

**Testimony of Jude Walsh, Special Assistant
Governor's Office of Health Policy and Finance
State of Maine**

**Before the House Committee on Energy and Commerce
Sub Committee on Health
Medicare Part D: Implementation of the new Drug Benefit
Hearing Date: March 1, 2006**

Chairman Deal, Representatives Brown, Dingell, Barton, and members of the Committee:

It is an honor to be here today to speak with you about Maine's experience with the implementation of the Medicare Drug Benefit. My name is Jude Walsh and I serve as the Director of Pharmacy Affairs in Maine and have overall responsibility for the implementation of the Medicare Drug Benefit in my state.

I would like to begin with some background on Maine, our experience with the implementation of the Part D benefit and our remaining concerns. There are approximately 45,000 dual eligible individuals enrolled in the MaineCare Program – Maine's Medicaid Program. Maine, like many other states, has invested a tremendous amount of time and effort to prepare for the safe transfer of its duals to Part D. Part of this preparation included an analysis of the formularies of all the Prescription Drug Plans available to our duals. The analysis showed that 1 out of every 4 dual members had been assigned to plans where less than 60% of their drugs were covered and available without prior authorization. We sought and gained permission from CMS to intelligently reassign these members to plans that covered over 95% of their drugs.

This preparation included working closely with our pharmacists. They alerted us to a potential major problem in late December. They were concerned that they could not verify Part D eligibility for 40-50% of their dual clients. This means that they would not be able to get the

plan to pay for that members' prescriptions. In addition, we had received our MMA file – the file identifying duals from CMS- that had only 4 people eligible for low-income subsidies when all 45,000 duals should have had this subsidy available to them. These issues prompted the Governor to draft an urgent letter to Dr. McClellan.

We also set up a toll free hotline where low-income seniors could call for information about Part D, assisted with enrollment into plans and helped people apply for Low Income Subsidies. The last week of December we were averaging about 15,000 calls a day from confused seniors. This call volume was very difficult to manage for a state of Maine's size. This hotline enabled us to respond quickly during the first few days of January when thousands of Maine seniors were not able to access their Federal drug benefit.

State staff were monitoring phone lines over the New Year's holiday weekend. On New Year's Day we immediately began hearing about problems. We tried contacting plans and some were closed or did not answer their phones. Pharmacists were put on hold an hour or more – and at one point our largest independent pharmacy had all 13 outgoing lines on hold with plans.

By Tuesday January 3rd we were up to 18,000 calls from people who could not get their medications. In some cases they were being charged a \$250 deductible and over a \$100 in co pays. Many were leaving pharmacies without life sustaining medications. It was chaos. People were calling non-stop. Nobody could get their medicine. They were crying and they had no place else to turn. The State had to act. At 11:30 am Tuesday morning the Governor had heard enough. He instructed me to restore our pharmacy benefit for these people.

We created an emergency override for pharmacists to bill the State when Duals were being charged excessive co pays or being denied transition coverage. This also allowed the

pharmacies to bill us when nursing home duals were denied injectable drugs like insulin and cancer medication.

To date we have filled over 115,000 prescriptions for over 50,000 people using this override. We continue to need this safety net. We still have more than 12% of our members without Low Income Subsidy indicators working. We have spent over \$6 Million dollars and have asked for an extension to continue this critically needed safety net through the end of March.

There are issues with the Part D benefit that persist, especially for the dual eligible population. The number and choices of plans is confusing with duals often auto-assigned into plans with drug formularies not matching their drug needs. They have mandatory co pays – in fact we have heard that some pharmacies have denied filling medications for failure to pay co pays. This federal flaw has resulted in legislation pending in Maine that would provide additional co pay assistance. The drug benefit is divided with some medications covered by Medicaid (excluded drugs), some covered by Medicare Part B (cancer medications) and the remaining drugs covered by Part D – none of which is held in a single drug profile, creating the opportunity for drug to drug interactions and duplicate therapy to occur. Prior Authorization criteria vary from plan to plan, fair hearings requests take a minimum of 17 days, transitional coverage is inconsistently applied depending on the plan and enrollment averages 6 –8 weeks and is difficult to administer when members attempt to move to a new plan.

We would like to acknowledge the valiant efforts of CMS staff to work with us to address these concerns. We have seen improvements since the benefit began. We have taken their advice on working with pharmacies to make sure that Part D plans are billed prior to using our

override and billing the State. We appreciate the opportunity to apply for the Medicare demonstration waiver and the promise of repayment.

Maine is adversely impacted by the clawback. Even with the Secretary's recent reduction in the clawback amount we still are being charged millions of additional dollars for a benefit we had no role in designing and whose current and future costs we have no influence in controlling. The clawback is perhaps the most accurately named and least confusing aspect of Medicare Drug benefit. It uniformly punishes states for effectively controlling prescription drug costs while rewarding states that had annual double-digit increases due to inaction. For the next three years CMS will be using a national trend rate on prescription drug growth of over 9% when in fact, Maine has been containing growth to less than 3%.

The federal drug benefit was not ready January 1st and is still not ready for everyone today. CMS would never have allowed a state Medicaid Program to implement a benefit as flawed as this one remains. We appreciate the enormity of the task before CMS but urge Congress to act and fix the Part D benefit including changing the base year for calculation of the clawback and using actual trend rates instead of projections.

Thank you for the opportunity to testify. I would be happy to answer any questions you might have.

