131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document	**No. 1829**
S.P. 745	In Senate, April 27, 2023

An Act to Reduce Prescription Drug Costs by Requiring Reference-based Pricing

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator RENY of Lincoln.
Cosponsored by President JACKSON of Aroostook, Representative PERRY of Calais and Senators: BAILEY of York, CURRY of Waldo, RAFFERTY of York, VITELLI of Sagadahoc, Representatives: CLOUTIER of Lewiston, MATHIESON of Kittery, MEYER of Eliot, Speaker TALBOT ROSS of Portland.

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

Sec. 1. 22 MRSA c. 603, sub-c. 1-C is enacted to read:

SUBCHAPTER 1-C

REFERENCE-BASED PRESCRIPTION DRUG PRICING

§2689. Reference-based prescription drug pricing

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

B. "ERISA plan" means a plan qualified under the federal Employee Retirement Income Security Act of 1974.

C. "Health plan" has the same meaning as in Title 24-A, section 4301-A, subsection 7.

D. "Participating ERISA plan sponsor" means an ERISA plan sponsor that has elected to participate in the requirements and restrictions of this section as described in subsection 3.

E. "Prescription drug" has the same meaning as in Title 32, section 13702-A, subsection 30.

F. "Price applicability period" means the period of time defined in United States Public Law 117-169, Section 1191 (2022).

G. "Referenced drugs" means prescription drugs subject to a referenced rate.

H. "Referenced rate" means the maximum rate for a prescription drug published by the Secretary of the United States Department of Health and Human Services pursuant to United States Public Law 117-169, Section 1195 (2022).

I. "State entity" means any agency of State Government that purchases prescription drugs on behalf of the State for a person whose health care is paid for by the State, including any agent, vendor, fiscal agent, contractor or other party acting on behalf of the State. "State entity" does not include the medical assistance program established under 42 United States Code, Section 1396 et seq.

2. Payment in excess of referenced rate prohibited. The following practices are prohibited.

A. It is a violation of this section to dispense, deliver or administer to a consumer in the State in person, by mail or by another means a prescription drug for a cost that exceeds the referenced rate during the price applicability period.

B. It is a violation of this section for a state entity, carrier offering a health plan or participating ERISA plan sponsor to purchase referenced drugs or seek reimbursement for referenced drugs to be dispensed or delivered to a consumer in the State, whether directly or through a distributor, for a cost higher than the referenced rate. Contracts entered into by a state entity, carrier or participating ERISA plan sponsor and a 3rd

party for the purchase of prescription drugs must expressly provide that rates paid for referenced drugs may not exceed the referenced rate.

C. It is a violation of this section for a retail pharmacy licensed in the State to purchase for sale or seek reimbursement for a prescription drug to be dispensed or delivered to a consumer whose health care is provided by a state entity, health plan or participating ERISA plan at a cost that exceeds the referenced rate. The referenced rate does not include a dispensing fee paid to a retail pharmacy, and this chapter may not be construed to prevent a retail pharmacy from receiving a dispensing fee above the referenced rate.

3. ERISA plan sponsor participation. An ERISA plan sponsor may elect to participate in the provisions of this section. An ERISA plan sponsor that elects to participate in the requirements of this section shall notify the Superintendent of Insurance in writing by December 15th of each year.

4. Rules. The Superintendent of Insurance may adopt rules to carry out the purposes of this subchapter. Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

5. Registered agent and office within the State. An entity that sells, distributes, delivers or offers for sale any prescription drug in the State shall maintain a registered agent and office within the State.

6. Use of savings. The following provisions govern the use of savings generated as a result of the requirements in subsection 2.

A. Any savings generated as a result of the requirements in subsection 2 during the price applicability period must be used to reduce costs to consumers. A state entity, carrier or participating ERISA plan sponsor shall calculate its savings and use the savings directly to reduce costs for its members. In determining how to use savings in order to comply with this subsection, a state entity, carrier or participating ERISA plan sponsor shall consider strategies that promote greater health equity by addressing health disparities across communities.

B. No later than April 1st of each calendar year, each state entity, carrier or participating ERISA plan sponsor subject to this section shall submit to the Superintendent of Insurance a report describing the savings achieved for each referenced drug for the previous calendar year and how those savings were used to achieve the requirements under paragraph A, including if the savings were used to promote greater health equity by addressing health disparities across communities.

C. The Superintendent of Insurance shall adopt and implement rules setting forth the method for calculating savings and the format and manner for submitting the report under paragraph B.

7. Enforcement. Each violation of this section is subject to a fine of $1,000. Each individual transaction in violation of subsection 2 is a separate violation. The Attorney General is authorized to enforce the provisions of this section on behalf of any state entity or consumer of prescription drugs. The refusal of a manufacturer or distributor of prescription drugs to negotiate in good faith as described in subsection 8 is a valid affirmative defense in any enforcement action brought under this subchapter.

8. Prohibition on withdrawal of referenced drugs for sale. The following provisions govern the withdrawal of a referenced drug.

A. A manufacturer or distributor of a referenced drug may not withdraw that drug from sale or distribution within the State for the purpose of avoiding the effect of the rate limitations set forth in subsection 2.

B. A manufacturer that intends to withdraw a referenced drug from sale or distribution from within the State shall provide a notice of withdrawal in writing to the Superintendent of Insurance and to the Attorney General at least 180 days prior to the withdrawal.

C. A manufacturer or distributor of a referenced drug may not refuse to negotiate in good faith with a payor or seller of prescription drugs a price that does not exceed the referenced rate for that drug.

D. The Superintendent of Insurance shall assess a penalty of $500,000 or the amount of annual savings determined by the superintendent in accordance with subsection 6, whichever is greater, on any manufacturer or distributor of a referenced drug, that the superintendent determines has withdrawn a referenced drug from sale or distribution in the State in violation of paragraph A or B or has failed to negotiate in good faith in violation of paragraph C.

Sec. 2. Purpose; legislative findings. The purpose of this Act is to protect the safety, health and economic well-being of the people of this State by safeguarding them from the negative and harmful effects of excessive and unconscionable prices for prescription drugs. The Legislature finds that:

1. Access to prescription drugs is necessary for the people of this State to maintain or acquire good health;

2. Excessive prices negatively affect the ability of the people of this State to obtain prescription drugs, and price increases that exceed reasonable levels endanger the health and safety of the people of this State;

3. Excessive prices for prescription drugs threaten the economic well-being of the people of this State and endanger their ability to pay for other necessary and essential goods and services, including housing, food and utilities;

4. Excessive prices for prescription drugs contribute significantly to a dramatic and unsustainable rise in health care costs and health insurance costs and threaten the overall ability of the people of this State to obtain health insurance coverage and maintain or acquire good health; and

5. Excessive prices for prescription drugs contribute significantly to rising costs to the State for health care provided and paid for through health insurance programs for public employees, including employees of the State, municipalities and counties, school districts, institutions of higher education and retirees whose health care costs are funded by public programs, thereby threatening the ability of the State to fund those programs adequately and further threatening the ability of the State to fund other programs necessary for the public good and safety, such as public education and public safety.

Based on findings in subsections 1 to 5, the Legislature finds that excessive prices for prescription drugs threaten the safety and well-being of the people of this State and finds it

necessary to act in order to protect the people of this State from the negative effects of excessive costs.

SUMMARY

This bill requires that a state entity, health plan or participating plan qualified under the federal Employee Retirement Income Security Act of 1974 may not purchase prescription drugs to be dispensed or delivered to a consumer of this State at a cost that exceeds the referenced rate. The referenced rate of a prescription drug is the maximum rate for a drug determined by the Secretary of the United States Department of Health and Human Services under the federal Medicare program. Any savings generated as a result must be used to reduce costs to consumers.