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Tuesday, May 20, 2003

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High court allows start of Maine Rx

By BART JANSEN, Portland Press Herald Writer

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Also on this page:
MAINE PRESCRIPTION-DRUG PROGRAMS

WASHINGTON — The U.S. Supreme Court agreed Monday to remove three-year-old judicial handcuffs from Maine Rx and allow the pioneering program to begin negotiating lower prescription-drug prices for the state's 325,000 uninsured residents. The ruling is expected to boost efforts to launch similar programs in other states, and some observers believe it may increase the pressure on Congress to act on prescription-drug price relief.

A 6-3 majority agreed to remove a U.S. District Court injunction that had prevented Maine from negotiating drug discounts of 25 percent or more. But justices stopped short of endorsing the merits of Maine's plan, saying only that drug makers did not adequately show why the plan should be blocked.

Because of that, either the

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federal secretary of health and human services, Tommy Thompson, or the courts could still terminate the program as its details are reviewed.

The three dissenting justices argued that the state should still be blocked from starting the program until after the District Court takes another look.

The result of the ruling, however, was that state officials will embark on a program that has been halted since the Maine Legislature approved it in 2000. Peter Walsh, acting commissioner of the Department of Human Services, said he hopes to get the program started this year, although he declined to be more specific.

"Although more work remains before the benefits of Maine Rx can be realized, this is a very encouraging development," said Gov. John Baldacci.

Attorney General Steven Rowe called the decision a huge victory, but not the final word.

"I think today's decision was terribly important," he said. "It's not a touchdown. It was a first down. But we're moving the ball up the field."

A lawyer for the drug industry trade group that challenged the program, Pharmaceutical Research and Manufacturers of America, said the case will be returned to District Court to weigh evidence about the burdens and benefits of the program for Medicaid patients.

The lawyer, Marjorie Powell, said she didn't think the industry group could block the program again without showing thorough evidence of how people would be harmed. But she said the group will continue to argue that the program hurts Medicaid patients more than it helps the uninsured.

cost of prescription drugs for residents. Pharmaceutical Research and Manufacturers of America, an industry group, challenged both in court. Here are brief descriptions:

The Maine Rx Program directs the state to negotiate discount prices for the estimated 325,000 Maine residents with no prescription-drug benefits. The program, which could begin this year, lets the state impose price limits if negotiations fail to result in prices comparable to the lowest paid in Maine.

Healthy Maine Prescriptions, which could be restarted soon, requires drug makers to provide prescriptions at the Medicaid price to uninsured Maine consumers who don't qualify for Medicaid but earn less than three times the federal poverty level. About 225,000 Mainers were eligible.

See related story: [Seniors hope and wonder if Maine Rx can prevail.](#)

See related story: [Incremental start likely for Maine Rx.](#)

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"I would presume that the District Court is going to want something other than opinions, but actual evidence," Powell said. "It's not clear whether the court will take evidence from programs in other states or actually ask the state of Maine to go ahead and implement its program."

The Legislature created Maine Rx to lower drug costs by authorizing the state Department of Human Services to negotiate discounts with drug makers. Uncooperative manufacturers face the threat of having their drugs placed on a special list requiring state approval for every prescription written for a Medicaid patient.

Drug makers called the enforcement an unconstitutional hijacking of the Medicaid program for the poor. By raising the so-called "prior-authorization" hurdle to Medicaid patients, drug makers argued, the law penalized those who the program is intended to serve, while potentially benefiting more affluent people.

The case has been widely watched as states seek ways to cut health-care costs for residents. Twenty-nine states supported Maine in the case, holding up Maine Rx as a national model that others planned to mimic.

"I think it will allow other states to go back in and look at these bills that have been dormant," said Chellie Pingree, the former state senator who authored the legislation and who is now head of the advocacy group Common Cause. "They're looking for solutions now more than ever."

Kevin Concannon, the former Maine human services commissioner who is the named defendant in the case, said lowering drug costs for patients with chronic problems such as heart disease and high cholesterol could prevent them from draining their savings to the point they are poor enough to qualify for Medicaid.

"In all those states, this has had a dampening effect of saying we have to wait and see what the Supreme Court says," said Concannon, who now heads Iowa's human services department. "Now that it's decided this way, to me, opens up tremendous opportunities across the country on the prescription-drug issue."

At the federal level, the Senate voted 56-43 last year to allow states to adopt programs like Maine Rx. But the legislation died in a dispute about speeding generics to market as a way to curb rising drug costs.

Sen. Olympia Snowe, R-Maine, said the court's decision would spur action in Congress, where debate is scheduled in June to create a prescription-drug benefit within Medicare. "This decision is a victory for consumers, who deserve access to more affordable

prescription drugs," she said.

Sen. Susan Collins, R-Maine, urged courts to allow state experiments like the Maine Rx program.

"States are important laboratories for reform, and we need to let them carry out this innovative attempt to help Mainers cope with the high cost of prescription drugs," she said.

Reps. Tom Allen and Mike Michaud, both D-Maine, sponsored legislation called America Rx to force drug makers to negotiate discounts under threat of losing tax breaks for marketing and advertising. Both welcomed the court decision.

"It's an interim victory, but a great victory," Allen said.

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