

132nd Legislature
***Senate
of Maine***
Senate District 31

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Testimony of Senator Donna Bailey introducing
**LD 1018, An Act to Protect Health Care for Rural and Underserved Areas
by Prohibiting Discrimination by Participants in
a Federal Drug Discount Program**
Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services
Wednesday, April 16, 2025

Representative Mathieson, and Esteemed Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, as you know, my name is Donna Bailey, and I proudly represent Senate District 31, which includes Buxton, Old Orchard Beach, and Saco. Today, I am pleased to introduce my bill LD 1018, “An Act to Protect Health Care for Rural and Underserved Areas by Prohibiting Discrimination by Participants in a Federal Drug Discount Program.”

Maine’s non-profit hospitals and Federally Qualified Health Centers provide vital services to our communities and this legislation will help them during these difficult times.

Over 30 years ago, Congress created a program to help these safety net providers stretch scarce resources by requiring drug manufacturers to voluntarily sell their drugs at a discounted rate to hospitals and FQHCs in exchange for gaining access to participate in Medicare and Medicaid.

Importantly, no taxpayer dollars have ever been used to fund this program.

And for over thirty years, this program - known as “340B” - has worked.

It has provided needed resources to these providers so that they can meet their mission and maintain access to high-quality care for our rural and underserved communities.

But recently, the pharmaceutical industry unilaterally decided to change years of practice and they began to prohibit hospitals and FQHCs from forming cost-saving partnerships with local pharmacies to serve their patients, greatly reducing their access to these savings.

This is not theoretical. The folks coming after me can explain to you the financial losses they have already experienced in Maine.

The federal government’s 340B oversight entity attempted to prevent this discrimination.

Maine's attorney general, along with other attorneys general supported the federal government's anti-discrimination position.

But, PhRMA sued the federal government and won.

A few states, both "red" and "blue" states, stepped-up and passed anti-discrimination laws at the state level to support their safety net providers. At least three more states are poised to adopt legislation of this kind as we speak.

Again, PhRMA sued to block these anti-discrimination laws. However, they are having far less success against the states. In fact, most state laws are being upheld by the courts, and the US Supreme Court recently declined to take-up a case brought by PhRMA. This bill is modeled on state legislation that has been upheld in federal court.

Based upon these facts, I agreed to sponsor a similar anti-discrimination law in Maine. I want to protect these partnerships between local pharmacies and hospitals and FQHCs, and ensure our most vulnerable Mainers have access to care and services.

There are three primary sections to the bill:

- First, section 7703 prohibits discrimination by manufacturers.
- Second, section 7704 prohibits discrimination by others such as carriers and PBMs.
- Third, section 7706 outlines the enforcement protocol; this legislation gives enforcement responsibility to the Attorney General and authorizes a private right of action by covered entities.

I also want to be clear as to what this legislation is not intended to do. This legislation does not prohibit legitimate business actions by manufacturers or carriers as long as 340B status is not the basis for the action.

For example, carriers can use preferred networks, such as mail order pharmacies, as long as the requirement to use the pharmacy does not apply only to 340B drugs or patients who would otherwise use 340B pharmacies.

Because this is a federal program, we have not had the normal insight into it that we might otherwise have. As such, this committee enacted legislation in 2023 (LD 1395) that will require hospitals to publicly provide information about their participation in the 340B program. MHDO was charged with implementing this law and adopted the reporting regulation in 2024 (Chapter 340). The first hospital reports are due to be provided in the second-half of 2025.

A note of caution for my fellow committee members as we deliberate this legislation. Normally, we have a fairly wide latitude to amend bills that are brought before us.

With LD 1018, we are dealing with a federal program, and we have very little room to navigate. In other words, the 340B drug discount program is not ours to re-shape as we see fit. Federal courts have said that states may protect contract pharmacy partnerships. Other state actions invite

federal preemption challenges. So, my request is that we keep this bill limited to what we know the federal courts will likely allow.

I recognize that the price of health care is a major issue for Maine families. It will be an issue that this Legislature will look at again this year.

This legislation ensures that more of the money we Mainers pay – stays in Maine, and is not sent to large, multi-national and out-of-state to for-profit pharmaceutical companies.

I thank the Committee for its time, and I would be happy to answer any questions.

A handwritten signature in black ink, appearing to read 'Donna Bailey', with a stylized, looping initial 'D' and a trailing flourish.

Donna Bailey
State Senator, Senate District 31
Buxton, Old Orchard Beach, and Saco