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## Half an Rx Win

The Supreme Court's decision to remove an injunction against the Maine Rx program prolongs but does not assure the program's life. The court correctly saw that the issue of whether Maine Rx violated Medicaid rules was a matter for the secretary of Health and Human Services to determine - an agency that is part of an administration that sides with drug manufacturers and against Maine on this issue. Nonetheless, the state should take its limited success and present strong arguments for supporting this valuable idea.

Maine Rx would reduce prescription drug prices for the working poor, retirees and others who lack health coverage by negotiating with drug manufacturers and subjecting drugs from companies that choose not to negotiate to "prior authorization" that gives the state a chance to find a less expensive equivalent. The price of Medicaid drugs would drop 25 percent as a result of the program, benefiting recipients overall by expanding the number of people who could be covered.

While the Medicaid Act gives states the ability to control many aspects of its coverage, the Pharmaceutical Research and Manufacturers of America said, among many other arguments, that the potential harm of not making available certain drugs to participants created a harm that invalidated the program. The court, however, suggested that not just any harm would vacate the program, that a minor harm weighed against a major benefit might be acceptable. Mostly though, what the Supreme Court indicated is that it wants HHS Secretary Tommy Thompson to offer his view on the program and provide a lower court with his opinion of whether Maine Rx meets Medicaid objectives.

This is exactly what Maine's congressional delegation asked for last January, with Sen. Olympia Snowe writing to Secretary Thompson at the time, "I urge you to publicly endorse the program. With the cost of health care continuing to rise by double digit figures each year, and the growing cost of prescription drugs fueling that trend, consumers who do not have prescription drug insurance coverage are being forced to choose between their necessary prescription drugs, and purchasing groceries or paying utility bills." The secretary decided to wait for the ruling rather than comment.

Both Sen. Snowe and Sen. Susan Collins have argued that states should be allowed to experiment with these types of drug programs both to provide assistance to their residents and to demonstrate what might work on a national level. And for all the talk of Maine's program being innovative, it should be noted that other states have been allowed to continue drug programs that required prior authorization or have administered programs based on a restrictive list. These, like Maine's, were not specifically identified in Medicaid rules, but they were approved by the secretary because they helped to control costs, thereby expanding the number of people who could qualify for them.

Persuading Secretary Thompson to support Maine Rx, however, will require coordination and a comprehensive argument from the delegation and Augusta. It is premature to celebrate a complete victory for Maine Rx until that happens.

