

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION

July 29, 2005

SECOND REGULAR SESSION

January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR

SECOND SPECIAL SESSION

NON-EMERGENCY LAWS IS

OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR

SECOND REGULAR SESSION

NON-EMERGENCY LAWS IS

AUGUST 23, 2006

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Penmor Lithographers

Lewiston, Maine

2006

SELECTED MEMORIALS AND JOINT RESOLUTIONS

JOINT RESOLUTION MEMORIALIZING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO ADOPT CERTAIN CHANGES TO THE MEDICARE PART D PROGRAM

S.P. 846

WE, your Memorialists, the Members of the One Hundred Twenty-second Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the President of the United States and the Congress of the United States, as follows:

WHEREAS, beginning on January 1, 2006, prescription drug coverage was to be provided through the Medicare Part D program to eligible residents of the State of Maine, and these Medicare beneficiaries must now navigate a new and extremely complex system for purchasing coverage and receiving prescription drug benefits; and

WHEREAS, thousands of these Maine residents who are Medicare beneficiaries are eligible for both Medicare and Medicaid and are known as “dual eligible.” These residents are sicker and poorer than other Medicare beneficiaries. Nationally, more than 60% of dual eligibles live below the poverty level; and

WHEREAS, more than half of all dual eligibles require assistance with activities of daily living and have higher rates of a range of chronic conditions than other Medicare beneficiaries, including Alzheimer’s disease, diabetes, pulmonary disease and stroke; and

WHEREAS, the enrollment process for dual eligibles in Maine and the Nation has failed to adequately protect the health and safety of these most vulnerable of our citizens. There are significant and widespread data management and other implementation problems, resulting in dual eligibles being charged excessive copayments, being denied necessary medications, being refused enrollment and subsidies and not being informed of appeal procedures and other rights; and

WHEREAS, the State of Maine has incurred costs of almost \$6,000,000 to ensure that its neediest citizens who previously received their medications through Medicaid or our own prescription drug program receive needed medications through Medicare Part D, including paying the costs of reimbursing pharmacies improperly denied payment by prescription drug plans, reenrolling beneficiaries in plans with formularies that cover a greater percentage of their

needed medication, providing counseling and education about the confusing array of plans and formularies and staffing telephone hotlines; and

WHEREAS, the federal Medicare Part D program has failed to operate as intended, and the Federal Government has given no assurance to the State of Maine that these unanticipated costs to protect the health and safety of our citizens will be fully and quickly reimbursed; and

WHEREAS, the State of Maine has also been charged \$19,100,000 associated with the phased-down state contribution, or the “clawback” provision of Medicare, which requires states to reimburse the Federal Government for the costs of dual eligibles based on a formula that is inaccurate and overcharges the State by millions; and

WHEREAS, individuals eligible for Medicare who enroll in Part D after May 15, 2006 will be assessed a 1% penalty for each month between the date they were eligible and the date they enrolled, and this penalty is cumulative, less predictable and more severe than the enrollment penalty for other parts of Medicare; and

WHEREAS, each prescription drug plan has a different formulary, different copayments and varied cost sharing that Medicare beneficiaries must understand in order to determine which plan has a formulary that not only includes most or all of their drug needs but is also the best value; and

WHEREAS, each plan is allowed to modify its formulary on a monthly basis, including dropping coverage of medications, while most Medicare beneficiaries may only change plans once a year during an open enrollment period; and

WHEREAS, a beneficiary who needs a drug not covered by the formulary must change to another drug or pay out of pocket for the drug, and drugs not listed on the formulary that are purchased out of pocket or paid for by using a state discount do not count towards the beneficiary’s cost sharing under the Part D plan; and

WHEREAS, prescription drug plans are not required to disclose complete information about the actual price of drugs on their formularies, nor the cost of these drugs as negotiated by the plan with drug manufacturers, resulting in the opportunity for plans to inflate prices charged to Medicare beneficiaries who will then have a higher total cost-sharing amount; and

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WHEREAS, Medicare law explicitly prohibits negotiation over the price paid by the Federal Government for these prescription drugs, and yet these same medications currently provided to all dual eligibles under Medicaid are subject to price negotiation by the Federal Government, and so the cost of these Medicare medications, which will be reimbursed by the states to the Federal Government, is likely to increase without price negotiations; now, therefore, be it

RESOLVED: That We, your Memorialists, respectfully urge and request that the administration of President George W. Bush and the Congress of the United States address these concerns immediately and as necessary through changes to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the allocation of additional funding; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the President and Congress specifically adopt the following changes to the Medicare Part D program:

1. Eliminate the unfair penalty for all eligible Medicare individuals who do not enroll by May 15, 2006;
2. Permit the prescription drug plans to drop coverage of drugs on their formularies only after advance notice once a year to coincide with the annual open enrollment period, except for those drugs determined to be dangerous or that have been removed from the market;
3. Standardize the formulary design so that each plan has the same number of tiers and requirements for coverage;
4. Modify the requirements for what can be counted towards the Medicare beneficiary's true out of pocket cost to include all prescription drugs purchased on behalf of the beneficiary regardless of where the drugs are purchased, or whether the drugs are purchased through a state pharmacy program or with a discount card, and regardless of whether the drugs are on the formulary of the beneficiary's plan;
5. Ensure transparency, so that states know the cost negotiated by the prescription drug plan to make certain that all negotiated rebates are passed through to the beneficiaries;
6. Institute price negotiation for the purchase of prescription drugs for the Medicare program, similar to provisions already in place under Medicaid and the Department of Veterans Affairs;

7. Provide timely and sufficient funding and reimbursement to the State of Maine to ensure that the State is made whole for costs incurred in ensuring its citizens who are eligible for or required to participate in Medicare Part D are not denied needed medications or otherwise harmed by the faulty implementation and design of this program; and

8. Provide that the "clawback" provision is based on actual experience and costs; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable George W. Bush, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States, and to each Member of the Maine Congressional Delegation.

**Read and adopted by the Senate April 10, 2006
and the House of Representatives April 10,
2006.**

JOINT RESOLUTION HONORING THE MAINE NATIONAL GUARD

H.P. 1506

WHEREAS, patriots from the District of Maine mustered to form a militia to fight for the colonies in the Revolutionary War and for the nation during the War of 1812; and

WHEREAS, the Maine National Guard has proudly served the citizens of Maine during natural disasters such as forest fires, floods and storms and has bravely defended the United States of America during times of war since Maine first entered the Union in 1820, and over the years the highest percentages of volunteers have been Maine people; and

WHEREAS, nearly 2,390 soldiers and airmen of the Maine Army National Guard and the Maine Air National Guard have faithfully answered the call to duty in America's Global War on Terror. At times the State has had a larger percentage of personnel mobilized in support of that mission than any other state in the Union; and

WHEREAS, members of the Maine Army National Guard and the Maine Air National Guard are defending freedom and democracy around the globe, including in Iraq and Afghanistan, where they are playing a vital role in protecting the safety and security of all Americans; and

WHEREAS, the people of Maine have the utmost respect for the members of the Maine Army National Guard and the Maine Air National Guard for putting their lives in danger for the sake of the freedoms enjoyed by all Americans; and

WHEREAS, the people of Maine are appreciative of the countless personal and professional sacrifices that the volunteers of the Maine Army National Guard and the Maine Air National Guard and their families have made in order to protect our freedoms; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-second Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to express our solidarity with the men and women of the Maine Army National Guard and the Maine Air National Guard and their families; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Adjutant General of the Maine National Guard.

**Read and adopted by the House of
Representatives April 27, 2006 and the Senate
April 27, 2006.**
