

# MAINE STATE LEGISLATURE

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L.D. 1454

(Filing No. S-257 )

STATE OF MAINE  
SENATE  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 550, L.D. 1454, Bill, "An Act to Amend the Laws Relating to the Long-term Care Ombudsman Program"

Amend the bill by striking out all of subsection 2 and inserting in its place the following:

'2. Advocate. Serve as an advocate on behalf of older people promoting and assisting activities designed to enhance at the national, state and community levels the well-being of older people. The committee shall serve as an ombudsman on behalf of individual citizens and older people as a class in matters under the jurisdiction of State Government. It shall serve as a voice on behalf of older people to officers of State Government, the Governor, the Legislature, the public-at-large and the Federal Government.

To serve as advocate and ombudsman for older people, the committee may enter onto the premises of any boarding care facility licensed according to section 7801 and any nursing home facility licensed according to section 1817 to investigate complaints concerning those facilities. In addition, the committee shall investigate complaints received on behalf of individuals receiving long-term care services provided by the home-based care programs, Medicaid waiver program, licensed home health agencies, certified homemaker agencies and licensed adult day care agencies. To carry out this function, any committee member, staff or volunteer authorized by the committee may enter onto the premises of any adult foster care facility, any boarding care facility or any nursing home during the course of an investigation, speak privately with any individual in the facility or home who consents to the conversation and inspect and copy all records pertaining to a resident as long as the resident or the legal representative of the resident consents in writing to that inspection. The consent, when required and not obtainable in writing, may be conveyed orally or otherwise to the

COMMITTEE AMENDMENT " A" to S.P. 550, L.D. 1454

2 staff of the facility or home. When a resident is not competent  
 4 to grant consent and has no legal representative, the committee  
 6 may inspect the resident's records and may make copies that do  
 8 not contain personally identifiable material without the written  
 10 consent of a duly appointed legal representative. The committee  
 12 may authorize up to 25 persons, in addition to committee members  
 14 and staff of the committee, to carry out this function.  
 16 Appropriate identification must be issued to all such persons.  
In accordance with the federal 1987 Older Americans Act (OAA), 42  
United States Code, as amended, a person may not serve as an  
ombudsman without training by committee staff as to the rights  
and responsibilities of an ombudsman or without a specific plan  
of action under direction of committee staff. The committee  
shall renew the authorization and issue identification annually.  
The findings of the committee must be available to the public  
upon request.

18 In addition, the committee, staff and volunteers shall visit,  
 20 talk with and make personal, social and legal services available  
 22 to residents; inform residents of their rights, entitlements and  
 24 obligations under federal and state laws by distributing  
 26 educational materials and meeting with groups or individuals;  
 28 assist residents in asserting their legal rights regarding claims  
for public assistance, medical care and social security benefits  
or in actions against agencies responsible for those programs, as  
well as in all other matters in which residents are aggrieved,  
including but not limited to advising residents to litigate; and  
investigate complaints received from residents or concerned  
parties regarding the care or other matters concerning residents.

30 Information or records maintained by the committee concerning  
 32 complaints may not be disclosed unless the ombudsman authorizes  
 34 the disclosure. The ombudsman may not disclose the identity of  
any complainant or resident unless:

36 A. The complainant, the resident or a legal representative  
 38 of either consents in writing to the disclosure; or

40 B. A court orders the disclosure.

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

46 Any person, official or institution who in good faith  
 48 participates in the registering of a complaint pursuant to this  
 50 subsection, or in good faith investigates that complaint or  
 52 provides access to those persons carrying out the investigation,  
about an act or practice in any boarding care facility licensed  
according to section 5154 or 7801 or any nursing home licensed  
according to section 1817 or who participates in a judicial

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COMMITTEE AMENDMENT "A" to S.P. 550, L.D. 1454

2 proceeding resulting from that complaint is immune from any civil  
3 or criminal liability that otherwise might result from these  
4 actions. For the purpose of any civil or criminal proceedings,  
5 there is a rebuttable presumption that any person acting pursuant  
6 to this subsection did so in good faith;

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STATEMENT OF FACT

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This amendment reorganizes and clarifies the language in the original bill. It does not make substantive changes in the bill.

Reported by Senator Conley for the Committee on Human Resources.  
Reproduced and Distributed Pursuant to Senate Rule 12.  
(5/30/91) (Filing No. S-257)