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THE NATION

## States See Maine Drug Plan as a Remedy for Budget Ills

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### Legislatures expected to craft similar programs. The White House says the law goes 'too far.'

By Vicki Kemper  
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WASHINGTON — For almost three years, legislators from Florida to Hawaii have watched the high-stakes legal battle between the state of Maine and the pharmaceutical industry with more than passing interest.

So they reacted to Monday's U.S. Supreme Court ruling, which revived a Maine program to reduce prescription drug prices for the uninsured, as if David had seriously wounded, if not slain, Goliath.

"This is a tremendous blow to the [pharmaceutical] industry," said Peter E. Shumlin, a former state senator in Vermont who founded a multistate coalition on drug prices.

"It's not just the state of Maine that's the problem," Shumlin said. "It's that every legislator in every state — regardless of political party — in his right mind will do this."

He was referring to the Maine Rx program, which threatens to punish drug companies that don't give uninsured state residents the same low prices offered to patients in the federal-state Medicaid program for the poor. Companies that decline to offer the discount would have their products taken off the state's list of approved drugs.

While Monday's court ruling probably will encourage many states to follow Maine's lead, it does not guarantee that their programs — or Maine's — will survive the inevitable legal challenges from the pharmaceutical industry. Maine Rx, established in 2000, has yet to be carried out.

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States will also have to reckon with the Bush administration, which Monday restated its view that Maine had gone "too far" in using the leverage of its Medicaid program to force drug companies to lower prices for non-Medicaid patients.

"Today's decision validated [our] central position," said Campbell Gardett, a spokesman for the Department of Health and Human Services.

State programs such as Maine's will need the approval of HHS, he said, and Secretary Tommy G. Thompson would be unlikely to approve Maine Rx in its current form.

Any program that requires a state to authorize drugs on a case-by-case basis if they are not on a list of preferred medications "is going to slow down drugs to [Medicaid] patients," Gardett said, echoing an argument of the drug industry.

The Pharmaceutical Research and Manufacturers of America, which sued to block Maine Rx, said Monday that the program "effectively [denies] patients the specific medicine they need based on cost."

Federal health officials told state Medicaid directors last year that they could use the stick of prior authorization to win deeper Medicaid discounts from drug manufacturers. The Maine Rx program is different, Gardett said, because it would use a company's Medicaid participation to extract lower prices for non-Medicaid patients.

Slower delivery of prescription drugs to Medicaid patients in return for lower Medicaid prices is acceptable, Gardett said, but potentially inconveniencing Medicaid patients to help the uninsured is not.

The HHS position likely will encourage other states to modify their Maine-styled laws, said Richard Cauchi, health program manager for the National Conference of State Legislatures.

To get around the federal objection, new state laws could make additional drug discounts voluntary rather than mandatory, while dangling prior authorization as a potential penalty rather than a sure one, Cauchi said.

Virtually all states are taking steps to control spending on prescription drugs.

With the economy slumping, the same states that lowered taxes and expanded their Medicaid rolls in the booming 1990s now face record-level budget deficits. As a result, many state legislatures are limiting Medicaid eligibility and cutting program benefits.

To control spending on Medicaid medications, states have adopted a combination of strategies including preferred drug lists, prior authorization, increased use of generics and beefed-up co-payments. Patients in California's Medicaid program, Medi-Cal, are asked — but not required — to pay \$1 for each prescription they receive.

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