of Old Orchard Beach, RICHARDSON of Brunswick.

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

4 **Sec. 1. 22 MRSA c. 603, sub-c. 1** is amended by repealing the
subchapter headnote and enacting the following in its place:

6 **SUBCHAPTER 1**

8 **MAINE RX PLUS PROGRAM**

10 **Sec. 2. 22 MRSA §2681**, as amended by PL 2001, c. 358, Pt. Q,
12 §6 and c. 405, §2 and affected by §3, is further amended by
repealing the section headnote and enacting the following in its
14 place:

16 **§2681. Maine Rx Plus Program established**

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

20 The Maine Rx Plus Program, referred to in this subchapter as
the "program," is established to reduce prescription drug prices
22 and to improve the quality of health care for residents of the
State. The program is ~~designed for the State to administered by~~
24 the department and must utilize manufacturer rebates and pharmacy
discounts to reduce prescription drug prices. ~~In implementing~~
26 ~~the program, the State shall serve as a pharmacy benefit manager~~
~~in establishing rebates and discounts on behalf of qualified~~
28 ~~residents.~~

30 **Sec. 4. 22 MRSA §2681, sub-§§1, 2, 4, 5 and 6**, as enacted by PL
1999, c. 786, Pt. A, §3, are amended to read:

32 **1. Program goals.** The Legislature finds that affordability
34 is critical in providing access to prescription drugs for Maine
residents. This subchapter is enacted by the Legislature to
36 enable the State to ~~act as a pharmacy benefit manager in order~~
take steps to make prescription drugs more affordable for
38 qualified Maine residents, thereby increasing the overall health
of Maine residents, promoting healthy communities and protecting
40 the public health and welfare, and to integrate the program as
part of any statewide program for the uninsured. It is not the
42 intention of the State to discourage employers from offering or
paying for prescription drug benefits for their employees or to
44 replace employer-sponsored prescription drug benefit plans that
provide benefits comparable to those made available to qualified
46 Maine residents under this subchapter.

48 **2. Definitions.** As used in this subchapter, unless the
context otherwise indicates, the following terms have the
50 following meanings.

2 A. "Average wholesale price" means the wholesale price
4 charged on a specific commodity that is assigned by the drug
6 manufacturer and is listed in a nationally recognized drug
8 pricing file.

10 A-1. "Covered drugs" means drugs that are on the MaineCare
12 preferred drug list established and revised from time to
14 time by the department pursuant to its authority to operate
16 the MaineCare program.

18 B. "Initial discounted price" ~~for a drug means a price that
20 is less than or equal to the average wholesale price, minus
22 6%, plus the dispensing fee provided under the Medicaid
24 program under this Title~~ the price the department pays
26 MaineCare participating retail pharmacies for that drug for
28 MaineCare members.

30 C. "Labeler" means an entity or person that receives
32 prescription drugs from a manufacturer or wholesaler and
34 repackages those drugs for later retail sale and that has a
36 labeler code from the federal Food and Drug Administration
38 under 21 Code of Federal Regulations, 207.20 (1999).

40 D. "Participating retail pharmacy" or "retail pharmacy"
42 means a retail pharmacy located in this State, or another
44 business licensed to dispense prescription drugs in this
46 State, that participates in the program ~~and that provides
discounted prices to residents as provided in subsection 5.~~

48 E. ~~"Pharmacy benefit manager" means an entity that procures
prescription drugs at a negotiated rate under a contract.~~

F. "Qualified resident" means a resident of the State who
has ~~obtained from the department a Maine Rx enrollment card~~
a family income equal to or less than 350% of the federal
poverty level and who is enrolled in the program.
"Qualified resident" also means a resident of the State
whose family incurs unreimbursed expenses for prescription
drugs that equal 5% or more of family income or whose total
unreimbursed medical expenses equal 15% or more of family
income. For purposes of this paragraph, the cost of drugs
provided under this subchapter is considered an expense
incurred by the family for eligibility determination
purposes.

G. "Secondary discounted price" means ~~a price that is equal
to or less than the initial discounted price minus the
amount of any rebate paid by the State to the participating~~

2 ~~retail--pharmacy~~ the initial discounted price minus any
3 further discounts paid for out of the fund.

4 **4. Rebate amount.** The commissioner shall negotiate the
5 amount of the rebate required from a manufacturer or labeler in
6 accordance with this subsection.

8 A. The commissioner shall take into consideration the
9 rebate calculated under the Medicaid Rebate Program pursuant
10 to 42 United States Code, Section 1396r-8, the average
11 wholesale price of prescription drugs and any other
12 information on prescription drug prices and price discounts.

14 B. The commissioner shall use the commissioner's best
15 efforts to obtain an initial rebate amount equal to or
16 greater than the rebate calculated under the Medicaid
17 MaineCare program pursuant to 42 United States Code, Section
18 1396r-8.

20 C. With respect to the rebate taking effect no later than
21 October 1, ~~2001~~ 2004, the commissioner shall use the
22 commissioner's best efforts to obtain an amount equal to or
23 greater than the amount of any discount, rebate or price
24 reduction for prescription drugs provided to the Federal
25 Government.

26 **5. Discounted prices for qualified residents.** Any Each
27 participating retail pharmacy ~~that--sells--prescription--drugs~~
28 ~~covered--by--a--rebate--agreement--pursuant--to--subsection--3--shall~~
29 ~~discount--the--retail--price--of--those--drugs--sold--to--qualified~~
30 ~~residents~~ shall sell covered drugs to qualified residents at the
31 lower of the initial discounted price and the secondary
32 discounted price as such prices are determined by the department
33 pursuant to this subchapter.

34 A. The department shall establish discounted prices for
35 drugs covered by a rebate agreement and shall promote the
36 use of efficacious and reduced-cost drugs, taking into
37 consideration reduced prices for state and federally capped
38 drug programs, differential dispensing fees, administrative
39 overhead and incentive payments.

40 B. Beginning January 1, ~~2001~~ 2004, a participating retail
41 pharmacy shall offer the initial discounted price.

42 C. No later than October 1, ~~2001~~ 2004, a participating
43 retail pharmacy shall offer the secondary discounted price
44 if available.

2 ~~D. In determining the amount of discounted prices, the~~
3 ~~department shall consider an average of all rebates provided~~
4 ~~pursuant to subsection 4, weighted by sales of drugs subject~~
5 ~~to these rebates over the most recent 12-month period for~~
6 ~~which the information is available.~~

7 **6. Operation of program.** The requirements of this
8 subsection apply to participating retail pharmacies.

10 A. The Maine Board of Pharmacy shall adopt rules requiring
11 disclosure by participating retail pharmacies to qualified
12 residents of the amount of savings provided as a result of
13 the program. The rules must consider and protect
14 information that is proprietary in nature. Rules adopted
15 pursuant to this paragraph are routine technical rules as
16 defined in Title 5, chapter 375, subchapter ~~II~~-A 2-A.

18 B. The department may not impose transaction charges under
19 this program on retail pharmacies that submit claims or
20 receive payments under the program.

22 C. A participating retail pharmacy shall submit claims to
23 the department to verify the amount charged to qualified
24 residents under subsection 5.

26 D. On a weekly or biweekly basis, the department must
27 reimburse a participating retail pharmacy for the difference
28 between the initial discounted price and the secondary
29 discounted prices price provided to qualified residents
30 under subsection 5 ~~and professional fees, which must be set~~
31 ~~by the commissioner. The amount of the initial professional~~
32 ~~fee must be set at \$3 per prescription.~~

34 ~~E. The department shall collect utilization data from the~~
35 ~~participating retail pharmacies submitting claims necessary~~
36 ~~to calculate the amount of the rebate from the manufacturer~~
37 ~~or labeler. The department shall protect the~~
38 ~~confidentiality of all information subject to~~
39 ~~confidentiality protection under state or federal law, rule~~
40 ~~or regulation.~~

42 F. The department shall conduct ongoing quality assurance
43 activities similar to those used in the MaineCare program.

44 **Sec. 5. 22 MRSA §2681, sub-§7**, as enacted by PL 1999, c. 786,
45 Pt. A, §3 and amended by PL 2001, c. 405, §2 and affected by §3,
46 is repealed and the following enacted in its place:

48 **7. Action with regard to nonparticipating manufacturers and**
49 **labelers.** The names of manufacturers and labelers who do not

2 enter into rebate agreements pursuant to this subchapter are
3 public information. The department shall release this
4 information to health care providers and the public. The
5 department shall impose prior authorization requirements in the
6 MaineCare program, as permitted by law, to the extent the
7 department determines it is appropriate to do so in order to
8 encourage manufacturer and labeler participation in the program
9 and so long as the additional prior authorization requirements
10 remain consistent with the goals of the MaineCare program and the
11 requirements of the federal Social Security Act, Title 19.

12 This subsection is repealed when subsection 7-A takes effect.

14 **Sec. 6. 22 MRSA §2681, sub-§7-A** is enacted to read:

16 **7-A. Action with regard to nonparticipating manufacturers**
17 **and labelers.** The names of manufacturers and labelers who do and
18 do not enter into rebate agreements pursuant to this subchapter
19 are public information. The department shall release this
20 information to health care providers and the public on a regular
21 basis and shall publicize participation by manufacturers and
22 labelers that is of particular benefit to the public. The
23 department shall impose prior authorization requirements in the
24 MaineCare program, as permitted by law, to the extent the
25 department determines it is appropriate to do so in order to
26 encourage manufacturer and labeler participation in the program
27 and so long as the additional prior authorization requirements
28 remain consistent with the goals of the MaineCare program and the
29 requirements of the federal Social Security Act, Title 19.

30 This subsection takes effect on the date that the department
31 begins offering prescription drug benefits under the program.

34 **Sec. 7. 22 MRSA §2681, sub-§8,** as enacted by PL 1999, c. 786,
35 Pt. A, §3, is repealed.

36 **Sec. 8. 22 MRSA §2681, sub-§9,** as amended by PL 2001, c. 358,
37 Pt. Q, §6, is amended to read:

40 **9. Dedicated fund.** The Maine Rx Plus Dedicated Fund,
41 referred to in this section as the "fund," is established to
42 receive revenue from manufacturers and labelers who pay rebates
43 as provided in subsection 4 and any appropriations or allocations
44 designated for the fund. The purposes of the fund are to:
45 reimburse retail pharmacies for discounted prices provided to
46 qualified residents pursuant to subsection 5; to reimburse the
47 department for contracted services including pharmacy claims
48 processing fees, administrative and associated computer costs,
49 ~~professional fees paid to participating retail pharmacies~~ and
50 other reasonable program costs; and to benefit the elderly

low-cost drug program under section 254. The fund is a
2 nonlapsing dedicated fund. Interest on fund balances accrues to
the fund. Surplus funds in the fund must be used for the benefit
4 of the program. Notwithstanding Title 5, section 1585, surplus
funds may also be transferred to the elderly low-cost drug
6 program established under section 254.

8 **Sec. 9. 22 MRSA §2682**, as amended by PL 2001, c. 471, Pt. E,
§§5 to 7 and affected by §8, is further amended by repealing the
10 section headnote and enacting the following in its place:

12 **§2682. Display of Maine Rx Plus Program participation information**

14 **Sec. 10. 22 MRSA §2693, sub-§1, ¶¶A and B**, as enacted by PL
1999, c. 786, Pt. A, §3, are amended to read:

16 A. By July 1, 2002 2005, the department shall adopt rules
18 establishing the procedures for adoption and periodic review
of maximum retail prices, the procedures for establishing
20 maximum retail prices for new prescription drugs and for
reviewing maximum retail prices of selected drugs and the
22 procedures for phasing out or terminating maximum retail
prices. Prior to adopting rules pursuant to this paragraph,
24 the commissioner shall consult with and consider the
recommendations of the commission regarding the rules.

26 B. By January 5, 2003 2006, the commissioner shall
28 determine whether the cost of prescription drugs provided to
qualified residents under the Maine Rx Plus Program pursuant
30 to subchapter 1 is reasonably comparable to the lowest
cost paid for the same drugs delivered or dispensed in the
32 State. In making this determination the following
provisions apply.

34 (1) The commissioner shall review prescription drug
36 use in the ~~Medicaid~~ MaineCare program using data from
the most recent 6-month period for which data is
38 available.

40 (2) Using the data reviewed in subparagraph (1), the
commissioner shall determine the 100 drugs for which
42 the most units were provided and the 100 drugs for
which the total cost was the highest.

44 (3) For each prescription drug listed in subparagraph
46 (2), the commissioner shall determine the cost for each
drug for qualified residents who are provided those
48 drugs under the Maine Rx Plus Program on a certain
date. The average cost for each such drug must be
50 calculated.

2 (4) For each prescription drug listed in subparagraph
4 (2), the commissioner shall determine the lowest cost
6 for each drug paid by any purchaser on the date that is
8 used for subparagraph (3) delivered or dispensed in the
10 State, taking into consideration the federal supply
schedule and prices paid by pharmaceutical benefits
managers and by large purchasers and excluding drugs
purchased through the Maine Rx Plus Program. The
average cost for each such drug must be calculated.

12 (5) If the average cost for one or more prescription
14 drugs under the Maine Rx Plus Program as determined in
16 subparagraph (3) is not reasonably comparable to the
18 average lowest cost for the same drug or drugs as
20 determined in subparagraph (4), the commissioner shall
establish maximum retail prices for any or all
prescription drugs sold in the State. Maximum
prescription drug prices established under this
subparagraph must take effect July 1, ~~2003~~ 2006.

22 **Sec. 11. PL 2001, c. 405, §3** is amended to read:

24 **Sec. 3. Effective date.** This Act takes effect on the date that
26 the Department of Human Services begins offering prescription
28 drug benefits under the Maine Rx Plus Program as ~~defined~~
established in the Maine Revised Statutes, Title 22, section 2681.

30 **Sec. 12. Appropriations and allocations.** The following
appropriations and allocations are made.

32 **HUMAN SERVICES, DEPARTMENT OF**

34 **Maine Rx Plus Program**

36 Initiative: Appropriates funds for the following unfunded
38 positions for which a position count has already been
40 established: one Social Services Program Manager position, one
42 Comprehensive Health Planner II position, one Financial Analyst
44 position, one Senior Medical Claims Adjuster position and 2 Clerk
Typist III positions. It also appropriates funds for necessary
operating costs, including outreach activities, claims management
services and for costs associated with the issuance of
prescription cards.

46 General Fund	2003-04	2004-05
48 Personal Services	\$172,022	\$344,044
All Other	627,978	1,655,956

2	General Fund Total	\$800,000	\$2,000,000
4	HUMAN SERVICES, DEPARTMENT OF DEPARTMENT TOTALS	2003-04	2004-05
6	GENERAL FUND	\$800,000	\$2,000,000
8	DEPARTMENT TOTAL - ALL FUNDS	\$800,000	\$2,000,000

10 **PROFESSIONAL AND FINANCIAL
REGULATION, DEPARTMENT OF**

12 **Licensing and Enforcement**

14 Initiative: Provides for the appropriation of funds for the
16 costs associated with the Maine Board of Pharmacy to adopt rules
18 associated with the Maine Rx Plus Program.

20	General Fund	2003-04	2004-05
	All Other	\$0	\$2,500
22	General Fund Total	\$0	\$2,500

24 **PROFESSIONAL AND FINANCIAL
REGULATION, DEPARTMENT OF
DEPARTMENT TOTALS**

26		2003-04	2004-05
28	GENERAL FUND	\$0	\$2,500
30	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$2,500
32	SECTION TOTALS - ALL FUNDS	\$800,000	\$2,002,500

34 **SUMMARY**

36 This bill changes the name of the Maine Rx Program to the
38 Maine Rx Plus Program. It defines "covered drugs" in the Maine
40 Rx Plus Program to mean drugs that are on the MaineCare preferred
42 drug list established by the Department of Human Services. It
44 changes the definition of "qualified resident" for the Maine Rx
46 Plus Program to mean a resident of the State who has a family
48 income equal to or less than 350% of the federal poverty level
50 who is enrolled in the program. "Qualified resident" also means
a resident of the State whose family incurs unreimbursed expenses
for prescription drugs that equal 5% or more of family income or
whose total unreimbursed medical expenses equal 15% or more of
family income. It changes the definition of "initial discounted
price" and specifies the price at which a participating retail
pharmacy shall sell covered drugs to a

2 qualified resident. It directs the Department of Human Services
to conduct ongoing quality assurance activities similar to those
4 used in the MaineCare program. It changes dates for certain
activities to be undertaken in connection with the Maine Rx Plus
6 Program. It appropriates funds for unfunded positions for which
a position count has already been established and for necessary
operating costs in connection with the Maine Rx Plus Program. It
8 also appropriates funds for the costs associated with the
adoption of rules associated with the Maine Rx Plus Program by
10 the Maine Board of Pharmacy.