

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 626

S.P. 190

In Senate, February 23, 1993

An Act to Amend the Long-term Care Ombudsman Program.

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.

Cosponsored by Senators: McCORMICK of Kennebec, PARADIS of Aroostook, TITCOMB of Cumberland, Representatives: GWADOSKY of Fairfield, HOLT of Bath, MELENDY of Rockland, PARADIS of Augusta.

Be it enacted by the People of the State of Maine as follows:

2
4 Sec. 1. 22 MRSA §5107-A, first and 2nd ¶¶, as enacted by PL 1991, c. 622, Pt. QQ, §2, are amended to read:

6 In accordance with the program established pursuant to
8 section 5106, subsection 11-C, the ombudsman may enter onto the
10 premises of any boarding care facility licensed according to
12 section 7801 and any nursing home facility licensed according to
14 section 1817 to investigate complaints concerning those
16 facilities or to perform any other functions authorized by this
18 section or other applicable law or rules. The ombudsman shall
20 investigate complaints received on behalf of individuals
22 receiving long-term care services provided by home-based care
24 programs, the Medicaid waiver program, licensed home health
26 agencies, certified homemaker agencies and licensed adult day
28 care agencies. To carry out this function, any staff member or
30 volunteer authorized by the ombudsman may enter onto the premises
32 of any adult foster care facility, boarding care facility or
34 nursing home during the course of an investigation, speak
36 privately with any individual in the facility or home who
38 consents to the conversation and inspect and copy all records
40 pertaining to a resident as long as the resident or the legal
42 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 ombudsman may
inspect the resident's records and may make copies ~~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~~ as many individuals as necessary,
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.

44 The ombudsman and volunteers shall visit, talk with and make
46 personal, social and legal services available to residents;
48 inform residents of their rights, entitlements and obligations
50 under federal and state laws by distributing education materials
and meeting with groups or individuals; 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

2 as in all other matters in which residents are aggrieved,
including, but not limited to, advising residents to litigate;
4 and investigate complaints received from residents or concerned
parties regarding care or other matters concerning residents; and
6 participate as observer and resource in any on-site survey or
other regulatory review performed by state agencies pursuant to
state or federal law.

8
10 **STATEMENT OF FACT**

12 This bill clarifies the ombudsman's authority to have full
and continuous access to adult foster care, boarding care and
14 nursing facilities in order to carry out the ombudsman's
statutory duties. It also makes clear that the ombudsman has the
16 right to provide information and observe during state surveys or
reviews of long-term care facilities. The bill removes the limit
18 on the number of volunteers the ombudsman may certify to assist
in the ombudsman's work. Finally, the bill removes any confusion
20 regarding the ombudsman's right to copy and inspect the records
of long-term care residents who are not competent and have no
22 legal representative available to consent to such inspection and
copying.