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Testimony of Leo J. Delicata, Esq., Legal Services for the Elderly, neither for nor against L.D. 178 An Act To Reduce Waste of Prescription Medications before the Joint Standing Committee on Health Coverage Insurance and Financial Services

Senator Sanborn, Representative Tepler and members of the Joint Standing Committee on Health Coverage Insurance and Financial Services.

On behalf of Legal Services for the Elderly, I am here to offer some information about LD178.

This bill prohibits medical care providers from ordering more than a 30-day supply of a prescription drug the first time they write a prescription for a particular drug. The bill also prohibits a pharmacist from dispensing more than a 30-day supply of a new prescription to a patient who does not have a previous prescription for that drug.

We are fully in support of the idea that prescription drugs should not be prescribed in a manner that will tend to contribute to the unwanted medication disposal problem. Neither should patients or third party payers, increase the cost of health care by paying for drugs that do not promote the improvement or maintenance of a patient's health. This bill supports both of those principles. It applies to all initial prescriptions with the expectation that if a medication works as intended for the first thirty days it will be more probable that a drug will be both effective and well tolerated by the patient before additional doses of the same drugs are ordered. That said, we do have three concerns about this well intended initiative.

A number of our staff are specifically dedicated to solving problems for older adults who get their medicine through the Medicare Part D program. This a federal program for people who are 65 or older or who have been disabled for two years and eligible for Medicare. So we are aware of the

Federal laws and regulations that control how plans that offer prescriptions under Part D must operate. There is one particular legal development that we would like to bring to your attention.

As a result of the coronavirus pandemic the US Congress passed the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#). Section 3714 contains an amendment specifically affecting single fills or refills of prescription drugs. It requires Medicare Part D plans to provide up to a 90-day (3 month) supply of covered Part D drugs to enrollees who request it. This amendment will continue until the Covid-19 federal emergency ends. While nobody knows when that might be, the Biden administration recently announced that the emergency declaration will be in force at least through 2021.

A State law that prevents prescribers from writing and pharmacies from dispensing an initial prescription for a 90 day supply of a drug the will prevent the application of the Federal CARES ACT. For that reason this proposed change in our law is not legally permissible as written. Hopefully the COVID-19 emergency will end before non-emergency bills passed this session become effective. However, unless this bill is passed with an effective date that tracks the end of the Federal emergency declaration period, Part D plans will still be compelled to act consistent with the CARES ACT amendment.

Our second concern is financial and logistical in nature. Some Part D plans will pay for a prescription ordering a 90 day supply of a medication at a cost that is lower than a 30 day supply. For some individuals with chronic conditions it's not a question of what drug will be prescribed but what dosage will work best. Anti-coagulants to treat an irregular heartbeat, proton pump inhibitors to treat "heart-burn" and insulin to treat diabetes are some examples of such time tested remedies. This bill would increase the cost of drugs for those older adults who could benefit from a 90 day supply starting with the initial prescription. As importantly, it will also create the need for another trip to the pharmacy before the mail can deliver a 90 day supply to their homes. This may not seem like a significant factor but if you are homebound, lack transportation, don't have family or neighbors that you trust, or don't want to risk winter or pandemic harms, this will create a huge worry.

Our last concern is this: the bill legislates how medicine must be prescribed. It completely removes any discretion from anyone with a license to prescribe medicine to determine how much of a particular drug would be best for their patient. Rarely has this been an area in which the Legislature has thought it appropriate to intervene so completely. The only time in my memory is the initiative to control the prescription of opioids because of the public health dangers and societal harms caused by substance abuse. Even in that case the restrictions and limitations were carefully created with the advice and cooperation of the medical community. Any law that supplants medical judgment has consequences for the health care provider as well as the patient. We hope that you will proceed cautiously.

Thank you for letting us share our thoughts with you about this bill. We hope that you find our comments helpful and we are prepared to provide whatever assistance you may ask of us in the course of your deliberations.