122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document **No. 1541**

S.P. 536 In Senate, April 4, 2005

An Act Pertaining to Disclosure of Prescription Drug Prices

(EMERGENCY)

Reference to the Committee on Health and Human Services suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator WESTON of Waldo.
Cosponsored by Representative CROSBY of Topsham and
Senators: ROSEN of Hancock, SNOWE-MELLO of Androscoggin, WOODCOCK of Franklin.

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 121st Legislature in the Second Special Session enacted legislation requiring pharmaceutical manufacturers to report certain pricing information to the Department of Health and Human Services; and

Whereas, certain provisions of those reporting requirements require clarification or are duplicative of data otherwise available to the department; and

Whereas, clarification of those provisions is necessary in advance of the first reporting deadline of April 2005; and

Whereas, the reportable information constitutes trade secrets, and the existing confidentiality protection afforded to the reported information is not adequate; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §2698-B, sub-§1, as enacted by PL 2003, c. 667, §1 and affected by §2, is amended to read:

1. Quarterly report. A manufacturer of prescription drugs dispensed in this State under a health program directed or administered by the State shall, on a quarterly basis, report by National Drug Code the following pharmaceutical pricing criteria to the commissioner for each of its drugs:

~~A. The average wholesale price;~~

~~B. The wholesale acquisition cost;~~

C. The average manufacturer price as defined in 42 United States Code, Section 1396r-8(k); and

D. The best price as defined in 42 United States Code, Section 1396r-8(c)(1)(C).

The pricing information required under this section is for drugs defined under the Medicaid drug rebate program and must be submitted to the commissioner following its submission to the

Federal Government in accordance with 42 United States Code, Section 1396r-8(b)(3).

Sec. 2. 22 MRSA §2698-B, sub-§§2 and 3, as enacted by PL 2003, c. 667, §1 and affected by §2, are repealed.

Sec. 3. 22 MRSA §2698-B, sub-§4, as enacted by PL 2003, c. 667, §1 and affected by §2, is amended to read:

4. Certification. When a manufacturer of prescription drugs dispensed in this State reports the ~~average--wholesale price, wholesale acquisition cost,~~ average manufacturer price or best price, ~~the president or chief executive officer~~ an officer of the manufacturer or officer's delegate responsible for reporting Medicaid drug pricing information to the Federal Government shall certify to the department, on a form provided by the commissioner, that the reported prices ~~are accurate~~ are the same as those reported to the Federal Government as required by 42 United States Code, Section 1396r-8(b)(3) for the applicable rebate period.

Sec. 4. 22 MRSA §2698-B, sub-§5, as enacted by PL 2003, c. 667, §1 and affected by §2, is repealed and the following enacted in its place:

5. Confidentiality; public information. Notwithstanding any provision of law to the contrary, information submitted to the department pursuant to this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3. Disclosure may be made by the department to an entity providing services to the department under this section; however, that disclosure does not change the confidential status of the information. The information may be used by the entity only for the purpose specified by the department in its contract with the entity. Data compiled in aggregate form by the department for the purposes of reporting required by this section is a public record as defined in Title 1, section 402, subsection 3, as long as it does not reveal trade information that is protected by state or federal law.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

SUMMARY

This bill limits the pricing information that a manufacturer must report to the Department of Health and Human Services to average manufacturer price and best price as defined by federal law. It eliminates the instructions on calculating

other pharmaceutical pricing information and the requirement to describe the methodology for calculating pricing information that is reported to the department. The bill also modifies the certification provisions and strengthens the confidentiality protection afforded to the reported information.