

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1339

H.P. 940

House of Representatives, March 31, 2009

An Act To Improve Oversight of Pharmaceutical Purchasing

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TREAT of Hallowell.
Cosponsored by Senator ALFOND of Cumberland and
Representatives: BUTTERFIELD of Bangor, CAIN of Orono, CONNOR of Kennebunk, HILL
of York, MARTIN of Eagle Lake, PERRY of Calais, WEBSTER of Freeport, Senator:
CRAVEN of Androscoggin.

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

2 **Sec. 1. 22 MRSA §2699, sub-§1, ¶C-1** is enacted to read:

3 C-1. "Individually identifying information" means information derived from or
4 relating to a prescription for a prescribed product that directly or indirectly identifies
5 a patient or a prescriber.

6 **Sec. 2. 22 MRSA §2699, sub-§1, ¶D-1** is enacted to read:

7 D-1. "Marketing" means any activity of a pharmacy benefits manager, alone or in
8 collaboration with a company making or selling prescribed products, that is intended
9 to influence prescribing or purchasing choices, including but not limited to:

10 (1) Advertising, publicizing, promoting or sharing information about a
11 prescribed product;

12 (2) Identifying individuals to receive a message promoting use of a prescribed
13 product, including but not limited to an advertisement, brochure or contact by a
14 sales representative;

15 (3) Planning the substance of a sales representative visit or communication or the
16 substance of an advertisement or other promotional message or document;

17 (4) Evaluating or compensating sales representatives;

18 (5) Identifying individuals to receive any form of gift, prescribed product
19 sample, consultancy or other item, service, compensation or employment of
20 value; and

21 (6) Advertising or promoting prescribed products directly to patients, including
22 through refill reminders or information about alternative prescribed products.

23 **Sec. 3. 22 MRSA §2699, sub-§1, ¶G** is enacted to read:

24 G. "Prescriber" has the same meaning as in section 1711-E, subsection 1, paragraph
25 G-1.

26 **Sec. 4. 22 MRSA §2699, sub-§6** is enacted to read:

27 **6. Registration with Bureau of Insurance.** A pharmacy benefits manager may not
28 enter into a contract with a covered entity for pharmacy benefits management in this State
29 unless the pharmacy benefits manager registers with the Department of Professional and
30 Financial Regulation, Bureau of Insurance on a form and in a manner prescribed by the
31 Bureau of Insurance. The Bureau of Insurance shall establish a registration fee. Fees
32 collected under this subsection must fund the costs of registration and enforcement of this
33 section by the Attorney General.

34 **Sec. 5. 22 MRSA §2699, sub-§8** is enacted to read:

35 **8. Compliance; audits.** The State Auditor shall work with the Department of
36 Administrative and Financial Services, Bureau of General Services and other state
37 agencies, including, but not limited to, state employees, teachers and the Maine Turnpike

1 Authority, that purchase prescription drugs to ensure compliance of a pharmacy benefits
2 manager with the requirements of this section. The State Auditor shall develop
3 appropriate audit procedures to be used by the State to determine if a pharmacy benefits
4 manager and a pharmacy benefits management contract entered into by the State meets
5 the requirements of this section and other laws applicable to pharmacy benefits.

6 **Sec. 6. 22 MRSA §2699, sub-§9** is enacted to read:

7 **9. Privacy protections.** The following provisions apply to the release of records
8 containing individually identifying information.

9 A. In addition to the disclosure and privacy provisions of the federal Health
10 Insurance Portability and Accountability Act of 1996, 42 United States Code, Section
11 1301 et seq., a pharmacy benefits manager may not knowingly disclose or use records
12 containing individually identifying information for marketing a prescribed product to
13 a patient or prescriber.

14 B. A record containing individually identifying information may be transferred to
15 another entity, including to another branch or subsidiary of the same firm, only if
16 there is satisfactory assurance that the recipient will safeguard the records from being
17 disclosed or used in the State for a marketing purpose prohibited under this section.

18 C. Records containing individually identifying information may be disclosed, sold,
19 transferred, exchanged or used for nonmarketing purposes.

20 D. This section does not prohibit conduct involving the collection, use, transfer or
21 sale of records for marketing purposes if:

22 (1) The data in the records is aggregated;

23 (2) The data in the records does not contain individually identifying information;
24 and

25 (3) There is no reasonable basis for the belief that the data in the records can be
26 used to obtain individually identifying information.

27 E. This section may not prevent a person from disclosing records to the identified
28 individual as long as the information does not include individually identifying
29 information pertaining to another person.

30 SUMMARY

31 This bill requires pharmacy benefits managers to register with the Department of
32 Professional and Financial Regulation, Bureau of Insurance before entering into any
33 contracts for pharmacy benefits management in the State. The bill also sets forth
34 standards for audits conducted by pharmacy benefits managers. The bill requires the
35 State Auditor to develop audit procedures to ensure state agencies that have pharmacy
36 benefits management contracts are compliant with state law relating to pharmacy benefits
37 management and prescription drug rebates. The bill also expands the privacy provisions
38 applicable to pharmacy benefits managers to ensure that patient prescription information,
39 even deidentified information, is not used directly by the pharmacy benefits manager or

1 sold by or transferred to others for use in pharmaceutical marketing or by insurance
2 companies in making benefits decisions.