

Maine Rx law has been held up long enough

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With the tentative approval of the nation's highest court, the state can finally move ahead with the Maine Rx program. For three years, this innovative approach to making prescription drugs more affordable has been kept under wraps by an industry that would rather run up its lawyers fees than provide medicine to people in need.

The genesis of the Maine law can be found in a baffling fact: Those who can least afford prescription drugs (i.e., those who have no medical insurance, or whose medical insurance does not include a drug benefit) are forced to pay the highest prices for medicine. Those with a drug benefit, in contrast, get a discounted price negotiated between the insurance company and the drug maker.

Maine Rx directs the state to negotiate discounted prices for Maine residents with no prescription-drug insurance coverage. Drug makers who refuse to negotiate would face a sanction: Their products would then be put on the Medicaid prior authorization list, which means that doctors in Maine could not prescribe those drugs to Medicaid patients without explicit state approval. The Medicaid market is lucrative enough that drug makers are loathe to lose patients.

If the pharmaceutical companies continued to refuse to negotiate, the state could ultimately set drug prices.

Monday, the United States Supreme Court ruled in a 6-3 decision that Maine Rx was not, on its face, unconstitutional. The Pharmaceutical Research and Manufacturers of America (PHARMA), which represented drug makers, had argued that the law violated the Constitution's interstate commerce clause and was an illegal expansion of the federal Medicaid act.

The constitutional argument was dubious at best. While the Constitution does give Congress the right to regulate interstate commerce, the Maine Rx law regulated drug sales only within Maine's borders. It requires accounting acrobatics to suggest that Maine's use of Medicaid's prior authorization rules directly affects pharmaceutical commerce in other states.

Furthermore, for the past 80 years, the courts have agreed to show deference to state legislatures and have refused to substitute their judgments about the substantive content of regulation. The Supreme Court might have serious questions about the wisdom of Maine's law, but precedent declares that justices should not rule against a law merely because they do not like it.

The Court's decision clears the way for Maine to begin implementing the law, but it did not say that Maine Rx is completely in the clear. If evidence crops up that Medicaid beneficiaries are unduly penalized (because some drugs would require prior authorization), the drug companies could find justices sympathetic to their arguments.

State officials, nonetheless, have every right to crow for the time being. They have shown that a little state can, in the face of federal inaction, work on behalf of its neediest citizens. The need was clear — lifesaving drugs can't save lives if the patient can't afford to purchase them — and lawmakers responded.

As the state devises a plan to put Maine Rx to work for the people, officials should keep in mind that a new bureaucracy isn't the solution. Gov. John Baldacci should ensure that the Department of Human Services gets the job done with existing resources — even if that means curtailing other priorities.

Critics of Maine Rx said Maine was too small to negotiate a favorable price with drug makers, but the lawsuit suggests that the drug makers are worried. Critics also said that Maine shouldn't attack the prescription drug problem alone. Instead of waiting, though, the state plowed ahead and — guess what? — Maine is not alone. There are 28 states with plans to enact Maine Rx-style legislation now that the Court has ruled.

Ultimately, Congress will address the national issue of prescription drug prices — either through an America Rx program sponsored by Maine congressmen Mike Michaud and Tom Allen, or through a Medicare prescription drug benefit such as last year's proposals by Sens. Olympia Snowe and Susan Collins. Until then, however, you can count yourself lucky to live in Maine.