

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Improve Oversight of Pharmaceutical Purchasing**

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

**Sec. 1. 22 MRSA §2699, sub-§1, ¶C-1** is enacted to read:

C-1. "Individually identifying information" means information derived from or relating to a prescription for a prescribed product that directly or indirectly identifies a patient or a prescriber.

**Sec. 2. 22 MRSA §2699, sub-§1, ¶D-1** is enacted to read:

D-1. "Marketing" means any activity of a pharmacy benefits manager, alone or in collaboration with a company making or selling prescribed products, that is intended to influence prescribing or purchasing choices, including but not limited to:

- (1) Advertising, publicizing, promoting or sharing information about a prescribed product;
- (2) Identifying individuals to receive a message promoting use of a prescribed product, including but not limited to an advertisement, brochure or contact by a sales representative;
- (3) Planning the substance of a sales representative visit or communication or the substance of an advertisement or other promotional message or document;
- (4) Evaluating or compensating sales representatives;
- (5) Identifying individuals to receive any form of gift, prescribed product sample, consultancy or other item, service, compensation or employment of value; and
- (6) Advertising or promoting prescribed products directly to patients, including through refill reminders or information about alternative prescribed products.

**Sec. 3. 22 MRSA §2699, sub-§1, ¶G** is enacted to read:

G. "Prescriber" has the same meaning as in section 1711-E, subsection 1, paragraph G-1.

**Sec. 4. 22 MRSA §2699, sub-§6** is enacted to read:

**6. Registration with Bureau of Insurance.** A pharmacy benefits manager may not enter into a contract with a covered entity for pharmacy benefits management in this State unless the pharmacy benefits manager registers with the Department of Professional and Financial Regulation, Bureau of

Insurance on a form and in a manner prescribed by the Bureau of Insurance. The Bureau of Insurance shall establish a registration fee. Fees collected under this subsection must fund the costs of registration and enforcement of this section by the Attorney General.

**Sec. 5. 22 MRSA §2699, sub-§8** is enacted to read:

**8. Compliance; audits.** The State Auditor shall work with the Department of Administrative and Financial Services, Bureau of General Services and other state agencies, including, but not limited to, state employees, teachers and the Maine Turnpike Authority, that purchase prescription drugs to ensure compliance of a pharmacy benefits manager with the requirements of this section. The State Auditor shall develop appropriate audit procedures to be used by the State to determine if a pharmacy benefits manager and a pharmacy benefits management contract entered into by the State meets the requirements of this section and other laws applicable to pharmacy benefits.

**Sec. 6. 22 MRSA §2699, sub-§9** is enacted to read:

**9. Privacy protections.** The following provisions apply to the release of records containing individually identifying information.

A. In addition to the disclosure and privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1301 et seq., a pharmacy benefits manager may not knowingly disclose or use records containing individually identifying information for marketing a prescribed product to a patient or prescriber.

B. A record containing individually identifying information may be transferred to another entity, including to another branch or subsidiary of the same firm, only if there is satisfactory assurance that the recipient will safeguard the records from being disclosed or used in the State for a marketing purpose prohibited under this section.

C. Records containing individually identifying information may be disclosed, sold, transferred, exchanged or used for nonmarketing purposes.

D. This section does not prohibit conduct involving the collection, use, transfer or sale of records for marketing purposes if:

(1) The data in the records is aggregated;

(2) The data in the records does not contain individually identifying information; and

(3) There is no reasonable basis for the belief that the data in the records can be used to obtain individually identifying information.

E. This section may not prevent a person from disclosing records to the identified individual as long as the information does not include individually identifying information pertaining to another person.

## **SUMMARY**

This bill requires pharmacy benefits managers to register with the Department of Professional and Financial Regulation, Bureau of Insurance before entering into any contracts for pharmacy benefits management in the State. The bill also sets forth standards for audits conducted by pharmacy benefits managers. The bill requires the State Auditor to develop audit procedures to ensure state agencies that have pharmacy benefits management contracts are compliant with state law relating to pharmacy benefits management and prescription drug rebates. The bill also expands the privacy provisions applicable to pharmacy benefits managers to ensure that patient prescription information, even deidentified information, is not used directly by the pharmacy benefits manager or sold by or transferred to others for use in pharmaceutical marketing or by insurance companies in making benefits decisions.