

May 22, 2003 6:48 p.m. EDT

FOLLOW THE MONEY


By SCOTT HENSLEY

Maine Case Lends Momentum To Drug-Price-Control Efforts

When the Supreme Court lifted an injunction this week blocking a Maine plan to cut drug prices for the uninsured, the decision looked like a modest procedural step favoring the state. But the case lends momentum to a growing drug-price-control movement that could eventually affect the private market.

On Monday, the high court ruled that a federal district court erred in blocking Maine from implementing a drug-assistance program called Maine Rx that could give an estimated 325,000 state citizens about a 25% discount on their medicines.

The court did not endorse the program, saying it could not predict its "ultimate fate." But a win is a win, especially from the Supremes. "When a little state like Maine takes on the pharmaceutical manufacturers and wins, it's a very big deal," says Chellie Pingree, president of Common Cause, a consumer advocacy group.

The drug industry strenuously opposes Maine's plan because it ties pharmaceutical-makers' participation on a list of preferred drugs in the state Medicaid program to the companies' willingness to offer deep drug discounts for uninsured citizens of better means. Maine Rx strikes at the industry's pricing power on two fronts: lower prices for existing Medicaid beneficiaries and the broad extension of drug discounts to the uninsured.

Nearly 20 states are considering plans similar to Maine Rx; Hawaii has already passed the necessary law. By failing to block the Maine plan, the court's decision gives other states more room to run, at least for now.

The immediate bottom-line risk for drug makers isn't so bad. In the worst case for the industry -- if every state followed Maine's lead and enacted a similar plan -- sales could drop by 2% to 3% and profits could fall by 6% to 7%, according to research by Richard Evans, an analyst at Sanford C. Bernstein & Co., New York. He expects the most likely scenario to be only half as costly.

But a trickle-down effect from Maine and other Medicaid innovators could be a bigger problem. By law, Medicaid gets the best prices that drug companies offer. If states succeed in driving prices even lower through creative legislation and negotiation, private insurers will have more room to

ABOUT SCOTT HENSLEY

"Follow the Money," written by Scott Hensley, is a behind-the-scenes look at what drives decisions in the health-care industry.

Mr. Hensley writes about health care and the pharmaceutical industry from The Wall Street Journal's New York headquarters. He also appears frequently on CNBC. He joined the paper in 2000 and spearheaded coverage of the decoding of the human genome. Previously, he was New York bureau chief for Modern Healthcare, a weekly magazine covering the business of health care. Before becoming a journalist, Mr. Hensley worked for a medical-equipment maker. He holds a bachelor's degree in natural sciences from Johns Hopkins University and a master's degree in journalism from Columbia University.

maneuver for their own discounts. Price erosion in the broader and more profitable private market is the most significant danger the Maine decision poses to drug makers.

It's a danger that doesn't worry people like Ms. Pingree. She's been leading Common Cause for just two months, taking the post after losing her bid last year to represent Maine in the U.S. Senate. In fact, Ms. Pingree can thank the drug industry, at least in part, for her current job. As majority leader in the Maine senate three years ago, she wrote the law that established Maine Rx. The drug industry opposed her U.S. Senate bid and took no small satisfaction in her defeat at the hands of Susan Collins, the Republican incumbent.

But Ms. Pingree has stuck to her guns: drugs need to be more affordable, she maintains. "We're going after the pricing of prescription drugs, which is the one issue that nobody want to deal with in Congress," she says, "but it's the core issue." States need budget relief, and a Medicare drug benefit won't be affordable if prices are too high, she argues.

Most every state is struggling with the cost of Medicaid, the health insurance program for the poor that is paid for with a mix of federal and state funds. Prescription drugs, which Medicaid covers, are one of the fastest-growing items in state health budgets across the country.

The spiraling state drug tabs are compounded by the absence of drug coverage under Medicare. Many of the elderly who qualify for both Medicare and Medicaid seek out the latter for its pharmaceutical benefit. About 12% of the drug industry's U.S. sales are to Medicaid.

Little wonder, then, that some of the hottest battles over drug prices are being waged in state houses and then courtrooms around the country. Other decisions in favor of Michigan and Florida during the past two years have let those states implement highly restricted drug lists, called formularies, that required drug makers to go beyond basic price discounts required under Medicaid law.

If companies don't offer additional rebates to win spots on the preferred list, their drugs are relegated to the equivalent of Siberia. Doctors have to seek prior approval from the state before prescribing the medicine. The plans have saved money and moved market share to companies that won the formulary slots.

For its part, Maine must get its Medicaid plan approved by the Department of Health and Human Services, which could water it down. And Maine Rx may still face legal challenges on some particulars.

For now, though, a little state took a bold stab at lowering drug prices and extending drug benefits at the same time. And so far no one has stopped it.

Write to Scott Hensley at scott.hensley@wsj.com¹

URL for this article:

<http://online.wsj.com/article/0,,SB105363779012284200,00.html>

Hyperlinks in this Article:

(1) scott.hensley@wsj.com

Updated May 22, 2003 6:48 p.m.

Copyright 2003 Dow Jones & Company, Inc. All Rights Reserved

Printing, distribution, and use of this material is governed by your Subscription agreement and Copyright laws.

For information about subscribing go to <http://www.wsj.com>