maxim healthcare services

March 2, 2021

The Honorable Ned Claxton
The Honorable Michele Meyer
Join Standing Committee on Health and Human Services
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: Opposition to LD 330: An Act to Prevent Accidental Overdoses by Establishing a Protocol for Prescription Drug Recovery

Dear Chairman Claxton, Chairwoman Meyer, and Distinguished Members of the Committee:

My name is Veronica Charles and I am the Director of Government Affairs at Maxim Healthcare Services, Inc. ("Maxim"). Maxim is a national provider of home healthcare, homecare, and additional in-home service options. We employ approximately 75 caregivers serving over 39 patients throughout the state, primarily offering private duty nursing (PDN) services. As you may know, private duty nursing is continuous skilled nursing care provided in the home for medically-complex and vulnerable pediatric and adult patient populations under Medicaid, many of whom require assistive technology such as ventilators and tracheostomies to sustain life. We are also members of the Home Care & Hospice Alliance of Maine (Alliance), which represents the interests of home health providers throughout the state.

Our nurses serve the most medically fragile individuals in the state—including complex children with special healthcare needs (CSHCN) and children with complex chronic conditions (CCC) along with adult patients who require similar services. These individuals require skilled nursing services performed in the home by a registered nurse (RN) or licensed practical nurse (LPN) under the supervision of an RN from between 4 to 24 hours per day every day in order to manage their chronic condition and keep them safe in their homes and communities. Our home health nurses receive special education and training in managing prescriptions from home health care plans and follow strict internal policies to address theft/misuse of medications by those other than the patient. These policies are reviewed by the Department of Licensing and Certification staff during mandated onsite survey visits and we have never had any discrepancies. While we fully appreciate the committee's effort to curb controlled substance abuse, we do not believe that additional monitoring of the home health population will remove any inappropriate use given the highly controlled environment already in place that removes opportunity for misuse and diversion.

One of the many aspects of this bill that we would like to address is the requirement that providers submit a written policy to the DHHS for review and approval for how the administering provider will document, collect and dispose of controlled substances in compliance with the requirements of this bill. This additional process is entirely unnecessary, as policies are already subject to state review during the survey process. Additionally, our nurses are concerned with the provisions of this bill that would require the use of prescription "lock boxes" in a patient's home. Lock boxes present a number of difficulties and hindrances for clients with medical and cognitive deficits. For example, a client with a seizure disorders would be unable to meet this requirement. They must have quick and easy access to essential rescue medication such a Midazolam and Valium when they experiencing seizure activity, but this bill would require that these medications be placed in a lock box, thus restricting access to important emergency medications.

In addition to this critical patient access concern, it is necessary to note that it is a violation of patient's rights to put any requirements on their prescribed medications, as they are owned entirely by the patient. Home care and hospice policies address securing access to medications when there is risk of diversion identified by the nurse, but forcing each patient to access a lock box each time they need to take their medication creates unintended consequences for many of our patients including those who are cognitively impaired and cannot manage access to a locked container but can successfully take their medications in a pill dispenser. A patient may not always be in the care of home health nurse during their medication times which would place many of our patients in non-compliance with scheduled medications that they need to take at all hours of the day and night.

Because medications are owned solely by the patient, the medication disposal requirement outlined in this bill is not possible for the home health population. This issue has been debated and litigated at the federal level since 2012 when the U.S. Environmental Protection Agency (EPA) attempted to create federal standards (Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine)[1] that imposed similar requirements on assisted living facilities and other congregate care environments to dispose of an individual's medications, just like LD 330 is attempting to do. After more than 5 years of reviewing disposal requirements, the final EPA regulations determined that these types of disposal requirements can only apply to clinical facilities (like skilled nursing facilities) where the medications are owned by the facility and not the patient. Due to the noncompliance of resident privacy concerns and issues with the coordination of multiple pharmacies with different disposal standards, they conceded that disposal requirements could not apply to other, non-facility, environments.

> "[T]he agency recommends that assisted living facilities, group homes, independent living communities, and the independent and assisted living portions of continuing care retirement communities develop voluntary pharmaceutical collection programs for both hazardous and non-hazardous waste pharmaceuticals as a best management practice, as allowed by DEA regulations, to ensure proper management, avoid flushing, and minimize the potential for accidental poisonings, misuse or abuse."[2]

Our company has followed this guidance carefully and has best management practices in place to avoid the accidental misuse or abuse of controlled substances in a patient's home. Requiring our staff to dispose of personal property presents a federal risk of noncompliance and a personal liability risk that we find unacceptable.

It is also important to understand that home care and hospice services are provided at a specific point in time during the patient's course of care. Patients generally have medications in the home that are not part of the home health plan of care as they were obtained prior to the initiation of our services. It is not our practice to carry client medications when we are not with the client. We do not pick up meds from the

[1] Final Rule: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, accessed at: https://www.epa.gov/hwgenerators/final-rule-management-standards-hazardous-waste-pharmaceuticals-and-amendment-p075

[2] McKnight's Senior Living: Assisted living gets a break on EPA hazardous waste pharmaceutical rule, accessed at https://www.mcknightsseniorliving.com/home/news/assisted-living-gets-a-break-on-epa-hazardous-waste-pharmaceutical-rule/

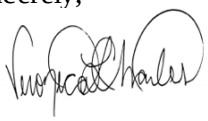
pharmacy, and we don't take meds from the home for disposal. These differences make it nearly impossible to practice the necessary disposal practices that this bill mentions.

This bill makes specific mention of patients taking prescribed controlled substances who pass away. This presents a number of additional issues that are entirely out of the scope of practice for our nurses and our business. When a client passes away at home, it is unrealistic to expect the nurse to take client medications out of the home immediately, if at all. Often, we do not return to the home following a death, and only do so if the family requests our assistance. Our nurses are there to provide support and comfort to the family, if requested, but we are not there to remove patient property. Forcing a family to have the nurse return to the home to remove personal property violates patient rights and crosses professional boundaries.

While we again appreciate Representative Gramlich's intent of minimizing the devastating impact of opioid misuse and abuse in the state of Maine, we are unable to support the burdensome requirements laid out in this legislation at this time as there is not enough risk in the home health population to offset the many dangerous requirements set forth in this this legislation. We stand with Representative Gramlich and other members of the committee who want to prevent opioid abuse, and welcome additional educational opportunities to inform our home health patients of best medication management practices and we welcome the opportunity to partner with members of the committee to form consensus on this matter in the future.

Thank you for your support of home health and private duty nursing services in the state of Maine. We hope that the committee will consider our request to exempt the home health and home care population from this legislation. If you have any questions, please feel free to contact me directly at vecharle@maxhealth.com.

Sincerely,



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cc: Joint Standing Committee on Health and Human Services
Bethany Beausang, Office of Governor Janet Mills

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