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Court Gives States OK on Drug Price Fight

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WASHINGTON (AP) -

Armed with a Supreme Court ruling, states are set to follow Maine's lead in trying to force drug companies to lower prices on prescription drugs for the elderly, the working poor and others who have trouble paying for their medicine.

More than 20 states have considered programs that would do what Maine is now free to try: use the power of the Medicaid program to leverage bulk discounts from drug makers.

Many of the people who need drug coverage are older Americans who rely on Medicare for health coverage, and while lawmakers have promised repeatedly to add drug coverage to Medicare, Congress still has not acted. Many state programs are geared specifically to help low-income seniors.

"We have been waiting a long time for Congress," said Sarah Lock, an attorney for AARP, the largest lobby group for older Americans. "States can't afford to take a pass and wait for Congress yet again."

Nationwide, drug prices have been rising by double-digit percentages annually.

Poor people generally get prescription drugs through Medicaid. Programs like Maine's use the Medicaid program to pressure drug makers to bring down their prices for those without insurance.

Drug makers are asked to negotiate discounts for the elderly and others and if they won't do it, the state makes it more difficult for them to sell those drugs to people in Medicaid. Specifically, when manufacturers won't cooperate, the state will require doctors to verify that no other drug will work before they prescribe that particular medicine.

Opponents, led by drug makers, argue that the program would hurt people on Medicaid, who could be forced to jump through an extra hoop in order to get certain prescriptions filled.

In Maine, supporters say their Maine Rx program would cut prices by 25 percent and help more than 300,000 residents.

"It's a model that could cut drug costs substantially across the country. We expect a number of states to follow Maine's lead," said a statement from the Medicare Rights Center, an advocacy group.

Drug makers don't like it because it would pressure them to sell their medicines for less money. Their trade group, the Pharmaceutical Research and Manufacturers of America, sued to stop it.

In its 6-3 ruling, the Supreme Court stopped short of broadly endorsing Maine's plan. The decision said only that drug makers did not adequately show why the plan should be blocked. Details of the issue will continue to be litigated in the lower courts, and the Department of Health and Human Services has yet to issue its own interpretation of the law, which could affect the program's fate in the end.

Maine Gov. John Baldacci said Monday the state would move ahead with its plan, first approved in 2000. Lock predicted others may hold off until HHS provides clearer guidance.

"Other states may wait to see how that develops," she said.

Beyond the legal issues, some say the ruling will give states political cover to move ahead. The victory for Maine shows drug companies can be beaten, said Chellie Pingree, president of Common Cause, who wrote the Maine law when she was president of the state Senate.

"Frankly, up until this point, these guys come in with huge armies to lobby you against any kind of change you would make that would force them to lower their prices," Pingree said.

The Maine case is Pharmaceutical Research and Manufacturers of America v. Concannon, 01-188.

On the Net: Supreme Court: <http://www.supremecourtus.gov>

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