

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1539

S.P. 534

In Senate, April 4, 2005

An Act Pertaining to Reporting of Prescription Drug Advertising Costs

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 BRENNAN of Cumberland.
Cosponsored by Representative FISCHER of Presque Isle and
Senators: BROMLEY of Cumberland, WESTON of Waldo, Representatives: BOWLES of
Sanford, CURLEY of Scarborough, MILLS of Farmington.

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

2
4 **Sec. 1. 22 MRSA §2698-A, sub-§§3, 4 and 6**, as amended by PL 2003, c. 688, Pt. C, §8, are further amended to read:

6 **3. Manner of reporting.** Beginning in ~~2006~~ 2007, by July
8 1st each year, a manufacturer or labeler of prescription drugs
10 that directly or indirectly distributes prescription drugs for
12 dispensation to residents of this State shall file a report with
14 the department in the form and manner provided by the
department. The report must be accompanied by payment of a fee,
as set by the department in rule, to support the work of the
department under this section.

16 **4. Content of annual report by manufacturer or labeler.**
The annual report filed under subsection 3 must include the
18 following information for each calendar year, beginning with
20 calendar year ~~2005~~ 2006, as it pertains to marketing activities
conducted within this State in a form that provides the value,
nature, purpose and recipient of the expense:

22 A. All expenses associated with advertising, marketing and
24 direct promotion of prescription drugs through radio,
television, magazines, newspapers, direct mail and telephone
26 communications as they pertain to residents of this State,
except for expenses associated with advertising purchased
28 for a regional or national market that includes advertising
within the State;

30 B. With regard to all persons and entities licensed to
32 provide health care in this State, including health care
professionals and persons employed by them in this State,
34 carriers licensed under Title 24 or Title 24-A, health plans
and benefits managers, pharmacies, hospitals, nursing
36 facilities, clinics and other entities licensed to provide
health care under this Title, the following information:

38 (1) All expenses associated with educational or
40 informational programs, materials and seminars and
remuneration for promoting or participating in
42 educational or informational sessions, regardless of
whether the manufacturer or labeler provides the
44 educational or informational sessions or materials;

46 (2) All expenses associated with food, entertainment,
gifts valued at more than \$25 and anything provided to
48 a health care professional for less than market value;

50 (3) All expenses associated with trips and travel; and

2 (4) All expenses associated with product samples,
except for samples that will be distributed free of
charge to patients; and

4
6 C. The aggregate cost of all employees or contractors of
the manufacturer or labeler who directly or indirectly
engage in the advertising or promotional activities listed
8 in paragraphs A and B, including all forms of payment to
those employees. The cost reported under this paragraph
10 must reflect only that portion of payment to employees or
contractors that pertains to activities within this State or
12 to recipients of the advertising or promotional activities
who are residents of or are employed in this State.

14
16 **6. Department reports.** Beginning in ~~2006~~ 2007, by November
30th each year, the department shall provide an annual report,
providing information in aggregate form, on prescription drug
18 marketing expenses to the Legislature and the Attorney General.
By January 1, ~~2007~~ 2008 and every 2 years after that date, the
20 department shall provide a report to the Legislature and the
Attorney General, providing information in aggregate form,
22 containing an analysis of the data submitted to the department,
including the scope of prescription drug marketing activities and
24 expenses and their effect on the cost, utilization and delivery
of health care services and any recommendations with regard to
26 marketing activities of prescription drug manufacturers and
labelers.

28
30 **Sec. 2. 22 MRSA §2698-A, sub-§7**, as reallocated by RR 2003, c.
1, §17 and affected by §18, is amended to read:

32 **7. Confidentiality; public information.** Notwithstanding
any provision of law to the contrary, information submitted to
34 the department pursuant to this section is confidential and is
not a public record as defined in Title 1, section 402,
36 subsection 3. Disclosure may be made by the department to an
entity providing services to the department under this section;
38 however, that disclosure does not change the confidential status
of the information. Data compiled in aggregate form by the
40 department for the purposes of reporting required by this section
is a public record as defined in Title 1, section 402, subsection
42 3, as long as it does not reveal trade information that is
protected by state or federal law.

44
46 **SUMMARY**

48 This bill delays implementation of the deadline for filing
reports regarding marketing activities by pharmaceutical
50 manufacturers.

2 The bill also clarifies that the Department of Health and
Human Services may disclose that information to an entity that
4 provides services to the department under the laws requiring
those reports, but specifies that such disclosure does not change
6 the confidential status of the information.