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Testimony of the Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

In Support of LD 1344

An Act To Clarify the Authority of the Department of Health and Human Services
during a Public Health Emergency

Sponsored by: Representative Meyer
Hearing Date: Wednesday, April 14, 2021

Senator Claxton, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services: my name is Sara Gagné-Holmes and I am a Deputy Commissioner for the Department of Health and Human Services. I am here today to help introduce and speak in support of LD 1344 - An Act To Clarify the Authority of the Department of Health and Human Services during a Public Health Emergency, a bill presented by the Department. The following information is offered for your consideration.

LD 1344 would provide the Department of Health and Human Services with additional tools to address imminent public health hazards in order to control infectious disease outbreaks and protect the health and safety of the people of Maine. These tools include administrative fines and license suspensions for violations of Department rules regarding disease control during public health emergencies. Additionally, the Department is authorized to establish procedures specific to the closure of any licensed business or entity when that business or entity directly and repeatedly violates public health control measures during an extreme public health emergency.

All Maine businesses must operate in accordance with laws established to protect public health, whether those laws are established through Executive Order during a public health emergency or through the legislative process. It is the role of the licensing agency to ensure that businesses under their regulatory purview are operating in accordance with the law. This bill strengthens the Department's ability to respond timely and appropriately to enforce orders issued during a health emergency.

During the COVID-19 pandemic, the Governor's Executive Orders provided the Department with authority to enforce the Orders and the COVID-19 prevention checklists, which detailed best practices for safely operating businesses, including but not limited to ensuring staff stay home when sick, wearing face coverings, hand-washing, physical distancing, installing physical barriers such as plexiglass, capacity limits, and cleaning and disinfecting high touch surfaces, chairs, tables and equipment. This authority enhanced and supported the Health Inspection Program (HIP)'s existing authority to take licensing action for observed health or safety hazards under 5 M.R.S. §10004(3). HIP interpreted non-compliance with Executive Orders and COVID-19 prevention checklists as an imminent health hazard under its own statute and rule and implemented appropriate licensing actions for the protection of public health and safety during this extreme public health emergency. In response to reports of non-compliance, the HIP followed up on complaints and provided licensees (i.e. restaurants, lodging places, campgrounds, youth camps, public pools, spas and body artists) with education on the related Orders and COVID-19

prevention checklists. When non-compliance was observed after providing education, HIP issued an Imminent Health Hazard (IHH) finding. Continued, observed non-compliance resulted in a temporary suspension of a license for up to 30 days in accordance with 22 M.R.S. §2500 and 5 M.R.S. §10004(3) and, if a licensee continued to operate after the license suspension, penalties were assessed daily for operating without a valid license, in accordance with 22 MRS § 2498. From May 2020 to present, the HIP has issued 23 temporary suspensions and 93 IHHs for non-compliance and has assessed fines against six establishments for operating while their license was under suspension.

Currently, 22 MRS §2498 permits the Department to impose fines up to \$100 daily for a licensee's initial and continued non-compliance. Additionally, section 2498 subsection (C) specifies that an unlicensed establishment, which includes those with suspended licenses, may be subject to fines from \$25-\$500 per day, per violation. The fines permitted by section 2498, however, have not deterred some businesses from operating in direct and repeated violation. In one instance, an eating establishment operated continuously during the five periods of temporary suspension of license. It was only when the Court imposed a Contempt of Court finding and a \$5,000 per day fine for additional operation that the licensing establishment closed its business. A more impactful penalty is needed to enforce cease and desist orders and to ensure that businesses operate in a way that protects the health of their staff and customers and that does not jeopardize public health in Maine during public health emergencies. LD 1344 will provide the Department additional authority to impose more consequential fines and/or force the immediate closure of a business that repeatedly violates public health control measures during an extreme public health emergency, an enforcement measure critical for protecting public health.

If the proposed language for 22 MRS §804(3)(B), regarding license suspensions, is enacted, then the District Court - at the licensee's request - would review any temporary suspensions of licenses during public health emergencies, resulting from violations of public health control measures. This judicial review would afford licensees the ability to challenge a licensing agency's decision to temporarily suspend licenses for operating in a way that poses an imminent risk to public health or safety.

This bill also allows a licensing agency to directly and temporarily suspend licenses for more than 30 days. Currently, a maximum of 30 days is permitted under Title 5, section 10004, subsection 3 for temporarily suspending licenses. During the pandemic, six HIP licensees operated after their licenses were suspended. Four of these licensees had temporary suspensions re-issued for up to another 30 days, due to continued non-compliance. This bill will only impact those businesses that fail to obey an order and repeatedly violate public health measures in an extreme public health emergency.

In summary, the Maine Department of Health and Human Services recommends this bill ought to pass to provide the licensing agency authority to protect the public during a public health emergency by providing the ability to impose significantly greater fines; revoke, suspend or refuse to renew a license beyond 30 days when there is imminent risk to public health or safety; and close businesses for repeated and continued non-compliance. LD 1344 seeks additional authority to enforce laws necessary to ensure the public health and safety of Maine people; however, it also limits that authority to public health emergencies by amending chapter 250 of Title 22, rather than chapter 562 and the HIP program generally.

Thank you for your consideration of this matter and for the opportunity to provide testimony today. I would be happy to address any questions from the Committee and I and my colleagues will be available to participate in the work session.