

MAINE STATE LEGISLATURE

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L.D. 1967

Date: 4-1-08

(Filing No. S-547)

HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
SENATE
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to S.P. 761, L.D. 1967, Bill, "An Act To Establish a Consumer Council System of Maine Consistent with the AMHI Consent Decree and the State's Comprehensive Mental Health Plan"

Amend the bill by striking out the title and substituting the following:

'An Act To Establish a Consumer Council System of Maine'

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 5 MRSA §12004-I, sub-§60-B is enacted to read:

60-B.

| | | | |
|----------------------|--------------------------|------------------------|------------------------|
| <u>Mental Health</u> | <u>Consumer</u> | <u>Expenses and</u> | <u>34-B MRSA §3611</u> |
| | <u>Council System of</u> | <u>Legislative Per</u> | |
| | <u>Maine</u> | <u>Diem</u> | |

Sec. 2. 34-B MRSA §3611 is enacted to read:

§3611. Consumer Council System of Maine

In order to promote high-quality adult mental health services, the Consumer Council System of Maine, established in Title 5, section 12004-I, subsection 60-B and referred to in this section as "the council system," is established to provide an effective, independent consumer voice in an advisory capacity in the development of public policy and resource allocation. The council system consists of the Statewide Consumer Council established in subsection 6 and local councils.

1. Independent public instrumentality. The council system exists as an independent public instrumentality of the State to provide guidance and advice from consumers of adult mental health services provided or funded by the State regarding the delivery of effective and appropriate adult mental health services consistent with the

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1 State's comprehensive mental health services plan and to comply with the consent decree
2 and incorporated settlement agreement in the case of Paul Bates, et al. v. Robert Glover,
3 et al., Kennebec County Superior Court, Civil Action Docket No. CV-89-88 dated August
4 2, 1990.

5 **2. Governmental functions; tort claims.** Exercise of the powers conferred by this
6 section is the performance of an essential governmental function. The council system
7 must be considered as within the definition of "State" for the purposes of Title 14, section
8 8102, subsection 4. The council system is not considered an agency of the State for the
9 purposes of budgeting, accounts and control, auditing, contracting and purchasing.

10 **3. Duties.** As pertains to the delivery of mental health services for adults, the
11 council system shall:

12 A. Advise the department, the Governor and other state agencies. This duty includes
13 advising the department on the review, analysis and evaluation of adult mental health
14 programs, policies, procedures and service delivery systems administered or funded
15 by the State and the hiring of personnel when appropriate;

16 B. Assist the department in program design and implementation, including
17 assessment of the quality of services and delivery systems and prioritization of
18 programming;

19 C. Provide consumers with a recognized mechanism for collaboration with State
20 Government, including addressing issues with persons and entities that provide
21 services through contracts with the department;

22 D. Provide input regarding programs, evaluation, public policy and resource
23 allocation and address issues and concerns that arise at the local level;

24 E. Identify, research and respond to issues of importance to consumers, including
25 requesting information and data to facilitate informed decision making;

26 F. Interact with state agencies, community entities and other organizations;

27 G. Provide budget requests to fund the council system to the department for each
28 biennial budget and each supplemental budget; and

29 H. Make annual and interim recommendations to State Government and provide by
30 May 31st of each year a report to the Governor and the Legislature. The report must
31 include analysis of state programs, policies and procedures, legislative and regulatory
32 proposals and recommendations for action by the State.

33 **4. Powers.** The council system may:

34 A. Contract for staff assistance or hire employees, including an executive director or
35 project manager and such other staff as necessary, to conduct the activities of and
36 support the duties of the council system. Employees of the council system are not
37 state employees; however, they are immune from civil liability for acts that they
38 perform in good faith within the scope of their duties for the council system;

39 B. Reimburse members of the Statewide Consumer Council established in subsection
40 6 and local council members who are not otherwise fully reimbursed for expenses of
41 participating in council system meetings from the council system budget in an

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1 amount up to the legislative per diem rate for participation in Statewide Consumer
2 Council and local council meetings, plus reimbursement for reasonable and necessary
3 expenses actually incurred, including but not limited to costs incurred for travel, child
4 care for the member's child and substitute care for dependent adults. A standard
5 statewide rate of reimbursement, including reduced reimbursement for a member
6 entitled to partial reimbursement from any other source, must be approved by the
7 Statewide Consumer Council. To the extent allowable under federal law,
8 reimbursement under this paragraph may not be counted as income, resources or
9 assets for the purposes of determining eligibility for benefits under any state or
10 municipal program of assistance or health coverage for which a council member may
11 be eligible;

12 C. Engage in advocacy regarding legislative and regulatory initiatives; and

13 D. Provide interim reports to the Governor and the Legislature and respond to
14 written responses from the department under subsection 5.

15 **5. Written response.** No later than September 30th of each year, the commissioner
16 shall provide a written response to the council system's annual report under subsection 3,
17 paragraph H to the chair of the Statewide Consumer Council, the Governor and the
18 Legislature. The response must:

19 A. Address the actions that the department plans to take or proposes to implement
20 with regard to the recommendations contained in the council system's annual report
21 and any interim reports or the reasons for declining to take or propose action; and

22 B. Include a report on progress in implementing actions detailed in prior department
23 written reports under this subsection.

24 **6. Statewide Consumer Council.** The provisions of this subsection govern the
25 membership, duties and operation of the Statewide Consumer Council, as established in
26 Title 5, section 12004-I, subsection 60-B.

27 A. The Statewide Consumer Council consists of 16 to 30 members who represent the
28 local councils, described in subsection 7, after being elected at local council meetings
29 on a schedule established by the Statewide Consumer Council.

30 B. Members of the Statewide Consumer Council shall annually elect a coordinating
31 committee consisting of a chair, vice-chair, secretary and treasurer. Officers serve for
32 terms of one year and are eligible for reelection.

33 C. The Statewide Consumer Council shall:

34 (1) Convene at least 4 regular meetings per year and special meetings as the
35 Statewide Consumer Council determines necessary;

36 (2) Establish an application procedure by which the Statewide Consumer
37 Council may recognize a local council;

38 (3) Determine the timing of and procedures for elections by local councils to
39 elect representatives to the Statewide Consumer Council;

40 (4) Apportion the number of representatives each local council will have on the
41 Statewide Consumer Council; and

1 (5) Adopt policies and procedures regarding removal for good cause of a
2 Statewide Consumer Council member.

3 D. Meetings of the Statewide Consumer Council or such subcommittees as may be
4 formed from the council membership may be held to perform the duties listed in
5 subsection 3 and:

6 (1) To receive, review and distribute the recommendations of the local councils
7 and prepare the council system's annual report and any interim reports;

8 (2) To develop a mechanism for communication with department personnel that
9 ensures timely responses to issues and concerns identified by the council system
10 and that provides a formal means of communication with the commissioner and
11 high-level department personnel;

12 (3) To advise and engage in dialogue with the department concerning oversight,
13 evaluation, unmet needs, quality assurance and quality improvement, design of
14 new program initiatives and prioritization of programming; and

15 (4) To oversee and manage the council system, including assumption of
16 responsibility for the development of local councils in unrepresented areas.

17 E. The Statewide Consumer Council shall adopt policies and procedures for the
18 operation of the Statewide Consumer Council and the local councils. The policies
19 must:

20 (1) Require that local councils file with the Statewide Consumer Council
21 periodic reports and maintain records of meetings and business conducted, a list
22 of members elected to the Statewide Consumer Council and leadership and
23 financial records; and

24 (2) Require that the Statewide Consumer Council file with the department
25 periodic reports and maintain records of meetings and business conducted,
26 policies and procedures adopted and financial records as required by contract
27 with the department.

28 7. Local councils. The provisions of this subsection govern the membership, duties
29 and operation of the local councils.

30 A. Each local council shall follow the policies and procedures for local councils
31 adopted by the Statewide Consumer Council pursuant to subsection 6.

32 B. Each local council shall hold regular meetings, at least 4 per year and more if
33 determined necessary by the local council, for the purpose of discussing and
34 reviewing the delivery of adult mental health services to consumers and shall engage
35 in other activities:

36 (1) To reach out to all persons in the surrounding community to encourage
37 participation in the local council, to stimulate and receive local consumer advice
38 and to gain awareness of local concerns, needs and ideas, including identifying
39 concerns of persons who do not usually participate in the local council meetings;

40 (2) To advocate for and provide advice regarding local response to local issues;

1 (3) To advise the department, State Government and independent contractors on
2 local responses to local issues through communication with the Statewide
3 Consumer Council;

4 (4) To elect representatives to the Statewide Consumer Council; and

5 (5) To communicate with the Statewide Consumer Council via elected members
6 and reports regarding issues of concern identified by the local council.

7 **8. Funding.** Funding for the council system must be included as part of the
8 Governor's proposed budget for the department. The council system may accept gifts,
9 grants and other funds and contributions for use in performing the duties of the council
10 system as long as such gifts, grants, funds and contributions are in accordance with state
11 laws prohibiting conflicts of interest.

12 **9. General provisions.** The provisions of this subsection apply to the council
13 system.

14 A. A Statewide Consumer Council member or elected local council member may not
15 cast a vote on any matter that would provide any direct or indirect financial benefit to
16 that member or otherwise give the appearance of a conflict of interest under state law.

17 B. A person may not be excluded from the council system or discriminated against
18 within the council system by reason of race, creed, color, gender, sexual orientation,
19 age, marital status, homelessness, national origin, disability or status as a consumer of
20 mental health services.

21 C. Meetings of the Statewide Consumer Council and local councils are public
22 proceedings and their records are public records for the purposes of Title 1, chapter
23 13.

24 **Sec. 3. Transition provisions.** The provisions of this section apply to the transfer
25 of functions from the Transitional Planning Group convened under the auspices of the
26 Department of Health and Human Services in 2007 to the Consumer Council System of
27 Maine and to the remaining time period under the consent decree and incorporated
28 settlement agreement in the case of Paul Bates, et al. v. Robert Glover, et al., Kennebec
29 County Superior Court, Civil Action Docket No. CV-89-88 dated August 2, 1990.

30 **1. Governance guidelines.** The governance guidelines approved by the Transitional
31 Planning Group on April 19, 2007 must serve as the initial policies and procedures for the
32 establishment of the Consumer Council System of Maine, including local councils, until
33 those policies and procedures are replaced by the Statewide Consumer Council elected
34 pursuant to the Maine Revised Statutes, Title 34-B, section 3611.

35 **2. Members of the interim Statewide Consumer Council.** An interim Statewide
36 Consumer Council, consisting of Transitional Planning Group representatives serving on
37 the effective date of this Act, shall serve until local councils are established and elect
38 members to the Statewide Consumer Council under the provisions of the Maine Revised
39 Statutes, Title 34-B, section 3611, subsections 6 and 7.

40 **3. Relationship to the Bates v. Glover consent decree.** During the time period in
41 which the consent decree and incorporated settlement agreement in the case of Paul
42 Bates, et al. v. Robert Glover, et al., Kennebec County Superior Court, Civil Action

R. 015

COMMITTEE AMENDMENT "A" to S.P. 761, L.D. 1967

1 Docket No. CV-89-88 dated August 2, 1990 are in effect, the Consumer Council System
2 of Maine shall provide its annual report under the Maine Revised Statutes, Title 34-B,
3 section 3611, subsection 3, paragraph H to the Court Master and to the Chief Justice of
4 the Maine Supreme Judicial Court in addition to the Governor and the Legislature. In
5 addition, during this time period the Statewide Consumer Council shall maintain formal
6 communication with the Court Master at least twice per year to ensure the effectiveness
7 of the Consumer Council System of Maine.'

8 **SUMMARY**

9 This amendment establishes the Consumer Council System of Maine, consisting of
10 the Statewide Consumer Council and local councils, to provide an effective, independent
11 consumer voice in an advisory capacity in the development of public policy and resource
12 allocation for delivery of adult mental health services in the State.

13 **FISCAL NOTE REQUIRED**
14 (See attached)



Approved: 03/26/08 *MAC*

123rd MAINE LEGISLATURE

LD 1967

LR 2989(02)

**An Act To Establish a Consumer Council System of Maine Consistent with the AMHI Consent Decree
and the State's Comprehensive Mental Health Plan**

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

The additional costs associated with the mental health consumer council can be absorbed by the Department of Health and Human Services utilizing existing budgeted resources.