

MAINE STATE LEGISLATURE

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8/11/13
R O F S

L.D. 897

Date: 6/11/13

(Filing No. H-462)

Majority

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 620, L.D. 897, Bill, "An Act To Establish the Volunteer Advocate Program"

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

'An Act To Establish the Volunteer Advocate Program and the Volunteer Advocate Program Council'

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

'Sec. 1. 5 MRSA §12004-I, sub-§66-A is enacted to read:

66-A.

Mental Health and Intellectual Disability Volunteer Advocate Program Council Expenses Only 34-B MRSA §1223, sub-§12

Sec. 2. 22 MRSA §3477, sub-§1, ¶C, as amended by PL 2011, c. 291, §2, is further amended to read:

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation; or

Sec. 3. 22 MRSA §3477, sub-§1, ¶D, as enacted by PL 2011, c. 291, §2, is amended to read:

D. Any person providing transportation services as a volunteer or employee of an agency, business or other entity, whether or not the services are provided for compensation; and

Sec. 4. 22 MRSA §3477, sub-§1, ¶E is enacted to read:

COMMITTEE AMENDMENT

ROFS

1 E. Any person serving as a volunteer advocate under the Volunteer Advocate
2 Program established in Title 34-B, section 1223, subsection 12.

3 **Sec. 5. 34-B MRSA §1223, sub-§9, ¶G** is enacted to read:

4 G. The board shall make recommendations to the Governor for appointment to the
5 Volunteer Advocate Program Council established pursuant to Title 5, section
6 12004-I, subsection 66-A.

7 **Sec. 6. 34-B MRSA §1223, sub-§12** is enacted to read:

8 **12. Volunteer Advocate Program.** The Volunteer Advocate Program, referred to in
9 this subsection as "the program," is established within the board for the purpose of
10 advocating for the rights of persons with intellectual disabilities or autism. The program
11 may assist persons, referred to in this subsection as "consumers," who have requested to
12 be served by a volunteer advocate. The program shall serve the consumer within a
13 system of services and supports that operates according to the principles of normalization
14 and full community inclusion.

15 A. The Volunteer Advocate Program Council, established by Title 5, section
16 12004-I, subsection 66-A and referred to in this section as "the council," consists of 6
17 members.

18 (1) The Governor shall appoint the members of the council based on
19 recommendations of the board. Members serve for terms of 3 years and may be
20 reappointed for up to 3 full terms. In making appointments, the Governor shall
21 endeavor to ensure adequate representation from different regions of the State.

22 (2) Council members must be volunteer advocates. A member of the board, a
23 member of any other state advisory council and a state employee or contractor
24 may not serve as a council member.

25 (3) A vacancy on the council must be filled as soon as practicable by
26 appointment for the unexpired term in the same manner as the original
27 appointment under subparagraph (1). A member serves until a successor is
28 appointed.

29 B. The council shall elect a chair from among its members.

30 C. Council members are entitled to reimbursement of reasonable expenses incurred
31 in order to serve on the council as provided in Title 5, section 12004-I, subsection
32 66-A.

33 D. The council may hire a program coordinator.

34 E. The program must be funded from the budget of the board. The board must
35 provide funding to the council and the program. The amount of funding must be
36 proportionally similar to the amount of funding that was provided by the board to the
37 program of volunteer correspondents that preceded the council and program. The
38 board retains fiscal responsibility for the program. The council and program must
39 remain operationally independent from the board.

40 F. The council may raise funds, through grants or other means, to be used toward the
41 operation of the program or for specific projects.

COMMITTEE AMENDMENT

1 G. Council members, staff of the program and volunteer advocates act as employees
2 of the State, as defined in Title 14, section 8102, subsection 1, when engaged in
3 official duties specified in this section or assigned by the council.

4 H. The council shall oversee and exercise operational control of the program and
5 shall perform the following duties:

6 (1) To recruit, approve, train, assign, supervise and support volunteer advocates
7 for consumers of services for persons with intellectual disabilities or autism and
8 to supervise the program coordinator; and

9 (2) To maintain and update a policy and training manual for volunteer advocates.
10 The manual must include a policy regarding protection of confidential
11 information and conflicts of interest. Every 2 years, beginning January 15, 2014,
12 the council shall submit a copy of the manual, and any updates, to the board and
13 the department for review and comment.

14 I. The program may refer matters brought to its attention to other resources when
15 those matters involve consumers who have a volunteer advocate assigned by the
16 program.

17 J. A volunteer advocate shall serve as the next friend of a consumer who wishes to
18 have a volunteer advocate and to whom the volunteer advocate has been assigned by
19 the program. A volunteer advocate shall attend planning meetings and assist a
20 consumer in articulating the consumer's needs and desires and in ensuring that the
21 consumer's rights under law are acknowledged and respected.

22 K. The program, its staff and volunteer advocates, subject to the right of the
23 consumer to restrict access, have the following rights of access to information and
24 facilities.

25 (1) A volunteer advocate must be provided access to all living and program areas
26 used by a consumer and to records related to a consumer for whom the volunteer
27 advocate serves as volunteer advocate, other than personnel records of persons
28 providing services to the consumer. A volunteer advocate must be provided
29 access to the personnel of any institution, facility, agency or other provider that is
30 servicing a consumer that the volunteer advocate represents and that is
31 administered, licensed or funded by a state agency. This subparagraph does not
32 permit a volunteer advocate access to information or records relating to a person
33 or persons for whom the volunteer advocate does not serve as the designated
34 volunteer advocate.

35 (2) The program and program staff must be provided access as described in
36 subparagraph (1) for all consumers who participate in the program.

37 (3) A volunteer advocate has the right to be notified of and attend all personal
38 planning meetings for the consumer to whom the volunteer advocate is assigned
39 and to file grievances on that consumer's behalf.

40 L. The council shall submit a report by January 15th, annually, to the board, the
41 department and the joint standing committee of the Legislature having jurisdiction

1 over health and human services matters. The report must provide information on the
2 activities of the council and the operations of the program.

3 M. The council and the board shall adopt rules governing the operations of the
4 council, including bylaws governing the program and policies specifying the
5 program's independent operation. Rules adopted pursuant to this paragraph are
6 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7 N. The council, in the interests of the complete independence of the program, shall
8 work toward establishing the program as a not-for-profit tax-exempt corporation that
9 is independent of the department, the board and any of the agencies that provide
10 services to consumers. The department and the board shall assist the council in the
11 transition of the program to an independent entity.

12 **Sec. 7. 34-B MRSA §5001, sub-§1-B**, as amended by PL 2011, c. 542, Pt. A,
13 §74, is repealed.

14 **Sec. 8. 34-B MRSA §5001, sub-§8** is enacted to read:

15 **8. Volunteer advocate.** "Volunteer advocate" means a person who serves as
16 advocate and next friend for a consumer in accordance with the provisions of section
17 1223, subsection 12.

18 **Sec. 9. 34-B MRSA §5206, sub-§7**, as amended by PL 2011, c. 542, Pt. A, §93,
19 is further amended to read:

20 **7. Training.** The department shall offer regular and ongoing information,
21 consultation and training on crisis prevention and intervention and respite services to its
22 own staff, providers and persons with intellectual disabilities or autism and their families,
23 guardians, ~~correspondents~~ volunteer advocates and allies.

24 **Sec. 10. 34-B MRSA §5461, sub-§8-C**, as enacted by PL 2003, c. 389, §3, is
25 amended to read:

26 **8-C. Planning team.** "Planning team" means those persons, including at a minimum
27 the client, the client's guardian and the client's individual support coordinator and others
28 selected by the client or guardian to participate, who develop a personal plan or service
29 plan. The planning team may include family, friends, service providers, ~~correspondents~~
30 volunteer advocates, advocates and others.

31 **Sec. 11. 34-B MRSA §5470-B, sub-§2, ¶D**, as enacted by PL 2007, c. 356, §21
32 and affected by §31, is amended to read:

33 D. Be developed at the direction of that person and include people whom the person
34 chooses to participate. The planning process must minimally include the person, the
35 person's guardian, if any, the ~~correspondent~~ volunteer advocate, if any, and the
36 person's case manager;

37 **Sec. 12. 34-B MRSA §5470-B, sub-§8, ¶B**, as amended by PL 2011, c. 542, Pt.
38 A, §114, is further amended to read:

39 B. The department shall ensure the provision of regular and ongoing training in
40 personal planning to persons with intellectual disabilities or autism and their families,
41 guardians, ~~correspondents~~ volunteer advocates and allies as well as its own staff and

1 providers. The department shall regularly provide persons with intellectual
2 disabilities or autism and their families, guardians, volunteer advocates and allies
3 with informational materials regarding personal planning.

4 **Sec. 13. 34-B MRSA §5470-B, sub-§10** is enacted to read:

5 **10. Notice to Volunteer Advocate Program.** The department shall notify the
6 Volunteer Advocate Program under section 1223, subsection 12 whenever a planning
7 team for an adult with an intellectual disability or autism has determined that the adult
8 has a need for a volunteer advocate.

9 **Sec. 14. 34-B MRSA §5604, sub-§3, ¶A**, as amended by PL 2011, c. 657, Pt.
10 EE, §7, is further amended to read:

11 A. The department shall provide easily accessible and regular notice of the grievance
12 process to persons with intellectual disabilities or autism served by the department.
13 This notice must be included in informational materials provided to such persons, as
14 well as to guardians, families, ~~correspondents~~ volunteer advocates and allies. Notice
15 of the right to appeal must be prominently displayed in regional offices and on the
16 department’s publicly accessible website and must be readily available from provider
17 agencies. Notice of the right to appeal must be included in all substantive
18 correspondence regarding personal planning. Written notice of the right to appeal
19 must also be provided when there is a denial or reduction of services or supports to
20 persons served by the department. All notices and information regarding the
21 grievance process must be written in language that is plain and understandable and
22 must include the address and telephone number of the protection and advocacy
23 agency designated pursuant to Title 5, section 19502.

24 **Sec. 15. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title
25 34-B, section 1223, subsection 12, paragraph A, subparagraph (1), of the initial members
26 of the Volunteer Advocate Program Council, the Governor shall designate 2 appointees to
27 serve for one-year terms, 2 appointees to serve for 2-year terms and 2 appointees to serve
28 for 3-year terms. An initial term of one year or 2 years may not be considered a full term
29 for the purposes of limiting the number of terms for which a member may serve.'

30 **SUMMARY**

31 This amendment is the majority report of the committee. This amendment changes
32 the name of the Volunteer Advocate Program Board to the Volunteer Advocate Program
33 Council, places the council within the Maine Developmental Services Oversight and
34 Advisory Board established pursuant to the Maine Revised Statutes, Title 34-B, section
35 1223 and gives to the board the responsibility of making recommendations to the
36 Governor for appointments to the council. This amendment adds a person who serves as
37 a volunteer advocate under the Volunteer Advocate Program to the list of persons who
38 are required to report to the Department of Health and Human Services known or
39 suspected abuse, neglect or exploitation of an incapacitated or dependent adult. The
40 amendment allows council members to serve 3 terms and changes the budget of the
41 council to a portion of the budget of the Maine Developmental Services Oversight and
42 Advisory Board in the same proportion as was provided to the volunteer correspondent
43 program. The amendment adds to the duties of the council supervision of the program

1 coordinator. The amendment removes from the provision on fund-raising the statement
2 on use of funds to defray the State's budget expenditure for the program. The amendment
3 adds to the council's duties the duty to exercise operational control of the program. The
4 amendment adds rulemaking and bylaw and policy responsibilities for the Maine
5 Developmental Services Oversight and Advisory Board. The amendment adds to the
6 duties of the council the duty to provide an annual report to the board, the department and
7 the joint standing committee of the Legislature having jurisdiction over health and human
8 services matters on the activities of the council and the operations of the program. The
9 amendment clarifies that a volunteer advocate is available to a person who requests the
10 assignment of an advocate and allows a consumer to restrict the advocate's access to
11 people, facilities and records. The amendment changes existing provisions of law on
12 personal planning for persons with intellectual disabilities or autism, enacting a definition
13 of "volunteer advocate," eliminating references to volunteer correspondents and
14 substituting references to volunteer advocates.

15 **FISCAL NOTE REQUIRED**

16 **(See attached)**



126th MAINE LEGISLATURE

LD 897

LR 265(02)

An Act To Establish the Volunteer Advocate Program

Fiscal Note for Bill as Amended by Committee Amendment *A (H462)*

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

The additional costs to the Department of Health and Human Services are expected to be minor and can be absorbed utilizing existing budgeted resources.