



MAINE OFFICE OF ATTORNEY GENERAL

A Legal Guide to Safely and Successfully Conducting a Collection Event for Unwanted Prescription Medications

“Wear it out, make it do, or do without...”

-- *Old New England Saying*

NOT with prescription drugs!

If you were to look in the medicine cabinet of the average Maine citizen, you would be likely to find a variety of unused, expired, and unneeded prescription medications. Many people’s thrifty nature leads them, often without thinking about it, to save left-over medications even after they are no longer needed or are past their expiration date. This is a **BAD IDEA** for a number of reasons:

- It is **UNSAFE** to reuse prescription medication. Prescriptions are written taking into account the patient’s medical needs at the time. No one should ever diagnose themselves and reuse left-over medications. If a person suspects that they need medical treatment or prescription medication they should see their doctor.
- Unused prescription medications are often **INEFFECTIVE** because they have either been kept past their expiration date, or because they were stored in a location with improper temperature or humidity. Prescription medications should be thought of like fresh food that can “go bad” after the “use by” date.
- Unused prescription medication that are classified as controlled substances, such as pain medications, have a high abuse potential and can make a person’s home the target of **BURGLARY OR THEFT** by drug abusers.
- Unwanted prescription drugs left in the medicine cabinet can be found and ingested by children, resulting in accidental **POISONING**.

Flush it? NOT A GOOD IDEA!

For years people have been advised to simply flush unwanted medications down the toilet. Recent research has shown that this can contribute to water pollution and

interfere with the health of our fish and wildlife. Private septic and municipal sewage disposal systems were never designed to treat waste from discarded prescription medications. Throwing the pills out in the trash can create problems as well. Groundwater contamination can occur from medications leeching out of landfills, and animals can be harmed if they were to ingest the drugs while rooting through garbage. Theft by addicts from the garbage (“dumpster diving”) is a possibility as well. The best solution for safely disposing of these medications is to have them collected and incinerated.

Collection Events Can be an Answer.

At a collection event for unwanted medications, the public is invited to bring in left-over or expired medications so that they can be safely destroyed. As a result, the medications brought in are no longer available for theft, diversion, or improper use. In addition, the publicity surrounding the events educates the public as to the risks of saving unneeded prescription medications.

Due to State and Federal law, it is necessary that these events be carefully and properly planned. The following guidelines **MUST** be followed in order to conduct a simple¹ prescription take-back program safely and lawfully in the State of Maine. Other states have different laws regulating these types of events. The following applies only to events taking place in the State of Maine.

1. At least one uniformed law enforcement officer must be present for the ENTIRE duration of the take-back program.
2. Collect only pills and tablets. Non-prescription pills are fine too. Transdermal skin patches (Nicotine or Duragesic patches) are OK to collect if they are still sealed in their original wrappers. Liquids, needles, lancets, inhalers, etc. should all be turned away with instructions for the person to safely dispose of the items themselves.
3. Only medications generated through normal household use can be collected. Do not accept medications brought in by residential care facilities, group homes, or other commercial or institutional sources.
4. If possible, medications should be collected in their original packaging (bottle or blister pack), not emptied out into the collection container.
5. For privacy, persons bringing in medications should be given the opportunity to use a black permanent felt-tip marker to obliterate their name on the original packaging, if they choose to do so. A private place such as an unattended table set off to the side

¹ There are a variety of additional optional components, discussed below, that may be added to a take-back program. These guidelines should therefore be considered to be the *minimum* components necessary for a properly conducted collection event.

should be made available for this purpose. They should not obliterate the name of the medication on the bottle.

6. Use a container that can be easily sealed at the end of the event, such as a sturdy cardboard box or plastic tub. Five gallon plastic buckets with a tight fitting top are ideal. To enhance privacy, use an opaque container, rather than one that is clear or see-through, and place the container where medications can be deposited into it but the contents cannot be easily seen. Make sure you have ample containers and packaging supplies on hand. One well publicized event in Maine collected the equivalent of fifty gallons of unused pharmaceuticals by volume, including the pill bottles!
7. Persons dropping off unwanted medications should be instructed to place them in the collection container themselves. A staffer (who need not be a law enforcement officer) should watch what is placed in the collection container to insure that no liquids, sharps, or other unwanted items are deposited. Persons staffing the event should under no circumstances touch or handle the medications.
8. At all times during the event, collected medications must be considered in the custody of the police officer. Since the medications cannot at any time be left unsupervised by the officer, having two officers available for the event will make things easier with respect to toilet or other breaks. If necessary, or if storage becomes an issue, officers can secure full containers in the trunk of their police cruiser.
9. After the event and in the presence of at least one witness, the police officer should seal the container shut in the same manner as he or she would evidence collected in a criminal case. Tamper-proof evidence tape or the equivalent should be used to seal the container and all seams. The officer should sign his or her name across the sealed top, with the date, and the words "Unwanted Medications for Disposal." The witness should also sign their name on the container next to the word "Witnessed." There is no need to sort or inventory the medications.
10. After the event, the law enforcement officer should handle and store the container of medications in the same manner as evidence seized in a criminal case. A written record of the chain of custody must be kept all the way from collection to destruction. The container should not be reopened unless witnessed by a second party and resealed as described above.
11. The law enforcement agency assisting with the collection may then dispose of the container by incineration that is witnessed by at least two police officers. The law enforcement agency may also contact the Maine Drug Enforcement Agency (MDEA) for technical assistance with the destruction of medications gathered from a collection event.

OPTIONAL COMPONENTS.

Although not legally required, the following are desirable procedures if resources allow.

1. Having a pharmacist present for the event in order to identify, inventory, and sort the drugs into controlled substances and non-controlled substances. The non-controlled substances can then be destroyed by hiring a licensed hazardous waste contractor. Due to strict DEA regulations regarding the destruction of controlled substances in a law enforcement witnessed burn, it is not currently possible for a hazardous waste contractor to possess or destroy controlled substances.
2. Asking the attendees to fill out an OPTIONAL anonymous Unwanted Medications Collection Survey. These survey forms may be obtained from and returned to:

Community Medical Foundation for Patient Safety
6800 West Loop South, Suite 190
Bellaire, Texas 77401

Forms and more information regarding reporting data to the unwanted drugs registry can be found at:

<http://www.communityofcompetence.com/>

What about Controlled Substances and Environmental Laws?

The majority of unwanted household pharmaceuticals that are collected at these events are non-hazardous, non-controlled substances. A small portion might meet the definition of hazardous waste pharmaceuticals under Maine and federal law if they were not collected from private households. A significant portion may be controlled substances such as pain medications.

It is a crime under both Maine² and federal law³ to possess a controlled substance that was not prescribed to you, unless the person is registered to do so by the federal Drug Enforcement Administration.⁴ However, law enforcement officers are exempt from this registration⁵ and may possess controlled substances for purposes of collection and destruction.⁶ This is why it is essential that during all take-back events sworn uniformed law enforcement personnel are present. At all times the collected medications must be considered in the custody of those officers, and should not at any time be possessed by

² 17-A M.R.S.A. §1107-A; 22 M.R.S.A. §2383-B.

³ 21 U.S.C. §844(a).

⁴ 21 U.S.C. §822.

⁵ 21 C.F.R. 1301.24(a)(2) (Registration is waived for law enforcement officers, who may possess scheduled drugs in course of their official duties.)

⁶ Id. See also 21 U.S.C. §885(d) (Law enforcement officers immune from criminal liability when enforcing any law relating to controlled substances.)

any civilian volunteers. This police custody must continue until such time as the medications are transported to another law enforcement agency for disposal, such as MDEA, or are disposed of through a law enforcement witnessed burn. It is not necessary for the law enforcement officer taking custody of the medications to inventory the collected medications.⁷

There are a wide variety of state⁸ and federal⁹ laws and regulations that govern the collection, transportation and disposal of hazardous waste. Fortunately, household waste is exempt from these regulations under both Maine¹⁰ and federal¹¹ law. In this regard, the organizers of the event and the law enforcement officers that collect the medications are simply collecting household waste the way a household trash hauler would. Although the collected medications may contain a small proportion of hazardous waste (primarily Coumadin and some cancer medications), so too does the trash that you put out by the curb for collection. Because household generated trash is exempt from these hazardous waste regulations, the collected medications may be treated just like any other household-generated trash for the purposes of transportation and disposal. Although disposal in an incinerator designed for hazardous waste is the optimal method of destruction, any form of incineration is a reasonable substitute.

Legislative background

Maine Public Law 2003, Chapter 679 created the Unused Pharmaceutical Disposal Program to be administered by the Maine Drug Enforcement Agency. The legislation also established the Maine Drug Return Implementation Group. The implementation group was charged with working on implementation issues for the Unused Pharmaceutical Disposal Program, specifically addressing postal regulations, methods and requirements for packaging for mailing, minimizing drug diversion and theft, public education and encouraging the development of turn-in programs. The Office of Attorney General actively participated in the implementation group.

The implementation group issued its final report to the legislature on March 5, 2005. The report contained a recommendation, among many others, that the Office of Attorney General “prepare informational materials for interested parties, participating

⁷ Only DEA “registrants” are required to keep records or prepare inventories of controlled substances possessed by them. 21 U.S.C. §827; 21 C.F.R. §1304.03. Since registration is waived for law enforcement personnel, they are not “registrants.” 21 C.F.R. §1300.01(40).

⁸ Chapter 13 of Title 38 M.R.S.A., “Waste Management” and associated rules promulgated by the Maine Department of Environmental Protection (specifically Chapter 400, “Solid Waste Management Rules: General Provisions” and Chapter 850, “Identification of Hazardous Wastes.”)

⁹ Primarily the federal Resource Conservation and Recovery Act of 1976, as amended. (42 U.S.C. § 6901 et seq.) and associated regulations.

¹⁰ 38 M.R.S.A. §1303-C(15) & 06-096 Code of Maine Regulations (C.M.R.) Ch. 850(3)(A)(4)(a)(vii) excludes “household waste” from the definition of “hazardous waste.”

¹¹ 40 C.F.R. 261.4. It should be noted that the federal exemption of household waste from the definition of hazardous waste uses language identical to the language adopted by the State DEP in their administrative rules. In this regard, the State of Maine is no stricter in its regulation of household waste than is the federal government.

municipalities, law enforcement, medical personnel and community service organizations.” This document is the result of that recommendation. It is the hope of the Attorney General that good information on how to successfully hold a collection event for unwanted prescription medications will increase the number of such events and enhance public health and safety.

Questions may be directed to:

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