



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

---

Legislative Document

No. 445

S.P. 147

In Senate, February 7, 2017

---

### **An Act To Encourage Maine Consumers To Comparison-shop for Certain Health Care Procedures and To Lower Health Care Costs**

---

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator WHITTEMORE of Somerset.  
Cosponsored by Representative PICCHIOTTI of Fairfield and  
Senators: BRAKEY of Androscoggin, COLLINS of York, CUSHING of Penobscot, KATZ of  
Kennebec, President THIBODEAU of Waldo, Representatives: FARRIN of Norridgewock,  
FOLEY of Wells, WALLACE of Dexter.

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

2 **Sec. 1. 22 MRSA §1718-B, sub-§2, ¶D** is enacted to read:

3 D. A health care entity shall notify patients of their right, if covered by a health plan,  
4 to shop for services and receive payment for shared savings under a carrier's shared  
5 savings incentive program provided in accordance with Title 24-A, section 4318-A.  
6 A health care entity may comply with this paragraph by prominently displaying the  
7 information in a location that is readily accessible to patients or by providing written  
8 notice when the health care entity recommends a health care service or procedure that  
9 may qualify for a shared savings incentive payment.

10 **Sec. 2. 24-A MRSA §4318-A** is enacted to read:

11 **§4318-A. Shared savings incentive program**

12 Beginning January 1, 2018, a carrier offering a health plan in this State shall provide  
13 a shared savings incentive program that, at a minimum, meets the requirements of this  
14 section.

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

17 A. "Comparable health care service" means a health care service for which a carrier  
18 offers a shared savings incentive payment under a program established by the carrier  
19 pursuant to this section. "Comparable health care service" includes, at a minimum, a  
20 health care service in the following categories:

21 (1) Physical and occupational therapy services;

22 (2) Obstetrical and gynecological services;

23 (3) Radiology and imaging services;

24 (4) Laboratory services;

25 (5) Infusion therapy services;

26 (6) Inpatient and outpatient surgical procedures; and

27 (7) Outpatient, nonsurgical diagnostic tests and procedures.

28 B. "Program" means the shared savings incentive program established by a carrier  
29 pursuant to this section.

30 **2. Filing with superintendent.** Prior to offering the program to an enrollee, a  
31 carrier shall file a description of the program established by the carrier pursuant to this  
32 section with the superintendent in the manner determined by the superintendent. The  
33 superintendent may review the filing made by the carrier to determine if the carrier's  
34 program complies with the requirements of this section.

35 **3. Availability of program; notice to enrollees.** Except for a health plan offered  
36 through the federally facilitated marketplace established pursuant to the federal  
37 Affordable Care Act, a carrier shall make the program available as a component of all

1 health plans offered by the carrier in this State. A carrier may make the program  
2 available as a component of a health plan offered by the carrier through the federally  
3 facilitated marketplace. Annually at enrollment or renewal, a carrier shall provide notice  
4 about the availability of the program to an enrollee who is enrolled in a health plan  
5 eligible for the program.

6 **4. Incentive program required.** A carrier shall develop and implement, or contract  
7 with a 3rd party to develop and implement, a program that provides incentives for an  
8 enrollee in a health plan who elects to receive a comparable health care service that is  
9 covered by the health plan from a provider that charges less than the average price paid  
10 by that carrier for that comparable health care service.

11 A. An incentive may be calculated as a percentage of the difference in price, as a flat  
12 dollar amount or by some other reasonable methodology approved by the  
13 superintendent. The carrier may provide the incentive as a cash payment to the  
14 enrollee or as a reduction in the enrollee's cost sharing or premium payment. For  
15 services that are paid for by the enrollee under the health plan's deductible provision,  
16 the carrier may provide the incentive by crediting a higher amount than the provider's  
17 actual charge toward the enrollee's deductible.

18 B. The program must provide an enrollee with at least 50% of the carrier's saved cost  
19 for each comparable health care service. Compliance with this requirement may be  
20 demonstrated in the aggregate of health plans offered in this State based on a  
21 reasonably anticipated mix of claims. A carrier is not required to provide a payment  
22 or credit to an enrollee when the carrier's saved cost is \$50 or less.

23 C. A carrier may determine the methodology for calculating the average price paid  
24 by the carrier for a comparable health care service and the process an enrollee must  
25 use to document that the provider chosen by an enrollee charges less for the  
26 comparable health care service than the average price paid by that carrier.

27 **5. Out-of-network provider.** If an enrollee elects to receive a comparable health  
28 care service from an out-of-network provider that results in a shared savings incentive  
29 payment, the carrier shall apply the amount paid for the comparable health care service  
30 toward the enrollee's cost sharing as specified in the enrollee's health plan as if the health  
31 care service were provided by a network provider.

32 **6. No administrative expense.** A shared savings incentive payment made by a  
33 carrier in accordance with this section is not an administrative expense of the carrier for  
34 rate development or rate filing purposes.

35 **7. Report.** Beginning March 1, 2019 and annually on March 1st of each year  
36 thereafter, a carrier shall file with the superintendent for the most recent calendar year the  
37 total number of shared savings incentive payments made pursuant to this section, the use  
38 of comparable health care services by category of service for which shared savings  
39 incentive payments are made, the total of shared savings incentive payments made to  
40 enrollees, the average amount of shared savings incentive payments made by category of  
41 service, the total savings achieved below the average prices by category of service and  
42 the total number and percentage of a carrier's enrollees that participated in the program.  
43 Beginning April 1, 2019 and annually by April 1st of each year thereafter, the

1 superintendent shall submit an aggregate report for all carriers containing the information  
2 required by this subsection to the joint standing committee of the Legislature having  
3 jurisdiction over health insurance matters.

4 **8. Rules.** The superintendent may adopt rules as necessary to implement this  
5 section. Rules adopted pursuant to this subsection are routine technical rules as defined  
6 in Title 5, chapter 375, subchapter 2-A.

7 **SUMMARY**

8 This bill requires all carriers offering health plans in the State, beginning January 1,  
9 2018, to provide a shared savings incentive program as a component of all health plans,  
10 except health plans offered through the federally facilitated marketplace established  
11 pursuant to the federal Affordable Care Act. The bill establishes the shared savings  
12 incentive program for enrollees who elect to receive a comparable health care service that  
13 costs less than the average price paid for that service by a carrier. The bill defines  
14 "comparable health care service" as a service for which a carrier offers a shared savings  
15 incentive payment and includes, at a minimum, a health care service in the following 7  
16 categories: physical and occupational therapy services; obstetrical and gynecological  
17 services; radiology and imaging services; laboratory services; infusion therapy services;  
18 inpatient and outpatient surgical procedures; and outpatient, nonsurgical diagnostic tests  
19 and procedures. If an enrollee shops for services, the bill requires a carrier to pay that  
20 enrollee a shared savings incentive payment of at least 50% of the difference between the  
21 average amount for that comparable health care service and the amount paid, except that  
22 a payment is not required if the saved cost is \$50 or less.

23 The bill authorizes a carrier to establish its own methodology for calculating the  
24 average price paid by that carrier under its shared savings incentive program. If an  
25 enrollee elects to receive health care services from an out-of-network provider that results  
26 in a shared savings incentive payment, a carrier shall apply the amount paid for the  
27 comparable health care service toward the enrollee's cost sharing as specified in the  
28 enrollee's health plan as if the health care services were provided by a network provider.

29 The bill also requires carriers to provide certain information to the Department of  
30 Professional and Financial Regulation, Bureau of Insurance on an annual basis relating to  
31 the payments made to enrollees, the use of health care services for which payments are  
32 provided and the saved costs if an enrollee elects to receive health care services from a  
33 provider that cost less than the average cost for a particular admission, procedure or  
34 service. The Superintendent of Insurance is required to report aggregate information  
35 from all carriers to the Legislature on an annual basis.

36 This bill also requires providers to notify patients of their right to shop for certain  
37 health care services pursuant to a carrier's shared savings incentive program.