

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1816

H.P. 1162

House of Representatives, April 27, 2023

An Act Requiring Reference-based Pricing to Reduce Prescription Drug Costs

Reference to the Committee on Health Coverage, Insurance and Financial Services
suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PERRY of Calais.
Cosponsored by Senator BAILEY of York and
Representative: ARFORD of Brunswick.

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

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

3 **SUBCHAPTER 1-C**

4 **REFERENCE-BASED PRESCRIPTION DRUG PRICING**

5 **§2689. Reference-based prescription drug pricing**

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

8 A. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

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

11 C. "Health plan" has the same meaning as in Title 24-A, section 4301-A, subsection
12 7.

13 D. "Maximum fair price" means the maximum rate for a prescription drug published
14 by the Secretary of the United States Department of Health and Human Services
15 pursuant to United States Public Law 117-169, Section 1195 (2022).

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

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

21 G. "Price applicability period" means the period of time defined in United States Public
22 Law 117-169, Section 1191 (2022).

23 H. "Referenced drugs" means prescription drugs subject to a maximum fair price.

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

29 **2. Payment in excess of maximum fair price prohibited.** The following practices
30 are prohibited.

31 A. It is a violation of this section to dispense, deliver or administer to a consumer in
32 the State in person, by mail or by another means a prescription drug for a cost that
33 exceeds the maximum fair price during the price applicability period.

34 B. It is a violation of this section for a state entity, carrier offering a health plan or
35 participating ERISA plan sponsor to purchase referenced drugs or seek reimbursement
36 for referenced drugs to be dispensed or delivered to a consumer in the State, whether
37 directly or through a distributor, for a cost higher than the maximum fair price.
38 Contracts entered into by a state entity, carrier or participating ERISA plan sponsor

1 and a 3rd party for the purchase of prescription drugs must expressly provide that rates
2 paid for referenced drugs may not exceed the maximum fair price.

3 C. It is a violation of this section for a retail pharmacy licensed in the State to purchase
4 for sale or seek reimbursement for a prescription drug to be dispensed or delivered to
5 a consumer whose health care is provided by a state entity, health plan or participating
6 ERISA plan at a cost that exceeds the maximum fair price. The maximum fair price
7 does not include a dispensing fee paid to a retail pharmacy, and this chapter may not
8 be construed to prevent a retail pharmacy from receiving a dispensing fee above the
9 maximum fair price.

10 **3. ERISA plan sponsor participation.** An ERISA plan sponsor may elect to
11 participate in the provisions of this section. An ERISA plan sponsor that elects to
12 participate in the requirements of this section shall notify the Superintendent of Insurance
13 in writing by December 15th of each year.

14 **4. Rules.** The Superintendent of Insurance may adopt rules to carry out the purposes
15 of this subchapter. Rules adopted pursuant to this subsection are routine technical rules
16 under Title 5, chapter 375, subchapter 2-A.

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

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

22 A. Any savings generated as a result of the requirements in subsection 2 during the
23 price applicability period must be used to reduce costs to consumers. A state entity,
24 carrier or participating ERISA plan sponsor shall calculate its savings and use the
25 savings directly to reduce costs for its members. In determining how to use savings in
26 order to comply with this subsection, a state entity, health plan or participating ERISA
27 plan shall consider strategies that promote greater health equity by addressing health
28 disparities across communities.

29 B. No later than April 1st of each calendar year, each state entity, health plan or
30 participating ERISA plan subject to this section shall submit to the Superintendent of
31 Insurance a report describing the savings achieved for each referenced drug for the
32 previous calendar year and how those savings were used to achieve the requirements
33 under paragraph A, including if the savings were used to promote greater health equity
34 by addressing health disparities across communities.

35 C. The Superintendent of Insurance shall adopt and implement rules setting forth the
36 method for calculating savings and the format and manner for submitting the report
37 under paragraph B.

38 **7. Enforcement.** Each violation of this section is subject to a fine of \$1,000. Each
39 individual transaction in violation of subsection 2 is a separate violation. The Attorney
40 General is authorized to enforce the provisions of this section on behalf of any state entity
41 or consumer of prescription drugs. The refusal of a manufacturer or distributor of
42 prescription drugs to negotiate in good faith as described in subsection 8 is a valid
43 affirmative defense in any enforcement action brought under this subchapter.

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

3 A. A manufacturer or distributor of a referenced drug may not withdraw that drug from
4 sale or distribution within the State for the purpose of avoiding the effect of the rate
5 limitations set forth in subsection 2.

6 B. A manufacturer that intends to withdraw a referenced drug from sale or distribution
7 from within the State shall provide a notice of withdrawal in writing to the
8 Superintendent of Insurance and to the Attorney General at least 180 days prior to the
9 withdrawal.

10 C. A manufacturer or distributor of a referenced drug may not refuse to negotiate in
11 good faith with a payor or seller of prescription drugs a price that does not exceed the
12 maximum fair price for that drug.

13 D. The Superintendent of Insurance shall assess a penalty of \$500,000 or the amount
14 of annual savings determined by the superintendent in accordance with subsection 6,
15 whichever is greater, on any manufacturer or distributor of a referenced drug, that the
16 superintendent determines has withdrawn a referenced drug from sale or distribution
17 in the State in violation of paragraph A or B or has failed to negotiate in good faith in
18 violation of paragraph C.

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

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

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

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

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

35 5. Excessive prices for prescription drugs contribute significantly to rising costs to the
36 State for health care provided and paid for through health insurance programs for public
37 employees, including employees of the State, municipalities and counties, school districts,
38 institutions of higher education and retirees whose health care costs are funded by public
39 programs, thereby threatening the ability of the State to fund those programs adequately
40 and further threatening the ability of the State to fund other programs necessary for the
41 public good and safety, such as public education and public safety.

42 Based on findings in subsections 1 to 5, the Legislature finds that excessive prices for
43 prescription drugs threaten the safety and well-being of the people of this State and finds it

1 necessary to act in order to protect the people of this State from the negative effects of
2 excessive costs.

3

SUMMARY

4 This bill requires that a state entity, health plan or participating plan qualified under
5 the federal Employee Retirement Income Security Act of 1974 may not purchase
6 prescription drugs to be dispensed or delivered to a consumer of this State at a cost that
7 exceeds the maximum fair price. The maximum fair price of a prescription drug is the
8 maximum rate for a drug determined by the Secretary of the United States Department of
9 Health and Human Services under the federal Medicare program. Any savings generated
10 as a result must be used to reduce costs to consumers.