

MAINE STATE LEGISLATURE

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Review of

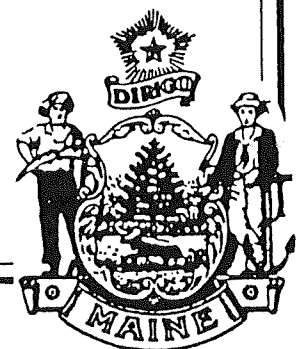
DEPARTMENT OF MENTAL HEALTH & MENTAL RETARDATION
SACO RIVER CORRIDOR COMMISSION
ACUPUNCTURE LICENSING BOARD
BOARD OF COMMERCIAL DRIVER EDUCATION
BOARD OF LICENSING OF AUCTIONEERS
BOARD OF LICENSING OF DIETETIC PRACTICE
ADVISORY BOARD FOR THE LICENSING OF TAXIDERMISTS

Joint Standing Committee

on

Audit and Program Review

1994 - 1995



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

January 11, 1995

The Honorable Jane A. Amero, Chair
The Honorable Elizabeth H. Mitchell, Vice Chair
Members of the Legislative Council

Pursuant to 3 MRSA §925-A sub-§2, we are submitting to the 117th Legislature the results of our reviews of the following agencies of State government:

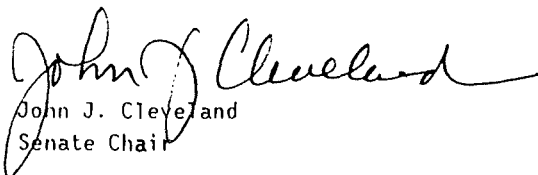
**Department of Mental Health and Mental Retardation;
Saco River Corridor Commission;
Board of Commercial Driver Education;
Acupuncture Licensing Board;
Board of Licensing of Auctioneers;
Board of Licensing of Dietetic Practice; and
Advisory Board for the Licensing of Taxidermists.**

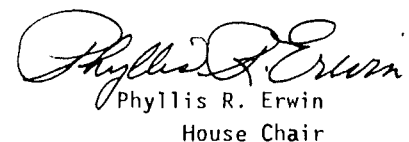
We have examined and pursued many issues of interest to the Legislature and to the taxpayers, for instance:

- the State's progress and approach to getting out of the business of centrally providing mental health and mental retardation services and moving towards a decentralized community-based service delivery system;
- consolidating government regulation of driving education under one entity;
- the cost, effectiveness, and quality of government regulation of certain professionals; and
- the maintenance of drinking water quality, the prevention of deterioration of water supplies, and the regulation of land development in southern Maine.

We acknowledge and thank the three members who served with us as adjunct members from other Committees of the Legislature: Representatives Sharon Treat and Michael Fitzpatrick from the Committee on Human Resources and Representative Marc Vigue from the Committee on Business Legislation. Their expertise enriched and strengthened our review process.

Sincerely,


John J. Cleveland
Senate Chair


Phyllis R. Erwin
House Chair

cc. Sarah C. Tubbesing, Executive Director, Legislative Council



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Committee Organization

MEMBERS:

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Senator M. Ida Luther
Senator Charles M. Begley
Representative Phyllis R. Erwin, Chair
Representative Beverly C. Daggett
Representative George A. Townsend
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Representative Edward L. Dexter

ADJUNCT MEMBERS:

Representative Marc J. Vigue
Joint Standing Committee on Business
Legislation
Representative Sharon Anglin Treat
Joint Select Committee on Human
Resources
Representative Michael Fitzpatrick
Joint Select Committee on Human
Resources

AGENCIES REVIEWED:

- Department of Mental Health and Mental Retardation;
- Saco River Corridor Commission;
- Acupuncture Licensing Board;
- Board of Commercial Driver Education;
- Board of Licensing of Auctioneers;
- Board of Licensing of Dietetic Practice; and
- Advisory Board for the Licensing of Taxidermists;

Summary of Recommendations

1994 - 1995

DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

I. INTRODUCTION:

Over the course of 15 meetings, the Committee received comments from many people with an interest or stake in Maine's mental health and mental retardation service delivery system and reviewed volumes of information from the Department and others.

Taken together, the comments paint a picture of a Department struggling to find its direction. The Department is beleaguered from all sides: its constituents, all three branches of government, private hospitals, towns, counties - few are satisfied with the Department's performance. At the moment, the Department is in contempt of the AMHI consent decree, is laboring to meet the demands of the Pineland Consent Decree, and has recently settled the so-called "Portland" law suit citing it for failure to provide adequate services in the community for people needing mental health or mental retardation services.

Should we be satisfied with the status quo and the Department's assertions that it is doing the best it can given the circumstances and scarcity of resources? The Committee concludes that the answer is no. Despite the Department's best efforts and good intentions, the Department's efforts are not moving Maine's system of services for people with mental illness and mental retardation where it needs to go.

The centerpiece of the Committee's conclusions is the need for the Department to move away from the existing centralized and regulated structure in which it operates and toward what has been called "public entrepreneurial management"¹.

¹ Reinventing Government. David Osborne. Ted Gaebler. pg. 4]

"Public entrepreneurial management" entails four critical features:

- a leader capable of articulating a vision and a new meaning of innovation and excellence for the Department;
- decentralization of decision-making authority;
- an increase in individual personal responsibility and stake in project outcomes; and
- a reduction in rigid, detailed oversight structures.

The Committee is unanimous in concluding the following:

1. The Department is deficient in embracing or articulating any particular vision. Therefore, no Common Vision is available to inform, motivate, or inspire Departmental staff, service providers, the Legislature, the public, or constituents.

2. The centralized and regulation-driven approach employed by the Department is left-over from the days of centralized services which are no longer appropriate in moving the Department to a decentralized mode of operation.

"Fifty years ago centralized institutions were indispensable. Information technologies were primitive, communication between different locations was slow, and the public work force was relatively uneducated. We had little alternative but to bring all our public health employees together in one organization, all our bank regulators together in one or two huge institutions, so information could be gathered and order dispensed efficiently. There was plenty of time for information to flow up the chain of command and decisions to flow back down.

But today, information is virtually limitless, communication between remote locations is instantaneous, many public employees are well educated, and conditions change with blinding speed. There is no time to wait for information to go up the chain of command and decisions to come down."

[Osborne and Gaebler, Reinventing Government pg. 250-251]

3. The Department must change course if it is to achieve the ultimate goals which it itself advocates and which we too endorse.

The Committee's recommendations are designed to suggest the parameters of that new approach and to serve as a guide to the leadership of the Department to put into motion the essence, if not the substance, of the Committee's conclusions.

II. COMMITTEE RECOMMENDATIONS:

ADMINISTRATIVE 1. Articulate a Common Vision of the future to serve as a succinct Statement of Mission for the Department of Mental Health and Mental Retardation.

The Committee has discovered, during the course of its review, that the Department's current mission and challenge seems to revolve around two nodes:

Downsizing of the two State Hospitals;

with a proportional increased reliance on

Service delivery through a decentralized community-based system

And yet, the Committee concludes that the Department has not yet communicated the current challenge effectively. As a result, the Committee finds that the Department:

- operates with little formal overlap among the three spheres of Mental Health, Mental Retardation, and Children with Special Needs;
- must effectively marshal its limited resources to work in concert to achieve the goal;
- must galvanize public and Legislative opinion to assist the Department in meeting its goal; and

- must focus its efforts and resources to engage community service providers, enlist the creative support of Departmental staff and community service providers, and galvanize DMHMR staff to proceed with vigor toward the higher goal of Service, rather than fixed on merely accomplishing the daily routine of business.

Accordingly,

ADMINISTRATIVE 2.

The Committee recommends that the Department clearly articulate a Plan by which to achieve the Department's mission by preparing a report spanning a prospective 6 year time period.

The Committee directs the Department to develop this comprehensive Management and Implementation plan to achieve the Department's mission, concentrating on

- downsizing and replacing AMHI and BMHI; and
- establishing a comprehensive community based Mental Health and Mental Retardation Service delivery system which is consumer driven.

The plan must be designed to be fully implemented within six years and include implementation steps to be accomplished each year of the six year plan. The plan must also be updated annually to reflect implementation steps completed and implementation steps yet to be completed in each of the remaining years.

The first draft of the report must be submitted to the Committee on Human Resources by January 15, 1996.

Since the Committee considers consumers to be integral to an effective planning process, the Committee intends the Department to work collaboratively with consumers and service providers in order to:

- represent the long-term vision, values, and needs of the people of Maine;
- identify where the Department is now and where it needs to go;
- integrate service delivery to all citizens of Maine who receive or have a need for mental health or mental retardation services;
- cross departmental lines and integrate mental health and mental retardation services delivered by the Departments of Human Services, Education, and Corrections;
- identify means by which consumers and service providers can participate meaningfully in the development of services;
- include pre-school and school-age children in the Department's plan and vision for the future;
- encourage entrepreneurial activity by providers;
- replace the current centralized and regulation driven management structure with public and private partnerships which encourage creativity in meeting consumer needs, and
- emphasize outcome based methods of oversight and management.

In order to accomplish this recommendation, the leadership of the Department must:

- raise the vision of the agency away from daily routine and marshal its resources to focus on the larger goal; and
- skillfully address the questions of:

**Where are we going?
What is our destination?
How do we use our energies to get there?**

The report must also include a **Plan of Action and Implementation**. The Committee intends this Plan to be achievable, appropriate, well-thought out, extremely specific and to include, at a minimum:

- the goal to be achieved;
- the actions to be taken to achieve each goal;
- an identification of a party who will be responsible for carrying out the actions to achieve the goal;
- the time schedule and benchmarks for achieving the goal;
- the resources needed to complete each goal;
- the regions of the State where services are needed;
- the array of resources needed to fulfill the unmet need, particularly detailing the cost;
- the Department's priority to meet the unmet need for services;
- an assignment of responsibility for coordinated action to achieve the goals by the Legislature, the Executive Branch, the Judicial Branch, community agencies, consumers, hospitals, and any other relevant interested parties; and
- a target date for completion for each phase or goal of the Implementation Plan.

ADMINISTRATIVE 3. Direct the Department to submit a plan by January 15, 1996 to the Human Resources Committee for the phased-in construction of a new State-operated hospital, consisting of two campuses, to replace AMHI and BMHI. The plan should accomplish the construction of the first campus by December 1997 and for the second campus by December 2000. In addition to an implementation schedule, the plan must include recommended sources of funding and include a determination/recommendation on the most appropriate use or disposition of the old facilities.

In the aftermath of Judge Chandler's finding of contempt, no question remains regarding the closing of AMHI and BMHI and the need to maintain a state hospital only for several specific purposes. The Committee concludes that these specialized purposes for which a State-run facility will continue to be needed, should and could be done in a facility other than the two current State hospitals.

Administrative recommendation #3 is intended to be consistent with the Committee's recommendation to develop a six year comprehensive management plan to move away from a centralized service delivery system to a community based system.

ADMINISTRATIVE 4. Direct the Department to comply with the Consent Decree's directive to develop an Individualized Support Plan [ISP] for Class Members in two-phases.

The Committee intends that the Department will develop an Individualized Support Plan [ISP], as directed by the Consent Decree, for the 1200 class members of the AMHI consent decree whose whereabouts are currently known and who desire an ISP developed on their behalf, by June 30, 1995. Then, the

Department should make every reasonable effort to locate the balance of the 3200 class members and develop an Individualized Support Plan [ISP] by June 30, 1996 for all those located and who desire to have an ISP developed on their behalf. Report to the Committee on Human Resources by June 1, 1995 regarding the status of this effort.

ADMINISTRATIVE 5. Direct the Department to replace the centralized and regulation-driven relationship it maintains over community providers and adopt a style designed to work in partnership with community providers.

The Department must overhaul its approach toward community providers and work with providers as allies, rather than as adversaries. The new approach should be distinguished by:

- unburdening providers from regulatory and oversight requirements not directly connected to the well-being of their clients;
- creating a climate conducive to an entrepreneurial approach by the providers and by Departmental staff;
- maintaining the Department's role as protector of the public's interest by expending limited state and community resources solely for the purpose of maximizing quality service for people in need of mental health or mental retardation services; and
- resolving conflicts in various rules imposed on providers.

"The word government is from a Greek word, which means "to steer". The job of government is to steer, not to row the boat. Delivering services is rowing, and government is not very good at rowing." [E.S. Savas]

The authors of "Reinventing Government" elaborate on the "steering" vs. "rowing" metaphor by pointing out that:

"Steering requires people who see the entire universe of issues and possibilities and can balance competing demands for resources. Rowing requires people who focus intently on one mission and perform it well. Steering organizations need to find the best methods to achieve their goals. Rowing organizations tend to defend "their" method at all costs." [pg. 35]

The Committee intends the Department to serve as skilled pilots who steer and to leave most of the rowing to service providers in the community.

ADMINISTRATIVE 6. Reconfigure DMHMR's contracting system to ensure that each provider is assigned only one Contract Officer, regardless of the number of DMHMR contracts administered by the provider.

The Committee's intent is to reduce the administrative burden of Contract Administration to both the Department and the community service provider, as well as to enhance the support and service available to the community provider from the Department.

In accordance with the Department's outcome of working in partnership with the community, and of each Departmental staff person having a personal stake in contributing to the outcome of partnership, the Contract Officers should be empowered to go beyond merely ensuring compliance with bureaucratic details, but to facilitate the delivery of services by helping the community provider solve problems and by initiating constructive improvements for a more productive working relationship.

STATUTORY 7. Require most service contracts between the Department and community service providers to span a minimum period of 3 years. Stagger the implementation of this 3 year approach so that all contracts will not terminate in the same year.

Currently, the Department contracts for most services with community agencies on a one, and occasionally a two year, basis. To reduce administrative costs both for the Department and for the community service provider, the Committee recommends that the Department contract for service delivery for a minimum period of three years, including the inception of new Performance-Based Contracts. [Single year projects by necessity or design are of course excepted from this provision.] The Committee intends this recommendation to facilitate planning, increase predictability, and reduce chaos evident in the current contracting process. In making this recommendation, the Committee recognizes that contracts arranged for three years will have to account for the effects of the State's biennial budgeting process, much as long-term leases do now.

STATUTORY 8. Amend the periodic contract re-bidding process to retain its benefit but reduce unnecessary expenditure of time, effort, and money.

Current law requires all contracts with the Department over \$500,000 to be re-bid every 8 years, regardless of circumstances. In reviewing this process, the Committee found that, in some instances, no bidder other than the agency which had been providing the contract historically, submitted a re-bid for the contract. Nevertheless, the law makes no provision for cases in which no other bidder emerges and requires the historical bidder to complete every aspect of the re-bidding process. Even though the Committee supports the intent of the re-bidding process to get the highest quality service possible and to allow all interested parties to bid, the Committee is concerned about the substantial cost imposed on lone bidders.

Therefore, the Committee proposes to amend the re-bidding process as follows:

- 1) Require the Department to announce the re-bidding of a contract with a lead time of one year;
- 2) Require all interested parties to submit a Notice of Intent to bid, as a requirement to win the opportunity of submitting a formal bid. The "notice of intent" must fulfill certain minimal requirements, specified by

Departmental rule, which provides a strong indication of the bidder's competence and ability to comply with the RFP's requirements;

- 3) Require the Department to hold an informational meeting at which all interested parties are invited to acquire more information about the RFP; i.e. a meeting more informational and broad-based than the current Departmental "bidders' conference";
- 4) if only one service provider ultimately submits a Notice of Intent to bid during the year lead-in period which meets the initial competence measures, then the Department must enter into a Negotiated Contract with that bidder. The process employed for a Negotiated Contract is abbreviated from the more lengthy and costly process necessary when two or more bidders are involved. As is currently the case, the Department is not compelled to accept any contract as negotiated. The State retains the right to reject any and all bids and negotiated contracts.

ADMINISTRATIVE 9. Recommend that the Department encourage community service providers to interview and consider hiring displaced state employees as service provision shifts from state institutions to community providers.

In this report, the Committee has recognized and endorsed the State's and Department's intent to get out of the business of directly providing mental health services in favor of building a community-based service delivery system. Accordingly, many jobs now held by State employees working in State facilities will no longer be necessary at the State level. However, most of these jobs will continue to be necessary in the private sector as part of the new community-based service delivery system. The Committee recommends that the Department encourage community service providers to interview and consider hiring displaced state employees as service provision shifts from state institutions to community providers.

AUDIT

As part of its review, the Committee also requested the State Auditor to perform an audit of the Department of Mental Health and Mental Retardation for the two-year period ending June 30, 1994.

The Committee's request was prompted by its interest in ensuring that the Department's accounting and billing procedures are adequate and to ensure that all services rendered are billed properly and fully to the appropriate responsible parties, all reimbursable expenses are identified and billed, accounts receivable are collected, and that the General Fund is reimbursed for all eligible expenditures. Accordingly, the Committee's inquiry included the following specifics:

- the Department's success in re-submitting initially rejected Medicaid claims to obtain reimbursement to the General Fund;
- whether all reimbursable ancillary services have been identified and are being billed to Medicaid;
- the Department's success in billing responsible parties for commercial accounts at AMHI;
- the Department's policy regarding Reimbursement Specialists unilaterally adjusting or writing off accounts without supervisory review;
- the diligence of the Department in determining a responsible party's ability to pay for care and treatment with personal assets before turning to government resources and to comply with statutory directive;
- billing problems resulting from inadequate confirmation procedures for accounts receivable balances;
- the adequacy of the computer systems and equipment used for accounting and billing at AMHI, Pineland, and the Division of Reimbursement;
- auditing and compliance of the Department's subrecipients with federal and state controls; and
- the Department's handling of Representative Payee accounts.

The Committee has reviewed the four categories of findings made by the State Auditor in his report to the Committee on October 11, 1994. The findings of the State Auditor appear below in *italic* type followed by the Committee's subsequent recommendations.

A. Billing Procedures for Patient Care and Treatment

DMHMR has no formal written policies to determine patient charges for non-Medicaid billing

ADMINISTRATIVE 10. The Committee recommends that the DMHMR Reimbursement Division initiate formal policies for reimbursement specialists to follow in order to determine patient charges consistently.

Medicaid billings are prepared and submitted without supervisory review.

ADMINISTRATIVE 11. The Committee recommends that the department instruct or supervise personnel to review and approve all Medicaid billings before they are sent out.

The billing processes at the DMHMR Reimbursement Office are not adequately automated

ADMINISTRATIVE 12. The Committee recommends that DMHMR establish a firm date for the vendor, The Public Consulting Group, to complete the automation. The Committee further recommends that all Medicaid claims not currently billed electronically be automated so that they can be completed more efficiently.

The commercial accounts receivable balances at AMHI are over a year old

ADMINISTRATIVE 13. The Committee recommends that the DMHMR Reimbursement Office write off any accounts receivable balances considered uncollectible. There are no current accounts receivable because the DMHMR Reimbursement Office has successfully collected from commercial accounts any payments that are current and due.

B. Subrecipient Monitoring and Audit

Incomplete data is used for subrecipient audits/Audits do not comply with requirements of the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP)

ADMINISTRATIVE 14. The Committee recommends that, before scheduling audits, the division obtain complete subrecipient revenue information.

An accounts receivable is not established/There are no collection procedures for surplus balances due the state

-
- ADMINISTRATIVE 15. The Committee recommends that the DMHMR:
- Establish accounts receivable on the records of the Controller once the department determines the amounts due to the state;
 - Implement the proposed policy of negotiating surplus funds within a specific period;
 - Document the basis for allowing subrecipients to retain surplus balances;
 - Establish collection procedures to ensure prompt receipt of all monies due to the state; and
 - Reduce grant payments to those subrecipients that do not comply with the resolution requirements.
-

Questioned costs are not fully developed

-
- ADMINISTRATIVE 16. The Committee recommends that when the DMHMR Division of Audit develops questioned costs it isolate the portion of those costs related to federal financial assistance and identify them by their CFDA number(s).
-

There is inadequate follow up on subrecipients' corrective actions

ADMINISTRATIVE 17. The Committee recommends that DMHMR maintain a written record of the resolution status of audit findings and questioned costs. The Committee also recommends that it require subrecipients to report in writing all planned and completed corrective actions on findings and questioned costs.

There is no requirement for allowing access to records

ADMINISTRATIVE 18. The Committee recommends that the department include language in standard subrecipient contracts which permits independent auditors to have access to subrecipients' records and financial statements.

There are no established policies requiring independence of audit staff/ There are no established policies on disclosing confidential information

ADMINISTRATIVE 19. The Committee recommends that the DMHMR Division of Audit develop an independence certification form to be signed by each auditor, and establish a written policy requiring each auditor to disclose any personal or external impairments to independence in all matters related to the audit work. The Committee further recommends that the division establish a written confidentiality statement to be signed by all auditors indicating their understanding of a conformance to the confidentiality policy.

The DMHMR Division of Audit has not had an external quality control review

ADMINISTRATIVE 20. The Committee recommends that the DMHMR Division of Audit obtain an external quality control review.

C. Representative Payee Accounts

Representative Payee accounts now appear in a central record of funds and are recorded officially with the State Controller.

Representative Payee deposits are now insured by the FDIC to a level of \$100,000 per payee holder.

D. Federal and State audit requirements not satisfied

1. *Department of Mental Health and Mental Retardation audits are not conducted in accordance with Government Auditing Standards. Audit reports do not comply with generally accepted governmental auditing standards. The reports do not refer to authoritative guidance, do not use consistent and correct terminology, and do not clearly identify the work performed or the subject on which an opinion is expressed. Additionally, auditors have not satisfied the qualifications standards. Some have not met continuing education requirements; Department of Mental Health and Mental Retardation has not participated in an external quality control review program; and has not used due professional care to ensure that all applicable standards are followed.*
2. *Audits done by state agencies address only the funds provided by those state agencies. They do not address funds provided by other state agencies or other funds available to the subrecipient. The audits are not*

organization-wide. They do not include financial opinions on the organizations' financial statements. Therefore they do not satisfy OMB Circulars A-128 and A-133 and they do not satisfy the single audit requirement of MAAP.

3. *Audit requirements of federal funds less than \$100,000 may be satisfied by program specific audits. If this option is selected, auditors must issue three reports for each federal program: an opinion on a program's financial statements, a report on a program's internal controls, and a report on a program's compliance with laws and regulations. This option is generally cost effective if an agency has only a single program. Department of Mental Health and Mental Retardation prepared audit reports also do not comply with this option. Audit reports prepared by the Department of Mental Health and Mental Retardation do not comply with any standard reporting requirements.*

ADMINISTRATIVE

21.

The Committee recommends that DMHMR assess its current audit responsibilities and submit a recommendation to the Joint Standing Committee on Human Resources to revise or repeal the Maine Uniform Accounting and Auditing Practices Act for Community Agencies (MAAP) in order to:

- authorize all subrecipient federal funds to be audited by Independent Public Accountants;
 - reduce DMHMR's audit involvement to a minimal level; i.e. only those audits which are solely in the purview of the Department;
 - bring current MAAP audit coordination provisions in line with current practice and capabilities; and
 - reduce duplication of effort in conducting audits.
-

E. Maine Uniform Accounting and Auditing Practices Act (MAAP)

Maine Uniform Accounting and Auditing Practices Act (MAAP) revisions made by DMHMR are void and have no legal effect

Title 5, chapter 148-B established MAAP which sets forth standard accounting practices and uniform criteria for audits of all state and federal funds provided by the state to community agencies. The Department of Administrative and Financial Services issues a MAAP Manual which outlines rules and policies. During fiscal year 1991 the Department issued three "clarifications" t the MAAP Manual which did not go through the Maine Administrative Procedures Act (APA) process and are, therefore, void and have no legal effect. Although not approved through the APA process, the Departments of Human Services and Mental Health and Mental Retardation have administered the programs using the rules.

According to the Maine Administrative Procedures Act, Title 5, section 8057 rules are void and have no legal effect when the following requirements are not met:

- 1. The agency shall give notice to the industry and may hold a public hearing;*
- 2. The agency shall notify Secretary of state who shall publish notice of each rule-making proceeding; and*
- 3. The agency shall obtain approval by the Attorney General as to form and legality.*

ADMINISTRATIVE 22. The Committee recommends that the Department of Administrative and Financial Services ensure that MAAP revisions are promulgated through the Maine Administrative Procedures Act.

ADMINISTRATIVE 23. The Committee further recommends that the Department of Human Services and the Department of Mental Health and Mental Retardation enforce only those rules that are promulgated through the Maine Administrative Procedures Act.

III. CONCLUSION:

The traditional centralized and regulation driven system used by the Department to deliver Mental Health and Mental Retardation services over the last several decades is outdated and inappropriate for the delivery of services today. Therefore the Committee concludes that the Department must accomplish two primary objectives:

- downsizing the existing state owned mental health and mental retardation facilities and constructing two new regional mental health institutions to deliver core services; and
- developing a decentralized community based service delivery system in partnership with community providers.

The Committee strongly supports the Department's efforts to work in concert with consumers. Now the Department must continue to restructure itself to work in partnership with service providers. The current atmosphere creates an environment that discourages entrepreneurship and innovation due to the emphasis on compliance to the detriment of quality service. In fashioning the new system, the Department must turn its energies to creating a powerful, effective, innovative, and model partnership with the community to provide the kind of mental health and mental retardation service delivery system that Maine people need and deserve.

As part of its transformation, the Department must not only encourage the entrepreneurial spirit in community service providers, but in Departmental staff as well. This will require flattening the hierarchy of decision-making, authorizing line staff to make decisions about their areas of jurisdiction, and holding staff accountable for their decisions, or lack thereof.

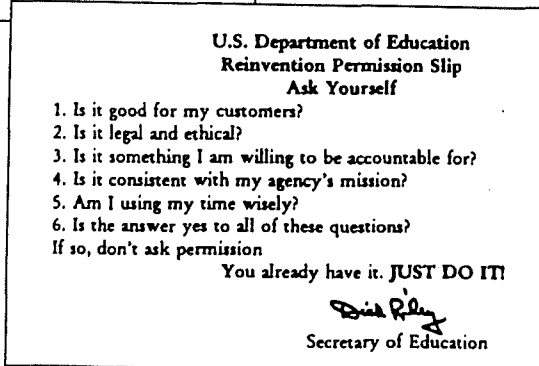
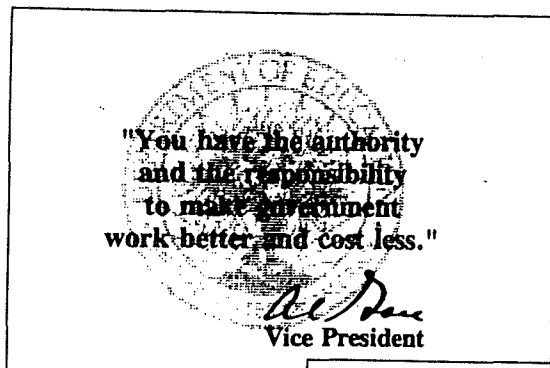
Committee intent in this regard is expressed by Alvin Toffler in his book Anticipatory Democracy who writes:

"the pressure for accelerated decision-making slams up hard against the increased complexity and unfamiliarity of the environment about which the decision must be made. ...Any decision system is ultimately capable of handling only a given 'decision load'. The load gets heavier as needed decisions multiply, grow in complexity, or

speed up. At some point, the decision load is greater than the system can handle. At this point the fuses blow...

"There are essentially two contrasting ways to approach the crushing decisional overload at the center: one way is to attempt to further strengthen the center of government, adding more and yet more politicians, bureaucrats, experts, and computers in the desperate hope of outrunning the acceleration of complexity; the other is to begin reducing the decision load by sharing it with more people, allowing more decisions to be made 'down below' or at the 'periphery' instead of concentrating them at the already stressed and malfunctioning center." [pg.xvii-xviii.]

An example of the kinds of innovations the Committee encourages the Department to consider would be an invention of the U.S. Department of Education



[Creating a Government that Works Better & Costs Less. Status Report. September 1994. Report of the National Performance Review. page 15]

To assure the public trust in Maine's mental health delivery system, the Department must start doing the right things, not just doing things right. We find no fault in the competence, sincerity, and hardwork of the employees of the Department. But the Department must do better. Can the Department do better? Emphatically, yes.

To achieve this goal the leadership of the Department and Executive Branch must recognize the changes that have to be made and take the actions necessary to implement the changes.

The leadership must demonstrate a personal commitment to creating a model system of delivery for mental health and mental retardation services and work with the community to make that vision a reality.

APPENDIX

TESTIMONIAL COMMENTS AND OBSERVATIONS

The Committee has included in its Appendix a sampling of comments and observations presented to it during the course of its 15 meetings on the subject of the Department of Mental Health and Mental Retardation. These comments were made to the Committee by about a dozen providers and many consumers and concerned family members. Accordingly, the Committee recognizes that this select group does not constitute a scientific sampling of the community. However, the Committee's meetings were open and widely advertised throughout the community; these were the comments made to the Committee by people who were willing and able to attend or who submitted comments in writing. The Committee finds these comments sufficiently important to include a selected summary here to inform the reader and to allow the reader to draw his or her own conclusions.

The eight categories into which the comments are clustered reflect our own interpretation of the comments' overall meaning.

1. MICROMANAGEMENT / CENTRALIZED AND REGULATED APPROACH

- The collection of comments below are the unsolicited remarks of service providers in regard to the costs of dealing with the Department and of meeting its administrative demands for contracting and licensing:
 - ✓ "Absolutely killing us;"
 - ✓ "Absurd";
 - ✓ "Out-of-control"
 - ✓ "Irrelevant";
 - ✓ "Feeding on itself";
 - ✓ "Without wisdom";
 - ✓ "An incredible waste of time";
 - ✓ "Outstripping the agency's ability to comply";
 - ✓ "Pushing providers over the edge" and
 - ✓ "A result of lack of leadership".

- "DMHMR's [insistence on] total control over case management services, guardianship services, and advocacy services...[is] a major deterrent to the achievement of quality..."

- "Even if DMHMR contributes only 10% of the agency budget, it expects to exert 100% control over the agency's case management practices. [This degree of control] extinguishes creativity; new ideas are thought of as tricks to cheat the State."
- "My contract with DMHMR requires that DMHMR's staff dictate hiring criteria I must follow but also mandate that DMHMR staff sit in on my hiring interviews." [Committee note: contracts with other service providers apparently include the same provision]
- The contract of one community service provider requires the Director to submit the resumes of staff he is planning to hire to the Department for its approval. Recently, the Executive Director conducted a 3 month search and offered the position to the candidate he felt could do the job that was needed. The Director submitted that person's resume to the Department for what the Director assumed would be a pro-forma approval. To his surprise and consternation, the Department refused to approve the person for hire on the basis that the person's resume lacked evidence of "warm fuzzies" in her coursework. To this day, after extensive effort to gather more information, the Executive Director remains unclear as to what constitutes "warm fuzzies" and why this should be used as a criteria for hiring, or refusing to endorse the hire. Cost to the agency:
 - ✓ loss of the prospective hire, who accepted another job prior to the resolution of the concern;
 - ✓ \$800 in advertising costs;
 - ✓ 3 months in time and interviewing costs lost;
 - ✓ at least 3 more months required to re-fill the position; and
 - ✓ services not delivered by the still-vacant position.
- "Our agency is required to spend thousands of dollars to document to DMHMR that the agency does not comply with ADA regulations - a conclusion that is intuitively obvious."

- A DMHMR employee told an agency director that the employee's job was to "see that you never get sued", presumably by making more and more detailed and restrictive regulations.

2. CONTRACTING

- "It is a rare occurrence if contracts are ever executed prior to the beginning of a contract year....Two [of ours] have still not been completed and the third was signed considerably into the contract year".
- "Our agency had to respond to 6 RFP's in order to maintain its current service structure at level funding...at considerable administrative expense. ...The Department started handing out supplemental funds completely ignoring [the formal RFP] process. It, in essence, seemed to just choose the providers it wanted and fund them."
- "The contract for operation of the Consumer Advisory Board [with DMHMR] has never been signed [in a timely manner]. Correspondence about the contract has been sent to every conceivable address EXCEPT the one [correct] address which is listed on the top of the contract."

3. PARTNERSHIP WITH THE COMMUNITY

- "Planning [is not done in a] spirit of partnership [among] State Government, consumers,...families, and those who provide the services."
- When asked why the Department insists on sending Department staff to sit in on the agency's interview and hiring process, one Executive Director said, "I don't know. I guess they don't trust us."
- "With a \$17 million dollar budget and 500 employees, my agency would have a great deal to offer as a partner [to the Department of Mental Health and Mental Retardation]."
- "People at DMHMR sit behind the desk, talk on the phone, write regulations. They focus on interpretation of the statute, not on getting the job done."

4. DATA-GATHERING

- "One individual at BCSN recently suggested that the home-based service providers would be asked to re-do their FY 94 quarterly statistics to 'try out' a new reporting form being developed by Central Office staff. There is absolutely no rationale for asking programs to re-do statistics that are already a year old..."
- Providers suggest that many of the data gathering requirements have no clear purpose; e.g..
 - ✓ Fiscal reports are required quarterly although providers are told by the Department that no one is available in the Department to review the information or even file it for future reference.
 - ✓ Agencies are required to submit a staff roster to the Department at the end of each month, regardless of whether the agency has experienced any changes in staffing levels.
- One agency reported that it receives \$5,900 from the Department out of the agency's 17 million dollar budget but that meeting the Department's administrative demands requires an "incredible amount of time" and speculated that the administrative cost amounted to 2 to 3 times what the amount of the grant is.

5. UNINTENDED OUTCOMES

- Since FY 91, if agencies are able to operate in such a way as to generate a year-end surplus, the Department "strips" the entire amount of revenue over expenditures away at the end of the year. Prior to 1991, the agencies were able to split any surplus of revenue over expenditure 50%-50%. The Committee finds that this practice serves as a disincentive to save money, discourages an entrepreneurial spirit, and encourages spending all the money so that the Department will not take any away.
- Augusta police recently attempted to gain admission for a man in their custody to AMHI.

The resources available to the police were completely ill-equipped to deal with the emotional, behavioral, and physical disintegration exhibited by the man. The police followed standard procedure by transporting the man to the Kennebec Valley Medical Center. After evaluation, KVMC requested that AMHI admit the man, but AMHI refused to do so. Accordingly, the Kennebec Valley Medical Center had no choice but to admit the man when State resources were not made available.

- "We wanted to add a short-term, intensive, crises oriented counseling component to our emergency shelter for children. DHS pointed out that emergency shelters are not categorized as residential child care facilities and that the type of counseling we wanted to offer can be provided only by a residential child care facility. Therefore, DHS refused to approve our request to add counseling to our emergency shelter. On the other hand, DMHMR insisted that we had to offer counseling in order to obtain a comprehensive certification for Medicaid reimbursement. So we had DHS saying that they'd pull our license if we offered counseling as part of the program and DMHMR saying that we had to. The matter was never resolved and was eventually dropped."

6. COMMUNITY CONCERNS

- Comments from Portland:
 - ✓ In FY 1994, the Oxford Street Adult Emergency Shelter provided over 11,000 bed-nights of shelter to homeless individuals - over 5,000 of these bed-nights were provided to people with mental illness. [This is] more bed-nights than a 12 bed psychiatric facility would provide at 100% occupancy for an entire year [yet] we are not a mental health facility, we are not funded with mental health dollars, and we are not staffed with mental health professionals..."
 - ✓ "People who are deinstitutionalized... present to us seeking housing, support, individual planning, counseling, and financial supports"

- ✓ "...the cracks in the mental health delivery system are so large that we are forced to create a mini-system within the city to assure [that] our residents with mental illness are [not] left 'on the streets' by the official state system".
- ✓ "System is failing. Quality of life is often unacceptable following deinstitutionalization. Need to increase coordination among service providers. Even if services are available the services may be, in effect, inaccessible because the consumer refuses to access the service in the only way the service is available".
- ✓ "The lack of adequate resources allocated to addressing [mental health needs for the homeless] has had an intolerable human cost."
- ✓ "the system of outpatient psychiatric services is virtually impossible to access; it is in gridlock."
- "Oxford is half the size of Androscoggin County with about one-eighth the services. ...If Maine is to truly have a community mental health system, services must be offered in all the counties and areas where people live."
- "The lack of basic community services continues to lead to unnecessary suffering and very expensive hospital use. The 1995 deadline to reduce residents of AMHI to 70 (plus those in the forensic unit) will not be met. The time frame is being extended far into the future. The prolonged period for implementing the community-based system is building inefficiency into the ultimate product. Also, extends the cumulative pain of families. Families who have to make up for gaps in the system tend to get discouraged and drop-out."
- "47,000 emergency patients are seen each year at Maine Medical Center. 10% have a psychiatric, behavioral, or substance abuse problem. Some patients are violent and have hurt practitioners. Some stay for 12-36 hours. The

emergency room often serves as the final answer for those who are most troubled or difficult. They are sent by community providers or by police".

- "[My 32 year old son lived at home with his family. We needed support services to continue in this mode [but support services were not available so son was placed in a residential placement." "Had [son] remained at home, the annual cost to taxpayers [for support services] would have been around \$6,000. The cost to taxpayers for maintaining [son in a residential setting] is about \$85,000."

7. SLOW RESPONSE TIME / HIERARCHICAL DECISION-MAKING

- "18 meetings have been required with Department staff to review and rewrite certification standards, and the process is not yet complete".
- One Executive Director recounts the story of seeking permission from DMHMR to alter a phrase that appeared on the agency's letterhead. The DMHMR contract officer assigned to the agency lacked sufficient authority to approve the change. After considerable time delay and effort and sending the question up through departmental channels, the question finally landed on the Commissioner's desk, who approved the change in the wording of the phrase.
- "The Department's fiscal management process and procedures are not effective, and...cause inefficient use of resources on the part of our community agency's administration. ...the handling of financial issues is extremely slow"
- The reviewer [of DMHMR'S contracts with the agency] needs to have more authority to make decisions directly."
- One director of an agency failed to receive a return phone call from the Department on a pressing matter for 10 days, despite multiple calls from the director to the Department during that time period.

8. RULES

The Department's Division of Licensing enforces a 94 page rule book, accompanied by a lengthy "technical assistance" checklist.

The Committee finds that many of the Department's rules are unnecessary and serve to quash the entrepreneurial and creative spirit of the service providers, as demonstrated by the examples which follow.

- GOV.5** The governing body documents its role, responsibilities and duties in the governance of the agency and its relationship to the management of the agency.
- GOV.8** The executive director meets minimum qualifications for his/her position.
- GOV.8-A.** The agency has a job description for the executive director position that includes minimum qualifications.
- GOV.8.B.** The executive director's personnel file has documented evidence that he/she meets the minimum professional criteria.
- MRK.2** The agency has evidence that its services are publicized.
- HS.7** There is documented evidence that staff members receive initial and continuing education concerning disaster and evacuation procedures.
- SD.1** The agency has an orientation program that is in place for all new employees...

This rule is followed by 22 requirements for orientation

- REC.3** All documents or entries in the client record shall be legible, dated and signed by the person making the entry, written in ink or typed, and properly corrected as necessary.

Interpretive Guideline for REC.3

"Properly corrected" is interpreted to mean that errors are voided by crossing out the incorrect entry with one line, writing "void" next to the crossed out entry, and initialing and dating the correction. Although writing "error" is acceptable, most attorneys/risk managers suggest that agencies avoid writing "error" in client records. White out shall not be used to correct errors in client records.

Signature stamps are only allowed for individuals with handicapping conditions and when a written agency policy and procedure on the use of signature stamps is present.

HRM.3 The agency has a policy and procedure that addresses the mechanism by which all employees have access to...personnel policies and procedures.

SACO RIVER CORRIDOR COMMISSION

The Saco River Corridor and Saco River Corridor Commission were codified in 1979 from precursors established earlier [PL 1979 ch. 459, effective 9/14/79].

The Corridor includes three rivers and riverbanks, as follows:

- **Saco River** from the landward side of the rock jetty in Saco Bay to the New Hampshire border; the
- **Ossipee River** from its confluence with the Saco River to the New Hampshire border; and the
- **Little Ossipee River** from its confluence with the Saco River to the New Hampshire border at Balch Pond.

The Corridor includes the lands adjacent to these rivers to a distance of 500 horizontal feet, or to the 100-year floodplain if the floodplain extends beyond 500 feet, up to a maximum of 1,000 feet.

The Corridor is in the counties of York, Cumberland, and Oxford and includes the towns of:

Acton	Baldwin
Biddeford	Brownfield
Buxton	Cornish
Dayton	Denmark
Fryeburg	Hiram
Hollis	Limerick
Limington	Newfield
Parsonsfield	Porter
Saco	Shapleigh
Standish	Waterboro

32 MRSA §954 establishes the Commission itself. The purpose of the Commission is to regulate the use of land or water within the Corridor in order to achieve the twelve objectives listed below. The Commission has permitting and enforcement authority to conduct this regulation.

The twelve objectives are:

- preserve existing water quality;
- prevent the diminution of water supplies;
- control erosion;
- protect fish and wildlife populations;
- prevent undue extremes of flood and drought;
- limit the loss of life and damage to property from periodic floods;
- preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers;
- prevent obstructions to navigation;
- prevent overcrowding;
- avoid the mixture of incompatible uses;
- protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to
- protect the public health, safety and general welfare.

The Commission consists of 40 members; i.e. one member and one alternate from each of the 20 municipalities whose jurisdiction includes land or bodies of water encompassed by the Saco River Corridor.

Since its inception, the Commission has received funding from state, county, and municipal government and from fees. Currently, the Committee finds that the Commission is unable to carry out its mandate because of a significant reduction in revenue.

Revenues and operating budget for selected years are as follows.

STATUTORY

-
24. Establish a Saco River Corridor Fund by authorizing the Biddeford & Saco Water Company to assess and collect a fee on its residential customers equal to 1% of the amount charged for the sale or distribution of water for drinking or for fire protection, not to exceed \$25,000 per year, for the purposes of partially underwriting the administration and operation of the Saco River Corridor Commission.
-

During its review of the Saco River Corridor Commission, the Committee determined that the most pressing issue regarding the Corridor Commission is the sharp reduction in its traditional sources of revenue; i.e., appropriations from the State and the towns and counties within the Corridor. Accordingly, the Committee finds the following:

- the Commission's level of funding is not sufficient to enable the Commission to fulfill its statutory mandate;
- prospective revenue sources to replace or augment current revenue are not apparent or forthcoming;
- the Commission is unable to fulfill its statutory mandate with traditional funding sources; and
- the work of the Corridor Commission is important and should continue.

After considering an array of possible funding scenarios, the Committee endorses an unsolicited proposal initiated by the Biddeford & Saco Water Company, a privately owned and operated water company in Biddeford, Maine which takes its water from the Saco River, as follows:

- Establish the Saco River Corridor Fund as a private, interest-bearing account;
- Establish that the purpose of the Saco River Corridor Fund is to preserve existing water quality and prevent the deterioration of water supplies in the rivers within the Corridor by partially underwriting the administration and operation of the Saco River Corridor Commission;

- Authorize the Biddeford & Saco Water Company to assess a fee on its residential customers equal to 1% of the amount charged for the sale or distribution of water for drinking or for fire protection services;
- Cap the amount in the fund not to exceed \$25,000 per year;
- Require the Saco River Corridor Commission to submit a report on the amount collected and how the Fund was disbursed by the Commission; and
- Determine, in 1997, whether the Fund and fee should be continued dependent upon whether additional sources of revenue to support the activity and operations of the Corridor Commission have been put into place.

This recommendation is made in partnership with the recommendation following.

ADMINISTRATIVE	25.	Approve the proposal of the Saco River Corridor Commission to study river usage within the Saco River Corridor for the purpose of identifying additional management needs and funding sources. Report to the Committees on Natural Resources, Fisheries and Wildlife, Energy and Utilities, and Appropriations and Financial Affairs by February 1, 1996 with recommendations and draft legislation.
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The Committee does not intend the user fee from the Biddeford & Saco Water Company to be the sole source of additional revenue for the Saco River Corridor Commission. The Committee intends and expects additional revenue sources to be identified and tapped. These additional sources will be identified by means of a study to be carried out by the Commission during the summer of 1995. The Committee anticipates that possible additional sources of revenue may include user fee assessments on canoe and other water craft put-in in the upper reaches of the rivers in the Corridor. The study is also intended to identify management needs that have arisen over the course of the 20 year life of the Corridor which may now require attention and remediation.

Finally, the Committee anticipates that the fee assessed on the residential customers of the Biddeford & Saco Water Company should continue if additional and augmenting sources of revenue are identified and implemented but that the water user fee should be repealed if additional revenue sources are not identified and implemented by 1997.

STATUTORY 26. Amend the jurisdiction of the Saco River Corridor to exclude tidal waters.

As established in 1973 [P&S 1973 ch.150], the Saco River Corridor included tidal waters, starting at the "landward side of the rock jetty in Saco Bay" (38 §953). The Corridor was also created to accomplish a number of objectives including preservation of existing water quality and prevention of the diminution of water supplies. During the course of its current review of the Saco River Commission and Corridor, the Committee identified a need to focus the Commission's jurisdiction expressly on water quality and drinking water and saw no compelling reason for the Commission's jurisdiction to continue to extend to the ocean. Accordingly, the Committee recommends redrawing the jurisdiction of the Corridor itself to exclude salt water, thereby commencing the Corridor several miles inland from the ocean starting at the Cataract hydropower project in the Biddeford-Saco area.

STATUTORY 27. Amend certain provisions of the Saco River Corridor Act to reflect the same degree of regulatory oversight as imposed by Maine's Mandatory Shoreland Zoning Act.

ADMINISTRATIVE 28. Direct the Corridor Commission to ensure that setbacks required for structures in the Limited Residential District also apply to roads and driveways by amending its rules accordingly.

Currently, land use on the banks of the rivers within the Corridor is regulated by several land use ordinances, the most prominent of which are the Saco River Corridor Act [38 MRSA chapter 6] and Maine's Mandatory Shoreland Zoning Act [38 MRSA §§435-449]. Accordingly, some types of proposed developments require permits from both the Corridor Commission and from the local administration of the shoreland zoning act. In order to reduce the amount of regulatory overlap, the Committee recommends that several provisions within the Saco River Corridor Act be amended so that these provisions are at least as stringent as the Mandatory Shoreland Zoning Act.

In regard to roads and driveways, the Committee notes that the Commission itself has the capacity to amend its rules in order to ensure that roads and driveways conform to the same setback requirements as are required for structures in the Limited Residential District.

STATUTORY	29.	Continue the Saco River Corridor Commission.
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As a result of its review, the Committee finds that the Saco River Corridor Commission has effectively fulfilled its statutory purpose to [38 §951]:

- preserve existing water quality;
- prevent the diminution of water supplies;
- control erosion;
- protect fish and wildlife populations;
- prevent undue extremes of flood and drought;
- limit the loss of life and damage to property from periodic floods;
- preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers;
- prevent obstructions to navigation;
- prevent overcrowding;
- avoid the mixture of incompatible uses;

- protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to
- protect the public health, safety and general welfare.

Therefore, the Committee recommends that the Saco River Corridor Commission be continued.

ACUPUNCTURE LICENSING BOARD

The Acupuncture Licensing Board was created as a board internal to the Department of Professional and Financial Regulation in 1987 to "establish and ensure high professional standards among professionals who provide services and [to] encourage and promote quality treatment for clients" [32 MRSA §12402].

The priorities and objectives of the Board are to "protect the public from fraud, incompetence, and malfeasance, and to establish a minimum level of professional standards for acupuncturists in Maine".

The law defines acupuncture as "the insertion of fine metal needles through the skin at specific points on or near the surface of the body, with or without the application of electric current, with or without the application of heat to the needles, skin, or both, and with or without the palpitation of specific points on the body" [32 MRSA §12403].

The board licenses 43 active acupuncturists in Maine and any person who practices acupuncture without a license is guilty of a Class E crime [32 §12404]. The fee for a license is set at the statutory cap of \$250 biennially.

The board itself consists of 5 members appointed by the Governor [32 §12406]:

- three must be licensed acupuncturists;
- one member must be a licensed, practicing medical or osteopathic doctor; and
- one must be a member of the public who is not licensed to practice any healing art or science and who is not an acupuncturist.

Appointments are for 3 years and members may serve an unlimited number of terms. The board is not authorized to receive per diem but may be compensated for expenses [5 MRSA §12004-A sub-§3]. The board is responsible for the following functions:

- A. Review of credentials of candidates for licensure;
- B. Examination and licensure of qualified candidates;

- C. Authorization and issuance of initial licenses and biennial renewals and review of documentation of continuing education for renewal purposes;
- D. Promulgation of rules;
- E. Investigation of complaints and incidents of noncompliance with the Board's statute and rules;
- F. Conduct of public hearings;
- G. Disciplinary action; reports of findings to the Administrative Court for prosecution;
- H. Establishment, when authorized by statute, of reasonable fees for application, examination, licensure and renewal;
- I. Maintenance of financial records; and
- J. Response to pertinent correspondence.

Revenues and expenses of the board are as follows:

	Total Resources	Total Expenditures
FY 1992	\$ 1,659	\$ 1,658
FY 1993	\$ 7,540	5,740
FY 1994(est)	10,201	7,366

STATUTORY	30.	Raise the cap for licensure from \$250 biennially to \$200 annually in order to ensure adequate revenues for board operation.
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Currently, the board receives revenue from three primary sources, license fees at \$250 every other year, an application fee of \$25 for first time licensees, and some small amount from fines and penalties. With this current mix of revenue and expenditures, the board is projected to show a small positive balance of \$1,927 at the close of FY 1997-98.

The Committee is concerned that this projected margin is too small to ensure adequate operation of the board. Accordingly, the Committee recommends that the statutory cap be increased to an annual fee of \$250.

However, in making this recommendation, the Committee asserts that the board should refrain from increasing the licensure fee unless an increase in the fee is deemed necessary to maintain the financial solvency of the board.

ADMINISTRATIVE 31. Direct the Board to review the Board's current authority to take action against a licensee for "good cause" in order to determine whether this phrase should be clarified.

Current law authorizes the board to suspend or revoke licenses for 6 reasons, including "good cause" [32 MRS §12413 sub-§6]. The Committee recommends that the Board review this language to determine whether a need exists to replace the generic phrase, "good cause" with specific items that would, in fact, constitute a cause compelling the board to exercise its suspension or revocation authority.

STATUTORY 32. Continue the Acupuncture Licensing Board at the level of licensure, and clarify several minor items in statute.

In addition to continuing the Board of Acupuncture, the Committee recommends that a number of grammatical items be corrected, as well as amend the definition of acupuncture by placing a non-defining sentence now included as part of the definition elsewhere in the board's enabling statute.

BOARD OF COMMERCIAL DRIVER EDUCATION

The purpose of the Board of Commercial Driver Education is to:

- "evaluate the qualifications and supervise the examination of applicants for licensure [as a commercial driver education school or as an instructor];" and to
- "investigate (or cause to be investigated) all complaints made to it and cases of noncompliance with this chapter" [32 MRSA §9553-A sub-§2].

The Board is responsible for the following functions:

- A. Licensure of qualified individuals and schools;
- B. Renewal of licenses for the purpose of license renewals and issuance of initial licenses;
- C. Development, revision, and promulgation of rules;
- D. Investigation of complaints and incidents of noncompliance with Board's statutes and rules;
- E. The conduct of public hearings and informal conferences;
- F. Disciplinary action; reports of findings to the Administrative Court for prosecutions;
- G. Establishment, when authorized by statute, of reasonable fees for application, examination, licensure and renewal;
- H. Maintenance of financial records;
- I. Response to pertinent correspondence;
- J. The issuance of completion cards upon the successful completion of an approved program of instruction, such completion being prerequisite for licensure for individuals under the age of 17; and

K. The inspection of school facilities.

The Board was established in July 1981 [PL 1981 c.456 §113].

Prior to the creation of the Board, private schools of driver education were regulated in some way by the Secretary of State's Office. Public programs of driver education conducted in the school system were (and are) regulated by the Department of Education.

No person may operate a commercial driver education school or act as an instructor without first being licensed under this chapter [32 MRSA §9601].

Any person who operates a commercial driver education school or acts as a commercial instructor without a license is guilty of a Class E crime [32 §9608].

Schools may be licensed in either of two categories:

- Class A school license, authorizes the school to provide both classroom instruction as well as on-the-road instruction; and
- Class B school license, authorizes the school to provide only on-the-road instruction.

The law also authorizes the Board to issue a truck training license, as a supplement to a Class A license. The Board is in the process of reviewing its procedures regarding these supplemental licenses.

Similarly, instructors may also be licensed as Class A [classroom and on-the-road instruction] or B [on-the-road instruction only].

Through its governing statute and rules, the Board regulates the following aspects of commercial driver education for:

Schools

- general requirements;
- facilities and equipment;
- curriculum;
- recordkeeping;
- branch schools;
- additional requirements for truck training supplement licensees;
- insurance requirements; and
- training vehicles.

Instructors

- general requirements for age, education, health, driving record, and association with a school;
- qualification for applicants; and
- examinations for applicants for an instructor's license.

The board currently has no jurisdiction over driver education offered in a public secondary school, a private secondary school approved for attendance purposes by the Commissioner of Education, an applied technology center, an applied technology region, certain an adult education programs, or a technical college. Programs in these types of institutions are governed by the Department of Education [Title 20-A, c. 315 and 316].

Licenses as of May 1994 are as follows:

<u>Schools of Instruction</u>		<u>Instructors</u>	
Class A	49	Class A	87
Class B	1	Class B	36
Class A - branch	21		
Class B - branch	0		

The Board is internal to the Department of Professional and Financial Regulation and consists of 5 members.

By law [32 MRSA §9552], the Governor appoints 4 members; the 5th serves by virtue of his or her status as the Director of the Bureau of Motor Vehicles within the Secretary of State's office. The four gubernatorial appointees are:

- 2 representatives of Class A schools;
- 1 representative of a Class B school; and
- 1 public member.

Only the public member of the board is authorized to receive a per diem of \$35/day, for a maximum of 4 meetings per year.

STATUTORY

33. Relieve the Department of Education of its responsibility to regulate the provision of driver education in school settings by repealing statutory authority.
-

AND

STATUTORY

34. Authorize the Board of Commercial Driver Education to regulate the provision of driver education not only in private, commercial settings but in public school settings as well.
-

Currently, driver education is regulated by means of a bifurcated system. The Board of Commercial Driver Education is responsible for regulating driver education in private, commercial settings [Title 32 chapter 95]. The Department of Education is responsible for regulating driver education in public secondary schools, approved private secondary schools, applied technology centers, applied technology regions, and certain adult education programs [Title 20-A chapter 316].

The Committee has determined that this system contributes to inequities between the two systems, particularly in the areas of curriculum, rules, enforcement, fees, and licensing standards.

The Committee finds that consolidating the regulation of driver education within the Board will serve to address the inequities cited above and will not substantially diminish the quality of instruction or the array of choice now available to consumers of driver education.

Finally, the Committee concludes that the regulation of driver education is an area in which involvement by the Department of Education is not required, thereby freeing up resources within the Department of Education to apply to more requisite issues.

STATUTORY

35. Change the composition of the Board to replace the requirement for a representative of a Class B school to a Class B instructor
-

As noted above the board consists of 5 members, one of whom is a representative of a Class B School.

In reviewing Board composition, the Committee notes that there is only one Class B school in the State, thereby posing some degree of burden on that single representative to continue to serve on the Board. However, the Board licenses 36 Class B instructors. Accordingly, the Committee recommends that the board slot be changed from a representative of a Class Be school to a Class B instructor in order to open the slot to more people, relieve the single Class B school representative from responsibility for filling the slot, and continue to maintain representation on the Board for vehicles in the Class B category.

STATUTORY

36. Specify that a person less than 17 years old must hold an instructional permit for at least 6 months as a prerequisite for licensure.
-

AND

STATUTORY

37. Specify that a person may not apply for an operator's license until that person is at least 16 years and 6 months old.
-

AND

STATUTORY

38. Specify that a license issued to a person less than 18 years old is a first degree provisional license which, in the event the operator is convicted or adjudicated of a moving motor vehicle violation, must be suspended until age 18 (or 30 days, whichever is longer).
-

Currently, a person who is at least 16 and has held an instructional permit (i.e. learner's permit) for at least 3 months is eligible to receive a driver's license in Maine [29-A MRSA §1251 (5) and §1304 ¶G].

Also, people under 17 years of age must successfully complete a driver education program as a condition for becoming licensed [29-A MRSA §1351]. People older than 17 years are not required to have completed a formal course in driver education as a condition for licensure.

In reviewing available literature regarding the relationship between driver education and traffic accidents, the Committee found that graduation from a driver education course does not necessarily produce a safer driver. Instead, graduation from a driver education course may actually contribute to accident and traffic violations committed by 16 year old drivers by virtue of facilitating the licensure of 16 year olds. The studies suggest that immaturity and inexperience contribute significantly to rates of accidents and traffic violations. Since 16 year olds may not drive in this state without graduating from a driver education program, the ironic outcome is that those who graduate from a licensed program actually have the highest rate of accidents, traffic violations, and, more tragically, fatalities than any other age group of drivers.

Data for calendar year 1993 from the Maine Department of Public Safety shows that people aged 15 to 19 have the highest fatality rate, injury rate, and accident rate than any other age group in Maine.

A 1993 study from the Insurance Institute for Highway Safety shows that, "[d]rivers ages 16-19 had the highest crash rate, 20.1 crashes per million miles driven, compared with a rate of 5.3 for all other ages combined" and that "[m]otor vehicle injuries are the major health problem for 16-19 year olds, accounting, in the United States, for more than 40 percent of *all* their deaths [italics as in article]. This report concludes that "[i]mmaturity and lack of driving experience are considered to be

the main reasons for the high crash rates of youthful drivers" and that "[r]isk taking tendencies and inexperience on the road combined with overconfidence...result in a high crash rate and a high fatality rate for youthful drivers".

The Committee notes in this study that "[n]ot licensing at age 16 virtually eliminates driver crash involvement among state residents in that age group..."

A 1978 article published in the American Journal for Public Health concluded that, "[a]mong 16-17 year olds, driver education was associated with a great increase in the number of licensed drivers, without a decrease in the fatal crash involvement per 10,000 licensed drivers."

The Committee also reviewed a 1986 article published in Accident Analysis and Prevention. This article concluded that "students assigned to an enhanced driver education program...were more likely to obtain drivers licenses, to be in car crashes, and to have traffic violations than...students not assigned to driver education."

The Committee concludes that the data do not show that driver education serves to improve the driving skills of young drivers and that immaturity and inexperience of youthful drivers, licensed by virtue of graduation from a driver education program, serve to increase this age-group's rate of accidents and fatalities.

The Committee concludes that public policy must account for these outcomes. Accordingly, the Committee recommends:

- increasing the time from 3 to 6 months in which a person must hold an instructional permit prior to licensure;
- setting the age at which a person may apply for licensure at 16½, rather than allowing licensure at 16; and
- penalizing drivers under age 18 who are convicted or adjudicated of a moving motor vehicle violation with the loss of their license until age 18 (or 30 days, whichever is longer).

STATUTORY

39

Clarify that a minimum of 6 hours of behind the wheel instruction per student must be delivered in no more than 2 hour increments within a 24 hour period.

During the course of the review, the Committee found that some commercial driving schools fulfill the current requirement of providing 6 hours of behind-the-wheel driving instruction in a single 6-hour session. Accordingly, the Committee concludes and recommends in statute that the behind-the-wheel instruction must be delivered in increments of no more than 2 hours in any 24 hour period.

ADMINISTRATIVE 40. Direct the Board to develop a comprehensive and uniform curriculum for use by all purveyors of driver education.

To ensure uniform, equitable, and quality instruction in both public and private school settings, the Committee directs the Board to develop such a curriculum for use in any setting in which driver education is offered.

STATUTORY 41. Repeal a provision requiring the Board to conduct an annual on-site inspection of each commercial driving school and, instead, authorize the Board to conduct an on-site inspection at its discretion.

Current law requires the Board to conduct an annual on-site inspection of each commercial driving school [32 MRSA §9607]. The Committee notes that the Board has never been able to fulfill this statutory requirement due to staff shortages and that it has attempted to comply with this provision by employing inspectors of other boards when available.

The Committee concludes that inspecting each school annually for the purpose of "reviewing records, facilities, and operating procedures" 32 §9607, sub-§1, is not necessary and may, in fact, be unwarranted. Therefore, the Committee recommends relieving the Board of this annual responsibility and authorizing the Board to make inspections as deemed necessary at the Board's discretion.

ADMINISTRATIVE 42. Simplify and streamline board inspection duties.

Rather than inspecting schools' compliance with safety and health standards by relying solely on Board personnel to collect the needed data in a labor-intensive hands-on manner, the Committee concludes that the Board should modify this approach and instead promulgate rules asking the licensee to mail documentation to the Board verifying that:

- the building in which the licensee's driver education class(es) are held meets all applicable state and local fire and building codes; and that
- the vehicle(s) used by students complies with state inspection standards.

In this way, the Committee concludes that the Board may discharge its duty to ensure the safety of the public but in a manner which conserves time and money for both the Board and the licensee.

ADMINISTRATIVE 43. Direct the Board to review its inspection protocol in order to affirm that the sole purpose of an inspection is to ensure quality education, as opposed to technical details of professional operation.

The Committee concludes that the primary purpose of any inspection of a driver education school must be solely for the purpose of ensuring quality education. The Committee also recommends that the Board review its inspection protocol, practices, and procedures in order to:

- ensure that unnecessary inspections are not being conducted;
- ensure that the Board's time and resources are being used to maximal effectiveness and productivity;
- distinguish circumstances in which a field inspection is essential from those instances in which a desk review would suffice; and to
- minimize the expenditure of time, effort, and money required of licensees to comply with Board requirements.

The Committee concludes that technical details of professional operation should be left solely in the purview of the business owner and should not be subject to regulation by the Board.

STATUTORY 44. Establish a cap for licensure fees at a dollar amount equivalent to current fee levels in order to authorize the Board to reduce licensure fees if warranted.

License fees are currently set precisely in statute at exactly \$250 per school and \$125 per instructor [32 MRSA §9605]. The Committee concludes that a fee reduction may be possible given the scaling back of Board duties as a result of the Committee's recommendations, notably in Board inspection duties. Also, the Committee received testimony from licensees commenting that, in some cases, the fees seemed inappropriately high. Therefore, the Committee recommends converting these same fees to caps, rather than precise amounts set in statute, in order to give the Board latitude to reduce the fee as circumstances allow.

STATUTORY 45. Repeal the provision mandating that all licenses expire on December 31st of each year and replace with a "rolling" renewal schedule of one year from the date of issuance.

Current law specifies that all licenses issued by the Board expire on December 31st of the year of issue, regardless of when the license was issued during the year (32 §9605 sub-§3). Accordingly, a licensee who has received a license in November and paid the full fee must renew the following month and pay a second full fee. The Committee recognizes that this arrangement was originally prompted by the Board's need to generate sufficient revenues to support its activities. Nevertheless, the Committee recommends in statute that each license be issued for a full 12 month period from the month of issue.

STATUTORY

46. Repeal the Board's authority to assess commercial driver education schools for expenses incurred by the Board for conducting special investigations or enforcement activities regarding the school.
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Current law authorizes the Board to assess a commercial driving school for expenses incurred by the Board in conducting a special investigation, regardless of whether the investigation concludes that the school is ultimately found in violation (32 §9607). The Committee concludes that the cost of special investigations or enforcement activities should be considered a routine cost of the board in carrying out its regulatory duties and that passing the cost on to the school is inappropriate. Therefore, the Committee recommends that this authority be repealed.

STATUTORY

47. Repeal the provision limiting the compensation of the public member of the Board to no more than 4 days per calendar year.
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Current law authorizes per diem of \$35 only for the public member of the Board; all other members receive no per diem [5 MRSA 12004-A sub-§12]. In addition the law also limits the available per diem for the public member to "no more than 4 days per calendar year" (32 §9554). Noting that the Board business routinely requires the Board to meet at least 12 times per year, the Committee recommends lifting the cap on the number of days for which the public member may receive per diem.

STATUTORY

48. Update outdated references in governing statute from "Class 1, 2, or 3" to "Class A, B, or C", as defined in 29 MRSA §530.
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The governing statute for the Board of Commercial Driving Education references classes of licenses cited in the Motor Vehicle statutes in Title 29-A as "Class 1, 2, or 3". The license classifications in Title 29-A are now changed to Class A, B, and C. Accordingly, the Committee recommends that the reference in Board statute reflect the nomenclature used in the Motor Vehicle statute.

BOARD OF LICENSING OF AUCTIONEERS

Auctioneers have been regulated by the current statute since 1979 [ch.478]. At that time, the board was entitled the "Auctioneers Advisory Board", was created "for the purpose of advising the commissioner or his designee on the administration of the chapter, and consisted of three members, rather than the complement of 5 which exists today.

Due to an increase in the interest and value of antiques, the Board was expanded to 5 members and its jurisdiction broadened in the areas of enforcement, minimum standards and professional ethics.

3 of the 5 members must be auctioneers augmented by 2 public members [32 §271].

As of 4/29/94, licensees numbered as follows:

• Resident licensees	269
• Non-resident licensees	62
• Non-active licensees (both res.and non-res.)	_____
TOTAL	331

Unlicensed practice is prohibited and is a Class E crime [32 §§272 and 282]. Applicants for licensure must pay a \$20 application fee and a \$75 fee to take the licensing examination. Successful in-state applicants pay a \$100 fee for a license; out-of-state applicants pay \$200. Also, each applicant must furnish evidence of a \$10,000 surety bond [rules, ch. 3], which is estimated to cost \$75-\$100.

The board operates on a biennial fee renewal schedule, charging \$100 for resident licenses and \$200 for non-resident licenses. The Board's year-end balances since FY 1991-1992 have ranged from ~\$15,000 in non-renewal years to ~\$44,000 in renewal years.

STATUTORY	49.	Establish a second licensure category of "small auctioneer" in order to facilitate entry into the profession.
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The Board is authorized to regulate auctioneers at the most restrictive level of regulation - that of licensure. Accordingly, those who wish to practice the profession must be licensed and practicing without a license is a crime. The Committee notes that the purpose of regulating a profession is to protect the public from the threat posed by unscrupulous practitioners and incompetent practice, rather than limiting entry into the profession.

In examining the level of regulation administered by the board, the Committee finds that the current level of regulation serves as a barrier to entry into the profession for auctioneers who wish to conduct relatively small-scale auctions which generate small proceeds

Accordingly, the Committee recommends the creation of a new level of licensure targeted expressly for those who wish to practice the profession on a small scale. People in this category will continue to be licensed and subject to all current licensure requirements, but will be exempt from paying a licensure fee. In this way, the Committee finds that the public's interest in regulating the profession will continue to be met, while reducing unwarranted barriers to entry into the profession.

STATUTORY	50.	Specify the Board's "powers and duties" in its governing statute
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Current governing statutes for the Board of Licensing of Auctioneers include no provision specifying the Board's powers and duties, in contrast to the statutes of most other boards. Accordingly, the Committee recommends that the powers and duties of the Board be specified in statute.

STATUTORY	51.	Place the definition of "auctioneer", which now appears in rule, in statute.
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During the course of the review, the Committee noted that the definition of "auctioneer", "auction", and "auction company" appeared only in Board rule [Rule 02-445. Ch.1 ¶3], not the Board's governing statute. In order to clarify the scope of the Board's jurisdiction in statute, the Committee recommends that these definitions also appear in statute.

ADMINISTRATIVE 52. Direct the Board to clarify ambiguous or inaccurate provisions in its rules, including amending Board rules to reflect regulation at the level of certification, rather than licensure.

In reviewing Board rules, the Committee found a number of provisions that need clarification; for example:

Chapter 2, §4 A.(1) - "insufficient" appears to be intended rather than "sufficient".

Current rule: "...*The Board may decline to issue an advisory ruling if the question is hypothetical, if there is sufficient experience upon which to base a ruling, or for any other reason the Board deems proper.*"

Chapter 3, §2, 2nd ¶: - meaning unclear:

"The licensee's name and auctioneer license number are not required on stationery, business cards, or on auction advertisements without a date, time, and/or location".

Board rules must also be amended to reflect regulation at the level of certification, rather than licensure.

In regard to these and other items throughout the rules, the Committee recommends that the Board revise and update its rules as warranted.

STATUTORY 53. Shift the authority from the Commissioner to the Board to investigate all complaints and allegations of noncompliance or violation of law or rule.

Current law endows the Commissioner of the Department of Professional and Financial Regulation with the authority to investigate Board complaints. The Committee finds that this language is outdated and probably reflects past practice and the former status of the Board. Currently, however, the Board has

sufficient resources and acumen to investigate its own complaints with staff of the Division of Licensing. Accordingly, the Committee recommends that the statute reflect the Board's current status and transfer authority for complaint investigation from the Commissioner to the Board itself.

STATUTORY 54. Relieve the Board of the responsibility to designate the format of contracts between auctioneer and the owner of property but specify the types of information that must be included in each contract.

Current law requires an auctioneer to draw up a written contract with the owner of the property to be auctioned prior to the auction [32 §280 sub-§4]. The Committee finds that the accompanying provision requiring the Board to "designate the format" of these contracts is no longer necessary. However, the Committee recommends that the Board augment the provisions of the contract to include a number of other requirements which must appear in the contract.

STATUTORY 55. Authorize the Board to administer examinations to prospective licensees as part of the licensing process.

Although the statute authorizes the board to "establish an...examination fee in amounts which are reasonable and necessary..." {32 §273 2nd ¶], the law does not specifically authorize the board to examine licensees. In light of the Board's commencement of giving examinations to applicants for licensure as of May 1994, the Committee recommends that the statute specifically authorize the Board to give examinations, in addition to collect an exam fee.

STATUTORY 56. Increase current caps on licensure fees by \$25 in order to ensure adequate revenue with which to conduct Board business.

The Board currently uses a two-tiered fee schedule based on residency, as follows:

- Resident license fee \$100
- Non-resident fee \$200

In reviewing the Board's projected budget, the Committee finds that the Board will show a negative cash balance of (\$3,446) by the end of FY 1996-97 with the current level revenue and expenditure. Accordingly, the Committee recommends raising fee caps in statute to \$125 and \$225 for residents and non-residents respectively, which are projected to generate a positive cash balance of \$13,604 by the end of FY 1996-97, and adequate revenues to support Board business.

STATUTORY

57

Strike the provision requiring every auctioneer to show that auctioneer's license to a municipal official prior to conducting an auction but require the auctioneer to produce the auctioneer's license at any time upon request of an appropriate municipal official in whose municipality the auctioneer is conducting an auction.

Current law requires "every auctioneer...intending to conduct an auction sale in any city or town [to], prior to the sale, show [that auctioneer's] state license to the municipal law enforcement agency or municipal clerk or officers" [32 §279]. The Committee finds that this provision is rarely complied with or enforced and that no continuing need exists to maintain it. Accordingly, the Committee recommends that the provision be amended to eliminate the mandate but require the auctioneer to show that auctioneer's license at any time upon the request of a municipal law enforcement agency or municipal clerk or officer in whose municipality the auctioneer is conducting an auction.

ADMINISTRATIVE

58.

Direct the Board to amend its application form to query the applicant about conviction of a "crime", rather than the less inclusive term currently employed of "felony".

Currently, the Board's application includes a question inquiring whether the prospective applicant has been convicted of a felony. The Committee notes that many boards include a question about criminal history on their application forms, with the clarification that the questions usually inquire about conviction of a crime, rather than conviction for a felony. As explained by AAG James Bowie, the word "crime" is more broadly encompassing than is the word "felony", including not only felonies but also misdemeanors. Accordingly, the Committee recommends that the Board amend its application form to query the applicant about conviction of a "crime", rather than the less inclusive term currently employed of "felony".

STATUTORY 59. Require the auctioneer to post the title and address of the Maine Board of Licensing of Auctioneers among other conditions of the auction sale prior to the start of each auction.

Currently, the law requires auctioneers to "post for display and describe at the beginning of each auction, the conditions of the auction sale" [32 §283]. These items include: a description of property to be sold, that the highest bidder will be acknowledged by the auctioneer; whether a bid not commensurate with value may be made; whether absentee bids will be allowed; sales tax requirements; whether the owner or auctioneer reserves the right to bid; whether not the auction has a reserve; a statement about the Uniform Commercial Code; and a statement of buyer's premium. In order to enhance the public's knowledge of and access to the regulatory board, the Committee recommends that auctioneers also be required to post the title and address of the Maine Board of Licensing of Auctioneers.

STATUTORY 60. Continue the Board of Licensing of Auctioneers with the changes recommended by the Committee.

The Committee finds that the board serves an important purpose in providing the consumer with the option of doing business with a certified auctioneer. Therefore, the Committee recommends that the board be continued and to regulate the profession at the level of certification.

BOARD OF LICENSING OF DIETETIC PRACTICE

"Dietetics" is defined as the "professional discipline of assessing the nutritional needs of an individual, including recognition of the effects of the individual's physical condition and economic circumstances, and the applying of scientific principles of nutrition to prescribing means to ensure the individual's proper nourishment and care" [32 §9902 sub-§4].

The professional regulatory Board was created by PL 1985 ch. 389 as the Board of Registration of Dietetic Practice as part of the then-Department of Business, Occupational, and Professional Regulation. The two original regulated categories of 1) registered dietetic technician and 2) registered dietitian were both upgraded to licensure by PL 1987 c. 313 and the board's name was changed to Licensing of Dietetic Practice.

The statute specifies that the board consists of 5 members appointed by the Governor, as follows:

- two must be dietitians;
- one must be a dietetic technician; and
- two must be public members.

The Board regulates 340 licensed dietitians and dietetic technicians. Unlicensed practice is prohibited.

The Board operates on license application and renewal fees which are renewed biennially. Since FY 1991-92, the Board's year-end balance has ranged from ~\$15,000 [non-renewal year] to \$28,000 [renewal year].

STATUTORY	61.	Continue the Board of Licensing of Dietetic Practice.
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The Committee finds that the Board has fulfilled its mandate to "provide for the licensing of qualified dietitians and dietetic technicians" in order to "recognize the professional qualifications of dietitians and dietetic technicians and to assure the availability to the public of information regarding those who hold themselves out to be dietitians and dietetic technicians" [32 §9901]. Therefore, the Committee recommends that the Board be continued.

STATUTORY

62. Clarify that the board may not impose any provision for licensure on out-of-state applicants that would constitute a standard higher than is required of in-state applicants.
-

Currently, the law authorizes the Board to, in its discretion, grant a license to an individual licensed in another state if the requirements or standards for licensure in that state are equivalent to, or greater than, those established in Maine [32 §9912]. Committee intent is consistent with this statutory provision giving the Board discretion to grant reciprocal licensure to out-of-state applicants but the Committee wants to ensure that standards imposed on out-of-state applicants are no more stringent than standards required of in-state applicants. Accordingly, the Committee recommends that the Board be prohibited from imposing any provision for licensure on out-of-state applicants that would constitute a standard higher than is required of in-state applicants.

ADMINISTRATIVE

63. Recommend that the board check on references submitted with the application and that at least one professional reference be required.
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Currently, the Board requires applicants to submit letters of reference with their application form. During the course of the review, the Committee found that the Board often failed to review these letters of reference and to certify the letters' validity. Accordingly, in order to improve the Board's application review process, the Committee recommends that the Board include a review of the applicant's references in its application process, and specify that at least one of the applicant's references should come from a professional source.

ADVISORY BOARD FOR THE LICENSING OF TAXIDERMISTS

Taxidermy is derived from the Greek words *taxis* + *derma*. *Taxis* means "arrangement or division" and *derma* is a skin. Therefore, taxidermy is the art of preparing, stuffing, and mounting the skins of animals so as to make these skins appear lifelike [Webster's New World].

The purpose of the Advisory Board for the Licensing of Taxidermists is to

- "advise the Commissioner [of Inland Fisheries and Wildlife] regarding implementation of [the laws governing taxidermy conducted for commercial purposes];
- [advise on] any related rules; and
- assist in the development of and in conducting [licensing] examinations [12 MRSA §7355 sub-§4].

Taxidermists have been regulated by the Department of Inland Fisheries and Wildlife since 1895 [PL 1895 ch. 50]. At that time, the Commissioner of DIF&W was authorized to license:

"as a taxidermist anyone who is skilled in that art and of good reputation; residents of this state shall pay an annual fee of \$5, except that unnaturalized, foreign-born residents shall pay an annual fee of \$25 for such license...."

Every person licensed at that time was required to "make a detailed report to the Commissioner of all they have done during the year by virtue of such license" by December 31st of each year.

In 1989, the Advisory Board for the Licensing of Taxidermists was created by the 114th Legislature [PL 1989 ch. 913 §C-4]. The Advisory Board is a component of the Department of Inland Fisheries and Wildlife and has no affiliation with the Department of Professional and Financial Regulation.

The Advisory Board consists of 5 people who must be residents of the State. 12 MRSA §7355 defines the members as follows:

- 2 employees of the DIF&W, appointed by the Commissioner;

- 2 licensed taxidermists with expertise in the art of taxidermy, appointed by the Governor; and
- 1 members of the general public with no affiliation to the art of taxidermy, appointed by the Governor.

The Board's expenses are paid out of the General Fund which are not tracked separately. However, reported Board expenses are minimal, amounting to less than \$1,000 per fiscal year.

STATUTORY

64.

Continue the Advisory Board and retain the degree of regulation administered by the board at the level of licensure.

Following considerable review and discussion, the Committee concludes that the Advisory Board operates in accordance with Committee intent, provides regulatory control of the profession of taxidermy necessary to protect the public health and welfare, and should be continued.

BOARD OF OPTOMETRY
Compliance Review

FINDING 65. Upon review of the compliance materials submitted by the Board of Optometry, the Committee finds that the Board has satisfactorily met all the Committee's 1993-1994 recommendations for change and that the Committee finds no need for further compliance review.

BOARD OF PODIATRY
Compliance Review

ADMINISTRATIVE 66. The Committee endorses the repayment schedule presented by the Board to retire the Board's long outstanding debt to the Attorney General's office for legal services and suggests immediate implementation of the schedule.

During the course of the Committee's 1993-1994 review of the Board of Podiatry, the Committee considered the Board's long-outstanding debt owed to the Department of Attorney General for services rendered and make the following recommendation:

"Retain the Board's liability for the debt owed to the Attorney General's office but do not remit payment pending the Committee's [later] review of the status of the Board's budget".

In reviewing the Board's financial position since its incorporation within the Department of Professional and Financial Regulation and its plan to repay its debt to the Attorney General, the Committee endorses the repayment schedule and suggests immediate implementation of the schedule.

FINDING

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67. Upon review of the compliance materials submitted by the Board of Podiatry, the Committee finds that the Board has satisfactorily met all the Committee's 1993-1994 recommendations for change and that the Committee finds no need for further compliance review.
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GENERAL PROVISIONS

STATUTORY

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68. Update the governing statutes of professional regulatory boards under review in order to eliminate archaic and gender-specific language
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STATUTORY

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69. Employ language which correctly reflects the degree of regulation imposed by the professional regulatory boards under review.
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