

# MaineHealth

Joint Standing Committee on Labor, Commerce, Research and Economic Development  
Room 209, Cross State Office Building  
January 31, 2018, 10:00am

Senator Volk, Representative Fecteau and distinguished members of the Joint Standing Committee on Labor, Commerce, Research and Economic Development:

On behalf of MaineHealth, Maine's largest integrated non-profit health care system that provides the full continuum of health care services to the residents of eleven counties in Maine and one in New Hampshire, I am writing to express concerns with components of L.D. 1768, An Act to Reduce Impairment on the Job and Improve Workplace Safety by Amending the Laws Governing Employment Practices Concerning Substance Use Testing.

Every day, MaineHealth's 18,500 employees work tirelessly to support our vision of "Working together so our communities are the healthiest in America," by providing safe, high-quality care. Accordingly, MaineHealth utilizes substance use testing of prospective and current employees as a tool to protect our patients.

MaineHealth has particular concerns that L.D. 1768 would mandate employers who use substance use testing comply with the Department of Labor's uniform substance use testing policy even though it may not align with the needs or concerns of the employer; for example, marijuana testing could be removed from the panel given that Maine voters to legalize marijuana use, notwithstanding its continued illegality under federal law, or alcohol testing could be required. Currently, MaineHealth has the flexibility to customize its substance use testing, with approval by the Department of Labor, to meet the needs of the organization and to ensure patient safety.

Additionally, MaineHealth has concerns with the amendments to *Section 11. 26 MRSA §684 2-A and 2-B*, which regulate how an employer can respond to an employee who is suspected of impairment. We believe those amendments create confusion over whether employers retain the discretion to discipline or terminate employees exhibiting evidence of impairment at work without going through the proposed detection process. These sections replace the probable cause standard currently applicable only to substance abuse tests. The proposed revisions appear to apply both to substance abuse tests and also to impairment determinations that do not rely on tests. Patient safety is of the utmost importance to MaineHealth and L.D. 1768 would impose a lengthy detection process, including completing a Department of Labor documentation form, providing the suspected employee with a copy of the completed form, and requiring that impairment detection be confirmed only through a medical review by an occupation health care provider before any further action is taken by the employer. This is not a process currently required when employers who have chosen not to implement probable cause testing are faced with evidence of impairment at work. This would tie the hands of employers, and in a health care environment where patient safety is paramount, any delay could put our most vulnerable in harm's way.

# MaineHealth

To ensure that health care providers have the necessary flexibility to adapt substance use testing with patient safety in mind, I urge the Committee to take into account the points raised above when considering L.D. 1768. Please feel free to contact me should you need additional information or if you have any questions.

Sincerely,



Sarah Calder  
Director, Government Affairs  
MaineHealth  
[scalder@mainehealth.org](mailto:scalder@mainehealth.org); (207) 661-7575