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STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

TO: Heather Gann, Public Consulting Group, Inc.

FROM: Senator Rebecca Millett, Senate Chair
Representative Victoria Kornfield, House Chair
Joint Standing Committee on Education and Cultural Affairs

DATE: November 9, 2020

RE: Direction for the Phase II Report

Thank you for your presentation on November 5, 2020 of the Phase I Report on Maine's early childhood special education services. As you know, the development of the Phase II report implementation plan must contain the components outlined in the contract, and must be in accordance with the direction received from the Joint Standing Committee on Education and Cultural Affairs at the completion of Phase I.

Accordingly, during the meeting on November 5, 2020 a majority of the Joint Standing Committee on Education and Cultural Affairs reviewed the recommendations from the Phase I report and provided you with some directions for the Phase II report implementation plan. That discussion and directions are summarized below.

As repeatedly emphasized during the meeting, the direction provided below is not an endorsement by members of the committee individually or the committee as a whole of any particular recommendation or course of action. Rather, this is an opportunity to receive additional information about what an implementation plan could look like if the State ultimately moves in this direction. Members of the committee need more information in order to understand what any possible implementation plan would entail, including but not limited to, statutory or regulatory changes, and administrative policy changes, and resources.

In addition to the specific recommendations outlined below, the majority of the members on the Joint Standing Committee on Education and Cultural Affairs have requested that PCG include the following components throughout the Phase II report, where applicable:

- A clear delineation between changes that need to be made through legislation, regulatory action, or administrative policy; and

- Greater clarity regarding the adequacy of funds and methods of deploying funds more effectively that demonstrates where there would be savings and efficiencies while maintaining or improving the level of services.

Early Intervention (Part C) Recommendations

PCG Recommendations:

- 1.1. **State lead agency** - DOE be officially designated as the lead agency for the administration of Early Intervention (EI) Part C and that CDS administration for the program be moved within the DOE. The lead agency having responsibility to implement a statewide system of early intervention in accordance with the federal IDEA Part C regulations, including: child find and public awareness; a comprehensive system of professional development; personnel standards, data collection; required general supervision system to monitor for compliance, correct noncompliance, facilitate improvement, support practices that improve results and functional outcomes for children and families, as well as ensuring the provision and funding of all required early intervention services.
- 1.2. **Administrative Office** - EI Part C be administered within the early childhood education office, along with Head Start Collaboration and Pre-K

Note: PCG also recommends that Maine consider exploring the development of a cabinet level early childhood department that would bring together all early care and education programs within a consolidated governance structure as is occurring in states across the country.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan. The implementation plan should also include what the next steps would be and what would ultimately be required for the State to move to a cabinet-level early childhood department.

Additionally, PCG should include the steps necessary for a transition of current Child Development Services (“CDS”) staff to the Department of Education (“DOE”).

PCG Recommendation:

- 1.3. **Consolidated regional office structure** - EI Part C to establish a reduced number of regions with 1-3 counties (regions to be aligned to county boundaries). Regional offices to include managers and staff to provide 1) accountability and monitoring; 2) outreach and child find 3) training and technical assistance. Service coordinators may also be located in satellite offices within the region or in home offices to maintain proximity to families and providers throughout the region.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

Instead of the above recommendation, PCG should include in the implementation plan the establishment of boundaries in line with boundaries already established by other agencies (such as the Department of Health and Human Services). PCG should include what steps would be required to accomplish that as seamlessly as possible, and whether there might be any advantages to certain regional boundaries, such as co-location with other agencies.

PCG Recommendations:

- 1.4. **EI provider agency contracts** - EI Part C to contract with provider agencies through a Request for Proposal (RFP) process, aligned to state procurement rules. The EI Program should decide whether more than one provider agency can be awarded a contract for a county with a high service need or population. The contracted early intervention provider agencies would be responsible for conducting: child find (including screening); comprehensive developmental evaluations; ongoing assessments; and for ensuring the provision of all sixteen required early intervention services in accordance with IDE Part C. Contracted EI agencies would utilize a mix of employees, sub-contracts and arrangements with other providers (e.g. health, medical, audiology) and would be monitored to ensure compliance with federal and state regulations, accurate data entry and performance measure achievement.
- 1.5. **Service coordination** - Service Coordination to continue to be provided by state employees through the regional offices, including intake, coordination of the evaluation and eligibility determination, development of the IFSP, coordination of services and supports and the transition to preschool at age 3.
- 1.6. **EI program regulations** - EI Part C to develop a new brand name, reflecting the new governance (see 3.1 regarding branded campaign).
- 1.7. **EI program regulations** - EI Part C to develop separate regulations for early intervention IDEA Part C that disentangle them for requirements for older children, making requirements clearer and easier to follow for staff, providers, collaborating partners and parents.
- 1.8. **Reconstitute the Interagency Coordinating Council (ICC)** – Ensure that required ICC members are appointed, meetings are held, and duties are carried out in accordance with IDEA Part C federal regulations. Support the effective functioning of the ICC using Federal IDEA Part C grant funds for meeting coordination, public notice, minutes and travel costs for members (especially parent members) to attend. Consider establishing the local ICCs at the regional level to advice on Part C issues and to feed information and recommendations up to the state-level ICC.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan.

PCG Recommendations:

- 2.1 **MaineCare billing expansion** - EI Part C to renew billing to MaineCare for service coordination and special instruction (sometimes defined as ‘developmental instruction’/’developmental therapy’ in state Medicaid policy). Under federal IDEA Part C regulations special instruction includes working with the infant or toddler with a disability to enhance the child’s development across domains including communication, gross and fine motor, adaptive, social and emotional. Service coordination may be funded under targeted care management. Both services were funded by MaineCare in the past and are consistently funded in other states.
- 2.2 **MaineCare early intervention policies** – Continue collaboration with MaineCare to develop specific ‘early intervention section’ (separate from a school-based section) of the MaineCare Benefits Manual that includes service definitions, billing codes, modifiers and rates for all reimbursable early intervention services. These can be used within the central billing system (see 2.5) to ensure that billing documentation and claiming processes meet MaineCare requirements and prevent audit exceptions. This will also ensure clear and consistent use of modifiers which is necessary for the accurate calculation of the state match (seed) associated with IEP authorized education services. These new codes and billing processes should be clearly and effectively communicated to all providers.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan.

PCG Recommendation:

- 2.3 **Early intervention rate study** - Conduct a rate study to develop rates that address the costs of providing early intervention services, including preparation for services, travel and report writing. The development of rates for evaluation and assessment should also be included. If adopted, the EI program should engage with MaineCare in order to standardize rates of reimbursement for services provided to MaineCare eligible and non MaineCare eligible children.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

The Joint Standing Committee on Education and Cultural Affairs learned that there is currently a rate study being conducted by the Department of Health and Human Services through Myers and Stauffer, LC. PCG should determine whether CDS rates are included in that rate study. If not, the Phase II report implementation plan should include this recommendation, but with clear information regarding what a rate study would involve and the time and cost required.

PCG Recommendation:

- 2.4 **Early intervention private insurance statute** - Amend private insurance legislation ‘Title 24-A Chapter 35 § 2847-S Coverage for children’s early intervention services’ to include 1) coverage of additional early intervention services (including special instruction by developmental specialists); 2) removing or raising the annual cap; and 3) changes “referral from the children’s primary care provider” to “for children who meet the State’s eligibility criteria for early intervention and services provided in accordance with their Individualized Family Service Plan (IFSP).”
- 2.5 **Central Billing System** – Develop a central billing system to process claims to MaineCare and private insurance that maximizes revenue through automation and efficiencies. Delivered services data (e.g. <number of minutes> of <service> provided on <date> to <child> at <location> by <therapist name> <therapist number>) from SAUs and contracted providers would be collected through a central web-based electronic data system. The data is then converted and processed into claims by either state employees or through a billing agent. A decision would be made regarding whether the payment would go directly from the private insurance plan and / or MaineCare directly to the contracted provider OR on pay-and-chase basis where the state reimburses the contracted provider and ‘chases’ the 3rd party reimbursement from the private insurance plan and / or MaineCare. Both options are utilized in other states.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan. To the extent possible, PCG should include how a central billing system will improve data collection.

PCG recommendations:

- 3.1 **Branded campaign** – Using federal IDEA Part C grant funds to develop a branded campaign for early intervention (using the new program name see 1.6 above) to include website, social media, materials (posters, brochure, developmental chart, promotional materials etc.) and have regional offices conduct outreach and child find to increase the number of infants and toddlers served, while promoting awareness and collaboration with local, potential referral sources.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan.

PCG Recommendation:

- 3.2 **Child Find Plan** – Establish a standing committee of the ICC (with partners from public health, Academy of Pediatrics; child care, home visiting, etc.) to develop and oversee implementation of statewide child find plan.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan. The implementation plan should include specificity regarding steps to reinvigorate the ICC. The implementation plan should also include specific benchmarks and timelines to measure the State's progress in improving its Child Find efforts compared to national averages.

PCG Recommendations:

- 3.3 **Eligibility Criteria** - Consider changing the state's eligibility criteria to enable more children with less significant developmental delays to be served.
- 3.4 **Competencies, training & practice-based coaching** - Develop competencies and the associated training for all early intervention providers that incorporates the evidence-based Routines-Based Early Intervention (FBEI) model and other Part C key principles and practices referenced earlier in this report. It is also recommended that this training make use of web-based learning along with classroom-based instruction and incorporated practice-based coaching. Continue to ensure fidelity in implementing FBEI under the State's federal State Systematic Improvement Plan (SSIP).

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan. In addition, the implementation plan should include what professional standards and minimum training requirements are required for Part B-619 providers and staff and any steps necessary for the credentialing and accreditation of early childhood providers and staff. And, to the extent possible, opportunities regarding the creation of undergraduate degree programs for early childhood education.

Early Childhood Special Education Part B-619 Recommendations

PCG Recommendations:

- 1.1. **Designated state agency:** The Maine Department of Education (DOE) to be officially designated in state statute as the state agency for the administration of Part B-619 services for children with developmental delays and disabilities 3 through 5. PCG recommends a transition period for this change of administration from CDS to DOE, as described in 1.6 below.
- 1.2. **Administrative Office:** Administration of Part B-619 services at the DOE to be within the Office of Special Services, along with K-12 special education services. Regular planning and coordination with staff from the Office of Early Childhood Education is also recommended.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan. The implementation plan should clearly demonstrate how the Department of Education will ensure fidelity to IEPs and specific systems for assuring consistency of quality for the provision of Part B-619 services across the State, and whether guidelines are sufficient or whether standards need to be adopted. The plan should include a process or methodology for the creation of minimal operational standards (such as length of school day, transportation, and space requirements).

The implementation plan should also identify how data will be transitioned from CDS to DOE and what database will be used (for example, either CINC or the current k-12 database).

PCG Recommendation:

- 1.3. **619 state staff:** Administration of Part B-619 services at the DOE to include a 619 Coordinator and team of early childhood special education specialist staff to assist in the statewide implementation of Part B-619 services by SAUs, including: 1) accountability and monitoring; 2) inclusion support and community systems building; and 3) training and technical assistance.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan. PCG should include how these recommendations will utilize current CDS staff and leadership.

PCG Recommendation:

- 1.4. **Designate SAUs to provide 619 services:** SAUs to be officially designated in state statute as responsible for the provision of Part B-619 services in accordance with federal and state regulations for all eligible children with developmental delays and disabilities ages 3 through 5 in their catchment area.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

In addition to the many components listed in conjunction with the transition period recommendations below, the implementation plan should also address the following:

- How SAUs will plan to provide for transportation for this population of students;
- Sufficiency and use of the major capital construction fund and other creation or improvements to physical spaces to serve these children in appropriate spaces; and
- How SAUs would supervise contracted providers.

The plan should also address the costs of the due process and what additional resources may be necessary once SAUs are responsible for the provision of Part B-619 services.

PCG Recommendations:

- 1.5. **Revise state regulations:** Revising the current Maine Unified Special Education Regulation (MUSER) to include the new administrative structure, including the provision of Part B-619 services by SAUs.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan.

PCG Recommendations:

- 1.6. **Transition Period:** Establish a transition period of 3 full school/fiscal years (e.g. if legislation was passed in March 2021 – the transition period would be July 2021 – June 30, 2024), providing support and direct funding options for ‘early adopter’ SAUs to provide IDEA 619 services to children 3-5 after 2 years.
- 1.7. **State-level transition leadership team:** Establish a state-level transition leadership team to work during the transition period to address identified state-level funding, facility, statute and policy changes, workforce and training and professional development, technical assistance. The state-level transition leadership team be assigned to complete ‘ECTA Systems Framework’ IDEA Part B 619 self-assessment, including the governance, accountability & quality improvement and finance sections and using the results during the transition period as part of the implementation planning.
- 1.8. **SAU Transition planning:** Support all SAUs to develop a preschool special education transition plan in year 1 through a team process to include parents and community partners. Each transition plan to address: number of children 3-5 with disabilities projected to be served; their current placements; projected placements; community partner agreements with Head Start and child care; opportunities to expand Pre-K; any needed space / facility needs; personnel needed (hiring / contracts); identification of technical assistance needs for topics such as, recommended practices for serving young children, early childhood outcomes, reporting required data and the use of the fiscal toolkit to address opportunities to braid funding.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in the Phase II report implementation plan.

However, PCG should include extensive information regarding what this transition would look like, including but not limited to:

- A rubric that will address the facets of the transition specifically for SAUs, such as what SAUs must have in place prior to transition and resources SAUs will need to have to accomplish the transition. This rubric should function as an assessment tool to evaluate a district’s readiness to take on the provision of Part B services;
- A statewide rubric with benchmarks for the State to assess overall statewide readiness before any actual transition in the provision of services begins to occur;

- Identification of how the Department of Education, working cooperatively with SAUs, will determine readiness;
- Ensuring that there are adequate resources for the new demands on the local SAUs and community services providers, and identification of any additional subsidies for SAUs or for the creation of additional services in the community;
- Identification of any task forces or committees to manage the transition;
- The involvement of stakeholders;
- The availability of any technical assistance from ECTA and how it can be utilized;
- What will happen with the current CDS programs and how will they work in the new system, especially in districts that may not have the capacity to absorb the existing programs;
- Identification of the steps necessary to ensure that in any transition of services there is a mitigation of harm and stress to families and children; and
- Methods for enforcing least restrictive environment when SAUs lack public preschool programs.

PCG Recommendations:

- 1.9 **Inclusive early childhood education guidance document:** Develop state guidance for SAUs and community early childhood providers regarding the implementation of inclusive early childhood services (drawing on national and other state documents).
- 1.10. **619 representation:** Ensure IDEA Part B-619 representation on the state IDEA panel, Children’s Cabinet and other early childhood planning initiatives.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include these recommendations in their Phase II report implementation plan.

PCG Recommendations:

- 2.1. **Central billing system:** Develop a central billing system to process claims to MaineCare that maximizes revenue through automation and reduction in administrative burden on SAUs. Delivered services data (e.g. <number of minutes> of <service> provided on <date> to <child> at <location> by <therapist name> <therapist number>) from SAUs and any contracted providers would be collected through a central web-based electronic data system. The data is then converted and processed into claims by either state employees or through a billing agent. SAUs and contracted providers would receive payment directly from MaineCare.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan. The implementation plan should include clear and specific guidance on the central billing system, including but not limited to how it will alleviate audit concerns.

PCG Recommendation:

- 2.2. **MaineCare ‘special education services’ section:** Continue working with MaineCare to develop clear ‘special education services’ section of the MaineCare Benefits Manual that includes service definitions, billing codes, modifiers and rates for all special education and related services reimbursable services. These can be used within the central billing system to ensure that billing documentation and claiming processes meet MaineCare requirements and prevent audit exceptions. This will also ensure clear and consistent use of modifiers which is necessary for the accurate calculation of the state match (seed) associated with IEP authorized education services.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan.

PCG Recommendation:

- 2.3 **Rate Study:** Working with MaineCare to conduct a rate study to determine the costs of providing reimbursable special education and related services.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

Similar to the same Part C recommendation, PCG should determine whether CDS rates are included in that rate study. If not, the Phase II report implementation plan should include this recommendation, but with clear information regarding what a rate study would involve and the time and cost required. In addition, how can the State ensure equity between State rates and MaineCare rates, and to the extent this impacts contracted providers and SPPS, whether there needs to be any mitigation to ensure there is no harm done.

PCG Recommendation:

- 2.4 **Funding of 619 services:** Fund 619 preschool special education services through SAUs utilizing either:
- 2.4.1 EPS special education funding formula by SAUs – with use of the \$30 million state appropriate currently received by CDS to offset the local cost (no more than 50% local cost for special education). SAUs would also receive MaineCare; IDEA 611 and IDEA 619 funds and can utilize inclusive Pre-K, Head Start and child care placements.
 - 2.4.2 Per child allocation to SAUs utilizing the current \$30 million state appropriation currently received by CDS. SAUs would also receive MaineCare; IDEA 611 and IDEA 619 funds and can utilize inclusive Pre-K, Head Start and child care placements.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include both options in the Phase II report implementation plan. In order to assist in the understanding of how the different funding models could be implemented, PCG should include two or three anonymous SAU examples of what the different funding models would look like. In addition, to the extent possible, the Committee would like to see how the State can allocate funds to cover the actual costs of the students.

PCG should also provide some clarity regarding role of funding for students who attend SPSS and whether these students should be funded in the current model or through tuition as is currently done in the k-12 model.

PCG Recommendation:

- 2.5 **Review of current children with high costs:** Conduct a review of the current children with high annual cost to determine the appropriateness of the intensity of services they are receiving and determine whether they are being served in the least restrictive environment. Currently 785 children aged 3-5 eligible for IDEA Part B-619 have annual costs over \$20,000.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include in the Phase II report implementation plan a review of the current children with high annual costs over \$75,000.

PCG Recommendation:

- 2.6 **Fiscal toolkit:** Develop a fiscal toolkit for SAUs to look at how to braid funding streams and maximize partnerships with other early childhood providers (Head Start, child care, Pre-K) and contracted providers to effectively serve preschool children with disabilities under IDEA Part B-619.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan. PCG should provide greater clarity in what braided funding actually looks like and where those funds come from.

PCG Recommendations:

- 3.1 **Training and professional development:** Develop training and other professional development opportunities (webinars, online asynchronous course) on inclusion of children with disabilities in early childhood education for a variety of audiences, including school administrators and boards; teachers and other instructional staff; parents and community partners. Training and professional development to include development of IEPs including the special education and related services to address the individualized developmental needs of each child and the determination of the least restrictive environment/setting for the child.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan. PCG should include training and professional development as part of the rubric and assessment tools for whether the State is ready to make a transition. The implementation plan should also include steps necessary to ensure access to trained professionals to provide services wherever they are being provided, and where there are not sufficient trained professionals, the timelines and resources for what it will take to ensure access to trained professionals.

PCG Recommendation:

- 3.2 **Pyramid Model:** Develop a cross early childhood program (Head Start, Pre-K, child care, IDEA Part B-619) leadership team to develop a plan for implementation of the Pyramid Model in order to promote the use of evidence-based practices for promoting young children’s healthy social and emotional development and effectively addressing challenging behaviors through a tiered intervention approach.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan.

PCG Recommendation:

- 3.3. **Chapter 676 training:** Include in training consideration of Chapter 676 (which currently allows children who turn 5 between July 01 – Oct 15 to remain in IDEA Part B-619 services and to transition to Kindergarten the following year) as it applies to the IEP Individualized Education Program (IEP) decisions made individually for each child. With IDEA Part B-619 services provided through SAUs it is likely that fewer IEP teams will determine the need for a child to continue to receive 619 preschool special education rather than transition to Kindergarten

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan.

PCG Recommendation:

- 3.4 **Use of developmental delay eligibility category:** Consider using the eligibility category of developmental delay more widely. Train and encourage evaluation teams in the use of the developmental delay category of eligibility.

Additional Direction from the Joint Standing Committee on Education and Cultural Affairs:

PCG should include this recommendation in the Phase II report implementation plan. To the extent possible, PCG should identify how expanding eligibility criteria could impact the number of children who will need to be served and any additional resources that will be necessary to serve these additional children.