

# MAINE STATE LEGISLATURE

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Date: 4/17/18

L.D. 1676

(Filing No. H- 769)

Majority

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1164, L.D. 1676, Bill, "An Act To Reestablish the Office of Advocacy within the Department of Health and Human Services"

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

'An Act To Establish an Independent Oversight Panel To Review Deaths of and Serious Injuries to Persons with Intellectual Disabilities or Autism'

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

Sec. 1. 5 MRSA §12004-J, sub-§18 is enacted to read:

18:

Intellectual
Disability or
Autism

Panel To Review
Deaths of and
Serious Injuries to
Persons with
Intellectual
Disabilities or
Autism

Expenses for
uncompensated
members

34-B MRSA §1971

Sec. 2. 22 MRSA §1711-C, sub-§6, ¶T, as amended by PL 2017, c. 203, §3, is further amended to read:

T. To a lay caregiver designated by an individual pursuant to section 1711-G; and

Sec. 3. 22 MRSA §1711-C, sub-§6, ¶U, as enacted by PL 2017, c. 203, §4, is amended to read:

U. To a panel coordinator of the maternal, fetal and infant mortality review panel pursuant to section 261, subsection 4, paragraph B-1 for the purposes of reviewing health care information of a deceased person and a mother of a child who died within one year of birth, including fetal deaths after 28 weeks of gestation. For purposes of

H. 43.

1 this paragraph, "panel coordinator" has the same meaning as in section 261,  
2 subsection 1, paragraph E and "deceased person" has the same meaning as in section  
3 261, subsection 1, paragraph B; and

4 **Sec. 4. 22 MRSA §1711-C, sub-§6, ¶V** is enacted to read:

5 V. To the panel coordinator, appointed under Title 34-B, section 1972, subsection 1,  
6 of the Panel To Review Deaths of and Serious Injuries to Persons with Intellectual  
7 Disabilities or Autism, established in Title 5, section 12004-J, subsection 18, for the  
8 purposes of reviewing health care information of a person with an intellectual  
9 disability or autism receiving adult developmental services as defined in Title 34-B,  
10 section 1001, subsection 1-A who has died or experienced a serious injury in the last  
11 12 months.

12 **Sec. 5. 22 MRSA §3474, sub-§3, ¶C**, as corrected by RR 1991, c. 2, §80, is  
13 amended to read:

14 C. A grand jury on its determination that access to those records is necessary in the  
15 conduct of its official business; and

16 **Sec. 6. 22 MRSA §3474, sub-§3, ¶D**, as corrected by RR 1991, c. 2, §81, is  
17 amended to read:

18 D. An advocacy agency conducting an investigation under chapter 961, United  
19 States Public Law 88-164, Title I, Part C or United States Public Law 99-319,  
20 regarding a developmentally disabled person or mentally ill person who is or who,  
21 within the last 90 days, was residing in a facility rendering care or treatment, when a  
22 complaint has been received by the agency or there is probable cause to believe that  
23 that individual has been subject to abuse or neglect, and that person does not have a  
24 legal guardian or the person is under public guardianship. The determination of  
25 which information and records are relevant to the investigation is made by agreement  
26 between the department and the agency; and

27 **Sec. 7. 22 MRSA §3474, sub-§3, ¶E** is enacted to read:

28 E. The panel coordinator, appointed under Title 34-B, section 1972, subsection 1, of  
29 the Panel To Review Deaths of and Serious Injuries to Persons with Intellectual  
30 Disabilities or Autism, established in Title 5, section 12004-J, subsection 18.

31 **Sec. 8. 34-B MRSA c. 1, sub-c. 9** is enacted to read:

32 **SUBCHAPTER 9**

33 **PANEL TO REVIEW DEATHS OF AND SERIOUS INJURIES TO**  
34 **PERSONS WITH INTELLECTUAL DISABILITIES OR AUTISM**

35 **§1971. Panel To Review Deaths of and Serious Injuries to Persons with Intellectual**  
36 **Disabilities or Autism**

37 The Panel To Review Deaths of and Serious Injuries to Persons with Intellectual  
38 Disabilities or Autism, referred to in this subchapter as "the panel," is established to  
39 conduct comprehensive, multidisciplinary reviews of cases of death of or serious injury to

1 persons with intellectual disabilities or autism receiving adult developmental services in  
2 the State as described in this subchapter.

3 **§1972. Panel membership; compensation; staffing**

4 **1. Membership.** The panel consists of 14 members as provided in this subsection.

5 A. The commissioner shall appoint a member to the panel who is an employee of the  
6 Maine Center for Disease Control and Prevention within the department and who is a  
7 registered nurse. The member appointed pursuant to this paragraph is the panel  
8 coordinator.

9 B. The Maine Developmental Services Oversight and Advisory Board, established in  
10 Title 5, section 12004-J, subsection 15, shall appoint a member to the panel. The  
11 board may appoint a new member to the panel annually or as the board determines  
12 necessary.

13 C. The Governor shall appoint 4 members to the panel as follows:

14 (1) A representative of the judicial branch;

15 (2) A physician licensed under Title 32, chapter 36 or chapter 48 who is a  
16 primary care physician;

17 (3) A law enforcement officer; and

18 (4) A provider of community services to persons with intellectual disabilities or  
19 autism in the State.

20 D. The President of the Senate shall appoint 4 members to the panel as follows:

21 (1) A nurse licensed in the State with expertise in intellectual disabilities or  
22 autism;

23 (2) A person licensed to practice law in the State working in the public sector;

24 (3) A person with expertise in forensic pathology; and

25 (4) A person with expertise in the field of community mental health.

26 E. The Speaker of the House of Representatives shall appoint 4 members to the panel  
27 as follows:

28 (1) A person with expertise in the field of public health;

29 (2) A person licensed to practice law in the State working in the private sector;

30 (3) A person employed by a university or who is a doctoral candidate in a  
31 relevant area of study; and

32 (4) A provider of community services to persons with intellectual disabilities or  
33 autism in the State.

34 **2. Terms.** The term of office of each member of the panel appointed under  
35 subsection 1, not including the panel coordinator and the member appointed pursuant to  
36 subsection 1, paragraph B, is 3 years. A member serves until a successor is appointed. A

1 vacancy must be filled as soon as practicable by appointment for the unexpired term.  
2 Members may be reappointed.

3 3. Chair. Every year, the panel shall elect a chair from among its members.

4 4. Compensation. Members of the panel not otherwise compensated by their  
5 employers or other entities whom they represent are entitled to reimbursement of  
6 reasonable expenses incurred in serving on the panel.

7 5. Panel coordinator duties; staffing. The panel coordinator shall act as staff to the  
8 panel. The panel coordinator may procure specialist expertise when the panel coordinator  
9 considers it necessary or when it is requested by the panel. The panel coordinator shall  
10 conduct an initial review as described in section 1973 of any death of or serious injury to  
11 a person with an intellectual disability or autism receiving adult developmental services.  
12 The panel coordinator shall compile reports required pursuant to this subchapter.

13 **§1973. Initial review by the panel coordinator**

14 The panel coordinator shall conduct an initial review of any death of or serious injury  
15 to a person with an intellectual disability or autism receiving adult developmental  
16 services to determine whether to refer a case to the panel for a review. The panel  
17 coordinator shall refer a case to the panel if the panel coordinator determines that any of  
18 the following circumstances exist:

19 1. Unexpected. The death or serious injury was unexpected;

20 2. Preventable. Facts and circumstances indicate that the death or serious injury  
21 could have been prevented;

22 3. System issues. Issues with the system of care described in section 5003-A are  
23 implicated; or

24 4. Other issues. Other issues related to the case indicate the case should be  
25 reviewed.

26 **§1974. Access to information and records**

27 1. Department records. Notwithstanding any other provision of law, the panel  
28 coordinator may access information or records from the department determined by the  
29 panel coordinator to be necessary to carry out the panel coordinator's responsibilities.  
30 The department shall provide the panel coordinator with direct access to the information  
31 or records or provide information or records necessary and relevant as soon as practicable  
32 upon oral or written request of the panel coordinator. Records that must be provided  
33 include, but are not limited to, the following:

34 A. Personal plans developed pursuant to section 5470-B;

35 B. Service plans and agreements developed pursuant to section 5471;

36 C. Documents from providers of residential services to persons with intellectual  
37 disabilities or autism pursuant to chapters 5 and 6 or caseworkers;

38 D. Documents related to any adult protective case or investigation;

1 E. Reports related to a person with an intellectual disability or autism who was  
2 receiving adult developmental services of incidents that occurred in the 12-month  
3 period prior to the person's death or serious injury;

4 F. Death certificates;

5 G. Health care information related to a person with an intellectual disability or  
6 autism who was receiving adult developmental services from the 12-month period  
7 prior to the person's death or serious injury. For the purposes of this paragraph,  
8 "health care information" has the same meaning as in Title 22, section 1711-C,  
9 subsection 1, paragraph E; and

10 H. Records from any autopsy performed on a deceased person.

11 **2. Duty to provide records.** A person that possesses medical records or information  
12 that is necessary and relevant to the review under section 1973 shall provide those  
13 medical records or information to the panel coordinator as soon as practicable. This  
14 subsection does not authorize the disclosure of a record generated by a hospital that is  
15 otherwise confidential, including, but not limited to, a sentinel event record, a root cause  
16 analysis and a professional competency review. As used in this subsection, "sentinel  
17 event" has the same meaning as in Title 22, section 8752, subsection 4-A and "root cause  
18 analysis" has the same meaning as in Title 22, section 8752, subsection 3-B.

19 **§1975. Cases referred to the panel by others**

20 A case of death of or serious injury to a person with an intellectual disability or  
21 autism receiving adult developmental services may be referred to the panel by the  
22 commissioner, the agency designated as the protection and advocacy agency for persons  
23 with disabilities pursuant to Title 5, section 19502, a member of the panel or any other  
24 person who presents credible evidence, as determined by the panel coordinator, that a  
25 death of or serious injury to a person with an intellectual disability or autism receiving  
26 adult developmental services warrants review by the panel.

27 **§1976. Monthly report**

28 The panel coordinator shall compile a monthly report that includes a list of all cases  
29 of death of or serious injury to a person with an intellectual disability or autism receiving  
30 adult developmental services reviewed by the panel coordinator, a list of all cases the  
31 panel coordinator has referred for review to the panel and a list of all cases referred  
32 pursuant to section 1975. For each case referred for review, the report must include the  
33 name of the person receiving adult developmental services who has died or experienced  
34 serious injury, the name of the guardian, the status of guardianship and a short description  
35 of the circumstances of the death or serious injury that occurred. The panel coordinator  
36 shall provide the monthly report to the panel, the department and the Maine  
37 Developmental Services Oversight and Advisory Board, established in Title 5, section  
38 12004-J, subsection 15. The monthly report compiled pursuant to this section is not a  
39 public record as defined in Title 1, section 402, subsection 3.

40 **§1977. Review by the panel**

41 **1. Cases reviewed by the panel.** The panel shall review all cases of death of or  
42 serious injury to a person with an intellectual disability or autism receiving adult

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1 developmental services that are referred by the panel coordinator or are referred pursuant  
2 to section 1975; all medical examiner cases pursuant to Title 22, section 3025, subsection  
3 1, paragraph E that pertain to a person with an intellectual disability or autism who  
4 received adult developmental services; all cases from the last 12 months that are reported  
5 incidents pursuant to section 5604-A; and all cases of death or serious injury that are  
6 being reviewed by the Maine Developmental Services Oversight and Advisory Board,  
7 established in Title 5, section 12004-J, subsection 15. The panel may also choose to  
8 review any other case from the monthly report of the panel coordinator under section  
9 1976.

10 **2. Records provided to the panel.** The panel coordinator shall determine records as  
11 listed in section 1974 that must be made available to the panel for the purpose of  
12 reviewing cases of death of or serious injury to persons with intellectual disabilities or  
13 autism receiving adult developmental services. The panel coordinator shall maintain  
14 custody of all records.

15 **3. Review.** A review of a case conducted by the panel is intended to be a thorough  
16 evaluation of circumstances surrounding the death of or serious injury to a person with an  
17 intellectual disability or autism receiving adult developmental services, including the  
18 overall care of the person, quality of life issues, the death or serious injury event and  
19 medical care preceding the event. The review must also include any determination of  
20 whether the case is suspicious.

21 **4. Investigations.** A review under this section is subject to and may not interfere  
22 with the authority and responsibility of the Attorney General to investigate and prosecute  
23 homicides pursuant to Title 5, section 200-A.

24 **§1978. Report of findings**

25 After a review of all materials related to a case of death of or serious injury to a  
26 person with an intellectual disability or autism receiving adult developmental services  
27 reviewed by the panel pursuant to section 1977, the panel shall make findings and  
28 recommendations and submit those findings and recommendations in a report to the  
29 commissioner and to the Maine Developmental Services Oversight and Advisory Board,  
30 established in Title 5, section 12004-J, subsection 15. The report must identify trends and  
31 patterns in deaths or serious injuries that indicate necessary systemic changes and reforms  
32 in the delivery of services to reduce adverse outcomes for persons with intellectual  
33 disabilities or autism receiving adult developmental services as well as recommendations  
34 for corrective actions. All personally identifying information must be removed from the  
35 report before it is submitted to the commissioner and the Maine Developmental Services  
36 Oversight and Advisory Board.

37 **§1979. Legislative reports**

38 **1. Annual report.** The panel shall provide to the joint standing committee of the  
39 Legislature having jurisdiction over health and human services matters an annual report  
40 by January 30th with data regarding the number of deaths of and serious injuries to  
41 persons with intellectual disabilities or autism receiving adult developmental services, the  
42 number of cases reviewed by the panel, the number of cases determined suspicious,  
43 actions taken on recommendations submitted to the commissioner and the Maine

1 Developmental Services Oversight and Advisory Board, established in Title 5, section  
2 12004-J, subsection 15, and a summary of findings and recommendations.

3 **2. Trend analyses.** The panel may provide to the joint standing committee of the  
4 Legislature having jurisdiction over health and human services matters a periodic report  
5 with trend analyses if the panel determines that such a report is necessary. Any periodic  
6 trend analysis report that is submitted must be developed in conjunction with the  
7 commissioner and the Maine Developmental Services Oversight and Advisory Board,  
8 established in Title 5, section 12004-J, subsection 15.

9 **§1980. Confidentiality**

10 Any information or record accessed by or provided to the panel coordinator or the  
11 panel pursuant to this subchapter that is designated confidential pursuant to state or  
12 federal law by the official, agency or other entity providing the information or record  
13 must be maintained as confidential by the panel coordinator and the panel.

14 **Sec. 9. Initial appointments; staggered terms.** Notwithstanding the Maine  
15 Revised Statutes, Title 34-B, section 1972, subsection 2, of the initial appointments to the  
16 Panel To Review Deaths of and Serious Injuries to Persons with Intellectual Disabilities  
17 or Autism, the Governor shall appoint one member to serve an initial term of one year, 2  
18 members to serve an initial term of 2 years and one member to serve an initial term of 3  
19 years; the President of the Senate shall appoint 2 members to serve an initial term of one  
20 year, one member to serve an initial term of 2 years and one member to serve an initial  
21 term of 3 years; and the Speaker of the House of Representatives shall appoint one  
22 member to serve an initial term of one year, one member to serve an initial term of 2  
23 years and 2 members to serve an initial term of 3 years.

24 **Sec. 10. Appropriations and allocations.** The following appropriations and  
25 allocations are made.

26 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

27 **Maine Center for Disease Control and Prevention 0143**

28 Initiative: Provides funding for one Health Services Consultant position to be the panel  
29 coordinator for the Panel To Review Deaths of and Serious Injuries to Persons with  
30 Intellectual Disabilities or Autism.

31	<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
32	POSITIONS - LEGISLATIVE COUNT	0,000	1,000
33	Personal Services	\$0	\$84,899
34	All Other	\$0	\$6,286
35			
36	<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$91,185</b>
37			

38 **SUMMARY**

39 This amendment, which is the majority report of the committee, replaces the bill. It  
40 establishes the Panel To Review Deaths of and Serious Injuries to Persons with



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COMMITTEE AMENDMENT "A" to H.P. 1164, L.D. 1676

1 Intellectual Disabilities or Autism. The panel consists of 14 members, including a panel  
2 coordinator who is an employee of the Department of Health and Human Services, Maine  
3 Center for Disease Control and Prevention and is a registered nurse and a member  
4 appointed by the Maine Developmental Services Oversight and Advisory Board. Other  
5 members of the panel are appointed by the Governor, the President of the Senate and the  
6 Speaker of the House of Representatives. Terms are for 3 years, and members receive  
7 expenses if they are not already compensated by their employers. The panel coordinator  
8 must review all cases of death of and serious injury to persons with intellectual  
9 disabilities or autism receiving adult developmental services and determine those that  
10 require further review by the panel. Other individuals may refer cases to the panel, and  
11 the panel may choose additional cases from the list of cases provided by the panel  
12 coordinator. The panel has access to records necessary for the review. The panel must  
13 provide reports to the Commissioner of Health and Human Services and the Maine  
14 Developmental Services Oversight and Advisory Board with findings and  
15 recommendations. The panel is required to provide reports to the Legislature on an  
16 annual basis and may provide trend analyses to the Legislature as necessary. Legislative  
17 reports are public documents.

18 The amendment also adds an appropriations and allocations section.

19 **FISCAL NOTE REQUIRED**

20 **(See attached)**



# 128th MAINE LEGISLATURE

LD 1676

LR 2500(02)

## An Act To Reestablish the Office of Advocacy within the Department of Health and Human Services

Fiscal Note for Bill as Amended by Committee Amendment *A (H-769)*

Committee: Health and Human Services

Fiscal Note Required: Yes

### Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$91,185	\$93,888	\$96,477
<b>Appropriations/Allocations</b>				
General Fund	\$0	\$91,185	\$93,888	\$96,477

#### Fiscal Detail and Notes

The bill includes General Fund appropriations to the Department of Health and Human Services of \$91,185 in fiscal year 2018-19 for one Health Services Consultant position to be the panel coordinator for the Panel to Review Deaths and Serious Injuries.

Any additional costs to the Department of the Attorney General can be absorbed within existing budgeted resources.