

MAINE STATE LEGISLATURE

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Minority

L.D. 1116

Date: 6/10/11

Minority

(Filing No. H-609)

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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "*B*" to H.P. 828, L.D. 1116, Bill, "An Act To Restore Market-based Competition for Pharmacy Benefits Management Services"

Amend the bill by striking out the title and substituting the following:

'An Act To Protect Pharmacies and Continue Regulation of Pharmacy Benefits Management'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 22 MRSA §2699, sub-§1, ¶¶A-1 and A-2 are enacted to read:

A-1. "Applicable number of calendar days" means:

(1) With respect to claims submitted electronically, 21 days; and

(2) With respect to claims submitted otherwise, 30 days.

A-2. "Clean claim" means a claim that has no defect or impropriety, including a lack of required substantiating documentation, or particular circumstance requiring special treatment that prevents payment within the applicable number of calendar days from being made on the claim under this section.

Sec. 2. 22 MRSA §2699-A is enacted to read:

§2699-A. Processing of clean claims; audits

1. Payment of claims. A pharmacy benefits manager shall pay or deny a clean claim pursuant to this subsection.

A. A pharmacy benefits manager shall pay or deny a clean claim submitted by a pharmacy within the applicable number of calendar days.

A pharmacy benefits manager that fails to pay or deny a clean claim in accordance with this subsection shall pay a penalty to the Department of Professional and Financial Regulation, Bureau of Insurance for the delinquent payment period, which

COMMITTEE AMENDMENT

1 is the period beginning on the 45th day after receipt of the clean claim and ending on
2 the clean claim payment date. The penalty is calculated as follows: the amount of the
3 clean claim payment multiplied by 10% per annum multiplied by the number of days
4 in the delinquent payment period divided by 365.

5 B. A contract entered into by a pharmacy benefits manager with a pharmacy with
6 respect to a prescription drug plan offered by a pharmacy benefits manager must
7 provide that payment be issued, mailed or otherwise transmitted with respect to all
8 clean claims submitted by a pharmacy, other than a pharmacy that dispenses drugs by
9 mail order only or a pharmacy located in, or under contract with, a long-term care
10 facility, within the applicable number of calendar days after the date on which the
11 claim is received. For purposes of this subsection, a claim is considered to have been
12 received:

13 (1) With respect to claims submitted electronically, on the date on which the
14 claim is transferred; and

15 (2) With respect to claims submitted otherwise, on the 5th day after the postmark
16 date of the claim or the date specified in the time stamp of the transmission of the
17 claim.

18 C. If payment is not issued, mailed or otherwise transmitted by the pharmacy
19 benefits manager within the applicable number of calendar days after a clean claim is
20 received, the pharmacy benefits manager shall pay interest to the pharmacy at the rate
21 of 18% per annum.

22 D. A claim is considered to be a clean claim if the pharmacy benefits manager
23 involved does not provide notice to the pharmacy of any deficiency in the claim
24 within 10 days after the date on which an electronically submitted claim is received
25 or within 15 days after the date on which a claim submitted otherwise is received.

26 E. If a pharmacy benefits manager determines that a submitted claim is not a clean
27 claim, the pharmacy benefits manager shall immediately notify the pharmacy of the
28 determination. The notice must specify all defects or improprieties in the claim and
29 list all additional information or documents necessary for the proper processing and
30 payment of the claim. If a pharmacy receives notice from a pharmacy benefits
31 manager that a claim has been determined not to be a clean claim, the pharmacy shall
32 take steps to correct that claim and then resubmit the claim to the pharmacy benefits
33 manager for payment.

34 F. A claim resubmitted to a pharmacy benefits manager with additional information
35 pursuant to paragraph E is considered to be a clean claim if the pharmacy benefits
36 manager does not provide notice to the pharmacy of any defect or impropriety in the
37 claim within 10 days of the date on which additional information is received if the
38 claim is resubmitted electronically or within 15 days of the date on which additional
39 information is received if the claim is resubmitted otherwise.

40 G. A claim submitted to a pharmacy benefits manager that is not paid by the
41 pharmacy benefits manager or contested by the covered entity within the applicable
42 number of calendar days after the date on which the claim is received by the

1 pharmacy benefits manager is considered to be a clean claim and must be paid by the
2 pharmacy benefits manager.

3 H. Payment of a clean claim under this subsection is considered to have been made
4 on the date on which the payment is transferred with respect to claims paid
5 electronically and on the date on which the payment is submitted to the United States
6 Postal Service or a common carrier for delivery with respect to claims paid otherwise.

7 I. A pharmacy benefits manager shall pay all clean claims submitted electronically
8 by electronic transfer of funds if the pharmacy so requests or has so requested
9 previously.

10 J. Beginning October 1, 2015, the Department of Professional and Financial
11 Regulation, Bureau of Insurance shall adopt rules that outline the collection
12 procedures for the outstanding interest from claims under paragraph A. The bureau
13 shall also adopt rules that transfer the remaining interest to the General Fund. Rules
14 adopted pursuant to this paragraph are routine technical rules as defined in Title 5,
15 chapter 375, subchapter 2-A.

16 **2. Exception.** This section does not apply to any medical assistance or public health
17 programs administered by the department, including, but not limited to, the MaineCare
18 program and the elderly low-cost drug program under section 254-D.

19 **3. Adjustment of payments.** Within 24 hours of a price increase notification by a
20 pharmaceutical manufacturer or supplier, a pharmacy benefits manager shall adjust its
21 payments to pharmacists or pharmacies consistent with the price increase.

22 **4. Retroactive denial of claims prohibited.** A claim paid by a pharmacy benefits
23 manager may not be retroactively denied or adjusted after 7 days from payment of the
24 claim except as provided in subsection 5. In no case may an acknowledgement of
25 eligibility be retroactively reversed.

26 **5. Retroactive denial or adjustment allowed.** A pharmacy benefits manager may
27 retroactively deny or adjust a claim if:

- 28 A. The original claim was submitted fraudulently;
- 29 B. The original claim payment was incorrect because the pharmacist or pharmacy
30 was already paid for services rendered; or
- 31 C. The services were not rendered by the pharmacist or pharmacy.

32 **6. Audits.** A pharmacy benefits manager's books and records relating to rebates and
33 other information must be made available for audit by a covered entity or its agent. The
34 auditor shall comply with the following requirements.

- 35 A. A finding of overpayment or underpayment must be based on the actual
36 overpayment or underpayment and not a projection based on the number of patients
37 served having a similar diagnosis or on the number of similar orders or refills for
38 similar drugs.
- 39 B. Calculations of overpayments may not include dispensing fees.
- 40 C. The auditor may not use extrapolation in calculating recoupments or penalties.

1 D. The auditor may not receive payment based on a percentage of the amount
2 recovered.

3 E. Interest may not accrue during the audit period.

4 F. To the extent that an audit results in the identification of any clerical or record-
5 keeping errors in a document or record required by the auditor, the pharmacy is not
6 subject to recoupment of funds by the pharmacy benefits manager unless the
7 pharmacy benefits manager can provide proof of intent to commit fraud or such error
8 results in actual financial harm to the pharmacy benefits manager, a covered entity or
9 a covered individual.

10 **7. Audit information and reports.** A preliminary audit report must be delivered to
11 the pharmacy within 60 days after the conclusion of the audit under subsection 6. A
12 pharmacy must be allowed at least 30 days following receipt of the preliminary audit to
13 provide documentation to address any discrepancy found in the audit. A final audit report
14 must be delivered to the pharmacy within 90 days after receipt of the preliminary audit
15 report or final appeal, whichever is later. A charge-back, recoupment or other penalty
16 may not be assessed until the appeals process established by rule by the Department of
17 Professional and Financial Regulation, Bureau of Insurance has been exhausted and the
18 final report issued. Except as provided by state or federal law, audit information may not
19 be shared. Auditors may have access only to previous audit reports on a particular
20 pharmacy conducted by that same entity. Rules adopted pursuant to this subsection are
21 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **Sec. 3. 24-A MRSA §4301-A, sub-§§14-A and 14-B** are enacted to read:

23 **14-A. Pharmacy benefits management.** "Pharmacy benefits management" means
24 the procurement of prescription drugs at a negotiated rate for dispensation within this
25 State to covered individuals, the administration or management of prescription drug
26 benefits provided by a covered entity for the benefit of covered individuals or any of the
27 following services provided with regard to the administration of pharmacy benefits:

28 A. Mail service pharmacy;

29 B. Claims processing, retail network management and payment of claims to
30 pharmacies for prescription drugs dispensed to covered individuals;

31 C. Clinical formulary development and management services;

32 D. Rebate contracting and administration;

33 E. Certain patient compliance, therapeutic intervention and generic substitution
34 programs; and

35 F. Disease management programs.

36 **14-B. Pharmacy benefits manager.** "Pharmacy benefits manager" means an entity
37 that performs pharmacy benefits management. "Pharmacy benefits manager" includes a
38 person or entity acting for a pharmacy benefits manager in a contractual or employment
39 relationship in the performance of pharmacy benefits management for a covered entity
40 and includes mail service pharmacy.

1 **Sec. 4. 24-A MRSA §4317, sub-§3**, as enacted by PL 2009, c. 519, §1 and
2 affected by §2, is amended to read:

3 **3. Exception.** ~~This section does~~ Subsections 1 and 2 do not apply to any medical
4 assistance or public health programs administered by the Department of Health and
5 Human Services, including, but not limited to, the Medicaid program and the elderly low-
6 cost drug program under Title 22, section 254-D.

7 **Sec. 5. 24-A MRSA §4317, sub-§§4 to 11** is enacted to read:

8 **4. Participation in contracts.** A pharmacy benefits manager may not require a
9 pharmacist or pharmacy to participate in one network in order to participate in another
10 network. The pharmacy benefits manager may not exclude an otherwise qualified
11 pharmacist or pharmacy from participation in one network solely because the pharmacist
12 or pharmacy declined to participate in another network managed by the pharmacy
13 benefits manager.

14 **5. Prohibition.** The written contract between a carrier and a pharmacy benefits
15 manager may not provide that the pharmacist or pharmacy is responsible for the actions
16 of the insurer or a pharmacy benefits manager.

17 **6. Pharmacy benefits manager duties.** All contracts must provide that, when the
18 pharmacy benefits manager receives payment for the services of a pharmacist or
19 pharmacy, the pharmacy benefits manager shall distribute the funds in accordance with
20 the time frames provided in Title 22, section 2699-A.

21 **7. Complaints, grievances and appeals.** A pharmacy benefits manager may not
22 terminate the contract of or penalize a pharmacist or pharmacy solely as a result of the
23 pharmacist's or pharmacy's filing of a complaint, grievance or appeal. This subsection is
24 not intended to restrict the pharmacy's and pharmacy benefits manager's ability to enter
25 into agreements that allow for mutual termination without cause.

26 **8. Denial or limitation of benefits.** A pharmacy's benefits manager may not
27 terminate the contract of or penalize a pharmacist or pharmacy for expressing
28 disagreement with a carrier's decision to deny or limit benefits to an enrollee or because
29 the pharmacist or pharmacy assists the enrollee to seek reconsideration of the carrier's
30 decision or because the pharmacist or pharmacy discusses alternative medications.

31 **9. Written notice required.** At least 60 days before a pharmacy's benefits manager
32 terminates a pharmacy's or pharmacist's participation in the pharmacy benefits manager's
33 plan or network, the pharmacy benefits manager shall give the pharmacy or pharmacist a
34 written explanation of the reason for the termination, unless the termination is based on:

35 A. The loss of the pharmacy's license or the pharmacist's license to practice
36 pharmacy or cancellation of professional liability insurance; or

37 B. A finding of fraud.

38 At least 60 days before a pharmacy or pharmacist terminates its participation in a
39 pharmacy benefits manager's plan or network, the pharmacy or pharmacist shall give the
40 pharmacy benefits manager a written explanation of the reason for the termination.

1 10. Audits. Notwithstanding any other provision of law, when an on-site audit of
2 the records of a pharmacy is conducted by a pharmacy benefits manager, the audit must
3 be conducted in accordance with the following criteria.

4 A. A finding of overpayment or underpayment must be based on the actual
5 overpayment or underpayment and not a projection based on the number of patients
6 served having a similar diagnosis or on the number of similar orders or refills for
7 similar drugs, unless the projected overpayment or denial is a part of a settlement
8 agreed to by the pharmacy or pharmacist.

9 B. The auditor may not use extrapolation in calculating recoupments or penalties.

10 C. Any audit that involves clinical or professional judgment must be conducted by or
11 in consultation with a pharmacist.

12 D. Each entity conducting an audit shall establish an appeals process under which a
13 pharmacy may appeal an unfavorable preliminary audit report to the entity.

14 E. This subsection does not apply to any audit, review or investigation that is
15 initiated based on or involves suspected or alleged fraud, willful misrepresentation or
16 abuse.

17 11. Audit information and reports. A preliminary audit report must be delivered
18 to the pharmacy within 60 days after the conclusion of the audit under subsection 10. A
19 pharmacy must be allowed at least 30 days following receipt of the preliminary audit to
20 provide documentation to address any discrepancy found in the audit. A final audit report
21 must be delivered to the pharmacy within 90 days after receipt of the preliminary audit
22 report or final appeal, whichever is later. A charge-back, recoupment or other penalty
23 may not be assessed until the appeal process provided by the pharmacy benefits manager
24 has been exhausted and the final report issued. Except as provided by state or federal
25 law, audit information may not be shared. Auditors may have access only to previous
26 audit reports on a particular pharmacy conducted by that same entity.'

27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
28 section number to read consecutively.

29 **SUMMARY**

30 This amendment is the minority report of the committee. This amendment strikes
31 and replaces the bill. This amendment adds to the bill provisions on the processing of
32 clean claims by a pharmacy benefits manager and audits of the books and records of the
33 pharmacy benefits manager by the entity that contracts for the services of the pharmacy
34 benefits manager. This amendment adds to the bill provisions that relate to the business
35 relationship between a pharmacy and a pharmacy benefits manager. The provisions
36 address the contract between the 2 entities, pharmacy benefits manager duties,
37 complaints, grievances and appeals, denial or limitation of benefits, written notice and
38 audits of the records of the pharmacy.

FISCAL NOTE REQUIRED
(See attached)



125th MAINE LEGISLATURE

LD 1116

LR 1589(03)

An Act To Restore Market-based Competition for Pharmacy Benefits Management Services

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost impact - General Fund
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

The fiscal impact to the Department of Corrections will depend on negotiated costs and can not be determined at this time. Any additional costs to the Bureau of Insurance in the Department of Professional and Financial Regulation are expected to be minor and can be absorbed within existing budgeted resources.