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An Act To Reduce Prescription Drug Costs by Using International Pricing

Received by the Secretary of the Senate on May 3, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CLAXTON of Androscoggin.

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

Sec. 1. 22 MRSA c. 603, sub-c. 1-C is enacted to read:

SUBCHAPTER 1-C

PRESCRIPTION DRUG PRICING

§2688. International pricing

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "ERISA plan" means a plan qualified under the federal Employee Retirement Income Security Act of 1974.

B. "Health plan" has the same meaning as in Title 24-A, section 4301-A, subsection 7.

C. "Participating ERISA plan" means an ERISA plan that has elected to participate in the requirements and restrictions of this section as described in subsection 3.

D. "Prescription drug" has the same meaning as in Title 32, section 13702-A, subsection 30.

E. "Referenced drugs" means prescription drugs subject to a referenced rate.

F. "Referenced rate" means the maximum rate established by the Superintendent of Insurance using the wholesale acquisition cost and other pricing data described in subsection 4.

G. "State entity" means any agency of State Government that purchases prescription drugs on behalf of the State for a person whose health care is paid for by the State, including any agent, vendor, fiscal agent, contractor or other party acting on behalf of the State. "State entity" does not include the medical assistance program established under 42 United States Code, Section 1396 et seq.

H. "Wholesale acquisition cost" has the same meaning as in 42 United States Code, Section 1395w-3a.

2. Payment in excess of referenced rate prohibited. The following practices are prohibited.

A. It is a violation of this section for a state entity or health plan or participating ERISA plan to purchase referenced drugs to be dispensed or delivered to a consumer in the State, whether directly or through a distributor, for a cost higher than the referenced rate as determined in subsection 4. Contracts entered into by a state entity or health plan or participating ERISA plan and a 3rd party for the purchase of prescription drugs shall expressly provide that rates paid for referenced drugs may not exceed the referenced rate.

B. It is a violation of this section for a retail pharmacy licensed in this State to purchase for sale or distribution to a person whose health care is provided by a state entity or

health plan or participating ERISA plan a referenced drug for a cost that exceeds the referenced rate.

3. ERISA plan opt-in. An ERISA plan may elect to participate in the provisions of this section. Any ERISA plan that desires its purchase of prescription drugs to be subject to the prohibition described in subsection 2 shall notify the Superintendent of Insurance in writing by December 15th of each year.

4. Referenced drugs determined. The following provisions govern the determination of referenced drugs.

A. By April 30th of each calendar year, the Executive Director of Health Insurance in the Department of Administrative and Financial Services, Bureau of Human Resources, Division of State Employee Health Insurance shall transmit to the Superintendent of Insurance a list of the 250 most costly prescription drugs based upon net price times utilization. For each of these prescription drugs, the Executive Director of Health Insurance shall also provide the total net spent on each of those prescription drugs for the previous calendar year.

B. Using the information described in paragraph A, by June 30th of each year the Superintendent of Insurance shall create and publish a list of 250 referenced drugs that are subject to the referenced rate.

C. The Superintendent of Insurance shall determine the referenced rate by comparing the wholesale acquisition cost to the cost in official publications of the governments of the Canadian provinces of Ontario, Quebec, British Columbia and Alberta,

D. The referenced rate for each prescription drug must be calculated as the lowest cost among the resources described in paragraph C and the wholesale acquisition cost. If a specific referenced drug is not included within resources described in paragraph C, the Superintendent of Insurance shall use for the purpose of determining the referenced rate the ceiling price for drugs as reported in official publications of the government of Canada.

E. The determination by the Superintendent of Insurance of which prescription drugs to include on the list of referenced drugs must be based upon an analysis of the savings that could be achieved by subjecting those prescription drugs to the referenced rate. In making this determination, the Superintendent of Insurance shall consult with the Executive Director of Health Insurance and the president of the Maine Board of Pharmacy.

F. The Superintendent of Insurance may adopt rules to carry out the purposes of this subchapter. Rules adopted pursuant to this paragraph are routine technical rules under Title 5, chapter 375, subchapter 2-A.

5. Registered agent and office within State. Any entity that sells, distributes, delivers or offers for sale any prescription drug in the State shall maintain a registered agent and office within the State.

6. Use of savings. The following provisions govern the use of savings generated as a result of the requirements in subsection 2.

A. Any savings generated as a result of the requirements in subsection 2 must be used to reduce costs to consumers. A state entity, health plan or participating ERISA plan shall calculate its savings and use the savings directly to reduce costs for its members.

B. No later than April 1st of each calendar year, each state entity, health plan and participating ERISA plan subject to this section shall submit to the Superintendent of Insurance a report describing the savings achieved for each referenced drug for the previous calendar year and how those savings were used to achieve the requirements of paragraph A.

7. Enforcement. Each violation of this section is subject to a fine of $1,000. Each individual transaction in violation of subsection 2 is a separate violation. The Attorney General is authorized to enforce the provisions of this section on behalf of any state entity or consumers of prescription drugs.

8. Prohibition on withdrawal of referenced drugs for sale. The following provisions govern the withdrawal of a referenced drug.

A. It is a violation of this section for any manufacturer or distributor of a referenced drug to withdraw that drug from sale or distribution within this State for the purpose of avoiding the effect of the rate limitations set forth in subsection 2.

B. Any manufacturer that intends to withdraw a referenced drug from sale or distribution from within the State shall provide a notice of withdrawal in writing to the Superintendent of Insurance and to the Attorney General 180 days prior to such withdrawal.

C. The Superintendent of Insurance shall assess a penalty of $500,000 on any entity, including any manufacturer or distributor of a referenced drug, that the superintendent determines has withdrawn a referenced drug from distribution or sale in the State in violation of paragraphs A or B.

Sec. 2. Purpose; legislative findings. The purpose of this Act is to protect the safety, health and economic well-being of the people of this State by safeguarding them from the negative and harmful effects of excessive and unconscionable prices for prescription drugs. In enacting this section, the Legislature finds that:

1. Access to prescription drugs is necessary for the people of this State to maintain or acquire good health;

2. Excessive prices negatively affect the ability of the people of this State to obtain prescription drugs, and price increases that exceed reasonable levels endanger the health and safety of the people of this State;

3. Excessive prices for prescription drugs threaten the economic well-being of the people of this State and endanger their ability to pay for other necessary and essential goods and services, including housing, food and utilities;

4. Excessive prices for prescription drugs contribute significantly to a dramatic and unsustainable rise in health care costs and health insurance that threaten the overall ability of the people of this State to obtain health coverage and maintain or acquire good health;

5. Excessive prices for prescription drugs contribute significantly to rising state costs for health care provided and paid for through health insurance programs for public employees, including employees of the State, municipalities and counties, school districts,

institutions of higher education and retirees whose health care costs are funded by public programs, thereby threatening the ability of the State to fund those programs adequately and further threatening the ability of the State to fund other programs necessary for the public good and safety, such as public education and public safety;

6. Because the costs of prescription drugs and health insurance are tax-deductible, excessive costs for prescription drugs result in a reduction in the tax base and a consequent reduction in state revenue;

7. The costs to consumers, health plans and the State for prescription drug coverage is higher than the costs in other countries because the prices charged by manufacturers and distributors of drugs in this State are higher; and

8. Based on findings in subsections 1 to 7, the Legislature finds that excessive prices for prescription drugs threaten the safety and well-being of the people of this State and finds it is necessary to act in order to protect the people of this State from the negative effects of excessive costs.

SUMMARY

This bill requires the Superintendent of Insurance to create a list of 250 referenced drugs that are subject to a referenced rate. The referenced rate must be calculated as the lowest cost from official publications of certain Canadian provincial government agencies and the wholesale acquisition cost. A state entity, health plan or participating plan qualified under the federal Employee Retirement Income Security Act of 1974 must purchase referenced drugs to be dispensed or delivered to a consumer of this State at a cost equal to or lower than the referenced rate. Any savings generated as a result must be used to reduce costs to consumers.