

MAINE STATE LEGISLATURE

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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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STAFF:

COLLEEN MCCARTHY REID, SR. LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670
<http://legislature.maine.gov/opla/>

*Committee member for a portion of the session

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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.

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methods recommended to meet those targets to the Legislature annually.

Enacted Law Summary

Public Law 2019, chapter 471 establishes the Maine Prescription Drug Affordability Board. The law provides that the board determines prescription drug spending targets for public entities, including for specific prescription drugs, based upon a 10-year rolling average of the medical care services component of the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index plus a reasonable percentage for inflation and minus a spending target determined by the board for pharmacy savings and in consideration of information received about the public entity's prescription drug spending and information collected by the Maine Health Data Organization. The board makes recommendations on prescription drug spending targets, including spending targets for specific prescription drugs, with input from representatives of those public entities. The recommendations may include establishing a common prescription drug formulary among public payors, purchasing prescription drugs in bulk or through a single purchasing agreement, collaborating with other states and state prescription drug purchasing consortia to purchase prescription drugs in bulk or to jointly negotiate rebates, allowing health insurance carriers providing coverage to small businesses in the State to participate in a public payor prescription drug benefit for a fee, procuring common pharmacy benefit management services and actuarial services, negotiating specific rebates and removing drugs for which a manufacturer does not negotiate a sufficient rebate from a formulary and other methods determined by the board. The board is required to report its prescription drug spending targets and the methods recommended to meet those targets to the Legislature annually.

LD 1504 An Act To Protect Consumers from Unfair Practices Related to Pharmacy Benefits Management

PUBLIC 469

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SANBORN H TEPLER D	OTP-AM OTP-AM	S-253

This bill replaces the current registration requirement for pharmacy benefits managers doing business in this State with a licensing requirement beginning January 1, 2020. The bill imposes the following requirements on a carrier that provides prescription drug benefits.

1. It makes a carrier responsible for monitoring all activities carried out by the carrier, or all activities carried out on behalf of the carrier by a pharmacy benefits manager, related to a carrier's prescription drug benefits and for ensuring that all requirements of the law are met.
2. If a carrier contracts with a pharmacy benefits manager to perform any activities related to the carrier's prescription drug benefits, it makes the carrier responsible for ensuring that the pharmacy benefits manager acts as the carrier's agent and owes a fiduciary duty to the carrier.
3. It prohibits a carrier from entering into a contract or agreement or allowing a pharmacy benefits manager or any person acting on the carrier's behalf to enter into a contract or agreement that prohibits a pharmacy provider from providing a consumer with the option of paying the cash price for the purchase of a prescription drug and not filing a claim with the consumer's carrier if the cash price is less than the covered person's cost-sharing amount or providing information to a state or federal agency, law enforcement agency or the Superintendent of Insurance when such information is required by law.
4. It prohibits a carrier or pharmacy benefits manager from requiring a consumer to make an excessive payment at the point of sale for a covered prescription drug.
5. It requires a carrier to provide a reasonably adequate retail pharmacy network and specifies that a mail order

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pharmacy may not be included in determining the adequacy of a retail pharmacy network.

6. It replaces and updates current law related to the use of a maximum allowable cost list by a carrier or pharmacy benefits manager under contract with a carrier. It also clarifies how a carrier or pharmacy benefits manager may determine the average wholesale price of a brand-name drug or generic drug not included on the maximum allowable cost list.

7. It specifies how to calculate the amount paid by a carrier or a carrier's pharmacy benefits manager to a pharmacy provider under contract with the carrier or the carrier's pharmacy benefits manager for dispensing a prescription drug.

8. It requires that all compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a pharmacy benefits manager related to its prescription drug benefits must be remitted to, and retained by, the carrier and used to lower the premium for covered persons. The bill requires a carrier to file annual reports beginning March 1, 2021 demonstrating how the carrier has complied with this requirement.

9. It requires a carrier to use a prescription drug formulary and specifies certain requirements for accessibility and disclosure of the formulary to covered persons. The bill also prohibits a carrier from allowing a person to be a member of its pharmacy and therapeutics committee if the member has a conflict of interest because of a relationship with, or compensation from, a pharmaceutical manufacturer, developer, labeler, wholesaler or distributor.

10. It requires a carrier to maintain certain records related to the administration and provision of prescription drug benefits under a health plan and authorizes the carrier to audit those activities. The bill also authorizes the superintendent to have access to records upon request.

11. If a carrier uses a pharmacy benefits manager to administer or manage prescription drug benefits provided for the benefit of covered persons, it provides that any pharmacy benefits manager compensation constitutes an administrative cost incurred by a carrier for purposes of calculating the anticipated loss ratio. "Pharmacy benefits manager compensation" is defined in the bill as the difference between the value of payments made by a carrier of a health plan to its pharmacy benefits manager and the value of payments made by the pharmacy benefits manager to dispensing pharmacists for the provision of prescription drugs or pharmacy services with regard to pharmacy benefits covered by the health plan.

12. It provides that the provisions in the bill take effect January 1, 2020.

Committee Amendment "A" (S-253)

This amendment makes the following changes to the bill.

1. It clarifies the provision related to excess payments at the point of sale.

2. It requires that all compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a pharmacy benefits manager related to its prescription drug benefit must be remitted directly to the covered person at the point of sale or to the carrier to offset premiums for covered persons.

3. It removes the provision related to prescription drug formularies used by carriers as it is duplicative of other provisions in current law.

4. It clarifies that the definition of "carrier" does not include a multiple-employer welfare arrangement if the

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multiple-employer welfare arrangement contracts with a 3rd-party administrator to manage and administer health benefits, including benefits for prescription drugs.

Committee Amendment "B" (S-254)

This amendment is the minority report of the committee and replaces the bill. The amendment repeals the current registration requirement for pharmacy benefits managers and replaces it with a licensing requirement.

This amendment was not adopted.

Enacted Law Summary

Public Law 2019, chapter 469 replaces the current registration requirement for pharmacy benefits managers doing business in this State with a licensing requirement beginning January 1, 2020. The law imposes the following requirements on a carrier that provides prescription drug benefits.

1. It makes a carrier responsible for monitoring all activities carried out by the carrier, or all activities carried out on behalf of the carrier by a pharmacy benefits manager, related to a carrier's prescription drug benefits and for ensuring that all requirements of the law are met.
2. If a carrier contracts with a pharmacy benefits manager to perform any activities related to the carrier's prescription drug benefits, it makes the carrier responsible for ensuring that the pharmacy benefits manager acts as the carrier's agent and owes a fiduciary duty to the carrier.
3. It prohibits a carrier from entering into a contract or agreement or allowing a pharmacy benefits manager or any person acting on the carrier's behalf to enter into a contract or agreement that prohibits a pharmacy provider from providing a consumer with the option of paying the cash price for the purchase of a prescription drug and not filing a claim with the consumer's carrier if the cash price is less than the covered person's cost-sharing amount or providing information to a state or federal agency, law enforcement agency or the Superintendent of Insurance when such information is required by law.
4. It prohibits a carrier or pharmacy benefits manager from requiring a consumer to make an excessive payment at the point of sale for a covered prescription drug.
5. It requires a carrier to provide a reasonably adequate retail pharmacy network and specifies that a mail order pharmacy may not be included in determining the adequacy of a retail pharmacy network.
6. It replaces and updates current law related to the use of a maximum allowable cost list by a carrier or pharmacy benefits manager under contract with a carrier. It also clarifies how a carrier or pharmacy benefits manager may determine the average wholesale price of a brand-name drug or generic drug not included on the maximum allowable cost list.
7. It specifies how to calculate the amount paid by a carrier or a carrier's pharmacy benefits manager to a pharmacy provider under contract with the carrier or the carrier's pharmacy benefits manager for dispensing a prescription drug.
8. It requires that all compensation remitted by or on behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a carrier or to a pharmacy benefits manager related to its prescription drug benefit must be remitted directly to the covered person at the point of sale or to the carrier to offset premiums for covered persons. The law requires a carrier to file annual reports beginning March 1, 2021 demonstrating how the carrier has complied with this requirement.
9. It prohibits a carrier from allowing a person to be a member of its pharmacy and therapeutics committee if the

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member has a conflict of interest because of a relationship with, or compensation from, a pharmaceutical manufacturer, developer, labeler, wholesaler or distributor.

10. It requires a carrier to maintain certain records related to the administration and provision of prescription drug benefits under a health plan and authorizes the carrier to audit those activities. The law also authorizes the superintendent to have access to records upon request.

11. If a carrier uses a pharmacy benefits manager to administer or manage prescription drug benefits provided for the benefit of covered persons, it provides that any pharmacy benefits manager compensation constitutes an administrative cost incurred by a carrier for purposes of calculating the anticipated loss ratio. "Pharmacy benefits manager compensation" is defined in the law as the difference between the value of payments made by a carrier of a health plan to its pharmacy benefits manager and the value of payments made by the pharmacy benefits manager to dispensing pharmacists for the provision of prescription drugs or pharmacy services with regard to pharmacy benefits covered by the health plan.

12. It clarifies that the definition of "carrier" does not include a multiple-employer welfare arrangement if the multiple-employer welfare arrangement contracts with a 3rd-party administrator to manage and administer health benefits, including benefits for prescription drugs.

The provisions in Public Law 2019, chapter 469 take effect January 1, 2020.

LD 1582 An Act Relating to Surgical Technologists and the Practice of Surgical Technology ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NADEAU C VITELLI E	ONTP	

Surgical technologists are individuals with specialized education who function as members of a surgical team by providing support during every phase of a surgical case. This bill requires health care facilities to employ or contract with only certified surgical technologists for this function. A surgical technologist who is not certified, but who is practicing surgical technology on the effective date of this legislation, may continue in that employment after the effective date. After the effective date, a health care facility may hire a noncertified surgical technologist who is a recent graduate, but the individual is required to obtain certification within 6 months of graduation in order to remain employed. Further, a critical access hospital may employ a noncertified surgical technologist if that facility is unable to recruit certified personnel and maintains a record detailing its recruitment efforts. All employed surgical technologists, regardless of certification status, must meet stated continuing education requirements. Nothing in the bill prohibits a licensed practitioner from performing surgical technology duties that fall within the scope of that person's license.

LD 1591 An Act To Provide Access to Health Care for Maine Citizens CARRIED OVER

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BRENNAN M		

This bill specifies that the base year for the hospital tax imposed under the Maine Revised Statutes, Title 36, section 2892 is 2018. It directs the Department of Health and Human Services to submit a plan to the Joint Standing Committee on Health and Human Services regarding how the additional state revenue resulting from that change can be used for the Medicare Buy-in Program and for subsidies under the federal Patient Protection and Affordable