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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 704, L.D. 949, Bill, “An Act To Prevent Overdose Deaths”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA c. 521, sub-c. 3-A is enacted to read:

SUBCHAPTER 3-A

OVERDOSE PREVENTION SITES

§20056. Precertification

A facility must be precertified by the department in order to qualify for a referendum for certification pursuant to section 20057. For the purposes of this subchapter, "facility" means an overdose prevention site that meets the qualifications and requirements of this section.

1. Qualifications of an applicant. The department may precertify a facility to be operated by an applicant only if the applicant has established:

A. Services for people currently using opioids, with a history of using opioids or seeking treatment for opioid use;

B. Standing orders for naloxone hydrochloride from a licensed health care professional authorized by law to prescribe naloxone hydrochloride;

C. Overdose prevention and reversal programs that include overdose prevention, identification of risk factors and overdose reversal techniques;

D. Referral networks, which may include agreements with primary care providers, drug treatment providers and social services providers; and

E. Systems by which to collect and report basic demographic and service-level data.

COMMITTEE AMENDMENT

1 **2. Facility requirements.** The department may precertify a facility to be operated
2 by an applicant only if the applicant demonstrates that the facility is able to provide:

3 A. A location supervised by trained staff where a client may self-administer
4 previously obtained drugs;

5 B. Sterile drug use supplies, collect used hypodermic needles and syringes and
6 provide secure hypodermic needle and syringe disposal services;

7 C. Overdose prevention education;

8 D. Distribution or administration of naloxone hydrochloride;

9 E. Education to clients on the risks of contracting human immunodeficiency virus,
10 viral hepatitis and sexually transmitted infections;

11 F. Information about safer drug use practices;

12 G. Monitoring of clients for potential overdose;

13 H. Referrals to services, including substance use disorder counseling and treatment,
14 reproductive health education and services and wound care;

15 I. Reasonable and adequate security of the facility, equipment, staff and clients; and

16 J. The reports required under section 20059.

17 **3. Process.** This subsection governs the process for precertification of a facility by
18 the department.

19 A. An applicant that meets the qualifications of subsection 1 may apply to the
20 department for precertification as a facility that meets or will meet the requirements
21 of this subchapter.

22 B. Upon receipt of an application under paragraph A, the department shall determine
23 whether the applicant and the proposed facility meet the qualifications and
24 requirements of subsections 1 and 2. The department shall notify the applicant of the
25 department's determination within 45 days of receipt of the application. If the
26 department denies the application, the department shall include with the denial a
27 written explanation of the department's determination, including an explanation of
28 any defects in the application that prevented precertification of the proposed facility.
29 A denied applicant may reapply for precertification at any time after denial. If the
30 department determines that the applicant and the proposed facility meet the
31 qualifications and requirements of subsections 1 and 2, the department shall
32 precertify the facility.

33 **§20057. Municipal approval**

34 A facility that is precertified by the department under section 20056 may be certified
35 by the department only if the facility is approved by referendum vote in accordance with
36 this section.

37 **1. Consent or petition.** The submission of a question of whether to approve a
38 precertified facility to the legal voters of a municipality is governed by this subsection.

1 A. The municipal officers of the municipality in which a precertified facility is
2 proposed to be located may submit the question of whether to approve the facility to
3 the legal voters of the municipality.

4 B. The municipal officers must submit the question of whether to approve a
5 precertified facility to the legal voters of the municipality upon receiving a written
6 petition, signed by at least 5% of the registered voters in the municipality or signed
7 by at least 500 registered voters in the municipality, whichever is less, requesting that
8 the question be submitted to the legal voters of the municipality.

9 **2. Referendum.** The petition process and voting must be held and conducted in
10 accordance with Title 30-A, sections 2528, 2529 and 2532 even if the municipality has
11 not accepted the provisions of Title 30-A, section 2528. The voting at elections must be
12 held and conducted in accordance with Title 21-A. The municipal clerk shall prepare the
13 required ballots, which must contain a question in substantially the following form:

14 "Do you favor the establishment of an overdose prevention site for the purposes of
15 preventing overdoses of persons who use opioids and encouraging safer drug use
16 practices in [this municipality]?"

17 The voters shall indicate by a cross or check mark placed against the word "Yes" or "No"
18 their opinion of the same. The municipal clerk shall certify the results and send the results
19 to the Secretary of State. The Secretary of State shall forward the results to the
20 department.

21 A facility is approved under this section if it is accepted by a majority of the legal voters
22 voting at the election and the total number of votes cast in that municipality equals or
23 exceeds 20% of the total number of votes cast in that municipality in the most recent
24 gubernatorial election.

25 **3. Certification.** If fewer than 2 facilities have been certified in the State under this
26 subchapter, the department shall certify a facility approved pursuant to subsection 2. If 2
27 or more facilities have been certified in the State under this subchapter, the department
28 may certify a facility approved pursuant to subsection 2.

29 **§20058. Facility funding**

30 A facility may accept a donation, grant or other financial assistance and may apply
31 for a grant from the department or any nonprofit or private organization. A facility may
32 not be denied financial assistance solely because it operates as a facility.

33 **§20059. Reports**

34 **1. Reports by a facility.** A facility certified under section 20057 shall collect and
35 report to the department aggregate demographic information about persons who use the
36 facility as well as information about the services provided and other information required
37 by the department under this section. A facility certified under section 20057 shall
38 provide a report under this section to the department on or before November 15th of each
39 year for the prior 12-month period ending on October 31st. The department shall define
40 by rule the demographic data and other information to be collected and reported by a
41 facility under this section.

1 **2. Reports by the department.** The department shall evaluate the effectiveness of
2 all facilities certified under section 20057 to determine whether to continue operation of
3 the facilities and whether additional facilities should be certified. Beginning January 31,
4 2021, the department shall submit a report of the evaluation accompanied by individual
5 facility reports to the joint standing committee of the Legislature having jurisdiction over
6 health and human services matters on or before January 31st of each year.

7 **§20060. Exemption from criminal liability**

8 **1. Definitions.** For the purposes of this section, unless the context otherwise
9 indicates, the following terms have the following meanings.

10 A. "Applicable law" includes:

11 (1) Title 17-A, section 1106;

12 (2) Title 17-A, section 1107-A;

13 (3) Title 17-A, section 1110;

14 (4) Title 17-A, section 1111;

15 (5) Title 17-A, section 1111-A; and

16 (6) A condition of probation imposed under Title 17-A, chapter 67, subchapter 1
17 related to the use or possession of drugs or drug paraphernalia as defined in Title
18 17-A, section 1111-A.

19 B. "Authorized activities of a facility" means the activities described in section
20 20056, subsection 2 of a certified facility.

21 C. "Certified facility" means a facility certified under section 20057, subsection 3.

22 **2. Exemption from criminal liability.** Notwithstanding any provision of law to the
23 contrary:

24 A. A person or entity, including but not limited to, property owners, managers,
25 contractors, employees, volunteers and clients or participants of a certified facility
26 may not be arrested, charged or prosecuted for a violation of applicable law,
27 including for attempting to commit, aiding or abetting the commission of or
28 conspiring to commit a violation of applicable law, or be subject to any civil or
29 administrative penalty or liability, including but not limited to, disciplinary action by
30 a professional licensing board, credentialing restrictions, contractual liability and
31 medical staff or other employment action, or be denied any right or privilege solely
32 for actions or conduct related to authorized activities of a facility;

33 B. The provisions of Title 15, chapter 517 do not apply to a certified facility, and real
34 or personal property may not be seized by a law enforcement officer, in connection
35 with authorized activities of a facility.

36 C. Using the services of a certified facility is not grounds for probable cause to stop
37 or search a participant or client of the certified facility.

1 **§20060-A. Rules**

2 The department shall adopt major substantive rules as defined by chapter 375,
 3 subchapter 2-A to carry out the provisions of this subchapter.

4 **§20060-B. Protection from federal interference**

5 In the event the Federal Government attempts to stop the operation of a certified
 6 facility, the State shall defend any civil or criminal action against the named defendants
 7 or provide adequate funds for a private legal defense.

8 **Sec. 2. Rulemaking.** The Department of Health and Human Services shall
 9 provisionally adopt rules to implement the Maine Revised Statutes, Title 5, chapter 521,
 10 subchapter 3-A no later than January 12, 2020.

11 **Sec. 3. Appropriations and allocations.** The following appropriations and
 12 allocations are made.

13 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

14 **Division of Licensing and Certification Z036**

15 Initiative: Provides funding for a contract with a 3rd party to conduct a program
 16 evaluation.

17	GENERAL FUND	2019-20	2020-21
18	All Other	\$150,000	\$150,000
19			
20	GENERAL FUND TOTAL	<u>\$150,000</u>	<u>\$150,000</u>

21 **Division of Licensing and Certification Z036**

22 Initiative: Provides funding for one Social Services Program Specialist II position and
 23 one Office Associate II position to manage the overdose prevention sites program within
 24 the Division of Licensing and Regulatory Services.

25	GENERAL FUND	2019-20	2020-21
26	POSITIONS - LEGISLATIVE COUNT	2.000	2.000
27	Personal Services	\$153,607	\$159,172
28	All Other	\$12,795	\$12,795
29			
30	GENERAL FUND TOTAL	<u>\$166,402</u>	<u>\$171,967</u>

31 **HEALTH AND HUMAN SERVICES,**
 32 **DEPARTMENT OF**
 33 **DEPARTMENT TOTALS**

34		2019-20	2020-21
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1	GENERAL FUND	\$316,402	\$321,967
2			
3	DEPARTMENT TOTAL - ALL FUNDS	\$316,402	\$321,967
4			

5 **SUMMARY**

6 This amendment, which is the minority report of the committee, replaces the bill. It
7 makes the following changes to the bill.

- 8 1. It changes the term "safer drug use facility" to "overdose prevention site."
- 9 2. It establishes qualifications and requirements for an overdose prevention site.
- 10 3. It provides for a municipal referendum on the location of an overdose prevention
11 site within that municipality.
- 12 4. It includes additional violations for which a person may not be arrested,
13 prosecuted or subject to a revocation of probation.
- 14 5. It requires the State to defend in criminal or civil action or provide funding for
15 private defense in the event that the Federal Government attempts to stop the operation of
16 an overdose prevention site.
- 17 6. It changes the authority for the Department of Health and Human Services
18 rulemaking from routine technical to major substantive.
- 19 7. It adds an appropriations and allocations section for funding for a contract with a
20 3rd party for program evaluation and 2 positions within the Department of Health and
21 Human Services, Division of Licensing and Regulatory Services.

22 **FISCAL NOTE REQUIRED**
23 **(See attached)**