

May 19, 2003

Maine Wins High Court Approval to Seek Lower Drug Prices

By LINDA GREENHOUSE

WASHINGTON, May 19 — Maine's innovative effort to reduce prescription drug costs for uninsured state residents by pressuring manufacturers to grant price rebates received the Supreme Court's qualified approval today in a decision likely to shift the drug pricing debate away from the courts and back to Congress and the executive branch.

The 6-to-3 decision lifted an injunction that has kept the Maine Rx Program from taking effect since the State Legislature enacted it in 2000. The Federal District Court in Portland, ruling in a suit brought by the pharmaceutical industry, had found that the program violated both the federal Medicaid statute and the constitutional proscription against state interference with interstate commerce. The federal appeals court in Boston disagreed, but kept the program on hold until the Supreme Court could rule.

Other states have been closely following the Maine case, with 29 states filing a Supreme Court brief on Maine's behalf. As prescription drug legislation has remained stalled in Congress, about half the states have started experimenting with ways to hold down costs for various groups of consumers.

Among these efforts, the Maine program was not only one of the earliest but one of the broadest, because while intended primarily for the state's 325,000 residents who lack medical insurance, it does not make the benefit dependent on financial need.

It places the state in the role of a pharmacy benefit manager and requires drug manufacturers who want to sell their products in Maine to negotiate rebates similar to those the manufacturers have accepted on drugs they sell through the Medicaid program of medical assistance for the poor.

Since a state cannot directly impose price regulation, Maine gave the drug companies a powerful incentive to go along: manufacturers that did not cooperate faced having their products subject to a "prior authorization" procedure, under which the state's Department of Human Services would have to approve prescriptions on a case-by-case basis before pharmacies would dispense them.

The federal Medicaid statute permits states to use this procedure, which manufacturers and doctors regard as onerous, for drugs prescribed through Medicaid. The industry alleged in its lawsuit that Maine was making improper use of what was intended to be a limited authority over drug pricing. Maine had not sought federal approval for its program, something the Bush administration emphasized in urging the justices to invalidate it.

The court today declined to take that step, instead leaving the next move up to the state and the administration.

"We cannot predict at this preliminary stage the ultimate fate of the maine Rx Program," Justice John Paul Stevens wrote in a portion of the opinion that was joined by Justices David H. Souter and Ruth

Bader Ginsburg.

In fact, the justices in the majority were united only in the result — to permit the program to go into effect, at least provisionally — while splintering into four separate opinions that did not produce a majority for a rationale.

There was general agreement that the Federal District Court had acted prematurely in granting the injunction in the absence of factual development on what the impact of Maine Rx would be on consumers, both those covered by Medicaid and those who, while "medically needy," were not poor enough to be covered by the federal program. And there was a clear majority to reject that portion of the industry attack that was based on the Constitution's Commerce Clause.

[Copyright 2003 The New York Times Company](#) | [Home](#) | [Privacy Policy](#) | [Search](#) | [Corrections](#) | [Help](#) | [Back to Top](#)