

# MAINE STATE LEGISLATURE

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*Bureau of Corporations, Elections and Commissions*

covers  
1996

*Department of  
the Secretary of State*

Rebecca Wyke  
*Assistant Secretary of State*

Dan A. Gwadosky  
*Secretary of State*

January 27, 1997

Gary Cooper  
*Deputy Secretary of State*

Honorable Angus S. King, Jr.  
Governor of the State of Maine  
1 State House Station  
Augusta, Maine 04333

Dear Governor King:

This is the annual report on the Administrative Procedure Act (APA) as required by 5 MRSA §8056-A sub-§3. The purpose of this annual report is to provide a summary of the activity of APA during 1996.

Our office was intensively engaged in converting rule chapters to electronic format throughout 1996. As of this date, 1,702 rule chapters (96%) are now on the Secretary of State's World-Wide Web site. A complete list of rules is attached by agency.

In 1996, there were 252 notices of proposed rules and 594 adopted rules, the latter figure including emergency rules. During the calendar year 1996, the cost of publishing the rule-making notices on a weekly basis in 5 daily newspapers was \$220,478.83. This was pro-rated among the agencies involved.

By the end of 1996, there were 1,702 active rule chapters on file with the Secretary of State, a decrease of 147 (8%) from the 1995 end-of-year total. This is due mainly to the review and repeal of outdated chapters by state agencies. This office solicited comments on the APA during the year. One comment was received, from the Maine Psychological Association, and it is attached.

A new element for APA that began during 1996 was the legislative review procedures as required by P.L. 1995, c. 463. These procedures are in the early stages and do not yet affect the majority of rule-making agencies.

If you have any questions regarding the content of this report or need further information about the APA, please feel welcome to contact Don Wismer, Administrative Rules Coordinator, at 287-6381.

Sincerely,

Dan A. Gwadosky  
Secretary of State

DAW/tp

Enclosures

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# MAINE PSYCHOLOGICAL ASSOCIATION

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January 16, 1997

To: Lucille Weeks, Office of Secretary of State

From: John W. Lelak, Psy.D.

Re: Modifications to the Administrative Procedure Act

Thank you for the opportunity to raise some of the issues that the Maine Psychological Association has encountered when dealing with the process of regulations being promulgated for the State of Maine. Specifically, our concerns fall in three areas-public notification, the apparent agency disregard for public comment, and agencies who promulgate rules without the benefit of public comment.

The first concern is for adequate public notification. Currently it is extremely difficult to determine when regulation changes are being proposed. We have been told by at least one state agency-the Office of Professional and Financial Regulation (the Board of Examiners of Psychologists-our licensing Board) that they do not maintain an interested parties list. This appears to violate Title 5 Chapter 375, section 5083 of the Administrative Procedure Act. The Dept. of Human Services requires a fee to be on an interested parties list, but fails to notify subscribers when their subscription expires, which can lead to costly oversights by interested parties. As an outsider observing the process, it appears that some state agencies do not wish the public to comment and find any number of schemes to deter the process. This is really the most critical part of the process and needs an overhaul, not in the APA rules, but rather in the way they are carried out. It is inexcusable for the licensure board of psychologists not to alert the primary professional organization for the state of changes in the licensure law which could have far-reaching effects on the profession.

The second area of concern is the blatant disregard of some agencies to public comment at all. It is not uncommon for a set of proposed regulations to be commented on by a long list of interested parties, yet not one of the comments are incorporated into the rules/regulations. Even more chilling is the lack of justification on the part of the state agency for why the comments /suggestions were not taken into account. We have two suggestions regarding this area of concern. The first is that state officials should take a more active role in getting input from interested parties. At the hearing, for example, it would be refreshing to see state officials actively engaging those testifying in a dialogue

about needed changes, instead of passively listening. Secondly, we would like to see the Commissioner be required to sign off on all regulations before they are promulgated. It is unclear whether in fact the Commissioner ever sees the final product.

Our final comment is in regard to agencies promulgating regulations without the benefit of public comment. In 1996, the Dept. of Human Services in collaboration with the Office of Substance Abuse promulgated rules on Medicaid coverage of substance abuse. When the final regulations were printed a major change to the rules on supervision had been added after the public comment period, even though no one had requested the change, and it had not gone through the public hearing process with all the other proposed changes. This is an example of a blatant disregard for the process and one that should be remedied.

As a final comment, we would encourage all agencies to work with interested parties before the regulations go out to public hearing.

In closing we appreciate the opportunity to comment on the process and we would be happy to assist further if necessary. Thank you.