## §3174-M. Medicaid drug formulary

**1. Authority.** The department has the authority to determine which prescription and over-the-counter drugs are subject to reimbursement and coverage under the Medicaid program.
[PL 1993, c. 410, Pt. I, §10 (NEW).]

**1-A. Formulary standards.** Any formulary established by the department must:

A. Conform to nationally accepted standards for a sound and adequate drug formulary system that promotes rational, clinically appropriate and safe access to medically necessary prescription drugs, ensures that members have timely and appropriate access to these drugs and does not discriminate based on disease or condition; [PL 2005, c. 386, Pt. X, §1 (NEW).]

B. Be structured to maintain at least the same therapeutic categories and pharmacological classes of drugs provided on the MaineCare preferred drug list in effect on July 1, 2005; [PL 2021, c. 265, §1 (AMD).]

C. With respect to atypical antipsychotic drugs:

(1) Ensure that atypical antipsychotic drugs remain available in the same manner as on July 1, 2005;

(2) Adopt any clinical edits approved by the department's psychiatric work group; and

(3) Conform to national standards for the prescribing of atypical antipsychotic drugs; and [PL 2021, c. 265, §2 (AMD).]

D. With respect to HIV prevention drugs as defined in Title 24-A, section 4317-D, subsection 1, paragraph B:

(1) Ensure that preexposure prophylaxis drugs are available; and

(2) Ensure that post-exposure prophylaxis drugs are available in accordance with national standards for the prescribing of post-exposure prophylaxis drugs. [PL 2021, c. 265, §3 (NEW).]
[PL 2021, c. 265, §§1-3 (AMD).]

**2. Drug formulary committee.**
[PL 2005, c. 386, Pt. X, §2 (RP).]

**2-A. Drug formulary committee.** As authorized by Section 1927 (d) (4) (A) of the federal Social Security Act, 42 United States Code, Section 1396r-8, the department may develop a formulary using the department's MaineCare drug utilization review committee, except that the membership of the formulary committee must include pharmacists who are expert in pharmacotherapy for pediatric, geriatric and psychiatric populations.

A. A vote of 2/3 of the members of the department's MaineCare drug utilization review committee present is required to add or delete a drug from the list of drugs that are subject to reimbursement and coverage under the MaineCare program. [PL 2005, c. 386, Pt. X, §3 (NEW).]

B. A determination under rules adopted pursuant to subsection 3 that a drug or category of drug is not covered by the MaineCare program is a final agency action subject to review under the Maine Administrative Procedure Act. [PL 2005, c. 386, Pt. X, §3 (NEW).]
[PL 2005, c. 519, Pt. DDDD, §1 (AMD); PL 2005, c. 519, Pt. DDDD, §3 (AFF).]

**3. Emergency supply.** The department shall adopt routine technical rules as necessary that provide for a pharmacy to dispense, in accordance with applicable licensing standards and professional judgment, a one-time supply for 10 days of the prescribed drug. The rules must allow the department to authorize refills of the drug on a case-by-case basis at the end of the 10-day period if the prescribing

provider has not submitted the required information at that time or the department determines that an additional refill is necessary.

The rules must provide that receipt of a 10-day supply under this subsection does not relieve the prescribing provider of the duty to submit all required information. The provision of the 10-day supply does not entitle the MaineCare member to receive benefits pending appeal in the event that a request for prior authorization is ultimately denied, except when the member was receiving the drug for which the 10-day supply was provided immediately prior to the provision of that supply.

Any drug provided under this emergency procedure is considered a Medicaid-covered service pending departmental actions.
[PL 2005, c. 386, Pt. X, §4 (RPR).]

**4. Rulemaking.** Rules adopted pursuant to section 3174-J prior to its repeal are effective as of the effective date of this chapter without the taking of any action pursuant to the Maine Administrative Procedure Act.
[PL 1993, c. 410, Pt. I, §10 (NEW).]

**5. Expedited review process.** The department shall provide an independent review process whenever a MaineCare member has written certification from the member's physician that:

A. Delay in the provision of the requested drug may severely jeopardize the life or health of the MaineCare member or cause a severe functional decline in the member; or [PL 2005, c. 386, Pt. X, §5 (NEW).]

B. A preferred drug, if provided, would impose a serious risk to the life or health of the MaineCare member. [PL 2005, c. 386, Pt. X, §5 (NEW).]

The independent review process must ensure a decision within 72 hours of the time that the request is filed, unless the parties otherwise agree that the 72-hour period may be extended. The independent review process must ensure that coverage decisions based upon lack of medical necessity are conducted by a physician or pharmacist. The physician need not in all cases be of the same specialty or subspecialty as the prescribing physician.
[PL 2005, c. 386, Pt. X, §5 (NEW).]

SECTION HISTORY

RR 1993, c. 1, §53 (RNU). PL 1993, c. 410, §I10 (NEW). PL 2005, c. 386, §§X1-5 (AMD). PL 2005, c. 519, §DDDD1 (AMD). PL 2005, c. 519, §DDDD3 (AFF). PL 2021, c. 265, §§1-3 (AMD).