

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

---

Legislative Document

No. 114

H.P. 101

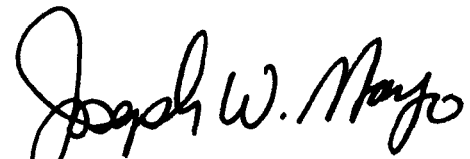
House of Representatives, January 11, 1999

**An Act to Implement the Recommendations of the Task Force to Study the Need for an Ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services Relating to the Department of Human Services.**

---

Submitted by Representative FULLER for the Task Force to Study the Need for an Ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services, pursuant to Resolve 1997, c. 120.

Reference to the Committee on Health and Human Services suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 19-A MRSA §2451-A is enacted to read:**

5 **§2451-A. Right to fair hearing in child support matters**

6  
7 **1. Former beneficiaries of Temporary Assistance for Needy**  
8 **Families program.** **A former beneficiary of the Temporary**  
9 **Assistance for Needy Families program who is aggrieved by a**  
10 **decision of the department relating to the distribution of child**  
11 **support arrearage payments has the right to a fair hearing. Any**  
12 **action relative to the distribution of child support arrearage**  
13 **payments must be communicated to the former beneficiary in**  
14 **writing and must state that the beneficiary affected has the**  
15 **right to a hearing.**

16  
17 **2. Nonwelfare families.** **A person receiving child support**  
18 **who is not eligible for welfare assistance from the department**  
19 **and who is aggrieved by a decision of the department relating to**  
20 **the timeliness and amount of child support payments has the right**  
21 **to a fair hearing. Any action relative to the timeliness and**  
22 **amount of child support payments must be communicated in writing**  
23 **and must state that the person affected has the right to a**  
24 **hearing.**

25 **Sec. 2. 22 MRSA §§3174-U and 3174-V are enacted to read:**

26  
27 **§3174-U. Medicaid ombudsman program**

28  
29 **1. Program established.** **The department shall establish and**  
30 **maintain a Medicaid ombudsman program by contract with such**  
31 **nonprofit organizations that the department finds best able to**  
32 **provide the services. The purpose of the ombudsman program is to**  
33 **represent the best interests of individuals involved in the**  
34 **State's Medicaid program as a class and to investigate and**  
35 **resolve complaints against state agencies that may be infringing**  
36 **on the rights of individuals involved in the State's Medicaid**  
37 **program.**

38  
39 **2. Powers and duties.** **The ombudsman program may:**

40  
41 **A. Provide advocacy services to individual citizens in**  
42 **matters relating to those Medicaid services provided by and**  
43 **under the jurisdiction of the State;**

44  
45 **B. Review and evaluate, on a continuing basis, state and**  
46 **federal policies and programs relating to the provision of**  
47 **Medicaid services conducted or assisted by any state**  
48 **departments or agencies for the purpose of identifying and**

- 2 addressing patterns or recurrent problems with the State's  
Medicaid program;
- 4 C. Receive, investigate and resolve inquiries, complaints,  
problems or requests for information and assistance  
6 regarding the State's Medicaid services;
- 8 D. Serve as a liaison for communication between individuals;
- 10 E. Coordinate information and make referrals for services  
to relevant state agencies or other organizations when  
12 appropriate;
- 14 F. Market and operate a toll-free telephone number for  
individuals involved in the Medicaid program;
- 16 G. Provide a range of alternative dispute resolution  
18 methods to individuals, including the pursuit of legal  
remedies when appropriate;
- 20 H. Advise, consult and assist the executive and legislative  
22 branches on activities of State Government relating to  
Medicaid and recommend improvements to the quality of  
24 Medicaid services in State Government; and
- 26 I. Make annual reports relating to the activities of the  
ombudsman program to the department and the joint standing  
28 committee of the Legislature having jurisdiction over human  
services.

30 **3. Access to files and records.** The ombudsman program has  
32 access, limited only by the law, to the files, records and  
personnel of the department or any agency or entity administered,  
34 licensed or funded by the department for the purposes of  
investigation of an inquiry or complaint. The ombudsman may also  
36 enter the premises of the department or any agency or entity  
administered, licensed or funded by the department for the  
38 purposes of investigation of an inquiry or complaint.

40 **4. Confidentiality of records.** Information or records  
42 maintained by the ombudsman program relating to a complaint or  
investigation may not be disclosed unless the ombudsman  
44 authorizes the disclosure. The ombudsman may not disclose the  
identity of any complainant unless the complainant or a legal  
46 representative of the complainant consents in writing to the  
disclosure or a court orders the disclosure. A complainant or a  
48 legal representative of the complainant, in providing the  
consent, may specify to whom the identity may be disclosed and  
50 for what purposes, in which event no other disclosure is  
authorized.

2           5. Immunity. Any person that in good faith participates in  
3 the registering of a complaint with the ombudsman program  
4 pursuant to this section or in good faith investigates that  
5 complaint as an employee or volunteer of the ombudsman program is  
6 immune from any civil or criminal liability that otherwise might  
7 result from these actions. For the purpose of any civil or  
8 criminal proceedings, there is a rebuttable presumption that any  
9 person acting pursuant to this section did so in good faith.

10           **§3174-V. Medicaid managed care ombudsman program**

11           1. Program established. The department shall establish and  
12 maintain the Medicaid Managed Care Ombudsman program until such  
13 time as Medicaid services are no longer provided to certain  
14 Medicaid recipients on a risk-based or case management basis.  
15 Ombudsman program services for these recipients must be made  
16 available to persons enrolled in any system using utilization  
17 review, risk-based capitation or case management. To the extent  
18 that the Medicaid managed care program is extended to persons  
19 receiving long-term care or home health care services, the  
20 department shall include in the ombudsman program the following  
21 organizations: the long-term care ombudsman program, the Health  
22 Insurance Counseling and Assistance Program of Legal Services for  
23 the Elderly, the 5 area agencies on aging and the Disability  
24 Rights Center.

25           2. Powers and duties. The ombudsman program may:

26           A. Provide advocacy services to individual citizens in  
27 matters relating to those Medicaid managed care services  
28 provided by and under the jurisdiction of the State;

29           B. Review and evaluate, on a continuing basis, state and  
30 federal policies and programs relating to the provision of  
31 Medicaid managed care services conducted or assisted by any  
32 state departments or agencies for the purpose of identifying  
33 and addressing patterns or recurrent problems with the  
34 State's Medicaid managed care program;

35           C. Receive, investigate and resolve inquiries, complaints,  
36 problems or requests for information and assistance  
37 regarding the State's Medicaid managed care program;

38           D. Serve as a liaison for communication between individuals;

39           E. Coordinate information and make referrals for services  
40 to relevant state agencies or other organizations when  
41 appropriate;

2 F. Market and operate a toll-free telephone number for  
individuals involved in the State's Medicaid managed care  
4 program;

6 G. Provide a range of alternative dispute resolution  
methods to individuals, including the pursuit of legal  
8 remedies when appropriate;

10 H. Advise, consult and assist the executive and legislative  
branches on activities of State Government relating to the  
12 Medicaid managed care program and recommend improvements to  
the quality of this program in State Government; and

14 I. Make annual reports relating to the activities of the  
ombudsman program to the department and the joint standing  
16 committee of the Legislature having jurisdiction over human  
18 services.

20 3. Access to files and records. The ombudsman program has  
access, limited only by the law, to the files, records and  
22 personnel of the department or any agency or entity administered,  
licensed or funded by the department for the purposes of  
24 investigation of an inquiry or complaint. The ombudsman may also  
enter the premises of the department or any agency or entity  
26 administered, licensed or funded by the department for the  
purposes of investigation of an inquiry or complaint.

28 4. Confidentiality of records. Information or records  
maintained by the ombudsman program relating to a complaint or  
30 investigation may not be disclosed unless the ombudsman  
authorizes the disclosure. With the exception of contractually  
32 required disclosures to the department, the ombudsman may not  
disclose the identity of any complainant unless the complainant  
34 or a legal representative of the complainant consents in writing  
to the disclosure or a court orders the disclosure. A  
36 complainant or a legal representative of the complainant, in  
providing the consent, may specify to whom the identity may be  
38 disclosed and for what purposes, in which event no other  
40 disclosure is authorized.

42 5. Immunity. Any person that in good faith participates in  
the registering of a complaint with the ombudsman program  
44 pursuant to this section or in good faith investigates that  
complaint as an employee or volunteer of the ombudsman program is  
46 immune from any civil or criminal liability that otherwise might  
result from these actions. For the purpose of any civil or  
48 criminal proceedings, there is a rebuttable presumption that any  
person acting pursuant to this section did so in good faith.

50 **Sec. 3. 22 MRSA §3789-E is enacted to read:**

2 **§3789-E. Ombudsman program for participants in TANF program,**  
4 **ASPIRE Program and Parents as Scholars Program**

6 **1. Program established.** The department shall establish and  
8 maintain an ombudsman program for participants in the TANF  
10 program, ASPIRE Program and Parents as Scholars Program by  
12 contract with such nonprofit organizations that the department  
14 finds best able to provide the services. The purpose of the  
ombudsman program is to represent the best interests of  
individuals involved in the State's TANF program, ASPIRE Program  
or Parents as Scholars Program as a class and to investigate and  
resolve complaints against state agencies that may be infringing  
on the rights of individuals involved in these programs.

16 **2. Powers and duties.** The ombudsman program may:

18 **A. Provide advocacy services to individual citizens in**  
20 **matters relating to those TANF program, ASPIRE Program and**  
22 **Parents as Scholars Program services provided by and under**  
**the jurisdiction of the State;**

24 **B. Review and evaluate, on a continuing basis, state and**  
26 **federal policies and programs relating to the provision of**  
28 **TANF program, ASPIRE Program and Parents as Scholars Program**  
**services conducted or assisted by any state departments or**  
**agencies for the purpose of identifying and addressing**  
**patterns or recurrent problems with these programs;**

30 **C. Receive, investigate and resolve inquiries, complaints,**  
32 **problems or requests for information and assistance**  
34 **regarding the State's TANF program, ASPIRE Program and**  
**Parents as Scholars Program;**

36 **D. Serve as a liaison for communication between individuals;**

38 **E. Coordinate information and make referrals for services**  
40 **to relevant state agencies or other organizations when**  
**appropriate;**

42 **F. Market and operate a toll-free telephone number for**  
44 **individuals involved in the State's TANF program, ASPIRE**  
**Program and Parents as Scholars Program;**

46 **G. Provide a range of alternative dispute resolution**  
48 **methods to individuals, including the pursuit of legal**  
**remedies when appropriate;**

50 **H. Advise, consult and assist the executive and legislative**  
**branches on activities of State Government relating to the**

2 TANF program, ASPIRE Program and Parents as Scholars Program  
3 and recommend improvements to the quality of these programs  
4 in State Government; and

5 I. Make annual reports relating to the activities of the  
6 ombudsman program to the department and the joint standing  
7 committee of the Legislature having jurisdiction over human  
8 services.

10 3. Access to files and records. The ombudsman program has  
11 access, limited only by the law, to the files, records and  
12 personnel of the department or any agency or entity administered,  
13 licensed or funded by the department for the purposes of  
14 investigation of an inquiry or complaint. The ombudsman may also  
15 enter the premises of the department or any agency or entity  
16 administered, licensed or funded by the department for the  
17 purposes of investigation of an inquiry or complaint.

18 4. Confidentiality of records. Information or records  
19 maintained by the ombudsman program relating to a complaint or  
20 investigation may not be disclosed unless the ombudsman  
21 authorizes the disclosure. The ombudsman may not disclose the  
22 identity of any complainant unless the complainant or a legal  
23 representative of the complainant consents in writing to the  
24 disclosure or a court orders the disclosure. A complainant or a  
25 legal representative of the complainant, in providing the  
26 consent, may specify to whom the identity may be disclosed and  
27 for what purposes, in which event no other disclosure is  
28 authorized.

30 5. Immunity. Any person that in good faith participates in  
31 the registering of a complaint with the ombudsman program  
32 pursuant to this section or in good faith investigates that  
33 complaint as an employee or volunteer of the ombudsman program is  
34 immune from any civil or criminal liability that otherwise might  
35 result from these actions. For the purpose of any civil or  
36 criminal proceedings, there is a rebuttable presumption that any  
37 person acting pursuant to this section did so in good faith.

40 **Sec. 4. 22 MRSA §4004-B is enacted to read:**

42 **§4004-B. Right to fair hearing for parents involved in child**  
43 **protective matters**

44 Before the initiation of a child protection proceeding, a  
45 parent or custodian who believes the conditions imposed by the  
46 department that are intended to reduce the risk of abuse or  
47 neglect of a child or that are intended to allow the parent or  
48 custodian to retain custody of a child has the right to a fair  
49 hearing. Any action relative to the conditions imposed by the  
50 department that are intended to reduce the risk of abuse or



2 department must be communicated to the parent or custodian in  
4 writing and must state that the parent or custodian affected has  
6 the right to a hearing. A hearing under this section must be  
8 convened and a decision rendered on an expedited basis in  
10 accordance with the Maine Administrative Procedure Act.

12 **Sec. 5. 22 MRSA §4087**, as enacted by PL 1989, c. 400, §§7 and  
14 14, is repealed.

16 **Sec. 6. 22 MRSA §4087-A** is enacted to read:

18 **§4087-A. Child welfare services ombudsman program**

20 **1. Program established.** The department shall establish and  
22 maintain a child welfare services ombudsman program by contract  
24 with such nonprofit organizations that the department finds best  
26 able to provide the services. The purpose of the ombudsman  
28 program is to represent the best interests of individuals  
30 involved in the State's child welfare system as a class and to  
32 investigate and resolve complaints against state agencies that  
34 may be infringing on the rights of individuals involved in the  
36 State's child welfare system.

38 **2. Powers and duties.** The ombudsman program may:

40 **A. Provide advocacy services to individual citizens in**  
42 matters relating to those child welfare services provided by  
44 and under the jurisdiction of the State;

46 **B. Review and evaluate, on a continuing basis, state and**  
48 federal policies and programs relating to the provision of  
50 child welfare services conducted or assisted by any state  
52 departments or agencies for the purpose of identifying and  
54 addressing patterns or recurrent problems with the State's  
56 child welfare system;

58 **C. Receive, investigate and resolve inquiries, complaints,**  
60 problems or requests for information and assistance  
62 regarding the State's child welfare services;

64 **D. Serve as a liaison for communication between individuals;**

66 **E. Coordinate information and make referrals for services**  
68 to relevant state agencies or other organizations when  
70 appropriate;

72 **F. Market and operate a toll-free telephone number for**  
74 individuals involved in the child welfare system;

2 G. Provide a range of alternative dispute resolution  
3 methods to individuals, including the pursuit of legal  
4 remedies when appropriate;

5 H. Advise, consult and assist the executive and legislative  
6 branches on activities of State Government relating to child  
7 welfare services and recommend improvements to the quality  
8 of child welfare services in State Government; and

9 I. Make annual reports relating to the activities of the  
10 ombudsman program to the department and the joint standing  
11 committee of the Legislature having jurisdiction over human  
12 services.

13 **3. Access to files and records.** The ombudsman program has  
14 access, limited only by the law, to the files, records and  
15 personnel of the department or any agency or entity administered,  
16 licensed or funded by the department for the purposes of  
17 investigation of an inquiry or complaint. The ombudsman may also  
18 enter the premises of the department or any agency or entity  
19 administered, licensed or funded by the department for the  
20 purposes of investigation of an inquiry or complaint.

21 **4. Confidentiality of records.** Information or records  
22 maintained by the ombudsman program relating to a complaint or  
23 investigation may not be disclosed unless the ombudsman  
24 authorizes the disclosure and the disclosure is otherwise  
25 permitted pursuant to section 4008. The ombudsman may not  
26 disclose the identity of any complainant unless the complainant  
27 or a legal representative of the complainant consents in writing  
28 to the disclosure or a court orders the disclosure. A complainant  
29 or a legal representative of the complainant, in providing the  
30 consent, may specify to whom the identity may be disclosed and  
31 for what purposes, in which event no other disclosure is  
32 authorized.

33 **5. Immunity.** Any person that in good faith participates in  
34 the registering of a complaint with the ombudsman program  
35 pursuant to this section or in good faith investigates that  
36 complaint as an employee or volunteer of the ombudsman program is  
37 immune from any civil or criminal liability that otherwise might  
38 result from these actions. For the purpose of any civil or  
39 criminal proceedings, there is a rebuttable presumption that any  
40 person acting pursuant to this section did so in good faith.

41 **Sec. 7. 22 MRSA §4089, sub-§1, ¶E,** as enacted by PL 1989, c.  
42 819, §6, is amended to read:

43

2 E. The child welfare services ombudsman, appointed in  
accordance with section 4087 4087-A, shall serve as a  
4 permanent member.

6 **Sec. 8. Biennial reporting requirement.** Beginning in January  
shall report to the joint standing committee of the Legislature  
8 having jurisdiction over human services regarding the ombudsman  
programs and advocacy services offered to clients of the  
10 department and the utilization and effectiveness of these  
programs and services.

12 **Sec. 9. Adoption of rules.** The Department of Human Services,  
14 Bureau of Child and Family Services shall adopt rules for the  
operation of the child protective system by December 31, 1999.  
16 Rules adopted pursuant to this section are routine technical  
rules as defined in the Maine Revised Statutes, Title 5, chapter  
18 375, subchapter II-A.

20 **Sec. 10. Investigation of Temporary Assistance to Needy Families  
program.** The Department of Human Services shall examine whether  
22 sanctions in the Temporary Assistance to Needy Families program  
are fairly and uniformly administered throughout the State and  
24 implement a corrective action plan to remedy any problems that  
are found. In its examination, the department shall calculate  
26 the percentage of Temporary Assistance to Needy Families program  
recipients sanctioned in each county and determine a statewide  
28 average, excluding those counties that are found to have very  
high or very low rates of sanctions compared with the total  
30 numbers of participants in the Temporary Assistance to Needy  
Families program in that county. Any county that exceeds the  
32 State sanction average by more than 5 percentage points is  
subject to further review. The review process must include a  
34 review of the case file of each sanctioned family to determine  
whether the caseworker followed state policy by contacting the  
36 family to hear the family's side of the story and evaluating  
whether the family had "good cause" for failing to comply. If  
38 the reviewer determines that the sanction was incorrectly  
applied, the family must be reinstated and any benefits  
40 improperly withheld must be restored.

42  
44

## SUMMARY

46 This bill implements the recommendations of the Task Force  
to Study the Need for an Ombudsman for the Department of Human  
Services and the Department of Mental Health, Mental Retardation  
48 and Substance Abuse Services relating to the Department of Human  
Services.