

Date: (Filing No. H- )

**HEALTH AND HUMAN SERVICES**

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

COMMITTEE AMENDMENT “ ” to H.P. 954, L.D. 1375, Bill, “An Act To Prevent Overdose Deaths and Infectious Diseases by Establishing Safer Drug Use Facilities”

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

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

**SUBCHAPTER 3-A**

**SAFER DRUG USE FACILITIES**

**§20054. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Facility.** "Facility" means a safer drug use facility that meets the qualifications and requirements of section 20055.

**§20055. Precertification**

The department must precertify a facility in accordance with this section prior to a referendum pursuant to section 20056.

**1. Qualifications of an applicant.** The department may precertify an entity as a facility to be operated by an applicant only if the entity 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;

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

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

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

7 **2. Facility requirements.** In order for a facility to be precertified under this section,  
8 an applicant must demonstrate that the applicant is able to:

9 A. Provide a location supervised by trained staff where a client may self-administer  
10 previously obtained drugs;

11 B. Provide sterile drug use supplies, collect used hypodermic needles and syringes  
12 and provide secure hypodermic needle and syringe disposal services;

13 C. Provide overdose prevention education;

14 D. Distribute or administer naloxone hydrochloride;

15 E. Educate clients on the risks of contracting human immunodeficiency virus, viral  
16 hepatitis and sexually transmitted infections;

17 F. Answer questions about safer injection practices;

18 G. Monitor clients for potential overdose;

19 H. Provide referrals to services, including substance use disorder counseling and  
20 treatment, reproductive health education and services and wound care;

21 I. Provide reasonable and adequate security of the facility, equipment, staff and  
22 clients; and

23 J. Meet the reporting requirements in section 20059.

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

26 A. An entity that meets the qualifications of subsection 1 may apply to the  
27 department for precertification as a facility that meets or will meet the requirements  
28 of this subchapter.

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

1 **§20056. Municipal approval**

2 A facility that is precertified by the department under section 20055 may be certified  
3 by the department only if the facility is approved by referendum vote in accordance with  
4 this section and section 20057.

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

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

10 B. The municipal officers must submit the question of whether to approve a  
11 precertified facility to the legal voters of the municipality upon receiving a written  
12 petition, signed by at least 5% of the registered voters in the municipality or signed  
13 by at least 500 registered voters in the municipality, whichever is lower, requesting  
14 that the question be submitted to the legal voters of the municipality.

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

20 "Do you favor the establishment of a safer drug use facility for the  
21 purposes of preventing overdoses of persons who use opioids and  
22 encouraging safer drug use practices in [this municipality]?"

23 The voters shall indicate by a cross or check mark placed against the word "Yes" or "No"  
24 their opinion of the same. The municipal clerk shall make a return of the results, certify  
25 the results and send them to the Secretary of State. The Secretary of State shall forward  
26 the results to the department.

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

30 **§20057. Certification**

31 If fewer than 2 facilities have been certified in the State under this chapter, the  
32 department must certify a facility approved under section 20056.

33 **§20058. Facility revenue**

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

37 **§20059. Reports**

38 **1. Reports by a facility.** A facility certified under section 20057 shall collect and  
39 report to the department aggregate demographic information about persons who use the  
40 facility as well as information about the services provided and other information required

1 by the department under this section. A facility certified under section 20057 shall  
2 provide a report under this section to the department on or before November 15th of each  
3 year for the prior 12-month period ending on October 31st. The department shall define  
4 by rule the demographic data and other information to be collected and reported by a  
5 facility under this section.

6 **2. Reports by the department.** The department shall evaluate the effectiveness of  
7 all facilities certified under section 20057 to determine whether to continue operation of  
8 the facilities and whether additional facilities should be certified. Beginning January 31,  
9 2020, the department shall submit a report of the evaluation accompanied by individual  
10 facility reports to the joint standing committee of the Legislature having jurisdiction over  
11 health and human services matters on or before January 31st of each year.

12 **§20060. Exemption from criminal liability**

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

15 A. "Applicable law" includes:

16 (1) Title 17-A, section 1107-A;

17 (2) Title 17-A, section 1111-A; or

18 (3) A condition of probation imposed under Title 17-A, chapter 49 related to the  
19 use or possession of drugs or drug paraphernalia as defined in Title 17-A, section  
20 1111-A.

21 B. "Authorized activities of a facility" means the activities of a certified facility  
22 described in section 20055, subsection 2.

23 C. "Certified facility" means a facility certified under section 20057.

24 D. "Detention" has the same meaning as in Title 15, section 3003, subsection 4-B.

25 **2. Exemption from criminal liability.** Notwithstanding any other provisions of  
26 law:

27 A. A person who uses the services of a certified facility may not be arrested,  
28 prosecuted or held in detention for a violation of applicable law on the premises of  
29 the certified facility;

30 B. A staff member of a certified facility, including but not limited to a manager or  
31 employee of the facility, a contractor of the facility, a volunteer with the facility or an  
32 owner or lessor of the facility may not be arrested, prosecuted or held in detention for  
33 any criminal violation directly related to engaging in authorized activities of a facility  
34 on the premises of that facility; and

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

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 **Sec. 2. Rulemaking.** The Department of Health and Human Services shall  
 5 provisionally adopt rules to implement the Maine Revised Statutes, Title 5, Part 25,  
 6 chapter 521, subchapter 3-A no later than January 12, 2018.

7 **Sec. 3. Appropriations and allocations.** The following appropriations and  
 8 allocations are made.

9 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

10 **Division of Licensing and Regulatory Services Z036**

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

13	<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
14	All Other	\$150,000	\$150,000
15			
16	<b>GENERAL FUND TOTAL</b>	<u>\$150,000</u>	<u>\$150,000</u>

17 **Division of Licensing and Regulatory Services Z036**

18 Initiative: Provides funding for one Social Services Program Specialist II position and  
 19 one Office Associate II position to manage the Safer Drug Use Facilities program within  
 20 the Division of Licensing and Regulatory Services.

21	<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
22	POSITIONS - LEGISLATIVE COUNT	2.000	2.000
23	Personal Services	\$144,414	\$149,160
24	All Other	\$12,572	\$12,572
25			
26	<b>GENERAL FUND TOTAL</b>	<u>\$156,986</u>	<u>\$161,732</u>

27 **HEALTH AND HUMAN SERVICES,**  
 28 **DEPARTMENT OF (FORMERLY DHS)**  
 29 **DEPARTMENT TOTALS**

30		<b>2017-18</b>	<b>2018-19</b>
31	<b>GENERAL FUND</b>	<b>\$306,986</b>	<b>\$311,732</b>
32			
33	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<u><b>\$306,986</b></u>	<u><b>\$311,732</b></u>
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**SUMMARY**

This amendment is the minority report of the committee and replaces the bill. It establishes a precertification process within the Department of Health and Human Services that would review the qualifications of an applicant seeking to open a safer drug use facility and it establishes requirements for such a facility. It provides certain exemptions from criminal liability for clients and staff members of a facility. It provides for a referendum process at the municipal level for municipalities to approve the establishment of a safer drug use facility.

The amendment also adds an appropriations and allocations section.

**FISCAL NOTE REQUIRED**

**(See attached)**