

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

D. OF R.

STATE OF MAINE
SENATE
110TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 98, L.D. 217, Bill, "AN ACT to Conform Confidentiality Requirements of the Maine Committee on Aging with the 1978 Older Americans Act."

Amend the Bill in section 1 by striking out the first 2 sentences/and inserting in their place the following:

'In order to serve as advocate and ombudsman for older people, the committee shall have the power to enter onto the premises of any boarding care facility licensed according to section 7801 and any nursing home facility licensed according to section 1817 in order to investigate complaints concerning those facilities.

To carry out this function, the committee may
< - enter onto the premises of any boarding care facility or
nursing home during the course of an investigation, < > speak pri-
vately with any individual therein who consents to the conver-
sation and < > inspect and copy all records pertaining to a
resident held by a facility or home, provided that^{the}resident, or
the legal representative of the^{resident,} consents in writing to that
inspection. The consent, where required and not obtainable in
writing, may be conveyed orally or otherwise^{the}to staff of the
facility or home. Where a resident is not competent to grant
consent and has no legal representative, the committee may in-
spect the resident's records and may make^{such}copies that do not
contain personally identifiable material without the written

consent of a duly appointed legal representative.'

Further amend the Bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 22 MRSA §5112, sub-§2, as repealed and replaced by PL 1977, c. 696, §192, is amended by adding after the 2nd paragraph a new paragraph to read:

No information or records maintained by the committee relating to complaints may be disclosed unless the ombudsman authorizes the disclosure; and the ombudsman shall not disclose the identity of any complainant or resident unless:

- A. The complainant or resident, or a legal representative of either, consents in writing to the disclosure with respect to that complainant or resident respectively; or
- B. A court orders the disclosure.

A complainant or resident, or legal representative thereof, in providing the consent, may specify to whom such identity may be disclosed and for what purposes, in which event no other disclosure is authorized.'

Further amend the Bill in section 3 by striking out all of the first sentence ^{after the amending clause} and inserting in its place the following: 'Any person, official or institution who in good faith participates in the registering of a complaint pursuant to this subsection, or in good faith investigates that complaint or provides access to those persons carrying out the investigation, about an act or practice in a boarding care facility or a nursing home licensed according to section 7801 or 1817, respectively, or who participates in a judicial proceeding resulting

D. O. F. R.

COMMITTEE AMENDMENT " A " to S.P. 98, L.D. 217

-3-

from that complaint, shall be immune from any civil or criminal liability that otherwise might result by reason of these actions.'

Statement of Fact

The intent of this amendment is to comply with requirements of the 1978 Older Americans Act concerning access to nursing homes, residents and residents' records and concerning the confidentiality of records obtained by the ombudsman, while also establishing a state policy to ensure respect for the privacy of nursing home residents. The amendment of section 1 of the bill guarantees access, but also requires that consent to inspecting and copying records be obtained if at all possible. The amendment of section 2 simply clarifies the language of the bill and allows a consenting resident or complainant to specify to whom his records may be disclosed. The amendment of section 3 of the bill extends civil and criminal liability immunity to persons who in good faith investigate complaints or provide access to investigators.

Reported by the Committee on Judiciary.

Reproduced and distributed pursuant to Senate Rule 11-A.

February 25, 1981

(Filing No. S-27)