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Date: (Filing No. S-)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
SENATE
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 461, L.D. 1499, Bill, “An Act To Establish the Maine Prescription Drug Affordability Board”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA c. 167 is enacted to read:

CHAPTER 167

MAINE PRESCRIPTION DRUG AFFORDABILITY BOARD

§2041. Maine Prescription Drug Affordability Board established

1. Board established. The Maine Prescription Drug Affordability Board, as established in section 12004-G, subsection 14-I and referred to in this chapter as "the board," shall carry out the purposes of this chapter.

2. Membership. The board has 5 members with expertise in health care economics or clinical medicine, who may not be affiliated with or represent the interests of a public payor, as that term is defined in section 2042, and who are appointed as follows:

A. Two members by the President of the Senate. The President of the Senate shall also appoint one alternate board member who will participate in deliberations of the board in the event a member appointed by the President of the Senate elects to be recused as provided in subsection 7, paragraph B;

B. Two members by the Speaker of the House of Representatives. The Speaker of the House of Representatives shall also appoint one alternate board member who will participate in deliberations of the board in the event a member appointed by the Speaker of the House of Representatives elects to be recused as provided in subsection 7, paragraph B; and

C. One member by the Governor. The Governor shall also appoint one alternate board member who will participate in deliberations of the board in the event the

1 member appointed by the Governor elects to be recused as provided in subsection 7,
2 paragraph B.

3 **3. Terms.** Members are appointed to 5-year terms. Of the initial appointees, the
4 member appointed by the Governor serves an initial term of 5 years, one member
5 appointed by the President of the Senate and one member appointed by the Speaker of the
6 House of Representatives serve an initial term of 4 years and one member appointed by
7 the President of the Senate and one member appointed by the Speaker of the House of
8 Representatives serve an initial term of 3 years.

9 **4. Quorum.** A majority of board members constitutes a quorum.

10 **5. Chair.** The Governor shall name the chair.

11 **6. Meetings.** Beginning no later than March 1, 2020, the board shall meet in public
12 session at least every 12 weeks to review prescription drug information and to make
13 recommendations pursuant to section 2042. Meetings may be cancelled or postponed at
14 the discretion of the chair.

15 A. Each public meeting must be announced 2 weeks in advance, and materials for
16 the meeting must be made public at least one week in advance.

17 B. Each public meeting must provide opportunity for comment from the public in
18 attendance at the meeting, and the board shall provide the opportunity for the public
19 to submit written comments on pending decisions.

20 C. The board may allow expert testimony at public meetings and any meeting
21 conducted in executive session as permitted by paragraph D.

22 D. Notwithstanding the requirements of Title 1, section 405, the board may meet in
23 executive session, except that any decision of the board must be made in public.

24 **7. Conflicts of interest.** The following provisions govern any conflict of interest for
25 a member of the board, a member of the advisory council established pursuant to
26 subsection 10 or any staff member or contractor of the board.

27 A. When appointing a member of the board or the advisory council established
28 pursuant to subsection 10, the appointing authority shall consider any conflict of
29 interest disclosed by the prospective member. A member shall elect to be recused
30 from any board activity in the case in which the member or an immediate family
31 member of the member has a conflict of interest. For the purposes of this paragraph,
32 "conflict of interest" means an association, including a financial or personal
33 association, that has the potential to bias or have the appearance of biasing an
34 individual's decisions in matters related to the board or the conduct of the board's
35 activities.

36 B. A board member or staff or contractor of the board with a conflict of interest shall
37 elect to be recused. For purposes of this paragraph, "conflict of interest" means any
38 instance in which a member of the board or an immediate family member of the
39 member has received or could receive either of the following:

40 (1) A direct financial benefit of any amount deriving from the results or findings
41 of a study or determination by or for the board; or

1 (2) A financial benefit from individuals or companies that own or manufacture
2 prescription drugs, services or items to be studied by the board that in the
3 aggregate exceeds \$5,000 per year. For purposes of this subparagraph, "financial
4 benefit" includes honoraria, fees, stock or other financial benefit and the current
5 value of the member's or immediate family member's already existing stock
6 holdings, in addition to any direct financial benefit deriving from the results or
7 findings conducted under this section.

8 C. A conflict of interest must be disclosed in the following manner:

9 (1) By the board in the employment of board senior staff;

10 (2) By the Governor, President of the Senate or Speaker of the House of
11 Representatives when appointing members to the board and advisory council
12 established pursuant to subsection 10;

13 (3) By the board, describing any recusals as part of any final decision relating to
14 a prescription drug; and

15 (4) By the 5th day after a conflict is identified or, if a public meeting of the
16 board will occur within that 5-day period, in advance of the public meeting.

17 D. Conflicts of interest must be publicly posted on the website of the board. The
18 information disclosed must include the type, nature and magnitude of the interests of
19 the individual involved, except to the extent that the individual elects to be recused
20 from participation in any activity with respect to which the potential conflict exists.

21 E. The board, the advisory council established pursuant to subsection 10, a member
22 of the board or staff or a contractor of the board may not accept gifts, bequests or
23 donations of services or property that suggest a conflict of interest or have the
24 appearance of creating bias in the work of the board or advisory council.

25 F. A member of the advisory council established pursuant to subsection 10 who
26 accepts a gift, bequest or donation of services or property that suggests a conflict of
27 interest or has the appearance of creating bias in the work of the advisory council
28 shall disclose the gift, bequest or donation publicly.

29 **8. Staff.** The board may employ an executive director, whose salary, to the extent
30 feasible, must comport with state personnel rules and requirements.

31 **9. Compensation.** A member of the board and a member of the advisory council
32 appointed pursuant to subsection 10, paragraph L are entitled to legislative per diem and
33 reimbursement for expenses as provided in section 12004-G, subsection 14-I.

34 **10. Advisory council.** A 12-member advisory council is established to advise the
35 board on establishing annual spending targets pursuant to section 2042, subsection 1 and
36 determining methods for meeting those spending targets pursuant to section 2042,
37 subsection 3. The advisory council consists of:

38 A. The Governor or the governor's designee;

39 B. The Commissioner of Administrative and Financial Services or the
40 commissioner's designee;

- 1 C. The Commissioner of Corrections or the commissioner's designee;
- 2 D. The Commissioner of Health and Human Services or the commissioner's
- 3 designee;
- 4 E. The Attorney General or the Attorney General's designee;
- 5 F. The Executive Director of Employee Health and Benefits, within the Department
- 6 of Administrative and Financial Services, Bureau of Human Resources, or the
- 7 executive director's designee;
- 8 G. A representative from the Maine State Employees Association, appointed by the
- 9 Governor, based on a nomination by the association;
- 10 H. A representative from the Maine Education Association, appointed by the
- 11 Governor, based on a nomination by the association;
- 12 I. A representative from the Maine Municipal Association, appointed by the
- 13 Governor, based on a nomination by the association;
- 14 J. A representative from the University of Maine System, appointed by the
- 15 Governor, based on a nomination by the system;
- 16 K. A representative from the Maine Community College System, appointed by the
- 17 Governor, based on a nomination by the system; and
- 18 L. A representative of consumer interests, appointed by the Governor, who serves a
- 19 3-year term.

20 **11. Funds and grants.** The board may apply for and receive funds, grants or

21 contracts from public and private sources.

22 **12. Assessment.** The board may recommend that a public payor, as defined in

23 section 2042, subsection 1, pay an annual assessment to support the administrative costs

24 of the board.

25 **§2042. Powers and duties of the board**

26 **1. Prescription drug spending targets.** The board has the following powers and

27 duties. For the purposes of this section, the term "public payor" means any division of

28 state, county or municipal government that administers a health plan for employees of

29 that division of state, county or municipal government or an association of state, county

30 or municipal employers that administers a health plan for its employees, except for the

31 MaineCare program. The board shall:

32 A. Beginning for the year 2021 and in consultation with the advisory council

33 established under section 2041, subsection 10, determine annual spending targets for

34 prescription drugs purchased by public payors based upon a 10-year rolling average

35 of the medical care services component of the United States Department of Labor,

36 Bureau of Labor Statistics Consumer Price Index medical care services index plus a

37 reasonable percentage for inflation and minus a spending target determined by the

38 board for pharmacy savings;

39 B. Determine spending targets on specific prescription drugs that may cause

40 affordability challenges to enrollees in a public payor health plan; and

1 C. Determine which public payors are likely to exceed the spending targets
2 determined under paragraph A.

3 **2. Prescription drug spending data.** The board may consider the following data to
4 accomplish its duties under this section:

5 A. A public payor's prescription drug spending data, which the 3rd-party
6 administrator or insurer for the public payor's health plan shall provide to the board
7 on behalf of the public payor upon request notwithstanding any provision of law to
8 the contrary, including:

9 (1) Expenditures and utilization data for prescription drugs for each plan offered
10 by a public payor;

11 (2) The formulary for each plan offered by a public payor and prescription drugs
12 common to each formulary;

13 (3) Pharmacy benefit management services and other administrative expenses of
14 the prescription drug benefit for each plan offered by a public payor; and

15 (4) Enrollee cost sharing for each plan offered by a public payor; and

16 B. Data compiled by the Maine Health Data Organization under Title 22, chapter
17 1683.

18 Prescription drug spending data provided to the board under this subsection is
19 confidential to the same extent it is confidential while in the custody of the entity that
20 provided the data to the board.

21 **3. Recommendations.** Based upon the prescription drug spending data received
22 under subsection 2, the board, in consultation with a representative of each public payor
23 identified under subsection 1, paragraph A, shall determine methods for the public payor
24 to meet the spending targets established under subsection 1. The board shall determine
25 whether the following methods reduce costs to individuals purchasing prescription drugs
26 through a public payor and allow public payors to meet the spending targets established
27 under subsection 1:

28 A. Negotiating specific rebate amounts on the prescription drugs that contribute most
29 to spending that exceeds the spending targets;

30 B. Changing a formulary when sufficient rebates cannot be secured under paragraph
31 A;

32 C. Changing a formulary with respect to all of the prescription drugs of a
33 manufacturer within a formulary when sufficient rebates cannot be secured under
34 paragraph A;

35 D. Establishing a common prescription drug formulary for all public payors;

36 E. Prohibiting health insurance carriers in the State from offering on their
37 formularies a prescription drug or any of the prescription drugs manufactured by a
38 particular manufacturer when the methods described in paragraph B or C are
39 implemented;

1 F. Purchasing prescription drugs in bulk or through a single purchasing agreement
2 for use among public payors;

3 G. Collaborating with other states and state prescription drug purchasing consortia to
4 purchase prescription drugs in bulk or to jointly negotiate rebates;

5 H. Allowing health insurance carriers providing coverage to small businesses and
6 individuals in the State to participate in the public payor prescription drug benefit for
7 a fee;

8 I. Procuring common expert services for public payors, including but not limited to
9 pharmacy benefit management services and actuarial services; and

10 J. Any other method the board may determine.

11 **4. Report.** The board shall report its recommendations, including prescription drug
12 spending targets, and the progress of implementing those recommendations to the joint
13 standing committee of the Legislature having jurisdiction over health coverage and
14 insurance matters no later than October 1, 2020 and on January 30th annually thereafter.
15 The joint standing committee may report out legislation based upon the report.

16 **Sec. 2. 5 MRSA §12004-G, sub-§14-I** is enacted to read:

17 **14-I.**

18 <u>Health care</u>	<u>Maine Prescription</u>	<u>Legislative Per</u>	<u>5 MRSA §2041</u>
	<u>Drug Affordability</u>	<u>Diem and Expenses</u>	
	<u>Board and advisory</u>		
21	<u>council</u>		

22 **Sec. 3. 22 MRSA §8712, sub-§6** is enacted to read:

23 **6. Data shared with Maine Prescription Drug Affordability Board.** The
24 organization may share data collected under this chapter with the Maine Prescription
25 Drug Affordability Board, established under Title 5, section 12004-G, subsection 14-I, as
26 long as any data shared pursuant to this subsection is not further disseminated.'

27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
28 section number to read consecutively.

29 **SUMMARY**

30 This amendment replaces the bill.

31 The amendment, as in the bill, establishes the Maine Prescription Drug Affordability
32 Board but removes the provisions that allow rate setting by the board and require the
33 board to determine excess prescription drug costs based upon certain thresholds for
34 prescription drug prices and price increases.

35 The amendment instead provides that the board determines prescription drug
36 spending targets for public entities, including for specific prescription drugs, based upon
37 a 10-year rolling average of the medical care services component of the United States
38 Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care
39 services index plus a reasonable percentage for inflation and minus a spending target

1 determined by the board for pharmacy savings and in consideration of information
2 received about the public entity’s prescription drug spending and information collected
3 by the Maine Health Data Organization. The board makes recommendations on
4 prescription drug spending targets, including spending targets for specific prescription
5 drugs, with input from representatives of those public entities. The recommendations may
6 include establishing a common prescription drug formulary among public payors,
7 purchasing prescription drugs in bulk or through a single purchasing agreement,
8 collaborating with other states and state prescription drug purchasing consortia to
9 purchase prescription drugs in bulk or to jointly negotiate rebates, allowing health
10 insurance carriers providing coverage to small businesses in the State to participate in a
11 public payor prescription drug benefit for a fee, procuring common pharmacy benefit
12 management services and actuarial services, negotiating specific rebates and removing
13 drugs for which a manufacturer does not negotiate a sufficient rebate from a formulary
14 and other methods determined by the board. The board is required to report its
15 prescription drug spending targets and the methods recommended to meet those targets to
16 the Legislature annually.

17 **FISCAL NOTE REQUIRED**

18 **(See attached)**