

**§2693. Emergency drug pricing**

In order to achieve the public health purposes listed in section 2691, maximum retail prices for prescription drugs sold in Maine may be established pursuant to this section. [PL 1999, c. 786, Pt. A, §3 (NEW).]

**1. Emergency drug pricing procedures.** The following provisions apply to determinations regarding maximum retail prices for prescription drugs and to the procedures for establishing those prices.

A. By July 1, 2005, the department shall adopt rules establishing the procedures for adoption and periodic review of maximum retail prices, the procedures for establishing maximum retail prices for new prescription drugs and for reviewing maximum retail prices of selected drugs and the procedures for phasing out or terminating maximum retail prices. [PL 2007, c. 395, §26 (AMD).]

B. By January 5, 2006, the commissioner shall determine whether the cost of prescription drugs provided to qualified residents under the Maine Rx Plus Program pursuant to subchapter 1 is reasonably comparable to the lowest cost paid for the same drugs delivered or dispensed in the State. In making this determination the following provisions apply.

(1) The commissioner shall review prescription drug use in the MaineCare program using data from the most recent 6-month period for which data is available.

(2) Using the data reviewed in subparagraph (1), the commissioner shall determine the 100 drugs for which the most units were provided and the 100 drugs for which the total cost was the highest.

(3) For each prescription drug listed in subparagraph (2), the commissioner shall determine the cost for each drug for qualified residents who are provided those drugs under the Maine Rx Plus Program on a certain date. The average cost for each such drug must be calculated.

(4) For each prescription drug listed in subparagraph (2), the commissioner shall determine the lowest cost for each drug paid by any purchaser on the date that is used for subparagraph (3) delivered or dispensed in the State, taking into consideration the federal supply schedule and prices paid by pharmaceutical benefits managers and by large purchasers and excluding drugs purchased through the Maine Rx Plus Program. The average cost for each such drug must be calculated.

(5) If the average cost for one or more prescription drugs under the Maine Rx Plus Program as determined in subparagraph (3) is not reasonably comparable to the average lowest cost for the same drug or drugs as determined in subparagraph (4), the commissioner shall establish maximum retail prices for any or all prescription drugs sold in the State. Maximum prescription drug prices established under this subparagraph must take effect July 1, 2006. [PL 2003, c. 494, §10 (AMD).]

C. In establishing maximum retail prices under this paragraph, the commissioner shall follow procedures set forth by rules adopted by the department. [PL 2007, c. 395, §27 (AMD).]

D. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1999, c. 786, Pt. A, §3 (NEW).]

[PL 2007, c. 395, §§26, 27 (AMD).]

**2. Select prescription drugs.** In making a determination under this section the commissioner may rely on pricing information on a selected number of prescription drugs if that list is representative of the prescription drug needs of the residents of the State and is made public as part of the process of establishing maximum retail prices.

[PL 1999, c. 786, Pt. A, §3 (NEW).]

**3. Public health or welfare.** The commissioner may take actions that the commissioner determines necessary if there is a severe limitation or shortage of or lack of access to prescription drugs in the State that could threaten or endanger the public health or welfare.  
[PL 1999, c. 786, Pt. A, §3 (NEW).]

**4. Appeals.** A retailer of prescription drugs may appeal the maximum retail price of a prescription drug established pursuant to this section in accordance with the Maine Administrative Procedure Act.  
[PL 1999, c. 786, Pt. A, §3 (NEW).]

**5. Enforcement.** A violation of the maximum retail prices established under this section is a violation of the Maine Unfair Trade Practices Act.  
[PL 1999, c. 786, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 1999, c. 786, §A3 (NEW). PL 2003, c. 494, §10 (AMD). PL 2007, c. 395, §§26, 27 (AMD).

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