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STATE OF MAINE  
ONE HUNDRED AND THIRTIETH LEGISLATURE  
COMMITTEE ON HEALTH AND HUMAN SERVICES

TO: Senator Anne M. Carney, Chair  
Representative Thom Harnett, Chair  
Joint Standing Committee on Judiciary

FROM: Senator Ned Claxton, Chair *NC (Att)*  
Representative Michele Meyer, Chair *MM (Att)*  
Joint Standing Committee on Health and Human Services

DATE: February 23, 2022

SUBJECT: Public Record Exception Review  
LD 1849, An Act To Clarify Inspection Requirements for Hospitals and Certain  
Nursing Facilities

The Joint Standing Committee on Health and Human Services is requesting the Joint Standing Committee on Judiciary's review, pursuant to 1 MRSA §434, of a confidentiality provision included in LD 1849, An Act To Clarify Inspection Requirements for Hospitals and Certain Nursing Facilities. This bill was submitted by the Department of Health and Human Services. It had a public hearing on January 25, 2022 and the bill was worked on February 3, 2022. It was voted unanimously OTP-A. The bill and amendment are attached.

LD 1849 has two purposes. First, it proposes to eliminate the current requirement that a single licensing and life safety inspection be performed in multi-level nursing and residential care facilities because the licensing cycles and federal certifications do not mesh. Second, it proposes that the Division of Licensing and Certification receive the survey findings of hospitals that are accredited by an accrediting organization recognized by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Currently, if a hospital is accredited, the department has no access to the accreditation survey, statement of deficiencies or plan of correction.

Prior to the public hearing, the Maine Hospital Association and Department of Health and Human Services agreed that the department would maintain the confidentiality of the surveys; statements of deficiencies and plans of corrections. The committee voted unanimously to support this agreement and drafted a new paragraph B in 22 MRSA §1816, sub-§2. It is this paragraph that triggers this review by your committee. The proposed amendment is as follows:

*SP*  
*P.3*

'B. The hospital provides, to the department, a copy of the survey findings of the health care facility accrediting organization described in paragraph A, including a statement of

deficiencies, and the hospital's final plan of correction for any identified deficiencies that is accepted by the health care facility accrediting organization. Survey findings, a statement of deficiencies and the hospital's final plan of correction provided pursuant to this subsection are confidential.'

Reviewing the statutory criteria for the proposed exception to public records, we have the following comments.

**A. Need to collect the information.** The survey findings, statement of deficiencies and final plans of correction are already collected by an accrediting organization recognized by CMS. Currently, these records are released only to CMS by the accrediting organization upon request from CMS; CMS does not release these records. The language proposed in ¶B would allow the Department of Health and Human Services access to these findings, statements and plans.

**B. Value in maintaining information.** The Department's interest is in monitoring any CMS regulatory violations the accrediting organization has identified, and the hospital's plans to resolve the violations and maintain compliance on an on-going basis. This would allow the Department to determine if any regulatory violations found as a result of a complaint investigation are isolated events or indicative of a pattern of repeat non-compliance that warrants a closer look at a facility's quality assessment program.

**C. Federal and state law.** Currently, 22 MRSA §1816 establishes that hospitals that are accredited by an accrediting organization are exempt from the Department's inspection requirements. The language proposed in ¶B would give the department access to records that it does not currently have access to but would maintain the confidentiality of these records. This is consistent with how CMS handles these records.

**D. Balancing the individual's privacy rights and the public interest.** The records referenced in the proposed ¶B relate to hospitals' regulatory compliance and are not related to the privacy of individual persons.

**E. Balancing the effect of disclosure on business competition against the public interest.** There is no connection between this information and competitive disadvantages of any business in this State.

**F. Interfering in public negotiations.** We are unaware of any connection between this information and negotiations involving a public body.

**G. Balancing the public interest and potential jeopardy to public safety or a member of the public.** The Department submitted LD 1849 to ensure access to the accreditation organization's survey findings, statement of deficiencies and the hospital's final plan of correction in order to monitor compliance and ensure quality and the safety of patients and hospital staff. There is no need for these records to be publicly available.

**H. Narrowness of the exception.** The public records exception has been drafted as narrowly as possible. Under current law, such records are completely unavailable.

Thank you for reviewing this proposed public records exception. If you have any questions, please don't hesitate to contact us.

Committee: HHS

Drafter: ATB

File Name: G:\COMMITTEES\HHS\Bill amendments\130th 2nd\223902.docx

LR (item)#: 223902

New Title?: No

Add Emergency?: No

Date: February 5, 2022

Committee Amendment “ ” to LD 1849, An Act To Clarify Inspection Requirements for Hospitals and Certain Nursing Facilities

Amend the bill in Section 1 on page 1, line 7 by striking out “Office of MaineCare Services” and inserting ‘division of licensing and certification’ in its place.

Amend the bill on page 1, line 10 by striking out “A license” and inserting ‘A full license’ in its place.

Amend the bill on page 1, line 16 by striking out “prior to licensure” and inserting ‘prior to the issuance of full licensure’ in its place.

Amend the bill on page 1 by striking out ¶B and inserting the following in its place:

‘B. The hospital provides, to the department, a copy of the survey findings of the health care facility accrediting organization described in paragraph A, including a statement of deficiencies, and the hospital’s final plan of correction for any identified deficiencies that is accepted by the health care facility accrediting organization. Survey findings, a statement of deficiencies and the hospital’s final plan of correction provided pursuant to this subsection are confidential.’

### SUMMARY

This amendment makes the following changes to the bill:

1. It removes the reference to licensing by the Office of MaineCare Services and corrects it to the Division of Licensing and Certification.
2. It clarifies that when a license is issued, it is a full license.
3. It requires survey findings conducted by an accreditation agency, including a statement of deficiencies and the hospital’s final plan of action that are submitted to the Department of Health and Human Services, to be confidential.

Existing law

**§1816. Inspections**

Every building, institution or establishment for which a license has been issued must be periodically inspected by duly appointed representatives of the division of licensing and certification under the rules and regulations to be established by the department. An institution licensed pursuant to this chapter may not be required to be licensed or inspected under the laws of this State relating to hotels, restaurants, lodging houses, boardinghouses and places of refreshments. A full license may not be issued until the applicant has furnished the department with a written statement signed by the Commissioner of Public Safety or the proper municipal official designated in Title 25, chapters 313 to 321 to make fire safety inspections that the home and premises comply with chapters 313 to 321 relating to fire safety. The department shall establish and pay reasonable fees to the municipal official or the Commissioner of Public Safety for each such inspection. This written statement must be furnished prior to the issuance of full licensure. [PL 2021, c. 398, Pt. MM, §1 (AMD).]

A hospital licensed under this chapter is exempt from department relicensure inspection requirements under this chapter if the hospital is certified by the Centers for Medicare and Medicaid Services for participation in the federal Medicare program and holds full accreditation status by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services. If a hospital is certified to participate in the federal Medicare program and not accredited by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services, the department shall inspect the hospital every 3 years for compliance with the Centers for Medicare and Medicaid Services' conditions of participation. The provisions of this paragraph do not exempt a hospital from an inspection by the department in response to a complaint or suspected violation of this chapter or of the Centers for Medicare and Medicaid Services' conditions of participation or an inspection by another state agency or municipality for building code, fire code, life safety code or other purposes unrelated to health care facility licensing or accreditation. For purposes of this paragraph, "Centers for Medicare and Medicaid Services" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. [PL 2021, c. 398, Pt. MM, §1 (AMD).]

**SECTION HISTORY**

PL 1971, c. 592, §5 (AMD). PL 1975, c. 623, §27 (AMD). PL 1981, c. 470, §A71 (AMD). PL 1997, c. 488, §2 (AMD). PL 2007, c. 314, §1 (AMD). PL 2007, c. 314, §2 (AFF). PL 2019, c. 343, Pt. YY, §5 (AMD). PL 2021, c. 398, Pt. MM, §1 (AMD).

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4



# 130th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2022

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Legislative Document

No. 1849

H.P. 1370

House of Representatives, December 22, 2021

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### **An Act To Clarify Inspection Requirements for Hospitals and Certain Nursing Facilities**

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 203.  
Received by the Clerk of the House on December 20, 2021. Referred to the Committee on  
Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint  
Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative MEYER of Eliot.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1816, as amended by PL 2021, c. 398, Pt. MM, §1, is repealed and the following enacted in its place:

**§1816. Inspections**

1. Inspection requirements. Every building, institution or establishment for which a license has been issued must be periodically inspected by duly appointed representatives of the Office of MaineCare Services under the rules adopted by the department. An institution licensed pursuant to this chapter may not be required to be licensed or inspected under the laws of this State relating to hotels, restaurants, lodging houses, boardinghouses and places of refreshments. A license may not be issued until the applicant has furnished the department with a written statement signed by the Commissioner of Public Safety or the proper municipal official designated in Title 25, chapters 313 to 321 to make fire safety inspections that the home and premises comply with Title 25, chapters 313 to 321 relating to fire safety. The department shall establish and pay reasonable fees to the municipal official or the Commissioner of Public Safety for each such inspection. This written statement must be furnished prior to licensure.

2. Accredited hospitals. A hospital licensed under this chapter is exempt from department inspection requirements under this chapter if:

A. The hospital is certified by the Centers for Medicare and Medicaid Services for participation in the federal Medicare program and holds full accreditation status by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services; and

*and  
replaces*

~~B. The hospital provides a copy of the survey findings of the health care facility accrediting organization described in paragraph A, including a statement of deficiencies, and the hospital's final plan of correction for any identified deficiencies that is accepted by the health care facility accrediting organization.~~

3. Nonaccredited hospitals. If a hospital is certified to participate in the federal Medicare program and is not accredited by a health care facility accrediting organization recognized by the Centers for Medicare and Medicaid Services, the department shall inspect the hospital every 3 years for compliance with the Centers for Medicare and Medicaid Services' conditions of participation.

4. Hospitals not exempt. The provisions of subsections 2 and 3 do not exempt a hospital from an inspection by the department in response to a complaint or suspected violation of this chapter or of the Centers for Medicare and Medicaid Services' conditions of participation or an inspection by another state agency or municipality for building code, fire code, life safety code or other purposes unrelated to health care facility licensing or accreditation.

For purposes of this section, "Centers for Medicare and Medicaid Services" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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**SUMMARY**

This bill removes the requirement for nursing facilities providing both nursing home and assisted living services to receive a single coordinated licensing and fire code inspection. Nursing home services inspections occur at varied intervals between 9 and 15 months apart based on a facility's performance with the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services' conditions of participation, while assisted living services inspections occur on a 2-year cycle and are required prior to issuance of full licensure, making the requirement in current law not feasible.

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The bill provides that a hospital is exempt from inspection by the Maine Department of Health and Human Services if it submits to the department a copy of its accreditation survey results completed by a health care facility accrediting organization, including a statement of any deficiencies and corresponding plan of correction.





**PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST**

Revised 11/16/21

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)	
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)	
C. Whether federal law requires the record to be confidential	
Does the proposed exception meet one or more of the following (D, E, F, G or I)	
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure	
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records	
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records	
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records	
H. Whether the proposed exception is as narrowly tailored as possible ( <i>applies in all reviews</i> )	
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception	
<b>NOTE: 5 MRSA §95-C, sub-§1, ¶C provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.</b>	
<b><i>If the proposed exception creates broad confidentiality for an entity:</i></b> <b>2-A. Accountability review of agency or official.</b> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public	
<b>2-B. Accessibility of public records.</b> In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.	