Exploration of Policy Concepts

Identifying policies to pursue in Maine considering the PDAB's potential updated charge (passage of LD 697)

Maine Prescription Drug Affordability Board
September 22nd, 2025

LD 697 Status & Bill Pathway

- Because the Legislature adjourned before the 10 day time limit that allows a bill to become law without the Governor's signature, LD 697 is still awaiting action by the Governor. It will become law **unless the Governor vetoes it within 3 days after the reconvening of the legislature**, in this case the convening of the 132nd Second Regular Session on January 7th, 2026
- The PDAB should have more information about whether LD 697 will become law by January 10th, 2026

LD 697 - New Charges

At a minimum, the board shall assess the following strategies:

- Upper Payment Limits
- Referenced Based Pricing
- Implementing transparency requirements and regulation of supply chain entities (including PBMs regarding the role of discounts and rebates)
- Implementing strategies to reduce out-of-pocket costs for prescription drugs
- Developing opportunities for engagement with providers and other health care professionals to disseminate information about prescription drug costs and pricing
- Implementing strategies to reduce out-of-pocket costs for prescription drugs through the regulation of insurance and the rate review process
- Aligning the payment for prescription drugs with actual drug acquisition costs
- Recommending annual spending targets for public payors or segments of the commercial sector

Feasibility Considerations

LD 697 Language:

The review of strategies must include consideration of the strategies' likely impact on consumers and overall health care costs **and the feasibility of implementing such strategies.**

Over the course of the PDAB's existence, the Board has consistently identified policy domains worth exploring. The following presentation will explore some of those domains that may align with both the new charges of the Board and with opportunity in the state.

Legal Considerations

State laws aimed at lowering prescription drug costs, whether it be through increased transparency or price gouging bans, for example, often face legal challenges from the pharmaceutical industry.

Law	Definition	Example of Legal Challenges
Dormant Commerce Clause (DCC)	DCC was established through federal case law to ensure states don't enact policies that have the unintended consequence of "hindering, affecting, or shaping industry business practices in other states, or that "unduly burden" the multi-state operations of national businesses"	**Struck down:** Maryland's 2017 anti-price gouging law was deemed in violation of DCC. Challenge brought by the Association for Accessible Medicines (trade group representing generic drug manufacturers)
Fifth Amendment (Takings Clause)	Bars the Government from taking private property for public use absent just compensation. In the Rx context, the Clause and disclosure of trade secrets is often used to challenge Rx law, as manufacturers argue it equates to taking of private property without just compensation.	**Provisions struck down:** Oregon's 2018 Prescription Drug Price Transparency Act was deemed unconstitutional in 2024, with rulings that the "public interest" exception for disclosure of drug manufacturers' trade secrets violates the Takings Clause. The Ninth U.S. Circuit Court of Appeals reversed that decision in August 2025, upholding the law. Challenge brought by Pharmaceutical Research and Manufacturers of America ("PhRMA")
ERISA Preemption	The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most private industry employee benefit plans, including health plans. Section 514 of ERISA makes void any state laws that "relate to" these employer-sponsored plans. In practice, ERISA preemption prevents states from directly regulating self-insured employer health plans, although they may still regulate aspects of fully-insured plans sold to employers.	**Provisions struck down:** Oklahoma 2019 law, aimed at imposing network restrictions and anti-steering provisions on PBMs, was found to be in violation of ERISA because it implicitly regulated ERISA plans through mandating benefit plan structures and preventing employers from structuring their plans in particular ways. Challenge brought by the Pharmaceutical Care Management Association

Implementation and Operational Challenges

- Enforcement mechanisms: when weighing policy options, the Board will need to consider whether there is a pathway to operationalizing the policy
  - For example, the state has limited authority to impose or enforce any direct requirements on manufacturers. When considering means of indirectly influencing the behavior of manufacturers or other entities, the Board will need to assess whether the incentives or penalties established will be effective in ensuring compliance.
- Implementation resources
  - When identifying policies for consideration, the Board will need to research likely costs of program operation including full-time state line staff, contractors, and other program costs.

Policy Areas

Upper Payment Limits (UPLs) and Referenced Based Pricing

Summary

UPLs establish a ceiling on the amount that state-regulated health plans can pay for prescription drugs. Programs in other states have established a board with the authority to identify drugs that pose affordability challenges and determine an appropriate UPL, but it could also be possible to establish a program that implemented a state-level UPL referenced to prices established in the Medicare Drug Negotiation Program.

Status in Maine

Legislation has been proposed in prior sessions but has not passed.

Policy Levers to Explore

Charge the Board with conducting affordability reviews to establish UPLs for select drugs which would apply to all state-regulated plans

Establish a reference rate program that would apply to public purchasers

Require that state-regulated insurers pay no more than the negotiated Medicare price for drugs subject to Part D negotiation

UPLs in Other States

Four states, Colorado, Maryland, Minnesota, and Washington, have PDABs with UPL authority, though no state has implemented a UPL yet.

State	Implementation Status
Colorado	Colorado's first UPL rulemaking hearing for the drug Enbrel took at its April 11, 2025 PDAB meeting. The establishment of a UPL for Enbrel would be **first in the nation**. • However, Colorado's PDAB has faced legal challenges from pharma. Amgen argues that CO law establishing the PDAB violates the Due Process Clause of the Fourteenth Amendment and the Dormant Commerce Clause. They claim a UPL is preempted by federal patent law. • A district court has dismissed the case. Amgen has filed an appeal.
Washington	• Cannot set UPLs until 2027 • Currently conducting affordability reviews
Maryland	• PDAB has been authorized to set UPLs since 2022 (initially only for public payers) but has yet to impose any limits • Currently conducting affordability reviews
Minnesota	• PDAB has been authorized to set UPLs since 2022, but has yet to impose any limits • Currently moving towards establishing framework for affordability reviews

Transparency Requirements

Summary

Some states have passed laws seeking more transparency into various programs or actors in the prescription drug supply chain, with the goal of better understanding the flow of spending and industry/provider practices. Recent transparency initiatives have particularly focused on the role of PBMs and the federal 340B program.

Status in Maine

Maine has robust reporting and transparency requirements that inform the Maine Health Data Organization's Drug Spending Dashboards. Recent legislation passed in Maine has included increased 340B transparency requirements for hospitals.

Policy Levers to Explore

Greater transparency into retail price setting at pharmacies

Transparency Requirements in Other States

Policy Opportunity	Examples From Other States
Greater transparency into retail price setting at pharmacies	N/A * Could include increased education on cost and access for pharmacists or real-time pricing tool implementation across the state

Regulation of Pharmacy Benefit Managers

Summary

Many states, including Maine, have sought to enable greater oversight and regulation of PBMs as a means of addressing business practices that may increase consumer and health plan costs.

Status in Maine

Maine's LD 1162, passed in 2019, requires drug manufacturers report to the Maine Health Data Organization when they increase the Wholesale Acquisition Cost of drugs by certain thresholds. The law also authorizes MDHO to require pricing component information for specific prescription drugs from manufacturers, wholesalers, and PBMs. As of 2020, PBMs are also required to obtain a license to operate in the state from the Bureau of Insurance. LD 1580, passed in 2025, bans spread pricing and LD 180, also passed in 2025, prohibits PBMs and carriers from reimbursing pharmacies at rates less than they reimburse PBMs or pharmacies affiliated with a carrier.

Policy Levers to Explore

Ban the ownership of PBMs by health plans

Establishing a program for intensive legal review of PBM business practices by the state

Regulation of PBMs in Other States

Policy Opportunity	Examples From Other States
Ban the ownership of PBMs by health plans	N/A * In 2025, Arkansas became the first state to ban PBM ownership of retail pharmacies in an attempt to disrupt vertical integration and ensuing concerns about cost and access
Establishing a program for intensive legal review of PBM business practices by the state	At least 30 states require registration or licensure of PBMs but some have more stringent or individualized business practice review for PBMs: • NY: Established the Pharmacy Benefits Bureau to oversee the PBM industry and manage licensing/reporting requirements • MA: A new law, effective in 2026, establishes a PBM licensure program and grants the Office of the Insurance Commissioner enforcement authority • CA, LA, NY: Have implemented laws that impose a "duty of care" on PBMs. While varying in strength and enforcement, the laws require PBMs to act in good faith and with fair dealing toward health plans

Reduce OOP Costs, Including Through Rate Review and Insurance Regulation

Summary

Legislation targeting out of pocket (OOP) costs can focus on spending caps for specific populations and drugs (insulin or specialty drugs, for example) or can target overall OOP spending caps. Some states look further upstream to insulate patients from high OOP costs through the implementation of programs penalizing unsupported price increases by manufacturers or establishing state purchasing pool buy in programs, for example.

Status in Maine

Maine caps copays for insulin at $35 for a 30-day supply in the commercial market and also includes protections to ensure that customers using cash assistance programs to purchase their prescriptions, have that amount counted toward deductibles out-of-pocket maximums.

Policy Levers to Explore

- **Institute additional caps on out-of-pocket costs for specific drugs or categories**
- **Engage with BOI on regulatory options – ex: carriers' OOP limit for prescription drugs**
- **Require additional justification of reported trends in pharmacy spending in rate filings**

Reducing OOP Costs in Other States

Policy Opportunity	Examples From Other States
Institute additional caps on out-of-pocket costs for specific drugs or categories	• CA, DE, LA , ME, MD, MT, NY and VT limit the amount a patient pays for a specialty drug (ex: DE, LA and MD limit consumers' out-of-pocket costs for specialty drugs to $150 per 30-day supply) • More than 20 states limit how much a patient pays for insulin

Collaborate with Providers to Enhance Consumer Education

Summary

Health care providers may have differing perspectives on including cost information in prescribing decisions, but gaining greater insight into the cost of drugs may help them in facilitating adherence to medications. More awareness of cost during the prescribing process may also help to shift incentives for PBMs and health plans.

Status in Maine

To date, the PDAB has not explicitly explored consumer education as a solution to increasing prescription drug prices.

Policy Levers to Explore

- **Explore options to provide drug cost data to prescribers to inform decision making and patient counseling**
- **Develop materials or resources encouraging providers to consider the intersection of cost and access**

Collaborating with Providers to Enhance Consumer Education in Other States

Policy Opportunity	Examples From Other States
Explore options to provide drug cost data to prescribers to inform decision making and patient counseling	• VT: Mandates that pharmaceutical manufacturers disclose to Vermont physicians and other prescribers the average wholesale price (AWP) of drugs they market within the state • CO: Requires pharmaceutical manufacturers, when engaging in prescription drug marketing, to provide the wholesale acquisition cost (WAC) of the drug to Colorado prescribers • CT: Requires the disclosure of the list price of a prescription drug when a pharmaceutical representative provides information about the drug to prescribing practitioners or pharmacists
Develop materials or resources encouraging providers to consider the intersection of cost and access	No specific state law examples, however organizations like the American Medical Association develop Continuing Medical Education courses and materials for providers to raise awareness of prescription drug pricing, financial assistance programs, and how to discuss costs with patients

Align Payment to Pharmacies with Drug Acquisition Costs

Summary

Due to the convoluted nature of the drug supply and payment chain, there can often be little relationship between what a pharmacy pays to obtain a drug from a wholesaler and the amount paid to the pharmacy by a PBM on behalf of a health plan. This can result in negative margins on some drugs and wide margins on others.

Status in Maine

In the 132nd Legislative Session, LD 180 explored the idea of a state benchmark for pharmacy reimbursement. The bill would have required pharmacies to be reimbursed at the National Average Drug Acquisition Cost (or Wholesale Acquisition Cost if NADAC is unavailable). The bill was supported by the Maine Pharmacy Association but faced pushback from PCMA and the Maine Association of Health Plans.

Policy Levers to Explore

Require commercial reimbursement for drugs using a specified structure

Aligning Payment to Pharmacies with Drug Acquisition Costs in Other States

Policy Opportunity	Examples From Other States
Require commercial reimbursement for drugs using a specified structure	States that require PBMs reimburse pharmacies at an amount no less than NADAC in the commercial market: • AR, DE, IA, WV, KY, CO

Recommending Annual Spending Targets for Public Payors

Summary

The MPDAB has previously identified an annual spending target for public payors, at the 10-year rolling average of the health component of CPI, which was determined to be 3.9 percent.

Status in Maine – Information from the MPDAB's Public Payors Questionnaire

Information on historical spending on prescription drugs for the last five years:

Maine Education Association Benefits Trust	For the July 2023-June 2024 plan year, the prescription drug benefit accounted for 28% of our total plan spend. **Our overall pharmacy trend was up 15.5% and for the July 2022 - June 2023 period the overall pharmacy trend was up 16.8%.** In looking at our renewal for July 2025, we are looking at pharmacy trends going up another **13%.**
Maine Municipal Employees Health Trust	Historical spending on prescription drugs for the last five years, measured by allowed charges, has increased in the MMEHT plan on **average by 14.3% per annum**. This is prior to rebates which have increased over the same period. **In the most recent year the increase was a bit lower at 9.7%.**
State Employee Health Plan	2021-2022 was approximately $44.1M, 2022-2023 was $46.7M (5.9%), 2023-2024 was $49.5M (6%), 2024-2025 projected at $55.6M (12.3%).

Recommending Annual Spending Targets for Public Payors: Policy Levers and Other States

Policy Levers to Explore:

- Collaborate with public payors on other cost containment strategies
- In-depth analysis on barriers to meeting spending targets
- Re-evaluate spending targets

Recommending Annual Spending Targets for Public Payors in Other States

Policy Opportunity	Examples From Other States
Collaborate with public payors on other cost containment strategies	Explore state-purchasing pool buy in: • New Mexico Interagency Pharmaceuticals Purchasing Council: Established by legislation, this council's objectives included identifying ways for state agencies to combine their purchasing power, with the long-term goal of applying these strategies to the private sector. Explore other opportunities for inter-state collaboration: • The Northwest Prescription Drug Consortium is a prescription drug discount card program for residents of Oregon and Washington (allows for purchasing through one vehicle and leveraging the purchasing power of both states). Open to public and private entities.

Legislative Update – End of 132nd Regular Session

Status of Prescription Drug Related Bills

Non-exhaustive list

LD	Content	Final Status
1018	Prohibits discrimination by manufacturers, carriers, and PBMs against pharmacies and health care providers that participate in the 340B program. Transparency language was added that required 340B hospitals to report specific information to MHDO.	Signed by Governor Mills as part of the larger biennial budget bill
180	A carrier (or PBM under contract) may not reimburse a pharmacy for a prescription or pharmacy service in an amount that is less than the reimbursement amount paid to a pharmacy affiliated with the provider	Signed into law
1580	Explicitly prohibits spread pricing. Requires annual certification of compliance with the BOI.	Signed into law
1906	Requires administrators and PBMs that provide health coverage or prescription drug coverage under contract with a plan sponsor to provide certain claims information to the sponsor upon request. The bill also gives the plan sponsor the right to request an audit to ensure compliance with a contract at least once every calendar year.	Signed into law