§2681. Maine Rx Plus Program established

The Maine Rx Plus Program, referred to in this subchapter as the "program," is established to reduce prescription drug prices and to improve the quality of health care for residents of the State. The program is administered by the department and must utilize manufacturer rebates and pharmacy discounts to reduce prescription drug prices. [PL 2003, c. 494, §3 (AMD).]

1. Program goals. The Legislature finds that affordability is critical in providing access to prescription drugs for Maine residents. This subchapter is enacted by the Legislature to enable the State to take steps to make prescription drugs more affordable for qualified Maine residents, thereby increasing the overall health of Maine residents, promoting healthy communities and protecting the public health and welfare, and to integrate the program as part of any statewide program for the uninsured. It is not the intention of the State to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified Maine residents under this subchapter.
[PL 2003, c. 494, §4 (AMD).]

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Average wholesale price" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file. [PL 1999, c. 786, Pt. A, §3 (NEW).]

A-1. "Covered drugs" means drugs that are on the MaineCare preferred drug list established and revised from time to time by the department pursuant to its authority to operate the MaineCare program. [PL 2003, c. 494, §4 (NEW).]

B. "Initial discounted price" for a drug means the amount that participating retail pharmacies may charge qualified residents participating in the program for that drug, as established by the department through rulemaking. [PL 2003, c. 513, Pt. G, §1 (AMD).]

C. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999). [PL 1999, c. 786, Pt. A, §3 (NEW).]

D. "Participating retail pharmacy" or "retail pharmacy" means a retail pharmacy located in this State, or another business licensed to dispense prescription drugs in this State, that participates in the program. [PL 2003, c. 494, §4 (AMD).]

E. [PL 2003, c. 494, §4 (RP).]

F. "Qualified resident" means a resident of the State who has a family income equal to or less than 350% of the federal poverty level and who is enrolled in the program. "Qualified resident" also means a resident of the State whose family incurs unreimbursed expenses for prescription drugs that equal 5% or more of family income or whose total unreimbursed medical expenses equal 15% or more of family income. For purposes of this paragraph, the cost of drugs provided under this subchapter is considered an expense incurred by the family for eligibility determination purposes. [PL 2003, c. 494, §4 (AMD).]

G. "Secondary discounted price" means the initial discounted price minus any further discounts paid for out of the fund. [PL 2003, c. 494, §4 (AMD).]
[PL 2003, c. 513, Pt. G, §1 (AMD).]

3. Rebate agreement. A drug manufacturer or labeler that sells prescription drugs in this State through the elderly low-cost drug program under section 254-D or any other publicly supported

pharmaceutical assistance program shall enter into a rebate agreement with the department for this program. The rebate agreement must require the manufacturer or labeler to make rebate payments to the State each calendar quarter or according to a schedule established by the department.
[PL 2005, c. 401, Pt. C, §3 (AMD).]

4. Rebate amount. The commissioner shall negotiate the amount of the rebate required from a manufacturer or labeler in accordance with this subsection.

A. The commissioner shall take into consideration the rebate calculated under the Medicaid Rebate Program pursuant to 42 United States Code, Section 1396r-8, the average wholesale price of prescription drugs and any other information on prescription drug prices and price discounts. [PL 1999, c. 786, Pt. A, §3 (NEW).]

B. The commissioner shall use the commissioner's best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the MaineCare program pursuant to 42 United States Code, Section 1396r-8. [PL 2003, c. 494, §4 (AMD).]

C. With respect to the rebate taking effect no later than October 1, 2004, the commissioner shall use the commissioner's best efforts to obtain an amount equal to or greater than the amount of any discount, rebate or price reduction for prescription drugs provided to the Federal Government. [PL 2003, c. 494, §4 (AMD).]
[PL 2003, c. 494, §4 (AMD).]

5. Discounted prices for qualified residents. Each participating retail pharmacy shall sell covered drugs to qualified residents at the lower of the initial discounted price and the secondary discounted price as such prices are determined by the department pursuant to this subchapter.

A. The department shall establish discounted prices for drugs covered by a rebate agreement and shall promote the use of efficacious and reduced-cost drugs, taking into consideration reduced prices for state and federally capped drug programs, differential dispensing fees, administrative overhead and incentive payments. [PL 1999, c. 786, Pt. A, §3 (NEW).]

B. Beginning January 1, 2004, a participating retail pharmacy shall offer the initial discounted price. [PL 2003, c. 494, §4 (AMD).]

C. No later than October 1, 2004, a participating retail pharmacy shall offer the secondary discounted price if available. [PL 2003, c. 494, §4 (AMD).]

D. [PL 2003, c. 494, §4 (RP).]
[PL 2003, c. 494, §4 (AMD).]

6. Operation of program. The requirements of this subsection apply to participating retail pharmacies.

A. The Maine Board of Pharmacy shall adopt rules requiring disclosure by participating retail pharmacies to qualified residents of the amount of savings provided as a result of the program. The rules must consider and protect information that is proprietary in nature. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 494, §4 (AMD).]

B. The department may not impose transaction charges under this program on retail pharmacies that submit claims or receive payments under the program. [PL 1999, c. 786, Pt. A, §3 (NEW).]

C. A participating retail pharmacy shall submit claims to the department to verify the amount charged to qualified residents under subsection 5. [PL 1999, c. 786, Pt. A, §3 (NEW).]

D. On a weekly or biweekly basis, the department must reimburse a participating retail pharmacy for the difference between the initial discounted price and the secondary discounted price provided to qualified residents under subsection 5. [PL 2003, c. 494, §4 (AMD).]

E. [PL 2003, c. 494, §4 (RP).]

F. The department shall conduct ongoing quality assurance activities similar to those used in the MaineCare program. [PL 2003, c. 494, §4 (NEW).]

[PL 2003, c. 494, §4 (AMD).]

7. Action with regard to nonparticipating manufacturers and labelers.
[PL 2003, c. 494, §5 (RPR); MRSA T. 22 §2681, sub-§7 (RP).]

7-A. Action with regard to nonparticipating manufacturers and labelers. The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to this subchapter are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers that is of particular benefit to the public. The department shall impose prior authorization requirements in the MaineCare program, as permitted by law, to the extent the department determines it is appropriate to do so in order to encourage manufacturer and labeler participation in the program and so long as the additional prior authorization requirements remain consistent with the goals of the MaineCare program and the requirements of the federal Social Security Act, Title 19.

This subsection takes effect on the date that the department begins offering prescription drug benefits under the program.
[PL 2003, c. 494, §6 (NEW).]

8. Discrepancies in rebate amounts.
[PL 2003, c. 494, §7 (RP).]

9. Dedicated fund. The Maine Rx Plus Dedicated Fund, referred to in this section as the "fund," is established to receive revenue from manufacturers and labelers who pay rebates as provided in subsection 4 and any appropriations or allocations designated for the fund. The purposes of the fund are to reimburse retail pharmacies for discounted prices provided to qualified residents pursuant to subsection 5; to reimburse the department for contracted services including pharmacy claims processing fees, administrative and associated computer costs and other reasonable program costs; and to benefit the elderly low-cost drug program under section 254-D. The fund is a nonlapsing dedicated fund. Interest on fund balances accrues to the fund. Surplus funds in the fund must be used for the benefit of the program. Notwithstanding Title 5, section 1585, surplus funds may also be transferred to the elderly low-cost drug program established under section 254-D.
[PL 2005, c. 401, Pt. C, §4 (AMD).]

10. Annual summary report. The department shall report the enrollment and financial status of the program to the Legislature by the 2nd week in January each year.
[PL 1999, c. 786, Pt. A, §3 (NEW).]

11. Obligations of department. The department shall establish simplified procedures for determining eligibility and issuing Maine Rx enrollment cards to qualified residents and shall undertake outreach efforts to build public awareness of the program and maximize enrollment of qualified residents. The department may adjust the requirements and terms of the program to accommodate any new federally funded prescription drug programs.
[PL 1999, c. 786, Pt. A, §3 (NEW).]

12. Contracting. The department may contract with a 3rd-party or 3rd-parties to administer any or all components of the program, including, but not limited to, outreach, eligibility, claims, administration and rebate recovery and redistribution.
[PL 1999, c. 786, Pt. A, §3 (NEW).]

13. Medical assistance programs. The department shall administer the program and other medical and pharmaceutical assistance programs under this Title in a manner that is advantageous to the programs and to the enrollees in those programs. In implementing this subsection the department

may coordinate the other programs and this program and may take actions to enhance efficiency, reduce the cost of prescription drugs and maximize the benefits to the programs and enrollees, including providing the benefits of this program to enrollees in other programs.
[PL 1999, c. 786, Pt. A, §3 (NEW).]

14. Rulemaking. The department may adopt rules to implement the provisions of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.
[PL 1999, c. 786, Pt. A, §3 (NEW).]

15. Waivers. The department may seek any waivers of federal law, rule or regulation necessary to implement the provisions of this subchapter.
[PL 1999, c. 786, Pt. A, §3 (NEW).]

16. Fee imposed. Beginning July 1, 2011, a fee is imposed on all enrollees in the program established under this section. The amount of the fee must be determined by rule adopted by the department to cover the administrative and other operating costs of the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2011, c. 380, Pt. SS, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 786, §A3 (NEW). PL 2001, c. 358, §Q6 (AMD). PL 2001, c. 405, §2 (AMD). PL 2001, c. 405, §3 (AFF). PL 2003, c. 494, §§2-8 (AMD). PL 2003, c. 513, §G1 (AMD). PL 2005, c. 401, §§C3,4 (AMD). PL 2011, c. 380, Pt. SS, §1 (AMD).