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STATE OF MAINE
ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON PERFORMANCE AUDIT

March 15, 1976

Legislative Council
107th Legislature
State House
Augusta, Maine 04333

Members of this Council:

In accordance with H.P. 529, an ORDER directing the Committee on Performance Audit to study the recommendations by the U.S. Department of Health, Education and Welfare about Maine's Aid to Families with Dependent Children Program, a copy of the Final Report of the Committee is attached.

Sincerely,

Senator Richard N. Berry, Co-chairperson

Representative Georgette B. Berube,
Co-chairperson

REPORT OF
THE COMMITTEE ON PERFORMANCE AUDIT
ON
HEW EVALUATION OF THE AFDC PROGRAM
IN MAINE

March 12, 1976

SENATE

Richard N. Berry, Chairman
Theodore S. Curtis, Jr.
Alton E. Cianchette

HOUSE

Georgette B. Berube, Chairwoman
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Harold L. Silverman
Walter A. Birt
Samuel A. Hinds

LEGISLATIVE ASSISTANT

Diana C. Scully

2. The Department of Human Services should make annual adjustments in the Standard of Need for families on AFDC, so that this official standard is more in line with the actual need of families on AFDC.

3. PL 1975, c. 441 should be amended in order to clarify the legislative intent that savings realized by policy changes, as well as reduced error rates must be used to increase payments to AFDC clients.

Epilogue: Under Items 9 and 10 in the HEW report the audit team suggested that the Department of Human Services was not complying with certain Federal Regulations [45 CFR 233.20 (a) (i) (ii)], which limit the types and values of personal and real property. At the time the report was written HEW had not yet received court clearance to implement these regulations.

On March 1, 1976, David Smith, Commissioner, Department of Human Services, received a telegram from Don Wortman, Acting Administrator, Social and Rehabilitation Services, U.S. Department of Health, Education and Welfare. Wortman stated that because on February 20, 1976, the U.S. Court of Appeals for the District of Columbia Circuit ruled against the new resource limitations, "the regulation continues to be suspended while the department [HEW] considers further judicial review."

DRAFT - 3-10-76

REPORT OF

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ABSTRACT OF THE REPORT ON AFDC OF THE COMMITTEE ON PERFORMANCE AUDIT

Purpose of the HEW Audit: The purpose of the audit of Maine's Aid to Families with Dependent Children (AFDC) program by the U.S. Department of Health, Education and Welfare (HEW) was to evaluate the use of scarce federal and State dollars in the AFDC program and to make recommendations, based on this evaluation, for a more efficient use of these dollars.

Purpose of the Committee: The purpose of the Committee on Performance Audit has been to determine whether the implementation of HEW's recommendations would be effective in reducing errors in the AFDC program without hurting the needy clients receiving AFDC benefits.

Committee's Methodology: A subcommittee on AFDC met several times from August through December, 1975, to discuss the HEW audit and to receive input from persons responsible for the implementation of various aspects of the AFDC program, as well as from advocates for clients in the program.

Major findings of the Committee:

1. The methodology employed by the HEW audit team was weak in certain areas (e.g., the small sample of AFDC cases covered only a one-month period).
2. Some of the HEW's findings are on shaky ground:
   - It is not appropriate to project from a small sample the $8-$23 million in savings.
   - The percentages representing both the types of errors and errors at regional levels are neither statistically valid nor reliable.
3. There are legal questions about several recommendations made by HEW, including:
   - providing that an AFDC recipient's failure to report changes within 10 days which may affect eligibility or grant raises a presumption of willful withholding of information;
   - limiting further the value and types of personal and real property an AFDC client can own;
   - discontinuing the deduction of day care expenses from earned income of AFDC clients;
   - prohibiting the provision of AFDC benefits to a needy child who is claimed as a dependent by either a stepparent or responsible relative for income tax purposes; and
   - preventing AFDC clients from holding sensitive or discretionary positions in the Department of Human Services.

Committee's Recommendations:

1. The function of welfare fraud investigation should be placed in a Human Services Fraud Unit in the Department of Human Services. The State should begin to focus more on the pursuit of suspected cases of fraud involving State monies in other programs such as Medicaid and Medicare, which would yield greater returns in dollars for the efforts expended.

2. The Department of Human Services should make annual adjustments in the Standard of Need for families on AFDC, so that this official standard is more in line with the actual need of families on AFDC.

3. PL 1975, c. 441 should be amended in order to clarify the legislative intent that savings realized by policy changes, as well as reduced error rates must be used to increase payments to AFDC clients.

Epilogue: Under Items 9 and 10 in the HEW report the audit team indicates that the Department of Human Services is not complying with Federal Regulations [45 CFR 233.20 (a) (3) (i) (ii)], which limit the types and values of personal and real property. However, at the time the report was written HEW had not yet received court clearance to implement these regulations.

On March 1, 1976, David Smith, Commissioner, Department of Human Services, received a telegram from Don Wortman, Acting Administrator, Social and Rehabilitation Services, U.S. Department of Health Education and Welfare. Wortman stated that because on February 20, 1976, the U.S. Court of Appeals for the District of Columbia Circuit ruled against the new resource limitations, "The regulation continues to be suspended while the department [HEW] considers further judicial review."

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PREFACE

The focus on high error rates in Maine's Aid to Families with Dependent Children (AFDC) program has exacerbated public suspicion and hostility toward both the program and its clients. The Committee on Performance Audit recognizes the necessity of running the AFDC program as efficiently as possible, but urges the critics of the program and its clients to bear in mind the following considerations:

1. The primary goal of the AFDC program is to provide financial assistance for needy dependent children, not to provide a "free ride" for adults.

2. One of the goals of the State of Maine Budget Document for 1976-77 is "maintaining or restoring individual dignity and security of those burdened with economic and social disadvantage". Yet this year, as in previous recent years, the portion of the total State budget for public assistance has declined.

3. The average annual income of a 3 1/2 member family in Maine which receives both AFDC and Food Stamps benefits is only $3,765. It is doubtful that this amount allows children in economically disadvantaged families to live with dignity and security.

I. INTRODUCTION

In February, 1975, Governor Longley and the 107th Legislature made a joint request to then Secretary Caspar W. Weinberger, U. S. Department of Health, Education, and Welfare (HEW) for a federal review of Maine's Aid to Families with Dependent Children (AFDC) program. From late April through early August U. S. Commissioner of Welfare Robert Carleson with the assistance of the HEW Audit Agency conducted an evaluation of the State's AFDC program.

H.P. 529, which was passed by the 107th Legislature in February, ordered the Joint Standing Committee on Performance Audit to assist the HEW audit team in the review of the State's AFDC program and in the analysis of findings resulting from the review.[1]

To carry out the mandates of H.P. 529 the full Committee established a Subcommittee on AFDC, which consisted of the following Committee members: Representative Berube (Chairperson of the Subcommittee), Senator Curtis and Representatives Bachrach, Hinds, and LaPointe. The Subcommittee met several times from August through December to discuss the HEW audit and other related matters of immediate importance to the AFDC program. The Subcommittee received input from persons responsible for the implementation of various aspects of the AFDC program, as well as from advocates for clients in the program.[2]

On August 4, 1975, Commissioner Carleson submitted to Governor Longley the results of the three month evaluation by HEW of the State's AFDC program in a report entitled Welfare in Maine. The purpose of this present document, prepared by the Committee on Performance Audit, has been to analyze the findings and recommendations of HEW, and, based on this analysis, to formulate its own recommendations on the State's AFDC program.

The Committee's analysis of the HEW findings and recommendations is based largely on the observations and insights of various State agencies which play a role in the administration of the AFDC program, including the Department of Audit, the Attorney General's Office, and most notably, the Department of Human Services. In addition, Pine Tree Legal Assistance, Inc. and the Maine Human Services Council offered their views of the HEW report. The Committee is grateful for the contributions of everyone who shared their knowledge of and experiences with the AFDC program in Maine.

II. OVERVIEW OF HEW REPORT

A. SUMMARY OF THE HEW REPORT

In the cover-letter to the HEW report dated August 4, 1975, Commissioner Carleson wrote to Governor Longley that there are "three major areas where improvement must be made in policies and administration of the AFDC program" in Maine. The areas mentioned by Carleson were: (1) closing loopholes which permit non-needy persons to receive welfare benefits, (2) eliminating errors which result in overpayments to welfare recipients and payments to ineligible recipients, and (3) collecting support from absent fathers or other responsible relatives.

Carleson made these comments after the HEW audit team had completed its three-month evaluation of the State's AFDC program. In addition to auditing a one-month sample of 157 randomly selected AFDC cases, the audit team had reviewed the State statutes on AFDC, the provisions of the Assistance Payments Manual,[3] and the staffing, workloads, organization, and procedures of the Department of Human Services.

Projecting the findings of the one-month audit of the 157 AFDC cases, the HEW report Welfare in Maine states that "over 54% of every one hundred cases receives an incorrect grant in Maine".[4] The report concludes that "19.1% of all cases were totally ineligible for public assistance, 31.2% were overpaid, and 3.8% were underpaid".[5] Further analysis of the results reveals that the Lewiston, Bangor, and Portland regional offices of the Department of Human Services with error rates of 62%, 62%, and 61%, respectively, had the highest number of errors in the State.[6]

The HEW report indicates that "the single most important factor that accounts for Maine's increasing error rates, rising caseloads, and large welfare population is its policy of simplified eligibility".[7]

According to the HEW report, a total of from \$8 to \$23.6 million per year can be saved, (offset only "by modest expenditures" needed to implement improvements in the AFDC program.)[8] The savings estimated by the audit team include "a minimum of \$4.9 million to \$15.8 million in federal funds, \$2.4 million to \$7.1 million in State funds, and \$.7 million in local funds".

The Committee questions several aspects of the HEW report, including the methodology employed by the audit team, the interpretation of some of the findings, and the estimated savings. A discussion of the Committee's concerns is presented in the next section of this document.

B. DEFICIENCIES OF THE HEW REPORT

1. Methodology and Findings

The methodology employed by the HEW audit team was deficient in certain areas.

Based on discussion with various personnel of the Department of Human Services, it appears that the audit team communicated with only a limited number of staff persons involved in administering the AFDC program. Furthermore, while it is true that 157 "cases" were interviewed in their homes "to establish the accuracy of data contained in case files and eligibility applications".[9] AFDC clients had no opportunity to air their views about the AFDC program.

Another methodological weakness suggested by several persons is that only 157 cases or less than .7% of the State's total AFDC caseload of 24,000 were included in HEW's one-month sample. In order to get an expert opinion on the issue of appropriate same size, the Committee's staff consulted with Dr. Edgar Miller, the State Economist. Dr. Miller commented that, generally, a sample of more than 1% of a total group is used, and that statistics textbooks usually suggest that a 5-10% sample be used. He states that if one accepts HEW's .7% sample as adequate, then the finding of a 54% error rate in the AFDC program is significant.

However, Dr. Miller indicated that the HEW report is "shaky" in the following areas:

- The study of the small sample covered only a one-month period.
- It is not appropriate to project from a small sample the range of savings, i.e., \$8-\$23 million.
- The percentages for subgroups of incorrect cases, i.e., 19.1 ineligible, 31.2% overpaid, and 3.8% underpaid, are neither statistically valid nor reliable.
- The percentages representing error rates at the regional levels of the Department of Human Services are neither statistically valid nor reliable.

2. Style of the HEW Report

The HEW Report often implies that the State is not doing what it is required to or should do to correctly administer the AFDC program. This observation is illustrated by the report's statement that "while never required by federal law, the State of Maine adopted and continues to use the so-called 'simplified eligibility system' of determining eligibility and grant amount in the AFDC program".[10] The fact of the matter is that until 1973, the federal government required states to rely on the applicant as the primary source of information.

Furthermore, as the Department of Human Services pointed out time and time again in its written comments on the HEW report,[11] the HEW audit team recommended many actions which the Department either has engaged in for substantial periods of time or has recently implemented as the result of new federal and state laws. Individuals reading the HEW report who are unaware that many recommendations are unnecessary or irrelevant, might assume that the Department has been lax in meeting its responsibilities.

3. Savings Cited by HEW

The HEW report asserts that Maine can save, annually a minimum of $4.9 million to $15.8 million in federal funds; $2.4 million to $7.1 million in state funds; and $.7 million in local funds for a range of total savings from $8 million to $23.6 million. As previously mentioned, the State Economist believes that the report is on "shaky" grounds when it projects savings based on a small, one-month sample of AFDC cases.

In only one place does the report examine the potential costs involved in carrying out procedures to save money.[12] In fact, the evaluation states that "no precise figures are available" for administrative costs. Despite this lack of important fiscal information, HEW states that "it appears clear that the relative savings in administrative costs are lost many times over as a result of overpayments and payments to ineligible persons."[13]

4. Legality of HEW's Recommendations

Several of the HEW recommendations focus on areas which have been and continue to be argued in our courts. The state of the law is often unsettled, especially in the area of State-imposed eligibility conditions. It is interesting to note that while the HEW report cites a few court cases which shed a positive light on a few recommendations, it remains silent about other court cases which might shed a negative light on other recommendations.

Having completed its careful and comprehensive analysis of the HEW report, the Department of Human Services has indicated that there are legal questions about many recommendations including those to:

- Provide that a recipient's failure to report within 10 days any changes which may affect the recipient's eligibility or grant raises a presumption of willful withholding of information;

- Require the Social Security number of both parents on all birth certificates issued in Maine;

- Broaden the Quality Control function of the Department of Human Services to include, among other programs, general assistance;

- Limit the value and types of personal and real property an AFDC client can own;

- Require that all day care services be paid as "vendor" payments, and discontinue the deduction of day care expenses from earned income;

- Do not provide public assistance to a child who is claimed as a dependent by either a stepparent or responsible relative for income tax purposes; and

- Prevent AFDC clients from holding sensitive or discretionary positions in the Department of Human Services.

5. Assumptions and Attitudes Underlying the HEW Report

The HEW report states several times that there are too many welfare recipients in Maine. The basic assumption appears to be that because of simplified eligibility requirements, too many people have gotten too much money. In no place does the report suggest that a reason for the large welfare population is the fact that Maine ranks among the lowest states in per capita income.

Some Committee members argue that it was not the function of the HEW audit to consider the need of AFDC clients. Other members believe that the report does not adequately address the question of need. Tucked away in the back of the report is a one-page table which shows, for AFDC families of various sizes, the standard of need (based on 1969 Bureau of Labor data), the benefits received, and the discrepancy between the standard of need and benefits received.[14] There is no discussion of either the adequacy of the need standards or the gaps between needs and benefits.

When the HEW audit team discusses attitude, it appears to assume that the attitude (e.g., suspicious toward AFDC clients) which pervades the report is the appropriate one. The HEW report implies that many of the staff who implement the AFDC program have the "wrong" attitude (e.g., sympathetic toward AFDC clients) and suggests that the staff be trained in the "right" attitude. The Committee does not feel that attitude can be boiled down into right and wrong or black and white. A combination of philosophies espoused by both advocates for welfare clients and managers responsible for distributing scarce funds must be maintained, so that the views of both providers and receivers of benefits can be weighed in the determination of policies and laws in the area of welfare.

C. USEFULNESS OF THE HEW REPORT

Despite the fact that the HEW report made many recommendations on which the Department of Human Services had already taken action, which state and federal laws already addressed, or which raised questions of legality, some of the recommendations merit further consideration and/or action. Most notably, the Committee agrees with some of the HEW recommendations which would help reduce error rates. (Section III of this document discusses the recommendations in detail.)

In addition, the HEW report inspired a careful evaluation by the Department of Human Services of its policies and practices in the area of welfare. Such self-examination should result in an improvement in the application and redetermination processes in the State's AFDC program.

Finally, the polemical arguments caused by the nature and content of HEW report have given the Committee the opportunity to hear the views of parties who are either opponents or advocates of the AFDC program. Such an exchange of ideas and opinions enables a legislative body to synthesize the more rational arguments from both sides and to work toward legislation which best serves the public interest.

D. IMPACTS OF THE HEW REPORT ON AFDC CLIENTS AND WORKERS

One detrimental impact of the HEW report is the aspersions it casts on AFDC clients and workers. An underlying and misleading implication of the report is that the error rate is so high because welfare clients are "cheats" and welfare workers are dishonest.

The Committee is concerned about some of the negative and unwarranted insinuations in the report. Such insinuations are likely to result in low morale among clients and workers, and in suspicion and hostility among taxpayers. The Committee recognizes that in the AFDC program, as in all social service programs, private businesses, professions, etc., there are some persons who lack integrity. However, the Committee does not accept the notion that the AFDC program has more than the usual complement of such persons.

For some time after the release of the HEW report, high error rates in the AFDC program were the focus of headlines and editorials in many newspapers throughout the State. Little or no attention was paid to possible reasons for high error rates, such as the implementation of new, often complex departmental policies which can confuse both workers and clients, resulting in clerical as well as client errors.

III. SPECIFIC RECOMMENDATIONS BY HEW

The bulk of the HEW report Welfare in Maine consists of discussion and specific recommendations in 25 areas or "items". The greatest number of items pertains to tightening up the eligibility requirements in the AFDC program. The remaining items focus on error and fraud, the collection of support payments from responsible relatives of dependent children, and the organization and procedures of the Department of Human Services.

The following is a summary of the reactions of the Committee on Performance Audit to the more salient and controversial recommendations made by the HEW audit team. A more detailed examination of each item in the HEW report, including a summary of the reactions of the Department of Human Services and other agencies and groups, is included in the Appendices to this document.[15]

A. TIGHTENING UP ELIGIBILITY REQUIREMENTS

1. Comprehensive Work Requirement

Under Item 6 one of HEW's more significant recommendations is to expand the work requirements for AFDC clients. The audit team suggests that as a condition of eligibility employable clients participate not only in the work incentive (WIN) program, as presently required by the Social Security Act, but also in community work and training programs.

The Committee on Performance Audit believes that in light of the present lack of jobs caused by Maine's lagging economy, it is not realistic to expect AFDC clients to find jobs which simply are not available. One might reasonably deduce that one of the many factors which causes a family to go on the AFDC rolls in the first place, is that the head of the household has already tried and failed to secure employment. The Committee agrees with the Department of Human Services that the establishment of a State program, similar to the federal Works Progress Administration set up during the Depression, would merely create another layer of bureaucracy competing for scarce jobs with the WIN and CETA programs in a sluggish labor market.

2. Assets of the AFDC Families

The HEW report recommends that the types and value of personal property of AFDC clients (Item 9) and the value of real (homestead) property (Item 10) be limited. The report states that the Department of Human Services is out of compliance with new federal requirements [45 CFR 233.20 (a)(3)(i)(ii)] which have not even been implemented yet.

The Committee agrees with the DHS that until or unless HEW implements these requirements, the State should consider no further restrictions on the personal property (e.g., the value of the one motor vehicle allowed per family) and real property (e.g., the value of the home) owned by AFDC clients.

3. Child Care Expenses

Under Item 14 HEW recommends that for AFDC parents who work the amount paid for child care expenses be limited and that these expenses not be deducted from earned income in the determination of grants. The Committee feels strongly that the implementation of these recommendations would penalize those AFDC clients who are making every effort to help themselves and their children. Furthermore, both the Social Security Act and the Code of Federal Regulations require that work related expenses not be counted as earned income.

4. Income Tax Withholding

HEW recommends under Item 15 that the income and property of stepparents and non-needy responsible relatives be available to dependent children when the stepparents or relatives claim the children as tax exemptions. The Committee echoes the Department of Human Services' disagreement with this recommendation. As the Department points out, existing State law does not hold stepparents liable for the support of stepchildren, and federal regulations prohibit the assessment of the income and assets of persons not included in the AFDC grant.

B. ELIMINATION OF ERROR AND FRAUD

1. Application Form and Process

Under Item 1 the HEW audit team recommends rigorous verification of all facts supporting eligibility for AFDC. Further, HEW expects all AFDC clients to report within ten calendar days all changes affecting eligibility and amount of grant, and suggests that any failure by clients to report represents a willful withholding of information.

While the Committee agrees that verification of information reported by AFDC clients is necessary, in particular for high risk cases, it would seem that there is a point of diminishing returns with respect to the checking and cross-checking of information. It appears likely that the costs involved in an exceedingly rigorous verification process would exceed the losses in funds resulting from incorrect reporting of information.

With respect to the failure of clients to report changes within ten days, the Committee, like the DHS, disagrees with HEW that such failure represents a presumption of willful withholding of information. The Committee is aware that some AFDC clients are guilty of conscious misrepresentation of information. However, it would not be just to assume that every client who misses a ten-day deadline was being deceitful. As the Department indicates, there are perfectly valid reasons, such as lack of understanding of complex policies and illness, which prevent reporting by clients within ten days.

During the Regular Session, the 107th Legislature attempted to increase the efficiency of the eligibility determination and redetermination processes by passing legislation requested by the DHS, which provided 68 new assistance payments staff members. The Legislature had hoped that this legislation would result in decreased error rates in the AFDC program, by reducing the staff-client ratio from roughly 1:500 to 1:250. Unfortunately, it appears that the potential benefits of the improved staff-client ratio have been at least partially offset by the recent enactment of federal and accompanying State legislation in the area of child support payments from absent parents, which has increased the responsibilities of the already heavily burdened assistance payments staff. The Committee urges those persons who are critical of high error rates in the AFDC program to bear in mind that the never-ending stream of policy changes flowing from the federal level, often results in both confusion and errors at the State level.

Some members of the Committee suggest that client input could provide a valuable contribution to future revisions in the application form and process.

2. Fraud Investigation

Under Item 2, HEW recommends the transfer of the "external" fraud investigation function from the Fraud Investigation Division (FID) of the Department of Audit to the Attorney General's Office, but suggests that the FID retain its "internal" fraud investigation function. In addition, HEW recommends that the State apply for the 50% matching federal funds available for use in fraud detection at the State level.

In response to this recommendation by HEW, the Committee filed LD 2290, a bill, under Joint Rule 3 pursuant to H.P. 529.[16] The primary purpose of this bill is to reduce fragmentation in and improve the efficiency of the investigation and prosecution of fraud, including human service fraud, perpetrated against the State. A further purpose of this bill is to enable the Department of Human Services to receive matching federal funds and, thereby, to expand staff in order that fraud in human service programs can be more vigorously investigated.

To accomplish these purposes the bill makes the following changes in the existing bureaucratic structure:

1. The Fraud Investigation Division, Department of Audit, is dismantled.

2. Three of the positions in the Fraud Investigation Division are transferred to the Department of the Attorney General to enable this Department to investigate, as well as prosecute, suspected acts of fraud against the State.

3. The remaining one position in the Fraud Investigation is transferred to the Department of Human Services to enable this department to investigate acts of fraud involving recipients, providers and vendors who receive or apply for funds administered by the Department.

3. Recipient Identification Cards/Direct Bank Delivery

Under Item 22 HEW recommends that photo-identification cards should be issued by the DHS to AFDC clients within six months, and that the DHS should investigate the feasibility of a direct bank delivery system for the monthly AFDC checks.

The Committee disagrees that ID cards should be issued to AFDC clients. The Committee learned that it would cost $1.00+ per card, or $20,000+ in starting costs for an AFDC caseload of 20,000. In addition, the DHS would have to issue roughly 900 new cards for new cases each month and to recall roughly 700 cards for cases closed each month. With the large number of cases moving off and onto the AFDC rolls each month, the Committee believes that the implementation of a photo-ID system would create an administrative nightmare for the Department.

With respect to the direct bank delivery of AFDC checks, the Committee recognizes that this would not be feasible in rural areas of the State. However, the Committee suggests that the viability of such a voluntary system in urban areas be examined by the DHS.

C. COLLECTING SUPPORT PAYMENTS

Under Item 3 the HEW audit team makes several recommendations pertaining to the collection of absent parent support for dependent children on the welfare rolls. The passage of both Title IV-D of the Social Security Act at the federal level and P.L. 1975, c.532 at the State level has rendered many of the recommendations under Item 3 irrelevant.

The Committee finds no rationale for HEW's recommendation that a unit should be established in the Department of Public Safety (DPS) to carry out the support collection functions presently carried out by the Support Enforcement and Location Unit (SELU) in the DHS.

Because PL 1975, c. 532, went into effect so recently (October 1, 1975), the Committee believes that it is premature for a thorough analysis of the new policies of the DHS in the area of collecting support payments.

D. ORGANIZATION AND PROCEDURES OF THE DEPARTMENT OF HUMAN SERVICES

1. Policy Adoption Procedures

The HEW audit team recommends under Item 19 that the DHS establish a more formalized policy adoption system in order to ensure that all policy matters are reviewed and personally approved by the Commissioner, that all departmental employees have a means for raising policy issues and that all policies receive competent legal and fiscal review. The Committee agrees with these recommendations.

The Committee understands that employees working in the AFDC program are responsible for the implementation of a plethora of federally-mandated policies. The numerous, complex, and ever-changing regulations which emanate from Washington, D.C., not only tend to create a great deal of confusion at the State level, but also often result in both clerical and client errors. The State lacks the power to improve either the efficiency of the process of promulgating federal regulations or the clarity of these regulations. However, the Committee believes that annual planning sessions involving the Department's central office and regional staff would be a step toward a more uniform and accurate implementation of AFDC policies.

Furthermore, the majority of the Committee members recommend that the DHS should adopt a new policy of making annual adjustments in the standard of need for AFDC families to equal the current year's lower budget level for families as computed by the U.S. Department of Labor. Presently, the Department bases the standard of need on the 1969 data of the Department of Labor. The Committee feels the standard of need used by the DHS should be updated each year, so that the public may be aware of the gap between the officially defined needs of and the benefits actually received by families on AFDC. The Committee submitted legislation (L.D. 2252) under Joint Rule 3, pursuant to H.P. 529, to require this updated standard of need.[17]

2. Conflicts of Interest

Under Item 21 one of the recommendations is to prevent AFDC clients working in the DHS from being placed in discretionary positions. The Committee does not agree. As the Department points out, this recommendation is discriminatory and contradictory to the Affirmative Action Plan and the State personnel system, which require that all applicants for jobs be judged on their capability to do the work, not on the fact that they receive or do not receive public assistance.

3. Social Services

The HEW report appears to question the number and effectiveness of social service workers in the DHS. Under Item 1, the audit team recommends that members of the social service staff be transferred to the assistance payments staff. Under Item 25, HEW suggests that "success" in the delivery of social services be interpreted as reducing or eliminating dependency on public assistance.

The Committee disagrees that the Social Services Unit is overstaffed, as implied by HEW in Item 1. While the delivery of social services should be evaluated, the Committee believes that the definition of success suggested in Item 25 is unrealistic. To expect social service personnel to eliminate the condition of poverty of their clients is naive, at best.

IV. KEY COMMITTEE RECOMMENDATIONS FOR THE AFDC PROGRAM

Fraud:

1) The Fraud Investigation Division, Department of Audit, should be dismantled.

2) Three of the positions in the Fraud Investigation Division should be transferred to the Attorney General's Office, so that various types of fraud perpetrated against the State can be more effectively investigated and prosecuted.

3) The remaining one position in the Fraud Investigation Division should be transferred to the Department of Human Services to enable this department to investigate acts of fraud involving recipients, providers and vendors who receive or apply for funds administered by the department.

Standard of Need: The Department of Human Services should make annual adjustments in the Standard of Need for families on AFDC, so that this official standard is more in line with the actual need of families on AFDC.

AFDC Savings: PL 1975, c. 441 should be amended in order to clarify the Legislative intent that savings realized by policy changes as well as reduced error rates must be used to increase payments to AFDC clients.

FOOTNOTES

1. H.P.529 is included in Appendix I of this document.

2. Appendix II of this document includes the names of persons providing input into the AFDC Subcommittee meetings.

3. The Assistance Payments Manual contains the formal policies of the Department of Human Services on the AFDC program.

4. Welfare in Maine, p.12.

5. Ibid., p.12

6. Ibid., p.134.

7. Ibid., p.9.

8. Ibid., p.3-4.

9. Ibid., p.131.

10. Ibid., p. 10.

11. On October 1, 1975, David Smith, Commissioner, Department of Human Services, submitted to the Performance Audit Committee written comments on the recommendations by the HEW audit staff on the AFDC program. Robert Wyllie, Director, Bureau of Social Welfare, and his staff worked for a period of roughly six weeks to prepare these comprehensive comments. In its written review of Welfare in Maine, the DHS analyzed each HEW recommendation with the following questions in mind:
    - Is the recommendation necessary?
    - Is the recommendation legal?
    - Is the recommendation cost beneficial?
    - Is the recommendation sound in terms of administration?

    A copy of the Department's general concerns about the HEW report is included.

12. Op.cit., p. 121.

13. Ibid., p. 11.

14. Ibid., p. 123.

15. See Appendix III of this document.

16. See Appendix IV for a copy of L.D. 2290.

17. See Appendix V for a copy of L.D. 2252.

APPENDIX I:

H.P. 529

Perf. Audit

D. CD. F.

STATE OF MAINE

In House February 13, 1975

Ordered,

Whereas, the 106th Legislature has expressed its concern for the conduct of the State's Aid to Families with Dependent Children Program by commencing a study of the program by the Program Review and Evaluation Division of the State Department of Audit, such study still being in its early stages at this date; and

Whereas, there is currently before the 107th Legislature proposed legislation that, if enacted, will substantially increase the cost of the program to the State and Federal Government; and

Whereas, the subject of welfare in general and Aid to Families with Dependent Children in particular is extremely complex and interwoven with federal and state laws, regulations, administrative practices and court rulings; and

Whereas, it is important to the people of this State that the Aid to Families with Dependent Children Program be conducted with the highest possible degree of economy, efficiency and effectiveness consistent with existing federal laws and regulations and court rulings; and

Whereas, it has recently been brought to the attention of the Legislature's Joint Standing Performance Audit Committee that the federal agency of Health, Education and Welfare has available to the states at no cost and conditioned only upon the joint request of the respective legislatures and governors, a highly skilled, competent and experienced team of experts to review Aid to Families with Dependent Children Programs and make detailed written reports of findings and recommendations; now, therefore, be it

Ordered, the Senate concurring, that the 107th Legislature join

Name:

Town:

D. OF R.

with the Governor of the State in filing a formal request with the U.S. Secretary of Health, Education and Welfare for such complete and thorough study to be made by his representatives of the State of Maine's Aid to Families with Dependent Children Program. It will be further requested that a detailed report of findings and recommendations be made available to both the legislative and executive branches of government; and be it further

Ordered, that the Joint Standing Performance Audit Committee be directed to act on behalf of the Legislature in aiding the aforementioned study team in their conduct of the review and analyzing the associated findings and recommendations; and be it further

Ordered, that the Joint Standing Performance Audit Committee be directed to report the results of their analysis of findings and recommendations to the full body of the 107th Legislature at the earliest practical time in the judgment of the committee chairman; and be it further

Ordered, upon final passage, that suitable copies of this order be forwarded forthwith to the parties named in this order.

IN SENATE CHAMBER Read and TABLED BY SEN. SPEERS OF KENNEBEC

FEB 18 1975

PENDING Passage

HARRY N. STARBRANCH, Secretary

IN SENATE

TAKEN FROM TABLE ON MOTION BY SEN. SPEERS OF KENNEBEC AND ON FURTHER

FEB 19 1975

MOTION BY SEN. SPEERS OF KENNEBEC

Passed IN CONCURRENCE

Harry N. Starbranch

SECRETARY

HP 529

HOUSE OF REPRESENTATIVES

READ AND PASSED

FEB 13 1975

SENT UP FOR CONCURRENCE

CLERK

NAME: (Mrs. Berube) Georgette B. Berube

TOWN: Lewiston

APPENDIX II:

PERSONS PROVIDING INPUT INTO THE AFDC SUBCOMMITTEE

PERSONS PROVIDING INPUT INTO THE AFDC SUBCOMMITTEE

Meeting of Augusta 12, 1975

David Smith, Commissioner, Department of Human Services

Meeting of August 21, 1975

Douglas Hall, Regional Director, Department of Human Services, Lewiston
Monica Genthner, Department of Human Services, Lewiston
Patricia Plante, Department of Human Services, Portland

Meeting of August 29, 1975

Richard Cohen, Deputy Attorney General, Criminal Division
Fernand LaRochelle, Assistant Attorney General, Criminal Division
Chalmers Hardenbergh, Assistant Attorney General, Department of Human Services
Bob Mittel, Pine Tree Legal Assistance, Inc.
Alice Bean, Maine Human Services Council and We Who Care, Inc.
Frank Schuyler, Title XX Task Force
Stanley Sumner, Department of Audit

Meeting of September 15, 1975

Robert Carleson, U.S. Commissioner of Welfare, U.S. Department of Health, Education, and Welfare (HEW)
Carl Williams, Deputy U.S. Commissioner Welfare, HEW
Edward Paregion, Regional Audit Director, HEW
Joseph Basile, Assistant Regional Audit Director, HEW

Meeting of September 23, 1975

Stanley Sumner, Department of Audit

Meeting of October 7, 1975

no outside visitors

Meeting of October 30, 1975

Robert Wyllie, Director, Bureau of Social Welfare, Department of Human Services
John Parrish, Director, Fraud Investigation Division, Department of Audit
Marshall Cohen, Director, Pine Tree Legal Assistance, Inc.

Meeting of November 24, 1975

no outside visitors

Meeting of December 15, 1975

Jim Tierney, Regional Director, Department of Human Services, Portland
Barbara Felds, Department of Human Services, Portland

Meeting of December 16, 1975

no outside visitors

Meeting of January 6, 1976

Richard Cohen, Deputy Attorney General, Criminal Division
David Smith, Commissioner, Department of Human Services
Jack Parrish, Director, Fraud Investigation Division, Department of Audit
Alfred Howes, Chief Inspector, Criminal Investigation Section, AG's Office

Meeting of January 26, 1976

Richard Cohen, Deputy Attorney General, Criminal Division
David Smith, Commissioner, Department of Human Services

APPENDIX III:

ITEM BY ITEM EXAMINATION OF THE HEW RECOMMENDATIONS

ITEM BY ITEM EXAMINATION OF THE HEW RECOMMENDATIONS

This appendix includes a summary of the more significant recommendations by HEW, and the comments about these recommendations of State employees responsible for implementing various aspects of the AFDC program and of advocates for the clients in the program.

A. TIGHTENING UP ELIGIBILITY REQUIREMENTS

Item 6. Comprehensive Work Requirement

HEW recommendations:

(a) Implement a comprehensive work requirement.

(b) Require all employable applicants for AFDC to register for employment with the MESC, accept work or training if offered, seek work and report to the MESC, and serve the community through a community work/training program.

(c) Colocate DHS and MESC staff, increase MESC staff by 12-20 new positions, and give MESC supervisory responsibility over the comprehensive work/training program.

(d) Require the State Auditor to monitor the comprehensive work/training program.

Comments of DHS:

The Department states that Maine already has a comprehensive work requirement (a) as a result of the mandates of the Work Incentive (WIN) program, and that persons in the WIN program must already register with the MESC (b), and accept suitable employment and training if offered (b). The DHS indicates that "a community work/training program (b) would be totally unrealistic", because the majority of AFDC families are female-headed, and because such a program would create another bureaucratic component competing for jobs with the WIN and CETA programs in a scarce labor market.

The DHS does not agree that DHS and MESC staff should be colocated (c) as there is a lack of space in both agencies.

In addition, the DHS believes that the HEW recommendation which would give the MESC the supervisory responsibility over the WIN program (c), violates both the Social Security Act and the Federal Regulations requiring a single State agency to administer and supervise the AFDC program.

Finally, the Department agrees in concept that the State Auditor should monitor the work/training program (d). However, the DHS estimates that the Audit Department would have to increase its staff by two additional persons plus clerical support at an estimated cost of $35,000 per year.

Item 7. Definition of Continued Absence

HEW recommendation: Eliminate the unrebuttable presumption that deprivation exists due to the absence of a parent caused by military service.

Comments of DHS: The Department has classified this item as "unnecessary", because it believes that the HEW audit team misunderstood the State law and Assistance Payments Manual. The DHS does not automatically pay AFDC grants to military families.

Item 8. Residence and Temporary Absence from the State

HEW recommendations:

(a) Define temporary absence as absence up to 30 days.

(b) Terminate eligibility after absence from State of caretaker relatives beyond 30 days; allow for emergency situations.

Comments of DHS: The Department agrees with the HEW recommendations (a+b) believes the recommendations are cost beneficial, and will amend the Assistance Payments Manual accordingly. The DHS will also clarify provisions in the Manual pertaining to the absence of servicemen from the State.

Items 9 & 10. Personal Property; Real Property

HEW recommendations:

(a) Limit the types and value of properties considered to be allowable cashable assets - e.g., limit the value of cars owned by recipients and do not allow ownership of major items like boats, trailers, and snowmobiles.

(b) Limit the value of homestead property a person can own without regard to encumbrances.

Comments of DHS: The HEW report indicates that the DHS is not complying with Federal Regulations [45 CFR 233.20 (a) (3) (i) (ii)] which limit the types and values of personal and real property owned by AFDC clients. Because HEW has not yet received court clearance to implement these new regulations, the DHS believes that it would be inappropriate for the State to implement, the HEW recommendations (a+b). Furthermore, the Department questions the recommendations in terms of their cost effectiveness and soundness of administration.

Item 11. Transfer of Property

HEW recommendation : Preclude from eligibility any person who, within one year prior to applying from AFDC, transfers property without just compensation.

Comments of DHS: The Department disagrees with this recommendation by HEW on cost-benefit grounds. In addition, the DHS points out that in the AFDC program there has never been a problem of clients transferring property. Finally, the DHS notes that neither the HEW audit team nor the DHS Quality Control Unit have found persons to divest themselves of property in order to become eligible for AFDC.

Item 12. Lifetime Rights

HEW recommendation : Consider the value of life interest in property in the eligibility and grant determination process.

Comments of DHS: The Department points out that this item is unnecessary, because this policy is already addressed in the Assistance Payments Manual (Chap. II, Sec. C.p.6 and Chap. II, Sec.B.p.1). The DHS further suggests its irritation with the audit team for not recognizing that Maine already implements policies in the area of lifetime rights, which are much broader than those recommended by HEW.

Item 13. Joint Bank Account

HEW recommendation : Consider all the money in the joint bank account of an AFDC recipient or applicant to be available to this recipient or applicant. (When there are withdrawal restrictions, the client should be credited with the amount he or she is entitled to withdraw.)

Comments of DHS: The DHS states that this recommendation by HEW, which is cost efficient, does not require new policy, but merely some strengthening of existing policy.

Item 14. Child Care Expenses

HEW recommendations:

(a) Limit the amount an AFDC client can pay for child care.

(b) Require that all day care services be paid as "vendor" payments.

(c) Discontinue the deduction of day care expenses from earned income.

Comments of DHS:

The Department has found that very few AFDC parents have paid more than the usual community rate for child care. To impose a ceiling on the amount a client can pay for child care (a) would appear to infringe on the parents' right to negotiate payments. Also, the DHS points out that under Fair Labor Standards Act, parents who employ non-relatives in the home are liable for payment of the minimum wage and the babysitter's Social Security.

With respect to vendor payments (b), the DHS states that the implementation of such a recommendation could possibly violate the parents' right to manage their own money, and could easily result in overpayment to the clients (e.g., if a mother is ill and makes no payments for child care for a week, the DHS would have automatically sent out a check to the mother without subtracting the payments).

With respect to discontinuing the deduction of day care expenses from earned income (c), the implementation of such a recommendation could act as a disincentive to work and could be in conflict with HEW's regulations. The DHS points out that 45 CFR, Section 233.20 (a) (33) (IV) (a) states that "income equal to expenses reasonably attributable to the earnings of income will not be included as income".

Item 15. Income Tax Withholding

HEW recommendations:

(a) Make sure that AFDC clients take the correct number of legal exemptions.

(b) Consider the income and property of stepparents or non-needy responsible relatives to be available to dependent children if the stepparents or relatives claim the children as tax exemptions. (Do not grant public assistance to a child who is claimed as an exemption by stepparents or relatives.)

Comments of DHS:

The Department agrees that it should determine withholding on the basis of the number of legal dependents (a) through the use of IRS tables contained in Circular E, Employers Tax Guide.

The Department does not agree that the income and property of stepparents should be available to dependent children (b). State law does not hold stepparents liable for the support of stepchildren. In addition Federal Regulations [45 CFR 233.20 (a) (2) (2) and 45 CFR 233.90 (a)] prohibit the assessing of tax income and assets of persons who are not included in the assistance plan. This recommendation by HEW would be feasible only if a State law were passed which would make all stepparents or other non-needy responsible relatives liable for the support of dependent children.

Item 16. Income Averaging - Seasonal and/or Irregular Income

HEW recommendations:

(a) For persons considered to be "regularly employed" (e.g., teachers), require that income received during 8 months of any 12 month period in excess of the recognized maximum need be averaged over the full 12 months or for as long as it would support the family based on the State's standard of need.

(b) Cross-check statements of the previous year's annual income with the IRS and/or the Maine Bureau of Taxation.

Comments of DHS:

The Department believes that the implementation of policy similar to that recommended by HEW (a) would be cost efficient. The DHS recommends that income be recalculated at least every six months and, in situations involving seasonal and irregular income, that such income be reviewed at least every three months. The DHS is checking with the regional HEW office to make sure that this policy would be in conformity with a newly proposed Federal Regulation (Vol. 40, No. 161, 8/19/75). The Department remarks that the cross-checking of reported income (b) with records in the Bureau of Taxation might require statutory change.

B. ERROR AND FRAUD IN THE AFDC PROGRAM

Item 1. Application Form and Process

HEW recommendations:

(a) Require complete verification of all facts supporting eligibility.

(b) Assume a rebuttable presumption of willful withholding of information if a client fails to report changes in circumstances within 10 days.

(c) Amend the AFDC application form, e.g., include various certifications.

(d) Require home visits and office visits at both initial determination and redetermination of eligibility.

(e) Consolidate AFDC and Food Stamps applications.

(f) Increase the size of the assistance payments staff by transferring social services staff and upgrade the qualifications of assistance payments personnel.

Comments of DHS:

In terms of both cost efficiency and soundness of administration, the Department of Human Services (DHS) agrees with a recommendation of more verification of eligibility (a) and suggests that the AFDC application form should be a joint client-worker form. It is evident that the DHS recognized the importance of and acted on such a recommendation long before the HEW audit. For example, during the Regular Session of the 107th Legislature, the Department requested and received additional assistance payments staff.

The DHS also agrees with the HEW's recommendations that certifications should be included on the application form (c) and that assistance payments workers should receive the same salaries as social workers (f).

With respect to the AFDC and Food Stamps applications (e), the Department attempted to consolidate these when the Food Stamp program was implemented, but found that consolidation was not cost beneficial and created confusion. The DHS feels that the idea of consolidation needs further study.

The Department disagrees with the HEW recommendations which would require home visits and office visits at both initial determination and redetermination of eligibility (d), the transfer of social service personnel to the assistance payments function (f), and the upgrading of qualifications of the assistance payments staff (f). The DHS questions the cost benefit of automatic home visits and office visits, and suggests that such a state requirement might violate the Federal requirement of prompt action in determining eligibility. With respect to assistance payments workers, the DHS maintains that because there is no overstaffing of Social Services, social service personnel should not be transferred to Assistance Payments. Further, the DHS believes that the present qualifications for Assistance Payments staff are sufficient.

Most importantly, the Department disagrees with the HEW recommendation which states that a recipient's failure to report changes in circumstances which would affect his or her grant within 10 days should raise a rebuttable presumption of willful withholding of information (b). The DHS states that there is no legal basis for this recommendation in either the Social Security Act or Federal Regulations. Furthermore, the DHS does not believe such a requirement would be cost beneficial. Finally, the DHS points out that often there are valid reasons for not reporting changes within 10 days.

Item 2. Fraud Investigation

HEW recommendations:

(a) Transfer the function of external fraud investigation from the Audit Department to the Attorney General's Office.

(b) Create 5-8 new positions in the AG's Office with the sole responsibility for investigating and prosecuting welfare fraud.

(c) Require the AG's Office to make monthly reports to the Governor and the Legislature.

Comments of DHS: The Department shares the concern of the HEW audit team that no prosecutions have taken place since the Fraud Investigation Division was established over two years ago.

Comments of the AG's Office: The AG's Office believes that because it has not had the function of investigating fraud, its capability to prosecute cases of welfare fraud has been diminished. The AG's Office would like to carry out the investigation of fraud (a) and would need 5 additional staff positions to do so (i.e., 3 investigators and 2 attorneys) (b). Funding would be necessary for these positions. Reporting (d) on a quarterly basis to the Governor and Legislature would be acceptable to the Attorney General.

Legislation would be needed to enable the AG's Office to have access to State records so that it could more effectively carry out its functions of investigation and prosecution.

Comments of the FID: The Fraud Investigation Division (FID) of the Audit Department suggests that an alternative to transferring the function of external fraud investigation to the AG's Office (a) could be to increase the staff and funding of the FID. The FID points out that such an alternative is in line with the recommendations of the Maine Management and Cost Survey Commission. In addition to bolstering up the present investigative unit, the FID suggests that its capability could be enhanced by (1) obtaining law enforcement status through legislation with prosecution being conducted by Assistant Attorney Generals assigned to the Division, or (2) after review by the AG's Office of fraud cases referred by the Division, assigning the cases to the District Attorneys in the regions where the cases originated.

The FID would have no difficulty in reporting to the Governor and Legislature on a monthly basis (d). No new confidentiality of records statutes would be necessary, since the Legislature has already passed legislation giving the FID adequate access to records.

In response to the HEW audit team's statement about the "apparent lack of interest in the vigorous investigation and prosecution of fraud", the FID points out that even though it has only been in existence for three years, it has ranked favorably among other States with respect to obtaining reimbursements, and thus, avoiding the prosecution of many cases of welfare fraud. Moreover, the FID has accomplished this creditable record, even though each investigator currently receives only $55.00 per week for expenses (e.g., travel) to perform his investigative duties.

In noting that often AFDC clients unwittingly commit "fraud", the FID questions whether the function of investigating persons who have merely made errors, should be housed in a prosecutory body.

Item 4. Earnings Clearance

HEW recommendations:

(a) Continue the system of cross-checking earnings reported by AFDC recipients with employee earnings reported to the Maine Employment Security Commission (MESC).

(b) Require each regional office to report within 60 days on discrepancies discovered.

Comments on DHS:

The Department agrees that it should continue a quarterly review of earnings (a) because such review is cost efficient. However, the DHS disagrees that regional offices should report the "thousands" of cases in which discrepancies are discovered. (b) Monitoring can more effectively be accomplished through a system of administrative reviews for local compliance to policy and regulations, quality control reviews, and reviews of fraud referrals.

Item 5. Quality Control

HEW recommendations:

(a) Broaden the quality control (QC) function to cover AFDC, Food Stamps, Medicaid, Social Services, and General Assistance.

(b) Assign additional staff to the QC function.

(c) Make one high level person, reporting directly to the Commissioner, responsible for follow-through and program reporting on all QC action plans.

(d) Develop more specific action plans.

(e) Require the QC Unit to make central verifications (for sample cases selected) on automobiles, VA benefits, income, employment, unemployment insurance, and any other centralized checks.

Comments of DHS:

The Quality Control Unit in the DHS already covers AFDC, Food Stamps, and Medicaid (a). In the area of General Assistance (a), the DHS notes that it is administered locally and that any QC review of it would require statutory authority and 100% State funding. The Department's comment about monitoring of Social Services (a) is included under the discussion on Item 25.[2] The Department would need appropriations to expand the QC staff (b).

The DHS points out that it already has a high level person responsible for all QC correction plans who reports directly to the Commissioner (c). The Deputy Commissioner for Regional Operations not only carries out this QC function, but also serves as a liaison between the regions and the central office bureaus.

The Department agrees with the HEW recommendation to develop more specific action plans (d), but it indicates that it has had difficulty in this area because of staff shortages. The DHS also believes that the recommendation about central verifications (e) deserves further attention.

Item 22. Recipient I.D. Cards/Direct Bank Delivery

HEW recommendations:

(a) Complete the issuance of recipient photo-identification cards within 6 months.

(b) Investigate the feasibility of automated direct bank delivery of monthly AFDC checks.

Comments of DHS: The Department does not consider HEW's recommendation on ID cards (a) to be justifiable from a cost-efficiency standpoint. Further, the DHS feels that the recommendation on direct bank delivery of checks (b) is unnecessary at present, even in urban areas, with respect to lost or stolen welfare checks.

Comments of FID: The Fraud Investigation Division of the Department of Audit suggests that a photo-ID system for AFDC clients (a) might be feasible in certain populated areas in the State.

C. COLLECTING SUPPORT PAYMENTS

Item 3. Absent Parent Support and Paternity

HEW recommendations:

(a) Establish a unit in the Department of Public Safety (DPS) to carry out the functions presently carried out by the Support Enforcement and Location Unit (SELU) in the DHS.

(b) Establish contracts with the District Attorneys to take actions relative to absent parent support and paternity.

(c) Create an automated central registry of absent parents in the DPS to be updated by cross checking with the records of the MESC, Division of Motor Vehicles, the Social Security Administration, etc.

(d) Refer every application for AFDC, in which an absent parent is involved, to support specialists in the District Attorney's Office, and interview every such applicant.

(e) Require AFDC applicants to assign their rights for absent parent support to the State and require the State to take immediate action - make this assignment a condition of eligibility.

(f) Exclude uncooperative caretaker relatives from AFDC grants.

(g) Convert voluntary support agreements by absent parents into court orders and require that these court orders contain a standard clause that requires payment directly to the State.

(h) Create a debt between the absent parent and the State for all welfare payments made to the parent's dependents. Do not allow this debt to be dischargeable through bankruptcy.

Comments on DHS:

The Department points out that prior to the HEW audit statutory changes at both the Federal and State level had been initiated with respect to collecting payments for dependent children from absent parents. The passage of both Title IV-D of the Social Security Act and P.L. 1975, C. 532, renders the majority of the audit team's recommendations irrelevant.

The Department indicates that the following HEW recommendations have already been acted upon as a result of the new legislation: requiring AFDC applicants to assign to the State their rights for absent parent support (e), excluding uncooperative caretaker relatives from AFDC grants (f), converting absent parent support agreements into court orders (g), and creating a debt between the absent parent and the State for all welfare payments made to the parent's dependents (h).

Further, the DHS states that neither the HEW recommendation that the support enforcement function be housed in the DPS (a) nor the recommendation that contracts be established with the District Attorneys to take actions relative to support (b) is cost beneficial.

With respect to the recommendation to create an automated registry (c), the Department is concerned that the HEW audit team did not recognize that the SELU has been cross-checking with the MESC, Division of Motor Vehicles, and the Social Security Administration for years, and that the DHS is in the process of developing automated files for use in such activities.

The Department disagrees that all applications in which an absent parent is involved should be referred to an absent parent support specialist in the District Attorney's Office and that all such applicants should be interviewed (d). For absent parents in medical or penal institutions, such referrals and interviews would not be cost beneficial. Additionally, the designation of an absent parent specialist in the D.A.'s Office (d) would violate Title IV-D of the Social Security Act, which requires that a single State agency determine eligibility and be responsible for securing contributions.

The DHS does agree with a few minor recommendations made by HEW not mentioned above, such as providing District Attorneys with a monthly printout of support cases in arrears, reviewing some of the cases of "unlocatable" absent parents each month, and using available federal financial participation for investigators or absent parent support specialists (the Department already makes use of these federal monies).

With respect to two other recommendations not mentioned above, the DHS states that legislation would be necessary to require all employed absent parents to provide medical insurance to their dependent children if insurance is available at their place of employment and to require the social security number of both parents on all birth certificates issued in Maine.

Comments of the AAG attached to DHS:

Assistant Attorney General attached to the Department of Human Services also pointed out that many of HEW's recommendations under this item have already been addressed by the recently enacted federal and state laws. He also spoke in opposition to establishing the support enforcement unit in the DPS (a), by pointing out that maintaining records in both the DPS and the DHS would result in duplication and additional bureaucratic red tape.

D. ORGANIZATION AND PROCEDURES OF THE DEPARTMENT OF HUMAN SERVICES

Item 17. Incapacity-Separation of Assistance Payments and Social Services

HEW recommendation:

Discontinue the function of social worker in determining eligibility caused by incapacity of parents.

Comments of DHS:

The Department considers this recommendation to be unnecessary and maintains that HEW is wrong in its claim that the DHS is violating 45 CFR 205.102 (6) (3), which provides that the income maintenance function be separate from the social service function. Regulations do allow social workers to carry out specialized income maintenance activities, such as determining eligibility caused by medical incapacity of parents. The social workers which carry out these activities in the Department are supervised by the Income Maintenance Unit, not by the Social Services Unit.

Item 18. Department of Human Services Organization

HEW recommendations:

(a) Establish 5 new Deputy Commissioner positions, appointed by the Commissioner, for Administration, Health, Operations Human Services, and Benefits Payments; group like functions together.

(b) Delete the statutory separation of services to the elderly and to children.

(c) Place internal audit, legal, and public information functions in the Commissioner's Office.

(d) Double the number of assistance payments workers to at least 100.

Comments of DHS:

The DHS remarks that its structure was already organized along the lines recommended by HEW prior to the release of the HEW report and that it is in the process of grouping like functions together (a). The recommendation to delete the statutory separation of services to the elderly and to children (b) would require legislation and is not a priority of the Department. The DHS finds no cost benefit to the recommendation of placing the internal audit, legal, and public information functions in the Commissioner's office (c).

With respect to new assistance payments staff (d) the 107th Legislature gave the Bureau of Social Welfare 70 new staff members, including 43 assistance payments workers.

Item 19. Policy Adoption Procedures

HEW recommendations:

(a) Create a more formalized policy adoption system, which provides for review by staff and fiscal officers.

(b) Ensure that all policy matters are reviewed and personally approved by the Commissioner.

Comments of DHS:

The Department, which believes that these recommendations (a+b) have merit, points out that some of the points raised by HEW have been standard practice for over two years and others for the past few months.

Item 20. Staff Development and Training

HEW recommendations:

(a) Decentralize staff development and training functions to the regional offices.

(b) Develop a comprehensive technical training program in AFDC, medical assistance, food stamps, and social services.

(c) Tie training to the quality control function so that a determination can be made about the extent to which errors result from inadequate training. Develop remedial training programs when necessary.

(d) Evaluate training expenditures in terms of quantifiable results.

(e) Require that certain training programs be a mandatory prerequisite to advancement.

(f) Develop a rotational training program.

Comments of DHS:

The HEW audit team failed to recognize that the DHS has emphasized staff training as a critical need since 1968 (a). A comprehensive technical training program (b), which is being utilized in the training of the newly acquired assistance payments staff, will be evaluated by the DHS in terms of its effectiveness. Noting that Quality Control findings represent only one indication of training needs (c), the Department suggests that supervisory findings and new policies should also be viewed as clues for staff development needs.

The DHS does not agree with HEW that training programs should be mandatory prerequisites to advancement (e). With respect to the HEW recommendations that training expenditures be monitored (d) and a rotational training program be developed (f), the DHS believes that both are worthy of further consideration and development.

Item 21. Potential Conflicts of Interest

HEW recommendations:

(a) Prevent welfare recipients working in the Department from being placed in discretionary positions.

(b) Prevent departmental caseworkers from processing the cases of relatives and from having a financial relationship with AFDC clients whose case they handle.

(c) Preclude supervisory relationships in the Department between relatives by blood or marriage.

Comments of DHS:

The DHS disagrees that welfare recipients should be prevented from holding discretionary positions (a) on the grounds that the implementation of such policy would be discriminatory, would be in conflict with the Department's "career ladder" philosophy, with the Affirmative Action Plan, and with the personnel system, which requires that job applicants be evaluated on the basis of their capability to do the work.

With respect to preventing caseworkers from processing cases of relatives and having financial relationship with clients (b), the DHS agrees that these recommendations should be formally implemented through departmental policy. The prohibition of supervisory relationships between relatives (c) is already addressed sufficiently in Personnel Bulletin 8.7 (July 23, 1975).

Comments of Human Services Council:

The Maine Human Services Council does not agree that AFDC clients should not work in the Department of Human Services (a).

Item 23. Administrative Hearings

HEW recommendation :

Eliminate the provision in the Public Assistance Payments Manual (Chapter 1, Section C, p.1) that requires employees to assist a recipient in "preparing his case".

Comments of DHS:

The Department remarks that the current policy is to inform the client about their rights to a fair hearing and, the procedures for obtaining such a hearing. Any "preparation" of cases for clients is referred to appropriate legal resources.

Comments of Human Services Council:

The Maine Human Services Council believes that social workers should not prepare fair hearings for AFDC clients.

Item 24. Retroactive Payments

HEW recommendation :

Limit the length of time for which retroactive payments may be made.

Comments of DHS:

The Department states that HEW is questioning a policy on authorization of retroactive payments exceeding 12 months. Retroactive payments for 12 months or longer are not made by the DHS unless it is ordered by the court to do so.

Item 25. Quality Control - Social Services

HEW recommendations:

(a) Evaluate the "success rate" of social service programs. (Suggestion: interpret "success" in the delivery of social services as reducing or eliminating dependency on public assistance.)

(b) Make periodic unannounced visits to rpoviders of social services to determine the quality of services being provided.

Comments of DHS:

Within the past four years the Department has evaluated social service programs two times (a). The Department believes that the interpretation of "success" suggested by HEW is inappropriate (a). The DHS is currently near completion of an evaluation plan which will include periodic on-site evaluations of social service providers (b).

APPENDIX IV:

L.D. 2290

(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document **No. 2290**

H. P. 2155 House of Representatives, March 5, 1976

Reported by Mrs. Berube from the Committee on Performance Audit pursuant to H. P. 529 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule 3 pursuant to H.P. 529.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-SIX

AN ACT to Increase the Efficiency of the Investigation and Prosecution of Fraud Against the State.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the investigation and prosecution of fraud perpetrated against the State is currently carried out by several state agencies in a fragmented and inefficient manner; and

Whereas, the efficient investigation and prosecution of all types of fraud against the State is a matter requiring immediate attention; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA §§ 200-C and 200-D are enacted to read:

§ 200-C. State Fraud Division

1. Establishment. The Attorney General is authorized to create a State Fraud Division, hereinafter referred to in this section as the "division," within the Department of the Attorney General.

2. Purpose. The purpose of the division shall be to investigate and prosecute, including actions for civil recovery, any act of fraud or attempted fraud perpetrated against the State or any department, agency or commission thereof. The division shall not have primary responsibility for the investigation of any act of fraud or attempted fraud or incident of commingling or misapplication of funds pursuant to Title 22, section 13, subsection 2.

3. Cooperation, information. All agencies of the State and municipal governments shall cooperate fully with the division, rendering any assistance requested by the division. Every head of a department, bureau, division, commission or any other unit of State Government shall report in writing to the division any suspected act of fraud or attempted fraud or violation of any law in connection with funds of the State. Any such act or violation involving funds administered by the Department of Human Services shall be reported pursuant to Title 22, section 13, subsection 3.

All information in the files of any department, commission or agency of State Government, regardless of any statute relating to confidentiality, shall be available to the division for use in connection with its official purpose.

§ 200-D. Complaints and investigative records confidential

Notwithstanding any other provision of law, all complaints and investigative records of the Department of the Attorney General shall be and are declared to be confidential.

Sec. 2. 5 MRSA § 242-A, as enacted by P&SL 1971, c. 179, § J, § 1, and as amended, is repealed.

Sec. 3. 22 MRSA § 13 is enacted to read:

§ 13. Human Services Fraud Investigation Unit

1. Establishment; composition. The Commissioner of Human Services is authorized to create within the department a Human Services Fraud Investigation Unit, hereinafter referred to in this section as the "unit." The commissioner is authorized to employ and assign to the unit such employees as he deems appropriate.

2. Purpose. The purpose of the unit shall be to investigate reported acts of fraud or attempted fraud or incidents of commingling or misapplication of funds in connection with, but not limited to, the requesting, obtaining, receiving, withholding, recording, reporting, expending or handling of funds administered by the department. The unit shall investigate such reported acts or incidents involving, but not limited to, recipients, providers and vendors receiving or applying for services or funds administered by the department.

3. Cooperation; information. All agencies of the State and municipal governments shall cooperate fully with the unit, rendering any assistance requested by the unit. Every head of a department, bureau, division, commission or any other unit of State Government shall report in writing to the unit all information concerning any suspected incident of fraud or attempted fraud or violation of any law in connection with funds administered by the department.

4. Violation of law; action. Whenever the unit determines that a fraud, attempted fraud or a violation of law in connection with funds administered

STATEMENT OF FACT

The purpose of this Act is to improve the efficiency of the investigation and prosecution of acts of fraud perpetrated against the State.

To accomplish this purpose, the Act makes the following changes:

1. The Fraud Investigation Division, Department of Audit, is dismantled.

2. Three of the positions in the Fraud Investigation Division are transferred to the Department of the Attorney General to enable this Department to investigate, as well as prosecute, suspected acts of fraud against the State.

3. The remaining one position in the Fraud Investigation Division is transferred to the Department of Human Services to enable this department to investigate acts of fraud involving recipients, providers and vendors who receive or apply for funds administered by the Department.

This Act should increase the efficiency with which suspected acts of fraud are handled, because it reduces the fragmentation present in the existing system.

APPENDIX V :

L.D. 2252

FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document **No. 2252**

H. P. 2093 House of Representatives, February 25, 1976

Reported by Mrs. Berube from Committee on Performance Audit pursuant to H. P. 529 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule 3, pursuant to H. P. 529.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-SIX

AN ACT to Require an Annual Ad'ustment in the Standard of Need for Families Receiving Aid to Dependent Children.

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

Sec. 1. 22 MRSA § 3759 is enacted to read:

§ 3759. Standard of need

1. Adjustments in standard of need. On the date this section becomes effective, and on July 1st of each year thereafter, the department shall adjust the standard of need for families receiving aid to dependent children to equal the most recent lower budget level for families of varying sizes as computed for Portland, Maine, by the United States Department of Labor, Bureau of Labor Statistics.

2. Payments. No family receiving aid to dependent children shall receive a payment less than the amount it received or would have received effective October 1, 1975, unless:

A. Such payment has to be reduced because of changes in federal laws or regulations or changes in the circumstances of the family; or

B. The Legislature has approved a decrease in payments to all families receiving aid to dependent children.

Sec. 2. P&SL 1975, c. 78, § 18, that part under the caption "Human Services, Department of Health and Welfare, Aid to Families with Dependent Children," last ¶ relating to "All Other" is repealed as follows:

~~To the extent the Department may utilize a rateable reduction of budget standard to determine payments to AFDC recipients the percentage once established shall not be decreased without prior legislative approval.~~

LEGISLATIVE DOCUMENT No. 2252

STATEMENT OF FACT

This Act requires the Department of Human Services to adjust annually the standard of need for families receiving aid to dependent children. This annual adjustment will result in a more accurate reflection of the gap between the dollar amount AFDC clients actually receive and the dollar amount they need to live in minimum decency and health.

In addition, the Act provides that the AFDC payment levels in effect on October 1, 1975, cannot be reduced without legislative approval.

Chapter 78 of the Private and Special Laws of 1975 provides that if the department makes AFDC payments which are rateably reduced, the department cannot reduce the percentage of the standard of need which is paid to AFDC clients "without prior legislative approval." This Act repeals this language in Chapter 78 for the following reasons:

(1) Annual adjustments in the standard of need will result in increases in the standard of need;

(2) Under Chapter 78, funding the existing percentage of an increased standard of need would require additional state dollars, unless the Legislature approves a decrease in the percentage; and

(3) By deleting the above language in Chapter 78, the department will not need legislative approval to decrease the percentage of the standard of need it pays to AFDC clients.

This Act is based on the findings of the Committee on Performance Audit with respect to H. P. 529, a study of the Aid to Families with Dependent Children Program.