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5/12/2025

Senator Ingwersen, Chair
Representative Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 1866 – *An Act to Amend the Laws Regarding the State-designated Agency Advocating for Individuals with Serious Mental Illness*

Senator Ingwersen, Representative Meyer and members of the Joint Standing Committee on Health and Human Services, thank you for the opportunity to provide information in opposition to LD 1866, *An Act to Amend the Laws Regarding the State-designated Agency Advocating for Individuals with Serious Mental Illness*.

The bill seeks to codify in Title 34-B an existing contract between the Governor-designated protection and advocacy agency pursuant to 5 M.R.S. § 19502, historically Disability Rights Maine (DRM), and the Department of Health and Human Services (Department) for the provision of advocacy services for individuals with serious mental illness. The Office of Behavioral Health (OBH) is committed to protecting the rights of individuals with serious mental illness and ensuring accountability, oversight and transparency with the successful resolution of the Consent Decree. Advocacy services are critical to a healthy and robust system of care to ensure that, for individuals who receive services, their rights and access to high quality care are upheld. For many years, OBH has maintained – and intends to continue – a contract with DRM to uphold this function. The contract allocates funding for advocates at Dorothea Dix and Riverview Psychiatric Centers and advocates in the community.

The Department does not support codifying in statute this contractual relationship and has concerns with portions of the bill language as drafted. First, OBH is generally concerned with the duplicative nature of specific provisions in this statute. Title 5, chapter 211 establishes the protection and advocacy for persons with disabilities and includes various provisions outlining the role of the designated agency, including the agency's powers and duties in section 19505, the agency's access to records in section 19506(1), and how the agency protects the confidentiality of information and ensures consent in representing individuals with disabilities in section 19507. OBH would not recommend repeating these provisions or using similar but different terms in this new bill which is focused, in essence, on requiring a contract. It is unnecessary and could lead to conflicting statutes and interpretations. OBH would further note that the contract contemplated by this bill would be the more appropriate vehicle, consistent with all applicable law, to expand upon any of the existing provisions in Title 5, chapter 211.

In addition to the general position that this bill need not repeat existing authorities, the specific concerns and recommendations OBH would like to provide the Committee for consideration are as follows:

1. **Section 1. Definitions:** As noted, the current contract between the Department and DRM includes advocates in the community and advocates at the two state psychiatric hospitals. If the intent of this bill is to codify this existing contractual work, then OBH would recommend that any pertinent establishment of definitions be limited to contractual processes rather than statutory ones.
2. **Section 2. Protection and advocacy agency services:** OBH does not support language that requires a certain number of full time employees / advocates, which constrains flexibility to be responsive to evolving needs.”
3. **Section 2A:** OBH notes that Title 5 already contemplates that the designated agency would receive complaints. *See, e.g.*, 5 M.R.S. § 19503(2-A). This level of detail is not needed in a statute and could be included in contract.
4. **Section 2B:** OBH notes that Title 5, section 19505(3) already authorizes the designated agency to “pursue administrative, legal and other appropriate remedies on behalf of persons with disabilities.” Section 19507 outlines the designated agency’s responsibilities in representing persons with disabilities. Additionally, OBH has concerns about the proposed language in Section 2B and potential conflicts with Title 5. As drafted, this language lacks appropriate reference to ensure that all individuals provide consent for advocacy services or actions. Further, allowing the agency to pursue remedies “in its own name” could conflict with principles of individual consent. OBH would further note that including this wholesale language in this bill addressing the scope of a contract is neither appropriate nor necessary, as the designated agency’s ability to pursue an action in its own name would necessarily be articulated elsewhere. For example, Title 5, section 19505(3) expressly grants the designated agency standing to file a civil action for certain alleged violations of the Maine Human Rights Act.
5. **Section 2C:** OBH notes that Title 5, section 19505(1) already authorizes the designated agency to “provide information on and referral of programs and services addressing the needs of persons with disabilities” making this language unnecessary. Any further detail on the scope of referrals could be outlined in contract.
6. **Section 2D:** OBH notes that Title 5, section 19505(2) already authorizes the designated agency to “advise and educate individuals on the rights of persons with disabilities and otherwise support and assist those persons in the protection of and advocacy of those rights” making this language unnecessary. Any further detail on the scope of advice and education could be outlined in contract.
7. **Section 2E:** OBH notes that Title 5, section 19505(5) already requires the designated agency to “prepare an annual report for submission to the Governor, the Legislature, and the Secretary of the United States Department of Health and Human Services” making this language unnecessary.
8. **Section 2F:** OBH notes that Title 5, section 19505(7) already authorizes the designated agency to “monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with disabilities for the purpose of ensuring that services, supports and assistance meets the needs of those persons and are delivered in

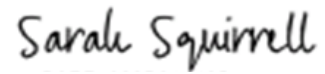
conformity with laws, regulations, rules and other standards regarding quality of care.” Repeating this nearly identical language in Section 2F is unnecessary.

9. **Section 2G:** OBH would recommend the removal of Section 2(G) as OBH deems this level of reporting to the Department unnecessary in statute. The contract would be the appropriate vehicle to set forth terms regarding Department-specific reporting that is agreeable to the parties;
10. **Section 3. Access to medical records and files:** OBH notes that Title 5, section 19506(1) already sets forth parameters for when the designated agency is granted access to the records of a person with disabilities. This bill proposes to additionally “through a contract” require the Department to “grant the agency access to medical records and files related to care exclusively for individuals hospitalized in a state mental health institute.” Whether specific to statute or contract, this language should be clarified if the intent is to expand access already granted under Title 5 and potentially without the consent of the individual. Further, OBH has concerns that any language and expectations be limited to medical records; the phrase “and files related to care” is unclear and potentially overly broad particularly where consent of the individual is not required. Additionally, language should be limited to “individuals with serious mental illness who are hospitalized in a state mental health institute” to align with the scope of advocacy services contemplated by the contract. Finally, OBH notes that requiring Department “through contract” to provide records to the designated agency, particularly without consent of an individual, could put the Department at odds of existing confidentiality laws; the statute could simply grant this access;
11. **Section 4. Confidentiality:** OBH notes that Title 5, section 19507 already includes extensive confidentiality provisions regarding when the designated agency may disclose information, materials and records containing the personally identifiable information of persons with disabilities, including for example, obtaining consent through a legal guardian and special provisions for persons under public guardianship. Including a different set of confidentiality provisions in this bill is unnecessary and could produce conflicts in state law. Nor is it necessary to repeat administrative regulations that may pertain to the designated protection and advocacy agency under federal law. *See, e.g.*, 42 C.F.R. § 51.45. Confidentiality laws are complex; Section 4 should either be removed or cross-reference existing confidentiality protections in Title 5;
12. **Section 5. Conflict with federal law:** OBH does not believe this section is necessary as general principles of statutory construction and interpretation would already apply.

As noted above, OBH believes that it is important to ensure advocacy services and representation for those with serious mental illness; these services are critical to a healthy and robust system of care. It is further important to not duplicate existing statute to ensure consistency in the function of an advocacy organization for those Mainers served by the Department, or codify in statute the need to undertake work via contract. As noted, the Department and OBH are committed to upholding the contractual services represented throughout much of this bill; work that is contractually performed is best developed and refined via the standard contracting processes of the Department and not statute.

Please feel free to contact me if you have any questions during your deliberation of this bill.

Sincerely,

A handwritten signature in black ink that reads "Sarah Squirrell". The script is cursive and fluid, with the first name "Sarah" and last name "Squirrell" clearly legible.

Sarah Squirrell

Director

Office of Behavioral Health

Maine Department of Health and Human Services