

www.nytimes.com

The New York Times
 ON THE WEB

June 1, 2002

U.S., in Court Filing, Backs Maine's Drug Discount Plan

By ROBERT PEAR

WASHINGTON, May 31 — The Bush administration told the Supreme Court today that it should allow Maine to carry out a state law that tries to force drug companies to reduce the prices of prescription medicines sold in the state.

Many states are looking to the Maine program as a model. The program, Maine Rx, was created under a 2000 law but has been stalled by litigation.

Maine Rx would try to force pharmaceutical companies into price negotiations with the state as a way of lowering drug costs for the uninsured. State officials estimate that it would benefit 325,000 people who lack insurance coverage for drugs.

The drug industry has challenged the law as unconstitutional, saying it would disrupt interstate commerce and is inconsistent with the federal Medicaid statute. In a brief filed with the Supreme Court today, Solicitor General Theodore B. Olson disputed both those arguments and said there was no reason for the justices to review the program.

The brief puts the Bush administration squarely at odds with the pharmaceutical industry. Administration officials have encouraged efforts by the states to increase access to prescription drugs, especially for low-income people, the elderly and the uninsured. But the filing today, which had been eagerly awaited, was the administration's first official statement on Maine Rx.

Senator Olympia J. Snowe, Republican of Maine, hailed the brief, saying, "It represents a victory for consumers in our state."

Marjorie Powell, a lawyer for Pharmaceutical Research and Manufacturers of America, the plaintiff in the case, said the group was studying the brief and had no immediate comment.

For several years, even as Congress has floundered in efforts to add drug benefits to Medicare, states have been creating and expanding programs to help people buy prescription medicines.

One such state is Maine, where, as in most border states, prescription drugs are a hot issue. Maine residents are continually reminded that prescription



medicines are less expensive in Canada, where government agencies regulate drug prices.

As a state legislator, Chellie Pingree, now the Democratic candidate for the United States Senate in Maine, was instrumental in getting the Rx law passed. Ms. Pingree is emphasizing drug costs more than any other issue in her campaign to unseat Senator Susan Collins, a Republican who has offered her own proposal to provide drug benefits to the elderly through Medicare.

Most states share Maine's goals, but the details of the Maine Rx program are unusual.

That program would use Medicaid, established for low-income people, to obtain drug discounts for those who are not Medicaid-eligible.

The state would exert leverage by imposing in effect a penalty on drug companies that refused to go along: pharmacists would have to obtain approval from the state before they could dispense to Medicaid recipients any drugs made by companies that balked at the discounts.

Drug companies detest this "prior authorization" requirement, and say it would limit access to particular drugs, forcing patients to accept inferior alternatives.

In October 2000, a federal district judge accepted the drug industry's legal arguments and issued a preliminary injunction blocking major parts of the Maine Rx law. But in May last year, the United States Court of Appeals for the First Circuit, in Boston, lifted the injunction and upheld the program.

A central argument in the industry's suit is that while Maine tries to use Medicaid as the essential instrument of its program, that program in fact has nothing to do with the purpose or structure of Medicaid. But the appeals court noted "some evidence in the record that by making prescription drugs more accessible to the uninsured, Maine may reduce Medicaid expenditures." The court said the state program advanced the goal of Medicaid, providing assistance to low-income people, "even if the individuals covered by the Maine Rx program are not poor enough to qualify for Medicaid."

The industry appealed to the Supreme Court, which asked the Bush administration last October for its views in the case.

In his brief today, Mr. Olson noted that the Maine Rx program would be open to all state residents, but acknowledged that it was intended mainly for people with incomes too high to qualify for Medicaid: those exceeding three times the federal poverty level (above \$43,890 a year for a family of three).

"No Medicaid purpose appears to be served by a state program focusing on that population," the solicitor general said. Still, he argued for allowing Maine to demonstrate that its program served some purpose related to Medicaid.

The brief also rejected the drug industry's argument that the Maine law dictated prices paid in commercial transactions occurring outside the state, and so violated the Constitution by transgressing on interstate commerce.

Such transactions would not be out of state, the brief said, since the discounts would result simply from the sale of the drug companies' products within Maine.

[Copyright 2002 The New York Times Company](#) | [Permissions](#) | [Privacy Policy](#)