

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
H.P. 1021 - L.D. 1498

**An Act To Clarify Medicaid Ombudsman Services**

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

**Sec. 1. 22 MRSA §3174-X**, as enacted by PL 1999, c. 681, §1, is repealed and the following enacted in its place:

**§3174-X. Contracted ombudsman services**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Children's health insurance program" means the state children's health insurance program under Title XXI of the Social Security Act. "Children's health insurance program" includes the Cub Care program, which is established in section 3174-T, the federal Children's Health Insurance Program, or CHIP, and the federal State Children's Health Insurance Program, or S-CHIP.

B. "Eligible member" means a person who is eligible to participate as a member or beneficiary of the MaineCare program or the children's health insurance program.

C. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program.

D. "Outreach and education" includes, but is not limited to, work site and community-based training and workshops for members, eligible members and health care providers, social service providers and health insurance navigators, brokers and agents; outreach at events such as town fairs, expositions and health fairs; development of mailings about coverage options, open enrollment periods and other important updates; information hotline response, including providing information and referrals to members and eligible members who call; and screening for eligibility for coverage programs, including programs other than Medicaid programs such as, but not limited to, prescription assistance programs.

E. "Program" means the ombudsman program established under this section.

**2. Program established.** The ombudsman program is established as an independent program to provide ombudsman services to the Medicaid population regarding Medicaid services provided by the department and the department's office for family independence and office of MaineCare services. The program shall consider and promote the best interests of the Medicaid and children's health insurance program populations, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of a member or eligible member. The program shall include outreach and education to eligible members and those who serve eligible members, including health care providers, social service providers and health insurance navigators, brokers, agents and other enrollment professionals. The program shall function through the staff of the program, subcontractors and any volunteers recruited and trained to assist in the duties of the program. If members or eligible members described in this subsection are applying for or receiving long-term care home-based and community-based services or institutional services, ombudsman assistance for those services is provided by the long-term care ombudsman program established pursuant to section 5106, subsection 11-C. The program shall coordinate with the long-term care ombudsman program on activities, including but not limited to marketing, outreach and referral services.

**3. Contracted services; political activity prohibited.** The program shall operate by contract with a nonprofit organization that is best able to provide services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

**4. Program services.** The first priority in the work of the program and the contract for ombudsman services under subsection 3 must be case-specific advocacy and enrollment services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. The program may:

- A. Provide information to the public about the services of the program through a comprehensive outreach program. The program shall provide information through a toll-free telephone number or numbers;
- B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department;
- C. Provide services to members and eligible members to assist them in protecting their rights;
- D. Inform members and eligible members of the means of obtaining services from the department;
- E. Provide information and referral services;
- F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws;

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with members and eligible members making inquiries or complaints and the department;

H. Apply for and use grants, gifts and funds for the purpose of performing the duties of the program; and

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or as the department considers appropriate.

**5. Information for members and eligible members; eligibility.** The program, in consultation with appropriate interested parties, shall provide information about eligibility requirements and procedures for enrolling in MaineCare to members and eligible members, including their dependents. The providing of the information under this subsection does not constitute representation of members and eligible members. Members and eligible members may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to members and eligible members.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of members and eligible members.

**6. Confidentiality of records.** Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made only if the ombudsman determines such disclosure is lawful and in the best interest of the member or eligible member.

**7. Liability.** Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability arising from that complaint or inquiry. 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. The ombudsman and employees and volunteers of the program are employees of the State for the purposes of the Maine Tort Claims Act.

**8. Information.** Information about the services of the program must be given to all members and eligible members who receive or are eligible to receive services from the department and from persons and entities contracting with the department for the provision of Medicaid services.

**9. Report.** The program shall report to the department according to the requirements of the program contract under subsection 3. The program shall also report annually by January 1st to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the activities and services of the program, priorities that may have been set by the program among types of inquiries and complaints, waiting lists for services and the provision of outreach services and recommendations for changes in statute, rules or policy to improve the provision of services.

**10. Funding.** The department shall contract for ombudsman services under this section as long as nonstate funding is available.