

**Final Report
of the**

**TASK FORCE TO STUDY THE NEED FOR AN OMBUDSMAN
FOR THE DEPARTMENT OF HUMAN SERVICES AND THE
DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE
ABUSE SERVICES**

December 15, 1998

Table of Contents

Executive Summary

Introduction

Current Programs and Services

The Need for an Ombudsman

Recommendations

Appendices

A. Resolves 1997, chapter 120

B. Task Force Membership

C. Draft Legislation Implementing the Task Force Recommendations Relating to the Department of Human Services

D. Draft Legislation Implementing the Task Force Recommendations Relating to the Department of Mental Health, Mental Retardation and Substance Abuse Services

Executive Summary

The Task Force to Study the Need for an Ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services was established by Resolves 1997, chapter 120 in the Second Regular Session of the 118th Legislature. The Task Force consisted of 13 members including legislators and individuals representing children; women; the elderly; low-income families; persons with developmental disabilities; consumers of substance abuse services; persons with mental illness; the Medicaid managed care ombudsman program; and the Long-term Care Ombudsman program.

The Task Force was convened on October 20, 1998 and elected Rep. Elaine Fuller to chair the Task Force. In addition to its first meeting, the Task Force met on November 9, November 30 and December 7, 1998. The first two meetings focused on fact finding and information gathering related to the current services and programs available to DHS and DMHMRSA clients. The last two meetings were devoted to discussions of the role and functions of an ombudsman, the need for an ombudsman or other improved services and programs to address gaps in the assistance available to clients and the Task Force's recommendations and final report.

As required in Resolves 1997, chapter 120, the Task Force was charged with the following duties:

- study the need for an ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services;
- examine the operation and effectiveness of current ombudsman programs, advocacy programs, offices of consumer affairs, appeals procedures and other opportunities for clients of the two departments and members of the public to express their interests to the departments;
- consider models for client representation in use in other states; and
- make recommendations for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The Task Force makes the following recommendations to address the gaps in services providing education, assistance and advocacy to recipients of services from the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Require the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services to make biennial reports to the joint standing committee of the Legislature having jurisdiction over human services and mental health, mental retardation and substance abuse services matters regarding the consumer assistance and advocacy services available to clients of the departments and the implementation of the recommendations of this Task Force

Department of Human Services

" Establish ombudsman programs for the Department of Human Services through outside contracts with nonprofit organizations. The ombudsman programs will assist clients of the department in the following areas:

-child welfare services

-Medicaid program

-Temporary Assistance to Needy Families (TANF), Additional Support for People in Retraining and Employment (ASPIRE) and Parents as Scholars programs

" Maintain a Medicaid Managed Care Ombudsman for all Medicaid recipients enrolled in managed care.

" Direct the Department of Human Services to prepare and distribute an informational pamphlet to parents who become involved with the child protective system by February 14, 1999

" Establish due process protection for parents involved with the child protective system prior to court action

" Require the Bureau of Child and Family Services to adopt rules for the operation of the child protective system by December 31, 1999

" Direct the Department of Human Services to investigate whether families applying for TANF benefits are receiving adequate notice of their right to refuse to cooperate in the collection of child support cases where cooperation would place the parent or child in danger and report back to the joint standing committee of the Legislature having jurisdiction over human services matters by May 1, 1999

" Require the Department of Human Services to make fair hearings available to former TANF beneficiaries seeking to challenge the amount of the distribution by the Department of child support that they are eligible to receive and the timeliness of payment by the Department

" Require the Department of Human Services to examine whether sanctions in the TANF Program are being fairly and uniformly administered throughout the State and implement a corrective action plan to remedy any problems that are found

" Direct the Auditing, Contracting and Licensing Service Center to adopt rules governing the Transitional Child Care program in accordance with the Maine Administrative Procedures Act by April 30, 1999

" Require the Department of Human Services to create a model set of forms for use by the department and all providers and contractors of the department to provide notice of action and notice of appeal or review rights to participants in department

programs

Department of Mental Health, Mental Retardation and Substance Abuse Services

" Increase the capacity of the Office of Advocacy to serve adult recipients of mental health services in the community by adding one advocate position in this area

" Provide funding for two additional positions to the Disability Rights Center for advocacy services to adult recipients of community mental health services

" Increase the number of children's advocates within the Office of Advocacy so that there is one advocate per region for children's services

" Provide funding for two additional positions to the Disability Rights Center for advocacy services to children with special needs

" Increase the funding to \$100,000 for the Office of Advocacy's outside contract for legal assistance to department clients with civil legal problems

" Amend the Office of Advocacy's annual reporting requirement to the joint standing committee of the Legislature having jurisdiction over mental health and mental retardation matters

" Support the development of an independent consumer initiative in the State for current consumers of substance abuse services, recovering substance abusers and their families

Introduction

The Task Force to Study the Need for an Ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services was established by Resolves 1997, chapter 120 in the Second Regular Session of the 118th Legislature. The Task Force was created during the Joint Standing Committee on Health and Human Services' consideration of LD 2207, An Act to Establish the Office of Mental Health and Human Services Ombudsman. LD 2207, as originally proposed, would have established a single, independent agency within the Executive Branch to represent the interests of individuals involved in both the mental health and human services systems and to provide independent clinical oversight over cases within the departments. In its deliberations, the Health and Human Services Committee amended the bill to recommend that this task force be established to study the need for an ombudsman for these departments. Resolves 1997, chapter 120 is included as Appendix A.

The Task Force consisted of 13 members: six members appointed by the President of the Senate; five members appointed by the Speaker of the House; and two members representing the Departments of Human Services and Mental Health, Mental Retardation and Substance Abuse Services. The Task Force was comprised of legislators and individuals representing children; women; the elderly; low-

income families; persons with developmental disabilities; consumers of substance abuse services; persons with mental illness; the Medicaid managed care ombudsman program; and the Long-term Care Ombudsman program. A list of Task force members is included in Appendix B.

The Task Force was convened on October 20, 1998 and elected Rep. Elaine Fuller to chair the Task Force. In addition to its first meeting, the Task Force met on November 9, November 30 and December 7, 1998. The first two meetings focused on fact finding and information gathering related to the current services and programs available to DHS and DMHMRSSA clients. The last two meetings were devoted to discussions of the role and functions of an ombudsman, the need for an ombudsman or other improved services and programs to address gaps in the assistance available to clients and the Task Force's recommendations and final report. Meeting summaries are included in Appendix D.

As required in Resolves 1997, chapter 120, the Task Force was charged with the following duties:

- study the need for an ombudsman for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services;
- examine the operation and effectiveness of current ombudsman programs, advocacy programs, offices of consumer affairs, appeals procedures and other opportunities for clients of the two departments and members of the public to express their interests to the departments;
- consider models for client representation in use in other states; and
- make recommendations for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Current Programs and Services

The Task Force's initial focus was to identify the current programs and services that provide advocacy services and other assistance to clients of the departments and members of the public. The following is a brief description of many of the programs and services identified and discussed by the Task Force.

Department of Human Services

JUDICIAL APPEALS: The judicial system has jurisdiction over department decisions subject to the administrative hearing process. Administrative decisions may be appealed to the Superior Court. The judiciary is also the first level of process for several department functions such as child and adult protective and child support enforcement. In child protective cases, a guardian ad litem is often appointed to advocate for the best interests of the child or children involved.

COMMISSIONER'S OFFICE: The Commissioner's Office responds to client concerns and complaints relating to department services. Referrals are made to the appropriate program for follow up and response or directly answered by the Commissioner's Office.

OFFICE OF LEGISLATIVE AND CONSTITUENT AFFAIRS: This office responds to all general inquiries to the department and responds specifically to issues affecting constituents relating to

department services. Inquiries are referred from the Governor, Legislature, Congressional delegation and other state agencies. Direct inquiries are also made by DHS clients and the public. The majority of inquiries relate to child support enforcement, child welfare and TANF/ASPIRE/Medicaid/food stamp issues. Referrals are made to the appropriate program for follow up and response.

ADMINISTRATIVE HEARINGS DIVISION: The department has an administrative hearings division to handle hearings and appeals of department decisions. Hearings are conducted in accordance with the Administrative Procedures Act. Hearing officers are employees or contractors of the department. Any person aggrieved by a decision of the department may request an administrative hearing; administrative hearings decisions may be appealed to the Superior Court.

CHILD SUPPORT ENFORCEMENT COMPLAINT AND INQUIRY UNIT: The department is required by statute to maintain a centralized system to receive and respond to complaints and inquiries from persons eligible for support enforcement services; the system must also be used to identify and eliminate chronic problems within the support enforcement program.

LONG-TERM CARE OMBUDSMAN: The long-term care ombudsman program is operated by a non-profit organization under contract with the department. The ombudsman, employees of the program and trained volunteers do the following: 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.

MEDICAID MANAGED CARE OMBUDSMAN: The Department has established a voluntary Medicaid managed care component to the Medicaid program. Through a contract with an outside entity, the Department has developed an ombudsman program to educate and assist participants in the Medicaid managed care component. The ombudsman assists participants in understanding and navigating the system; assists with appeals and grievances; and tracks patterns of complaints.

CHILD WELFARE SERVICES OMBUDSMAN: (Not funded since FY'93, but enabling legislation remains in statute) Public official appointed in the Executive Branch to receive and investigate citizens' complaints against state agencies which provide child welfare services and, when deemed necessary, may propose remedial action.

ADVISORY COUNCILS/COMMITTEES TO THE DEPARTMENT:

- Long-term Care Steering Committee: The committee provides input on all policies and initiatives, laws and rules concerning long-term care and assisted living in order to ensure that long-term care and assisted living programs reflect the needs of the elderly and individuals with disabilities.
- HIV Advisory Council: The council advises the department and other state agencies on prevention of HIV; crises that may develop related to HIV; services for persons with HIV and those family members or other providing support and care to persons with HIV; HIV-related policy, planning, rules or legislation; and fiscal matters related to HIV.

- Developmental Disabilities Council: The council advises the State on its policies and programs for persons with developmental disabilities.
- Child Welfare Advisory Committee: The committee advises department on development of policies and programs which affect the well-being of children and their families for whom the department has responsibility, as well as those programs which prevent the maltreatment of children within the State.
- Child Care Advisory Council: The council advises the department and Legislature regarding child care services in the State; to encourage the development of coordinated child care policies to promote quality, uniformity and efficiency of services.
- Temporary Assistance to Needy Families Advisory Council: The council advises the Commissioner regarding education, training, job opportunities, quality employment and business opportunities, postsecondary education programs and other matters affecting TANF recipients.

CONSUMER ADVOCACY/ASSISTANCE ORGANIZATIONS: These organizations provide outreach and support services to various constituent groups.

LEGAL ASSISTANCE PROVIDERS---Pine Tree Legal Assistance, Maine Equal Justice Project, Volunteer Lawyers Project, Legal Services for the Elderly: These organizations provide legal assistance and representation to various constituent groups related to Department of Human Services activities and programs.

Department of Mental Health, Mental Retardation and Substance Abuse Services

JUDICIAL APPEALS: The judicial system has jurisdiction over department decisions subject to the administrative hearing process. Administrative decisions may be appealed to the Superior Court.

COMMISSIONER'S OFFICE: The Commissioner's Office responds to client concerns and complaints relating to Department Services. Referrals are made to the appropriate program for follow up and response or directly answered by the Commissioner's Office.

FORMAL GRIEVANCE PROCEDURES FOR CHILDREN AND ADULTS RECEIVING MENTAL HEALTH SERVICES: Under the AMHI Consent Decree and 34-B MRSA § 3003, recipients of mental health services have the right to fair, timely and impartial grievance procedures for the purpose of ensuring appropriate administrative resolution of grievances with respect to infringement of rights.

FORMAL GRIEVANCE PROCEDURES FOR CHILDREN AND ADULTS RECEIVING MENTAL RETARDATION SERVICES: Under the Community Consent Decree and 34-B MRSA § 1203, sub-§ 4, recipients of mental retardation services also have the right to fair, timely and impartial grievance procedures.

PROPOSED STATEWIDE MEDIATION SERVICES: The department is currently considering bids for the development and implementation of a statewide mediation capacity to be utilized by children and adults who are served with department funds. The expectation is to provide "an effective conflict resolution process" as an adjunct to existing grievance procedures.

OFFICE OF ADVOCACY: The Office of Advocacy investigates claims and grievances of clients of

the department and advocates compliance by any institution, other facility or agency administered by the department or that receives department funds with any laws, rules, institutional or other policies relating to the rights and dignity of clients.

OFFICE OF CONSUMER AFFAIRS: The Office of Consumer Affairs is organized on the principle that consumers of department services have valuable insight and experience to offer in the design and delivery of those services. The office seeks to develop opportunities for past and present recipients of services to participate in decisionmaking as policies and programs are developed and the quality of those programs is assessed.

DEVELOPMENTAL DISABILITIES COUNCIL: The Council advises the State on its policies and programs for persons with developmental disabilities.

QUALITY IMPROVEMENT COUNCILS: The councils evaluate the delivery of mental health services to children and adults under the authority of the department or who have a major mental illness and advise the department regarding quality assurance, systems development and the delivery of mental health services to children and adults under the authority of the department. Two additional councils were also established to evaluate the delivery of mental health services at the 2 state mental health institutes and advise the department regarding quality assurance, operations and functions of the mental health institutes. Quality improvement councils have also been developed to evaluate the delivery of alcohol and other drug treatment services and to advise the Office of Substance Abuse and the department regarding quality assurance, systems development and the delivery of substance abuse services. Members of the quality improvement councils include recipients of department services and their families.

ADVISORY COUNCILS/COMMITTEES TO THE DEPARTMENT:

- Mental Health Rights Advisory Board: The board advises the department on the implementation of its rules concerning the rights of recipients of mental health services.
- Advisory Committee On Mental Retardation: The committee advises the department in assessing present programs, planning future programs and developing means to meet the needs of persons with mental retardation in the State.
- Family Support Councils: The councils advise the department regarding statewide development and implementation of family support services.
- Children With Special Needs Advisory Committee: The committee advises the department in assessing present programs, planning future programs and developing means to meet the needs of children in need of treatment and their families.
- Substance Abuse Services Commission: The committee advises the Office of Substance Abuse and the Legislature in the development of policies and programs for substance abuse services and treatment.

DISABILITIES RIGHTS CENTER: State-designated protection and advocacy agency for persons with disabilities, including recipients of mental health and mental retardation services; agency provides information and referral services; provides advice and education on the rights of persons with disabilities; investigates allegations of abuse, exploitation or neglect; and pursues administrative, legal and other appropriate remedies on behalf of persons with disabilities.

CONSUMER ADVOCACY/ASSISTANCE ORGANIZATIONS: These organizations provide

outreach and support services to various constituent groups that receive mental health, mental retardation and substance abuse services.

OTHER LEGAL ASSISTANCE---Pine Tree Legal Assistance, Maine Equal Justice Project, Volunteer Lawyers Project, Legal Services for the Elderly : These providers of legal services provide legal assistance and representation to various constituent groups that receive mental health, mental retardation and substance abuse services.

The Need for an Ombudsman

Role and Functions of an Ombudsman

Before considering the question of whether or not an ombudsman is necessary for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Task Force initially considered the proper role and functions of an ombudsman. The Task Force carefully considered and developed the role and functions of an ombudsman to ensure that the best interests of the consumer would be served. Webster's Dictionary defines an ombudsman as "a public official appointed to investigate citizens' complaints against local or national government agencies that may be infringing on the rights of individuals." For its purposes, the Task Force decided to create its own definition that reflects the changes in the way state government delivers services to its citizens. Members expressed the strong view that an ombudsman not be a neutral party, but be an advocate for the interests of the consumer. To that end, they believe an ombudsman should be an independent source of assistance to the consumer and not be perceived as an "insider" with the state agency involved. That independence can be ensured by creating the ombudsman through statute or some other manner giving the ombudsman independent authority. They also believe that the type of services offered to the consumer by the ombudsman should be determined and directed by the consumer and that the ombudsman be someone who is informed about the rights and responsibilities of the consumer.

The Task Force defines an ombudsman in the following manner:

"Ombudsman" is an independent entity created by the Legislature appointed to investigate and resolve citizens' complaints against local, state or national government agencies or service-providing agencies that may be infringing on the rights of individuals.

At a minimum, the Task Force identified the following functions and services that an ombudsman should perform for the consumer:

- systemic advocacy/identify and address patterns or recurrent problems;
- advocacy for individuals;
- investigate and resolve complaints;
- facilitate second opinions on medical or clinical issues;
- coordinate information and referrals to other agencies;
- provide a range of alternative dispute resolution methods;
- assistance in seeking legal remedies;
- market and operate a toll-free helpline;

- act as a liaison between consumers and state agencies; and
- report to State Legislature and state agencies.

The role of state government and its relationship with an ombudsman was also considered by the Task Force. Members believe that state government agencies have responsibility to take action to address systemic or individual issues identified by an ombudsman or other entity that advocates for consumers.

Task Force Discussion

With an understanding of the current programs and services available and consensus as to the role and functions of an ombudsman, the Task Force turned its attention to the question of whether or not an ombudsman is necessary for the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Task Force decided that the establishment of an ombudsman should not duplicate existing services and capabilities within the two departments. In that regard, the Task Force focused on two areas in its discussions: (1) the identification of gaps in services and assistance needed by consumers; and (2) the identification of where improvements could be made by building on existing capabilities to provide additional assistance to consumers.

Within the Department of Human Services, the Task Force identified several gaps in services. As a whole, the Department does not provide consumer education and advocacy for a wide range of its services. Advocacy services are provided to recipients of long-term care services and to participants in the Medicaid Managed Care program. The Task Force believes there are several areas with gaps in services where an ombudsman or other type of consumer advocacy may be appropriate for the department, especially in the areas of child welfare, child support enforcement, the Temporary Assistance to Needy Families (TANF) program, the ASPIRE program and the Medicaid program. The Task Force also believes there are other improvements to these programs that can be made without the creation of an ombudsman program.

As for the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Task Force discussed the wide range of consumer advocacy/assistance programs available to clients of the Department of Mental Health, Mental Retardation and Substance Abuse Services both within the department and outside of the agency. Because many of the functions appropriate for an ombudsman are currently being performed by these existing programs, the Task Force does not believe an ombudsman is necessary for the department. Rather, the Task Force prefers to build on existing programs and capabilities to fill the gaps in services that do exist in two primary areas, children's services and services for adult with mental illness that live in the community.

Recommendations

The Task Force makes the following recommendations to address the gaps in services providing education, assistance and advocacy to recipients of services from the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Department of Human Services

Establish ombudsman programs for the Department of Human Services through outside contracts with nonprofit organizations. The ombudsman programs will assist clients of the department in the following areas:

child welfare services

Medicaid program

Temporary Assistance to Needy Families (TANF), Additional Support for People in Retraining and Employment (ASPIRE) and Parents as Scholars programs

The Task Force carefully considered the issue of whether or not an ombudsman is necessary for the Department of Human Services. Members believe that a “super” ombudsman for all DHS services and functions would not be justified or effective. Instead, the Task Force focused on specific areas or programs within the department where an ombudsman program would be most effective. Members identified these areas as child welfare services, the Medicaid program and the Temporary Assistance to Needy Families (TANF), Additional Support for People in Retraining and Employment (ASPIRE) and Parents as Scholars programs. To preserve the independence of the ombudsman programs, the Task Force recommends that these programs be established through outside contracts with nonprofit organizations.

From 1989 until 1992, there was a child welfare services ombudsman program within the Executive Branch of government. Since fiscal year 1993, however, this office has not been funded, although the statutory authority for the program remains in law. The Task Force considered the child welfare services ombudsman program as a model and discussed past reports from the ombudsman to the Legislature. During the first nine months of its existence, the ombudsman program received 162 complaints. The Task Force believes that the lack of ombudsman services for individuals involved in the child welfare system is a significant gap in services. Members recommend that an ombudsman program for child welfare services be reestablished for the benefit of individuals with issues or concerns relating to child protective services, foster care or adoption.

With regard to the Medicaid program, the Task Force noted that there is one position currently within the Bureau of Medical Services of the department dedicated to Medicaid recipient relations. Given that there were 158,000 Medicaid recipients as of the end of September 1998 and the children that will be added to the caseload through the expansion of the eligibility requirements, the Task Force feels that one position is not adequate to meet the needs of Medicaid recipients related to their concerns or complaints related to their benefits. The Task Force recommends that the department establish an ombudsman program for Medicaid recipients not currently served by one of the existing ombudsman programs, the Long-term Care Ombudsman program or the Medicaid Managed Care Ombudsman program.

The Task Force also believes that the Temporary Assistance to Needy Families (TANF), Additional Support for People in Retraining and Employment (ASPIRE) and Parents as Scholars programs will also benefit from an ombudsman program. Recent changes in the federal and state requirements for these programs have caused confusion and concern among participants in these programs regarding program eligibility, benefits and other issues. The Task Force recommends that participants in these program have the opportunity for assistance and advocacy from an informed individual or individuals through an ombudsman program.

" Maintain a Medicaid Managed Care Ombudsman for all Medicaid recipients enrolled in managed care

The Maine Department of Human Services has established a Medicaid Managed Care Ombudsman program by rule. The Department has contracted with an independent nonprofit organization to run the program. The contractual arrangement between the department and the nonprofit organization runs until May 1999. The program's services extend only to persons in risk-based, capitated managed care. It does not include persons receiving primary care case management services. The Task Force recommends that Medicaid Managed Care Ombudsman program as established in the Maine Medical Assistance Manual, Chapter VI, Section 2, be maintained by the department until such time that Medicaid services are no longer provided to certain Medicaid recipients on a risk-based or case management basis. To the extent that the Medicaid Managed Care program is extended to persons receiving long-term care or home health care services, the Department of Human Services must create an ombudsman program which includes the following organizations: the Long-term Care Ombudsman Program, the Health Insurance Counseling and Assistance Program of Legal Services for the Elderly and the five Area Agencies on Aging, and the Disability Rights Center. Ombudsman services to serve these recipients must be available to persons enrolled in any system using utilization review, risk based capitation or case management.

" Direct the Department of Human Services to prepare and distribute an informational pamphlet to parents who become involved with the child protective system by February 14, 1999

There is presently no comprehensive written information available to parents who become involved with the child protective system. Further, parents do not have access to court-appointed legal counsel until the State actually initiates court action to remove a child from the home. The Task Force recommends that the department prepare and distribute written materials to all parents at the time of their first contact with the child protective system. This written material should include:

1. an individualized description of the complaint received against the parent(s), including the suspected harm or risk of harm to their child and what they are expected to do to protect their child;
2. a description of the child protective investigation process, including a generalized statement of how the investigation will be conducted and how long it will take;
3. the rights of parents in this process, including the right to be represented at any time by counsel, and the right to a court appointed lawyer if the case goes to court; and
4. notice of any services available to the family which may reduce the risk of abuse or neglect.

Establish due process protection for parents involved with the child protective system prior to court action

The vast majority of parents who become involved with the child protective system do not lose custody of their children. They do not go to court, and do not have access to a court-appointed lawyer. However, in many of the cases which do not go to court, the Department establishes conditions with which the family must comply in order to avoid court action. For example, the Department may require that a certain individual leave the household, or that the parent participate in certain activities in order to maintain custody. There is presently no formal due process mechanism, such as a fair hearing, by which the parent can challenge these conditions if he or she believes that they are

inappropriate, or not in the best interest of the child. The Task Force understands the department's concerns that the opportunity for fair hearing may lengthen the child protective process and present other practical problems. However, the Task Force believes that the right to a fair hearing overrides these concerns and that the use of an expedited hearing process will address these concerns. The Task Force recommends that legislation be enacted to provide access to a fair hearing for parents who want a formal review of these Department conditions.

Require the Bureau of Child and Family Services to adopt rules for the operation of the child protective system by December 31, 1999

The Bureau of Child and Family Services has not adopted rules through the Administrative Procedures Act that specify the bureau's policy governing the operation of the child protective system. The lack of written rules makes it difficult for parents to adequately understand their rights and responsibilities in that system. For example, supportive or reunification services or counseling are available in this system, but there are no properly adopted rules laying out what these services are, who is eligible for them or how to apply for them. This also means that there has been no formal opportunity for comment on these policies. The Task Force recommends that the Bureau of Child and Family Services be required to adopt a comprehensive body of rules governing this system by the end of 1999. This is particularly important in light of new federal regulations which will have the effect of significantly speeding up the process of terminating parental rights.

Direct the Department of Human Services to investigate whether families applying for TANF benefits are receiving adequate notice of their right to refuse to cooperate in the collection of child support cases where cooperation would place the parent or child in danger and report back to the joint standing committee of the Legislature having jurisdiction over human services matters by May 1, 1999

A significant amount of literature has been published in the last few years revealing a high incidence of domestic violence in the lives of TANF participants. While the law requires TANF applicants to assign their right to child support to the State as a condition of receiving benefits, parents are excused from this requirement if the assignment would place them or their children in danger from the absent parent. There are currently only 122 such "good cause" waivers active in Maine. That is less than 1% of the TANF caseload, even though different studies show that anywhere between 25 and 60% of TANF parents have experienced domestic violence. The Task Force recommends that the Department of Human Services investigate this issue to determine whether applicants and recipients are receiving adequate notice of the opportunity to claim a "good cause" waiver, and whether requests for good cause waivers are being appropriately processed. By May 1, 1999, the Department must report back to the joint standing committee of the Legislature having jurisdiction over human services matters on the outcome of its investigation.

Require the Department of Human Services to make fair hearings available to former TANF beneficiaries seeking to challenge the amount of the distribution by the Department of child support that they are eligible to receive and the timeliness of payment by the Department

The Department of Human Services collects child support for both welfare and non-welfare families. If a family receives welfare benefits, and disagrees with the amount of child support that it receives, the family can request a fair hearing to have an independent review of the Department's action. However, if the family is not receiving welfare they do not have that same right to an impartial administrative review. Often former TANF beneficiaries question the way in which child support

arrearage payments are distributed between the family and the State. Families may also have concerns related to the timeliness of payment by the Department. Currently, those not on TANF have no vehicle to challenge the way payments are distributed or the timeliness of payment without going directly to court. The Task Force recommends that legislation be enacted to provide access to the fair hearing process for former TANF beneficiaries and other non-welfare families who request a hearing on these issues.

Require the Department of Human Services to examine whether sanctions in the TANF Program are being fairly and uniformly administered throughout the State and implement a corrective action plan to remedy any problems that are found

Parents who fail to comply with the work requirements of the TANF Program are subject to sanction (a reduction in cash assistance). However, parents who have "good cause" for failing to comply, such as lack of transportation or child care, cannot be sanctioned. In some counties, the percent of families sanctioned is much higher than in others. The Task Force believes that these differences result from non-uniform application of the law, not vast differences in recipient behavior throughout the State.

In order to ensure that sanction policies are administered uniformly throughout the state, and that families are not punished unfairly, the Task Force recommends that legislation be introduced to require the department to examine whether sanctions in the TANF Program are being fairly and uniformly administered throughout the State. In its examination, the department should calculate the percent of TANF recipients sanctioned in each county and determine a statewide average, excluding counties with very high and very low sanction rate. Any county that exceeded the State sanction average by more than 5 percentage points would be subject to a review. This process should include a review of the case file of each sanctioned family to determine whether the caseworker followed state policy by contacting the family to hear the family's side of the story and evaluating whether the family had "good cause" for failing to comply. If the reviewer determines that the sanction was incorrectly applied, the family should be reinstated and any benefits improperly withheld should be restored.

Direct the Audit, Contracting and Licensing Service Center to adopt rules governing the Transitional Child Care program in accordance with the Maine Administrative Procedures Act by April 30, 1999

The Bureau of Family Independence and the Audit, Contracting and Licensing Service Center share responsibility for the administration of the Transitional Child Care program (TCC). After the first month of participation in the program, the Bureau of Family Independence transfers responsibility for the TCC program to the Audit, Contracting and Licensing Service Center. The Center provides all TCC assistance beginning in the second month of program eligibility through a number of contract agencies. However, the Center does not have any adopted rules governing this program. This lack of guidance and regulation has lead to considerable confusion about program eligibility. Further, the public has not had an opportunity to comment, as required by the APA, on the development of policies governing the program beyond the first month of the program. The Task Force recommends that rules governing the TCC program be adopted by April 30, 1999.

Require the Department of Human Services to create a model set of forms for use by the department and all providers and contractors of the department to provide notice of action and notice of appeal or review rights to participants in department programs

In some programs administered with department funds, notice of refusal, denial, change, reduction or termination is rarely provided. If notices are provided, the notices are more often confusing than informative. On other occasions, notices may not be timely either as related to closeness to the time when action was effectively taken, or in terms of adequacy prior to the review time or hearing schedule. It is universally felt that many notices are often couched or buried among obtuse statutory and regulatory language and legal phrasing. Task Force members believe that clear, concise and straightforward notice of action and appeal or review rights are necessary in every instance of refusal, denial, change, reduction or termination of services or benefits provided by or on behalf of the department. The Task Force recommends that the department develop a model set of notices that may be used by the department and all providers and contractors of the department and develop a method of determining periodic compliance with use of the forms.

Department of Mental Health, Mental Retardation and Substance Abuse Services

Increase the capacity of the Office of Advocacy to serve adult recipients of mental health services in the community by adding one advocate position in this area

There are two full-time advocates, one located at AMHI and one at BMHI, that provide services to adult recipients of mental health services. These advocates are able to provide services to people with mental illness in the community only to a limited degree, because the focus of their work is with patients at the State's mental institutions. Essentially, there is no system in place for community mental health advocacy.

As the State's mental institutions are downsized and persons with mental illness are transitioned to community-based mental health services, the Task Force recommends that one advocate position be added to develop the capacity to serve the needs of adults with mental illness in the community.

Provide funding for two additional positions to the Disability Rights Center for advocacy services to adult recipients of community mental health services

The Disability Rights Center is the federal protection and advocacy agency designated by the Governor to provide services to Maine citizens with developmental disabilities and mental illness. The DRC represents adults in the community through several of its programs. However, the DRC is prevented from using its federal funding to representing adults with mental illness in the community on non-discrimination complaints if the individuals have been discharged from a mental institution for more than 90 days. The Task Force recognizes that this constraint has resulted in a gap in services for persons with mental illness in the community. Members believe it is very important that both the Office of Advocacy and the Disability Rights Center be funded adequately to provide services to adults in the community. The Task Force recommends that State funding be provided to the DRC for two additional positions to enhance the services available to adults recipients of mental health services.

Increase the number of children's advocates within the Office of Advocacy so that there is one advocate per region for children's services

Currently, there is only one children's advocate in the Office of Advocacy with responsibilities to cover the entire state. The children's advocate performs a variety of functions, including advocacy for children with special needs with schools, social service agencies and court systems, short-term crisis case management and advice and consultation in custody-visitation conflicts when special needs

children are involved. Based on estimates from the Office of Advocacy, the children's advocate provided assistance to 230 children in 1998, yet the estimated number of children in Maine schools with special needs is close to 33,762. Department of Education, Office of Special Services, December 1997 statistic.

The Task Force believes that there is a significant gap in the services available to children through the Office of Advocacy. To better serve the needs of children, the Task Force recommends that an additional 2 children's advocates be added to the Office of Advocacy so that one advocate may serve in each of the three regions of the State.

Provide funding for two additional positions to the Disability Rights Center for advocacy services to children with special needs

Through its Developmental Disabilities program and other programs, the Disability Rights Center is recognized as a leading provider of special education advocacy for children. During the 1997 fiscal year, the DRC represented 260 children. Additionally, information and referral services were provided to an estimated 500 children and their parents. As with the services the DRC is able to provide to adults with mental illness, the DRC is limited in the services it can provide to children with its federal funding. The Task Force recognizes that this constraint has resulted in significant unmet need for advocacy services to children. The Task Force recommends that State funding be provided to the DRC for two additional positions to increase their capacity to serve children with special needs.

Increase the funding to \$100,000 for the Office of Advocacy's outside contract for legal assistance to department clients with civil legal problems

Currently, the Office of Advocacy has a contract with a nonprofit legal services organization to provide legal assistance to department clients. Under the contract, the legal services provider represents clients in civil legal actions. The demand for legal assistance has exceeded the current monetary limits of the contract. Additional funding is needed to expand the ability of the contractor to meet the needs of those seeking legal representation from the Office of Advocacy. The Office of Advocacy believes that additional referrals could be made with more funding under the contract. The Task Force recommends that the amount available under the contract be increased from \$30,878 to \$100,000 per year. These additional funds will allow the Office of Advocacy, in conjunction with its legal services contractor, to provide expanded legal services to department clients.

Amend the Office of Advocacy's annual reporting requirement to the joint standing committee of the Legislature having jurisdiction over mental health and mental retardation matters

Under current law, the chief advocate in the Office of Advocacy is required to report annually both in person and in writing to the joint standing committee of the Legislature having jurisdiction over mental health and mental retardation matters. However, no specific requirements or elements of the report are set out in the law. The Task Force believes that the Legislature and the public will benefit from more detailed information regarding the Office of Advocacy. The Task Force recommends that the statutory reporting requirement for the Office of Advocacy be amended to include information related to the number of complaints made to the Office of Advocacy, the actions taken by the Office on behalf of clients of the department, the numbers of hearings or grievance procedures of the department where the Office represented clients and the numbers of referrals the Office made to other advocacy agencies. The report must also include information as to the development of written protocols and policies between the Office of Advocacy and the Disability Rights Center regarding the

relationship between the Office and the DRC and the distinction between the services provided to individuals by these two entities.

Support the development of an independent consumer initiative in the State for current consumers of substance abuse services, recovering substance abusers and their families

The Task Force recognizes that there is no independent advocate for consumers of substance abuse services. While the Office of Substance Abuse has established a formal mechanism through the Quality Improvement Councils for consumers of these services to take part in the policymaking and planning process, an independent voice for consumers is also needed. The Task Force is aware of current efforts to develop a community advocacy organization for recipients of substance abuse services under a federal grant from the Center for Substance Abuse Treatment. In New England, the New England Institute of Addiction Studies is coordinating the effort to establish such an organization. In Maine, the National Council on Alcoholism-Maine, in partnership with local and community groups, is hosting and directing efforts to create a statewide network of educators and advocates around addiction and recovery. The Task Force supports these efforts to develop a statewide network of education and advocacy programs run by and for people recovering from substance abuse and addiction.

[Return to Study Report Page](#)

APPENDIX A

Resolve 1997, chapter 120
creating the
Task Force to Study the Need for an Ombudsman for the Department of Human Services and the
Department of Mental Health, Mental Retardation and Substance Abuse Services

APPENDIX B

Task Force Members

APPENDIX C

Draft Legislation Implementing the Recommendations of the Task Force Relating to the Department of Human Services

APPENDIX D

Draft Legislation Implementing the Recommendations of the Task Force Relating to the Department of Mental Health, Mental Retardation and Substance Abuse Services

