

CHAPTER 1453

ELDER AND ADULT SERVICES

§5105. Bureau of Elder and Adult Services

(REPEALED)

SECTION HISTORY

PL 1973, c. 630, §1 (NEW). PL 1973, c. 793, §6 (RPR). P&SL 1975, c. 90, §C5 (AMD). PL 1975, c. 293, §4 (AMD). PL 1975, c. 771, §231 (AMD). PL 1985, c. 785, §B94 (AMD). PL 1989, c. 329, §15 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 539, Pt. N, §39 (AMD). PL 2011, c. 657, Pt. BB, §8 (RP).

§5106. Powers and duties

The department shall establish, in accordance with the purposes and intent of this Part, the overall planning, policy, objectives and priorities for all functions and activities conducted or supported in the State that relate to Maine's aging population and incapacitated and dependent adults. In order to carry out the above, the department has the power and duty to: [PL 2011, c. 657, Pt. BB, §9 (AMD).]

1. Encourage and assist development. Encourage and assist development of more coordinated use of existing and new resources and services relating to Maine's aging population and incapacitated and dependent adults; [PL 1989, c. 329, §16 (AMD).]

2. Information system. Develop and maintain an up-to-date information system related to Maine's aging population and incapacitated and dependent adults. The information must be available for use by the people of Maine, the political subdivisions, public and private nonprofit agencies and the State. Educational materials must be prepared, published and disseminated. Objective devices and research methodologies must be continuously developed. Maintaining statistical information through uniform methods that are reasonably feasible and economically efficient must be specified for use by public and private agencies, organizations and individuals. Existing sources of information must be used to the fullest extent possible, while maintaining confidentiality safeguards of state and federal law. Information may be requested and received from any state government or public or private agency. To the extent reasonable and feasible, information must maintain compatibility with federal information sharing standards.

Functions of this information system include, but are not limited to:

- A. Conducting research on the causes and nature of problems relating to Maine's aging population and incapacitated and dependent adults; [PL 1989, c. 329, §16 (AMD).]
- B. Collecting, maintaining and disseminating such knowledge, data and statistics related to Maine's aging population and incapacitated and dependent adults as will enable the department to fulfill its responsibilities; [PL 2011, c. 657, Pt. BB, §9 (AMD).]
- C. Determining through a detailed survey the extent of problems relating to Maine's aging population and incapacitated and dependent adults and the needs and priorities for solving such problems in the state and political subdivisions; [PL 1989, c. 329, §16 (AMD).]
- D. Maintaining an inventory of the types and quantity of facilities, programs and services operated under public or private auspices for Maine's aging population and incapacitated and dependent adults. This function must include the unduplicated count, location and characteristics of people served by each facility, program or service; and the amount, type and source of resources supporting

functions related to Maine's aging population and incapacitated and dependent adults; and [PL 2011, c. 657, Pt. BB, §9 (AMD).]

E. Conducting a continuous evaluation of the impact, quality and value of facilities, programs and services, including their administrative adequacy and capacity. Activities operated by or with the assistance of the State and the Federal Government must be evaluated. Activities to be included, but to which the department is not limited, are those relating to education, employment and vocational services, income, health, housing, transportation, community, social, rehabilitation, protective services and public guardianship or conservatorship for older people and incapacitated and dependent adults and programs such as the supplemental security income program, Medicare, Medicaid, property tax refunds and the setting of standards for the licensing of nursing, intermediate care and boarding homes. Included are activities as authorized by this and so much of the several Acts and amendments to them enacted by the people of the State and those authorized by United States Acts and amendments to them such as the:

- (1) Elderly Household Tax and Rent Refund Act of 1971;
- (2) Priority Social Services Act of 1973;
- (3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;
- (4) United States Social Security Act of 1935;
- (5) United States Housing Act of 1937;
- (6) United States Older Americans Act of 1965;
- (7) United States Age Discrimination Act of 1967;
- (8) Home Based Care Act of 1981;
- (9) Congregate Housing Act of 1979;
- (10) Adult Day Care Services Act of 1983;
- (11) Adult Day Care Licensing Act of 1987;
- (12) Adult Protective Services Act of 1981;
- (13) The Maine Uniform Probate Code, Title 18-C;
- (14) The Americans with Disabilities Act of 1990;
- (15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000; and
- (16) The ADA Amendments Act of 2008; [PL 2017, c. 402, Pt. C, §72 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. C, §72 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Coordination of efforts. Assist the Legislative and Executive Branches of State Government, especially the Governor and the Bureau of the Budget, to coordinate all State Government efforts relating to Maine's aging population and incapacitated and dependent adults, by:

A. [PL 2019, c. 612, §2 (RP).]

B. Reviewing all proposed legislation, fiscal activities, plans, policies and other administrative functions relating to Maine's aging population and incapacitated and dependent adults made by or requested of all state agencies. The department has the authority to submit to those bodies findings, comments and recommendations, which are advisory. Such findings and comments must recommend what modification in proposals or actions is required to make proposed legislation, fiscal activities and administrative activities consistent with such policies and priorities; and [PL 2011, c. 657, Pt. BB, §9 (AMD).]

C. Making recommendations to the respective branches of State Government related to improving the quality of life of Maine's aging population and incapacitated and dependent adults, and shall consult with and be consulted by all responsible state agencies regarding the policies, priorities and objectives of functions related to Maine's aging population and incapacitated and dependent adults; [PL 2011, c. 657, Pt. BB, §9 (AMD).]

[PL 2019, c. 612, §2 (AMD).]

4. Comprehensive state plan. Prepare and administer a comprehensive state plan relating to Maine's aging population and incapacitated and dependent adults, developed by the department subject to the direction of the commissioner. The comprehensive state plan must be implemented for the purpose of coordinating all activities and of assuring compliance with applicable state and federal laws and regulations relating to Maine's aging population and incapacitated and dependent adults. Implementation of this duty means that the department has the authority, through a review process, to advise on the preparation and administration of any portion of any state plan relating to Maine's aging population and incapacitated and dependent adults, prepared and administered by any agency of State Government for submission to the Federal Government to obtain federal funding under federal legislation. Such state plans, or portions thereof, must include, but are not limited to, all state plans dealing with education, employment and vocational services, income, health, housing, protective services, public guardianship and conservatorship, rehabilitation, social services, transportation and welfare. The department shall advise the commissioner and Governor on preparation of and provisions to be included in such plans relating to Maine's aging population and incapacitated and dependent adults;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

5. Programs. Plan, establish and maintain necessary or desirable programs for individuals or groups of individuals. The department may use the full range of its powers and duties to serve Maine's aging population and incapacitated and dependent adults through indirect services provided by agreement and through direct services provided by state employees;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

6. Organizational unit. Function as the organizational unit of State Government with sole responsibility for conducting and coordinating, subject to the direction of the commissioner, programs authorized by this Part and so much of the several Acts, amendments and successors to them enacted by the people of the State and those authorized by the United States Acts, amendments and successors to them as relate to Maine's aging population and incapacitated and dependent adults:

A. The 1973 Act of Maine's Elderly; [PL 1973, c. 793, §6 (NEW).]

B. The Priority Social Service Act of 1973, including only meals for older people, transportation for older people and coordinated elderly programs; [PL 1989, c. 329, §16 (AMD).]

C. The United States Older Americans Act of 1965; and [PL 1989, c. 329, §16 (AMD).]

D. Adult Protective Services Act of 1981. [PL 1989, c. 329, §16 (NEW).]

The department is designated as the single agency of State Government solely responsible for administering, subject to the direction of the commissioner, any state plans as may be required by the above Acts, and for administering programs of Acts of the State or United States relating to Maine's aging population and incapacitated and dependent adults that are not the specific responsibility of another state agency under state or federal law;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

7. Mobilize resources. Help communities mobilize their resources to benefit Maine's aging population and incapacitated and dependent adults. The department shall provide or coordinate the provision of information, technical assistance and consultation to state, regional and local governments, and to public and private nonprofit agencies, institutions, organizations and individuals. The help is

for the purpose of encouraging, developing and assisting with the initiation, establishment and administration of any plans, programs or services with a view to the establishment of a statewide network of comprehensive, coordinated services and opportunities for Maine's aging population and incapacitated and dependent adults. Included in this duty is authority to coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in Maine's aging population and incapacitated and dependent adults;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

8. Funds. Seek and receive funds from the Federal Government and private sources to further its activities. Included in this function is authority to solicit, accept, administer, disburse and coordinate for the State in accordance with the intent, objectives and purposes of this Part; and within any limitation that may apply from the sources of such funds, the efforts to obtain and the use of any funds from any source to benefit Maine's aging population and incapacitated and dependent adults. Any gift of money or property made by will or otherwise, and any grant or other funds appropriated, services or property available from the Federal Government, the State or any political subdivision thereof and from all other sources, public or private, may be accepted and administered. The department may do all things necessary to cooperate with the Federal Government or any of its agencies in making application for any funds. Included in this duty is authority to advise regarding the disbursement of all state funds, or funds administered through agencies of State Government, appropriated or made available to benefit Maine's aging population and incapacitated and dependent adults;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

9. Agreements. Enter into agreements necessary or incidental to the performance of its duties. Included is the power to make agreements with qualified community, regional and state level, private nonprofit and public agencies, organizations and individuals in this and other states to develop or provide facilities, programs and services for Maine's aging population and incapacitated and dependent adults. Agreements with such agencies, organizations and individuals may be executed only with agencies reviewed by the area agency pursuant to section 5116, subsection 1, paragraph B. The department may engage expert advisors and assistants, who may serve without compensation or may be compensated to the extent funds may be available by appropriation, grant or allocation from a state department. The department may pay for such expert advisors or assistants;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

10. Rules. Prepare, adopt, amend, rescind and administer, subject to the direction of the commissioner, policies, priorities, procedures and rules to govern its affairs and the development and operation of facilities, programs and services. The department may adopt rules to carry out the powers and duties pursuant to this Part and in accordance with the purpose and objectives of this Part. It shall especially adopt such rules as may be necessary to define contractual terms, conditions of agreements and all other rules as are necessary for the proper administration of this Part. Such adoption, amendment and rescission must be made as provided under the Maine Administrative Procedure Act;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

11. Educational program. Develop and implement, as an integral part of programs, an educational program; assist in the development of, and cooperation with, educational programs for employees of state and local governments and businesses and industries in the State; and convene and conduct conferences of public and private nonprofit organizations concerned with the development and operation of programs for Maine's aging population and incapacitated and dependent adults. Included is the power to sponsor the Blaine House Conference on Aging;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

11-A. Elderly Legal Services Program. Support and maintain an Elderly Legal Services Program, by agreement with such nonprofit organization as the department finds best able to provide direct services to those of Maine's elderly in greatest economic and social need throughout the State;

[PL 2011, c. 657, Pt. BB, §9 (AMD).]

11-B. Adult protective services. Administer a program of protective services as provided in chapter 958-A designed to protect incapacitated and dependent adults from abuse, neglect, exploitation and physical danger. The program is described in the Adult Protective Services Act; [PL 2011, c. 542, Pt. A, §40 (AMD).]

11-C. Long-term care ombudsman program. Support and maintain a long-term care ombudsman program, in accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, by agreement with such nonprofit organization as the department finds best able to provide the services; [PL 2011, c. 657, Pt. BB, §9 (AMD).]

12. Training programs. Foster, develop, organize, conduct or provide for the conduct of training programs for persons in the field of serving Maine's aging population and incapacitated and dependent adults; [PL 1989, c. 329, §16 (NEW).]

13. Coordinate activities. Coordinate activities and cooperate with programs in this and other states for the common advancement of programs for Maine's aging population and incapacitated and dependent adults; and [PL 2011, c. 657, Pt. BB, §9 (AMD).]

14. Establish and maintain an office. [PL 2011, c. 657, Pt. BB, §9 (RP).]

15. Duties. Do such other acts and exercise such other powers necessary or convenient to execute and carry out the purposes and authority expressly granted in this Part. [PL 1973, c. 793, §6 (NEW).]

SECTION HISTORY

PL 1973, c. 630, §1 (NEW). PL 1973, c. 793, §6 (RPR). PL 1975, c. 293, §4 (AMD). PL 1981, c. 463, §D1 (AMD). PL 1981, c. 470, §§A104-A111 (AMD). PL 1983, c. 523, §1 (AMD). PL 1989, c. 329, §16 (AMD). PL 1991, c. 622, §QQ1 (AMD). PL 2003, c. 653, §21 (AMD). PL 2003, c. 689, §B7 (REV). PL 2011, c. 542, Pt. A, §§39, 40 (AMD). PL 2011, c. 657, Pt. BB, §9 (AMD). PL 2017, c. 402, Pt. C, §72 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 612, §2 (AMD).

§5107. State agencies to cooperate

(REPEALED)

SECTION HISTORY

PL 1973, c. 630, §1 (NEW). PL 1973, c. 793, §7 (RP).

§5107-A. Long-term care ombudsman program

In accordance with the program established pursuant to section 5106, subsection 11-C, the ombudsman may enter onto the premises of any residential care facility, as defined in section 7852, subsection 14, licensed according to section 7801, any assisted living facility licensed pursuant to chapter 1663 or 1664 and any nursing facility licensed according to section 1817 to investigate complaints concerning those facilities or to perform any other functions authorized by this section or other applicable law or rules. The ombudsman shall investigate complaints received on behalf of individuals receiving long-term care services provided by home-based care programs, the Medicaid waiver program, licensed home health agencies, assisted living services providers, certified homemaker agencies and licensed adult day care agencies. To carry out this function, any staff member or volunteer authorized by the ombudsman may enter onto the premises of any residential care facility, assisted living facility or nursing facility during the course of an investigation, speak privately with any individual in the facility who consents to the conversation and inspect and copy all records pertaining

to a resident as long as the resident or the legal representative of the resident consents in writing to that inspection. The consent, when required and not obtainable in writing, may be conveyed orally or otherwise to the staff of the facility. When a resident is not competent to grant consent and has no legal representative, the ombudsman may inspect the resident's records and may make copies without the written consent of a duly appointed legal representative. The ombudsman may authorize as many individuals as necessary, in addition to staff, to carry out this function except that these individuals may not make copies of confidential client information. Appropriate identification must be issued to all such persons. In accordance with the federal 1987 Older Americans Act, 42 United States Code, as amended, a person may not serve as an ombudsman without training as to the rights and responsibilities of an ombudsman or without a specific plan of action under direction of the ombudsman. The ombudsman shall renew the authorization and issue identification annually. The findings of the ombudsman must be available to the public upon request. [PL 2001, c. 596, Pt. B, §9 (AMD); PL 2001, c. 596, Pt. B, §25 (AFF).]

The ombudsman and volunteers shall visit, talk with and make personal, social and legal services available to residents; inform residents of their rights, entitlements and obligations under federal and state laws by distributing education materials and meeting with groups or individuals; assist residents in asserting their legal rights regarding claims for public assistance, medical care and social security benefits or in actions against agencies responsible for those programs, as well as in all other matters in which residents are aggrieved, including, but not limited to, advising residents to litigate; investigate complaints received from residents or concerned parties regarding care or other matters concerning residents; and participate as observer and resource in any on-site survey or other regulatory review performed by state agencies pursuant to state or federal law. [PL 1993, c. 284, §1 (AMD).]

The ombudsman may provide advocacy during the hospital discharge process to assist patients with complex medical needs who experience significant barriers in accessing long-term services and supports. If the ombudsman provides advocacy, the ombudsman shall ensure that the patient has information regarding available options including, but not limited to: home and community-based services provided under MaineCare or funded by the State; admission to a residential care facility as defined in section 7852, subsection 14 and licensed according to section 7801; admission to a nursing facility licensed according to section 1817; and admission to an assisted living facility or program licensed pursuant to chapter 1663 or 1664. The ombudsman also may provide assistance to the patient after discharge from the hospital. [PL 2015, c. 506, §1 (NEW).]

Information or records maintained by the ombudsman concerning complaints may not be disclosed unless the ombudsman authorizes the disclosure. The ombudsman may not disclose the identity of any complainant or resident unless the complainant, the resident or a legal representative of either consents in writing to the disclosure or a court orders the disclosure. [PL 1991, c. 622, Pt. QQ, §2 (NEW).]

A complainant, a resident or a legal representative of either, in providing the consent, may specify to whom such identity may be disclosed and for what purposes, in which event no other disclosure is authorized. [PL 1991, c. 622, Pt. QQ, §2 (NEW).]

Any person, official or institution that in good faith participates in the registering of a complaint pursuant to this section or in good faith investigates that complaint or provides access to those persons carrying out the investigation about an act or practice in any residential care facility licensed according to section 7801, any assisted living facility or program or any nursing facility licensed according to section 1817 or that participates in a judicial proceeding resulting from that complaint is immune from any civil or criminal liability that otherwise might result from these actions. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. [PL 1995, c. 670, Pt. B, §4 (AMD); PL 1995, c. 670, Pt. D, §5 (AFF).]

SECTION HISTORY

PL 1991, c. 622, §QQ2 (NEW). PL 1993, c. 284, §1 (AMD). PL 1995, c. 670, §§B3,4 (AMD). PL 1995, c. 670, §D5 (AFF). PL 2001, c. 596, §B9 (AMD). PL 2001, c. 596, §B25 (AFF). PL 2015, c. 506, §1 (AMD).

§5107-B. Long-term Care Steering Committee

(REPEALED)

SECTION HISTORY

PL 1995, c. 696, §B5 (NEW). PL 1997, c. 665, §2 (AMD). PL 1997, c. 734, §1 (AMD). PL 2003, c. 465, §3 (RP).

§5107-C. Program established

(REPEALED)

SECTION HISTORY

PL 1997, c. 734, §2 (NEW). PL 2001, c. 559, §BB1 (RP).

§5107-D. Eligibility for services under the personal care assistance program

(REPEALED)

SECTION HISTORY

PL 1997, c. 734, §2 (NEW). PL 2001, c. 559, §BB1 (RP).

§5107-E. Evaluation teams

(REPEALED)

SECTION HISTORY

PL 1997, c. 734, §2 (NEW). PL 2001, c. 559, §BB1 (RP).

§5107-F. Reimbursement

(REPEALED)

SECTION HISTORY

PL 1997, c. 734, §2 (NEW). PL 2001, c. 559, §BB1 (RP).

§5107-G. Biennial review of reimbursement rates

(REPEALED)

SECTION HISTORY

PL 1999, c. 401, §SSS1 (NEW). PL 2001, c. 559, §BB2 (RP).

§5107-H. Certain family members as personal care assistants

(REPEALED)

SECTION HISTORY

PL 1999, c. 615, §1 (NEW). PL 1999, c. 615, §2 (AFF). PL 2001, c. 559, §BB3 (RP).

§5107-I. Quality assurance review committee

The department shall establish a quality assurance review committee, referred to in this section as the "committee," to review the provision of home care coordination services for long-term services and supports for elders and adults with disabilities. The committee membership must include consumers of home care services; representatives of consumers; consumer advocates, including the long-term care ombudsman program; health care and service providers; representatives from each area agency on aging; and staff of each agency that provides home care coordination services. The joint standing

committee of the Legislature having jurisdiction over health and human services matters may make recommendations to the department regarding committee membership. [PL 2011, c. 495, §1 (AMD).]

1. Chair; meetings. The members of the committee shall choose a chair, who may not be a representative of a home care coordination agency. The committee shall meet at least quarterly. [PL 2001, c. 362, §1 (NEW).]

2. Duties. The committee shall assess, evaluate and prepare findings regarding quality of care coordination, including:

A. Implementation, monitoring and modification of the plan of care of a consumer of home care services; [PL 2001, c. 362, §1 (NEW).]

B. Advocacy on behalf of the consumer of home care services for access to appropriate community resources; [PL 2001, c. 362, §1 (NEW).]

C. Ensuring coordination of service providers and timely delivery of services pursuant to the plan of care and identified needs of the consumer of home care services; [PL 2001, c. 362, §1 (NEW).]

D. Maintaining contact, on behalf of the consumer of home care services, with family members and others in the consumer's support structure and with other representatives, guardians, surrogates or providers of services or supports; [PL 2001, c. 362, §1 (NEW).]

E. Ensuring the continuity of care; [PL 2001, c. 362, §1 (NEW).]

F. With the participation of the consumer of home care services or the consumer's representative and providers of services or support, monitoring services and supports and evaluating the effectiveness of the plan of care; [PL 2001, c. 362, §1 (NEW).]

G. Coordinating and requesting assessments and reassessments and providing necessary consumer status reports to the assessor in a timely manner; [PL 2001, c. 362, §1 (NEW).]

H. Providing the consumer of home care services with appropriate information regarding eligibility, rules and benefits and helping the consumer apply for appropriate assistance; [PL 2001, c. 362, §1 (NEW).]

I. Addressing consumer complaints in a timely manner; and [PL 2001, c. 362, §1 (NEW).]

J. Providing the consumer of home care services with information about the services of the long-term care ombudsman under section 5107-A and the availability of legal services. [PL 2001, c. 362, §1 (NEW).]

[PL 2001, c. 362, §1 (NEW).]

3. Coordination. The committee shall work to coordinate its efforts with those of any other quality assurance initiatives, committees and working groups within the department relating to the delivery of long-term care services.

[PL 2001, c. 362, §1 (NEW).]

4. Annual report.

[PL 2019, c. 612, §3 (RP).]

5. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 2001, c. 362, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 362, §1 (NEW). PL 2011, c. 495, §§1, 2 (AMD). PL 2019, c. 612, §3 (AMD).

§5107-J. Long-term Care Oversight Committee

(REPEALED)

SECTION HISTORY

PL 2003, c. 465, §4 (NEW). PL 2009, c. 299, Pt. A, §4 (AMD). PL 2009, c. 369, Pt. A, §32 (RP). PL 2009, c. 652, Pt. A, §31 (RP).

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