

**TESTIMONY SUBMITTED REGARDING
LD 1183 as ENACTED DURING THE 124th LEGISLATIVE SESSION**

JOINT STANDING COMMITTEE on JUDICIARY

Submitted by:

**Andrew Friedell
Director, Government Affairs
Medco Health Solutions, Inc.**

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Senator Bliss, Representative Priest and members of the Joint Standing Committee on Judiciary, my name is Andrew Friedell and I am Director of Government Affairs for Medco Health Solutions, Inc., which is a pharmacy benefits management company, or “PBM.” I would like to thank you for this opportunity to submit these comments outlining our concerns with LD 1183 as enacted by the 124th Maine Legislature earlier this year. We understand the Legislature’s concern in this area, particularly as it relates to the health and safety of Maine’s younger population. But we also believe that the law as written would have unintended negative consequences for minors and could reduce the quality of care for these patients in Maine.

Specifically, the law includes two very broad provisions (Section 9552 and 9553) that could restrict basic health care administration activities such as when the pharmacy contacts a prescriber to discuss a prescription, or when a plan contacts a patient to make the patient aware of lower cost alternatives.

Section 9552 stipulates that it is unlawful to transfer to another person any health-related information or personal information about a minor if (among other things) that action would be a violation of section 9553 of the law. Section 9553 provides that it is unlawful to use any health-related or personal information about a minor for the purposes of “marketing” a product or service (as defined by the law) or for “promoting any course of action for the minor relating to a product.”

There are many lawful and indeed beneficial activities that could conceivably be banned by this language -- to the detriment of minors throughout the state. For example, if a pharmacy receives a new prescription and discovers that the patient is already taking a medication (prescribed by a different doctor) that could adversely interact with the new prescription; the pharmacy will contact the prescriber to make them aware of the potential problem and to discuss alternatives. In many cases, the PBM is the only entity that is able to provide visibility across a patient’s entire prescription drug history. Therefore our ability to communicate this information to prescribers is critical for maintaining patient health.

At Medco, our pharmacists are also becoming specialized in certain disease states as we organize our pharmacies into “Therapeutic Resource Centers” that are devoted to helping patients with a particular chronic disease. In this way, our pharmacists are becoming a trusted partner whose expert counsel can assist patients and doctors in identifying and closing gaps in care. For example, if our pharmacists discover that an asthma patient is using a rescue inhaler more than usual, or that a diabetes patient is increasing or decreasing their use of test strips, these can be signs of distress or improper use of medications. When we see these indicators (which may not be visible to the prescribing physician) it is in the patient’s best interest that we communicate this information to their doctor. But doing so depends on the use of patient information in a safe secure environment that is already protected by robust privacy laws such as the federal Health Information Portability and Accountability Act of 1996 or HIPAA.

Unless Maine’s new law were to include an express exemption for such basic health care administration activities -- as is the case with HIPAA -- some may view this exchange as a transfer of health-related information for the purpose of promoting a course of action.

Likewise, if a benefit plan is designed in such a way as to encourage patients to choose certain lower cost options (such as a lower cost generic or a lower cost mail service pharmacy), it is common for the plan to ask its PBM to communicate this information to members. Such communications can help lower patient out-of pocket expenses and help contain overall plan costs. But again, without an express exemption for such basic plan administration activities of this kind, it is conceivable that these activities could be swept up into the “marketing” or promotional activities that are restricted by the bill.

Protecting the health and privacy of all our patients is at the heart of what Medco does. Therefore, we look forward to the opportunity to continue to work with the Committee and the Legislature to improve this law. We must ensure that Maine patients are not denied important communications that can improve the quality and affordability of their care.