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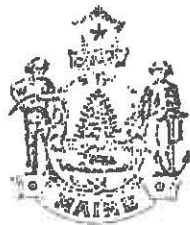


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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

January 8, 1980

80-3

Representative Robert Berry
Maine House of Representatives
State House
Augusta, Maine 04333

Re: Bureau of Resource Development - Title XX forms

Dear Representative Berry:

The purpose of this letter is to answer questions which you posed to me in a telephone conversation on November 15, 1979. Specifically, you asked:

- 1) Does 42 U.S.C.A. §§1397 et seq. (Title XX) or regulations promulgated by the Secretary of the U.S. Department of Health, Education and Welfare (HEW) to implement that Title, prohibit the use of form SWICS-012 by agencies receiving Title XX funds for transportation and meal services to elderly persons?
- 2) Does the request for information regarding the applicant's sex, marital status, employment, race or national origin on form BRDSS-001 violate the applicant's legal rights?
- 3) Must the Bureau of Resource Development of the Maine Department of Human Services (BRD) comply with the rule-making procedures of the Maine Administrative Procedure Act (APA), 5 M.R.S.A. §8001 et seq. in order to mandate the use of certain forms by an agency receiving Title XX funds?

CONCLUSIONS:

1. Yes.
2. No.
3. No.

BACKGROUND:

Title XX funds are available to the State of Maine for the provision of social services which promote the goals of self-sufficiency, economic self-support, reducing and remedying neglect, abuse, exploitation of children and adults and decreasing inappropriate institutionalization.

These services may be provided to eligible persons either directly by the State or indirectly through contracts with non-profit agencies.

BRD is the State unit authorized by 22 M.R.S.A. §5310(7) to administer Title XX funds in Maine. This unit is authorized to develop whatever policies, procedures and rules are necessary to comply with federal laws and regulations applicable to Title XX. In addition, BRD must develop a State Plan, for public review and subsequent approval by HEW, which identifies the manner in which federal funds will be used, services provided, eligibility criteria, etc. 45 C.F.R. §§228.4 to 228.16 and 228.33. Penalties for non-compliance with applicable law, regulations and the State Plan may include loss of federal funds. 45 C.F.R. §228.19.

States may elect in their plans to provide a number of services funded by Title XX without regard to the individual's income, namely, information and referral; protective services to adults and children, family planning. 45 C.F.R. §228.60. A state plan may also indicate that services are available on a group eligibility basis. 45 C.F.R. §228.61. In both instances, a written request for services signed by the applicant (except in the case of family planning) and an individual determination of eligibility are not required.

Since Maine's 1979-1980 Title XX Comprehensive Annual Services Program Plan specifically excludes the use of the group basis method of determining eligibility (Title XX Plan, pp. 44-45), and transportation and meal services to the elderly are not the type of services which may be provided without regard to income, 45 C.F.R. §228.60 requires that Maine agencies providing Title XX services make individual determinations of eligibility and obtain a written request for services or for a determination of eligibility. One form may be used to document the requests and determine eligibility since BRD has not required otherwise. Agencies may assist applicants to complete these forms provided the applicant signs and certifies the accuracy of the information.

REASONING FOR ANSWER 1:

According to the applicable laws and regulations, the form(s) used to request services and determination or redetermination of eligibility must contain the following:

- 1) a date, so that BRD and HEW can determine if services are provided or action is taken promptly upon the request, 45 C.F.R. §228.60(g);
- 2) a request for a determination of eligibility or for specific services, 45 C.F.R. §228.60;
- 3) enough information for a reasonable person to conclude that the eligibility criteria stated in 45 C.F.R. §228.60 is met;
- 4) the applicant's signature (or under limited circumstances

that of an authorized representative) and the applicant's certification that the information contained in the application is correct, 45 C.F.R. §228.60;

5) notification of the applicant's right to request and how to obtain a fair hearing, 45 C.F.R. §§205.10, 228.14, 228.60 and 228.61;

6) notification of the applicant's rights and how to obtain relief if the applicant believes that he or she has been discriminated against on the basis of race, color or national origin. 45 C.F.R. §§80:6(d) and 228.61(a);

In addition the form must be "prescribed by" the State agency. 45 C.F.R. §228.60.

SWICS-012 (see Attachment A) does not comply with the above criteria in the following respects:

- 1) The applicant does not specifically request services or a determination of eligibility.
- 2) The section regarding the individual's financial circumstances does not adequately inquire into that area, as required by 45 C.F.R. §228.66.
- 3) The applicant is not informed of the right to a fair hearing in case of adverse action on the application or what to do if discrimination on the basis of race, color or national origin is suspected.

Forms BRDSS-001 and BRDSS-002 (see Attachment B & C) do comply with the applicable laws and regulations and have received the approval of James J. Colarusso, Acting Regional Program Director, Administrator for Public Services, Department of Health, Education and Welfare, in a letter dated October 3, 1979. In addition to meeting federal requirements, BRDSS-001 informs the applicant of the continuing duty to notify the provider agency of a change in financial circumstances and the legal consequences for failing to do so or for providing false information. According to BRD the use of BRDSS-001 and BRDSS-002 is not mandated. Both forms are distributed to provider agencies as samples. If the provider agency desires to design its own forms, those forms must still contain the information stated earlier and must be approved by BRD in order to meet federal requirements.

REASONING FOR ANSWER 2:

BRD is not prohibited from inquiring into a person's age, race, national origin, employment or marital status. To the contrary, collection of this information appears to be required in order to comply with the Civil Rights Act, Title XX regulations and Maine law.

42 U.S.C.A. §2000-d prohibits discrimination on the basis of race, color or national origin in federally assisted programs. Both

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the State of Maine, as primary recipient of federal funds, and the provider agency, as the secondary recipient, must make available to HEW "racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs." 45 C.F.R. §80.6(b). 22 M.R.S.A. §5310(9), as well as 45 C.F.R. §§228.31 and 228.32, require BRD to carry on a continuing evaluation of social service programs to determine the needs and priorities for such services in Maine. According to 22 M.R.S.A. §5310(9), this research should include "the number, location and characteristics of people served by each type of services..." Further, the State Plan must indicate what efforts will be made in the area of needs assessment, planning evaluation and reporting to HEW. 45 C.F.R. §§228.31 and 228.32. Maine's Title XX Plan states that BRD will solicit data regarding number of clients served, amounts of service provided, cost, distribution "and analysis of client characteristics at entry to the client service system" and will develop a data collection format. Title XX Plan, pp. 38-44.

Consequently, BRD must inquire into the characteristics of the client, including race and national origin, in order to comply with federal and state reporting and evaluation requirements. BRD may not, however, use this information to determine eligibility or discriminate against the client or it will be subject to penalties for non-compliance with the Civil Rights Act and the Title XX program. This limitation is specifically expressed on BRDSS-001.

REASONING FOR ANSWER 3:

There are two reasons why BRD need not comply with APA rule-making procedures in order to use the attached forms. First, "a form...which in itself is not judicially enforceable, and which is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges" is excluded from the rule-making procedure. 5 M.R.S.A. §8002(9)(B)(4). All of the attached forms clearly fit within this exclusion because they are either of an advisory nature or distributed in order to assist provider agencies to fulfill reporting duties imposed by Title XX regulations or the contract entered into between BRD and the provider agency. Second, in order to mandate the use of a particular form, BRD may either impose this requirement by means of a regulation promulgated in accordance with the APA or incorporate this requirement into its contract with the provider agency. BRD has chosen the latter method in the case of BRDSS-010. (See Attachment D). BRD is mandated to enter into written contracts with provider agencies by 45 C.F.R. §228.70 and 22 M.R.S.A. §5306. Among other provisions, these contracts must identify the reports to be submitted by the provider agency to BRD. To implement the latter, Clauses 1, 7 and 10 of the Provider Contract require contracting agencies to comply with the Purchase of Services Administrative Manual which requires the use of such forms as BRDSS-010. The use of BRDSS-010 assists BRD to accomplish the following permissible goals: 1) obtain the evaluation and civil rights data mentioned earlier and

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fulfill the reporting requirements of 45 C.F.R. §228.11; 2) obtain sufficient information, through uniform documentation, prior to disbursing funds; 34 M.R.S.A. §12(3)(B); and 3) obtain information in such form as to facilitate its entry into the computer system utilized by BRD.

SUMMATION:

Form SWICS-012 does not comply with statutes and regulations applicable to the administration of Title XX funds. BRDSS-001 and BRDSS-002 are sample forms which do meet federal requirements.

Requesting information regarding sex, marital status, employment status, race or national origin is not prohibited by law or regulation and appears to assist BRD in complying with Civil Rights Act, Title XX regulations and State law.

Finally, BRD does not need to comply with APA requirements prior to the distribution and use of forms BRDSS-001, BRDSS-002 and BRDSS-010 since the first two forms are advisory in nature and the provider agency is bound to use the latter form by the terms of the Provider Contract.

Respectfully,

Carmen L. Coulombe
Assistant Attorney General

CLC:mm

**PURCHASE OF SERVICE CONTRACTS
CLIENT APPLICATION FOR SERVICE AND ELIGIBILITY DETERMINATION/REDETERMINATION**

1. AGENCY CONTRACT REPORTING NO. _____ DATE OF CLIENT APPLICATION, REDETERMINATION, REOPENING
2. OR CORRECTION: _____

3. FILL IN APPROPRIATE CODE: _____
N = NEW CLIENT
R = REDETERMINATION
B = REOPENING
K = CORRECTION (COMPLETE ITEM 5. TO CORRECT SSN)

4. CLIENT I.D. NO.: _____ FOR CORRECTIONS ONLY:
5. PREVIOUS SSN: _____

6. CLIENT NAME: _____
FIRST MIDDLE LAST

7. BIRTHDATE: _____ 8. RESIDENCE CODE: _____ 9. PROGRAM OBJECTIVE: _____

10. NUMBER OF INDIVIDUALS BENEFITING FROM SERVICE: _____ ADULTS _____ CHILDREN _____

11. SELECT ONE OF THE FOLLOWING: _____
ELIGIBILITY (RECIPIENT STATUS)
NON-RECIPIENTS OF PUBLIC ASSISTANCE
B SSI RECIPIENTS
F AFDC
C FOSTER CARE (CWS)
M MEDICALLY NEEDY (MEDICAID)
I INCOME ELIGIBLE

12. IF CODE "I" INCOME ELIGIBLE IS CHECKED UNDER ITEM 9 OR DAY CARE CLIENTS, COMPLETE THE FOLLOWING:
A. \$ _____ TOTAL ANNUAL GROSS FAMILY INCOME (EVEN DOLLARS)
B. _____ NUMBER IN HOUSEHOLD DEPENDENT ON THIS INCOME (IRS RULES)
C. THE AMOUNT OF INCOME IS DETERMINED BY:
_____ INCOME TAX RETURN OR SELF-EMPLOYMENT RECORDS
_____ WAGE STUBS OR SIGNED STATEMENT FROM EMPLOYER
_____ SELF DECLARATION (DEPARTMENT PERSONNEL MAY CONTACT YOU FOR VERIFICATION OF INCOME)
_____ OTHER (SPECIFY) _____
DATE OF CERTIFICATION _____

13. COMPLETE FOR DAY CARE CLIENTS ONLY. SELECT ONE OF THE FOLLOWING: _____
A. 1. FIRST CHILD 2. SECOND CHILD 3. THIRD CHILD 4. FOURTH CHILD
B. INCOME GROUP FROM FEE SCALE _____

AGENCY CERTIFICATION OFFICER'S SIGNATURE

14. I CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS CORRECT. (ALL APPLICANTS.) IF THERE IS ANY CHANGE IN YOUR INCOME OR OTHER FINANCIAL OR LIVING ARRANGEMENTS, YOU MUST NOTIFY THE AGENCY PROVIDING YOU WITH THE SERVICE AT ONCE.

APPLICANT'S SIGNATURE

15. LIVING ARRANGEMENTS:
 HOME INSTITUTION OTHER

WITNESS DATE

16. _____ 17. _____ 18. _____ 19. _____
STREET ADDRESS TOWN STATE ZIP CODE

CENTRAL OFFICE USE ONLY:
20. DATE OF ACCEPTANCE: _____
CLIENT NOT ELIGIBLE: _____

21. _____
DEPT. CERTIFICATION OFFICER'S SIGNATURE

APPLICATION FOR SOCIAL SERVICES

I hereby apply for _____ services
 at _____ of _____
Name of Regional Office or Provider Agency Town or City
 Applicant's Name: _____ Birthdate: _____
 Address: _____ of _____
Street No., RFD, P.O. Box, etc. Town or City
 Telephone No.: _____ Social Security No.: _____ Medicaid No.: _____

The following information is collected for purposes of planning, evaluation and research only. This information may not be used to reduce or deny services to you.
 Employment Status: _____ (Employed part-time, full-time, unemployed)
 Occupation: _____ Sex: _____
 Ethnicity (Race, National Origin): _____ Marital Status: _____

LIVING ARRANGEMENTS: I live:

- | | | |
|--|---|---|
| <input type="checkbox"/> Alone in my own home or apartment | <input type="checkbox"/> In an adult boarding home | <input type="checkbox"/> In a maternity home |
| <input type="checkbox"/> With one parent | <input type="checkbox"/> In a licensed foster home for children | <input type="checkbox"/> In a correctional facility |
| <input type="checkbox"/> With both my parents | <input type="checkbox"/> In an approved foster home for adults | <input type="checkbox"/> In a hospital |
| <input type="checkbox"/> With my spouse, and children, if any | <input type="checkbox"/> In a children's group home | <input type="checkbox"/> In a nursing home |
| <input type="checkbox"/> With relatives | <input type="checkbox"/> At a boarding school | <input type="checkbox"/> In the military service |
| <input type="checkbox"/> With non-relatives | <input type="checkbox"/> In an adoptive home | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> In an institution or residential treatment center. Specify: _____ | | |

TO BE FILLED OUT FOR DEPARTMENT OF HUMAN SERVICES CLIENTS ONLY: Members of my household include:

	Name	Relationship to Me	Sex	Birthdate
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

INCOME AND SOURCE:

The following information is needed to determine your eligibility for service. Services funded by Title XX or other funds administered by the Bureau of Resource Development are free to eligible clients except for day care services and some Mental Retardation Services for which a fee is charged for those earning more than 60% of median income.

- | | | | |
|---|-------------------|---|-------------------|
| <input type="checkbox"/> AFDC (Aid to Families with Dependent Children) | Amt. \$ _____ mo. | <input type="checkbox"/> Dividends/Interest | Amt. \$ _____ mo. |
| <input type="checkbox"/> SSI (Supplementary Security Income) | Amt. \$ _____ mo. | <input type="checkbox"/> Unemployment Compensation | Amt. \$ _____ mo. |
| <input type="checkbox"/> Social Security | Amt. \$ _____ mo. | <input type="checkbox"/> Net Income from Business/Self Employment | Amt. \$ _____ mo. |
| <input type="checkbox"/> Veterans Pension | Amt. \$ _____ mo. | <input type="checkbox"/> Rental Income | Amt. \$ _____ mo. |
| <input type="checkbox"/> General Assistance | Amt. \$ _____ mo. | <input type="checkbox"/> Retirement Pension | Amt. \$ _____ mo. |
| <input type="checkbox"/> Employment Wages/Salary Before Deductions | Amt. \$ _____ mo. | <input type="checkbox"/> Child Support/Alimony | Amt. \$ _____ mo. |
| | | <input type="checkbox"/> Other (Specify) _____ | Amt. \$ _____ mo. |

Total Income \$ _____ mo.

The number of people in my household sharing the income listed above is _____

I certify under penalty of perjury that to the best of my knowledge the above information is correct. If there is any change in my income or living arrangement, I will notify the agency above which is providing me this service at once. I understand that this information will be provided to the central office of the Department of Human Services for use in administration of this program.

Signed _____

Date _____

IMPORTANT INFORMATION ON REVERSE SIDE

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES



MICHAEL R. PETIT
COMMISSIONER

SOCIAL SERVICES NOTICE

REPLY TO THIS OFFICE FOR ANY
QUESTIONS REGARDING THIS LETTER

Case No:

Dear

As a result of recent action on your application/request for social services
the following action is to be taken:

- Granted Denied Remain the same
- Increased Reduced Terminated

The effective date of this action will be: _____
The reason for this action is as follows:

Policy Reference:

If your circumstances change, or if you have any question about this please
contact me at the above address.

Sincerely,

PLEASE READ THE BACK OF THIS NOTICE FOR YOUR RIGHTS AND RESPONSIBILITIES

MAINE DEPARTMENT OF HUMAN SERVICES
BUREAU OF RESOURCE DEVELOPMENT, STATE HOUSE, AUGUSTA, ME 04333

**PURCHASE OF SERVICE CONTRACTS
CLIENT DATA INPUT FORM**

1.	Contract Number	5-10								
2.	Date of Action	11-16							Mo/Da/Yr	
3.	Action Code	17	A (Application); R (Redetermination); B (Reopen); K (Correction/Change)							
4.	Action Reason Code	18-19	Codes in Chap. III PSC Administrative Manual							
5.	Client ID Number	20-28								
5A.	Client ID Number Changed To	29-37								
6.	Client Name	38-62								(One Space Between First/Middle Initial/Last Name)
7.	Birthdate	63-68							Mo/Da/Yr	
8.	Sex	69	M (Male); F (Female)							
9.	Marital Status	70	M (Married); D (Divorced); P (Separated); S (Never Married); W (Widowed); X (Unknown)							
10.	Employment Status	71	} See Chap. III of PSC Administrative Manual for Codes							
11.	Ethnicity	72								
12.	Living Arrangements	73-74								
13.	Mailing Address	75-98								
14.	Town	97-114								
15.	State	115-116								
	Zip Code	117-121								
17.	Tel. No.	122-128								
18.	Residence Code	129-133	See Appendix of Administrative Manual							
19.	Region/Office	134-135								
20.	Program Objective	136-139	See Contract for Acceptable Codes							
21.	Federal Goal	140	See Appendix of Administrative Manual							
22.	Eligibility Status	141	F (AFDC); S (SSI); I (Income Eligible); W (Without Regard to Income); M (Medically Needy)							

If Income Eligible I or Medically Needy M Selected in Item 22: OR Fee Scale Client, Complete the Following:

23.	Total Monthly Gross Income	142-146							Round to Nearest Dollar
24.	No. Sharing Income	147-148							

FEE SCALE CLIENTS ONLY:

25.	Child Receiving Day Care	149		1 (First Child); 2 (Second Child); 3 (Third Child); 4 (Fourth Child)					
26.	Income Group	150-151		See Chap. IV of Administrative Manual					

27. CENTRAL OFFICE USE ONLY

Date of Acceptance: _____
Client Not Eligible: _____

28.

Agency Certification Officer's Signature

BRDIS-010 NO579

IMPORTANT INFORMATION FOR ALL DEPARTMENT OF HUMAN SERVICES CLIENTS REGARDING SOCIAL SERVICES PROVIDED DIRECTLY BY THE DEPARTMENT OR THROUGH PUBLIC OR PRIVATE COMMUNITY AGENCIES WHICH PROVIDE SERVICES UNDER CONTRACT TO THE DEPARTMENT OF HUMAN SERVICES.

HEARING RIGHTS

If you are not satisfied with a decision made regarding your eligibility for or the provision of social services, you have the right to ask for a hearing before the Commissioner of the Department of Human Services or his agent.

If you want an *informal* conference with the Regional Director or Director of the Provider Agency or his agent you should request it within ten (10) days of the notice of the action by contacting the office where you made application for or received the service.

If you want a *formal* hearing, you must request it by contacting the same office or the Commissioner of the Department of Human Services, State House, Augusta, Maine 04333. A request for a formal hearing must be made within thirty (30) days of the effective date of the notice of the action you wish to appeal.

If you request either type of hearing within ten (10) days of the date of the notice regarding your eligibility for or the provision of social services, the proposed action will not go into effect until your appeal has been heard and a decision rendered.

CIVIL RIGHTS NOTICE

If you feel you have been discriminated against because of your race, color, or national origin, you may file a complaint requesting a hearing on this matter with a Regional or the State Office of the Department of Human Services or with the U.S. Department of Health, Education, and Welfare, Washington, D.C.

REPORTING RESPONSIBILITIES

REMEMBER! It is your responsibility to report to the agency providing the social service to you all changes in your circumstances which could affect your eligibility for the services. Should you receive benefits to which you are not entitled due to failure to report changes promptly and correctly, you will be expected to repay any benefits for which you were not eligible.

FRAUDULENT REPRESENTATION

The willing acceptance and/or use of any State and/or Federal funds under this program for which a person knowingly is not eligible may constitute fraud and subject the user to prosecution under penalty of law.

FOR FURTHER INFORMATION ABOUT ANY OF THE ABOVE, CALL OR WRITE THE AGENCY NAMED ON THE REVERSE SIDE OF THIS NOTICE