



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
BUREAU OF INSURANCE



Janet T. Mills
Governor

Anne L. Head
DPFR Commissioner

Timothy N. Schott
Acting Superintendent

February 13, 2024

Senator Donna Bailey, Senate Chair
Representative Anne Perry, House Chair
Joint Standing Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, ME 04333-0100

Re: L.D. 2096, An Act to Ensure Access to Nonopioid, Nonnarcotic Medication for Acute Pain Relief,
131st Second Regular Session

Dear Senator Bailey, Representative Perry, and Members of the Committee:

This bill amends the Health Plan Improvement Act to add a subsection to 24-A M.R.S. § 4311 to require carriers to allow an enrollee, an enrollee's designee, or a person who has issued a valid prescription for the enrollee to obtain a clinically appropriate FDA-approved, nonopioid/nonnarcotic drug not covered by the health plan for treating acute pain. The requirements of the bill are as follows:

- The enrollee's share of the cost of the medications must be included in the calculation of the enrollee's annual out-of-pocket maximum.
- The carrier's utilization review of such drugs must comply with § 4304.
- Coverage for such drugs may not be more restrictive than coverage for an opioid/narcotic on the plan formulary.
- Carriers may not disadvantage or discourage the use of nonopioid drugs by making access more restrictive than those for formulary opioids/narcotics in terms of prior authorization requirements, step therapy protocols, or other utilization management techniques.
- These requirements apply upon FDA drug approval, regardless of whether DHHS has included it on a preferred drug list or the carrier has included it on the carrier's prescription drug formulary.

We understand that the bill is intended to cover non-opioid prescription drugs. We suggest that the Committee clarify that the bill is intended to apply only to prescription drugs, not over-the-counter pain relief medications, such as Tylenol.

The Bureau also has concerns with the technical language in the bill such as the first sentence, which would indicate an effective date of this year despite carriers' need to file their forms far in advance of the effective date. In addition, regarding the last sentence of the first paragraph, it is the federal Department of Health and Human Services that determines whether or not something is an "essential health benefit" and thus, we suggest

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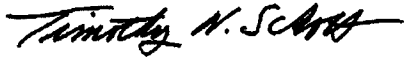
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removing that language. The Bureau also does not include specific medications in calculating a plan's actuarial value as stated in that final sentence.

I hope this information is useful to the Committee. Please let me know if I can provide any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Timothy N. Schott". The signature is written in a cursive, flowing style.

Timothy N. Schott
Acting Superintendent