M|H|A

Maine Hospital Association

MAINE'S LEADING
VOICE FOR HEALTHCARE

TESTIMONY OF THE MAINE HOSPITAL ASSOCIATION

Neither For Nor Against

LD 2110 - *An Act To Update Employer Substance Use Testing Policy Requirements*

January 21, 2026

Senator Tipping, Representative Roeder and members of the Labor and Housing Committee, my name is Jeffrey Austin and I am with the Maine Hospital Association. I am offering this testimony **neither for nor against LD 2110** but with specific concerns about a few provisions.

The Maine Hospital Association (MHA) represents 32 community-governed hospitals including 29 non-profit general acute care hospitals, 2 private psychiatric hospitals, and 1 acute rehabilitation hospital. In addition to acute-care hospital facilities, we also represent home health agencies, skilled nursing facilities, nursing facilities, residential care facilities, and physician practices.

Many of our members utilize pre-employment drug testing.

My comments and suggestions relate to the "Medical Review Officer" ("MRO") concept that is in sections 9, (page 2), 10 (page 2), 21 (page 8), 23 (page 9) and 24 (page 9).

Our general comment is that the law is not clear on who selects and compensates the MRO.

Section 21 – We would like to request an amendment. This provision says the MRO may not be an employee of the employer. Given the nature of hospitals, some of our members do their own drug testing and would like to be able to utilize their own resources rather than having to pay someone else for a service they are more than capable of delivering within their existing resources.

Further, we're unsure of the nature of the concern here, at least with respect to pre-employment screening. Generally, pre-employment screening is conducted on a candidate the employer would like to hire. So, there would seem to be little in the way of conflict between what the employer and prospective employee want.

Finally, it says nothing about the MRO being independent of the employee (family member, friend, contractor of employee's union etc.). Independence, if it is in the bill, should go both ways.

Section 23 – We have an operational question, a concern and a policy comment.

Section 23 (page 9, line 2) allows for an employee to provide an excuse of sorts of a positive test result by offering a "legitimate medical explanation."

The trigger in section 23 is a "non-negative" test result. This should probably say a "confirmed positive result." "Non-negative" is the term this bill uses to describe an initial or preliminary positive test. A "confirmed positive result" is the term for a second test.

Pursuant to Section 683(5-A)(B)[1], the preliminary non-negative test must be sent for confirmation testing. Furthermore, pursuant to Section 683(5-1)(C)(2) employers are not even notified of preliminary non-negative test results. They may only be notified of confirmed results.

So our question is: Why is the employee's right to contest being established after the first preliminary test instead of after the confirmed test? It seems like a potential waste of resources to have a discussion about something that may not even come to fruition.

Second, and much more troubling, is our concern with the draft which states that if the MRO agrees with the employee's assertion that there is a "legitimate medical explanation" for the positive result, the bill says the MRO must notify the employer and indicate *that the result of the test was negative* (See page 9,lines 5-7). This is simply wrong. The law should not mandate that licensed physicians present positive tests as negative. If the test is positive but the MRO accepts an explanation that somehow excuses the positive test, then the employer should be told just that. Employers should never be given affirmatively false information.

Lastly, the bill's definition of legitimate medical explanation has very little in the way of guidance. Our policy comment is that a use may be legitimate in some sense, but still present risks of harm to the employer.

Section 2, the definition of "legitimate medical explanation" in Section 2, page 9 needs work on two fronts. First, it does not give the MRO a lot of guidance on this topic. For example, is the MRO supposed to take into account the nature of the employee's job or simply whether the employee has a prescription. This may be ripe for further rulemaking. Second, the MRO's standard of review is unclear. That is, if the employee indicates that they have a legitimate prescription, does the MRO need to see the prescription? Does the MRO need to speak to the prescribing clinician?

Are you sure this is a good policy to allow an MRO to excuse the presence of a substance in an employee and further mislead the employer into thinking that the employee does not have that substance in his/her system when he/she does.

Thank you for accepting these comments.

[1] This section of law is also on page 7 of the bill in Section 18.