

MAINE STATE LEGISLATURE

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March 12, 1980

Representative Sandra K. Prescott
Chairman, House Committee on
Health and Institutional Services
State House
Augusta, Maine 04333

Re: Adult Foster Homes

Dear Representative Prescott:

On March 3, 1980, you requested an opinion as to whether or not clear statutory authorization exists enabling the Department of Human Services (Department) to operate the adult foster care program. In order to adequately answer this query, a brief review of the existing program is necessary to determine the nature and extent of the Department's involvement.

According to Departmental officials, there are approximately three hundred adults in foster care currently receiving Supplemental Security Income (SSI) benefits pursuant to a program of federal-state financial cooperation. The State's share of benefits paid on behalf of each SSI recipient located in an adult foster home is estimated at forty-two dollars (\$42.00) per month. It is clear that the Department has the necessary statutory authorization enabling it to pay SSI benefits to eligible recipients. (Title 22 M.R.S.A. §3271 et seq.) However, since the federal government contributes the bulk of monies distributed pursuant to the SSI program, certain federal regulations must be complied with in order for the State to obtain the highest rate of benefits from the Federal source for its SSI recipients. One of these regulations concerns the requirement that if the SSI recipient resides in an adult foster home, that home must meet certain standards as determined by the State. (45 C.F.R. Ch. II, part 229.0). If the home does not meet these standards, the amount of monthly federal financial participation for each adult who is residing therein will be reduced by an amount equal to the State's share or contribution. In other words, the Federal government will reduce its contribution by forty-two dollars (\$42.00) per month for each SSI patient who is not in an "approved" facility. The problem presented at this juncture, however, is that the Maine Legislature has not specifically authorized the Department to enumerate the standards for approval

which must be met by an adult foster home in order to maximize federal financial participation. The only references to "adult foster homes" are found in relation to reimbursement standards. For example, Title 22 M.R.S.A. §7907 states that the Department is mandated to "...reimburse all approved adult foster homes at a rate of at least \$225.00 per month". (emphasis added). The preceding category of "home" further appears in Title 22 M.R.S.A. §3273. This section establishes benefit levels for individual recipients' of SSI. However, the determination as to the amount of benefits received is dependent, in part, upon whether or not the home in which the person lives meets the standards as delineated by the State.

On April 1, 1977, the Department adopted "Rules and Procedures for the Approval of Adult Foster Homes." Although it may be argued that these rules were authorized in part pursuant to the wording in Title 22 M.R.S.A. sections 7907 and 3271, et seq., it must be realized that their continued validity is in doubt due to the lack of specific legislative standards authorizing the Department to promulgate and adopt them. Although the Legislature has authorized the Department to expend monies on behalf of adult foster homes and SSI recipients residing therein, it has not provided the Department with any standards or guidelines from which the Department may glean the necessary parameters of its regulatory powers. Without specific authorization, it is possible that the above cited rules may be successfully challenged as being promulgated without the necessary enabling legislation from the Legislature. This is not, however, to say that the above mentioned rules are invalid. Rather, portions thereof are suspect and, certainly, would be on much firmer ground if enabling legislation were passed which specifically authorized the Department to promulgate rules encompassing the adult foster care program.

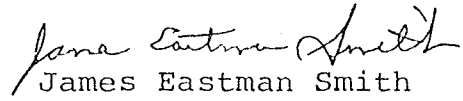
Therefore, in answer to your questions, it would be my opinion that:

1. The Department may not license adult foster homes without specific enabling legislation. (The Department is not currently performing this function).
2. Portions of the rules pertaining to adult foster homes may be invalid.
3. Legislative authorization is specifically necessary in order to determine what rules the Department may adopt in conjunction with adult foster homes.

Representative Sandra K. Prescott
March 12, 1980
Page 3

I hope that the above will be of some assistance to you, and if you have any further questions regarding this subject, please do not hesitate to let me know.

Respectfully yours,


James Eastman Smith
Assistant Attorney General

JES:mm