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An Act to Direct the Maine Prescription Drug Affordability Board to Assess Strategies to Reduce Prescription Drug Costs and to Take Steps to Implement Reference-based Pricing

Received by the Secretary of the Senate on February 20, 2025. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator RENY of Lincoln.
Cosponsored by Representative MATHIESON of Kittery and
Senators: BAILEY of York, INGWERSEN of York, RAFFERTY of York, TEPLER of Sagadahoc, Representative: MASTRACCIO of Sanford.

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

Sec. 1. 5 MRSA §2041, sub-§2, as repealed and replaced by PL 2021, c. 293, Pt. A, §5, is amended to read:

2. Membership. The board ~~has 5~~ consists of 6 members with expertise in health policy, health care data, health care economics or clinical medicine, who may not be affiliated with or represent the interests of a pharmaceutical manufacturer or a public payor, ~~as that term is defined in section 2042, and who are appointed~~ as follows:

A. Two members appointed by the President of the Senate. The President of the Senate shall also appoint one alternate board member who will participate in deliberations of the board in the event a member appointed by the President of the Senate elects to be recused as provided in subsection 7, paragraph B;

B. Two members appointed by the Speaker of the House of Representatives. The Speaker of the House of Representatives shall also appoint one alternate board member who will participate in deliberations of the board in the event a member appointed by the Speaker of the House of Representatives elects to be recused as provided in subsection 7, paragraph B; ~~and~~

C. One member appointed by the Governor. The Governor shall also appoint one alternate board member who will participate in deliberations of the board in the event the member appointed by the Governor elects to be recused as provided in subsection 7, paragraph B~~.~~; and

D. The executive director of the Maine Health Data Organization established by Title 22, section 8703, or the executive director's designee, who serves as an ex officio, nonvoting member.

Sec. 2. 5 MRSA §2041, sub-§9, as repealed and replaced by PL 2021, c. 293, Pt. A, §5, is amended to read:

9. Compensation. ~~A~~ Except for the member under subsection 2, paragraph D, a member of the board and a member of the advisory council appointed pursuant to subsection 10, paragraph L are entitled to legislative per diem and reimbursement for expenses as provided in section 12004-G, subsection 14-I.

Sec. 3. 5 MRSA §2041, sub-§10, as repealed and replaced by PL 2021, c. 293, Pt. A, §5, is amended to read:

10. Advisory council. A 12-member advisory council is established to advise the board ~~on establishing annual spending targets pursuant to section 2042, subsection 1 and determining methods for meeting those spending targets pursuant to section 2042, subsection 3~~. The advisory council consists of:

A. The Governor or the governor's designee;

B. The Commissioner of Administrative and Financial Services or the commissioner's designee;

C. The Commissioner of Corrections or the commissioner's designee;

D. The Commissioner of Health and Human Services or the commissioner's designee;

E. The Attorney General or the Attorney General's designee;

F. The Executive Director of Employee Health and Benefits, within the Department of Administrative and Financial Services, Bureau of Human Resources, or the executive director's designee;

G. A representative from the Maine ~~State~~ Service Employees Association, appointed by the Governor, based on a nomination by the association;

H. A representative from the Maine Education Association, appointed by the Governor, based on a nomination by the association;

I. A representative from the Maine Municipal Association, appointed by the Governor, based on a nomination by the association;

J. A representative from the University of Maine System, appointed by the Governor, based on a nomination by the system;

K. A representative from the Maine Community College System, appointed by the Governor, based on a nomination by the system; and

L. A representative of consumer interests, appointed by the Governor, who serves a 3-year term.

Sec. 4. 5 MRSA §2041, sub-§12, as repealed and replaced by PL 2021, c. 293, Pt. A, §5, is repealed.

Sec. 5. 5 MRSA §2042, as repealed and replaced by PL 2021, c. 293, Pt. A, §5, is amended to read:

§2042. Powers and duties of the board

The board has the following powers and duties.

~~**1. Prescription drug spending targets.** The board has the following powers and duties. For the purposes of this section, the term "public payor" means any division of state, county or municipal government that administers a health plan for employees of that division of state, county or municipal government or an association of state, county or municipal employers that administers a health plan for its employees, except for the MaineCare program. The board shall:~~

~~A. Beginning for the year 2021 and in consultation with the advisory council established under section 2041, subsection 10, determine annual spending targets for prescription drugs purchased by public payors 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;~~

~~B. Determine spending targets on specific prescription drugs that may cause affordability challenges to enrollees in a public payor health plan; and~~

~~C. Determine which public payors are likely to exceed the spending targets determined under paragraph A.~~

1-A. Strategies to reduce costs of prescription drugs. The board shall:

A. Review prescription drug spending and utilization data to identify causes of high spending or rising spending affecting public payors and private payors and impacting consumers;

B. Solicit public input to identify cost-related barriers to accessing prescription drugs; and

C. Assess strategies to reduce the cost of prescription drugs and reduce the rate of growth in prescription drug spending and to reduce cost barriers for consumers. The review of strategies must include consideration of the strategies' likely impact on consumers and overall health care costs and the feasibility of implementing such strategies. At a minimum, the board shall assess the following strategies:

(1) Empowering the board to assess the affordability of drugs and to establish upper payment limits;

(2) Implementing reference-based pricing, including reviewing potential savings for the state employee group health plan under Title 5, section 285 by implementing reference-based pricing for the first 10 drugs negotiated under the Medicare drug price negotiation program established in United States Public Law 117-169 (August 16, 2022);

(3) Recommending annual spending targets for prescription drugs for public payors and implementing strategies for the purchase of prescription drugs by public payors in order to meet those annual spending targets, including group purchasing and formulary alignment. For the purposes of this subsection, the term "public payor" means any division of state, county or municipal government that administers a health plan for employees of that division of state, county or municipal government or an association of state, county or municipal employers that administers a health plan for its employees, except for the MaineCare program;

(4) Recommending annual spending targets for prescription drugs that could be applied to one or more segments of the state-regulated commercial insurance market and implementing strategies to meet those annual spending targets;

(5) Implementing transparency requirements and regulation of supply chain entities, including, but not limited to, pharmacy benefits managers, including regarding the role of discounts and rebates in prescription drug costs;

(6) Implementing strategies to reduce out-of-pocket costs for prescription drugs through the regulation of insurance and the rate review process of the Department of Professional and Financial Regulation, Bureau of Insurance;

(7) Developing opportunities for engagement with providers and other health care professionals to disseminate information about prescription drug costs and pricing; and

(8) Aligning the payment for prescription drugs with actual drug acquisition costs.

1-B. Other states' experiences. To accomplish the duties under subsection 1-A, the board shall consider and review the experiences of other states, including, but not limited to, the role of prescription drug affordability boards established in other states that are authorized to assess affordability of prescription drugs and to establish upper payment

limits or reference-based pricing requirements and their regulation of pharmacy benefits managers.

2. Prescription drug spending data. The board may consider the following data to accomplish its duties under this section:

A. ~~A public payor's prescription~~ Prescription drug spending data~~, which the~~ not available through the Maine Health Data Organization. The board may request data under this paragraph from 3rd-party ~~administrator~~ administrators or ~~insurer for the public payor's health plan shall provide to the board on behalf of the public payor upon request~~ insurers notwithstanding any provision of law to the contrary, including:

(1) Expenditures and utilization data for prescription drugs for each plan offered ~~by a public payor~~;

(2) The formulary for each plan offered by a ~~public~~ payor and prescription drugs common to each formulary;

(3) Pharmacy ~~benefit management~~ benefits manager services and other administrative expenses of the prescription drug benefit for each plan offered ~~by a public payor~~; and

(4) Enrollee cost sharing for each plan offered ~~by a public payor~~ and other available information regarding costs to consumers, including premiums and out-of-pocket costs; and

B. Data compiled by the Maine Health Data Organization under Title 22, chapter 1683.

Prescription drug spending data provided to the board and its staff under this subsection is confidential to the same extent it is confidential while in the custody of the entity that provided the data to the board.

~~**3. Recommendations.** Based upon the prescription drug spending data received under subsection 2, the board, in consultation with a representative of each public payor identified under subsection 1, paragraph A, shall determine methods for the public payor to meet the spending targets established under subsection 1. The board shall determine whether the following methods reduce costs to individuals purchasing prescription drugs through a public payor and allow public payors to meet the spending targets established under subsection 1:~~

~~A. Negotiating specific rebate amounts on the prescription drugs that contribute most to spending that exceeds the spending targets;~~

~~B. Changing a formulary when sufficient rebates cannot be secured under paragraph A;~~

~~C. Changing a formulary with respect to all of the prescription drugs of a manufacturer within a formulary when sufficient rebates cannot be secured under paragraph A;~~

~~D. Establishing a common prescription drug formulary for all public payors;~~

~~E. Prohibiting health insurance carriers in the State from offering on their formularies a prescription drug or any of the prescription drugs manufactured by a particular manufacturer when the methods described in paragraph B or C are implemented;~~

~~F. Purchasing prescription drugs in bulk or through a single purchasing agreement for use among public payors;~~

~~G. Collaborating with other states and state prescription drug purchasing consortia to purchase prescription drugs in bulk or to jointly negotiate rebates;~~

~~H. Allowing health insurance carriers providing coverage to small businesses and individuals in the State to participate in the public payor prescription drug benefit for a fee;~~

~~I. Procuring common expert services for public payors, including but not limited to pharmacy benefit management services and actuarial services; and~~

~~J. Any other method the board may determine.~~

4. Report. The board shall report ~~its~~ any recommendations~~, including prescription drug spending targets, and the progress of implementing those recommendations~~ regarding strategies to reduce the cost of prescription drugs, other states' experiences and prescription drug spending data to the joint standing committee of the Legislature having jurisdiction over health coverage and insurance matters no later than ~~October 1, 2020 and on~~ January 30th annually ~~thereafter~~. The joint standing committee may report out legislation based upon the report.

5. Rulemaking. The board may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined by chapter 375, subchapter 2-A.

Sec. 6. Affordability program. The Maine Prescription Drug Affordability Board established under the Maine Revised Statutes, Title 5, section 2041, referred to in this section as "the board," in consultation with its advisory council established under Title 5, section 2041, subsection 10 and any technical committees the board may establish, shall develop a program to reduce the impact of prescription drug costs on the State's health care system, stem the rate of growth in prescription drug spending and reduce cost barriers for consumers. The program must be based on the prescription drug spending data received under Title 5, section 2042, subsection 2 and the assessment conducted under Title 5, section 2042, subsections 1-A and 1-B, include recommended implementation and enforcement strategies and identify necessary funding and regulatory and legislative authority.

1. The board shall adopt and submit a preliminary plan for a prescription drug affordability program in its annual report due by January 30, 2026 pursuant to the Maine Revised Statutes, Title 5, section 2042, subsection 4 to the Joint Standing Committee on Health Coverage, Insurance and Financial Services. The preliminary plan must include any proposals for legislative action needed to implement the program. The joint standing committee may report out legislation based upon the report to the 133rd Legislature in 2027.

2. The board shall adopt and submit its final plan for a prescription drug affordability program in a report to the joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters by October 1, 2027. The final plan must include any proposals for legislative action needed to implement the program. The joint standing committee may report out legislation based upon the report to the Second Regular Session of the 133rd Legislature.

SUMMARY

This bill makes the following changes to the laws governing the Maine Prescription Drug Affordability Board.

1. It adds to the board the executive director of the Maine Health Data Organization, or the executive director's designee, as an ex officio, nonvoting member.

2. It removes the authority of the board to recommend that public payors pay an annual assessment to support the administration of the board.

3. It changes the scope of the duties of the board from determining prescription drug spending targets to focusing on an assessment of strategies to reduce prescription drug costs, reduce the rate of growth in prescription drug spending and reduce cost barriers for consumers.

4. It requires the board to review how states with authority to establish upper payment limits have implemented that authority and their regulation of pharmacy benefits managers, to recommend whether the board should have comparable authority and to assess implementing reference-based pricing for the first 10 prescription drugs for which the Medicare program has negotiated maximum fair prices through the Medicare drug price negotiation program.

5. It requires the board to recommend annual spending targets for prescription drugs for public payors and implementing complementary purchasing strategies; annual spending targets and strategies for the commercial insurance market; transparency requirements and supply chain regulation; strategies to reduce out-of-pocket costs through insurance regulation; and aligning prescription drug payment with acquisition costs.

The bill also directs the board to recommend a program to reduce the impact of prescription drug costs on the State's health care system, stem the rate of growth in prescription drug spending and reduce cost barriers for consumers based on data the board has collected. The board is directed to submit in reports to the joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters a preliminary plan to implement the program by January 30, 2026 and a final plan by October 1, 2027. The joint standing committee is authorized to report out legislation based on the reports.