

MAINE STATE LEGISLATURE

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L.D. 1985

(Filing No. S- 504)

STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND SPECIAL SESSION

SENATE AMENDMENT "X" to H.P. 1402, L.D. 1985, Bill, "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government for the Fiscal Years Ending June 30, 1992 and June 30, 1993 and to Change Certain Provisions of Law"

Amend the bill by inserting before the emergency clause the following:

PART OO

Sec. OO-1. 22 MRSA §5106, sub-§11-C is enacted to read:

11-C. Long-term care ombudsman program. Support and maintain a long-term care ombudsman program, in accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, by agreement with such nonprofit organization as the bureau finds best able to provide the services;

Sec. OO-2. 22 MRSA §5107-A is enacted to read:

§5107-A. Long-term care ombudsman program

In accordance with the program established pursuant to section 5106, subsection 11-C, the ombudsman 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. The ombudsman shall investigate complaints received on behalf of individuals receiving long-term care services provided by home-based care programs, the Medicaid waiver program, licensed home health agencies, certified homemaker agencies and licensed adult day care agencies. To carry out this function, any staff member or volunteer authorized by the ombudsman may enter onto the premises of any adult foster care facility, boarding care facility or nursing home during the

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2 course of an investigation, speak privately with any individual
4 in the facility or home who consents to the conversation and
6 inspect and copy all records pertaining to a resident as long as
8 the resident or the legal representative of the resident consents
10 in writing to that inspection. The consent, when required and
12 not obtainable in writing, may be conveyed orally or otherwise to
14 the staff of the facility or home. When a resident is not
16 competent to grant consent and has no legal representative, the
18 ombudsman may inspect the resident's records and may make copies
20 that do not contain personally identifiable material without the
written consent of a duly appointed legal representative. The
ombudsman may authorize up to 25 persons, in addition to staff,
to carry out this function. Appropriate identification must be
issued to all such persons. In accordance with the federal 1987
Older Americans Act, 42 United States Code, as amended, a person
may not serve as an ombudsman without training as to the rights
and responsibilities of an ombudsman or without a specific plan
of action under direction of the ombudsman. The ombudsman shall
renew the authorization and issue identification annually. The
findings of the ombudsman must be available to the public upon
request.

22
24 The ombudsman and volunteers shall visit, talk with and make
26 personal, social and legal services available to residents;
28 inform residents of their rights, entitlements and obligations
30 under federal and state laws by distributing education materials
32 and meeting with groups or individuals; assist residents in
34 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 care or other matters concerning residents.

36 Information or records maintained by the ombudsman
38 concerning complaints may not be disclosed unless the ombudsman
40 authorizes the disclosure. The ombudsman may not disclose the
42 identity of any complainant or resident unless the complainant,
the resident or a legal representative of either consents in
writing to the disclosure or a court orders the disclosure.

44 A complainant, a resident or a legal representative of
46 either, 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.

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2 Any person, official or institution that in good faith
4 participates in the registering of a complaint pursuant to this
6 section or in good faith investigates that complaint or provides
8 access to those persons carrying out the investigation about an
10 act or practice in any boarding care facility licensed according
12 to section 5154 or 7801 or any nursing home licensed according to
14 section 1817 or that participates in a judicial proceeding
16 resulting from that complaint is immune from any civil or
18 criminal liability that otherwise might result from these
20 actions. For the purpose of any civil or criminal proceedings,
22 there is a rebuttable presumption that any person acting pursuant
24 to this section did so in good faith.

14 Sec. OO-3. 22 MRSA §5112, sub-§2, as repealed and replaced by
16 PL 1991, c. 408, is amended to read:

18 2. Advocate. Serve as an advocate on behalf of older
20 people promoting and assisting activities designed to enhance at
22 the national, state and community levels the well-being of older
24 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.~~

26 ~~To serve as advocate and ombudsman for older people, the
28 committee may enter onto the premises of any boarding care
30 facility licensed according to section 7801 and any nursing home
32 facility licensed according to section 1817 to investigate
34 complaints concerning these facilities. In addition, the
36 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
38 member, staff or volunteer authorized by the committee may enter
40 onto the premises of any adult foster care facility, any boarding
42 care facility or any nursing home during the course of an
44 investigation, speak privately with any individual in the
46 facility or home who consents to the conversation and inspect and
48 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
staff of the facility or home. When a resident is not competent
to grant consent and has no legal representative, the committee
may inspect the resident's records and may make copies that do~~

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2 net contain personally identifiable material without the written
consent of a duly appointed legal representative. The committee
4 may authorize up to 25 persons, in addition to committee members
and staff of the committee, to carry out this function.
6 Appropriate identification must be issued to all such persons.
In accordance with the federal 1987 Older Americans Act (OAA), 42
8 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
10 of action under direction of committee staff. The committee
shall renew the authorization and issue identification annually.
12 The findings of the committee must be available to the public
upon request.

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

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

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

36 B. A court orders the disclosure.

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

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

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~~er--criminal--liability--that--otherwise--might--result--from--these
actions.---For--the--purpose--of--any--civil--or--criminal--proceedings,
there--is--a--rebuttable--presumption--that--any--person--acting--pursuant
to--this--subsection--did--so--in--good--faith,~~

6 Sec. OO-4. PL 1991, c. 591, Pt. B, §2, under the caption "HUMAN
SERVICES, DEPARTMENT OF," the 2nd part relating to "Bureau of
8 Elder and Adult Services" is repealed.

10 Sec. OO-5. PL 1991, c. 591, Pt. B, §2, under the caption "HUMAN
SERVICES, DEPARTMENT OF," last line is amended to read:

12	TOTAL	29,936,429	40,321,212
14		<u>29,879,075</u>	<u>40,263,340</u>

16 Sec. OO-6. PL 1991, c. 591, Pt. B, §2, last line is amended to read:

18	TOTAL ALLOCATIONS	28,299,041	38,747,955
20		<u>28,241,687</u>	<u>38,690,083</u>

22 Sec. OO-7. Allocation. The following funds are allocated from
the Federal Expenditure Fund to carry out the purposes of this
Act.

24		1991-92
26	HUMAN SERVICES, DEPARTMENT OF	
28	Elder and Adult Services - Bureau of	
30	Positions - Other Count	(1.5)
32	Personal Services	\$15,152
34	All Other	3,847
36	Provides for the allocation of funds for one	
38	part-time Advocate position, one Social	
40	Services Program Specialist II position and	
42	associated support costs for the long-term	
	care ombudsman program.	
	DEPARTMENT OF HUMAN SERVICES	
	TOTAL	<u>\$18,999'</u>

44 Further amend the bill by relettering the Parts to read
consecutively.

48 **FISCAL NOTE**

50 This amendment provides an allocation of Federal Expenditure
funds to the Department of Human Services in the amount of

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\$18,999 in fiscal year 1991-92 for the long-term care ombudsman program. It also corrects an allocation of these funds contained in Public Law 1991, chapter 591.

There is no fiscal impact on the General Fund.

STATEMENT OF FACT

This amendment places responsibility for the long-term care ombudsman program in the Department of Human Services, Bureau of Elder and Adult Services and corrects an allocation of these funds contained in Public Law 1991, chapter 591.

(Senator GAUVREAU)
SPONSORED BY: 

COUNTY: Androscoggin

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(12/19/91) (Filing No. S-504)