LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

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and other fiduciaries; pension, retirement funds and profit-sharing plans; other persons carrying on a banking business; and all other persons may properly and legally invest funds, including capital in their control or belonging to them. These bonds are made securities that may properly and legally be deposited with and received by any state, municipal or public officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

§11499-A. Taxable bond option

With respect to all or any portion of any issue of any bonds or any series of bonds that the authority may issue in accordance with the limitations and restrictions of this chapter, the authority may covenant, elect and consent that the interest on the bonds be includable under the federal Internal Revenue Code or any subsequent corresponding internal revenue law of the United States in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the federal Internal Revenue Code or any subsequent law. Bonds issued pursuant to this section are not subject to any limitations or restrictions of any law that may limit the authority's power to issue those bonds. The grant of power in this section may not be construed as limiting the inherent power of the State or its agencies under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders under the federal Internal Revenue Code or any subsequent law.

§11499-B. Agreement of the State

The State pledges to and agrees with the holders of any bonds issued under this chapter and with those parties who may enter into any contract with the authority pursuant to this chapter that the State will not limit, alter, restrict or impair the rights vested by this chapter in the authority until the bonds issued pursuant to this chapter, together with interest, including interest on any unpaid installment of interest and all costs and expenses in connection with any actions or proceedings by or on behalf of the bondholders, are fully met and discharged and such contracts are fully performed on the part of the authority. Nothing in this chapter precludes that limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds and of those parties entering into contracts with the authority. The authority is authorized to include this pledge and undertaking for the State in those bonds or contracts.

§11499-C. Chapter cumulative; no notice required

This chapter may not be construed as a restriction or limitation upon any powers that the authority might otherwise have under any laws of this State and this chapter is cumulative of any such powers. Neither the making of contracts nor the issuance of bonds pursuant to this chapter need comply with the requirements of any other state law applicable to the making of contracts, the issuance of bonds or the construction, acquisition or management of any project undertaken pursuant to this chapter. No proceedings, notice or approval is required for the issuance of any bonds or any instrument as security for those bonds, except as is provided in this chapter or in the federal Internal Revenue Code, if applicable.

§11499-D. Chapter liberally construed

This chapter being necessary for the welfare of the State and its inhabitants must be liberally construed so as to effect its purposes.

See title page for effective date.

CHAPTER 456

S.P. 194 - L.D. 554

An Act To Protect Against Unfair Prescription Drug Practices

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

Sec. 1. 22 MRSA c. 603, sub-c. 4 is enacted to read:

SUBCHAPTER 4

PRESCRIPTION DRUG PRACTICES

§2699. Prescription drug practices

Pharmacy benefits managers shall and contracts for pharmacy benefits management must comply with the requirements of this section.

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

A. "Covered entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan or health maintenance organization licensed pursuant to Title 24 or 24-A; a health program administered by the department or the State in the capacity of provider of health coverage; or an employer, labor union or other group of persons organized in the State that provides health coverage to covered individuals who are employed or reside in the State. "Covered

entity" does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care or other limited benefit health insurance policies and contracts.

B. "Covered individual" means a member, participant, enrollee, contract holder or policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity. "Covered individual" includes a dependent or other person provided health coverage through a policy, contract or plan for a covered individual.

C. "Generic drug" means a chemically equivalent copy of a brand-name drug with an expired patent.

D. "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, 270.20 (1999).

E. "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this State to covered individuals, the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals or any of the following services provided with regard to the administration of pharmacy benefits:

(1) Mail service pharmacy;

(2) Claims processing, retail network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals;

(3) Clinical formulary development and management services;

(4) Rebate contracting and administration;

(5) Certain patient compliance, therapeutic intervention and generic substitution programs; and

(6) Disease management programs.

F. "Pharmacy benefits manager" means an entity that performs pharmacy benefits management. "Pharmacy benefits manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity and includes mail service pharmacy.

2. Required practices. A pharmacy benefits manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law.

A. A pharmacy benefits manager shall perform its duties with care, skill, prudence and diligence and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like character and with like aims.

B. A pharmacy benefits manager shall discharge its duties with respect to the covered entity for the primary purpose of providing benefits to covered individuals and defraying reasonable expenses of administering health plans.

C. A pharmacy benefits manager shall notify the covered entity in writing of any activity, policy or practice of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the duties imposed by this subsection.

D. A pharmacy benefits manager shall provide to a covered entity all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity. A pharmacy benefits manager providing information under this paragraph may designate that material as confidential. Information designated as confidential by a pharmacy benefits manager and provided to a covered entity under this paragraph may not be disclosed by the covered entity to any person without the consent of the pharmacy benefits manager, except that disclosure may be made in a court filing under the Maine Unfair Trade Practices Act or when authorized by that Act or ordered by a court of this State for good cause shown.

E. With regard to the dispensation of a substitute prescription drug for a prescribed drug to a covered individual the following provisions apply.

(1) The pharmacy benefits manager may substitute a lower-priced generic and therapeutically equivalent drug for a higher-priced prescribed drug.

(2) With regard to substitutions in which the substitute drug costs more than the prescribed drug, the substitution must be made for medical reasons that benefit the covered individual and must benefit the covered entity. If a substitution is being made under this subparagraph, the pharmacy benefits manager shall obtain the approval of the prescribing health professional or that per-

son's authorized representative after disclosing to the covered individual and the covered entity the cost of both drugs and any benefit or payment directly or indirectly accruing to the pharmacy benefits manager as a result of the substitution.

(3) The pharmacy benefits manager shall transfer in full to the covered entity any benefit or payment received in any form by the pharmacy benefits manager as a result of a prescription drug substitution under subparagraph (1) or (2).

F. A pharmacy benefits manager that derives any payment or benefit for the dispensation of prescription drugs within the State based on volume of sales for certain prescription drugs or classes or brands of drugs within the State shall pass that payment or benefit on in full to the covered entity.

G. A pharmacy benefits manager shall disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefits manager and any prescription drug manufacturer or labeler, including, without limitation, formulary management and drug-switch programs, educational support, claims processing and pharmacy network fees that are charged from retail pharmacies and data sales fees.

3. Compliance. Compliance with the requirements of this section is required in all contracts for pharmacy benefits management entered into in this State or by a covered entity in this State.

4. Enforcement. A violation of this section is a violation of the Maine Unfair Trade Practices Act, for which a fine of not more than $10,000 may be adjudged.

See title page for effective date.

CHAPTER 457

H.P. 963 - L.D. 1309

An Act To Protect Public Health by Reducing Human Exposure to Arsenic

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

Sec. 1. 33 MRSA §173-A is enacted to read:

§173-A. Information provided

Beginning January 1, 2004, unless the transaction is exempt under section 172, the seller of residential real property shall provide to the purchaser information developed by the Director of the Bureau of Health within the Department of Human Services regarding what homeowners should know about arsenic in private water supplies and arsenic in treated wood. Copies of this information must be provided to sellers at cost.

Sec. 2. 38 MRSA c. 16-C is enacted to read:

CHAPTER 16-C

ARSENIC-TREATED WOOD PRODUCTS

§1681. Definitions

As used in this chapter, unless the context otherwise indicates, "arsenic-treated wood" means lumber, timber, piles, poles, posts, plywood, shakes, shingles or other wood or forest products intended for outdoor use that have been pressure treated to reduce decay with a wood preservative containing inorganic arsenic or inorganic arsenic compounds, including, but not limited to, chromated copper arsenate, commonly referred to as "CCA," or similar arsenic-based wood-preserving chemical mixtures.

§1682. Restriction on sale

The following restrictions apply to the sale of arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003.

1. Purchase of arsenic-treated wood by retail business. Retail businesses that sell wood for residential use may not purchase arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003.

2. Sale of arsenic-treated wood. Beginning April 1, 2004, a person may not sell or offer for sale arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003. This prohibition does not apply to structures already built containing arsenic-treated wood that are included as part of a residential real estate transaction.

§1683. Statute not admissible in evidence