

Janet T. Mills  
Governor

Jeanne M. Lambrew, Ph.D.  
Commissioner



Maine Department of Health and Human Services  
Commissioner's Office  
11 State House Station  
109 Capitol Street  
Augusta, Maine 04333-0011  
Tel: (207) 287-3707; Fax: (207) 287-3005  
TTY: Dial 711 (Maine Relay)

April 13, 2021

Senator Heather Sanborn, Chair  
Representative Denise Tepler, Chair  
Members, Joint Standing Committee on Health Coverage, Insurance, and Financial Services  
100 State House Station  
Augusta, ME 04333-0100

Re: LD 1117 – An Act To Prevent Excessive Prices for Prescription Drugs

Senator Sanborn, Representative Tepler, Members of the Joint Standing Committee on Health Coverage, Insurance, and Financial Services

Thank you for the opportunity to weigh in on LD 1117, *An Act To Prevent Excessive Prices for Prescription Drugs*. This bill aims to prevent excessive price increases of generic and off-patent medications that are sold in the State of Maine. State government entities such as MaineCare and others are responsible under the bill to report any such price increases to the Attorney General for enforcement purposes. While the Department of Health and Human Services shares the goal of lowering drug costs and ensuring access to needed medications, we oppose this bill and have particular concerns related to the application of this bill to the MaineCare program.

LD 1117 specifically requires that “[t]he administrator of benefits for state employees, or any entity of State Government that provides or purchases a prescription drug benefit, any entity under contract with State Government to provide prescription drug benefits or any other state agency shall notify a prescription drug manufacturer and the Attorney General of any price increase for a generic or off-patent prescription drug that is an excessive price increase in violation of this section.” MaineCare provides coverage for hundreds of prescriptions through the state’s formulary. Federal regulations require MaineCare, along with all state Medicaid programs, to reimburse pharmacies based on the lesser of the (1) ingredient cost plus a professional dispensing fee; or (2) the pharmacy’s “usual and customary charge” to the public. Federal guidelines dictate the pricing of the ingredient costs. As such, MaineCare cannot prohibit drug price increases the State may otherwise deem excessive.

Finally, in addition to the administrative issues regarding this bill as structured, the Department notes that other states with similar laws have faced legal challenges. We recommend the Committee consult with the Office of the Attorney General to address any potential risk to the State in this respect.

Thank you for the consideration of our comments on LD 1117. I am happy to make myself available to you should you have questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Michelle Probert".

Michelle Probert  
Director  
Office of MaineCare Services