

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1615

H.P. 1143

House of Representatives, December 23, 2009

**An Act To Reimburse Pharmacies under the MaineCare Program
Based on Wholesale Acquisition Costs**

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LEWIN of Eliot.
Cosponsored by Senator RAYE of Washington and
Representatives: CURTIS of Madison, EVES of North Berwick, JOHNSON of Greenville,
Speaker PINGREE of North Haven; STRANG BURGESS of Cumberland, SYKES of
Harrison, Senators: COURTNEY of York, SHERMAN of Aroostook.

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

3 **Whereas,** the adequate reimbursement of pharmacies for dispensing prescription
4 drugs under the MaineCare program is critical to the financial stability of the pharmacies;
5 and

6 **Whereas,** as a result of the settlement of litigation in the First DataBank and
7 MediSpan case in which First DataBank and MediSpan were ordered to reduce the
8 average wholesale price used in determining pharmacy reimbursement beginning
9 September 26, 2009 in the federal Medicaid program, pharmacy reimbursement will be
10 suddenly reduced, with the possible result of destabilizing the pharmacies of Maine and
11 patient access to pharmacy services; and

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

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

17 **Sec. 1.** 22 MRSA §3174-PP is enacted to read:

18 **§3174-PP. MaineCare pharmacy reimbursement**

19 **1. Definition.** For the purposes of this section, unless the context otherwise
20 indicates, "wholesale acquisition cost" means the cost of a covered brand name or generic
21 prescription drug based on the size of the package from which the drug is dispensed as
22 reported by the prescription drug pricing service used by the department.

23 **2. Reimbursement rate.** The department shall reimburse pharmacies for dispensing
24 brand name and generic prescription drugs covered by the MaineCare program based on a
25 formula that uses the wholesale acquisition cost and that includes a dispensing fee. The
26 formula and pharmacy reimbursement must be calculated using the wholesale acquisition
27 cost plus 6.7% and a dispensing fee of \$3.35 per prescription.

28 **3. Application; retroactivity.** The formula and pharmacy reimbursement required
29 under subsection 2 applies retroactively to reimbursements to pharmacies to cover brand
30 name and generic prescription drugs dispensed under the MaineCare program beginning
31 September 26, 2009.

32 **4. Rulemaking.** The department shall adopt rules to implement this section no later
33 than July 1, 2010. Rules adopted pursuant to this subsection are routine technical rules as
34 defined in Title 5, chapter 375, subchapter 2-A.

35 **Emergency clause.** In view of the emergency cited in the preamble, this
36 legislation takes effect when approved.

SUMMARY

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This bill requires the Department of Health and Human Services to reimburse pharmacies for dispensing covered brand name and generic drugs under the MaineCare program based on a formula that includes calculated wholesale acquisition cost plus 6.7% and a dispensing fee of \$3.35 per prescription and allows the department to adopt routine technical rules. The formula applies to drugs dispensed under the MaineCare program on or after September 26, 2009.