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## TESTIMONY OF THE MAINE HOSPITAL ASSOCIATION

In Support Of

[LD 1791](#) - *An Act Directing the Department of Health and Human Services  
To Provide Notice to Hospitals of Nursing Facility Closures*

February 15, 2022

Senator Claxton, Representative Meyer, and members of the Health and Human Services Committee, my name is Jeffrey Austin and I am here on behalf of the Maine Hospital Association. I am here today to testify in support of LD 1791. We want to thank Rep. McDonald for her willingness to co-sponsor the bill.

One of the most challenging aspects of operating a hospital today is discharge planning for individuals who are going to need long term care assistance.

A large group of these folks need placement in a nursing home. On any day, dozens and dozens of individuals who are ready to leave the hospital are “stuck” because no suitable long term care placement is available.

This bill deals with a very minor aspect of this issue. If a nursing home is going to close, the local hospitals would benefit from having this information from an official source.

Knowledge of an impending closure does not solve the placement challenge, but late notice is unhelpful. Or, more likely, rumors will be swirling and hospitals deserve to have an official notice and not have to try and sort out fact from rumor.

The bill is structured so that hospitals are notified AFTER both DHHS and residents and their families are first notified. Admittedly, hospitals are notified within 2 business days after DHHS and families have been notified – but it is after.

Furthermore, upon the date notice is currently provided to DHHS and the residents, the nursing facility must cease accepting new residents. Accordingly, our members will find out unofficially when they call and try to place a new resident. But, we see no reason why hospitals shouldn't be given formal notice once it is provided to both DHHS and residents.

I want to thank Bill Montejo at DHHS for providing me more information about the closure process than I possessed when we drafted the bill. That additional information is important to the structure of LD 1791 and requires an amendment to the bill (see the end of our testimony).

**Current Law.** LD 1791 seeks to enact a new section of law, 22 MRSA §1822-B. It immediately follows §1822 which governs closure notices today.

**§1822. Notice of voluntary closure of hospital, sanatorium, convalescent home, rest home, nursing home or similar institution**

*Any person, including county or local government units, who is conducting, managing or operating any hospital, sanatorium, convalescent home, rest home, nursing home or institution within the meaning of this chapter and who is properly licensed therefor in accordance with this chapter shall give at least 30 days' advance notice of the voluntary closing of such facility to the patients therein and to those persons, governmental units or institutions who are primarily responsible for the welfare of those patients who are being cared for by said hospital, sanatorium, convalescent home, rest home, nursing home or institution so that adequate preparation may be made for the orderly transfer of said patients to another qualified facility.*

There is also companion regulation in the DHHS rules.

**3.I. Voluntary Closing of a Licensed Facility**

*Whenever a licensed facility voluntarily discontinues operation, the facility shall notify the Department, and during the period when it is preparing for such discontinuance, the facility shall inform the resident, the next of kin, legal representative or agency acting on the resident's behalf of the fact and the proposed time of such discontinuance, with at least thirty (30) days notice so that suitable arrangements may be made for the orderly transfer and care of such resident. In the case of any resident who has no person acting on his/her behalf, the facility shall be responsible for assisting such resident to arrange for a suitable transfer prior to the discontinuance of operation. Immediately upon discontinuance of operation of a licensed facility, the owner shall surrender the license to the Department.*

A slightly complicating factor is that **CMS has a mirror regulation in place** that requires 60 days notice. This is the additional information I did not have when putting the bill together.

**§483.70(l) Facility closure-Administrator.**

**Any individual who is the administrator of the facility must:**

- §483.70(l)(1) *Submit to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure:
  - (i) *At least 60 days prior to the date of closure;* or
  - (ii) *In the case of a facility where the Secretary or a State terminates the facility's participation in the Medicare and/or Medicaid programs, not later than the date that the Secretary determines appropriate;**
- §483.70(l)(2) *Ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and*
- §483.70(l)(3) *Include in the notice the plan, that has been approved by the State, for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.*

As is the case with most CMS regulation, there are several paragraphs of additional guidance that accompanies the rule.

**MHA Proposed Amendment.** Please consider the following two amendments to the bill.

*§1822-B. Notice to hospitals of voluntary closure of nursing facility.*

*Within 2 business days after receipt of notice from a nursing facility of that facility's voluntary closure pursuant to either §1822 or comparable CMS regulations, whichever notice is received first, the department shall provide notice of the pending closure to:*

*~~1. Same county. All hospitals that are located in the same county as the nursing facility; and~~*

*~~2. Adjacent county. All hospitals within 25 miles of the nursing facility that are located in a county adjacent to the county in which the nursing facility is located.~~*

The goal of the additional language is to clarify that we are only seeking to receive the formal/official notice that families receive. We are not seeking to have notice provided to hospitals when DHHS receives the draft closure plan.

Second, we have heard that it may be easier for DHHS to provide all hospitals notice rather than only a subset within 25 miles that would have to be determined on a case-by-case basis. If providing notice to all hospitals is easier, that is ok with us.

Thank you.