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Legislative Document

No. 1676

H.P. 1164

House of Representatives, December 20, 2017

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

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 18, 2017. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DENNO of Cumberland.

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

2 **Sec. 1. 22 MRSA §7924, sub-§1**, as amended by PL 2011, c. 657, Pt. EE, §1, is
3 further amended to read:

4 **1. Alleged violations reported and investigated.** Any person who believes that any
5 of those rules governing the licensure of long-term care facilities or the operation of
6 assisted living programs and services authorized pursuant to section 7853 adopted by the
7 department pertaining to residents' rights and conduct of resident care has been violated
8 may report the alleged violation to the protection and advocacy agency designated
9 pursuant to Title 5, section 19502; the long-term care ombudsman pursuant to section
10 5106, subsection 11-C and section 5107-A; the Office of Advocacy pursuant to Title
11 34-B, section 5005-B; and any other agency or person whom the commissioner may
12 designate.

13 **Sec. 2. 34-B MRSA §1223, sub-§9, ¶F**, as amended by PL 2011, c. 657, Pt. EE,
14 §2, is further amended to read:

15 F. The board may refer individual cases that require investigation or action to the
16 Office of Advocacy within the department, the protection and advocacy agency
17 designated pursuant to Title 5, section 19502 or any other appropriate agency.

18 **Sec. 3. 34-B MRSA §5005-A**, as amended by PL 2013, c. 310, §§2 to 5, is
19 repealed.

20 **Sec. 4. 34-B MRSA §5005-B** is enacted to read:

21 **§5005-B. Office of Advocacy**

22 **1. Establishment.** The Office of Advocacy, referred to in this section as "the
23 office," is established within the department to provide the services described in
24 subsection 3 to individuals with intellectual disabilities or autism.

25 **2. Chief advocate.** A chief advocate shall direct and coordinate the program of the
26 office.

27 A. The chief advocate shall report administratively to the commissioner and advise
28 and consult with and inform the commissioner on the issues described in this section.
29 The chief advocate shall provide the commissioner with regular reports on the office's
30 findings, conclusions and recommendations regarding individual and systemic
31 violations of the rights of individuals with intellectual disabilities or autism.

32 B. The chief advocate shall select other advocates needed to carry out the intent of
33 this section who shall report only to the chief advocate.

34 C. The chief advocate shall establish operating policies and procedures to guide the
35 work of the office, including policies regarding priority setting.

36 D. The chief advocate and all other advocates are classified state employees.

37 **3. Duties.** The office, through the chief advocate and other advocates, shall:

1 A. Receive complaints made by or on behalf of individuals with intellectual
2 disabilities or autism and represent their interests in any matter pertaining to their
3 rights and dignity;

4 B. Investigate the claims, grievances and allegations of violations of the rights of
5 individuals with intellectual disabilities or autism;

6 C. Intercede on behalf of individuals with intellectual disabilities or autism with
7 officials of any provider of service administered, licensed or funded by the
8 department, except that the office may refuse to take action on any complaint that it
9 considers to be trivial or moot or for which there is clearly another remedy available;

10 D. Assist individuals with intellectual disabilities or autism in any hearing or
11 grievance proceeding pertaining to their rights and dignity;

12 E. Refer individuals with intellectual disabilities or autism to other agencies or
13 entities and collaborate with those agencies or entities for the purpose of advocating
14 for the rights and dignity of those individuals;

15 F. Act as an information source regarding the rights of all individuals with
16 intellectual disabilities or autism, keeping itself informed about all laws,
17 administrative rules and institutional and other policies relating to the rights and
18 dignity of those individuals and about relevant legal decisions and other
19 developments related to the fields of mental health, intellectual disabilities and
20 autism, both in this State and in other parts of the country; and

21 G. Make and publish reports necessary to the performance of the duties described in
22 this section. The chief advocate may report findings of the office to groups outside
23 the department, such as legislative bodies, advisory committees, commissions, law
24 enforcement agencies and the press, and may authorize the advocates in the office to
25 so communicate. At least annually, the chief advocate shall report both in person and
26 in writing to the joint standing committee of the Legislature having jurisdiction over
27 health and human services matters regarding the performance of the duties described
28 in this section.

29 **4. Participate in personal planning.** The office, through the chief advocate and
30 other advocates, may participate in personal planning when:

31 A. The department is the public guardian; or

32 B. An advocate has concerns regarding the rights or dignity of an individual with
33 intellectual disabilities or autism.

34 An individual who is not under guardianship has the right to refuse such participation by
35 an advocate.

36 **5. Access to files and records.** The office, through the chief advocate and other
37 advocates, has access, limited only by the civil service law, to the files, records and
38 personnel of any provider of services administered, licensed or funded by the department.
39 Within the department, the office has access to all reports and related documents
40 submitted pursuant to section 5604-A.

41 **6. Confidentiality.** Requests for confidentiality are treated as follows.

1 A. Any request by or on behalf of an individual with intellectual disabilities or
2 autism for action by the office and all written records or accounts related to the
3 request are confidential as to the identity of the individual.

4 B. The records and accounts under paragraph A may be released only as provided by
5 law.

6 7. Protection for advocates. Advocates may not be disciplined or sanctioned for
7 any action taken pursuant to this section on behalf of individuals with intellectual
8 disabilities or autism.

9 8. Budget. When submitting any budget request to the Legislature, the department
10 and the Governor shall provide that any funds for the office be listed in a separate
11 account.

12 **Sec. 5. 34-B MRSA §5470-B, sub-§7, ¶C** is enacted to read:

13 C. The department shall provide the Office of Advocacy, established in section
14 5005-B, with sufficient advance notice of all scheduled personal planning meetings to
15 permit the office to determine if the attendance or participation of an advocate in the
16 planning process is appropriate pursuant to the duties and responsibilities of the
17 office.

18 **Sec. 6. 34-B MRSA §5604, sub-§3, ¶A**, as amended by PL 2011, c. 657, Pt. EE,
19 §7, is further amended to read:

20 A. The department shall provide easily accessible and regular notice of the grievance
21 process to persons with intellectual disabilities or autism served by the department.
22 This notice must be included in informational materials provided to such persons, as
23 well as to guardians, families, correspondents and allies. Notice of the right to appeal
24 must be prominently displayed in regional offices and on the department’s publicly
25 accessible website and must be readily available from provider agencies. Notice of
26 the right to appeal must be included in all substantive correspondence regarding
27 personal planning. Written notice of the right to appeal must also be provided when
28 there is a denial or reduction of services or supports to persons served by the
29 department. All notices and information regarding the grievance process must be
30 written in language that is plain and understandable and must include the address and
31 telephone number of the Office of Advocacy, established in section 5005-B, and the
32 protection and advocacy agency designated pursuant to Title 5, section 19502.

33 **Sec. 7. 34-B MRSA §5604-A, sub-§3**, as amended by PL 2011, c. 657, Pt. EE,
34 §8, is further amended to read:

35 **3. Violation.** All persons with knowledge of an alleged violation of the rights of an
36 individual with an intellectual disability or autism as set out in section 5605 shall
37 promptly report the details of the alleged violation to the ~~advocacy agency designated~~
38 ~~pursuant to Title 5, section 19502~~ Office of Advocacy, established in section 5005-B, as
39 set forth in department rules.

1 **Sec. 8. 34-B MRSA §5605, sub-§13, ¶B**, as amended by PL 2013, c. 310, §7, is
2 further amended to read:

3 B. Behavior modification and behavior management programs may be used only to
4 correct behavior more harmful to the person than the program and only:

5 (1) On the recommendation of the person's personal planning team;

6 (2) For an adult 18 years of age or older, with the approval, following a case-by-
7 case review, of a review team composed of a representative from the department,
8 ~~a representative from the advocacy agency designated pursuant to Title 5, section~~
9 ~~19502 an advocate from the Office of Advocacy, established in section 5005-B,~~
10 and a representative designated by the Maine Developmental Services Oversight
11 and Advisory Board. ~~The advocacy agency representative serves as a nonvoting~~
12 ~~member of the review team and shall be present to advocate on behalf of the~~
13 ~~person. The department shall provide sufficient advance notice of all scheduled~~
14 ~~review team meetings to the advocacy agency and provide the advocacy agency~~
15 ~~with any plans for which approval is sought along with any supporting~~
16 ~~documentation; and~~

17 (3) For a child under 18 years of age, with the approval, following a case-by-
18 case review, of a review team composed of ~~a representative~~ an advocate from the
19 ~~advocacy agency designated pursuant to Title 5, section 19502~~ Office of
20 Advocacy, established in section 5005-B, a team leader of the department's
21 children's services division and the children's services medical director or the
22 director's designee. ~~The advocacy agency representative serves as a nonvoting~~
23 ~~member of the review team and shall be present to advocate on behalf of the~~
24 ~~person. The department shall provide sufficient advance notice of all scheduled~~
25 ~~review team meetings to the advocacy agency and provide the advocacy agency~~
26 ~~with any plans for which approval is sought along with any supporting~~
27 ~~documentation. Until rules are adopted by the department to govern behavioral~~
28 ~~treatment reviews for children, the team may not approve techniques any more~~
29 ~~aversive or intrusive than are permitted in rules adopted by the Secretary of the~~
30 ~~United States Department of Health and Human Services regarding treatment of~~
31 ~~children and youth in nonmedical community-based facilities funded under the~~
32 ~~Medicaid program.~~

33 **Sec. 9. 34-B MRSA §5605, sub-§14-A**, as amended by PL 2011, c. 657, Pt. EE,
34 §10, is further amended to read:

35 **14-A. Restraints.** A person with an intellectual disability or autism is entitled to be
36 free from restraint unless:

37 A. The restraint is a short-term step to protect the person from imminent injury to
38 that person or others; or

39 B. The restraint has been approved as a behavior management program in
40 accordance with this section.

41 A restraint may not be used as punishment, for the convenience of the staff or as a
42 substitute for habilitative services. A restraint may impose only the least possible

1 restriction consistent with its purpose and must be removed as soon as the threat of
2 imminent injury ends. A restraint may not cause physical injury to the person receiving
3 services and must be designed to allow the greatest possible comfort and safety.

4 Daily records of the use of restraints identified in paragraph A must be kept, which may
5 be accomplished by meeting reportable event requirements.

6 Daily records of the use of restraints identified in paragraph B must be kept, and a
7 summary of the daily records pertaining to the person must be made available for review
8 by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule
9 determined by the team. The review by the personal planning team may occur no less
10 frequently than quarterly. The summary of the daily records must state the type of
11 restraint used, the duration of the use and the reasons for the use. A monthly summary of
12 all daily records pertaining to all persons must be relayed to the ~~advocacy agency~~
13 ~~designated pursuant to Title 5, section 19502~~ Office of Advocacy, established in section
14 5005-B.

15 **Sec. 10. 34-B MRSA §5606, sub-§1**, as amended by PL 2013, c. 310, §8, is
16 further amended to read:

17 **1. Reportable events.** Any alleged violation of the rights of a person receiving
18 services must be reported immediately to the ~~advocacy agency designated pursuant to~~
19 ~~Title 5, section 19502, referred to in this subsection as "the agency,"~~ Office of Advocacy,
20 established in section 5005-B, and to the Attorney General's office.

21 A. The ~~agency~~ Office of Advocacy, established in section 5005-B, shall investigate
22 each alleged violation pursuant to section ~~5005-A~~ 5005-B.

23 B. ~~The agency may independently pursue a complaint or may pursue administrative,~~
24 ~~legal and other appropriate remedies on behalf of an individual with intellectual~~
25 ~~disabilities or autism. The agency may refuse to take action on any alleged violation~~
26 ~~that it considers to be trivial, to be moot or to lack merit or for which there is clearly~~
27 ~~another remedy available or may refer an individual who is the subject of an alleged~~
28 ~~violation to another agency or entity and collaborate with that agency or entity for the~~
29 ~~purpose of advocating for the rights and dignity of that individual~~ Office of
30 Advocacy, established in section 5005-B, shall submit a written report of the findings
31 and results of the investigation to the chief administrative officer of the facility in
32 which the rights of the person receiving services were allegedly violated and to the
33 commissioner within 2 working days after the day of the occurrence or discovery of
34 the alleged incident.

35 **Sec. 11. 34-B MRSA §5608, sub-§2**, as amended by PL 2011, c. 657, Pt. EE,
36 §12, is further amended to read:

37 **2. Duties.** The residential council shall work closely with the department and the
38 ~~advocacy agency designated pursuant to Title 5, section 19502~~ Office of Advocacy,
39 established in section 5005-B, to promote the interests and welfare of all persons
40 receiving services from the provider.

41 **Sec. 12. 34-B MRSA §5611**, as enacted by PL 2013, c. 310, §9, is repealed.

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SUMMARY

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This bill reestablishes the Office of Advocacy, abolished in 2011, in the Department of Health and Human Services as an internal agency to protect the interests of individuals with intellectual disabilities and autism.

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