

# MAINE STATE LEGISLATURE

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Date: 6-9-17

(Filing No. H- 477)

**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
128TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 940, L.D. 1363, "Resolve, Regarding Legislative Review of Portions of Chapter 11: Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications, a Late-filed Major Substantive Rule of the Department of Health and Human Services"

Amend the resolve by striking out all of section 1 and inserting the following:

**Sec. 1. Adoption. Resolved:** That final adoption of portions of Chapter 11: Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications, a provisionally adopted major substantive rule of the Department of Health and Human Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if:

**1. Cancer aftercare.** In Section 4, subsection A, paragraph 4, subparagraph b, division (i) in the portion of the rule that is a routine technical rule, Exemption Code A for active and aftercare cancer treatment must be amended to remove the 6-month limit for aftercare cancer treatment post remission;

**2. Second prescriptions for opioids.** In Section 4, subsection A, paragraph 4, subparagraph b, division (i) in the portion of the rule that is a routine technical rule, Exemption Code H is amended to provide that if an individual is prescribed a 2nd opioid after proving unable to tolerate a first opioid, the individual is not required to return the initial prescription to a pharmacy for collection prior to dispensation of the 2nd prescription. The department shall recommend to dispensers that a patient be provided with guidance on proper disposal of the first opioid prescription;

**3. Early refills.** In Section 4, subsection B of the rule, a new paragraph 3 is added to allow for dispensers to provide an early refill of a prescription to an individual before the refill date if, in the judgment of the dispenser, the early refill does not represent a pattern of early refill requests by the individual;

**COMMITTEE AMENDMENT**

1 **4. Verification by dispensers.** In Section 4, subsection B of the rule, a new  
2 paragraph 4 is added to allow for dispensers to contact prescribers by telephone to verify  
3 and document information about prescriptions;

4 **5. Out-of-state prescriptions.** In Section 4, subsection B of the rule, a new  
5 paragraph 5 is added to establish a process for a dispenser who receives a prescription for  
6 an opioid medication from an out-of-state prescriber that does not comply with  
7 department rules. The dispenser may fill the prescription if the dispenser records an oral  
8 confirmation with the validity of the prescription from the out-of-state prescriber and  
9 documents any missing information such as diagnosis code, exemption code and acute or  
10 chronic pain notation and the dispenser makes a reasonable effort to determine that the  
11 oral confirmation came from the prescriber or prescriber's agent, which may include a  
12 telephone call to the prescriber's telephone number listed in a telephone directory or other  
13 directory; and

14 **6. Delayed implementation of ICD-10 codes.** In Section 5, subsection C,  
15 paragraph 1, subparagraph n of the rule, the requirement for dispensers to provide  
16 information to the Prescription Monitoring Program on the exemption code and ICD-10  
17 code is delayed until July 1, 2018 and a provision is added to authorize a waiver after that  
18 date from the department for dispensers who are unable with good cause to comply with  
19 the requirement.'

20 **SUMMARY**

21 This amendment provides that the Department of Health and Human Services may  
22 finally adopt portions of Chapter 11: Rules Governing the Controlled Substances  
23 Prescription Monitoring Program and Prescription of Opioid Medications, a provisionally  
24 adopted major substantive rule that was filed outside the legislative rule acceptance  
25 period, only if the rule is modified.

26 The first required modification is to the routine technical portions of the rule  
27 establishing Exemption Code A for active and aftercare cancer treatment. The exemption  
28 code in the rule must be amended to remove the 6-month limit for aftercare cancer  
29 treatment post remission.

30 The 2nd required modification is to the routine technical portions of the rule  
31 establishing Exemption Code H for circumstances when an individual is prescribed a 2nd  
32 opioid after proving unable to tolerate a first opioid. The exemption code in the rule must  
33 be amended so that the individual is not required to return the initial prescription to a  
34 pharmacy for collection prior to dispensation of the 2nd prescription. The department  
35 must recommend to dispensers that patients are provided with guidance on proper  
36 disposal of the first opioid prescription.

37 The 3rd required modification is to allow for dispensers to provide an early refill of a  
38 prescription before the refill date if, in the judgment of the dispenser, the early refill does  
39 not represent a pattern of early refill requests by the individual.

40 The 4th required modification is to allow for dispensers to contact prescribers by  
41 telephone to verify and document information about prescriptions.

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COMMITTEE AMENDMENT "A" to H.P. 940, L.D. 1363

1           The 5th required modification is to establish a process for a dispenser who receives a  
2 prescription for an opioid medication from an out-of-state prescriber that does not comply  
3 with department rules. The dispenser may fill the prescription if the dispenser records an  
4 oral confirmation with the validity of the prescription from the out-of-state prescriber and  
5 documents any missing information such as diagnosis code, exemption code and acute or  
6 chronic pain notation and the dispenser makes a reasonable effort to determine that the  
7 oral confirmation came from the prescriber or prescriber's agent, which may include a  
8 telephone call to the prescriber's telephone number listed in a telephone directory or other  
9 directory.

10           The 6th required modification is to delay the requirement for dispensers to provide  
11 information to the Prescription Monitoring Program on the exemption code and ICD-10  
12 code until July 1, 2018 and allow the Department of Health and Human Services to  
13 approve waivers after July 1, 2018 for dispensers who are unable with good cause to  
14 comply with the requirement.

**COMMITTEE AMENDMENT**