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DSPS Testimony on AB 26—Medical Oxygen

Medical oxygen is a legend drug that requires a prescription for dispensing. Currently a home medical oxygen provider may not dispense medical oxygen directly to a patient unless they are licensed as a pharmacist, physician or other authorized practitioner. Requiring a home medical oxygen provider to obtain a pharmacist and pharmacy license would create a burden on these small businesses. It is important for Wisconsin citizens to be able to have medical oxygen delivered directly to their homes. Assembly Bill 26 creates a new license under the Pharmacy Examining Board's jurisdiction to license persons that provide medical oxygen directly to a patient.

The U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) conducted an audit that indicated a number of Wisconsin's medical oxygen suppliers, distributors and manufacturers are out of compliance with state law because they are not licensed as pharmacists. Therefore these companies are ineligible to receive Medicare reimbursement for services rendered to Wisconsin citizens.

The CMS notification to the Department occurred after the 2013-2014 legislative session ended. On May 1, 2014, the Department requested and received a one-year extension from CMS to allow oxygen suppliers, distributors and manufacturers to come into compliance with the law. The request was granted based upon the Department's assurance that a statutory change to the law would be pursued in the next legislative session. CMS contacted all suppliers who were revoked as a result of the audit to advise them they would not pursue enforcement efforts until after May 1, 2015.

The Department, in conjunction with the Pharmacy Examining Board, requested legislation to allow for licensure, under the Pharmacy Examining Board, for home medical oxygen providers. Assembly Bill 26 provides for licensure of home medical oxygen providers that submit an application, pay a fee and meet the requirements established by the Pharmacy Examining Board and requires the Board to adopt rules implementing the bill's provisions. Assembly Bill 26 does not affect a pharmacist, physician or other currently authorized practitioner from dispensing medical oxygen to a patient at their home.

In order for Wisconsin home medical oxygen providers to be reimbursed by Medicare, the home medical oxygen provider must be licensed by May 1, 2015. CMS indicated that they will continue to monitor any changes made in the Wisconsin law based on the effort to pursue statutory solutions. CMS will proceed with taking administrative action against suppliers determined to be non-compliant after May 1, 2015. Failure to enact this legislation in time to allow for licensure by May 1, 2015 would create a financial hardship for these small businesses.