STATE OF MAINE

129TH LEGISLATURE

FIRST REGULAR SESSION

Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

August 2019

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LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 129th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER.....*carried over to a subsequent session of the Legislature*
CON RES XXX.....*chapter # of constitutional resolution passed by both houses*
CONF CMTE UNABLE TO AGREE..... *Committee of Conference unable to agree; legislation died*
DIED BETWEEN HOUSES.....*House & Senate disagreed; legislation died*
DIED IN CONCURRENCE ..... *defeated in each house, but on different motions; legislation died*
DIED ON ADJOURNMENT..... *action incomplete when session ended; legislation died*
EMERGENCY.....*enacted law takes effect sooner than 90 days after session adjournment*
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE.....*emergency failed to receive required 2/3 vote*
FAILED, ENACTMENT or FINAL PASSAGE..... *failed to receive final majority vote*
FAILED, MANDATE ENACTMENT.....*legislation proposing local mandate failed required 2/3 vote*
HELD BY GOVERNOR..... *Governor has not signed; final disposition to be determined at subsequent session*
LEAVE TO WITHDRAW.....*sponsor's request to withdraw legislation granted*
NOT PROPERLY BEFORE THE BODY.....*ruled out of order by the presiding officer; legislation died*
INDEF PP..... *indefinitely postponed; legislation died*
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... *ought-not-to-pass report accepted; legislation died*
P&S XXX.....*chapter # of enacted private & special law*
PUBLIC XXX..... *chapter # of enacted public law*
RESOLVE XXX..... *chapter # of finally passed resolve*
VETO SUSTAINED.....*Legislature failed to override Governor's veto*

The effective date for non-emergency legislation enacted in the First Regular Session of the 129th Legislature is Thursday, September 19, 2019. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

The law also prohibits a carrier from requiring prior authorization for emergency services and requires that, before a carrier denies benefits or reduces payment for an emergency service based on a determination of the absence of an emergency medical condition or a determination that a lower level of care was needed, the carrier's utilization review must be done by a board-certified emergency physician who is licensed in this State and that the review must include a review of the enrollee's medical record related to the emergency medical condition subject to dispute.

LD 1162 **An Act To Further Expand Drug Price Transparency** **PUBLIC 470**

Sponsor(s)	Committee Report	Amendments Adopted
VITELLI E TEPLER D	OTP-AM	S-252

This bill requires that, if a prescription drug has a wholesale acquisition cost of more than $40 for a course of therapy and there is an increase in the wholesale acquisition cost of that prescription drug of more than 16%, including the proposed increase and the cumulative increases that occurred within the previous two calendar years prior to the current year, the manufacturer of the prescription drug must provide notice to certain registered purchasers.

Under current law the Maine Health Data Organization, referred to as the "organization," is required to collect and report information with regard to the 25 prescription drugs that are the most frequently prescribed in the State, the 25 costliest as determined by the total amount spent on those drugs in the State and the 25 drugs that have the highest year-over-year cost increases in total spending in the State. This bill requires the organization to post online a list of the identified prescription drugs, along with the corresponding wholesale acquisition cost and the percentage of wholesale acquisition cost increase, if applicable, for each identified prescription drug.

The bill directs the organization to develop a plan to collect data from manufacturers that will help explain how prescription drug prices are established. The organization is required to work with other state and national agencies and organizations to determine how to conduct the data collection. The organization is required to submit the plan as well as any recommendations for legislation to the joint standing committee of the Legislature having jurisdiction over judiciary matters by April 1, 2020. That committee may report out legislation to the First or Second Regular Session of the 130th Legislature.

Using the plan developed and reported to the Legislature, starting in 2021 the organization must require the manufacturer of each drug on the list to disclose drug production, research and development costs, marketing and advertising costs and actual costs paid by purchasers. The manufacturer must certify the accuracy of the information and provide it within 60 days after the information is requested by the organization. The organization is authorized to request additional information related to the required information. The information that the manufacturers are directed to provide to the organization, unless the information is already publicly accessible or available or previously released in the public domain, must be held confidential at the request of the manufacturer. The organization may release information that was previously accessible or available or released in the public domain. The organization may release additional information as long as the information released is not a trade secret. The organization must treat the information as "Level II" information as required by rules that have already been adopted by the organization.

This amendment provides that the manufacturer may voluntarily provide any other information the manufacturer determines relevant to the increase in wholesale acquisition cost, including but not limited to information about all manufacturer-sponsored assistance programs for that drug in the previous year, including the terms of the programs, the total amount of financial assistance provided to residents of the State and the average amount of assistance per resident of the State for whom assistance was provided. This information is not considered confidential and the

organization may release it, identifying both the manufacturer and the individual drug. The organization is required to submit an annual report to the Legislature based on the list of up to 75 drugs and the wholesale acquisition cost information. The organization may include in the report recommendations for increasing prescription drug pricing transparency. Once the organization starts collecting information from manufacturers in 2021, the report must also include at least a summary of the manufacturer information. The organization is required to post the report online.

The bill provides that when a manufacturer violates the reporting requirements, the Board of Directors of the Maine Health Data Organization may impose a fine of not more than $10,000 per day after the deadline for reporting required information. If the manufacturer fails to pay a fine, or if an injunction is necessary, the board may refer the matter to the Attorney General. The Attorney General may bring an action in Superior Court for injunctive relief, enforcement of fines, costs, attorney's fees and any other appropriate remedy.

The legislation does not restrict the legal ability of a prescription drug manufacturer to change prices to the extent permitted under federal law.

Committee Amendment "A" (S-252)

This amendment replaces the bill. The amendment does the following.

The amendment requires prescription drug manufacturers to report annually to the Maine Health Data Organization no later than January 30, 2020 and annually thereafter, on prescription drug prices when the manufacturer has during the prior calendar year increased the wholesale acquisition cost of a brand-name drug by more than 20% per pricing unit, increased the wholesale acquisition cost of a generic drug that costs at least $10 per pricing unit by more than 20% per pricing unit or introduced a new drug for distribution in this State when the wholesale acquisition cost is greater than the amount that would cause the drug to be considered a specialty drug under the Medicare Part D program.

The amendment also requires prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers to provide pricing component data per pricing unit of a drug within 60 days of a request by the Maine Health Data Organization. The amendment defines "pricing component data" as data unique to each manufacturer, wholesale drug distributor or pharmacy benefits manager that evidences the cost to make a prescription drug available to consumers and the payments received by each manufacturer, wholesale drug distributor or pharmacy benefits manager to make a prescription drug available to consumers, taking into account any price concessions, and that is measured uniformly among the entities, as determined by rules adopted by the organization.

The amendment provides that reported information is confidential, except that information may be shared in the aggregate and with the Department of Professional and Financial Regulation, Bureau of Insurance for enforcement purposes.

Beginning November 1, 2020 and annually thereafter, the amendment requires the Maine Health Data Organization to produce and post on its publicly accessible website an annual report, including information developed from the notifications and disclosures received from prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers on trends in the cost of prescription drugs, an analysis of manufacturer prices and price increases, the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and cost sharing and other information the organization determines is relevant to providing greater consumer awareness of the factors contributing to the cost of prescription drugs in the State.

Enacted Law Summary

Public Law 2019, chapter 470 requires prescription drug manufacturers to report annually to the Maine Health Data Organization no later than January 30, 2020 and annually thereafter, on prescription drug prices when the manufacturer has during the prior calendar year increased the wholesale acquisition cost of a brand-name drug by more than 20% per pricing unit, increased the wholesale acquisition cost of a generic drug that costs at least

$10 per pricing unit by more than 20% per pricing unit or introduced a new drug for distribution in this State when the wholesale acquisition cost is greater than the amount that would cause the drug to be considered a specialty drug under the Medicare Part D program.

The law also requires prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers to provide pricing component data per pricing unit of a drug within 60 days of a request by the Maine Health Data Organization. The law defines "pricing component data" as data unique to each manufacturer, wholesale drug distributor or pharmacy benefits manager that evidences the cost to make a prescription drug available to consumers and the payments received by each manufacturer, wholesale drug distributor or pharmacy benefits manager to make a prescription drug available to consumers, taking into account any price concessions, and that is measured uniformly among the entities, as determined by rules adopted by the organization.

The law provides that reported information is confidential, except that information may be shared in the aggregate and with the Department of Professional and Financial Regulation, Bureau of Insurance for enforcement purposes.

Beginning November 1, 2020 and annually thereafter, the law requires the Maine Health Data Organization to produce and post on its publicly accessible website an annual report, including information developed from the notifications and disclosures received from prescription drug manufacturers, wholesale drug distributors and pharmacy benefits managers on trends in the cost of prescription drugs, an analysis of manufacturer prices and price increases, the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and cost sharing and other information the organization determines is relevant to providing greater consumer awareness of the factors contributing to the cost of prescription drugs in the State.

LD 1197 **An Act To Amend the Law Prohibiting the Denial by Health Insurers of Referrals by Out-of-network Providers** **PUBLIC 178**

Sponsor(s)	Committee Report	Amendments Adopted
FOLEY R MORRIS J	OTP-AM	S-90

This bill provides that the law that prohibits carriers from denying payment for covered health care services solely on the basis that the referral for services was made by an out-of-network provider applies only to referrals made by out-of-network direct primary care providers. It also allows a carrier to require a direct primary care provider who is not a member of the carrier's provider network and who makes a referral to meet appropriate credentialing standards consistent with other primary care providers participating in the carrier's provider network.

Committee Amendment "A" (S-90)

This amendment replaces the bill. The amendment provides that the law that prohibits carriers from denying payment for covered health care services solely on the basis that the referral for services was made by an out-of-network provider applies only to referrals made by out-of-network direct primary care providers. It prohibits a carrier from requiring an enrollee to pay a greater cost-sharing amount than the cost-sharing that would apply to the same service if the service was referred by a participating primary care provider. It also allows a carrier to require a direct primary care provider who is not a member of the carrier's provider network to attest that the provider is a direct primary care provider through a written attestation or copy of the direct primary care agreement with the enrollee.

Enacted Law Summary