

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1848

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H.P. 1305

House of Representatives, April 30, 1997

**An Act to Create the Managed Care Ombudsman Program.**

(EMERGENCY)

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Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Bangor.

Cosponsored by Representatives: MITCHELL of Vassalboro, SAXL of Portland.

2       **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

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6       Whereas, managed care organizations are doing business in  
this State in unprecedented numbers and their numbers are market  
penetration are increasing with unprecedented speed and are  
8       gaining momentum; and

10       Whereas, citizens of this State are in need of managed care  
information and advocacy services to ensure that the new managed  
12       care system meets their needs; and

14       Whereas, it is imperative that we respond to the challenge  
of a changing health care system in a timely and effective  
16       manner; and

18       Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
20       Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
22       safety; now, therefore,

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

26       **Sec. 1. 24-A MRSA c. 56-A**, as enacted by PL 1995, c. 673, Pt.  
C, §1, is amended by repealing the chapter headnote and enacting  
28       the following in its place:

30                                   CHAPTER 56-A

32                                   HEALTH PLAN IMPROVEMENT ACT

34                                   SUBCHAPTER I

36                                   HEALTH PLAN REQUIREMENTS

38       **Sec. 2. 24-A MRSA c. 56-A, sub-c. II** is enacted to read:

40                                   SUBCHAPTER II

42                                   MANAGED CARE OMBUDSMAN

44       §4321. Managed Care Ombudsman Program

46       There is established within the Office of the Public  
48       Advocate the Managed Care Ombudsman Program to assist a consumer  
to navigate the managed care system; to select an appropriate  
50       managed care plan; and to understand and assert that consumer's  
rights as a managed care plan enrollee.

2           1. Managed Care Ombudsman. The Managed Care Ombudsman,  
4 referred to in this section as the "ombudsman," is appointed by  
the Public Advocate, subject to review by the joint standing  
6 committee of the Legislature having jurisdiction over insurance  
matters and confirmation by the Legislature.

8           2. Staff. The staff of the Managed Care Ombudsman Program  
10 consists of personnel, including staff attorneys, the Public  
Advocate in consultation with the ombudsman determines necessary  
12 to perform the duties of the program. The staff is appointed,  
supervised and directed by the Public Advocate in consultation  
14 with the ombudsman.

16           3. Duties. The duties of the Managed Care Ombudsman  
Program include the following:

18           A. Assisting consumers with managed care plan selection by  
20 providing referrals and information about obtaining health  
coverage and services;

22           B. Assisting enrollees to understand their rights and  
24 responsibilities under managed care plans by identifying and  
investigating practices, policies, laws or regulations that  
26 may adversely affect access to quality health care,  
including, but not limited to, practices relating to  
28 marketing of managed care plans and accessibility of  
services and resources for underserved areas and vulnerable  
30 populations and by publicizing and promoting solutions to  
problems caused by those practices, policies, laws and  
32 regulations;

34           C. Publishing an annual consumer guide and providing  
education for managed care plan selection based on managed  
36 care plan performance;

38           D. Advocating policies and programs that protect consumer  
interests and rights under managed care plans, including:

40           (1) Representing the interests of consumers before  
42 governmental agencies and seeking administrative,  
legislative, legal and other remedies to protect the  
44 health, safety, welfare and rights of consumers;

46           (2) Analyzing, evaluating and monitoring the  
development and implementation of federal, state and  
48 local laws, regulations and other governmental policies  
and actions that pertain to the health, safety, welfare  
and rights of consumers, with respect to the adequacy

2 of managed care plans, facilities and services in the  
3 State;

4 (3) Facilitating public comment on the laws,  
5 regulations, policies and actions under subparagraph  
6 (2);

7 (4) Involving citizen organizations in the activities  
8 of the Managed Care Ombudsman Program; and

9 (5) Providing technical support for the development of  
10 consumer organizations to protect the well-being and  
11 rights of consumers;

12 E. Identifying, investigating and resolving enrollee  
13 complaints, assisting enrollees with filing complaints and  
14 appeals and providing legal representation when appropriate.

15 (1) Such complaints and appeals may relate to action,  
16 inaction or decisions of managed care plans and public  
17 or private entities or agencies involved in the  
18 delivery, funding or regulation of health care.

19 (2) The Managed Care Ombudsman Program shall notify  
20 state health plan licensing agencies, health  
21 professional licensing boards and other appropriate  
22 state and federal oversight bodies of quality-of-care  
23 complaints.

24 (3) The Managed Care Ombudsman Program may provide the  
25 services under this paragraph by agreement with any  
26 nonprofit organization the Managed Care Ombudsman  
27 Program finds best able to provide such services;

28 F. Ensuring that consumers have timely access to services  
29 provided through the Managed Care Ombudsman Program and that  
30 the complainants receive timely response from  
31 representatives of the Managed Care Ombudsman Program;

32 G. Submitting an annual report by January 1st of each year  
33 to the joint standing committee of the Legislature having  
34 jurisdiction over insurance matters describing the  
35 activities carried out by the Managed Care Ombudsman Program  
36 in the year for which the report is prepared, containing and  
37 analyzing the data collected by the Managed Care Ombudsman  
38 Program and evaluating the problems experienced by and the  
39 complaints made by or on behalf of consumers; and

40

2 H. Exercising any other duties that are consistent with the  
duties assigned by this subsection.

4 4. Powers. The powers of the Managed Care Ombudsman  
Program include but are not limited to the following:

6 A. Access to managed care plans and the names and addresses  
8 of their participating providers and facilities;

10 B. Appropriate access to review the medical records of a  
12 consumer if the representative has the permission of that  
consumer or the legal representative of that consumer;

14 C. Access to administrative records, policies and documents  
16 of managed care plans to which consumers or the general  
public has access;

18 D. Access to all licensing, certification and data  
20 reporting records maintained by the State or reported to the  
Federal Government with respect to health care providers and  
22 copies of those records on request;

24 E. Access to quality assessment and improvement data  
26 maintained by the State or public or private entities or  
agencies involved in the delivery, funding or regulation of  
health care; and

28 F. Entering agreements when necessary to carry out its  
30 duties or responsibilities.

32 **§4322. Rulemaking**

34 The Public Advocate shall adopt rules to implement this  
36 subchapter. Rules adopted pursuant to this subchapter are  
routine technical rules as defined in Title 5, chapter 375,  
38 subchapter II-A. Rules adopted to implement this subchapter must  
address the following issues:

40 1. Coordination with other groups. Promoting coordination  
42 between the Managed Care Ombudsman Program and other citizen  
advocacy organizations, legal assistance providers serving  
44 low-income and other vulnerable health care consumers, health  
insurance counseling assistance programs, the long-term care  
46 ombudsman program and protection and advocacy systems for  
individuals with disabilities established under:

48 (1) Part A of the Developmental Disabilities Assistance and  
50 Bill of Rights Act, 42 United States Code, Section 6001 et  
seq.;

2           (2) The Protection and Advocacy for Mentally Ill  
3           Individuals Act of 1986, 42 United States Code, Section  
4           10801 et seq.; and

6           (3) The federal Americans with Disabilities Act of 1986, 42  
7           United States Code, Section 12101 et seq.;

8           **2. Coordination of information.** Coordinating the data  
9           collection and information dissemination activities of the  
10           Managed Care Ombudsman Program with other public or private  
11           entities or agencies involved in the delivery, funding or  
12           regulation of health care, collecting information regarding  
13           managed care plans, quality assurance programs and quality  
14           improvement; and

16           **3. Confidentiality.** Protecting the identity and  
17           confidentiality of any complainant or other individual with  
18           respect to whom the Managed Care Ombudsman Program maintains  
19           records or files.

20           **§4323. The Managed Care Ombudsman Program Fund**

22           The Managed Care Ombudsman Program Fund is established as a  
23           dedicated fund administered by the Treasurer of State for the  
24           purpose of funding the operations of the Managed Care Ombudsman  
25           Program. Any funds not expended by the end of a fiscal year may  
26           not lapse but must be carried forward to the succeeding fiscal  
27           year.

30           Every nonprofit hospital and medical service organization  
31           licensed under Title 24 and every insurance carrier and health  
32           maintenance organization licensed under this Title shall pay an  
33           annual assessment to the Treasurer of State for deposit in the  
34           Managed Care Ombudsman Program Fund. The amount of the  
35           assessment must be set by the Treasurer of State by October 15th  
36           of each year for payment by January 1st of the following year and  
37           may not exceed the amount allocated by the Legislature for  
38           operations of the Managed Care Ombudsman Program established in  
39           section 4321. The maximum amount of the allocation for fiscal  
40           year 1997-98 is \$250,000 and for fiscal year 1998-99 is  
41           \$500,000. The Treasurer of State shall adopt rules required to  
42           implement this section.

44           **Emergency clause.** In view of the emergency cited in the  
45           preamble, this Act takes effect when approved.

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## SUMMARY

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This bill creates the Managed Care Ombudsman Program within the Office of the Public Advocate to educate and assist consumers with managed care plan selection, assist enrollees in understanding their rights and responsibilities under managed care plans, advocate for policies and programs that protect consumer rights and interests and handle complaints and appeals and provide individual case representation. The bill establishes the Managed Care Ombudsman Program Fund, a dedicated fund to receive income from nonprofit hospital and medical service organizations, insurers and health maintenance organizations under an assessment capped at \$250,000 in fiscal year 1997-98 and \$500,000 in fiscal year 1998-99.