

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

CHAPTER 691

H.P. 1522 - L.D. 2026

**An Act to Transfer Responsibility for
Determining Eligibility for the
Elderly Low-cost Drug Program
from the Department of
Administrative and Financial
Services to the Department of
Human Services**

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

Sec. 1. 22 MRSA §254, as amended by PL 2001, c. 293, §§1 to 4; c. 405, §1 and affected by §3; and amended by c. 439, Pt. HH, §§1 to 3 and affected by §4, is further amended to read:

§254. Elderly low-cost drug program

As part of the Healthy Maine Prescription Program established under section 258, the Department of Human Services may conduct a program, referred to in this section as the "program," to provide low-cost prescription and nonprescription drugs, medication and medical supplies to disadvantaged, elderly and disabled individuals.

The commissioner shall provide for sufficient personnel to ensure efficient administration of the program. The extent and the magnitude of the program must be determined by the commissioner on the basis of the calculated need of the recipient population and the available funds. The department may not spend more on this program than is available through appropriations from the General Fund, dedicated revenue, federal or other grants and other established and committed funding sources. The commissioner may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly and disabled individuals and may take such action as is necessary for the purposes of carrying out that federal law and may accept from any other agency of government, individual, group or corporation such funds as may be available to carry out this chapter.

The commissioner shall make available suitable applications with instructions for applicants.

The commissioner may adopt rules relating to the conduct of this program. These rules must be adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, and must be related to the following aspects of this program:

1. Prescription and nonprescription drugs. The kinds of prescription and nonprescription drugs,

medications and medical supplies that may be made available through the operation of this program. Drugs and medications must be provided for the conditions and illnesses provided in this subsection.

A. The basic component of the program must provide drugs and medications for cardiac conditions and high blood pressure, diabetes, arthritis, anticoagulation, hyperlipidemia, osteoporosis, chronic obstructive pulmonary disease and asthma, incontinence, thyroid diseases, glaucoma, parkinson's disease, multiple sclerosis and amyotrophic lateral sclerosis. The basic component must also provide over-the-counter medications that are prescribed by a health care provider and approved as cost-effective by the department.

B. In the supplemental component of the program, drugs and medications must include all prescription drugs and medications provided under the Medicaid program under this Title with the exception of drugs and medications provided by the basic component of the program under paragraph A;

1-A. Eligibility. An individual is eligible for the program if that individual meets the eligibility criteria set forth in this section and the following additional conditions.

A. An individual must be a legal resident of the State.

B. An individual does not receive full Maine-Care pharmaceutical benefits;

~~**2-A. Income eligibility.** Individuals are eligible for this program if the household income, as defined in subsection 9, is not more than the amount set by this subsection. In calculating income eligibility, the cost of drugs provided to a household under this section is considered a cost incurred by the household. The income eligibility limit is determined as follows:~~

~~A. Calculate the applicable poverty level by reference to 185% of the federal nonfarm income official poverty level, as defined by the Office of Management and Budget, that was in effect on January 1, 2001;~~

~~B. Calculate the income eligibility limit for calendar year 2001 by multiplying the poverty level figure from paragraph A by the result of one plus the annualized cost-of-living adjustment used to determine Social Security retirement benefits issued during calendar year 2001;~~

~~C. For each program year after 2001, calculate the income eligibility limit for the year for which relief is requested by multiplying the income eli-~~

~~gibility limit for the previous program year as calculated by paragraph B by one plus the annualized cost of living adjustment applicable to Social Security retirement benefits issued during the year for which relief is requested; and~~

~~D. For individuals in households that spend at least 40% of income on unreimbursed direct medical expenses for prescription medications, the income eligibility limit is increased by 25%.~~

2-B. Income eligibility. Income eligibility of individuals must be determined by this subsection and by reference to the federal nonfarm income official poverty level, as defined by the federal Office of Management and Budget and revised annually in accordance with the United States Omnibus Budget Reconciliation Act of 1981, Section 673, Subsection 2. If the household income, as defined in subsection 9, is not more than 185% of the federal poverty line applicable to the household, the individual is eligible for the basic program and the supplemental program. Individuals are also eligible for the basic and the supplemental program if the household spends at least 40% of its income on unreimbursed direct medical expenses for prescription drugs and medications and the household income is not more than 25% higher than the levels specified in this subsection. For the purposes of this subsection, the cost of drugs provided to a household under this section is considered a cost incurred by the household for eligibility determination purposes;

3. Specifications for administration of program. Specifications for the administration and management of the program, which may include, but not be limited to, program objectives, accounting and handling practices, supervisory authority and evaluation methodology;

4. Method of prescribing or ordering drugs. The method of prescribing or ordering the drugs under subsection 1, which may include, but is not limited to, the use of standard or larger prescription refill sizes so as to minimize operational costs and to maximize economy. Unless the prescribing physician indicates otherwise, the use of generic or chemically equivalent drugs is required, ~~provided that~~ as long as these drugs are of the same quality and have the same mode of delivery as is provided to the general public, consistent with good pharmaceutical practice;

4-A. Payment for drugs provided. The commissioner may establish the amount of payment to be made by recipients toward the cost of prescription or nonprescription drugs, medication and medical supplies furnished under this program ~~provided that~~ as long as, for persons at or below 185% of the federal poverty line, the total cost for any covered purchase of a prescription or nonprescription drug or medication

provided under the basic component of the program or the total cost of any covered purchase of a generic prescription drug or medication under the supplemental component of the program does not exceed 20% of the price allowed for that prescription under program rules or \$2, whichever is greater. For the supplemental component of the program except as otherwise provided in this subsection, the total cost paid by the individual for any covered purchase of a prescription drug or medication may not exceed the cost of the program for that drug or medication minus the \$2 paid by the program. The commissioner shall establish annual limits on the costs incurred by eligible household members for prescriptions or nonprescription drugs or medications covered under the program on or prior to May 31, 2001, after which the program must pay 80% of the cost of all prescriptions or nonprescription drugs or medications covered by the supplemental component of the program on May 31, 2001. The limits must be set by the commissioner by rule as necessary to operate the program within the program budget;

4-C. Appeals. The eligibility determination made by the department ~~based on information provided by the State Tax Assessor pursuant to Title 36, section 6162-B~~ is final, subject to appeal in accordance with the appeal process established in the Medicaid MaineCare program;

5. Other rules. Such other rules as may be necessary to efficiently and effectively manage and operate a program within the intent of this section;

7. Wholesale price. "Wholesale price" means the average price paid by a wholesaler to a pharmaceutical manufacturer for a product distributed for retail sale. "Wholesale price" includes a deduction for any customary prompt payment discounts;

8. Drug rebate program. Effective May 1, 1992, payment must be denied for drugs from manufacturers that do not enter into a rebate agreement with the department for prescription drugs included in the list of approved drugs under this program. Each agreement must provide that the pharmaceutical manufacturer make rebate payments for both the basic and supplemental components of the program to the department according to the following schedule.

B. For the quarters beginning October 1, 1992, the rebate percentage is equal to the percentage recommended by the federal Health Care Financing Administration Center for Medicare and Medicaid Services of the manufacturer's wholesale price for the total number of dosage units of each form and strength of a prescription drug that the department reports as reimbursed to providers of prescription drugs, provided payments are

not due until 30 days following the manufacturer's receipt of utilization data supplied by the department, including the number of dosage units reimbursed to providers of prescription drugs during the period for which payments are due.

C. Beginning October 1, 1998, the department shall seek to achieve an aggregate rebate amount from all rebate agreements that is 6 percentage points higher than that required by paragraph B of this subsection, provided such rebates result in a net increase in the rebate revenue available to the elderly low-cost drug program. In the event the department is not able to achieve the rebate amount required by this paragraph without compromising the best interest of recipients of the elderly low-cost drug program, ~~it~~ the department shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs in the First Regular Session of the 119th Legislature.

Upon receipt of data from the department, the pharmaceutical manufacturer shall calculate the quarterly payment. If a discrepancy is discovered, the department may, at its expense, hire a mutually agreed-upon independent auditor to verify the pharmaceutical manufacturer's calculation. If a discrepancy is still found, the pharmaceutical manufacturer shall justify its calculation or make payment to the department for any additional amount due. The pharmaceutical manufacturer may, at its expense, hire a mutually agreed-upon independent auditor to verify the accuracy of the utilization data provided by the department. If a discrepancy is discovered, the department shall justify its data or refund any excess payment to the pharmaceutical manufacturer.

If the dispute over the rebate amount is not resolved, a request for a hearing with supporting documentation must be submitted to the Administrative Hearings Unit. Failure to resolve the dispute may be cause for terminating the drug rebate agreement and denying payment to the pharmaceutical manufacturer for any drugs.

Any prescription drug of a manufacturer that does not enter into an agreement is not reimbursable unless the department determines the prescription drug is essential.

All prescription drugs of a pharmaceutical manufacturer that enters into an agreement pursuant to this subsection that appear on the list of approved drugs under this program must be immediately available and the cost of the drugs must be reimbursed ~~and is not subject to any restrictions or prior authorization requirements, except as provided in this paragraph~~

subsection. If the commissioner establishes maximum retail prices for prescription drugs pursuant to section 2693, the department shall adopt rules for the elderly low-cost drug program requiring the use of a drug formulary and prior authorization for the dispensing of certain drugs to be listed on a formulary. Rules adopted pursuant to this ~~paragraph~~ subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A-;

8-A. Participation requirement. Beginning January 1, 2001, all manufacturers and labelers of drugs that participate in the ~~Medicaid~~ MaineCare program under this Title must participate in the drug rebate program under subsection 8. For the purposes of this subsection, "labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999);

8-B. Action with regard to nonparticipating manufacturers and labelers. The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to subsection 8 are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers that is of particular benefit to the public;

9. Household income. "Household income," for the purposes of this section, means ~~all income, as defined in Title 36, section 6201, subsection 9, received by all persons of a household in a calendar year while members of the household~~ family income as that term is defined for purposes of the Healthy Maine Prescription Program established in section 258;

10. Eligible individuals. To be eligible for the program, an individual must be:

A. At least 62 years of age; or

B. Nineteen years of age or older and determined to be disabled by the standards of the federal social security program;

~~**11. Retention of eligibility.** A person who was eligible for the program at any time from August 1, 1998 to July 31, 1999 and who does not meet the requirements of subsection 10 retains eligibility for the program if that person is a member of a household of an eligible person.~~

~~**11. Retention of eligibility.** A person who was eligible for the program at any time from August 1, 1998 to July 31, 1999 and who does not meet the requirements of subsection 10 retains eligibility for the~~

program if that person is a member of a household of an eligible person; and

11-A. Retention of eligibility. A person who was eligible for the program at any time from August 1, 1998 to July 31, 1999 and who does not meet the requirements of subsection 10 retains eligibility for the program if that person is a member of a household of an eligible person; and

12. Funds not to lapse. Funds appropriated from the General Fund to carry out the purpose of this section may not lapse but must carry from year to year.

Sec. 2. 22 MRSA §254-A, as enacted by PL 1997, c. 643, Pt. RR, §3, is amended to read:

§254-A. Elderly low-cost drug program information

The department shall produce and provide educational materials about the availability of benefits under and application process for the elderly low-cost drug program established under section 254. These materials must include brochures for the Bureau of Revenue Services to mail to eligible residents with drug cards, posters for pharmacies and flyers for pharmacists to include with prescription drug purchases.

Sec. 3. 36 MRSA §191, sub-§2, ¶X, as amended by PL 2001, c. 439, Pt. L, §6, is repealed.

Sec. 4. 36 MRSA c. 905, as amended, is repealed.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Revenue Services, Bureau of

Initiative: Eliminates one Tax Examiner position and one Clerk Typist II position and deappropriates funds from savings resulting from the transfer of certain administrative responsibilities for the elderly low-cost drug program from the Department of Administrative and Financial Services, Bureau of Revenue Services to the Department of Human Services, Bureau of Family Independence effective January 1, 2003.

General Fund	2001-02	2002-03
Positions - Legislative Count	(0,000)	(-2,000)
Personal Services	\$0	(\$33,683)
All Other	0	(22,629)
Total	\$0	(\$56,312)

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

DEPARTMENT TOTALS	2001-02	2002-03
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GENERAL FUND	\$0	(\$56,312)
DEPARTMENT TOTAL - ALL FUNDS	\$0	(\$56,312)

HUMAN SERVICES, DEPARTMENT OF

Family Independence, Bureau of - Regional

Initiative: Adds 1 1/2 Family Independence Specialist positions and appropriates funds resulting from the transfer of certain administrative responsibilities for the elderly low-cost drug program from the Department of Administrative and Financial Services, Bureau of Revenue Services to the Department of Human Services, Bureau of Family Independence effective January 1, 2003.

General Fund	2001-02	2002-03
Positions - Legislative Count	(0,000)	(1,500)
Personal Services	\$0	\$29,760
All Other	0	26,552
Total	\$0	\$56,312

HUMAN SERVICES, DEPARTMENT OF

DEPARTMENT TOTALS

GENERAL FUND	\$0	\$56,312
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DEPARTMENT TOTAL - ALL FUNDS	\$0	\$56,312
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SECTION TOTALS	2001-02	2002-03
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GENERAL FUND	\$0	\$0
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SECTION TOTAL - ALL FUNDS	\$0	\$0
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Sec. 6. Effective date. This Act takes effect January 1, 2003 except that that section of this Act that repeals the Maine Revised Statutes, Title 36, section 191, subsection 2, paragraph X takes effect January 1, 2004.

Effective January 1, 2003, unless otherwise indicated.

CHAPTER 692

H.P. 1548 - L.D. 2051

An Act to Increase the Workers' Compensation Insurance Assessment to Fund a Hearing Officer Position

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

Sec. 1. 39-A MRSA §154, sub-§6, as amended by PL 2001, c. 393, §1, is further amended to read:

6. Assessment levied. The assessments levied under this section may not be designed to produce