LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

without prescription drug benefits to purchase a plan with prescription drug benefits under the following circumstances:

A. The insured was covered under the low-cost drugs for the elderly or disabled program established by Title 22, former section 254 or section 254-D;

B. The insured applies for a plan with prescription drug coverage within 90 days after losing eligibility for the low-cost drugs for the elderly or disabled program established by Title 22, former section 254 or section 254-D; and

C. The insured either:

(1) Had a Medicare supplement plan with prescription drug benefits from the same issuer prior to enrolling in the low-cost drugs for the elderly or disabled program established by Title 22, former section 254 or section 254-D; or

(2) Is entitled to continuity of coverage pursuant to subsection 1 and has had prescription drug benefits, through either a Medicare supplement plan or the low-cost drugs for the elderly or disabled program established by Title 22, section ~~254~~ 254-D, since the insured's open enrollment period with no gap in prescription drug coverage in excess of 90 days.

The purchase of a plan with prescription drug benefits by an insured pursuant to this subsection does not affect eligibility for coverage under the low-cost drugs for the elderly or disabled program established by Title 22, section ~~254~~ 254-D if the insured is not covered by a Medicare supplement plan with prescription drug benefits at the time of reapplying for coverage under the low-cost drugs for the elderly or disabled program established by Title 22, section ~~254~~ 254-D.

See title page for effective date.

CHAPTER 402

S.P. 536 - L.D. 1541

An Act Pertaining to Disclosure of Prescription Drug Prices

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 121st Legislature in the Second Special Session enacted legislation requiring pharmaceutical manufacturers to report certain pricing information to the Department of Health and Human Services; and

Whereas, certain provisions of those reporting requirements require clarification or are duplicative of data otherwise available to the department; and

Whereas, clarification of those provisions is necessary in order to amend the law as close as possible in time to the first reporting date; and

Whereas, the reportable information constitutes trade secrets, and the existing confidentiality protection afforded to the reported information is not adequate; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §2698-B, sub-§1, as enacted by PL 2003, c. 667, §1 and affected by §2, is amended to read:

1. Quarterly report. A manufacturer of prescription drugs dispensed in this State under a health program directed or administered by the State shall, on a quarterly basis, report by National Drug Code the following pharmaceutical pricing criteria to the commissioner for each of its drugs:

~~A. The average wholesale price;~~

~~B. The wholesale acquisition cost;~~

C. The average manufacturer price as defined in 42 United States Code, Section 1396r-8(k); and

D. The best price as defined in Section 1927 of the Social Security Act, 42 United States Code, Section 1396r-8(c)(1)(C) as in effect on January 1, 2005.

The pricing information required under this subsection is for drugs defined under the Medicaid drug rebate program.

Sec. 2. 22 MRSA §2698-B, sub-§2, as enacted by PL 2003, c. 667, §1 and affected by §2, is repealed.

Sec. 3. 22 MRSA §2698-B, sub-§§3, 4 and 5, as enacted by PL 2003, c. 667, §1 and affected by §2, are amended to read:

3. Description of methodology. When reporting the ~~average wholesale price, wholesale acquisition cost,~~ average manufacturer price and best price, a manufacturer of prescription drugs dispensed in this State shall also include a ~~detailed description of the methodologies by which the prices were calculated~~ summary of its methodology. The department may accept the standards of the national drug rebate agreement entered into by the federal Department of Health and Human Services and Section 1927 of the Social Security Act, 42 United States Code, Section 1396r-8(c)(1)(C) for reporting pricing methodology or may adopt its own standards by rule.

4. Certification. When a manufacturer of prescription drugs dispensed in this State reports the ~~average wholesale price, wholesale acquisition cost,~~ average manufacturer price or best price, the ~~president or~~ chief executive officer or chief officer of the manufacturer or an employee of the manufacturer in a position that reports directly to the chief executive officer or chief financial officer who has been delegated authority to sign shall certify to the department, on a form provided by the commissioner, that the reported prices are accurate as of the date they are submitted.

5. Confidentiality. Except as provided in this subsection, all information provided to the commissioner by a manufacturer of prescription drugs under this section is confidential and may not be disclosed by any person or by the department to any person without the consent of the manufacturer. Disclosure may be made by the department to an entity providing services to the department under this section and such a disclosure does not change the confidential status of the information. The information may be used by the entity only for the work that is authorized or approved by the department. Disclosure may be ordered by a court for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. Nothing in this subsection limits the Attorney General's use of civil investigative demand authority under the Maine Unfair Trade Practices Act to investigate violations of this section.

Sec. 4. 22 MRSA §2698-B, sub-§8 is enacted to read:

8. Rulemaking. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 17, 2005.

CHAPTER 403

H.P. 719 - L.D. 1034

An Act To Prevent Lead Poisoning of Children and Adults

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

Sec. 1. 22 MRSA §§1322-E and 1322-F are enacted to read:

§1322-E. Lead Poisoning Prevention Fund

1. Fund established. The Lead Poisoning Prevention Fund, referred to in this section as "the fund," is established within the department as a nonlapsing fund for the purposes specified in this section.

2. Sources of fund. The fund is funded from all fees collected under section 1322-F and from other funds accepted by the commissioner or allocated or appropriated by the Legislature.

3. Prevention purposes. Allocations from the fund must be made for the following purposes:

A. Contracts for funding community and worker educational outreach programs to enable the public to identify lead hazards and take precautionary actions to prevent exposure to lead;

B. An ongoing major media campaign to fulfill the purposes of the educational and publicity program required by section 1317-B;

C. Measures to prevent children's exposure to lead, including targeted educational mailings to families with children that occupy dwellings built prior to 1978 with culturally appropriate information on the health hazards of lead, the identification of lead sources, actions to take to prevent lead exposure and the importance of screening children for lead poisoning;

D. Measures to prevent occupational exposures to lead for private and public employees, including improvements in the effectiveness of the occupational disease reporting system required in chapter 259-A in identifying and educating health care providers, employers and lead-exposed adults about occupational lead poisoning prevention strategies;

E. Funding an assessment of current uses of lead and the availability, effectiveness and affordability of lead-free alternatives; and

F. Funding for educational programs and information for owners of rental property used for residential purposes.