

MAINE STATE LEGISLATURE

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FINAL REPORT

A STUDY OF THE
FREE DRUGS FOR ELDERLY
DISADVANTAGED PERSONS PROGRAM

Prepared by the
JOINT STANDING COMMITTEE ON
HEALTH AND INSTITUTIONAL SERVICES
107th Legislature

Submitted to the
Legislative Council
107th Legislature

January 4, 1977

SENATE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON HEALTH & INSTITUTIONAL SERVICES

January 4, 1977

Rep. John L. Martin
Chairman, Legislative Council
c/o Speaker's Office
State House
Augusta, Maine 04333

Dear Representative Martin:

In accordance with House Paper 1704 which ordered a study of the subject matter of L.D. 1683, AN ACT to Enable the Department of Health & Welfare to Conduct a Program to Provide Free Drugs to Elderly, Disadvantaged Maine Citizens, we enclose herein the final report of the Health & Institutional Services Committee.

Respectfully submitted,

Walter W. Hichens

Walter W. Hichens
Senate Chairman

Harland C. Goodwin, Jr.

Harland C. Goodwin, Jr.
House Chairman

enclosures
BC/sym

The law:

Chapter 619 of the Public Laws of 1975, enacted during the Regular Session of the 107th Legislature, authorized the Department of Health and Welfare (since then renamed the Department of Human Services) "to conduct a program to provide free prescription and non-prescription drugs and medication to disadvantaged elderly persons". The law became effective on October 1, 1975. Because Governor Longley had recommended that the program should be funded from non-State sources a token appropriation of one one dollar for each year of the current biennium was attached to the bill.

The law specified the qualifications for the administrator of the program, authorized the commissioner to determine the nature and extent of the program, limited program expenditures to the amount of available money and authorized the acceptance of funds from non-State sources. In addition, the commissioner was authorized to adopt rules and regulations relating to the kinds of drugs to be included in the program, the eligibility of persons for program benefits, the administrative specifications for the program, the method of prescribing or ordering drugs and any other matters pertaining to the efficient management of the program.

The commissioner was directed to establish "a planned program of solicitation of funds and drugs", to maintain a public register of these solicitations and to transmit a copy of this register to the Governor and Council once every 6 months. Finally, the department was authorized to form an advisory committee to provide technical information for the

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program and the Commissioner of Finance and Administration was directed to establish a dedicated revenue account for the receipt of any program money.

The study:

During the same session in which the law was enacted, the Legislature directed the Health and Institutional Services Committee to study the subject matter of the law authorizing the program and "to determine.... whether the best interests of the State have been served by enactment of such legislation." **

In carrying out this study the Committee has held a series of meetings with Commissioner Smith and Mr. Michael O'Donnell, the administrator of the program. We wish to thank Commissioner Smith and Mr. O'Donnell for their assistance and cooperation throughout the study.

Department efforts:

Of the several actions either authorized or required by the law, the department has thus far established a plan to solicit funds, but not drugs, and the Commissioner of Finance and Administration has created a dedicated revenue account. The department has taken no other action because of the response to solicitations described in the following section.

1)Solicitations: Because drug solicitations, if successful, would have required the department to establish administrative machinery for dispensing drugs, solicitations have been limited to contributions of money. Mr. O'Donnell has corresponded with roughly 25 drug manufacturers, describing Maine's program and

** See Appendix B.

asking for funding assistance. Thus far, with the exception of the Eli Lilly Company, the firms have declined the invitation to contribute to the program. Most companies suggested that contributions to the program of one state would merely encourage the enactment of similar programs in many other states. They explain that the support of a large number of these programs would quickly become a serious drain on the companies' financial resources.

The department has negotiated a contract, a Medical Assistance Program Agreement, with the Eli Lilly Company which provides that Lilly will pay to the State 15% of the net price of all Lilly drugs bought by Maine recipients under the Medicaid Program. Because the agreement with Eli Lilly is based on the State's payments for the firm's drugs under the Medicaid program, the precise amount which the State will receive during the current year cannot yet be determined. The department does not expect the money available for the program in the current year to exceed \$30,000.

2) Target groups: Although the department has not yet held hearings and established rules and regulations, in discussions with the Committee Mr. O'Donnell has informally identified a target group for program benefits and suggested a way of deciding how this group should benefit.

Mr. O'Donnell identified the roughly 18,000 people who participate in the Elderly Householder's Property Tax and Rent Refund Program as the prospective group of recipients. Any of these people who do not qualify for free drugs under the Medicaid program could be made eligible for drugs under

the new State program. In order to determine the drug needs of this group of people, the department has been considering a survey of the individuals. After completing the survey the department could make a more informed decision about what drugs should be provided.

Findings: The program has been a small experiment with the concept of seeking non-public funds to support public programs. Although one corporation has agreed to provide some support, the program on balance, has not thus far been successful. Further, because of the number of negative responses to solicitations and the reasons given for those responses, the Committee believes that the program has little potential as a meaningful answer to the drug needs of Maine's disadvantaged elderly citizens.

The money received by the State from the one donor can pay for a small quantity of drugs. As described above, the department intends to survey the people who have benefited under the Elderly Householder's Property Tax and Rent Refund Program in order to determine their drug needs. The Committee agrees that these people should be the recipients of any program benefits and is sympathetic with the department's need to gather information about their patterns of drug use. We believe, however, that a survey of the group would entail a violation of the confidentiality provided in 36 MRSA § 6121 and, therefore, would urge the department to seek the information through public hearings, meetings with associations of the elderly and the Bureau of Maine's Elderly. Further, the Committee recommends that the department should limit, where-

ever possible, expenditures of money collected for the drug program to actual payments for drugs.

The Medical Assistance Payment Agreement which the department has negotiated with the Eli Lilly Company links Lilly's payments to the State for the drug program to the volume of Lilly drugs bought by Maine citizens under the Medicaid program. Prior to completing this agreement, the department informed the Committee that some drug companies were interested in supporting the State's program if a way to do so could be established which would not encourage similar programs in other states. The Committee believes the Medical Assistance Payment Agreement is a method which could be easily duplicated in other states. The Committee also questions the wisdom of basing Lilly's commitment to the State on the dollar amount of a program which is funded by roughly 70% Federal money. We urge the department to seek assurances from Federal officials that the Federal government will not demand 70% of the rebates which the State is receiving under the agreement with Lilly. In addition, we recommend that the department should request an immediate review of the Medical Assistance Payment Agreement by the Attorney General and the Commissioner of Finance and Administration.

The Committee is concerned, not merely with the small benefits which may flow from the current program, but also with the expectations which may have been aroused by the enactment of the program. The publicity surrounding the passage of the law may have encouraged some Maine citizens to believe that their drug needs would be provided for by the State within the near future. We are convinced that the program as now

authorized cannot satisfy expectations. The State should make clear to the public that the program is not funded and is not likely to be funded except by State appropriations. The Committee believes, therefore, that if the State is serious about providing free drugs to Maine's disadvantaged elderly persons the State should appropriate the necessary money.

APPENDIX A

§ 254. Free drugs to elderly, disadvantaged individuals

The Department of Health and Welfare is authorized to conduct a program to provide free prescription and nonprescription drugs and medication to disadvantaged, elderly individuals. The person responsible for administration of this program must be either a Maine licensed pharmacist, physician, osteopathic physician or dentist, or must be under the administrative supervision of someone meeting these specifications. The extent and the magnitude of this program will be determined by the Commissioner of Health and Welfare and will be determined on the basis of the calculated need of the recipient population and the available funds. The department is not authorized to spend more on the conduct of this program than is available either through appropriations from the General Fund, dedicated revenue, federal or other grants and other established and committed funding sources. The commissioner is authorized to accept for the purposes of carrying out this program federal funds appropriated under any federal law relating to the furnishing of free drugs to the disadvantaged, elderly individuals and to do such acts as are necessary for the purposes of carrying out such federal law; and to accept from any other agency of government, individual, group or corporation such funds as may be available to carry out this chapter.

The commissioner is authorized to adopt rules and regulations relating to the conduct of this program, following public hearings, notice of which shall appear in at least 3 appropriate daily newspapers published in the State and a public review period of 60 days. These rules and regulations shall be related to the following aspects of this program:

1. Prescription and nonprescription drugs. The kinds of prescription and nonprescription drugs and medications which may be made available through the operation of this program;
2. Individuals eligible for participation. Eligibility requirements for participation in this program which may include, but not be limited to, income requirements, age requirements and such other requirements as may be reasonably necessary to define a specific eligible population group;
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 such drugs which may include, but not be limited to, the use of generic prescribing and the use of standard prescription refill sizes so as to minimize operational costs;
5. Other rules and regulations. Such other rules and regulations as may be necessary to efficiently and effectively manage and operate a program within the intent of this section.
6. Establish a planned program. The Commissioner of Human Services shall establish, or shall require the person responsible for administration of this program to establish, a planned program of solicitation of funds and drugs for this program from agencies of government, individuals, groups and corporations. A register of solicitations shall be kept, which shall include at least the name, address and business of the agency, individual, group or corporation from whom funds and drugs are solicited, as well as the date, time and result of such solicitation. This register shall be a public record and shall be sent to the Governor and Council every 6 months for their inspection.

The department is also authorized to form an advisory committee which it may consult for technical information regarding the nature and operation of this particular program. The nature and composition of the advisory committee shall be at the discretion of the Governor, or at his direction, at the discretion of the Commissioner of the Department of Health and Welfare. The members of such advisory committee shall serve without compensation; however, the department is authorized to disburse funds from an account created pursuant to this section to defray the reasonable costs associated with formulation of policy and the carrying out of activities of this committee. The department is further authorized to disburse funds from the account set up to carry out the purposes of this section to reimburse members of the advisory committee for their reasonable expenses incurred in carrying out their duties under this section. In no circumstance, however, shall expenditures of over \$3,000 per year be incurred for the operation of this committee and all such expenditures must be approved by the Governor and Executive Council.

The Commissioner of Finance and Administration is authorized to create a dedicated revenue account to receive moneys pursuant to this section from whatever source is available which money may be disbursed solely for the purposes of implementing this section.

Sec. 2. Appropriation. There is appropriated from the General Fund the sum of \$2 to carry out the purposes of this Act. The breakdown shall be as follows:

1975-76 1976-77

HEALTH AND WELFARE,
DEPARTMENT OF

All Other

\$1

\$1

APPENDIX B

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D OF R.

In House

Ordered,

WHEREAS, legislation was introduced at the regular session of the 107TH Legislature to enable the Department of Health and Welfare to provide free drugs to elderly, disadvantaged Maine citizens; and

WHEREAS, there are serious questions concerning the definition, administration and funds availability^e for such a program as well as the possibility of extending the State's Medicaid program to cover costs of said program; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Council be authorized, through the Joint Standing Committee on Health and Institutional Services, to study the subject matter of "AN ACT to Enable the Department of Health and Welfare to Conduct a Program to Provide Free Drugs to Elderly, Disadvantaged Maine Citizens," H.P. 1413, L.D. 1683, as introduced at the regular session of the 107th Legislature to determine in light of the foregoing preamble whether the best interests of the State have been served by enactment of such legislation; and be it further

ORDERED, that the Department of Health and Welfare is directed to cooperate with the Committee on Health and Institutional Services in this study; and be it further

ORDERED, that the Council report the results of its findings together with any proposed recommendations and necessary implementing legislation to the next special or regular session of the Legislature; and be it further

ORDERED, upon passage in concurrence, that suitable copies of this Order be transmitted forthwith to said department as notice of this directive.

Rules Suspended
IN SENATE CHAMBER
TABLED BY ~~SEN. GENE SPEERS~~ *Lead*
OF KENNERED
JUN 13 1975
PENDING *Passage*
HARRY H. STARRANCH, Secretary

HP1704

NAME: (Mrs. Goodwin) *Mathleen W. Goodwin*
TOWN: Bath

HOUSE OF REPRESENTATIVES
READ AND PASSED
JUN 13 1975

Edwin D. Lee
SENT UP FOR CONCURRENCE CLERK
ORDERED SENT FORTHWITH