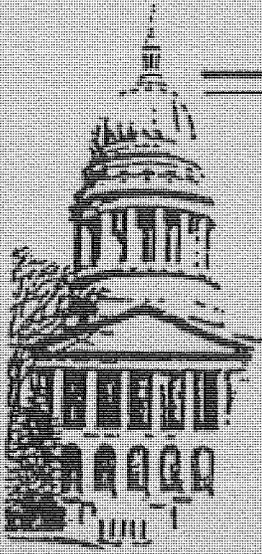


# MAINE STATE LEGISLATURE

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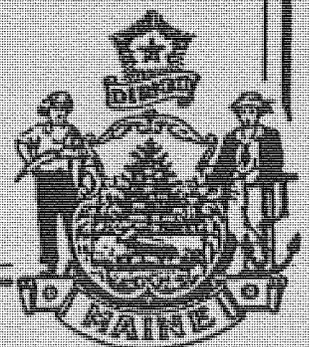
# Review of

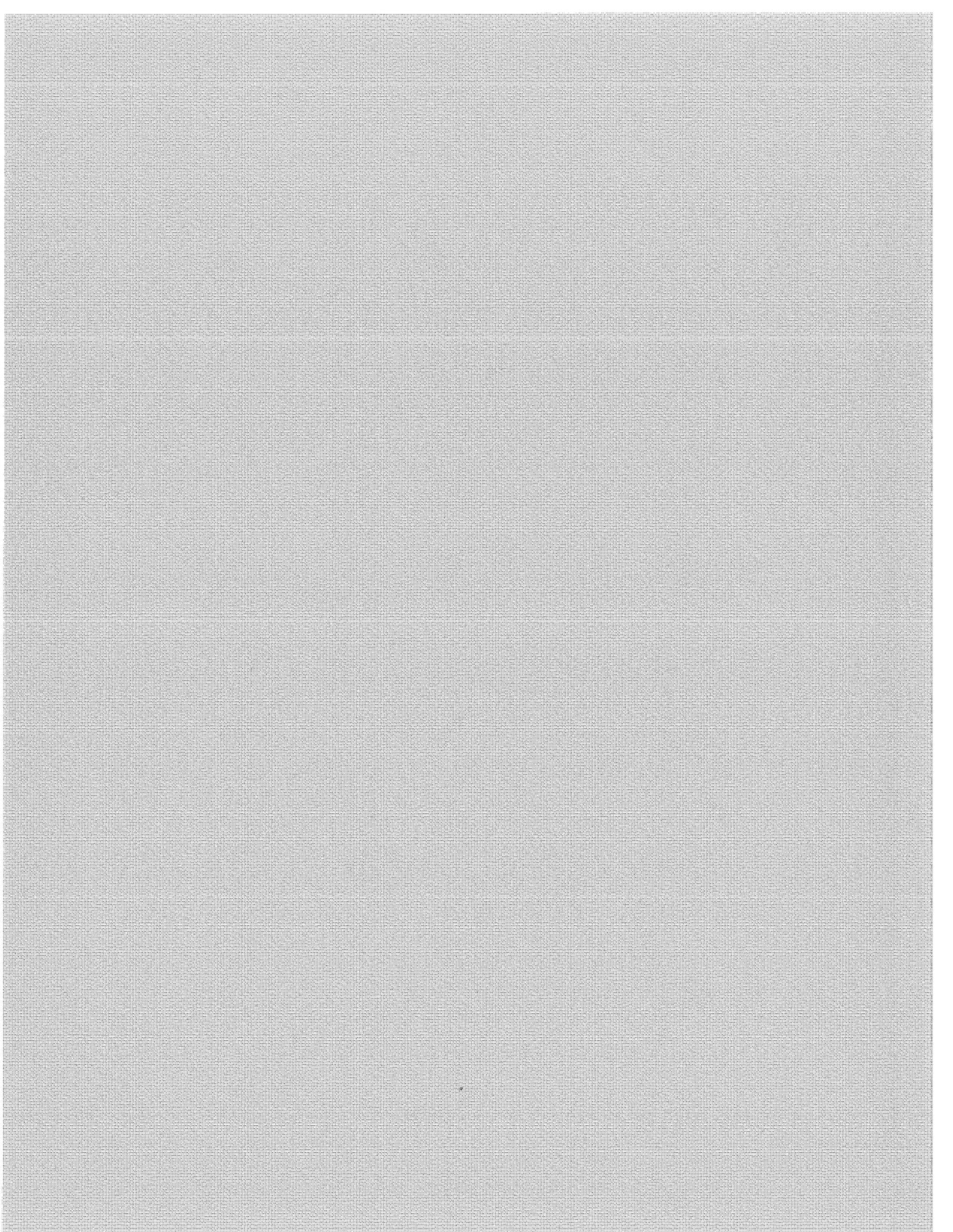
SELECTED ISSUES

STATE PLANNING OFFICE  
DEPARTMENT OF HUMAN SERVICES  
DEPARTMENT OF TRANSPORTATION

## Joint Standing Committee on Audit and Program Review

1992 - 1993





SENATE

JOHN J. CLEVELAND, DISTRICT 22, CHAIR  
M. IDA LUTHER, DISTRICT 8  
CHARLES M. BEGLEY, DISTRICT 20



HOUSE

PHYLLIS R. ERWIN, RUMFORD, CHAIR  
BEVERLY C. DAGGETT, AUGUSTA  
GEORGE A. TOWNSEND, EASTPORT  
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ALBERT G. STEVENS, JR., SABATTUS  
ALVIN L. BARTH, JR., BETHEL  
EDWARD L. DEXTER, KINGFIELD

STATE OF MAINE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE  
COMMITTEE ON AUDIT AND PROGRAM REVIEW

The Honorable Dan A. Gwadosky, Chair  
The Honorable Dennis L. Dutremble, Vice-Chair  
Members of the Legislative Council:

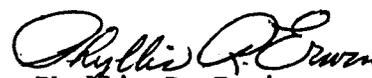
Pursuant to 3 MRSA §927, we are submitting to the Legislature the final findings and recommendations required to implement the Committee's 1992-1993 study of the following agencies:

- State Planning Office;
  - Energy Planning and Policy Development
  - Consolidation of Natural Resource Programs.
- Department of Human Services;
  - Medicaid Voluntary Contribution and Provider Specific Taxes;
  - Home & Community Based Waivers within DHS
  - Adult Protective Services Program.
- Department of Transportation;
  - Certificates of Participation;
  - Eminent Domain and the Department's Right-of-Way Program; and
  - Retired Engineers returning to the Department as consultants.

We acknowledge and thank Senator Beverly Bustin for her work as Senate Committee Chair during the review phase of this work, as well as the Committee members of the 115th Second Regular Legislature, and the adjunct members who served with the Committee. Their expertise enriched and strengthened the review process.

Sincerely,

  
John J. Cleveland  
Senate Chair

  
Phyllis R. Erwin  
House Chair

cc: Sarah C. Tubbesing, Executive Director  
Legislative Council



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# Committee Organization

## AUDIT & PROGRAM REVIEW COMMITTEE Review Assignment

- State Planning Office;
  - Energy Policy Planning and Implementation
  - Consolidation of Natural Resource Programs.
- Department of Human Services;
  - Medicaid Voluntary Contribution and Provider Specific Taxes;
  - Home & Community Based Waivers within DHS; and
  - Adult Protective Services Program.
- Department of Transportation;
  - Certificates of Participation;
  - Eminent Domain and the Department's Right-of-Way Program; and
  - Retired Engineers returning to the Department as consultants.

### MEMBERS:

Senator Beverly Bustin, Chair  
Senator John Cleveland  
Senator Donald Rich  
Representative Phyllis Erwin, Chair  
Representative Harriet Ketover  
Representative Harold Macomber  
Representative Beverly Daggett  
Representative John Aliberti  
Representative George Townsend  
Representative William Lemke  
Representative Catharine Lebowitz  
Representative Eleanor Murphy  
Representative Wesley Farnum

### ADJUNCT MEMBERS:

Representative Donald Strout  
Joint Standing Committee on  
Transportation  
Representative Stephen Simonds  
Joint Standing Committee on Human  
Resources  
Representative Charlene Rydell  
Joint Standing Committee on  
Appropriations and Financial  
Affairs



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# The Committee Process

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The Joint Standing Committee on Audit & Program Review was created in 1977 to administer Maine's Sunset Act which "provides for a system of periodic justification of agencies and independent agencies of State Government in order to evaluate their efficacy and performance " [3 MRSA Ch. 33 §921 et. seq.]. To carry out its mandate, the goal of the Audit Committee is to increase governmental efficiency by recommending improvements in agency management, organization, program delivery, and fiscal accountability.

The Committee process unfolds as follows:

## **RECEIPT OF PROGRAM REPORTS**

The law requires agencies due for review to submit a Program Report to the Committee which provides baseline data used to orient staff and Committee to the agency's programs and finances.

## **COMMITTEE MEETINGS**

The Committee meets frequently when the Legislature is in session and every three to four weeks between the sessions to discuss issues regarding the agency and to make recommendations for change. Early in the review, the Committee augments itself with at least one member of the policy committee whose jurisdiction is germane to the agencies under review. Staff prepares material for the Committee's deliberation and presents it to the Committee in one of several forms; as an option paper, discussion paper, or information paper. The Committee has found that these formats facilitate its process by accurately describing the topic for discussion and the points necessary for expeditious decision-making. These Committee meetings are not formal hearings but are open to the public and are usually well attended by interested parties. The committees conduct their business in an open manner, inviting comment, and providing a forum for all views to be heard and aired.

## **THE LEGISLATURE**

Following the close of the active review phase, staff prepare text and draft a bill containing all the Committee's

recommendations for change. The Committee introduces this bill into the Legislative session in progress and the legislation is then referred to the Audit & Program Review Committee. As a final avenue for public comment prior to reaching the floor, the Committee holds public hearings and work sessions on all its recommendations. After the Committee concludes final deliberations and amendments, the bill is amended and placed on the calendar for consideration by the entire Legislature.

---

For 1992-93 the Committee's review schedule was established in consultation with the Legislative Council, as indicated in the following letter.



STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
SPEAKER'S OFFICE  
AUGUSTA, MAINE 04333

ADOPTED BY THE LEGISLATIVE COUNCIL

JOHN L. MARTIN  
SPEAKER

MAY 12, 1992

April 30, 1992

Honorable Charles P. Pray, Chair  
Legislative Council  
115th Maine Legislature  
Augusta, Maine 04333

Dear Senator Pray:

The Committee that you appointed pursuant to the Council's action at its April 14 meeting met with the Chairs of the Joint Standing Committee on Audit & Program Review on April 22 to pursue the Council's concerns regarding the Committee's proposed scope and schedule for work during the interim. Members of the Committee included Senator Clark, Senator Cahill and myself. In addition to the Committee Chairs, Rep. Murphy attended the meeting, as did John Wakefield.

We had a thorough and constructive discussion about the need to focus the Committee's reviews more clearly and about the need to develop an overall scope of work that is feasible given the available staff and budgetary resources. Our discussion resulted in the development of a revised scope of work and schedule for the Committee, which I have summarized below. I would note that this revised plan has the unanimous endorsement of the three Council members, and I think it reflects the priorities of the Audit & Program Review Committee members who were present as well.

### Revised Scope of Review

#### Department of Human Services

The Committee will limit their review to the following areas:

1. "Tax and Match"
2. Waivered Programs (AFDC and Medicaid)

The focus of this review is to assess whether Maine is taking appropriate advantage of all the waivers the Federal government offers.

Honorable Charles P. Pray, Chair  
Legislative Council  
April 30, 1992  
Page Two

3. Adult Protective Services
4. Relocation of Assistant Attorneys General from DHS to the AG's Office

This will involve a brief review of the impact of this relocation on the Department's operations and service capacity.

In addition to these four areas, the Committee will request that the State Auditor conduct a review of the Department's auditing function. This is an area of concern to the Committee, but we agreed that legislative staff had neither the credentials nor the expertise to carry out the type of review that is required. The Committee Chairs plan to contact the State Auditor as soon as possible in order to initiate this review.

**State Board of Funeral Services  
Board of Hearing Aid Dealers and Fitters**

These reviews will be deferred until 1997, when the Department of Professional & Financial Regulation is scheduled for review.

**Advisory Commission on Radioactive Waste**

We have agreed to defer this review indefinitely.

**Department of Transportation**

The Committee's review will focus on the following:

1. Right of Way
2. Use of Certificates of Participation (COP's) as a funding mechanism for purchasing equipment and vehicles.
3. Use of former DOT employees (specifically, engineers) as consultants to DOT.

**Maine Turnpike Authority**

The Committee will defer this review; future scheduling will depend on the outcome of the study mandated by the most recent budget bill (chapter 780, P.L. 1991).

Honorable Charles P. Pray, Chair  
Legislative Council  
April 30, 1992  
Page Three

#### **State Planning Office**

We agreed that the Committee would complete its review of the energy programs this summer. This is the only area that was not completed during the recently completed review cycle.

#### **Capitol Planning Commission**

This agency will be continued for 10 more years; thus, the Committee will pursue no activity in this area this year. Legislative action is required to continue the agency.

#### **State Lottery Commission**

The Committee has expressed an interest in pursuing one issue related to privatization.

Finally, I would note that we reiterated with the Committee Chairs the Council's position that any deviation from the specific areas outlined above will require Council approval in advance.

### **Staffing and Schedule**

We also communicated to the Committee Chairs and Representative Murphy the Council's actions with regard to schedule and staffing as follows:

#### **Schedule**

The Committee plans to conduct its work as a full committee this year, rather than breaking down into subcommittees. We support this approach as one that will reduce the Committee's costs and maximize the use of available staff.

The Committee is to have completed all of its work by December 1. Consistent with the policy that the Council has established for the work of other joint standing committees and study commissions, this means that the Committee must have taken final votes on all issues by this date, and that staff must have any final instructions that would affect drafting.

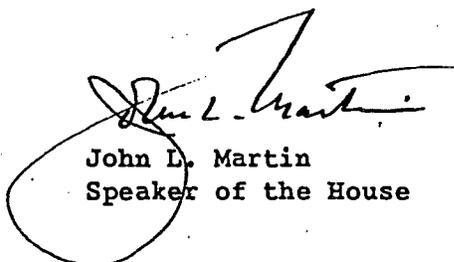
Honorable Charles P. Pray, Chair  
Legislative Council  
April 30, 1992  
Page Four

**Staffing**

The Committee understands that, pursuant to the Council's action, assignment of staff is the responsibility of the Office Director, John Wakefield. John has assured the Chairs that he would work with them to determine both the level and specific expertise required for the various reviews and to match these needs with the resources available.

This concludes the Committee's report to the Council. On behalf of the other Committee members, I would, again, note that we felt that this meeting was a successful attempt to balance the Audit & Program Review Committee's commitment to fully discharging its oversight responsibilities with the Council's interest in focussing the Committee's efforts on issues of particular policy interest to the Legislature. We trust the Council will ratify the plan we have worked out and would be happy to answer any questions at the May Council meeting.

Sincerely,



John L. Martin  
Speaker of the House

cc: Members of the Legislative Council  
Honorable Beverly Miner Bustin  
Honorable Phyllis R. Erwin  
Honorable Eleanor M. Murphy  
John Wakefield, Director, Office of Fiscal  
and Program Review

# Summary of Recommendations

The Committee makes both Statutory and Administrative recommendations. In some instances, the Committee will issue a Finding which requires no action but which highlights a particular situation. The Committee's bill consists of the Statutory Recommendations. Administrative recommendations are implemented by the agencies under review without statutory changes. A simple listing of the Committee's recommendations and findings appears here. Narratives describing the background and rationale for these proposed changes appear throughout the report.

## STATE PLANNING OFFICE

### Natural Resources Program

---

**STATUTORY**

1. Consolidate the Critical Areas Program and the Natural Heritage Program within the Department of Economic and Community Development and transfer all associated funding from both programs to the consolidated program.
- 

**STATUTORY**

2. Transfer the Senior Planner position traditionally assigned to the Critical Areas Program from the State Planning Office to the DECD, to accompany the transfer of the Critical Areas Program itself.
-

---

**ADMINISTRATIVE**

3.

Direct the State Planning Office and the Department of Economic and Community Development to develop a Memorandum of Understanding specifying the manner in which the Critical Areas Program Senior Planner position at the State Planning Office will continue to be involved in the consolidated Natural Areas Program.

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**Energy Policy Planning & Implementation**

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**STATUTORY**

4.

Establish a Maine Natural Areas Advisory Board to advise, assist, and support the Natural Areas Program

---

**FINDING**

5.

The Committee finds the report of the Commission on Comprehensive Energy Planning is an important document in assisting Maine in meeting its energy needs with reliable energy supplies at the lowest possible cost, while ensuring that energy production is consistent with a healthy environment and a vibrant economy.

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**ADMINISTRATIVE** 6.

Commend the report of the Commission on Comprehensive Energy Planning to the Joint Standing Committees on Energy and Natural Resources, Utilities, and Transportation for these Committees' review, discussion, and further implementation.

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**ADMINISTRATIVE** 7.

Direct the State Planning Office to 1) articulate in detail the action the Office will take to implement the recommendations of the Commission on Comprehensive Energy Planning, 2) suggest measures other sectors could take to implement the recommendations, and 3) report on the progress made in all sectors to implement the Commission's recommendations at the compliance review.

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**STATUTORY** 8.

Continue the State Planning Office pursuant to Maine's Sunset Law.

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DEPARTMENT OF TRANSPORTATION

Certificates of Participation

STATUTORY

- 
9. Authorize the Department of Administrative and Financial Services to coordinate a master lease-purchase program for all state agencies, with the exception of programs supported by the Highway Fund or Federal Expenditure Funds within the Department of Transportation, by developing, negotiating, and administering master lease-purchase financing programs.
- 

STATUTORY

- 
10. Authorize the Department of Transportation to enter into lease-purchase financing programs supported by the Highway Fund or the Federal Expenditure Fund, separate from the Department of Administrative and Financial Services' master-lease purchase financing program.
- 

Eminent Domain

FINDING

- 
11. The Committee finds that the Department's initiative to notify owners of unsettled parcels of the parcel's referral to the State Claims Board is important and should be continued.
-

DEPARTMENT OF HUMAN SERVICES

Bureau of Elder & Adult Services

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**ADMINISTRATIVE**    12.        Recommend that the Bureau of Elder and Adult Services explore the implementation of additional training programs targeted specifically to Supervisors of Adult Protective Services caseworkers in order to ensure quality casework and compliance with professional standards and practices.

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**ADMINISTRATIVE**    13.        Direct the Adult Protective Services program to work with Maine's Area Agencies on Aging and other relevant groups to review and update media outreach efforts regarding issues of interest to the adult protective and elderly communities.

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**ADMINISTRATIVE**    14.        Direct the Adult Protective Services program to provide the chief executive officer of a facility which has undergone an Adult Protective investigation with official notification about the findings and conclusions of the investigation.

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Home & Community Based Waivers

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**FINDING**

15. The Committee finds that the quality of life for those with developmental disabilities will be enhanced if decision makers and service providers engage in a periodic planning process for the individual which accounts for the total needs of the person.
- 

**FINDING**

16. The Committee finds that the manner in which decisions are made regarding the future of a person with mental retardation is controversial and important and deserves further consideration and review.
- 

**ADMINISTRATIVE**

17. Direct the Bureau of Mental Retardation (DMHMR) and the Division of Licensing and Certification, Bureau of Medical Services (DHS) to cooperate in implementing a series of 21 recommendations regarding the operation, administration, and licensing of Intermediate Care Facilities for the Mentally Retarded and report to the Committee on a quarterly basis.
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**ADMINISTRATIVE 18.**

Educational opportunities should be offered and made available to clients and their parents and/or guardians by the Bureau of Medical Services, Bureau of Mental Retardation, and ICF/MR providers. Topics shall include clients' and parents' rights in situations involving life and lifestyle decisions made by an IDT, living arrangements, institutional admission and discharge decisions, and other relevant topics.

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**ADMINISTRATIVE 19.**

Service providers, parents, and guardians should be encouraged to exercise their right to communicate to the Health Care Financing Administration their problems or disagreements with Federal regulations.

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**ADMINISTRATIVE 20.**

The Bureau of Mental Retardation, the Bureau of Medical Services, providers, and advocates should explore, on a continuous basis, simplification of reimbursement and client classification procedures in order to assist clients, parents, and guardians.

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**ADMINISTRATIVE 21.**

The Bureau of Mental Retardation, the Bureau of Medical Services, providers, and advocates shall cooperate to develop an index of available services that identifies which entity within state government can address different types of inquiries and problems.

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**ADMINISTRATIVE 22.**

The Bureau of Mental Retardation and the Bureau of Medical Services shall review the policy on Leaves of Absence from ICFs/MR, as specified in the Maine Medical Assistance Manual, Chapter II, Section 50.

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**ADMINISTRATIVE 23.**

The Bureau of Mental Retardation and the Bureau of Medical Services shall review the use of respite care, including reimbursement issues, the use of beds when regular clients go home for the weekend (with guardian permission), and other relevant matters.

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**ADMINISTRATIVE 24.**

The Bureau of Mental Retardation and the Bureau of Medical Services should support recommendations that federal rulemakers explore changing the Principles of Reimbursement to allow for prepayment to ICFs/MR and community based waiver services, as well as to review the further use of the Hospital Depreciation Assets Schedule for capital equipment.

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**ADMINISTRATIVE 25.**

The Department of Mental Health and Mental Retardation should clarify the methods by which staff are hired for State-owned ICFs/MR, including permanent, temporary, and emergency staff.

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**ADMINISTRATIVE 26.**

The Division of Licensing and Certification should add an informal appeals process to the Regulations Governing the Licensing and Functioning of Intermediate Care Facilities for Persons with Mental Retardations.

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**ADMINISTRATIVE 27.** Regular meetings should be held between DHS staff, BMR staff, service providers, advocates, and other interested parties to discuss ICF/MR survey, certification, and reimbursement issues.

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**ADMINISTRATIVE 28.** The appeals process for providers and clients under Chapter One of The Maine Medical Assistance Manual should be reviewed and clarified by DHS Division of Licensing and Certification staff.

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**ADMINISTRATIVE 29.** BMS should provide periodic educational presentations for providers regarding state ICF/MR licensing regulations, reimbursement procedures and regulations, and rights of client/guardian/parent.

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**ADMINISTRATIVE 30.** The Division of Licensing and Certification, the Bureau of Mental Retardation, providers, and advocates should explore the required qualifications of ICF/MR Group Administrators and consider substituting related experience for educational qualifications where warranted.

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**ADMINISTRATIVE 31.** The Bureau of Medical Services should provide more training to providers concerning billing.

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**ADMINISTRATIVE 32.** The Bureau of Medical Services, Bureau of Mental Retardation, and providers should hold a meeting to promote and plan coordination of electronic billing procedures.

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**ADMINISTRATIVE 33.** "Mandated training" for staff in ICFs/MR should be defined to ensure a minimum level of appropriate training for staff while allowing for reimbursement of a reasonable level of continuing skill training above the minimum level. The Bureau of Mental Retardation, Bureau of Medical Services, and providers shall collaborate on the definition, and the Bureau of Mental Retardation shall determine the reimbursement mechanism for such training.

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**ADMINISTRATIVE 34.** The Bureau of Medical Services should review the four hours a day, five days a week of day active programming requirement, which is required to be carried out for each client by the Consent Decree.

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**ADMINISTRATIVE 35.** The Bureau of Medical Services, Bureau of Mental Retardation, and providers shall further explore the use of psychotropic medications for clients with mental illness and how the use of these medications interrelates with active treatment.

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**ADMINISTRATIVE 36.** The Bureau of Mental Retardation, Bureau of Medical Services, and providers should continue to explore how best to provide habilitation to clients requiring skilled level nursing home services, a level requiring more medical services than what is allowed in ICF/MR nursing level of care.

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**ADMINISTRATIVE 37.** The Bureau of Medical Services staff should research federally mandated "diet" requirements for clients who do not require a special or modified diet.

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**ADMINISTRATIVE 38.** The Bureau of Medical Services, Bureau of Mental Retardation, and providers should reassess the role of the Qualified Mental Retardation Professional in the IDT process.

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**ADMINISTRATIVE 39.**

Recommend that the Bureau of Medical Services study the implications of providing services through the MR waiver rather than through an ICF/MR, including the cost of the services delivered contrasted to the cost of delivering these same services in an ICF/MR. Finally, recommend that USM's Human Resources Development Institute include an assessment of the waiver in its future studies.

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**DHS Auditing Division**

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**ADMINISTRATIVE 40.**

Direct the Department of Administrative and Financial Services to convene a working group consisting of the State Auditor, providers, and other relevant State departments to review the status of the Maine Uniform Accounting and Auditing Practices Act (MAAP) and report to the Audit Committee early in the 116th Legislative Session.

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**ADMINISTRATIVE 41.**

Strongly recommend that a significant number of backlogged audits be conducted using desk reviews and report to the Committee in the 116th Legislature on the reduction in the backlog as well as the number of audits still outstanding

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Other Issues

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STATUTORY

42.

Continue the following agencies as follows:

State Board of Funeral Service - to 1997;

Board of Hearing Aid Dealers and Fitters - to 1997;

Advisory Commission on Radioactive Waste - to 1999;

Capitol Planning Commission - to 1994;

Maine Turnpike Authority - to 1994; and

Review the State Lottery Commission as part of the Department of Administrative and Financial Services (2001), rather than as a separate entity.

---

**STATE PLANNING OFFICE**

**CONSOLIDATION OF TWO NATURAL RESOURCES PROGRAMS**

**STATUTORY**

- 
1. Consolidate the Critical Areas Program and the Natural Heritage Program within the Department of Economic and Community Development and transfer all associated funding from both programs to the consolidated program.
- 

**STATUTORY**

- 
2. Transfer the Senior Planner position traditionally assigned to the Critical Areas Program from the State Planning Office to the DECD, to accompany the transfer of the Critical Areas Program itself.
- 

In the Committee's 1991-92 report, the Committee directed the State Planning Office to provide the Committee with a plan by July 1, 1992 to efficiently and effectively integrate three natural resources programs located within three different State agencies; i.e.:

Natural Resource Program

State Agency

- |   |   |
|---|---|
| • Maine Critical Areas Program                  | • State Planning Office   |
| • Natural Heritage Program                      | • Department of Economic and<br>Community Development<br>(DECD) |
| • Endangered and Threatened<br>Wildlife Program | • Department of Inland<br>Fisheries and Wildlife<br>(DIFW)      |

Briefly, the three programs can be described as follows:

#### Critical Areas Program

- facilitates the preservation of sites of unusually natural, scenic, or scientific significant;
- compiles a Register of Critical Areas, which is a statewide inventory of natural, scenic, and scientific areas of overriding state interest;
- maintains a database on significant botanical and geological coastal areas, old growth forests, and other important natural areas;
- prepares educational materials.
- throughout its history, has been supported entirely with General Fund dollars.

#### Natural Heritage Program

- conducts an ongoing inventory of the State's critical natural resources, such as rare plants, animals, natural communities, and ecosystems;
- maintains a biological and conservation data base to support conservation and land use planning, environmental review, scientific research, and education;
- coordinates inventory and data management activities with the Departments of Inland Fisheries and Wildlife, Environmental Protection, Conservation, and the State Planning Office in order to prevent duplication, increase efficiency, and increase the flow of data and communication among these agencies and several other relevant functions; and
- is supported with no General Fund dollars, being entirely funded with federal funds and dedicated revenues; (CHECK THIS)

### Endangered and Threatened Wildlife program

- conducts species management programs for a large number of game and non-game species.

In asking for a plan of integration, the Committee had intended the Planning Office to explore the following possibilities

- whether the identification, management, and conservation of natural resources would be strengthened by consolidation, without the need for additional resources;
- whether a more complete natural resource conservation and management program would result from consolidation; i.e. research; collection, analysis, and management of data; inventory capabilities; on-the-ground survey capabilities; a habitat protection and management component; acquisition capabilities; public education; and law enforcement;
- whether the business community would be assisted in acquiring information on rare and endangered species through this consolidated effort which would then, in turn, facilitate the environmental permitting process; and
- whether natural resource management programs developed through a unified effort would serve to more fully incorporate and reflect the views of all interested parties in the conservation, business, and sporting community.

The State Planning Office's subsequent report recommended that only two of the three programs be consolidated; the Critical Areas Program within SPO and the Natural Heritage Program within DECD, leaving the Endangered and Threatened Wildlife program within DIFW as an independent entity. The SPO report justified its recommendation with the following rationale (page 6 of the July SPO report):

- "for a variety of reasons, DIF&W does not feel that it could take on this responsibility [of housing the new integrated program] or even

recommend that responsibility for a consolidated natural areas program be assigned to the Department by the Legislature";

- "the Department of Inland Fisheries and Wildlife cannot make a commitment to new programming without direction from the Joint Standing Committee on Inland Fisheries and Wildlife due to the changes in departmental mandates that would be required";
- "DIF&W is reluctant to take on additional mandates without significant funding"; and
- staffing levels within the Department are reportedly inadequate to address current responsibilities, let alone assume additional duties without additional staff.

Following discussion with representatives from the fisheries and wildlife community, the conservation community, and others, the Committee found the following:

- the Critical Areas Program and the Natural Heritage Program have similar missions, functions, and mandates, which currently results in some degree of duplication of effort;
- a consolidation of the programs would be consistent with the intent of the Special Commission on Governmental Restructuring;
- 10% of Maine's plant species are expected to extinguish in a generation, with most unsurveyed for potential economic value, highlighting the importance of voluntarily protecting land through the Critical Areas Program;
- the Critical Areas Program is currently functioning at a low level and has been assigned a low priority by SPO managers;
- given current priorities, the goals of the Critical Areas Program would be more effectively accomplished if located outside of the State Planning Office;
- much of the progress that has been made by the Critical Areas Program is due to the efforts of

the Senior Planner who has been assigned to the program for the past 16 years;

- the State Planning Office has also lost three Senior Planner positions and 2 Planner II positions and has recently been given additional mandates. Furthermore, the Committee notes that the Planning Office maintains that current staffing levels are not adequate to carry-out its array of current mandates;
- the State Planning Office has ~\$20,000 in federal funds to transfer to DECD with the CAP Program; however
- if the Senior Planner position were transferred with the program, the State Planning Office has no General Fund dollars to accompany the position, since recently the Senior Planner has spent 90% of his time assigned to other projects deemed to hold higher priority;
- if the Senior Planner position were not transferred with the program, some provisions for another position at DECD would have to be made in order for DECD to carry out the expanded mandate;
- the Natural Heritage Program would be strengthened by consolidation with the Critical Areas Program; and
- ultimately, the consolidation should perhaps include DIF&W's Endangered and Threatened Wildlife program, but inclusion of the program at this time is not prudent.

Accordingly, the Committee recommends that the Critical Areas Program within the State Planning Office and the Natural Heritage Program within the Department of Economic and Community Development be consolidated within DECD, including associated federal and other special revenue funding. Also, transfer the Senior Planner position traditionally assigned to the Critical Areas Program to DECD, to accompany the transfer of the program itself.

[Note: In a separate bill, the Committee transferred the Senior Planner associated with the Critical Areas Program in the State Planning Office to the Department of Economic and Community Development. Currently, that bill has been held over to the

116th 2nd Regular Session. The following recommendation was also approved by the Committee.]

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**ADMINISTRATIVE 3.**

Direct the State Planning Office and the Department of Economic and Community Development to develop a Memorandum of Understanding specifying the manner in which the Critical Areas Program Senior Planner position at the State Planning Office will continue to be involved in the consolidated Natural Areas Program.

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As noted above, the Committee has made the recommendation to transfer the Senior Planner position traditionally associated with the Critical Areas Program to the Department of Economic and Community Development when the program itself is transferred. In this way, the Committee is recognizing the importance of the incumbent to the success of the Critical Areas program. However, as another vehicle to ensure the continued association of the incumbent with the program after the program's transfer to DECD, the Committee also recommends that the State Planning Office and the Department of Economic and Community Development develop a Memorandum of Understanding between the two agencies. The purpose of the Memorandum of Understanding is to ensure an orderly and efficient transfer of functions and personnel, should the Committee's recommendations ultimately become law.

In the period prior to July 1, 1992, the date at which the consolidation is due to take effect, the parties to the Memorandum agree that:

- the Natural Heritage Program will serve as the primary source for information requests by other State and federal agencies, with the Critical Areas program clearly communicating this arrangement to relevant governmental agencies;
- as an alternative in the event that the Committee's recommendation to transfer the Senior Planner position fails to become law, the Memorandum specifies that the DECD and the SPO

will seek to raise special revenue funds sufficient to support a new Senior Planner position for the consolidated program within DECD; and

- efforts will be made to physically consolidate the two programs, in preparation for the legal consolidation.

Following enactment of the legal consolidation on July 1, 1992, the parties to the Memorandum agree that:

- the Senior Planner at the SPO traditionally associated with the Critical Areas Program, Mr. Hank Tyler, will be appointed to the Natural Areas Advisory Board when the Board is created;
- the SPO will provide one month of Hank Tyler's time to effect a smooth transition of the Critical Areas Program's data, files, publications, and all other relevant materials;
- if sufficient other special revenue has been raised to create a Senior Planner position within DECD, the position will be opened to qualified candidates, including the incumbent Senior Planner within the State Planning Office (thereby invalidating the previous two points if Mr. Tyler is the successful candidate for the new position); and
- all contracts, agreements, and grants held by the Critical Areas Program of the State Planning Office and the Natural Heritage Program of the Department of Economic and Community Development will be transferred to the consolidated Natural Areas Program.

The Committee notes that the parties signed the Agreement on November 25, 1992, consistent with the Committee's intent, thereby activating the first leg of the ultimate consolidation plan.

Accordingly, in order to provide an alternative in the event that the Committee's recommendation to transfer the Senior Planner position from the SPO to DECD fails to become law, the Committee recommends that the State Planning Office and the Department of Economic and Community Development develop a

Memorandum of Understanding specifying the manner in which the Critical Areas Program Senior Planner position at the State Planning Office will continue to be involved in the consolidated Natural Areas Program.

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**STATUTORY**

4. Establish a Maine Natural Areas Advisory Board to advise, assist, and support the Natural Areas Program
- 

In reviewing the two natural resource management programs slated for consolidation, the Committee notes that the Critical Areas Program has operated from its conception with the advice and, in some cases, the approval, of an 11 member advisory board [5 MRSA §3313 et. seq.].

Although the Board has not met in recent months, the Committee noted the importance of an advisory board to meeting the program's goal of registering critical areas which include sites of significant natural, esthetic, or scientific value. In order for a new advisory board to meet the consolidated needs of both the Critical Areas Program and the Natural Heritage Program, the Committee finds that the new advisory board must include landowners or land managers, and private citizens, as well as the Commissioner of the Department of Economic and Community Development, or designee. Areas of expertise to be represented on the board, either through vocation or avocation, must include, but need not be limited to, rare plant or animal biology; ecology or taxonomy; landscape or natural community ecology; conservation biology or natural areas conservation; natural resources policy; earth sciences; or other similar natural or physical sciences.

Furthermore, the Committee finds that the purpose of the Board must be solely advisory in nature, and that members of the board must be strictly volunteers, receiving neither per diem nor compensation for expenses.

In this way, the Committee recommends the establishment of a Maine Natural Areas Advisory Board to advise, assist, and support the Natural Areas Program.

## ENERGY POLICY PLANNING AND IMPLEMENTATION

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### FINDING

5. The Committee finds the report of the Commission on Comprehensive Energy Planning is an important document in assisting Maine in meeting its energy needs with reliable energy supplies at the lowest possible cost, while ensuring that energy production is consistent with a healthy environment and a vibrant economy.
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The State Planning Office is mandated to perform many functions and duties regarding energy use, planning, and policy in the State of Maine. Many of the Office's energy-related responsibilities were transferred to the Office following the abolition of Maine's Office of Energy Resources. For example, the State Planning Office is now mandated to "formulate a biennial state energy resources plan" [5 MRSA §3304]. The Office is also required to:

- "coordinate the preparation of policies to guide and carry forward the wise and coordinated development of the State's...energy resources [5 MRSA §3304, sub-§1, ¶A];
- provide technical assistance...by undertaking special studies and plans...in the areas of energy...[5 § 3305, sub-§, ¶B];
- coordinate the development of energy policy, including...collecting and analyzing energy data from all available energy sources, ...preparation of an energy resources plan...every two years..., encouragement and direction or sponsorship of research, experiments, and demonstration projects...to develop alternate energy sources [such as] solar energy, water of tides and rivers, forest, winds, ...provision of conservation alternatives to proposed new electric power generating plants and assessment

of the long-term energy savings realized by...conservation alternatives [5 MRSA §3305, sub-§1, ¶K].

In 1991-1992, the Economics and Energy Policy Division within the Maine State Planning Office staffed the "Commission on Comprehensive Energy Planning", established in 1991, to create a "comprehensive energy plan for the State" [Resolve 1991, ch. 50]. The Commission included unprecedented representation from the Legislative and Executive branches, including 10 Legislators, the Director of the State Planning Office; the Chair of the Public Utilities Commission; the Public Advocate; and the Commissioners of Transportation, Conservation, and Environmental Protection. In the introduction to its May 1992 report, the Commission asserted that the report "represents an extensive effort to fashion a well-balanced and comprehensive energy policy for the State of Maine ... and is offered as a consensus document dealing with a broad range of complex and difficult energy planning issues". The Commission also "urge[s] that the goals, objectives, and recommendations contained in this report be adopted as Maine's energy policy".

In reviewing the report, the Committee finds that it provides an overview of past energy policy as well as current energy use in Maine, and discussions on regional and federal energy issues, future energy demand in Maine, and indigenous energy resources.

The Committee notes that the Commission stresses that Maine energy policy must address the four fundamental aspects of cost, reliability; environmental impact, and economic impact with the ultimate goal being to *meet the State's energy needs with reliable energy supplies at the lowest possible cost, while at the same time ensuring that our energy production and use is consistent with Maine's goals for a healthy environment and a vibrant economy.*

In order to meet this goal, the Committee notes that the Commission suggests focussing on the following set of objectives:

- promoting energy efficiency and conservation;
- supporting energy education;
- controlling energy costs;
- ensuring adequate levels of competition and promoting market-based approaches to energy problems, and overcoming market barriers and distortions;

- ensuring equity in how energy supplies and costs are allocated among Maine energy consumers;
- promoting the continued development of renewable indigenous resources;
- improving the State's flexibility to respond to unforeseen price volatility and supply disruptions;
- reducing/avoiding environmental degradation; and
- promoting consistency among energy policies and programs and coordination between policy and other State goals and objectives.

Finally, the Committee notes that the report includes strategies and recommendations to promote energy efficiency and conservation, support energy education, control energy costs, promote greater diversity and renewable resources, and to reduce and avoid energy-related environmental degradation (pgs. 44-61).

Accordingly, on the basis of its review of the report of the Commission on Comprehensive Energy Planning, the Committee finds the report is an important document in assisting Maine in meeting its energy needs with reliable energy supplies at the lowest possible cost, while ensuring that energy production is consistent with a healthy environment and a vibrant economy.

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**ADMINISTRATIVE 6.**

Commend the report of the Commission on Comprehensive Energy Planning to the Joint Standing Committees on Energy and Natural Resources, Utilities, and Transportation for these Committees' review, discussion, and further implementation.

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**ADMINISTRATIVE 7.**

Direct the State Planning Office to 1) articulate in detail the action the Office will take to implement the recommendations of the Commission on Comprehensive Energy Planning, 2) suggest measures other sectors could take to implement the recommendations, and 3) report on the progress made in all sectors to implement the Commission's recommendations at the compliance review.

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Consistent with its finding in support of the report of the Commission on Comprehensive Energy Planning, the Committee concludes that the report is a "significant first step" and that the guidelines it provides warrant further study and application. Accordingly, the Committee finds that encouraging a wide reading of the report and promoting a formal plan of implementation, including assigning specific responsibilities to appropriate sectors, is important. Therefore, the Committee takes two actions. First, the Committee commends the report of the Commission on Comprehensive Energy Planning to the Joint Standing Committees on Energy and Natural Resources, Utilities, and Transportation for these Committees' review, discussion, and further implementation. Second, the Committee charges the State Planning Office with the responsibility to 1) articulate in detail the action the Office will take to implement the recommendations of the Commission on Comprehensive Energy Planning, 2) suggest measures other sectors could take to implement the recommendations, and 3) report on the progress made in all sectors to implement the Commission's recommendations at the compliance review.

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**STATUTORY**

**8.**

Continue the State Planning Office pursuant to Maine's Sunset Law.

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The State Planning Office was established in 1968 and is "directly responsible to the Governor, [serving] as an advisory, consultative, coordinating, administrative, and research agency [5 MRSA § 3303]. The Planning Office "assists the Governor and other state agencies in the:

- development of economic, energy, fiscal, and regulatory policy;
- planning and policy development for the State's natural and physical resources;
- the identification of issues and problems of long-term significance to the State; and the
- coordination of state policy and its implementation on issues of interagency concern" [5 MRSA §3303].

The Committee's review of the State Planning Office spanned parts of two review cycles, the first including a broad look at the Planning Office as a whole and the second focussing on the Office's energy policy and planning activities and the Critical Areas Program. For more information about the Committee's work in the last review cycle, as well as additional background information, please refer to the Committee's 1991-92 report, pages 185-203. The Committee's work on the two areas reviewed in the current cycle are included herein.

The table and graphs below show the Planning Office's total actual expenditures for the General Fund, Federal Expenditure Fund, Other Special Revenue, and a federal block grant for five fiscal years, as well as the General Fund budgeted authority for FY 1992-93.

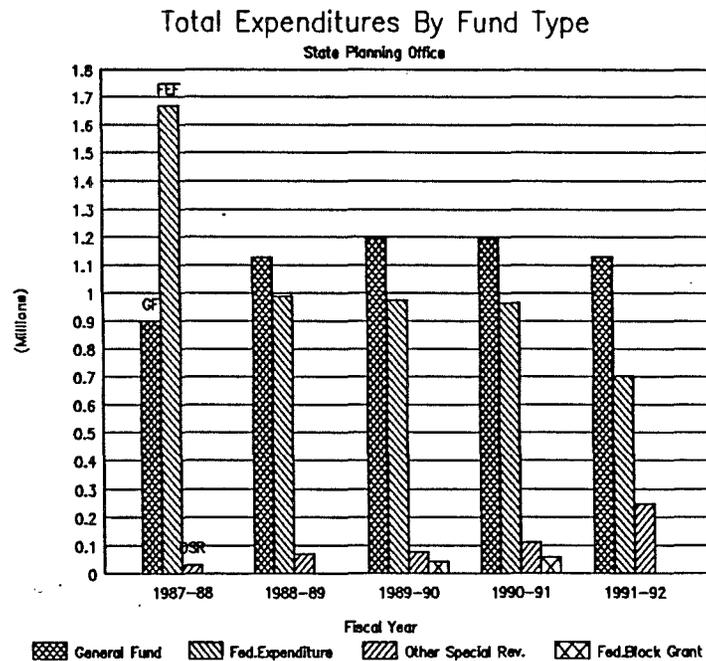
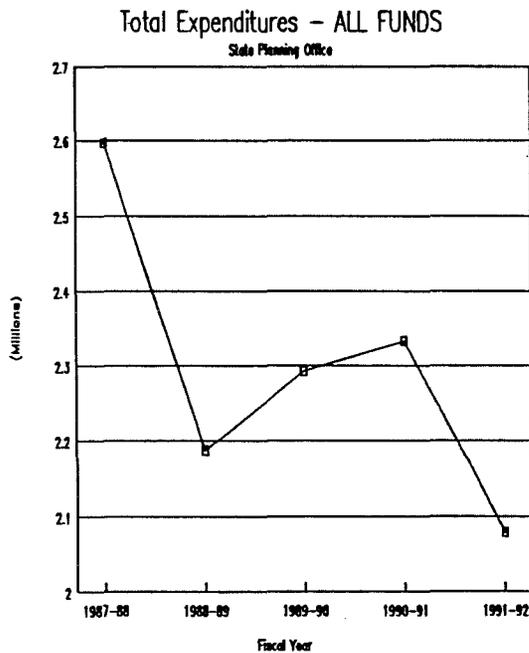
As a result of its review, the Committee finds that the State Planning Office continues to play an important role in State Government and recommends the Office's continuation for ten years, pursuant to the sunset law.

## State Planning Office Actual Expenditures

[Data from Income and Expenditure Analysis Sheets and MFASIS]

	FY 1987-88	FY 1988-89	FY 1989-90	FY 1990-91	FY 1991-92	FY 1992-93* <u>budgeted</u> <u>authority</u>
GF	\$898,915	\$1,128,242	\$1,197,082	\$1,197,026	\$1,129,912	\$1,063,544
FEF	\$1,667,499	\$989,253	\$975,372	\$965,727	\$701,649	
OSR	\$30,803	\$69,272	\$78,002	\$111,992	\$247,051	
Fed.BG	\$0	\$0	\$42,303	\$57,823	\$439	
<b>TOTAL</b>	<b>\$2,597,217</b>	<b>\$2,186,767</b>	<b>\$2,292,759</b>	<b>\$2,332,568</b>	<b>\$2,079,051</b>	

\* Showing budgeted authority for GF only



## DEPARTMENT OF TRANSPORTATION

The Committee selected three topics to consider regarding the operation of the Department of Transportation:

- The Department's use of Certificates of Participation;
- Eminent Domain and the Department's Right-of-Way program; and
- the issue of retired employees returning to the Department as consultants

As a result, the Committee made the following recommendations.

### **CERTIFICATES OF PARTICIPATION**

Certificates of Participation, or COPs, are a form of leased-backed financing. In brief, leased-backed financing resembles installment purchasing agreements and is defined as a situation in which:

... The lessee (the ultimate buyer, often a government agency) purchases specified property from the lessor in installments over an established period by making lease payments. Once all lease payments are made, the lessee obtains full ownership rights to the property for a nominal sum...The lessor, in effect is a lender" [A guide to Certificates of Participation. Public Securities Association. 1991. page.2].

Lease-backed financing is not considered to be debt because of several conditions which are built into the lease and will be identified and discussed later in this paper. Because it is not considered to be debt, in most states lease-backed financing is not subject to most state debt limitation laws which typically set ceilings for allowable state debt and require voter approval.

The Committee finds that lease-backed financing has several advantages:

- a political subdivision of the state can, in

effect, increase debt capacity beyond formal debt limits, and can complete the entire financing process in a shorter and more efficient manner than voter-approved debt, typically referred to as "bonds";

- an investor can take advantage of well established federal tax regulations which hold that interest paid on borrowing by state and local governments is tax-free, "... the portion of the lease payments received by the lessor ... that is attributable to interest will not be includable in gross income for federal tax purposes." [A guide to Certificates of Participation. Public Securities Association. 1991. page.2].

The Committee also notes that the disadvantages of lease-backed financing correspond directly to the advantages;

- because lease-backed financing is not considered to be debt and, therefore, in most states, does not require (or receive) direct voter approval, in many instances leased-back financing instrument (such as COPs) may not be well received by the public; and
- from an investor's perspective, the sometimes tenuous political and financial circumstances surrounding a particular lease-backed financing agreement may significantly detract from its attractiveness as a sound financial investment.

The Committee concludes that COPs are the most popular form of publicly issued lease-backed financing. During the 1980's, COP's were increasingly used by state and local governments to finance the purchase of property and equipment. Most recently in 1990, 11 states had issued 441 separate COPs having a total value of more than \$5 billion.

In brief, COPs are a form of public financing which allow investors to purchase certificates which "... entitle [the investor] to receive a participation or share, in the lease payments from a particular project". Certificates are purchased through a lessor. The COP is usually administered by a trustee. Typically the trustee will disburse proceeds of the COP to the lessee, accept the scheduled repayments by the lessee, and forward the lease repayments to the various certificate holders.

The Committee notes that many, if not most, COPs include or reflect the following characteristics:

- the structure of a COP is extremely important and must be tailored to the particular circumstances surrounding each issuer. In fact, for most investors, the appropriate structure of a COP is a significantly more important factor than the issuers' creditworthiness. The structure of a COP reveals exactly how the issuer (or lessee) has arranged for future payments without invoking the legal concept of debt; this is one of the features that sharply distinguishes a Certificate of Participation from a bond;
- COPs avoid being considered as debt through the use of one of two limiting clauses. The first clause is referred to as an "abatement clause" which basically states that if a property cannot be used as intended then the lessee is not obligated to make payments. The second clause is generally referred to as "nonappropriation" or "nonrenewal's" clause which stipulates that while the lessee will make the best possible effort to make the required payments, the COP may be terminated without penalty if the agency does not receive adequate appropriations to do so from the governing authority;
- unlike bonds, COPs use the purchased property or equipment as collateral, ownership, of which reverts to the certificate holders in the event that a lessee is not able to finally meet its repayment obligations under the terms of the COP;
- an important feature, or component of COPs is the "essentiality" of the product being purchased. In the eyes of a COPs investor, the more essential the purchased product(s), the more likely it is that money will be appropriated by the governing body for repayment;
- COP's investors also carefully evaluate the revenue source for the proposed COP. Possible revenue sources include general obligation, pledging of property taxes, general fund appropriations, or enterprise revenue streams. The source and nature of the revenue will have a significant impact on the perceived security of the proposed COP;
- Another aspect of a proposed COP is the useful

life of the purchased item. Investors are concerned about whether the lessee is likely to use the product through the duration of scheduled payments. To reduce risk from an investment perspective, most COPS will include a "nonsubstitution" clause which prohibits the leasee from using or acquiring a similar product to achieve the same purpose within a limited amount of time. In addition, the repayment schedules for most COPS are deliberately structured not to exceed the useful life of the purchased product;

- proposed COP's generally receive investment grade ratings from credit rating agencies. Most COP's receive fairly high ratings; nonpayment of COPS has been relatively rare;
- the analysis of a proposed COP will generally focus on 5 major features:
  1. the purpose of the project; i.e. exactly what is being financed and how essential is that project;
  2. the nature of the lease; leases generally take one of three forms: long term (full term of the lease), annually renewable (used with nonappropriation classes); or special fund (dependent on funds from a particular special funding source);
  3. the ability and willingness to make lease payments;
  4. a detailed review of all required legal documents; and
  5. an analysis of the adequacy and assumptions of the overall financing plan.

**STATUTORY**

- 
9. Authorize the Department of Administrative and Financial Services to coordinate a master lease-purchase program for all state agencies, with the exception of programs supported by the Highway Fund or Federal Expenditure Funds within the Department of Transportation, by developing, negotiating, and administering master lease-purchase financing programs.
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**STATUTORY**

- 
10. Authorize the Department of Transportation to enter into lease-purchase financing programs supported by the Highway Fund or the Federal Expenditure Fund, separate from the Department of Administrative and Financial Services' master-lease purchase financing program.
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As a result of its review, the Committee found that lease-backed financing is a legitimate and important public financing tool. However, the Committee also identified concerns about this financing tool, as follows:

- the need to ensure uniform review of agency proposals for lease-backed financing, prior to these proposals' presentation to the Legislature;
- the need to ensure uniform administration and monitoring of lease-purchase agreements;
- the need to employ economy of scale by combining COPS with the aim of attracting the most advantageous investment arrangements and terms; and

- the need to standardize financial controls and protocols for the administration of all state COPS.

In addition, the Committee recommends that the Department of Transportation be endowed with its own authority to enter into lease-purchase financing programs supported by the highway Fund or the Federal Expenditure Fund, separate from the Department of Administrative and Financial Services's master-lease purchase financing program since General Fund dollars are not involved in these types of lease-purchase agreements. In any event, DOT may elect to participate in the master lease-purchase program.

Accordingly, the Committee's recommendations are intended to allow the State to continue to use lease-backed financing as a financing mechanism, but to ensure that the agencies' use of this financing mechanism is entirely justified and to ensure that when this mechanism is used, that the State receives the highest return on its investment as possible.

#### EMINENT DOMAIN

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#### FINDING

11. The Committee finds that the Department's initiative to notify owners of unsettled parcels of the parcel's referral to the State Claims Board is important and should be continued.
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The power of eminent domain is inherent in the Legislature as the embodiment of the "sovereign" and is constitutionally limited to taking only for a public use when the owner is justly compensated. The Legislature has delegated the power to exercise eminent domain to the Department of Transportation through a number of statutory provisions, primarily within Title 23. Section 153 of Title 23 provides that the "Department of Transportation, on behalf of the State of Maine, may take over and hold for the State of Maine, such property as it may deem necessary to:

1. Lay out and establish, construct, improve or maintain, or to provide a change of

location or alignment of, or to provide drainage for state and state aid highways;

2. Provide rest areas, parking strips, roadside and landscape development for the preservation and development of natural scenic beauty;

3. Provide for the health, safety and welfare of the public using any state or state aid highway;

4. Secure materials, with necessary ways and access thereto, for the construction, improvement and maintenance of state and state aid highways;

5. Secure the relocation, removal or disposal of automobile graveyards and junkyards which are not in conformity with Title 30-A, chapter 183, subchapter I;

6. Erect administrative, storage and operational buildings used in affecting the objectives in conformity with section 1; or

7. Construct, improve and maintain transportation projects as directed by law and provide mitigation for existing or potential environmental effects of any transportation projects.

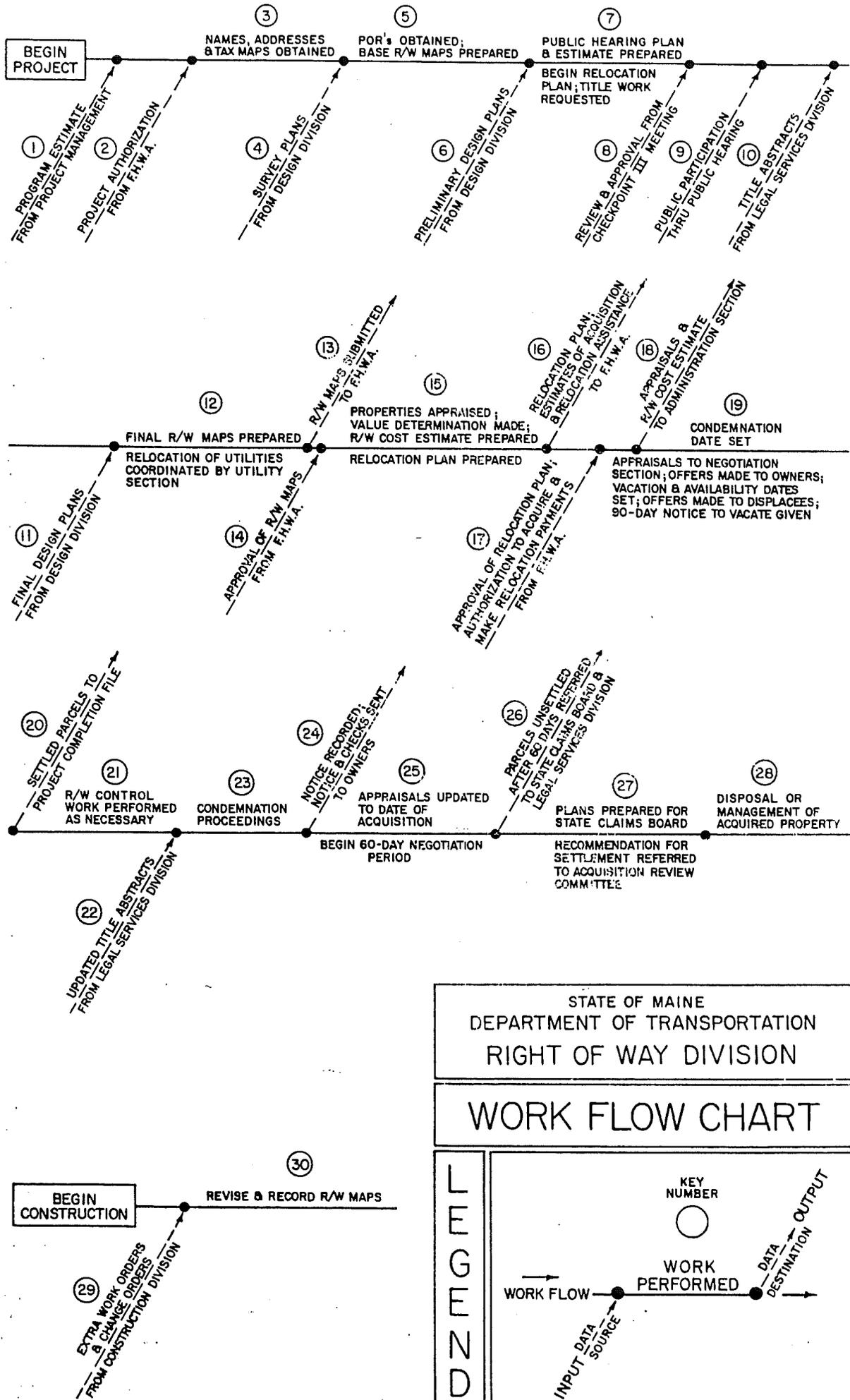
The Right-of-Way Division within the Department is responsible for acquiring land necessary to carry out its public mandate. In reviewing the work of the Right-of-Way Division, the Committee found that Right-of-Way agents within the Acquisition Section of the Division meet with owners from whom real property and rights are required, explains the effect of the acquisition for each property, and offers just compensation for the property at fair market value. The objective of these negotiations is to secure agreement from the owner for the real property rights of the property needed for the public project.

Right-of-Way acquisition and relocation costs for four fiscal years are as follows:

<u>YEAR</u>	<u>ACQUISITION</u>	<u>RELOCATION</u>	<u>TOTAL</u>
FY '88	\$2,101,666.00	\$205,905.00	\$2,307,571.00
FY '89	\$1,666,180.00	\$185,409.00	\$1,851,589.00

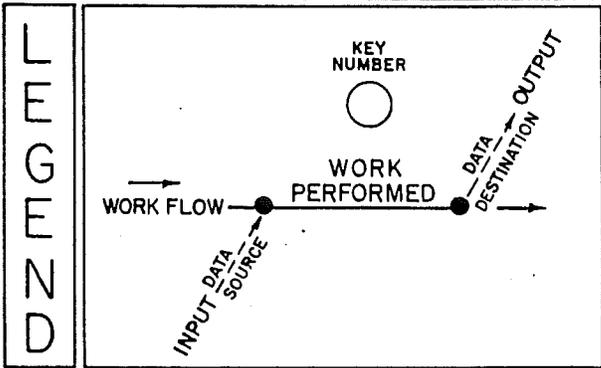
FY '90	\$2,433,701.00	\$192,261.00	\$2,625,962.00
FY '91	<u>\$2,286,875.00</u>	<u>\$ 73,988.00</u>	<u>\$2,360,863.00</u>
<b>TOTAL</b>	<b>\$8,488,422.00</b>	<b>\$657,563.00</b>	<b>\$9,145,985.00</b>

The taking process itself is displayed in the flow chart below:



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY DIVISION

WORK FLOW CHART



The Right-of-Way Process as a whole is responsible for acquiring all lands, and rights in land, necessary for the development and construction of transportation projects. Permanent acquisition of land and rights in land is done via fees and easements; grading rights may be temporarily taken only for the duration of the project.

Six steps constitute the "taking" process, as described in more detail in the accompanying flow chart.

Step One: Collect Property Owner Information;

Step Two: Develop a "final" right-of-way plan which shows all existing right-of-ways, all property ownerships, the proposed right-of-way, and all lands and rights proposed for acquisition;

Step Three: Appraise Property, includes viewing the parcel (with the owner, if possible), gathering sales data in order to determine the property's fair market value, and writing an appraisal;

Step Four: Contact Owners regarding acquisition and relocation issues, including describing the project, describing the taking process and its impact, explaining the acquisition process and schedule, and making an offer;

Step Five: Condemn the project, including mailing an official notice, the plan, and a check for the fair market value of the property; and

Step Six: Deal with unsettled parcels, including referring unsettled parcels to the State Claims Commission 60 days following condemnation. The State Claims Commission may hold a hearing and make an award to settle the unresolved issue. The State or the owner may appeal the Commission's ruling to Superior Court.

Step Number six in the general description above (which corresponds to step 26 in the more detailed flow-chart) was of particular interest to the Committee in that parcels for which no agreement has been reached 60 days after condemnation are referred to the State Claims Commission. The role of the State Claims Commission is to review these "unsettled" parcels and resolve the conflict, leading to final settlement of the negotiation. The Committee understands that past failure of the Department to notify owners of referral of the unsettled parcel

to the Claims Commission has resulted in problems and difficulties for the owner. Accordingly, the Committee endorses the Committee's recent innovation to the "taking" process to notify owners when the parcel is referred to the Claims Commission for its review and encourages continuation of this practice.

#### **RETIRED EMPLOYEES**

Pursuant to its review of retired employees working as contractors with the Department of Transportation, the Committee communicated its findings to the President of the Senate and the Speaker of the House in the attached letter.

SENATE

BEVERLY MINER BUSTIN, DISTRICT 19, CHAIR  
JOHN J. CLEVELAND, DISTRICT 22  
DONALD L. RICH, DISTRICT 27

STAFF

OFFICE OF FISCAL AND PROGRAM REVIEW  
CHERYL RING, PRINCIPAL ANALYST  
LOCK KIERMAIER, ANALYST  
KATHRYN VAN NOTE, ANALYST



STATE OF MAINE

ONE HUNDRED AND FIFTEENTH LEGISLATURE  
COMMITTEE ON AUDIT AND PROGRAM REVIEW

HOUSE

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CATHARINE KOCH LEBOWITZ, BANGOR  
WESLEY FARNUM, SOUTH BERWICK

November 4, 1992

Honorable Charles P. Pray, President of the Senate  
Honorable John L. Martin, Speaker of the House  
115th Maine State Legislature  
Augusta, Maine 04333

President Pray and Speaker Martin;

We are writing to report our findings regarding an issue which you had asked the Audit Committee to review in its current review cycle; i.e. the Department of Transportation's use of retired employees.

We have concluded from our review that the Department's use of retired employees is appropriate and that no remedial action on our part is indicated.

We considered the following information in our review of this matter.

1. There are two categories of retired state employees working for the Department of Transportation
  - A. Retirees who are reemployed as an employee of the Department of Transportation in some capacity which we will call "actual" employees; and
  - B. People who are not employees of the Department of Transportation but who work for the Department of Transportation as contractual employees.

2. According to the Department of Administrative and Financial Services, 96 retired state employees have returned to state employment throughout State Government since October 1, 1989.\*

During that same approximate time period, 24 retired state employees are now, or recently were, employed by the Department of Transportation. The 24 retirees are segregated as follows:

A. 8 Retirees are employed as full-time, part-time, seasonal, project, acting capacity or intermediate employees; and

B. 16 Retirees are employed through Personal Services Contracts.

3. Retired state employees who have returned to state employment since October 1, 1989 represent approximately 0.28% of the total State Government workforce.

\* Figure excludes University System, Judicial Department, Legislature, and possibly a few other small agencies.

4. The enabling authority to rehire retirees is summarized in the Personnel Bulletin 8.15 (please refer to attachment 1) and is further supported by 5 MRSA §17855 within the Maine State Retirement statutes. (Please refer to Attachment 2).

## II. ACTUAL EMPLOYEES - OVERVIEW:

A. Hiring process - In order to be considered for re-employment, retirees must apply to the State Bureau of Human Resources for placement on the re-employment register within the classification they held prior to retirement. A retiree who wishes to be considered for other job classifications must submit an application for employment as normally required. The position must be vacant for the Department of Transportation to re-employ a retiree. Also the type of position must fit the employee and the needs of the Department.

B. Benefits - On a project or acting capacity position, no benefits are available for retirees. For permanent positions (full-time, part-time, or seasonal) a retiree continues medical and life insurance programs available through retirement. They may get dental coverage as none is available through retirement. They could also have credit union and deferred comp deductions. For more information concerning the so called "actual" employees, please refer to Attachment 3.

### III. CONTRACTUAL EMPLOYEES - OVERVIEW:

During fiscal years 1990, 1991, and 1992, the Department of Transportation has employed 16 retirees utilizing the Personal Services contractual method. Seven were employed by the Bureau of Project Development and nine by the Bureau of Transportation Services. For more specific information concerning personal services contractual employees, please refer to Attachment 4.

We considered the following pros and cons regarding the hiring of retired employees:

#### PROS

- Could be perceived as a cost-savings measure in that the Department of Transportation is able to hire an employee for a limited period as opposed to hiring a full-time employee;
- the hired positions are tailored for a particular project and the talents of the hired person is selected with the project in mind - in this sense, it could be said that the Department of Transportation is getting the most for its money;
- the Department of Transportation does not have to spend limited resources on training and "lag-time" before the position is fully operational;
- Retirees are already trained, familiar with the Department of Transportation process and procedures, and the retirees themselves are interested in working; and
- The Department of Transportation is not aware of any problems or complaints with this practice.

#### CONS

- Some may argue that vacancies now used for these positions should be filled instead with full-time permanent employees; and
- Perhaps alternative means of achieving this work could be explored, such as hiring other types of contractors and consultants.

In light of the relatively small number of employees involved, the potential benefits of the practice, and the lack of apparent harm, the Committee declined to suggest any remedial action and, for your information, decided to send this information to you.

We would be happy to answer any additional questions, as would DOT.

Sincerely,

Beverly M. Bustin  
Senate Chair

Phyllis R. Erwin  
House Chair

cc: John Wakefield, Director OFPR  
Tim Leet, Analyst OFPR

**DEPARTMENT OF HUMAN SERVICES**

**ADULT PROTECTIVE SERVICES PROGRAM**

Maine's Adult Protective Services program is administered by the Bureau of Elder and Adult Services, one of six bureaus within the Department of Human Services [see organizational chart].



Adult protective services have been provided by the Bureau since 1966 and codified since 1981 [primarily 22 MRSA c. 958-A, §§3470-3492]. Currently, the law provides for a protective services program for incapacitated and dependent adults, 18 years of age and older, who are in danger of abuse, neglect, or exploitation; requires certain professionals to report suspected abuse, neglect, or exploitation of an adult, when the professional has reasonable cause to suspect that the adult is incapacitated [22 MRSA §3477-3479-A]; and regulates specialized adult foster home and boarding home care for protective clients who are mentally ill, substance abusers, or who have behavior problems [22 MRSA §§3488-3492].

Currently, the purpose of the Bureau of Elder and Adult Services as a whole is two-fold:

- to establish planing, policy, objectives, and priorities for all activities relating to Maine's elderly (defined as people 60 years of age and older); and
- to serve incapacitated and dependent adults who are eighteen years of age and older who are in danger of abuse, neglect, or exploitation.

Accordingly, the Bureau administers services under the Federal Older Americans Act [45 CFR Parts 1321.7(a)(b)(c)] and State law governing services for the elderly, including, the Congregate Housing Act of 1979, the Home-Based Care Act of 1981, Adult Day Care Services Act of 1983, and the Adult Day Care Licensing Act of 1987.

Specifically, the Bureau's administration of Maine's Adult Protective Services program is guided by the Legislature's "declaration of policy and Legislative intent".

**22 § 3471. Declaration of policy and legislative intent**

"The Legislature recognizes that many adult citizens of the State, because of **incapacitation**, are unable to manage their own affairs or to protect themselves from abuse, neglect, exploitation or physical danger. Often these persons cannot find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of **protective services** designed to fill this need and

to assure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or physical danger. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions."

The *General Principles* of the Adult Protective Services Program are as follows [Adult Protective Services Manual §100, sub-§104, Part A, pg.1]:

1. So far as possible, the adult participates in making the decisions as to the action which should be taken to meet his or her needs;
2. The adult is helped to remain in the community so long as his or her condition warrants it, and to return to the community as soon as possible after hospitalization or care in a facility;
3. The action taken should always be the least restrictive alternative available which will best meet the individual's needs, while ensuring safety;
4. Legal intervention is taken if the adult is in need of protective services, lacks the capacity to consent, has no able, willing and responsible relative or friend to act in his or her behalf, and all reasonable alternatives to legal intervention have been exhausted; and
5. When legal intervention is taken involving loss of civil rights or rights of self-direction, they are restored as soon as possible. It is not assumed that the inability of a person to direct his or her own affairs is permanent, e.g., physical illness or malnutrition may cause temporary inability.

The Committee finds that the overall goal of the Adult Protective Services program is to "make people safe" [Manual, §100, sub-§104, Part B, pg.1] and that the Bureau accomplishes this goal by means of the following statutory mandates [22 MRSA §3473].

- A. To protect abused, neglected or exploited incapacitated and dependent adults in circumstances which present a substantial risk of abuse, neglect or exploitation;
- B. To prevent further abuse, neglect or exploitation;
- C. To enhance the welfare of these incapacitated and dependent adults; and
- D. To promote self-care wherever possible.

Furthermore, the law requires the Bureau to [22 MRSA § 3473]:

- A. Receive, promptly investigate and determine the validity of reports of alleged abuse, neglect or exploitation;
- B. Take appropriate action, including providing or arranging for the provision of appropriate services; and
- C. Petition for guardianship or a protective order under Title 18-A, Article 5,<sup>1</sup> when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult.

The Committee finds that the Bureau is also responsible for the public guardianship and conservatorship of incapacitated adults (other than persons with mental retardation) under the Uniform Probate Code. A guardian assumes on-going responsibility for decision making regarding all facets of an individual's life, unless the appointment is limited by the court. A conservator protects and manages the finances of the adult.

The Committee also notes that the "Adult Protective Services Casework Manual", issued to each caseworker, includes information that can serve as a practical guide for day-to-day decision making as well as a Code of Ethics [§103].

The Bureau of Elder and Adult Services [BEAS] administers the Adult Protective Services Act using a three-tiered management structure, including the Director of the Bureau, Christine Gianopoulos, the Assistant Director, Doris Russell, and the Director of Regional Operations, Joyce Saldivar.

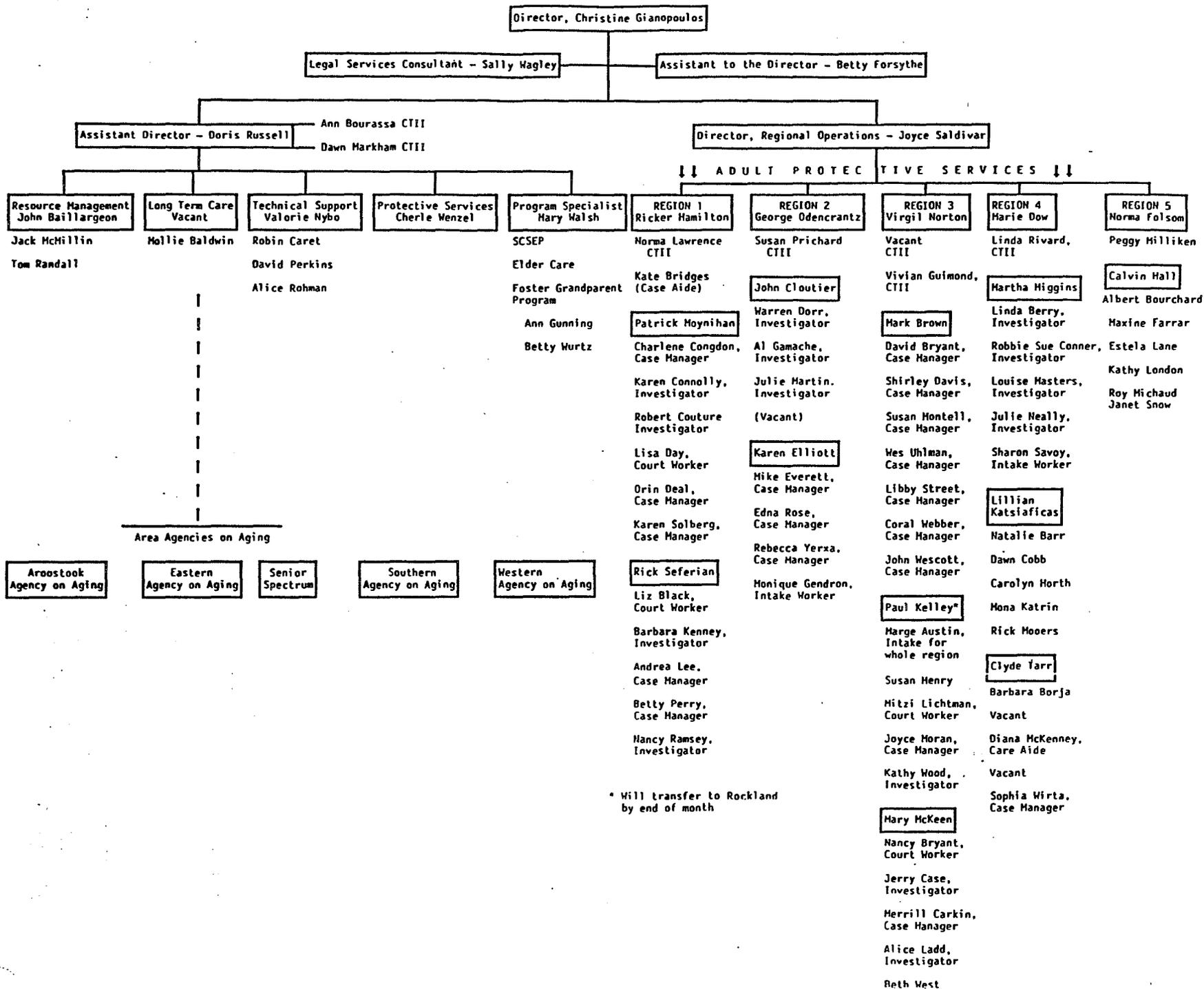
The Adult Protective Services program itself is conducted by 54 caseworkers, dispersed in 5 regional offices throughout the State. The 54 adult protective services caseworkers are supervised by a total of 11 supervisors, making an average caseworker/supervisor ratio of 5 to 1.

Technically speaking, the job functions of caseworkers are specialized into the functional categories listed below. However, circumstances often require a caseworker to perform the full range of duties in Adult Protective Services, regardless of the caseworker's technical specialization. Also, the nature of the work in Aroostook county does not demand specialization, therefore, caseworkers in the County perform the full-range of adult protective services functions, rather than assuming a particular specialization.

The "specialized" functions of the 54 caseworkers break out in the following categories:

- *Investigator* - investigates referrals of abuse, neglect, or exploitation of people over the age of 18;
- *Court Worker* - performs the duties required to petition the Probate Court for guardianship or conservatorship;
- *Case Manager* - manages the public "wards", whose guardianship or conservatorship have been granted by the Probate Court to the Commissioner of DHS. The Commissioner delegates her guardianship duties to "agents", i.e. APS caseworkers;
- *Intake Workers* - at least three Regions employ full-time intake workers to receive incoming referrals.

## BUREAU OF ELDER AND ADULT SERVICES



Referrals of abuse, neglect, or exploitation come from any source which suspects adult abuse. However, as in the child protective statutes, the statute does mandate some professionals to report actual or suspected instances of adult abuse, neglect, or exploitation, including medical people, social workers, various types of therapists, and law enforcement officials [22 §3477].

According to the "DHS/BEAS State Plan - 1991-1993", approximately 219,000 people live in Maine who are sixty years of age and older. Of this group, 10,000 people live in institutions such as nursing and boarding homes. There are at least 20,000 Mainers who are seventy years of age, with incomes at or below 125% of poverty and living alone. Eighty-seven percent of this group are women" [pg.1-2 of the State Plan] During the course of its review, the Committee found that adult protective services clients often include people who are homeless, who have medical problems or disabilities, or who suffer from mental illness and substance abuse problems. The Committee also notes that the majority of clients referred for protective services reside alone or with family but that abuse, neglect, and exploitation also occur in nursing homes, boarding homes, adult foster homes, and mental health institutes.

Statistics shows that the number of open adult protective cases on a July 1, 1992, was 1,119. The total number of cases served in an entire year, FFY 91 (ending September 30, 1991), was 3,342, showing that the average number of cases served by each caseworker for that year was ~61.

RATIO COMPARISON OF ADULT SERVICES CASES, CASEWORKERS, AND SUPERVISORS

REGION	NUMBER OF CASEWORKERS	NUMBER OF SUPERVISORS	CASEWORKER/SUPERVISOR RATIO	NUMBER OF OPEN CASES AS OF 7/1/92	CURRENT: CASELOAD/CASEWORKER RATIO	TOTAL CASES SERVED IN FFY 91	TOTAL SERVED: CASELOAD/CASEWORKER RATIO
I	11	2	5.5	271	25	830	75
II	7	2	3.5	161	20	561	70
III	17	3	5.7	256	15	742	44
IV	13.5	3	4.5	316	23	808	60
V	5.5	1	5.5	115	23	401	80
STATEWIDE	54.0	11	5.0	<b>1,119</b>	21	<b>3,342</b>	61

The next table shows the 1,119 cases open on July 1, 1992 by age, group, and gender. The largest number of service recipients are age 75-84 and 64% of all recipients are female.

**NUMBER OF CURRENTLY OPEN ADULT SERVICES CLIENTS  
BY AGE, GROUP AND SEX  
STATEWIDE  
AS OF 7/1/92**

AGE	18-21	22-25	26-29	40-45	46-59	60-64	65-74	75-84	85+	TOTAL	% OF TOTAL
Male	2	6	6	68	46	30	86	92	69	405	36%
Female	7	3	6	46	72	42	124	220	194	714	64%
<b>TOTAL</b>	<b>9</b>	<b>9</b>	<b>12</b>	<b>114</b>	<b>118</b>	<b>72</b>	<b>210</b>	<b>312</b>	<b>263</b>	<b>1,119</b>	<b>100%</b>
% of TOTAL	1%	1%	1%	10%	10%	6%	19%	28%	24%	100%	

Additional data show that, in three federal fiscal years, approximately 60% of referrals received had been screened-out.

**NUMBER OF ADULT SERVICES REFERRALS RECEIVED, SCREENED OUT,  
AND INVESTIGATED BY FEDERAL FISCAL YEAR**

	FEDERAL FISCAL YEAR					
	1990	%	1991	%	1992	%
NUMBER OF REFERRALS RECEIVED	6,044		5,414		2,466	
NUMBER OF REFERRALS SCREENED OUT	3,678	60.9	3,419	63.2	1,404	56.9
NUMBER OF REFERRALS INVESTIGATED	2,366	39.2	1,995	36.9	1,062	43.1

Finally, the table below shows the open caseload as of July 1, 1992 by the source of referral, showing that most referrals are made by social services personnel, followed by physicians.

**OPEN ADULT SERVICES CASES AS OF JULY 1, 1992  
BY REFERRAL SOURCE**

<u>REFERRAL SOURCE</u>	<u>NUMBER OF CASES</u>
Social Services Person	555
Physician	110
Other Professional	91
Other/Unknown	89
Nurse	62
Mental Health Person	59
Relative	48
Friend/Neighbor	31
Law Enforcement Person	25
Landlord	19
Anonymous	13
Self	11
Other Medical Professional	<u>6</u>
<b>STATEWIDE TOTAL</b>	<b>1,119</b>

The law requires that the provision of adult services must be provided only upon a determination that the adult is "incapacitated" [22 MRSA §§3472-3474]; conversely, if the adult is determined to be "capacitated", then the Bureau has no authority to provide services.

In practice, the initial assessment of "capacity" is the responsibility of the Investigator, using a standard "Assessment Form". If the Investigator concludes that the client is, indeed, incapacitated, the Investigator then arranges for a second assessment of capacity to be performed by a member of the medical community, such as a physician, psychiatrist, or, most often, a clinical psychologist.

If the medical person also concludes the client lacks capacity and that the client is in actual danger or at risk of danger, requiring a guardian or conservator, the Investigator technically turns the case over to a caseworker who specializes in court work. The first responsibility of a Court Worker is to immediately minimize whatever danger the adult may be in. The second is to locate family members, or other suitable people in the life of the client, who may wish to serve as guardian or conservator. Finally, if a suitable person is not located, the Court Worker may then prepare the necessary documents to seek public guardianship or conservatorship in Probate Court. The Court Worker, with the help of either an Assistant Attorney General or a contracted attorney, compiles the necessary documents.

If the court agrees that the person requires a public guardian, the court technically appoints the Commissioner of Human Services to serve in that role. In practice, an adult services Case Manager assumes the role of protecting the best interests of the client and performing the necessary duties of public guardian. The table below shows that the Department serves as public guardian for 488 people (and provides other information about caseworkers' caseloads).

**ADULT SERVICES CASELOAD DISTRIBUTION  
AS OF JULY 2, 1992**

OBJECTIVE	CASELOAD BY REGION					STATE - WIDE CASELOAD
	I	II	III	IV	V	
Guardianship/Conservatorship	85	59	136	156	52	488
Assess Danger	111	72	46	94	40	363
Danger Determined	9	2	3	23	3	40
Planning Court Action	9	2	17	11	10	49
Dependent Adults/Risk	4	8	2	6	2	22
Study - Court Request	0	0	0	0	0	0
Study - Nomination	53	18	52	26	8	157
<b>TOTAL ADULT SERVICES CASELOAD</b>	<b>271</b>	<b>161</b>	<b>256</b>	<b>316</b>	<b>115</b>	<b>1,119</b>

The Bureau's Adult Protective Services program is entirely supported with General Fund dollars. The table below shows actual expenditures for the program of \$3,520,656 for SFY 1991-92.

**BUREAU OF ELDER AND ADULT SERVICES  
Adult Protective Services  
SFY 1992-92 Expenses**

	<b>CENTRAL OFFICE</b>	<b>REGION I</b>	<b>REGION II</b>	<b>REGION III</b>	<b>REGION IV</b>	<b>REGION V</b>	<b>TOTAL</b>
Personal Services	\$183,970	\$548,495	\$434,683	\$778,219	\$616,886	\$416,404	\$2,978,657
All Other	71,352	60,872	38,644	101,606	33,858	36,428	342,760
Home Based Care		55,352	23,932	47,316	400,056	5,094	171,750
Social Services Block Grant	<u>27,489</u>						<u>27,489</u>
<b>TOTAL</b>	<b>\$218,983</b>	<b>\$664,719</b>	<b>\$497,259</b>	<b>\$927,141</b>	<b>\$690,800</b>	<b>\$457,925</b>	<b>\$3,520,656</b>

**ADMINISTRATIVE 12.**

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Recommend that the Bureau of Elder and Adult Services explore the implementation of additional training programs targeted specifically to Supervisors of Adult Protective Services caseworkers in order to ensure quality casework and compliance with professional standards and practices.

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During the course of its review, the Committee found that an extensive training curriculum for adult protective services caseworkers does not exist. However, training is provided either on-the-job, or through a number of courses offered by DHS's Staff Education and Training Unit.

As noted earlier, day-to-day work is governed by the Adult

Protective Services Manual, the Policy Manual for the Bureau of Elder and Adult Services, and other such documents.

As a means of ensuring casework quality, the Committee notes that the Adult Protective Services Program implemented a formal case review system in January 1992. The primary purpose of the case review system is to ensure that the Bureau provides protective services to adults consistent with the Bureau's legal mandates. This is accomplished by reviewing cases against established standards, identifying and resolving problems, and promoting effective and appropriate service delivery. The case review system is conducted by Casework Supervisors, Regional Managers, and Central Office staff, who review a certain number of cases each quarter and who then meet jointly to discuss the results of those reviews, also quarterly.

In order to gather additional information about the effectiveness of the Adult Protective Services system, the Committee solicited comment about the program from Maine's Probate Court judges, county sheriffs, nursing home facility administrators, District Attorneys, Area Agencies on Aging, and Legal Services for the Elderly. The Committee reviewed comments from the respondents carefully, including several who expressed concerns regarding the competence, responsiveness, and dedication of adult protective services caseworkers. Accordingly, the Committee finds a need to highlight the importance of training in ensuring quality casework and compliance with professional standards and practices and concludes that the Casework Supervisor plays a vital role in maintaining an effective and responsive adult protective services system. The Committee also finds that:

- supervisors serve to support, coach, oversee, and ensure quality performance from caseworkers;
- time and resources spent on training supervisors can serve to save additional time and resources by increasing overall productivity;
- experienced caseworkers who are promoted to supervisory positions can often benefit from additional training specific to their new supervisory duties; and that the
- supervisory level has often been the weakest link in a number of Maine's social services systems.

Accordingly, the Committee recommends that the Bureau of Elder and Adult Services explore the implementation of additional training programs targeted specifically to Supervisors of Adult

Protective Services caseworkers in order to ensure quality casework and compliance with professional standards and practices.

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**ADMINISTRATIVE 13.** Direct the Adult Protective Services program to work with Maine's Area Agencies on Aging and other relevant groups to review and update media outreach efforts regarding issues of interest to the adult protective and elderly communities.

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To assess the needs of the 209,000 elderly who live outside of institutions in Maine, the Bureau of Elder and Adult Services commissioned a statewide telephone interview survey that was conducted during a three month period in 1989.

One finding from the survey was of particular interest to the Committee; i.e. *"few [respondents] are aware of public or senior citizens' transportation in their area."*

Additional findings of the survey provide a profile of Maine's older citizens as follows:

The average age is 71;

The majority are married; but one in four live alone;

22% have household incomes at or below poverty (\$8,020 for a household of two);

Three-quarters live in single family houses;

One in four have difficulty with daily tasks because of health or physical problems;

Half of those 75 and older are widowed;

One in five are employed;

Of those who are helped with daily tasks, most receive help from a spouse;

Of those who need help, 9,700 fail to get the help they need;

68% are high school graduates and 34% have some education beyond high school;

Most are satisfied with their level of social activity; and

Of the nearly 50,000 older Mainers who have health or physical problems that cause difficulty in carrying out daily tasks, 9,700 do not receive the help they need.

The Committee suggested that the Area Agencies on Aging may be of particular help in publicizing the availability of transportation opportunities available in the community, as well as addressing other concerns identified in the survey. In particular, the Committee cited the AAA Outreach Workers and the AAA Newsletters as important vehicles for heightening awareness and addressing concerns. The Committee also suggested that Public Service Announcements be aired on local cable TV stations regarding transportation opportunities. Accordingly, the Committee recommends that the Adult Protective Services program work with Maine's Area Agencies on Aging and other relevant groups to review and update media outreach efforts regarding issues of interest to the adult protective and elderly communities.

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**ADMINISTRATIVE 14.**

Direct the Adult Protective Services program to provide the chief executive officer of a facility which has undergone an Adult Protective investigation with official notification about the findings and conclusions of the investigation.

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During the course of its review, the Committee found that APS caseworkers who conduct investigations of facilities which serve the elder and adult population are not required to provide the facility with a written account of the investigation's findings and conclusions. The Committee understands that

although the Bureau at one time required caseworkers to provide facilities with a written final report following an investigation, it no longer does so. The Committee found that the reason why the Bureau no longer requires submission of a final report to the facility upon the conclusion of an adult protective services investigation is due to:

- lack of adequate caseworker and clerical staff to prepare a full written report; and
- the Bureau's assertion of the inappropriate use of these reports in the past by facility owners in disciplinary proceedings against an employee.

The Committee understands that a form currently in use by the Bureau, i.e. an "Investigation Referral and Notification Form" (BEAS-027), could be modified and employed to meet the purpose of providing a final report of an investigation to a facility owner. Accordingly, in order to provide the facility owner with an official communication at the close of an investigation within the limits of current resources, the Committee directs the Bureau to employ the current Investigation Referral and Notification Form for this purpose.

## HOME AND COMMUNITY BASED WAIVERS

The Committee explored state agency use of "Waivers" under the Federal Medicaid, Food Stamp, and AFDC Programs during 1992. Maine relies on several waiver programs, mostly to provide federally funded services as an alternative to institutional care for Medicaid clients with illness or disability. These programs are called "Waiver" Programs because the state must apply for and receive a waiver of the rules that would usually apply to the federal program. Waiver programs are initiated to provide a service either to an underserved population, or in an innovative way not originally contemplated by the creators of the federal program.

The Committee, through staff, researched the use of Medicaid funds (through "waivered programs, described below) for provisions of home-based services for Maine citizens, as well as the status of Maine's application for the waiver of certain rules for administration of the Food Stamp Program. Information received by the Committee included relevant portions of the Social Security Act, Federal Regulations, literature and state plans obtained by staff, interviews with state administrators and out-of-state experts concerning waiver programs, interviews with waived services providers, and review of relevant portions of the Maine Medical Assistance Manual (state regulations enacted to guide administrators, state personnel, and clients in interpretation of federal Medicaid law).

### MEDICAID AND WAIVERS:

#### **\*\*Medicaid\*\***

The Federal Medicaid Program is the program by which federal dollars are granted to the states to jointly administer and pay for medical services to persons in need who could not access necessary health care without government assistance. This Program, governed by Title XIX of the Social Security Act, pays for a large percentage of medical services rendered to persons in Maine who are either impoverished, or whose medical needs far exceed the family's ability to pay. The Medicaid Program has existed for over twenty years, and use of the federal funds for Medicaid is historically tightly regulated by the federal government, which requires states to promulgate detailed eligibility and other rules for implementation of the program. Medicaid is considered jointly administered by state and federal government.

**\*\*Waiver Program Created\*\***

In 1981, Section 1915 (c) of the Social Security Act was enacted, creating the Medicaid "Home and Community Based Waiver Program." Prior to enactment of the section, federal Medicaid funds had been used only to provide institutional care to those needing extensive services, even though many of the institutional clients could have been cared for in their homes at lower cost. Enactment of Section 1915(c) was a Congressional response to the growing movement for greater independence and freedom of choice for historically institutionalized populations; the elderly, persons with developmental disabilities, and the physically handicapped.

The Waiver program, simply, allows states to apply to have certain federal requirements waived, in order to provide Medicaid funding of home-based services which would allow persons who would be medically qualified for reimbursement in an Intermediate Care Facility (ICF, or nursing home), to receive medical and habilitative services at home. The simple purpose of the use of waived programs, is to avoid institutionalization of the client, while retaining an adequate level of care.

All states have applied for and received waiver funds. Maine uses the waiver program in slightly higher percentage than most states, which means that its level of use of the program is high.

In return for approval for participation in the waiver program, the state must provide formal assurance that

- \* safeguards have been taken to protect the health and safety of each participating client;
- \* that the state will evaluate each prospective client for the need for inpatient or ICF services, and, if determined to be eligible for ICF level care, informed of the waiver alternative (to receive services at home);
- \* that the cost of the services provided to clients under the waiver program will be no greater than the cost of providing the same services in an institution;
- \* that the state will collect and submit information concerning the impact of the waiver program on the type and quantity of medical services provided, and on the health and welfare of the recipients.

Maine now operates waiver programs for home based services to the elderly, persons with mental retardation, and the physically disabled.

**WAIVER SERVICES FOR THE ELDERLY:**

Under Maine's program, and detailed in the Maine Medical Assistance Manual, Chapter II, Sections 19.01-19.09, home based services under the waiver are provided to Maine citizens over the age of 60, who are medically and financially needy (as defined in the Manual), and who would otherwise be placed in a nursing home for care.

Each individual must be provided with an individual plan of care, developed by an interdisciplinary team. This plan must include all services necessary to maintain the client, and is approved by the Bureau of Medical Services at DHS, so that payment will be made under the waiver program.

The five Area Agencies on Aging are the responsible contractors for the coordination and provision of services in each area of the state. These agencies assist in the development of the individual plan, assist in selection of individual service providers locally, and are responsible to monitor the plans on an ongoing basis as care managers.

Data for three fiscal years for the elderly waiver is shown below:

	5/1/90-4/30/91	5/1/89-4/30/90	5/1/88-4/30/89
Per Capita			
Waiver Services	\$ 6,116	\$ 5,517	\$ 5,490
Institutional Svcs	\$ 22,063	\$ 16,953	\$ 16,961
People Approved	1,308	1,189	1,081
People Served	724	763	748
\$ Approved	\$6,113,500	\$5,205,489	\$4,425,732
\$ Spent	\$4,427,157	\$4,209,605	\$4,106,769

**\*\*ISSUES Raised by research:\*\***

The Committee considered a number of issues with regard to the Waiver Program for the elderly:

Eligibility determination for the program has been delayed by staff reductions within the Bureau of Income Maintenance (DHS);

Primarily due to staff shortage, the state has been unable to comply with a requirement that each client be re-examined for continuing eligibility every six months. This could potentially cause the state to be liable to repay the federal government for services provided to ineligible clients. Interviews with BMS officials revealed that the Bureau has considered this problem, and taken steps to ameliorate the potential impact of the problem.

The cost of the waiver program per client has increased from an average of \$5,490 in 1988, to an average of \$6,116 in 1991. Although this is an increase, the cost of providing these same services in an institutional setting averaged \$22,063 in 1991.

During 1991, state medicaid rules changed to increase the monthly income allowance for eligibility for medicaid from 100% to 125% of poverty level. This change means that greater state medicaid funds are used to fill the resulting gap formerly paid by those clients' income. In the aggregate, this reduces the funds available in the State's medicaid pool.

#### **WAIVER SERVICES FOR PERSONS WITH MENTAL RETARDATION:**

The general outline of Medicaid Waiver explained above applies to this waiver program as well. In addition, there are rules which govern eligibility and priority of services to persons with mental retardation.

According to the rules, recipients of waiver services with MR must already be eligible for medicaid, must be clients of the Bureau of Mental Retardation (BMR), and must qualify for medicaid reimbursement for the level of care and supervision provided at an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

Clients who have priority for waiver services are:

- people residing at the time of application at Pineland Center;

- people residing in ICF/MR facilities;
- people applying for and eligible for the ICF/MR level of care.

### **\*\* Individual Program Plan\*\***

Each person who will receive waiver services must do so pursuant to an Individual Program Plan (IPP), which must have been developed by an interdisciplinary planning team. The plan must include exactly what medical and other support services will be provided, how often they will be provided, and what type or level of provider will be authorized to provide the service.

### **\*\* Waiver Services Available to Clients\*\***

Unlike the coverage of traditional, medical, services which medicaid covers under medicaid grants to the states, the services which may be paid for under the waiver are intended to be virtually all those which are necessary to prevent institutionalization of the client. Thus, services paid for under the waiver can include adaptive aids, crisis intervention services, daily living skills training, personal support services, respite care, supported employment services, and transportation.

### **\*\*Administration\*\***

Three agencies are involved in administration of this Waiver program. DHS's Bureau of Medical Services (BMS) is the party responsible for reporting and liaison with the federal Medicaid program. However, BMR plays a pivotal role in the administration of this waiver program by overseeing eligibility procedure, convening the interdisciplinary team, and evaluating and maintaining all records. The Bureau of Income Maintenance at DHS is responsible for determination of financial eligibility. BMS determines medical eligibility issues and monitors provision of medical services to this client group.

Data for three fiscal years for the waiver for people with mental retardation is shown below:

7/22/90-7/21/91 7/22/89-7/21/90 7/22/88-7/21/89

Per Capita

Waiver Services	\$ 28,356	\$ 23,970	\$ 17,629
Institutional Svcs (ICF/MR)	\$ 67,321	\$ 56,649	\$ 40,782
People Approved	453	453	453
People Served	494	509	530
\$ Approved	\$13,543,232	\$ 8,551,983	\$8,129,266
\$ Spent	\$14,007,946	\$12,200,953	\$9,343,229

**\*\*Issues Raised by Research\*\***

At the time of the Committee's review, the Waiver Program is completely filled, and there is a substantial waiting list for those desiring access to waiver services as an alternative to institutional care.

Room and board costs are not allowable for reimbursement under the waiver. "Room and Board" has not been defined on the state or federal level in association with this prohibition. If Maine services are not adequately distinguished from room and board in records, this could jeopardize eligibility, thus creating a potential liability for Maine to repay the federal government if it is found in non-compliance. Accordingly, the Committee asked, and received, a clarification dated 11/25/92 from the Director of the Bureau of Mental Retardation regarding charging room and board costs to the home and community based waiver.

Recipients eligible for the waiver may not be served due to a cap on the number of clients the state may serve under the waiver, which is set by contract with federal medicaid authorities. Clients otherwise eligible for the waiver are living in group situations such as foster homes, which are paid for in part by general fund dollars.

A number of professionals in the MR provider community assert that some current uses of waiver funds are not within the intent of the state plan, and of the federal program, because some individuals receive services which cost well above what their care would cost in an ICF/MR. The position of BMR and the other agencies involved is that the waiver program is intended to provide alternatives to institutionalization, inclusive of people whose supervisory or service needs are higher than average,

especially in light of the requirement that the program serve those whose care would otherwise be provided in a hospital, nursing, or intermediate care facility.

Some providers and others advocate "folding" the home-based independent living services now provided by waiver into the state's medicaid program. This would end the cap on numbers of persons who would be served, and would make the funds more dependable to clients on a long-term basis, but it would cost more in state "seed" money, and would increase the numbers of recipients, changing the character of the services to an entitlement program under the regular medicaid program.

#### **WAIVER SERVICES FOR THE PHYSICALLY DISABLED:**

Bureau of Medical Services Rules governing the Home and Community Based Waiver program for persons with physical disabilities are found in the Maine Medical Assistance Manual Sections 22.01 to 22.10.

Services that can be paid for under the waiver program include case management, consumer instruction, and consumer directed attendant services (personal care attendants). These services are intended to enable eligible persons with disabilities, who would otherwise be at risk of institutionalization in a nursing facility, to remain in their communities. The program focuses on functional disability, rather than on any particular diagnosis.

#### **\*\*Eligibility\*\***

Medicaid's standard test of income eligibility is waived under this program. Although the traditional medicaid program requires eligibility to be computed based on the cumulative income of the entire household, the waiver requires only the income of the client to be counted, regardless of family members' income.

Participants must be over the age of 18, and be their own guardian.

The person must have a physical disability, meaning that he or she cannot provide self care without assistance, and is lacking a community support system which is adequate to meet the need for assistance.

There must be a reasonable expectation that, with services, the individual will become more independent at home.

The client must agree to undergo full instruction in the skills identified in the plan of service developed by the Provider Evaluation Staff.

The client must require the level of care of a nursing facility (NF) in the absence of home-based services.

While services are being provided, the client's residence cannot be a hospital, an ICF/MR, or a Nursing Facility.

Aggregate expenditures (for the entire population served under the state plan) may not exceed the cost of Medicaid-funded nursing facility care.

### **\*\* Services Provided\*\***

The Waiver requires that a "consumer directed" model be used, which frames the client as a consumer of personal care attendant (PCA) services. Accordingly, the intent of the waiver is to empower the client to hire and train a PCA to assist the client with the physical tasks of every day living. The client would evaluate and supervise the PCA's work, including documenting the PCA's time sheets.

Actual services and day-to day administration of the waiver is conducted statewide by one provider, Alpha One Center for Independent Living in South Portland. Alpha One is the only independent living center in Maine with the requisite complement of professional providers, according to staff there. It is a private non-profit business providing services to people with physical disabilities statewide. Alpha One operates four regional offices around the state.

After a client has been determined eligible by the Bureau of Income Maintenance, Alpha One conducts an initial screening process with the client at his or her home. A detailed assessment of the client's needs is performed, including the clients' disabilities, and the client's level of ability to care for him or herself and participate in the consumer-directed model. Alpha One submits the paperwork to HCFA, and must wait for approval 4-6 weeks to begin to provide waiver services. When approved, Alpha One meets with the client to instruct on "consumer skills" and management, in preparation for the client's hiring of personal care assistance in the form of PCAs. When the client is ready, the client will recruit and hire the number of PCAs needed to meet the client's personal needs.

Alpha One administers the Personal Care Assistant payroll

process, upon receipt of the necessary information and paperwork from the client. According to Alpha One, the advantages of this model are not only that the client remains in the community and in control of his or her daily life, but the services provided by PCAs are cost-effective in comparison to higher priced visiting nurses. At this time, the 129 clients of the waiver program employ about 400 Personal Care Attendants.

**\*\*Administration\*\***

DHS's Bureau of Medical Services and Bureau of Rehabilitation are involved in the administration of the program. The Bureau of Rehabilitation provides on-site monitoring of Alpha One, and conducts visits to clients' homes in the event of consumer complaints.

Data for the physically disabled waiver for three fiscal years appears below.

	7/1/90-6/30/91	7/1/89-6/30/90	7/1/88-6/30/89
Per Capita			
Waiver Services	\$ 7,869	\$ 5,546	\$ 6,224
Institutional Svcs	\$ 22,709	\$ 11,354	\$ 15,212
People Approved	142	125	144
People Served	129	126	124
\$ Approved	\$ 863,360	\$ 731,875	\$1,244,941
\$ Spent	\$1,015,118	\$ 698,804	\$ 771,778

The Committee received testimony on a number of issues regarding this waiver, including:

1. The benefits of expanding Personal Care Services within the standard Medicaid program, in order to further extend services to additional unserved Maine citizens with disabilities;
2. The co-pay requirements may be an issue for some consumers; and
3. The rate of reimbursement of PCA's under the waiver of \$5.75 is not competitive with the competing rate of \$7.00/hour allowed under rules for the state-authorized home-based care program, also run by Alpha One.

Finally, the Committee considered a report of the State Auditor's office following an audit of the three Home and Community-Based waivers in April of 1992. Four findings and one recommendation were issued, as follows:

- "It appears that internal controls are adequate to ensure the Medicaid waiver program is being operated in compliance with federal regulations.
- "Expenditures [for 5/1/90 - 4/30-91] reported to HCFA were supported through the Medicaid Management Information System (MMIS) data base;
- "The waiver program for the elderly was [cost] effective, as determined through working the required equation";
- "Individuals served under the waiver did not exceed the HCFA approved limit"; and
- Recommendation: That "the division submit all waiver reports as required by HCFA regulations".

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**FINDING**

15. The Committee finds that the quality of life for those with developmental disabilities will be enhanced if decision makers and service providers engage in a periodic planning process for the individual which accounts for the total needs of the person.

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**FINDING**

16. The Committee finds that the manner in which decisions are made regarding the future of a person with mental retardation is controversial and important and deserves further consideration and review.

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Persons who are clients of DMHMR'S Bureau of Mental Retardation (BMR), either living in institutions such as Intermediate Care Facilities for the Mentally Retarded, (ICFs/MR) or in community based alternatives need assistance in making plans for future medical and support services. BMR is required by law to implement a process for future planning for each client it serves. The primary process now used to formulate such plans is annual service planning for the client by an Interdisciplinary Team (IDT). The IDT method of planning is a process by which a group of professionals convene annually to formulate life plans for each client (such as goals to be achieved), and medical and service plans (for the range of medical and habilitation services the individual will require), over the upcoming year. The annual meeting to make plans for the upcoming year is federally mandated for persons residing in ICFs/MR. A debate exists among persons with mental retardation and those who work with them as to whether the IDT model for annual and long-term planning is the best way to assist people with mental retardation to plan their futures, or whether other methods might be more beneficial or responsive to users.

- **THE INTERDISCIPLINARY TEAM MODEL**

An IDT is convened for each individual who receives services through the Bureau of Mental Retardation on an annual basis. IDT members are professional persons who know or provide services to the client. The objective of this group process is to produce a written plan for the client detailing which services will be provided for the upcoming year and to set goals for behavior changes, habitation, and medical improvement, if relevant. Generally a plan is drawn which, in the professional judgment of the providers participating in the IDT, will serve the needs and best interests of the client.

The IDT "product" is a legal document which specifies human service and provider agency roles and responsibilities. The IDT plan serves as a guide for the upcoming year's service plan.

- **PERSONAL FUTURES PLANNING**

Relatively recently, people involved with persons with developmental disabilities have begun to implement alternative methods for planning for needs and services. Personal futures planning is a method of future planning

which embodies a "person centered" philosophy, meaning at a minimum that the planning process will be responsive to the needs and desires of the person receiving the help. In practice, this personal planning process may either replace or supplement the IDT process, it may require frequent meetings of the team, require that the person be a part of the team, and that the team solicit from the individual his or her wishes, likes, and dislikes. The individual serves as the primary decision maker about who participates on the future planning team, as well as what goals the team defines for the person.

- **ELEMENTS OF DEBATE CONCERNING PLANNING METHOD**

Those who support the concept of personal futures planning assert that the team inquiry about the needs of the client is centered on the wishes and goals of the client. More important, they say, is that the process starts from the premise of defining and finding ways to promote the client's strengths and abilities, whereas the IDT model of planning is based on identifying and finding ways to "fix" the clients' deficits or problems. Proponents of the personal future planning approach feel that the client should be the primary judge of what his or her goals will be, with help from concerned and involved people of their choice. The Committee finds that philosophically, the differences between IDT and personal future planning are the difference between formulating plans for support based on services available in the community, versus formulating plans which define what the person needs for supports and then finding or developing community services which might meet those requirements. Often, people on personal planning teams in other states have had to seek changes in existing organizational structures and processes as they have made efforts to implement the team's plan.

Proponents assert that the personal futures planning approach works best with clients and team members who are seeking solutions to problems that arise when a client has needs or wants which are not easily met by existing community systems. It can be a flexible complement to the IDT process, addressing different issues and needs than the traditional IDT.

Since methods of future planning for persons who are clients of the Bureau of Mental Retardation continue to be the subject of evolving discussion as outlined above, the Committee

will refer its finding to the Joint Standing Committee for Human Resources of the 116th Legislature for further consideration.

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**ADMINISTRATIVE 17.**

Direct the Bureau of Mental Retardation (DMHMR) and the Division of Licensing and Certification, Bureau of Medical Services (DHS) to cooperate in implementing a series of 21 recommendations regarding the operation, administration, and licensing of Intermediate Care Facilities for the Mentally Retarded and report to the Committee on a quarterly basis.

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In the course of its inquiry concerning the Home and Community Based Waiver program, the Committee became aware of several alleged problems with new state regulations governing Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). Local regulation and licensing of ICFs/MR is required for federal funding of services to persons in such institutions, as well as to providers of services to waiver clients. In October, 1991, new regulations for ICF/MR licensing and functions went into effect.

The Committee in July, 1992 focused on several problems brought to its attention which were claimed to have been brought about by the new regulations or the failure of the new regulations to address certain issues. After receipt of comments from ICF administrators, waiver program providers, clients, and other interested parties, the Committee concluded that review of the cost efficiency and relevance of the regulations would be warranted. Subsequently, the Committee requested that the Division of Licensing and Certification (a Division of the Bureau of Medical Services, within the Department of Human Services) convene a group to perform such a review and report back to the Committee in September.

In order to create a review forum which would encompass varied viewpoints, the Division formed a task force consisting of representatives from the Bureau of Mental Retardation (BMR), the Maine Association of Private Residential Resources, Division of Licensing, parents and guardians of clients, and advocates from

the Department of Mental Health and Mental Retardation (DMHMR) Other interested parties participated in the task force explorations as well.

The Division of Licensing task force met several times and worked to address the issues brought to the attention of the Committee as well as issues raised by task force members. It determined that many of the regulations are federally mandated and therefore tied to Medicaid funding issues. However, the task force also found that several changes might be made which would serve to alleviate many of the identified problems.

21 recommendations for change in the regulations were proposed by the Division of Licensing's task force to the Audit and Program Review Committee, following solicitation of input from administrators of ICFs/MR, clients, families of clients, staff of ICFs, professionals, and others. These recommendations were well received by those with whom the task force had consulted and others, and were in course adopted with few amendments as the recommendations of the Audit and Program Review Committee. The recommendations follow this narrative.

The 21 recommendations are directed to the two Bureaus most relevant, and divided according to which Department and Bureau the Committee determined should take the lead in implementing each recommendation. They are generally worded so that the responsible agencies can implement each as the agency determines is best. The Bureau of Mental Retardation (DMHMR) and the Division of Licensing and Certification (BMS, DHS) are to report to the Audit and Program Review Committee on a quarterly basis, detailing the steps taken and success achieved in executing the recommendations.

**The Bureau of Mental Retardation (DMHMR) will take the lead on the following 8 recommendations:**

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**ADMINISTRATIVE 18.**

Educational opportunities should be offered and made available to clients and their parents and/or guardians by the Bureau of Medical Services, Bureau of Mental Retardation, and ICF/MR providers. Topics shall include clients' and parents' rights in situations involving life and lifestyle decisions made by an IDT, living arrangements, institutional admission and discharge decisions, and other relevant topics.

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*It was found that parents and/or guardians are often unfamiliar with or do not utilize their right to appeal IDT decisions, particularly when it appears that the wishes of the parent/guardian may be contrary to regulations.*

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**ADMINISTRATIVE 19.**

Service providers, parents, and guardians should be encouraged to exercise their right to communicate to the Health Care Financing Administration their problems or disagreements with Federal regulations.

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*The BMS Division of Licensing and Certification does not have the authority to waive federal requirements. This sometimes leads to clients being provided services they do not want and may not need. The Committee finds a necessary precondition for change of counterproductive federal regulations is that federal authorities be made aware of problems.*

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**ADMINISTRATIVE 20.**

The Bureau of Mental Retardation, the Bureau of Medical Services, providers, and advocates should explore, on a continuous basis, simplification of reimbursement and client classification procedures in order to assist clients, parents, and guardians.

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*There are numerous difficulties related to reimbursement issues  
for all parties*

*involved in the system. Continuing dialogue is necessary to rapid identification of system-wide problems and their early resolution.*

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**ADMINISTRATIVE 21.** The Bureau of Mental Retardation, the Bureau of Medical Services, providers, and advocates shall cooperate to develop an index of available services that identifies which entity within state government can address different types of inquiries and problems.

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*The idea for this recommendation came from parents who shared with the task force their concerns arising from the difficulty they had experienced in locating the appropriate state agency or program to help them find information or services for their client children.*

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**ADMINISTRATIVE 22.** The Bureau of Mental Retardation and the Bureau of Medical Services shall review the policy on Leaves of Absence from ICFs/MR, as specified in the Maine Medical Assistance Manual, Chapter II, Section 50.

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**ADMINISTRATIVE 23.** The Bureau of Mental Retardation and the Bureau of Medical Services shall review the use of respite care, including reimbursement issues, the use of beds when regular clients go home for the weekend (with guardian permission), and other relevant matters.

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*Although most interested parties agree that respite care and opportunities for clients to familiarize themselves with an ICF/MR facility through overnight visits prior to entry are desirable, significant difficulties exist in obtaining medicaid funding for such purposes. Review may be helpful in making optimum use of funding sources which are available, and in exploring alternatives under the medicaid program.*

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**ADMINISTRATIVE 24.**

The Bureau of Mental Retardation and the Bureau of Medical Services should support recommendations that federal rulemakers explore changing the Principles of Reimbursement to allow for prepayment to ICFs/MR and community based waiver services, as well as to review the further use of the Hospital Depreciation Assets Schedule for capital equipment.

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*Providers complain of financial problems caused by the medicaid system which reimburses for services only after the fact. Advocates assert that prepayment for medicaid services would assist in solving recurring resource problems in ICFs and provision of waiver services.*

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**ADMINISTRATIVE 25.**

The Department of Mental Health and Mental Retardation should clarify the methods by which staff are hired for State-owned ICFs/MR, including permanent, temporary, and emergency staff.

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The Division of Licensing and Certification, Bureau of Medical Services, in DHS will take the lead on the following recommendations:

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**ADMINISTRATIVE 26.**

The Division of Licensing and Certification should add an informal appeals process to the Regulations Governing the Licensing and Functioning of Intermediate Care Facilities for Persons with Mental Retardations.

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*Frequently, there are disagreements between ICF/MR administration and DHS licensing staff over survey results which find deficiencies existing under the regulations. Despite the lack of any explicit informal appeal process, some ICFs have asked DHS management for reconsideration, occasionally resulting in changes. Task force members agreed that an informal appeal process should be added to provide for DHS management staff review of contested survey findings for all ICFs/MR.*

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**ADMINISTRATIVE 27.**

Regular meetings should be held between DHS staff, BMR staff, service providers, advocates, and other interested parties to discuss ICF/MR survey, certification, and reimbursement issues.

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*Many of the reimbursement problems encountered by service providers could be*

*best addressed by an ongoing mutual discussion of implementation of the regulations. This discussion would serve to point up other common problems as well, such as billing complexities, ambiguities in defining eligible services for individuals, and processing issues.*

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**ADMINISTRATIVE 28.**

The appeals process for providers and clients under Chapter One of The Maine Medical Assistance Manual should be reviewed and clarified by DHS Division of Licensing and Certification staff.

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**ADMINISTRATIVE 29.**

BMS should provide periodic educational presentations for providers regarding state ICF/MR licensing regulations, reimbursement procedures and regulations, and rights of client/guardian/parent.

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*Confusion exists among providers concerning several issues including differences between state and federal regulations, billing, appeals processes, and the rights of clients and guardians. Regular informational opportunities will help keep providers "up to date" and will thus prevent problems due to misinformation.*

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**ADMINISTRATIVE 30.**

The Division of Licensing and Certification, the Bureau of Mental Retardation, providers, and advocates should explore the required qualifications of ICF/MR Group Administrators and consider substituting related experience for educational qualifications where warranted.

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*There is strong disagreement among providers about mandated minimum educational requirements for administrators of ICF/MR groups. The Committee intends that further discussion of this question should continue before any final decision is made to change the regulation.*

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**ADMINISTRATIVE 31.**

The Bureau of Medical Services should provide more training to providers concerning billing.

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**ADMINISTRATIVE 32.**

The Bureau of Medical Services, Bureau of Mental Retardation, and providers should hold a meeting to promote and plan coordination of electronic billing procedures.

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*It is anticipated that use of electronic billing procedures will reduce payment delays and smooth processing difficulties.*

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**ADMINISTRATIVE 33.**

"Mandated training" for staff in ICFs/MR should be defined to ensure a minimum level of appropriate training for staff while allowing for reimbursement of a reasonable level of continuing skill training above the minimum level. The Bureau of Mental Retardation, Bureau of Medical Services, and providers shall collaborate on the definition, and the Bureau of Mental Retardation shall determine the reimbursement mechanism for such training.

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**ADMINISTRATIVE 34.**

The Bureau of Medical Services should review the four hours a day, five days a week of day active programming requirement, which is required to be carried out for each client by the Consent Decree.

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*This rule does not allow for choice of individuals who do not wish to participate in structured programming, for those who would prefer or benefit from a lower level of activity, and for those who wish to "retire" from day programming, as other citizens retire from employment. The present rule limits the options and flexibility of IDTs in developing plans for (or with) clients.*

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ADMINISTRATIVE 35.

The Bureau of Medical Services, Bureau of Mental Retardation, and providers shall further explore the use of psychotropic medications for clients with mental illness and how the use of these medications interrelates with active treatment.

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ADMINISTRATIVE 36.

The Bureau of Mental Retardation, Bureau of Medical Services, and providers should continue to explore how best to provide habilitation to clients requiring skilled level nursing home services, a level requiring more medical services than what is allowed in ICF/MR nursing level of care.

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ADMINISTRATIVE 37.

The Bureau of Medical Services staff should research federally mandated "diet" requirements for clients who do not require a special or modified diet.

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*The federal regulations have been interpreted as requiring a review of diet orders (among other elements of physician care) for clients every 90 days, even for clients who always eat a regular diet.*

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**ADMINISTRATIVE 38.**

The Bureau of Medical Services, Bureau of Mental Retardation, and providers should reassess the role of the Qualified Mental Retardation Professional in the IDT process.

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**ADMINISTRATIVE 39.**

Recommend that the Bureau of Medical Services study the implications of providing services through the MR waiver rather than through an ICF/MR, including the cost of the services delivered contrasted to the cost of delivering these same services in an ICF/MR. Finally, recommend that USM's Human Resources Development Institute include an assessment of the waiver in its future studies.

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#### **WAIVERS - MAINE'S FOOD STAMP PROGRAM**

In addition to the Home and Community -Based Waivers, the Committee also reviewed information regarding federal waivers sought by Maine's Department of Human Services regarding its Food Stamp Program.

In January 1992, the Department requested waivers of federal regulations in several areas. The waivers were requested in order to 1) improve the effectiveness of the food stamp program, 2) make food stamp regulations consistent with the regulations for AFDC, and 3) ease the burden of administering the program since the caseload is increasing and staff levels are decreasing.

The Committee was concerned that two of the requested waivers had been denied at the time of the review. The two denied waiver requests were:

- to employ a telephone interview instead of a face-to-face interview with certain households to determine re-eligibility status; and
- changing the time at which food stamp recipients are required to report changes in income to the Department

Accordingly, the Committee asked the Congressional delegation to intervene on behalf of the State with the U.S. Department of Agriculture, as demonstrated in the attached letter. As a result of the effort of the delegation, one waiver was ultimately approved with conditions, although the second was not approved. The attached responses from the Delegation serve as the record of this Committee action.



SENATE

BEVERLY MINOR BUSTIN, DISTRICT 19, CHAIR  
JOHN J. CLEVELAND, DISTRICT 22  
DONALD L. RICH, DISTRICT 27

STAFF

OFFICE OF FISCAL AND PROGRAM REVIEW  
CHERYL RING, PRINCIPAL ANALYST  
LOCK KIERMAIER, ANALYST



To Congressional Delegation:

HOUSE

PHYLLIS E. ERWIN, RUMFORD, CHAIR  
HARRIET A. KETOVER, PORTLAND  
BEVERLY C. DAGGETT, AUGUSTA  
HAROLD M. MACOMBER, SOUTH PORTLAND  
JOHN A. ALIBERTI, LEWISTON  
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WILLIAM LEMKE, WESTBROOK  
ELEANOR M. MURPHY, BERWICK  
CATHARINE KOCHLEBOWITZ, BANGOR  
WESLEY FARNUM, SOUTH BERWICK

STATE OF MAINE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
COMMITTEE ON AUDIT AND PROGRAM REVIEW

Dear :

On behalf of the Joint Standing Committee on Audit and Program Review, we are writing to ask you to intervene on behalf of Maine's Department of Human Services with the U.S. Department of Agriculture, Food and Nutrition Service.

The matter for which we are requesting your intervention is in regard to denial of two requests to waive two federal regulations regarding the administration of Maine's Food Stamp Program.

As the attached letters indicate, the requests were submitted by the Maine Commissioner of Human Services, Rollin Ives, on January 30, 1992 and were denied by Lynda Silva, Northeast Regional Director of the USDA Food Stamp Program within the Food and Nutrition Service, on July 8, 1992.

The two waivers which are denied can be summarized as follows:

*Waiver #1 Waiver of face-to-face recertification interviews*

Currently, federal rule requires the Food Stamp Program to conduct interviews in person for the purpose of recertifying a recipient's continuing eligibility for Food Stamps. In its waiver request, Maine had requested permission to conduct these interviews over the phone, rather than face-to-face, for a small select group of food stamp recipients, namely:

- for households with no earned income in which every member is age 60 or over; or
- for households whose only income is SSI; or
- for households whose only source of income is benefits from Social Security or a combination of Social Security Disability and SSI.

As the Maine DHS letter dated 1/30/92 explains, the reason why the waiver is requested is due to the sharp increase in Maine's Food Stamp caseload, at the same time that staff time available to conduct the Food Stamp Program has decreased, due to staff reductions, furlough days, state government shut-down days, and a 39 hour work-week. The Maine DHS letter also points out that, even though the targeted recipients comprise 32% of the State's total Food Stamp caseload, these households contribute only 0.05% to the State's overall error rate for quality control.

Finally, the Audit Committee understands that the financial status of households in these economic circumstances rarely changes, making these types of households particularly appropriate for phone recertification.

The letter from Regional Director Silva explains the Food and Nutrition Service's denial as, "...we do not believe that it is appropriate to certify households for extended periods of time without a face-to-face interview" [bottom of page 3].

The Joint Standing Committee on Audit and Program Review is asking for your intervention in this matter for two reasons:

1. As you know, State agencies are experiencing unprecedented strains on personnel and resources at this time. As State Legislators, we are making every effort to sort out high-priority tasks from lower-priority tasks performed by the Executive Branch, in an effort to ensure that these limited resources are applied to the most pressing matters for the benefit of the people of Maine. In our review of the Food Stamp waiver requests, we believe that other matters take precedence over the time and effort that would be needed for Food Stamp caseworkers to continue with face-to-face recertification interviews for this select group of Food Stamp recipients. Also, the potential "risk" that would be incurred as a result of phone recertification is justifiable given the need to attend to other, more pressing, issues.

2. As a Committee, we are committed to maximizing the State's use of waivers, and streamlining administration of these waivers. We believe the Department's request falls well within the bounds of reasonableness, particularly given the current stresses on staff and resources, and that the waiver should be approved.
3. Since Maine is a rural state, travel for its citizens, particularly those who are elderly or disabled, is often difficult. Also, recipients' homes are often far distant from DHS regional Food Stamp offices. Minimizing the need for clients to access limited public transportation, or arrange for private transportation, to travel to their regional Food Stamp office for a face-to-face recertification interview is another reason why the Committee favors approval of the waiver.

*Waiver #2 Changing the date at which income fluctuation must be reported*

Currently, federal regulation requires Food Stamp recipients to report changes in income to Maine DHS "within 10 days of the date the change becomes *known* to the household."

In its January 30 letter, Maine DHS is requesting a waiver of this requirement. Rather than requiring the Food Stamp recipient to report income within 10 days of when a change in income is known, the report would be required within 10 days of the date the income is received.

Maine DHS points out that changing this requirement from "known" to actually "received" would have a number of benefits, including:

- consistency with current federal AFDC regulations;
- reduction in errors caused by the difference in income reporting requirements between the two programs of AFDC and Food Stamps;
- providing recipients with more time to report a change in income; and
- higher compliance rates because caseworkers would have a fixed point in time from which to check compliance, i.e. the date at which the income is actually received, rather than the nebulous point in time in which the household "knew" that income would change.

Regional Director Silva points out, in her letter of July 8 [middle of page 4], that the reason why the USDA Food and Nutrition Service is denying the waiver request is two-fold:

- delays in reducing benefits in response to an increase in income may result in people receiving Food Stamp benefits for which they are not entitled; and, conversely
- households who experience a drop in income should receive an increase in benefits as soon as the anticipated drop is known, rather than when actually incurred.

The Audit Committee is asking your office to intervene regarding this matter for two reasons, as follows:

1. Even though approval of the waiver would change the income reporting date for compliance purposes, the change would not preclude Food Stamp recipients from reporting earlier if they wished. According to Maine's Food Stamp Program Manager, Peter McCarron, people who become aware of an imminent reduction in income are not tardy in reporting that reduction to Maine DHS. Accordingly, these recipients would receive increased benefits to which they are entitled upon reporting to DHS, without regard to the actual date in rule in which they are required to report.
2. Consistent with the Audit Committee's intent to improve service delivery to recipients of Food Stamps, we urge that the waiver be approved in order to reduce confusion to the recipient. Currently, the client who receives both Food Stamps and AFDC deals with the same caseworker from DHS. However, the differing reporting requirements requires the client to keep track of which program uses which reporting rule, usually to the detriment of all involved.

In summary, the Committee is asking you to request the USDA Food and Nutrition Service to reconsider these two waivers, and to actively advocate for these waivers' subsequent approval.

Of course, we thank you for your efforts. Please feel free to call Committee staff person Cheryl Ring for additional information.

Sincerely,

Beverly M. Bustin  
Senate Chair

Phyllis R. Erwin  
House Chair

cc. John Wakefield, OFPR Director  
Peter Walsh, Director, Bureau of Income Maintenance  
Judy Williams, Deputy Director, Bureau Income Maintenance  
Sue Dustin, Director, Division of Programs  
Peter McCarron, Food Stamp Program Manager



COMMITTEES:  
FOREIGN AFFAIRS  
JOINT ECONOMIC COMMITTEE  
SELECT COMMITTEE  
ON AGING

WASHINGTON OFFICE:  
2464 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-1902  
(202) 225-6308

OLYMPIA J. SNOWE  
2d DISTRICT, MAINE

Congress of the United States  
House of Representatives  
Washington, DC 20515

DISTRICT OFFICES:  
●  
ONE CUMBERLAND PLACE  
SUITE 306  
BANGOR, ME 04401-5000  
(207) 945-0432  
●  
TWO GREAT FALLS PLAZA  
SUITE 7B  
AUBURN, ME 04210-5813  
(207) 786-2451  
●  
189 ACADEMY ST.  
PRESQUE ISLE, ME 04769-0722  
(207) 764-5124

September 25, 1992

Honorable Phyllis Erwin  
Chair  
Committee on Audit & Program Review  
State House Station 5  
Augusta, Maine 04330

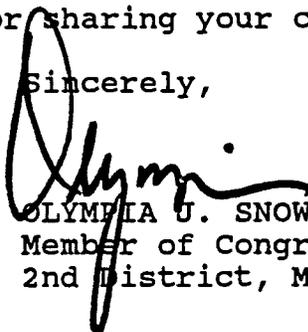
Dear Phyllis:

I am writing to share with you the response of the U.S. Department of Agriculture regarding Maine's Department of Human Services' request to waive two Federal Food Stamp Program regulations.

According to Northeast Region Administrator Harold McLean, USDA has decided to uphold their denial of changing the reporting requirement when changes to a recipient's income are "received" and not simply "known." However, you will be pleased to learn that USDA indicated a willingness to reconsider DHS's request to waive the face-to-face interview requirement for recertification. Enclosed please find a copy of Mr. McLean's response.

Once again, thank you for sharing your concerns with me.

Sincerely,



OLYMPIA J. SNOWE  
Member of Congress  
2nd District, Maine

OJS/kk

92 SEP 29 AM 8:11  
O.F.F.R.



SEP 8 1992

SEP 10 1992  
Honorable Olympia J. Snowe  
U.S. House of Representatives  
2464 Rayburn House Office Building  
Washington, DC 20515-1902

Dear Congresswoman Snowe:

Thank you for your letter of August 27, 1992 regarding the Maine Department of Human Service's (DHS) request to waive two Federal Food Stamp Program regulations.

On May 26, 1992, Maine submitted a package of four waiver requests. Two of these waivers were approved and two were denied.

The waiver to change the reporting requirements outlined in Food Stamp Regulations at 7 CFR 273.12(a) (2) was denied on July 8, 1992. The State wished to change the reporting requirements when changes to a recipient's income are "received" and not simply "known".

The other denial was a waiver of Food Stamp regulations at 7 CFR 273.2(e) (1) to allow telephone interviews for certain households at recertification rather than the required face-to-face interviews.

We understand Maine's concern with the unprecedented strains on personnel and resources and that waivers would enable them to prioritize the most pressing issues for the benefit of the people in Maine. It is for reasons such as these that FNS has increased our emphasis on approving waivers. In 1991, FNS approved 105 waivers. However, in approving waivers, we have to balance the rights of recipients with the needs of State agencies for increased flexibility and administrative relief. Many waivers either do not affect recipients or make things easier for them. However, some waivers, focus on rights provided to recipients through the regulatory process or requirements specified in the Food Stamp Act.

Changing the requirement that specifies when a household has to report a change results in changing the date when benefits are affected. Many households experience a drop in income, not an increase. A delay caused by the change in the reporting requirement could result in lost benefits to the household. The requirements for acting on changes are specified in regulation. The waiver authority in the regulations very specifically does not allow waivers that result in material impairment. This waiver would result in material impairment for households whose income drops if there is a delay in the reporting requirement. FNS does not have the authority to approve waivers that result in material impairment (7 CFR 272.3(c) (2) (ii)).

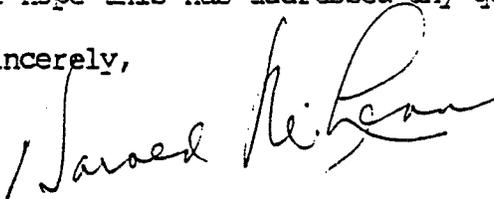
Also, promulgation of regulations is governed by the Administrative Procedures Act. Under the Administrative Procedures Act, we cannot change recipients' benefits without seeking public comment. In the waiver process, we do not ask for public comment when we approve waivers. Therefore, we cannot change benefits under the waiver process.

We continue to be very interested in working with State agencies to innovatively meet the workload demands they are facing, within the constraints we have discussed above.

Regarding Maine DES's request to waive face-to-face interviews at recertifications, on August 7, 1992 the State was informed that our National Office would be willing to reconsider approval of this waiver. The State was sent some additional information to assist them in the resubmittal of their request.

We hope this has addressed any questions or concerns you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold T. McLean". The signature is written in a cursive style with a large, sweeping initial "H".

Harold T. McLean  
Administrator  
Northeast Region

cc: Jane Sheehan, Commissioner  
Department of Human Services



THOMAS H. ANDREWS

MEMBER OF CONGRESS  
FIRST DISTRICT, MAINE

WASHINGTON OFFICE:  
1724 LONGWORTH BUILDING  
WASHINGTON, DC 20515-1901  
(202) 225-8116

DISTRICT OFFICE:  
177 COMMERCIAL STREET  
PORTLAND, ME 04101  
(207) 772-8240  
TDD (207) 772-8240  
1-800-445-4092



COMMITTEE ON  
ARMED SERVICES

COMMITTEE ON  
SMALL BUSINESS

## Congress of the United States House of Representatives

September 21, 1992

Lynda Silva  
Director  
Food Stamp Program  
Food and Nutrition Service  
U.S. Department of Agriculture, NE Region  
10 Causeway Street, Room 501  
Boston, MA 02222-1064

Dear Ms. Silva:

Enclosed is a copy of a letter I recently received from Senator Beverly Bustin and Representative Phyllis Erwin, co-chairs of the Maine legislature's Joint Standing Committee on Audit and Program Review, requesting waivers of two federal regulations regarding the administration of the food stamp program.

First, the committee joins with Maine Department of Human Services Commissioner Rollin Ives in requesting that the USDA waive the requirement for face-to-face interviews and permit instead the use of telephone interviews when recertifying a select group of food stamp recipients. This group would be limited to households with no earned income in which every member is age 60 or over, or households which receive only SSI, or households which receive only Social Security benefits, or households which receive only a combination of Social Security benefits and SSI.

I understand that the USDA previously rejected this request on the grounds that telephone contact is not an appropriate substitute for the face-to-face interview. However, USDA has granted a waiver of this requirement to the state of Massachusetts, which was likewise limiting its use to a select group of households. Clearly, precedent exists for such a waiver, and I believe the State of Maine has demonstrated that the limited substitution of a telephone interview will yield significant benefits, both to the state and to the selected categories of recipients, without jeopardizing quality control.

The second waiver request involves changing the requirement that a food stamp recipient notify the Maine DHS of a fluctuation in income within 10 days of the *date the change is known* to within 10 days of the *date the income is received*. This change would eliminate the current confusion caused by the inconsistency of AFDC and food stamp regulations on this point. Using the same notification requirement would increase compliance rates by reducing reporting errors.

Lynda Silva  
Food Stamp Program  
Page 2

This request was previously denied by the USDA because of concerns that this change could result in lost benefits for households that *know* about an imminent reduction of income before that reduced income is *received*. However, as the committee indicates in the attached letter, DHS' proposed change would not preclude food stamp recipients from choosing to report imminent reductions in income as soon as that reduction becomes known (i.e. utilizing the current criterion) -- it would simply allow DHS to use the "received" criterion as the last date when recipients are *required* to notify DHS of income fluctuations. If you require further clarification of DHS' language on this point, please contact committee staffer Cheryl Ring at (207) 289-1635.

These waiver requests are not made lightly, but come out of a sincere attempt on the part of the DHS to respond to the increasing needs of recipients at a time when unprecedented strains are being placed on personnel due to reduced resources at both the federal and state levels. I would appreciate your reconsideration of these requests, and look forward to receiving a favorable response.

Sincerely,



Thomas H. Andrews  
Member of Congress

THA:lsf  
Enclosure

THOMAS H. ANDREWS

MEMBER OF CONGRESS  
FIRST DISTRICT, MAINE

WASHINGTON OFFICE  
1724 LONGWORTH BUILDING  
WASHINGTON, DC 20515-1901  
(202) 225-6118

DISTRICT OFFICE  
177 COMMERCIAL STREET  
PORTLAND, ME 04101  
(207) 772-8240  
TDD (207) 772-8240  
1-800-445-4092



COMMITTEE ON  
ARMED SERVICES

COMMITTEE ON  
SMALL BUSINESS

Congress of the United States  
House of Representatives

October 26, 1992

The Honorable Beverly M. Bustin, Senate Chair  
The Honorable Phyllis R. Erwin, House Chair  
Committee on Audit and Program Review  
State House Station 5  
Augusta, Maine 04333

Dear Chairman Bustin and Chairman Erwin:

Enclosed is a copy of the response Tom recently received from Harold McLean, Regional Administrator for the USDA's Food and Nutrition Service, regarding DHS' request to waive two Food Stamp Program regulations.

Mr. McLean indicates that the regional office has notified DHS that it is willing to reconsider Maine's request to waive face-to-face interviews at recertifications. Please let me know if there is any further help we can render on this.

According to Mr. McLean, the Food and Nutrition Service is not willing to change reporting procedures to require that participants report income changes when they are "received" rather than when they are "known", primarily because he is concerned that this would result in the material impairment of households experiencing a drop in income.

As I understood from your initial letter (and as I believe I made clear in my letter to the Food and Nutrition Service), the state's argument was that this proposed change would not preclude participants from choosing to report reductions when they are "known" if using the "received" standard would cause material impairment. Perhaps this can be stated more explicitly, or perhaps I am missing a critical element of the proposal as it relates to current regulations. In any event, if DHS would like to pursue this matter further, I would be happy to speak with someone at the state level to iron out the details prior to taking this up again with Mr. McLean. I can be reached in the Portland office at 1-800-445-4092.

I hope this information is helpful, and I am pleased to see that the Food and Nutrition Service is amenable to the state's request to waiver face-to-face recertification interviews. We all need to work together if we are to deliver the best possible service at a time of increasing fiscal constraints. Please don't hesitate to let me know if this office can be of further assistance.

Sincerely,

Laurie Lemley  
Special Assistant to  
Representative Thomas H. Andrews

Enclosure

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United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Northeast  
Region

10 Causeway Street  
Boston, MA 02222

OCT 2 1992

Honorable Thomas H. Andrews  
U.S. House of Representatives  
1724 Longworth Building  
Washington, DC 20515-1901

Dear Congressman Andrews:

Thank you for your letter of September 21, 1992 regarding the Maine Department of Human Service's (DHS) request to waive two Federal Food Stamp Program regulations.

We understand the State agency's concern with the unprecedented strains on personnel and resources. We also understand that these waivers are being requested to enable the State to prioritize the most pressing issues for the benefit of the people in Maine. It has been in response to such concerns that the Food and Nutrition Service (FNS) has exercised as much flexibility as possible on approving waivers. In 1991, FNS approved 105 State requested waivers. However, in approving waivers, we have to balance the rights of recipients with the needs of State agencies for increased flexibility and administrative relief. Many waivers actually simplify participation procedures or have no negative effect on recipients. However, some waivers requested by States would limit recipient rights specified in the Food Stamp Act.

The waiver to change the reporting requirements outlined in Food Stamp Regulations at 7 CFR 273.12(a)(2) was denied on July 8, 1992. The State wished to change the reporting procedures to require participants to report income changes when they are "received" rather than when they are "known".

Changing the requirement that specifies when a household has to report a change affects the date when benefits are adjusted. Many households experience a drop in income, rather than an increase. A delay caused by the change in the reporting requirement could result in lost benefits to the household. The requirements for acting on changes are specified in regulation. The waiver authority in the regulations specifically prohibits waivers that result in material impairment to participants. This waiver would result in material impairment for households whose income drops if there were a delay in the reporting requirement.

Also, promulgation of regulations is governed by the Administrative Procedures Act (APA). Under the APA, we cannot change recipients' benefits without seeking public comment. Since the waiver process does not allow for public comment, we cannot approve waivers which change benefits under this process.

We informed DHS earlier that FNS is willing to reconsider Maine's request to waive face-to-face interviews at recertifications. We have sent additional information to assist them in the resubmittal of their request. Based on this information and further discussions with my staff, the State agency has already prepared the resubmittal for reexamination. We will act promptly in response to this resubmission.

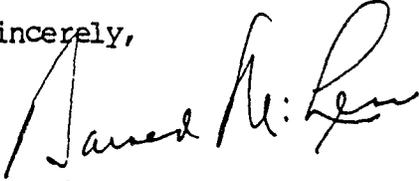
Honorable Thomas H. Andrews

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In addition, we were pleased to inform Maine that two of the four waiver requests submitted on May 26, 1992 were approved. We will continue to work with the State agency to innovatively meet the workload demands they are facing while ensuring the protection of recipient rights.

We hope this has addressed any questions or concerns you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold T. McLean".

Harold T. McLean  
Administrator  
Northeast Region

cc: Jane Sheehan, Commissioner  
Department of Human Services

# United States Senate

WASHINGTON, DC 20510-1901

RECEIVED  
OCT 15 1992

October 9, 1992

The Honorable Beverly Bustin  
The Honorable Phyllis Erwin  
Committee on Audit and Program Review  
State House Station 5  
Augusta, Maine 04333

Dear Senator Bustin and Representative Erwin:

Enclosed please find a letter I received from Andrew P. Hornsby, Jr., the Deputy Administrator of the Food Stamp Program of the United States Department of Agriculture, in response to my request that the Food and Nutrition Service (FNS) reconsider two waiver requests submitted by the Maine Department of Human Services.

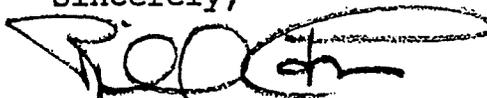
As the letter outlines, the denial of the first waiver, to conduct telephone interviews with elderly or disabled persons who have been certified to receive food stamps for 24 months, was reconsidered and approved on July 30, 1992 with conditions.

The second waiver, regarding the requirement to report a change in circumstances as soon as it becomes known to the household, was denied. As Mr. Hornsby states in his letter, FNS believes that delaying reporting changes in income could result in households receiving benefits to which they might not be entitled or delay an increase in benefits if the household experiences a decrease in income. In response to your concern that inconsistencies in the reporting requirements of the food stamp program and AFDC result in reporting errors, Mr. Hornsby explains that FNS is currently participating with the Administration for Children and Families to examine ways of increasing the consistency between the two programs.

I hope that Mr. Hornsby's letter sufficiently responds to your concerns. If I can be of any further assistance to the committee in your attempt to improve service delivery of the food stamp program, please let me know.

With best wishes, I am

Sincerely,



William S. Cohen  
United States Senator

WSC:kbd



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

3101 Park Center Drive  
Alexandria, VA 22302

92 OCT 15 AM 9:22

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OCT 1 1992

Honorable William S. Cohen  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510-1901

Dear Senator Cohen:

This is in response to your letter of September 4, 1992, which forwarded a letter from the Committee on Audit and Program Review of the Maine legislature. The letter requested that the Food and Nutrition Service reconsider two waiver requests from the Maine Department of Human Services (DHS) which were denied.

The first of the two waivers in question would allow the DHS to conduct telephone interviews rather than in-person interviews with elderly or disabled households who have been certified to receive food stamps for 24 months. Under regulations of the Food Stamp Program, these households would normally be certified for a maximum of 12 months. However, the Food Stamp Act allows waivers of the 12-month limit, and a waiver was granted to Maine. As approved on May 26, 1992, the waiver required the DHS to conduct a face-to-face interview with these households at the end of the 24-month period. The State agency's request to conduct only a telephone interview was denied.

However, on July 30, 1992, we notified the State agency that we had reconsidered the denial. The State agency may conduct telephone interviews with the elderly or disabled households, with two conditions: (1) A face-to-face interview must be conducted at a household's request, and (2) the State agency must submit an assessment of the effectiveness of the waiver with any request for an extension.

The second waiver request concerns the requirement at 7 CFR 273.12(a)(2) to report a change in circumstances as soon as the change becomes known to the household. Section 273.12(a)(1)(i) requires households to report changes in the source of income or in the amount of gross monthly income of more than \$25. The State agency wants to require households to report changes in income 10 days after the income is received, rather than within 10 days of the date the change becomes known to the household. The waiver request was based on increasing compatibility with the Aid to Families with Dependent Children (AFDC) Program, which, in Maine, requires changes in income to be reported after the income is received. Federal AFDC regulations at 45 CFR 206.10(a)(2)(ii) require State agencies to adopt procedures designed to assure that recipients make timely and accurate reports of any changes in circumstances that may affect their eligibility or the amount of assistance. Under these rules, State agencies may define "timely."

We denied this request because delays in reducing benefits caused by the delay in reporting could result in households receiving benefits to which they might not be entitled. It is important for program integrity that benefits be directed to those households actually in need. In addition, households may experience a decrease in income. Delaying an increase in benefits because of the delay in reporting could result in the household losing benefits. We are prohibited by our regulations from approving any waiver which could result in a material impairment to any applicant or recipient.

The Maine DHS argues that having consistent reporting requirements for the Food Stamp Program and AFDC would reduce errors, provide recipients with more time to report a change in income and achieve greater compliance with requirements because caseworkers would have a fixed point in time from which to check compliance. The Audit Committee believes the waiver should be approved because households anticipating a decrease in income would report the change immediately. The Committee also believes approval would reduce confusion in reporting requirements for households that receive both food stamps and AFDC.

We are also concerned about increasing consistency in AFDC/food stamp cases. FNS is currently participating with the Administration for Children and Families in a task force initiated by the American Public Welfare Association to examine ways of increasing consistency between the Food Stamp Program and AFDC. Regulations for reporting and acting on changes are being reviewed by the task force in preparation for making recommendations for regulatory changes.

We appreciate the concern of the Committee on Audit and Program Review and its desire to assist the State agency in coping with budget cuts and increased caseloads. However, because of the need to protect program integrity and assist households in need, we are unable to approve Maine's request for a waiver of the reporting requirements. We will consider the State agency's arguments in any revision of the regulations.

Sincerely,



Andrew P. Hornsby, Jr.  
Deputy Administrator  
Food Stamp Program

Enclosure

## DHS AUDITING DIVISION

At the request of the Committee, the State Department of Audit conducted a management review of the Department of Human Services Audit Division. To comply with the Committee's request, the State Auditor reviewed DHS's Audit Division's program objectives, authorizing legislation, organizational structure, funding, status of accomplishment of audit objectives, other New England states, appropriate of final report language, and the need for service rendered. In addition, the State Auditor solicited comments from providers and other participating organizations.

The State Auditor's report describes DHS's Division of Audit as follows:

"The DHS Audit Division is responsible for auditing medicaid cost settlement reports and ensuring that audits are made of subrecipient social service agencies. Within the organizational structure of the DHS, the Division reports to the Deputy Commissioner of Management and Budget. The Division is physically located at the old Lottery building on Winthrop Street. It has 24 audit staff and five support staff positions. None of the auditors are professionally certified as CPAs or CIAs. It is organized into three sections. The Director, Jim Getchell, is responsible for most Medicaid audits. The Assistant Director, John Bouchard, is responsible for ensuring that social services agencies are audited. The actual audits may be done by independent public accountants (IPAs), DHS auditors working as part of a team of state auditors or by some combination of both IPAs and state auditors. Currently, eight auditors are assigned to the approximately 200 Social Service agencies and fourteen auditors are assigned to audits of Medicaid cost settlement reports. One of the fourteen is assigned half-time to hospital reports. Approximately 280 Medicaid providers are required to submit reports."

The State Auditor presented his report to the Committee in three parts:

- Medicaid Provider Audits - Long-Term Facilities and Board Homes;
- Medicaid Provider Audits - Hospitals; and
- audits of subrecipients of social services funding.

As a result of this report and subsequent discussion, the Committee made the following recommendations.

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**ADMINISTRATIVE 40.** Direct the Department of Administrative and Financial Services to convene a working group consisting of the State Auditor, providers, and other relevant State departments to review the status of the Maine Uniform Accounting and Auditing Practices Act (MAAP) and report to the Audit Committee early in the 116th Legislative Session.

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**ADMINISTRATIVE 41.** Strongly recommend that a significant number of backlogged audits be conducted using desk reviews and report to the Committee in the 116th Legislature on the reduction in the backlog as well as the number of audits still outstanding

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During the course of the review, the Committee sought clarification from the federal Health Care Financing Administration regarding its requirements governing the use of desk reviews vs. field review by states. HCFA confirmed the following information:

- the only requirement imposed by the Federal Government on the states is that the states' Medicaid agencies have to provide for a periodic audit of the financial and statistical records of participating providers;
- the Federal Government does not define "periodic" and allows the states "total flexibility" in defining periodic audit;

- the Federal Government expects only that the State will demonstrate some type of periodic schedule for conducting field audits. But, the Federal Government would not expect nor require any state to conduct field audits on an annual basis. The State itself has the discretion to decide how frequently field audits will be done - the State may conduct field audits on provider "A" annually, but on provider "B" every third year;
- the State's definition of "final audit" would not have to actually appear in writing. The Federal Government would accept virtually any definition of "final audit" used by the State as long as the State could show a periodic schedule of audits;
- auditing the backlog of audits in Maine using desk review (followed by field audits only when warranted) would not cause a problem under current rules, even though other audits of the same year have been conducted using field audits. Maine's use of desk reviews to audit its current backlog will not jeopardize federal participation in medicaid reimbursement; and
- the Federal government's position on this question is in accordance with that of the Maine State Auditor's in that the Maine Department of Human Services' Division of Audit has complete discretion to define the phrase "final audit" in Principle of Reimbursement #7071 according to the Division's professional judgment; i.e. the Division may use whatever combination of desk reviews and field audit the Division concludes is warranted. This position is the same for both the pre-October 1 1992 rules and the post-October 1, 1992 rules.

As a result of this clarification, the Committee made the above recommendations.

## MAINE'S MEDICAID HEALTH CARE ASSESSMENT PLAN

The Committee also considered Maine's Medicaid Health Care Assessment Plan as part of its 1992-93 review cycle. No recommendations regarding the Plan were approved.

The Plan can be described as follows:

"Provider Taxes and Donation" programs [in Maine referred to as the Medicaid Health Care Assessment Plan and formerly as "Tax and Match"] are all predicated on the Medicaid program, which is a joint state and federal effort to provide medical care for specified groups of poor people.

As of January 1992, 38 states had established a Medicaid assessment program, Maine being one.

The **purpose** of these "Provider Taxes and Donation" programs varies but all have a common goal of drawing down additional federal Medicaid money.

In Maine, Public Laws 1991, chapters 591 (Part Q), 671 (Part G), and 780 (Part I) established Maine's "Medicaid Health Care Assessment Plan.

The purpose of Maine's Medicaid Assessment program is to levy an assessment on hospitals and health care providers in order to increase total dollars expended by the State for Medicaid, thereby drawing down additional federal Medicaid matching money.

The Medicaid Assessment program, as originally enacted, operates as listed below. However, the State's program is due for amendment in order to comply with federal law enacted in December 1991. The State's Plan amendment was submitted April 16, 1992 and comment from the feds is due within 90 days. However, the concept of the original Assessment Program is important to understand in broad terms.

- Maine originally imposed a 6% assessment on hospitals' *final gross patient service revenue limit* [GPSR] as established by the Maine Health Care Finance Commission [see 22 MRSA §1733, attached]. (The hospitals are currently guaranteed that their assessment will be fully reimbursed at a minimum);

- Maine temporarily deposits the assessed revenue into the newly-created **Medical Care - Payments to Providers Special Revenue Account** [see 22 MRSA §1734, attached].
- In return for the 6% assessment, the State then provides payments to hospitals which serve low income and Medicaid patients - these are called "disproportionate share" hospitals, or DSH hospitals;
- Maine then claims these increased payments for its match for Federal Financial Participation of **63.49% for FY 1991 and 62.40% for FFY 92.**
- Maine repays the DSH hospitals an amount equal to the original 6% assessment plus Medicaid's fair share of the hospitals' operating costs, which includes bad debt and charity care.

In addition, Maine's Medicaid Program includes the funding of approximately 1000 positions at the Augusta and Bangor Mental Health Institutes to a Special Revenue Account, as well as certain All Other services, such as food, fuel, and unemployment compensation costs for mental health and mental retardation institutions.

- \* As a result, Maine's Medicaid Assessment program allows Maine to draw down approximately 83 million federal dollars in fiscal year 1991-92 and 73 million federal dollars in fiscal year 1992-93. Accordingly, the equivalent amount of General Fund dollars are freed up, making the program an important element in balancing Maine's budget.

The federal government, represented by the Health Care Financing Administration and the Office of Management and Budget, can be considered as representing one perspective on Medicaid assessment programs.

The counterpoint perspective is represented by the States, advocates for the poor, hospital administrators, health care providers, the National Conference of State Legislatures (NCSL), the National Governors' Association (NGA), the National Association of Counties (NACO), the National Association of Budget Officers (NASBO), the American Public Welfare Association (APWA).

The flavor of these perspectives may be characterized as follows:

#### FEDERAL PERSPECTIVE

1. The states' Medicaid assessment programs inflate the true costs of the Medicaid program;
2. "Distorts the federal-state financial partnerships which is the cornerstone of the Medicaid program";
3. Results in a significant increase in the costs to the federal government. Medicaid has become one of the biggest growth factors in the federal budget. [see graphic attached to illustrate increased costs].
4. the federal government could ultimately be required to bear a disproportionate share of the entire cost of the Medicaid program;
5. the federal government already provides its fair share of Medicaid costs without the additional obligation imposed by Medicaid assessment programs;
6. States should have to contribute general revenues for the state's match (from broad-based taxes) in order to ensure that states have incentive to control costs; i.e. States are leveraging federal funds with no corresponding costs to themselves.

#### STATES ET.AL. PERSPECTIVE

1. Federal mandates requiring states to expand Medicaid coverage for the poor have worsened the serious fiscal problems facing most of the states.
2. The mandatory expansions of Medicaid coverage have been particularly burdensome because health care costs have been rising much faster than inflation.
3. The federal government has exacerbated the squeeze on the states by authorizing hospitals to sue states for not providing "reasonable and adequate" reimbursement for Medicaid costs - so that state's don't have the option of keeping costs down by reducing reimbursement rates to hospitals.
4. States have few options to fund medicaid expenses: 1) use "creative financing" to procure the needed dollars (like assessment plans), 2) cut Medicaid services, 3) cut other state programs, 4) increase taxes, or 5) fashion a combination of the first 4.
5. States assert that Washington should not have authority to dictate sources of revenue used by states for the Medicaid match. States'

7. Washington does not have unlimited cash reserves available to pay an increasing portion of Medicaid expenses.

8. HCFA's rules do not unconstitutionally interfere with States' rights to levy taxes in that HCFA is not limiting the States' flexibility to impose taxes or other mandatory payments from Medicaid providers. Rather, HCFA is only limiting Federal Financial Participation (FFP) to the actual net expenditure made by the State; i.e. HCFA can choose to match what it decides is an "appropriate" state match

authority to levy taxes on entities within their own borders must be protected.

6. The use of Medicaid funds drawn down through assessment plans is consistent with Congressional intent to fund health services for the poor and other targeted groups. State use of provider-taxes and donated funds is essential in order to maintain the integrity of the Medicaid program and the services Medicaid provides to low-income women, children, the elderly, and the disabled.

7. Elimination of Medicaid assessment programs would throw the state budgets into chaos.

8. The Medicaid assessment program provides funds to increase levels of reimbursement to the medical community, as well as pay for uncompensated care.

## OTHER ISSUES

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### STATUTORY

42.

Continue the following agencies as follows:

State Board of Funeral Service - to 1997;

Board of Hearing Aid Dealers and Fitters - to 1997;

Advisory Commission on Radioactive Waste - to 1999;

Capitol Planning Commission - to 1994;

Maine Turnpike Authority - to 1994; and

Review the State Lottery Commission as part of the Department of Administrative and Financial Services (2001), rather than as a separate entity.

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