# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

| **Legislative Document** | **No. 1706** |
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| S.P. 558 | In Senate, May 13, 2021 |

**An Act To Require Appropriate Coverage of and Cost-sharing for Generic Drugs and Biosimilars**

Received by the Secretary of the Senate on May 11, 2021. 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 President JACKSON of Aroostook.

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

**Sec. 1. 24-A MRSA §4311-A** is enacted to read:

**§4311-A. Coverage of and cost-sharing for generic drugs and biosimilars**

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

A. "Biosimilar" means any biological product that is licensed under 42 United States Code, Section 262(k).

B. "Biosimilar tier" means a cost-sharing tier of a formulary that includes a biosimilar, may include a generic drug and does not include a branded drug and provides an enrollee meaningfully lower cost-sharing for each biosimilar on the tier than the cost-sharing applicable to the branded drug to which the biosimilar is equivalent. A single cost-sharing tier of a formulary may be both a biosimilar and a generic tier for purposes of this section.

C. "Branded drug" means a drug for which an application has been approved under 21 United States Code, Section 355(c) or a biological product other than a biosimilar that is licensed under 42 United States Code, Section 262(a).

D. "Cost-sharing" means the copayment amount or coinsurance percentage multiplied by prescription drug cost used to determine the amount payable by an enrollee of a health plan for a given covered prescription drug after satisfaction of any applicable deductible under the plan when dispensed by a pharmacy.

E. "Equivalent" means:

(1) With respect to a generic drug, the branded drug against which the generic drug is evaluated by the United States Food and Drug Administration under 21 United States Code, Section 355(j); and

(2) With respect to a biosimilar, the branded drug biological reference product as defined in 42 United States Code, Section 262(i).

F. "Generic drug" means a drug for which an application has been approved under 21 United States Code, Section 355(i).

G. "Generic tier" means a cost-sharing tier of a formulary drug that includes a generic drug, may include a biosimilar and does not include a branded drug and provides an enrollee meaningfully lower cost-sharing for each generic drug on the tier than the cost-sharing applicable to the branded drug to which the generic drug is equivalent.

H. "Meaningfully lower" means lower by an amount that significantly incentivizes an enrollee of a health plan to use a generic drug or biosimilar instead of an equivalent branded drug.

I. "Step therapy" means a cost-savings measure that uses a less expensive drug to treat a condition before using another drug that is more expensive for an insurer.

**2. Cost-sharing.** If cost-sharing for a generic drug or biosimilar and the equivalent branded drug is based upon a coinsurance percentage, the coinsurance percentage for the generic drug or biosimilar must be meaningfully lower than the coinsurance percentage for the branded drug. If a copayment or coinsurance is used to determine cost-sharing, the

dollar amount payable to the enrollee for a generic drug or biosimilar must be meaningfully lower than the dollar amount payable for the equivalent branded drug.

**3. Generic drug and biosimilar coverage and cost-sharing requirements for health plans using a formulary.** If a health plan provides coverage for prescription drugs and the plan limits coverage to a drug included on a formulary, the carrier offering the plan, subject to subsection 4:

A. With respect to a generic drug, if the branded drug to which the generic drug is equivalent is included on the formulary, shall include the equivalent generic drug on a generic tier of the formulary;

B. With respect to a biosimilar, if the branded drug to which the biosimilar is equivalent is included on the formulary, shall include at least one biosimilar equivalent to the branded drug on a biosimilar tier of the formulary;

C. May not impose any prior authorization, step therapy or other limitation on coverage of a generic drug or biosimilar for which formulary placement is required under this subsection or any restriction on a pharmacy through which an enrollee may obtain the generic drug or biosimilar that makes it more difficult for an enrollee to obtain coverage of or access to the generic drug or biosimilar than the equivalent branded drug; and

D. May not establish any benefit term or condition, pricing or other arrangement that results in an enrollee of a health plan bearing a higher out-of-pocket cost for a generic drug or biosimilar for which formulary placement is required under this subsection than for the equivalent branded drug, including higher prices borne by an enrollee through a deductible for the generic drug or biosimilar than for the equivalent branded drug.

**4. Limitation.** This section applies to a health plan offered by an insurer licensed under this Title or a health maintenance organization licensed under chapter 56.

This section does not preclude a carrier from offering a health plan providing coverage of all prescription drugs on a formulary with the same cost-sharing or no cost-sharing applicable to the prescription drugs.

## SUMMARY

This bill requires that formularies for prescription drugs approved for coverage under a health plan contain tiers of generic drugs or biosimilars that are equivalent to the approved branded drugs, and that cost-sharing through coinsurance or a copayment make the cost of the generic drug or biosimilar meaningfully lower than the cost of the equivalent branded drug. A biosimilar is a biological product licensed by the United States Food and Drug Administration that is highly similar to a branded prescription drug.