

**TESTIMONY OF STACY BERGENDAHL**  
**SENIOR STAFF ATTORNEY**  
**BUREAU OF INSURANCE**  
**DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**  
**In Opposition to L.D. 1053**  
**An Act to Ensure That Rebates from Prescription Drug Manufacturers Are**  
**Passed on to Patients at Pharmacies**  
**Presented by Representative Cloutier**  
**Before the Joint Standing Committee on Health Coverage,**  
**Insurance & Financial Services**  
**March 27, 2025 at 1:00pm**

Senator Bailey, Representative Gramlich, and members of the Health Coverage Insurance and Financial Services Committee, I am Stacy Bergendahl, Senior Staff Attorney at the Bureau of Insurance. I am here today to testify in opposition to LD 1053.

This bill amends the section of the Prescription Benefits chapter of the Insurance Code that regulates prescription drug rebates.

Current law allows two options for any compensation paid to carriers or their pharmacy benefits managers (PBMs) by or on behalf of drug manufacturers, developers, or labelers: 1) it may be retained by the carrier, and applied to improve benefits in its plan design to offset premiums, or 2) it may be remitted directly to the consumer at the point of sale. The bill proposes to eliminate the first option.

According to the 2023 carrier/PBM report filed with the Bureau of Insurance, five out of nine carriers reported retaining and applying all such compensation to plan design to offset premiums. The remaining four carriers reported remitting a small percentage of the compensation to consumers at the point of sale. In the survey, the Bureau asked each carrier to estimate the impact on premiums if all compensation were passed along to the consumer at the point of sale. Five carriers projected premium increases between \$43 per member per month (PMPM) to \$135 PMPM.

A complicating factor is that PBMs negotiate rebate amounts with drug manufacturers, which routinely differ on a drug-by-drug basis, and there is no set rate per drug that applies across the board. Pharmacies would need to acquire data on the negotiated rebate amounts for various carriers and PBMs in order to provide the consumer with the correct discount at the point of sale, and then be compensated by the carrier or PBM for that rebate amount. Further, rebates are often paid at the end of each quarter and may be based in part on the overall volume of drugs distributed by the PBM, which cannot be known at the time of purchase by the individual consumer.

In short, the proposal – while well intentioned – would be nearly impossible to implement and enforce.

We also have technical concerns with the bill. The bill's elimination of the carrier's ability to retain the rebate compensation and apply it to improve benefits in its plan design to offset premiums is subject to language expressly forbidding the Superintendent from regulating carriers or PBMs beyond the extent permitted by law. The Superintendent may not exceed the scope of authority provided by

any statute. We question the purpose of prohibiting actions that are already prohibited.

The bill also requires PBMs acting on behalf of carriers to file a new annual report with the Superintendent to demonstrate compliance with the section. Carriers are already required to file this annual report. We believe this is duplicative because it would require both entities to report the same information.

If the committee moves forward with the bill, we recommend that Section 4 be clarified to allow the disclosure of this information to other insurance regulators, consistent with 24-A M.R.S. § 216 (5). This can be accomplished by removing “and may not be disclosed” from the confidentiality provision.

Lastly, the bill adds a specific enforcement provision allowing the Superintendent to impose civil penalties and enforcement actions pursuant to section 12-A against a carrier or PBM that violates the section. This is redundant because the Superintendent already has such powers.

Thank you, I would be glad to answer any questions now or at the work session.