

**§4087-A. Ombudsman program**

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

A. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program. [PL 2001, c. 439, Pt. X, §5 (NEW).]

B. "Program" means the ombudsman program established under this section. [PL 2001, c. 439, Pt. X, §5 (NEW).]

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**2. Program established.** The ombudsman program is established as an independent program within the Executive Department to provide ombudsman services to the children and families of the State regarding child welfare services provided by the Department of Health and Human Services. The program shall consider and promote the best interests of the child involved, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of the child and family involved. The program must be staffed, under contract, by a full-time director who is an attorney or a master's level social worker with experience in child welfare, development and advocacy. The program shall function through staff of the program, at the discretion of the nonprofit organization under contract pursuant to subsection 3, to assist in the duties of the program.

[PL 2021, c. 550, §3 (AMD).]

**3. Contracted services; terms.** The program shall operate by contract with a nonprofit organization that the Executive Department determines to be free of potential conflict of interest and best able to provide the 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. The contract must include funds for the nonprofit organization to provide health insurance benefits to the staff of the ombudsman program. The contract must be for a term of 5 years, except that the contract may be terminated consistent with the terms of the contract.

[PL 2021, c. 550, §4 (AMD).]

**4. Services.** The program shall provide services to persons and families involved with child welfare services and may provide input on the State's child welfare system to the department and the joint standing committee of the Legislature having jurisdiction over health and human services matters. The first priority in the work of the program must be case-specific advocacy services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. Any work on systems improvements or lobbying must be adjunctive to case-specific activities. The program may:

A. Provide information to the public about the services of the program through a comprehensive outreach program. The ombudsman shall provide information through a toll-free telephone number and a publicly accessible website; [PL 2021, c. 550, §5 (AMD).]

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; [PL 2001, c. 439, Pt. X, §5 (NEW).]

C. Provide services to persons to assist them in protecting their rights; [PL 2001, c. 439, Pt. X, §5 (NEW).]

D. Inform persons of the means of obtaining services from the department; [PL 2001, c. 439, Pt. X, §5 (NEW).]

E. Provide information and referral services; [PL 2001, c. 439, Pt. X, §5 (NEW).]

F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on current or proposed state programs, rules, policies and laws; [PL 2021, c. 550, §5 (AMD).]

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with persons making inquiries or complaints and the department; [PL 2001, c. 439, Pt. X, §5 (NEW).]

H. Apply for and utilize grants, gifts and funds for the purpose of performing the duties of the program; and [PL 2001, c. 439, Pt. X, §5 (NEW).]

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or determined to be appropriate. [PL 2001, c. 439, Pt. X, §5 (NEW).]

The department or designee of the department shall notify the ombudsman of any statewide policy changes affecting the State's child welfare system before the changes take effect.

[PL 2021, c. 550, §5 (AMD).]

**4-A. Information for parents in child protective cases.** The program, in consultation with appropriate interested parties, shall provide information about child protection laws and procedures to parents whose children are the subject of child protective investigations and cases under this chapter. The providing of the information under this subsection does not constitute representation of parents. Parents may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to parents.

The program shall report annually to the joint standing committee of the Legislature having jurisdiction over judiciary matters, starting February 1, 2003, on the provision of information required by this subsection.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of parents. Failure to provide information under this subsection does not create a cause of action or have any effect on a child protective proceeding.

[PL 2001, c. 696, §36 (NEW).]

**5. Access to persons, files and records.** As necessary for the duties of the program, the ombudsman has access to the files and records of the department, without fee, and to the personnel of the department for the purposes of investigation of an inquiry or complaint. The ombudsman may also enter the premises of the department for the purposes of investigation of an inquiry or complaint without prior notice. The program shall maintain the confidentiality of all information or records obtained under this subsection.

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**6. Confidentiality of records.** Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made as allowed or required in accordance with the provisions of section 4008, subsections 2 and 3. Unlawful dissemination is subject to the provisions of section 4008, subsection 4.

[PL 2005, c. 410, §2 (RPR).]

**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. 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 in the program are employees of the State for the purposes of the Maine Tort Claims Act.

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**8. Penalties.** A person who intentionally obstructs or hinders the lawful performance of the ombudsman's duties commits a Class E crime. A person who penalizes or imposes a restriction on a person who makes a complaint or inquiry to the ombudsman as a result of that complaint or inquiry commits a Class E crime. The Attorney General shall enforce this subsection under Title 5, section 191.

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**9. Information.** Beginning January 1, 2002, information about the services of the program and any applicable grievance and appeal procedures must be given to all children and families receiving child welfare services from the department and from all persons and entities contracting with the department for the provision of child welfare services.

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**10. Report.** The program shall report to the Governor, the department and the Legislature before January 1st each year on the activities and services of the program, priorities among types of inquiries and complaints that may have been set by the program, waiting lists for services, the provision of outreach services and recommendations for changes in policy, rule or law to improve the provision of services.

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**11. Oversight.** The joint standing committee of the Legislature having jurisdiction over health and human services matters shall review the operations of the program and may make recommendations to the Governor regarding the contract for services under this section. The committee may submit legislation that it determines necessary to amend or repeal this section.

[PL 2001, c. 439, Pt. X, §5 (NEW).]

**12. Notification of child fatality required.** The department shall notify the ombudsman of a fatality of a child if:

A. The child was involved with child welfare services at any time; or [PL 2021, c. 550, §6 (NEW).]

B. The fatality is suspected of being the result of abuse or neglect. [PL 2021, c. 550, §6 (NEW).]

Notification under this subsection must occur within 48 hours of a determination by the department that this subsection applies to the fatality. The notification may be provided by oral or electronic communication.

[PL 2021, c. 550, §6 (NEW).]

#### SECTION HISTORY

PL 2001, c. 439, §X5 (NEW). PL 2001, c. 696, §36 (AMD). PL 2003, c. 20, §EEE1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 410, §§1,2 (AMD). PL 2021, c. 550, §§3-6 (AMD).

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