
Remember the Maine

A small state casts fear in the heart of Big Pharma.

BY CHRIS MOONEY

AUGUSTA, MAINE — IN LATIN, THE word *dirigo*, Maine's state motto, means "I lead" or "I direct." On a sleepy summer Wednesday at the Maine State House, with the legislature out of session, this slogan at first seems out of place. Scattered visitors waltz into the capitol without passing through security, having parked their cars in the same small lot as the few legislators who are here working overtime. The low-key scene seems fitting for a state of 1.2 million people, one that sometimes gets cut out of the top right cor-

ner of U.S. weather maps. Still, Maine shouldn't be underestimated. Just ask U.S. pharmaceutical companies: Several years ago they failed to take this state seriously, and the mistake could cost them a fortune in profits.

Thanks to a cadre of clean-election-financed lawmakers who work closely with (and in some cases hail from) the state's vibrant political activist community, Maine has recently developed a reputation for cutting-edge lawmaking, particularly when it comes to medical and prescription-drug issues. In

2003, for example, Maine passed the nation's first universal health-care law, the aptly named Dirigo Health program, dubbed this year's "single most forward-looking" health bill by the liberal Center for Policy Alternatives.

Maine has won even more notoriety, however, for its 2000 "Maine Rx" law, which empowered the state to negotiate on behalf of the uninsured for cheaper drug prices from pharmaceutical manufacturers. Democrat Chellie Pingree, who spearheaded the bill as Maine's Senate majority leader and now heads Common Cause, calls Maine Rx a success story based on "not being afraid of a bold idea." In this case the idea bubbled up, in true Maine fashion, from an activist: the late John Marvin, a media-savvy senior advocate who dramatized high drug costs by organizing bus trips to Canada, where seniors filled their prescriptions at a dramatic discount. Before long an armada of seniors stormed Augusta to lobby for Maine Rx, in the process crowding out lobbyists from the pharmaceutical industry who were attempting to prevent the bill's passage. "We arrived early [at hearings] to take all the chairs, so [the lobbyists] had to stand up," recalls senior activist Vi Quirion of Waterville. The bill ultimately passed with near unanimity, and was signed into law by then-Gov. Angus King.

The central insight of Maine Rx was to use the state's Medicaid program, normally designed to help the poor, to negotiate discounts for other uninsured citizens as well. If drugmakers refused to deal, their products ran the risk of being excluded from Maine's preferred Medicaid drug list.

It's important to realize how radical this approach is: Whereas national prescription-drug proposals have emphasized providing various benefits to Medicare recipients, Maine Rx targets drug industry profiteering as the root cause of the nation's prescription-drug problem, in the process going head to head with one of America's most powerful lobbies. This tactic epitomizes the disdain for standard Washington remedies felt by many Maine lawmakers. "Our attitude is, 'We never expect Congress to do anything,'" says current Maine Senate Majority Leader Sharon Treat, a Democrat. "We've come to the point where we try to find our own solutions."

The passage of Maine Rx triggered an almost instant federal court challenge by the drug industry trade group Pharmaceutical Research and Manufacturers of America (PhRMA), which alleged that the law violated the Constitution's commerce clause and federal Medicaid law. After nearly three years of holdups, the U.S. Supreme Court tentatively ruled in May that Maine could proceed with the program. The state has since retooled its law, now dubbed "Maine Rx Plus," to make it more legally sturdy. Meanwhile, the battle shifts elsewhere, as other states, responding to the Supreme Court's green light and the lobbying of activist coalitions, have sought to craft their own versions of Maine Rx. In response, PhRMA seems prepared to crack open an almost bottomless war chest. According to industry documents obtained by *The New York Times*, the association will spend a stunning \$48.7 million over the next year on state-level lobbying alone.

PhRMA has already unleashed some 60 lobbyists on state capitols. Still, the trade group could find itself facing hydra heads as multiple states attack the problem of prescription-drug prices simultaneously, often with several bills. Indeed, as early as 2000, Vermont and Maine raced to see which could pass a Maine Rx-style bill first. (PhRMA managed to stymie the former but not the latter.) More recently, Hawaii and Illinois have passed laws resembling the original Maine Rx plan, and other states will surely consider similar bills during their 2004 legislative sessions (18 did in 2003). As a result, PhRMA finds itself perhaps more vulnerable than ever before. "Calling it 'death throes' [for the industry] would be too grand a term," says Marcia Angell, a Harvard Medical School professor and former editor-in-chief of *The New England Journal of Medicine*. "But the efforts of the pharmaceutical industry to regain their invincible position will be interesting to watch."

One particularly pitched battle has already begun in Ohio, where a coalition that includes the state AARP and AFL-CIO has collected well over 100,000 signatures on a petition to put a Maine Rx-style law on the ballot. Ohio is much larger than Maine, of course, and the state's activists hope to ultimately ob-

tain cheaper drugs for some 2.2 million uninsured citizens. PhRMA, in turn, has budgeted \$15.8 million to battle this "union-driven, get-out-the-vote ballot initiative," according to the *Times*.

The lengths to which the group has gone are mind-boggling: PhRMA lawyers have taken to challenging individual petition signatures before county courthouses and state election boards, nitpicking over things like handwriting and whether or not signees included their city and the correct date. "Folks, they've never seen any sort of challenge to a statewide petition like this one," says Tim Burga, legislative director of the Ohio AFL-CIO. "It's kind of new ground, what's happening here." Sure enough, Burga says that PhRMA's well-financed delay tactics have successfully kept the initiative off this year's ballot.

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In the upcoming battle over the spread of Maine Rx, whether in Ohio or elsewhere, a key factor will be the extent to which other states can replicate Maine's experience. Maine certainly had several advantages in its attempt to pass the law, including no significant in-state pharmaceutical interests to oppose the program and a shared border with Canada that fostered outrage over international price disparities. ("It's just enormously different than someone who lives in Kansas and has no idea of how badly they're being shafted," notes Bernie Horn of the Center for Policy Alternatives.) Moreover, from an advocacy perspective, Maine's small population naturally fosters solidarity, as community members who know one another, particularly seniors and unionists, band together in common cause. Maine's cozy size also facilitates a high degree of legislative responsiveness to an electorate that has remained deeply concerned about prescription-drug prices.

But perhaps the most central factor in the success of Maine Rx was the activist coalition that came together to support it. Senior citizens formed the

group's core, but they were bolstered by a wide range of other interests, from the state women's lobby to labor unions. According to Jeff Blum, executive director of USAction, which is working to spread Maine Rx to other states, a well organized senior constituency remains the most important factor in this kind of advocacy, because seniors aren't easily painted as radical and have plenty of time on their hands to organize. But the seniors must be complemented by courageous legislators—such as Pingree and Treat—and a strategic coordinating organization, which USAction tries to provide. Labor allies are also key to the fight, and, because PhRMA has a long history of funding so-called Astroturf groups to attack from the left—"trying to put an off-color face on its self-interest," says Blum—so are African American or Latino legislators. And de-

spite all this, the USAction-led Illinois coalition that pushed for Maine Rx for several years still had to compromise on some aspects of the program.

Other states that have the potential to pass something akin to Maine Rx (or Maine Rx Plus) include Oregon, Washington and Rhode Island. Granted, Maine's own program won't officially start until Jan. 1, 2004, and there's a possibility that new legal challenges will arise, especially if Secretary of Health and Human Services Tommy Thompson refuses to approve Maine Rx under the federal Medicaid program. Still, thanks to the Supreme Court, the momentum now lies with the activists. "In the end, I do think we're going to be successful," says Treat. "Other people are going to look around and say, 'Maine has this. Everyone in the state of Maine has a prescription [drug] card either through Dirigo Health, their insurance company or the Maine Rx program. Why can't we do that?' And what's the answer going to be, 'We're waiting for Washington?'" ■

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