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Thursday, June 19, 2003

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Prescription-drug law promises price relief

By JOSIE HUANG, Portland Press Herald Writer

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High hopes are riding on Maine Rx Plus, the soon-to-be-enacted law designed to offer prescription-drug coverage to roughly 275,000 Mainers with low to moderate incomes.

People who reach into their own pockets to pay high retail drug costs are expecting relief, especially senior citizens on fixed incomes, when the program begins in January. The governor is expected to sign the bill into law next week.

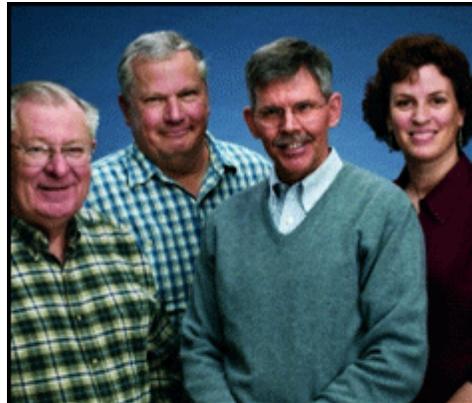
But the pharmaceutical industry questions whether Maine Rx Plus passes legal muster, making it unclear whether drug makers will file a new legal challenge or agree to cooperate by supplementing discounts for enrollees.

Advocates of Maine Rx Plus say it is strong enough to withstand lawsuits and will likely draw rebate agreements with drug companies. Even if drug companies don't sign on, Maine Rx Plus members will see discounts, even if not as deep as intended under

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the law, said Tom Bradley, a lawyer with the Maine Citizen Leadership Fund.

The industry's leading trade group takes a dimmer view of the program's chance for success. Pharmaceutical Research and Manufacturers of America says that Maine Rx Plus is no different from the original Maine Rx, the landmark prescription-price-control law passed by state lawmakers in 2000 but never implemented because of court challenges.

Both laws authorize the state to use its buying clout to negotiate deep Medicaid-like discounts with drug manufacturers for Mainers who earn too much to qualify for the government health-insurance program.

This would be accomplished through a provision allowing the state to penalize uncooperative drug companies by putting their products on a special list of drugs. Doctors would need authorization from the state before any of the drugs on the list could be prescribed to a Medicaid patient, a restriction that irks the drug industry.

"I think there are other ways to solving this problem than using the sickest and poorest people to extract discounts" for other Mainers, said Jan Faiks, assistant general counsel for PhRMA.

As a buffer against future legal challenges, Gov. John Baldacci's administration limited Maine Rx Plus eligibility to those who earn no more than 350 percent of the federal poverty level - about \$31,400 a year for a single person or \$64,400 for a family of four.

But Faiks said that the cap means nothing because of the inclusion of a new hardship clause. The clause extends membership to families whose medication expenses total 5 percent or more of family income, or whose medical expenses equal 15 percent or more of family income.

"That's darn near everybody in the state, which is what they had in Maine Rx," Faiks said.

PhRMA successfully tied up Maine Rx in the courts until May 19, when the U.S. Supreme Court ruled that drug makers didn't sufficiently show why the program should be halted. In a 6-3 vote, justices lifted an injunction on Maine Rx and sent the case back to U.S. District Court for review of its merits. The Baldacci administration quickly retooled the law and renamed it Maine Rx Plus.

Faiks would not say what, if any, action PhRMA would take against Maine Rx Plus, but said it should undergo federal scrutiny.



"If the state doesn't voluntarily submit the program to (the federal Department of Health and Human Services), the secretary of HHS may ask . . . or we may ask (District Court) to get that analysis," Faiks said.

Because of antitrust laws, Faiks said she does not know whether PhRMA members will enter into rebate agreements with the state for Maine Rx Plus. Individual companies refrained from committing to the program.

"This is a fluid situation with Maine and there are no immediate plans to modify our business relationships with the state until the case proceeds through the court system," said Rachel Bloom-Baglin, spokeswoman for the pharmaceutical giant AstraZeneca.

Maine's population constitutes a tiny sliver of the prescription-drug market. But Hawaii enacted a near-identical law last year, and 19 other states began to consider copycat legislation this year, raising the stakes around the Maine Rx case.

Assistant Attorney General John Brautigam said the Supreme Court ruling and state lawmakers' decision on Friday to pass Maine Rx Plus "put us in a good position to defend a lawsuit."

"The next move is up to PhRMA, to decide whether they want to block it," Brautigam said.

Even without drug-company rebates, members of Maine Rx Plus would get 15 percent off some brand-name drugs and 60 percent off generic drugs, according to the Department of Human Services.

The discounts, which apply to "preferred" drugs - medicines that the state deems cost-efficient and clinically appropriate - would come at the pharmacy counter. Pharmacies that choose to participate would charge Medicaid prices for prescriptions, rather than asking for full retail prices that Maine Rx Plus members would have normally paid.

Bob Morrissette, an executive board member of the Maine Pharmacy Association, said providing the discounts required a sacrifice on the part of Maine's pharmacists, who already have profit margins as low as 1 to 2 percent. But some pharmacists said they would join Maine Rx Plus to keep their customers.

If the state is able to negotiate rebate agreements with drug manufacturers, even bigger discounts will kick in by October 2004.

"We have not begun our discussions with pharmaceutical manufacturers with regard to those additional rebates, but we expect to begin those discussions in the near future," said Newell Augur,

spokesman for Maine's Department of Human Services.

As Maine moves to implement Maine Rx Plus, "Maine Rx-style" legislation continues to crop up all over the country, said Claire Kammer, a pharmaceuticals policy analyst at the National Conference of State Legislatures.

Kammer said that while Maine Rx became an archetype for states that are anxious to rein in prescription costs, Maine Rx Plus, with its income cap, might become a model for more cautious states.

"Some states that may have not been so apt to run after the Maine Rx program will look with more consideration at Maine Rx Plus," Kammer said.

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