

JOINT FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, September 25, 2015

MEMBERS PRESENT:

Rep. Neal Kurk, Chair

Rep. Ken Weyler

Rep. Lynne Ober

Rep. Cindy Rosenwald

Rep. Dan Eaton

Rep. Richard Barry (Alt.)

Sen. Chuck Morse

Sen. Jerry Little

Sen. Lou D'Allesandro

Sen. Andy Sanborn

Sen. John Reagan (Alt.)

(Convened at 10:04 a.m.)

(1) Acceptance of minutes of the August 26, 2015 meeting

CHAIRMAN KURK: Good morning, everyone. I'd like to call the September 25th, 2015, meeting of the Fiscal Committee to order. I know a number of you are concerned about the item dealing with retiree health care. I'm glad you're here, and I invite you to stay; but I would point out that this is not a public hearing. This is a public meeting of the committee, and we will not be taking public testimony. So please stay, listen to what we have to say; but we will not be taking public testimony.

With that, we'll turn to the first item on the agenda, the acceptance of the minutes of the August 26th meeting. Is there a motion?

**** SEN. D'ALLESANDRO: Move.**

CHAIRMAN KURK: Senator D'Allesandro moved, seconded by Representative Weyler that the minutes be approved. Discussion?

There being none, are you ready for the question? All those in favor, please indicate by saying aye. Opposed? The ayes have it and the minutes are accepted.

*** {MOTION ADOPTED}

(2) Old Business:

CHAIRMAN KURK: The next item is Old Business. There are a number of items under Tab (2). All of them are on the table, and it's my understanding that we have had requests from the proponents to withdraw those items. So what I'd like to do is to have a motion to take all of those items off the table, single motion to remove all of those items from the table, and then we will act, I hope, to accept the requests to withdraw those items.

** SEN. SANBORN: So move.

REP. OBER: Second.

CHAIRMAN KURK: It's been moved and seconded that all the items under Tab (2), Old Business, be removed from the table. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the items are off the table.

*** {MOTION ADOPTED}

CHAIRMAN KURK: Is there now a motion to accept the requests from the various proponents of those items to withdraw those?

** SEN. SANBORN: So move.

REP. OBER: Second.

CHAIRMAN KURK: Moved by Senator Sanborn, seconded by Representative Ober that the Committee accept the request to withdraw those tabled -- previously tabled items. Discussion? You ready for the question? All those in favor, please indicate

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by saying aye? Opposed? The ayes have it and those items are withdrawn.

*** {MOTION ADOPTED}

CONSENT CALENDAR

(3) RSA 9:16-a Transfers Authorized:

CHAIRMAN KURK: We now turn to the Consent Calendar. I understand that both of these items are requested by the various proponents to withdraw them; is that correct?

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: Items -- yes, Items 15 --

CHAIRMAN KURK: 207, 208.

MR. KANE: 15-207 and 15-208 are withdrawn by the Department.

CHAIRMAN KURK: So we will accept those requests to withdraw those items. We now move on to – if there's no objection on the part of the committee? There being none that will be the case.

(4) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from Any Non-State Source:

CHAIRMAN KURK: We turn now to Tab 4. First item is 15-188, a request from the Department of Transportation for authorization to accept and expend \$300,000 in Federal funds through the end of this Calendar Year.

** SEN. D'ALLESANDRO: Move the item.

CHAIRMAN KURK: Senator D'Allesandro moves the item. Is there a second?

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SEN. REAGAN: Second.

CHAIRMAN KURK: Second by Senator Reagan. Discussion? There being none, you ready for the question? All those in favor accepting Item 15-188, please now indicate by saying aye? Opposed? The ayes have it and the item is accepted.

*** {MOTION ADOPTED}

CHAIRMAN KURK: We turn now to 15-193, a request from DRED for authorization to accept and expend \$109,878 in Federal funds through the end of this Calendar Year.

** SEN. D'ALLESANDRO: Move the item.

REP. OBER: Second.

CHAIRMAN KURK: The approval of the item has been moved and seconded. Is there any discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye. Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(5) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from Any Non-State source and RSA 124:15, Positions Authorized:

CHAIRMAN KURK: Turning now to Tab (5), Fiscal 15-194, a request from the Department of Justice for authorization to accept and expend \$242,367 in other funds through the end of this Calendar Year. And contingent upon the approval of that, further authorization to establishing a full-time temporary Planning Analyst/Data Systems position, Labor Grade 24, and establish a consultant position through the end of this Calendar Year.

REP. OBER: I have a question, Mr. Chairman.

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CHAIRMAN KURK: Is there someone from the Department of Justice who can answer a question? Good morning and welcome.

KATHLEEN CARR, Director of Administration, Department of Justice: Good morning. Kathy Carr, Director of Administration.

CHAIRMAN KURK: Representative Ober has a question.

REP. OBER: Kathy, thank you for taking my question. On the last page of your memo to us it says, in the event that these funds are no longer available, General Funds will not be requested to support this program. And while I appreciate that, it doesn't say what will be done with the data that's been collected or the system that's available, if you plan to keep that data, where you plan to keep it, what's the cost of keeping it, who's going to pay for that?

MS. CARR: The data sits on a national database with the CDC. And from what I understand from the phone calls I made to DHHS today, that data will remain -- any data that was entered for New Hampshire statistics on violent death will remain in that system. Any data that wasn't when the program ceases that data will not be entered. It doesn't sit anywhere local. It's all part of an international or a national database.

REP. OBER: Further question.

CHAIRMAN KURK: Further question.

REP. OBER: If you have data that has not been entered, is it on a paper form that will be destroyed? How do you collect that? I mean, it can't just be somebody's brain sitting at a keyboard; right?

MS. CARR: Well, it will all be at the Office of the Chief Medical Examiner. So that data is already there anyways. So they would use their normal, secure functions that they use now. The only difference with that data is that in addition to the data that they have already collected as part of their normal

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examinations and determinations on the manner of death, would be that they would enter it into this system and track and report.

REP. OBER: Thank you, Kathy. Appreciate that.

CHAIRMAN KURK: Miss Rice, did you wish to add anything?

ANN RICE, Deputy Attorney General, Department of Justice: I think that she covered it.

CHAIRMAN KURK: I have another --

REP. OBER: Good timing.

CHAIRMAN KURK: I have another question. In response to one of the questions here you indicated that this item was not in the budget because, quote, the opportunity to accept and expend came after the request. It's my understanding that the budget is supposed to include items or grants for which application has been made, even if the outcome is not known so that budget writers in the course of doing the budget understand where the Department is going and can consider how this might impact other areas of the budget. So I would ask that in the future whenever you're doing a grant, you submitted it or you know you're going to submit it, you include that in the budget so that all of us have a full understanding of where the Department is headed.

MS. CARR: Okay.

CHAIRMAN KURK: Thank you. Further questions? Thank you both very much. Good timing. Is there a motion on Fiscal 15-194?

** REP. ROSENWALD: So move.

SEN. D'ALLESANDRO: Move the item.

CHAIRMAN KURK: Representative Rosenwald moves, seconded by Senator D'Allesandro that the item be accepted and approved. Discussion? There being none, are you ready for the question?

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All those in favor, please indicate by saying aye? Opposed?
The ayes have it and the item is accepted.

*** {MOTION ADOPTED}

CHAIRMAN KURK: We turn now to Fiscal 15-195, a request from the Department of Safety for authorization to accept and expend \$7,747,351 in Federal funds through the end of this Calendar Year, and establish two part-time temporary Program Assistant positions for the same period.

** REP. EATON: Move approval.

REP. OBER: Second.

CHAIRMAN KURK: Moved by Representative Eaton who -- uh --

REP. EATON: Don't go there.

CHAIRMAN KURK: Seconded by Representative Ober. Questions and discussion? There being none, are you ready for the question? All those in favor of the motion, please indicate by saying aye? Opposed? The ayes have it and the motion is adopted.

*** {MOTION ADOPTED}

(6) RSA 7:6-e Disposition of Funds Obtained by the Attorney General

CHAIRMAN KURK: We turn now to item number (6), Fiscal 15-186, a request from the Department of Justice for authorization to retain \$581,177.05 in settlement funds from multistate settlements and request to expend the funds in support of the Department's Consumer Antitrust Bureau.

** REP. OBER: Move to approve.

CHAIRMAN KURK: Representative Ober moves to approve.

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SEN. REAGAN: Second.

CHAIRMAN KURK: Senator Reagan seconds. Senator Sanborn has a question. Is there someone from the Department who can answer that question? Who will at least try to answer the question?

SEN. SANBORN: Hey, hey, hey.

REP. OBER: Just recognize that you have a complex mind, that's all.

CHAIRMAN KURK: Good morning again.

MS. RICE: Good morning. I'm Ann Rice, Deputy Attorney General, and Kathy Carr, Director of Administration.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair, and Kathy, thank you so much for coming in. I appreciate it.

My question, I'll try and narrow down about 30 questions into one and a holistic one. You know we have been struggling in the Legislature relative towards what to do with these funds and how to re-allocate them when you receive them, acknowledging we obviously passed something that required 10% of anything collected over a million dollars would go into the General Fund. So I've got a couple concerns I'd like you to kind of help me wade through.

My first concern, obviously, is I guess as an everyday, normal taxpayer, the State of New Hampshire goes out on behalf of the people of this state and enters into some sort of an action in a protective mode and you collect the money. Why aren't we giving it back to the people? That's the first part of it. So just holistically, I don't see us giving money back to the people when we're suing on their behalf. And the second half is I kind of get this feeling that now that we have lowered this threshold down to a million dollars that we're only seeing settlements below that part and it's making me uncomfortable

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relative to allocation of funds and whether or not we did the right thing with the cap at a million dollars at 10% going down, whether or not if we should be lowering even further to have better control over the settlements.

MS. RICE: With respect to the first part about whether money is going back to consumers. In the settlement funds that we get, most of these are multistate settlements and there is usually an aspect of the settlement where there is restitution or some sort of money to people. And then there is a State fund so the money that we are getting is separate and apart from what is negotiated to go back to consumers.

SEN. SANBORN: Okay.

MS. RICE: With respect to the second question on the level, the settlement level, I want to assure you that we are not trying to negotiate so that we are less than the million dollars. It is very rare that we would get a settlement in for more than a million dollars, simply because of the size of the state in these national multistate settlements. Our share is typically much less than a million dollars. So what you're seeing in these three settlements is just our State's share of what was negotiated for out of the entire settlement. You know, the million dollar level that was established recently in statute, I'm not exactly sure where that level came from; but I can say that we rarely get something more than a million dollars. I think we saw the mortgage settlements which was by far the largest settlement that we -- which was nine million, something like that; but, typically, these are going to be much less.

SEN. SANBORN: One follow-up.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: Help me understand. You're an attorney. I stay at Holiday Inn once a month so I'm not as prepared. If my memory serves on position of the State relative to disposition of funds is based upon is it a court order, a court finding, a

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negotiated settlement? 'Cause one of these cases, obviously, looks like there were four different cases that were found for the benefit of the State, but they were wrapped up into one specific order, even though they were different cases. How does it work in the disposition of funds relative to, you know, finding of the court or negotiated settlement before the court or some sort of an order where they are consolidating several cases into one?

MS. RICE: Well, oftentimes cases are consolidated. If cases are brought against similar defendants, we can consolidate. There can be an agreement to consolidate them into one court order, which may be what you're referring to. So with respect to this, this is the Verizon and the Sprint -- I don't remember the exact company.

SEN. SANBORN: Yeah, I apologize. I was given the document yesterday. It seemed they consolidated four. They seem to be somewhat different.

MS. RICE: They are treated -- the settlements are treated separately, but we may have combined those into one New Hampshire order. Because we have to -- in every multistate settlement, we have to bring something in our State court as well as in the Federal court.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: So you're trying this in Federal court. You come up with some sort of a solution. Then you take the agreement and you may present -- you present that to a state level judicial process and that's what you do in the consolidation. So in this case you've got Verizon Wireless for 180,000, AT&T for two twenty-five, Team Mobile for two oh two, and Sprint for 138. So, obviously, they're all phone companies.

MS. RICE: I beg your pardon. These are not consolidated. These are separate settlements.

SEN. SANBORN: All part of the same court order?

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MS. RICE: All part of the same court order. I need to find that. My understanding was that they were all severed settlements, that we negotiated these separately.

SEN. SANBORN: Okay. I'd love to try to understand how this all kind of works. Not today.

MS. RICE: Okay. Be glad to try and answer that for you. But we negotiated separately with – we being the national team – they negotiated separately with each of them. Now, there may have been, to expedite the process, it may have been consolidated, but I will find that out for you.

SEN. SANBORN: Thank you. Appreciate it. Thank you, Mr. Chairman.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. Ms. Rice, how frequently are we doing in-state settlements with in-state companies?

MS. RICE: Well, most of the time with in-state companies we're not doing settlements. We are doing more things like assurances and discontinuance, where we find a process a company is engaged in a deceptive practice, that sort of thing. Typically, what our first step is is entering into assurance or discontinuance with them. So we are not suing companies. This is more in the national level. Typically, in the state level it would be a much smaller and it would be for restitution to the victims or sometimes we would get a civil penalty; but you rarely would see settlements on the State level for consumer protection.

REP. WEYLER: Thank you. Thank you, Mr. Chairman.

CHAIRMAN KURK: Further questions? Thank you.

REP. OBER: Yes, I made a motion.

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CHAIRMAN KURK: The motion is -- before us is to accept Fiscal 15-186. Further discussion? Questions? There being none, are you ready for the question? All those in favor of accepting Fiscal 15-186, please now indicate by saying aye? Opposed? The ayes have it and the item is accepted.

*** {MOTION ADOPTED}

(7) RSA 21-I:30, II Medical and Surgical Benefits:

CHAIRMAN KURK: We turn now to item number (7) on the agenda, Fiscal 15-201, a request from the Department of Administrative Services for authorization for approval of plan design changes to the Retiree Health Benefit Plan effective January 1st, 2016, and authority to increase the premium contribution for Under 65 (non-Medicare) retirees from 12 1/2 to 15% effective on April 1st, 2016. There are many questions and there will be a fulsome discussion, and we are glad to welcome four folks? Oh, that's -- I see you're all well-prepared.

Just so you know, we have -- so we're looking at the same document, the document that I believe we will be acting on is Fiscal 15-201 Replacement. It's dated September 22nd, 2015; is that correct?

VICKI QUIRAM, Commissioner, Department of Administrative Services: Yes, it is.

CHAIRMAN KURK: In addition to that, we have an item dated today called Fiscal 15-201, Additional Information.

MS. QUIRAM: Yes, sir.

CHAIRMAN KURK: Plus, of course, all of the items that were previously submitted. But the item we will be acting on and taking a vote on is the Item 15-201 Replacement dated September 22nd.

MS. QUIRAM: Yes.

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CHAIRMAN KURK: Would you care to explain the latest version of your request?

MS. QUIRAM: Yes, I will. Good morning, Chair, and Members of the Committee. We are glad to be here today to talk a little bit more about the retiree health issue. As you know, we talked to you last month at your last meeting. I'm sorry. I am Vicki Quiram. I'm the Commissioner of Administrative Services, and with me today I have Cassie Keane, our Director of Risk and Benefits, and Sarah Trask, who is our Senior Financial Analyst for our Risk and Benefits program.

CHAIRMAN KURK: Welcome to all of you.

MS. QUIRAM: So, first of all, I just wanted to start just with a little bit of history and really give you history of the \$10.6 million deficit that we are expected to run in the retiree health budget for Fiscal Year 16-17 biennium. The budget process for 16-17, as you know, throughout every phase of that budget process DAS was projecting a \$5.5 million deficit for the retiree health care plan. And they actually showed during the budget process needed changes that would be -- needed to be made to plan design to make up for that deficit.

In June of 2015, DAS updated the budget presentation and we identified a 5% increase in pharmacy trends that was causing an additional \$4 million increase in the retiree health benefit budget. DAS also received a notice of a \$1 million reduction in the Federal subsidy that we get for the Employee Group Waiver Plan which we call EGWP, and it's the Medicare Prescription Drug Program for Fiscal Year 16-17. That with the 5.5 million, the 4 million, and the extra million dollars, took the total deficit in the health care plan to 10.6 million. So that kind of gives you where we were at that point.

So at the August 26th Fiscal Committee meeting, we made a presentation to you and that presentation is actually attached to the package that you have. I'm not going to go back through that presentation or go through the details. I think that we definitely talked at that time. We presented a review of the

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budget process. We explained the projected deficit and why we had it. We discussed all the variables that could change in health care management. We talked about the laws that we were under, certainly, to provide that health care plan and the tools that we had to change it. We gave examples and options under consideration and so we gave you an idea of the kind of the things we were looking at.

So what's happened since August? Since August, DAS has met with the Governor's Office, with retirees, with legislators, and with unions, and we have really obtained a lot of options, a lot of ideas on things that -- input on what we should consider to put in this plan. So based on the input from all these conversations, the proposed plan that we are actually giving you for consideration today has been put together.

I will tell you there is nobody that we got input from that likes doing this. Nobody wants to do this. But I think every -- and everybody knows it's going to have an effect on the retirees. But what we have put together to present to you today is the best plan that we possibly can that impacts the retirees as little as possible, although there will always be impacts but also stays within the funds we were given by everybody during the budget.

We worked very hard on this. We have run many, many models in different ways of doing this. It -- I'm going to tell you some things we didn't do. We didn't eliminate pharmacy coverage which was one of the options that we had talked about. We did not institute a premium contribution for people over 65. We did -- we did not increase our co-pays and our maximum out-of-pocket expenses for the pharmacy benefit above what was already included in here. And there were a lot of -- there was a lot of runs that included going deeper certainly than these cuts did. And it does include cost-saving measures, such as Site of Service, and what Site of Service does. It allows people to go to low-cost labs and low-cost in-patient locations for outpatient surgery without paying a deductible at all. We're also putting in there as far as savings the Compass Program. We need to do better with our Compass Program and what that does is

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steer people towards lower cost places to get their health care and that would be for non-Medicare retirees under 65. We cannot provide those programs to Medicare retirees.

So we're going to talk a little bit about DAS' short-term proposal for managing the retirement health benefit plan. I call this short-term because long-term we don't see this problem going away and we know that we are going to have to take a different look of how we do health care for all -- I think both our actives and our retirees as the costs go up. So long-term we are going to be looking at some other options? We'll talk a little bit about that later. But for the short-term, we have proposed some plans. Do you want me -- do you want us to walk you through the plan changes?

REP. OBER: Please.

CHAIRMAN KURK: Yes.

MS. QUIRAM: Okay. I'm going to ask Cassie to do the details of walking you through those tables.

CASSIE KEANE, Director, Bureau of Risk and Benefits, Department of Administrative Services: Good morning. I'm going to switch to the actual Fiscal item.

CHAIRMAN KURK: Before you do that --

MS. KEANE: Sure.

CHAIRMAN KURK: -- we had one question. If we wanted to delay making a decision today, I notice here there's a monthly cost of \$378,000. Does that apply to delaying our decision or does that apply to delaying the plan from January 1, 2016, to February 1, 2016?

MS. QUIRAM: January 1st.

MS. KEANE: It applies to January 1st. What I think is important for us to keep in mind is that when we get a decision,

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at that point we need to begin an education campaign with retirees. And so we need some time post-decision before implementation so we can inform the retirees about the plan changes.

CHAIRMAN KURK: Bottom line; if we were to delay this decision by tabling this for a month, would this have any impact on the \$378,000? Would you have enough time to do whatever you have to do and start the plan on January 1st or would you not?

MS. KEANE: I think we need three months. We have a lot of work ourselves.

CHAIRMAN KURK: That's a no, we cannot delay?

MS. KEANE: Yes, correct.

CHAIRMAN KURK: It would cost us \$378,000?

MS. KEANES: Correct.

CHAIRMAN KURK: Thank you. Please continue or start.

MS. KEANE: Sure. Okay. So I'm going to turn to the Fiscal item on Page 4. We begin with Table 1, and this table applies to Medicare Eligible Over 65 Individuals. And we are proposing two different changes to plan design. The first is that with respect to the Medicare Part A deductible, which is for this Calendar Year \$1,260. Today our retiree health plan pays the full cost of that deductible for an individual if they have an inpatient stay or a skilled nursing stay. Our proposed plan change is to have the retirees pick up \$500 of that deductible. By the way, that deductible changes every year, and that would result in a savings of \$1.1 million.

We also propose pharmacy changes and it's co-pays and maximum out-of-pocket changes. The pharmacy changes that we propose apply to both Over and Under 65. This is a table just laying it out for you. If you ever wanted to know what are we talking about for Over 65, we go through it in both charts.

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Retail co-payments today for generic, preferred, and non-preferred brands at retail, if I go to my local pharmacy, are 10, 20, 35 dollars. We propose they go up to 10, 25, and \$40. That's for a 30-day supply at retail. Mail order co-pays for a 90-day supply are today \$1, \$40, and \$70, and we propose they go up to \$10, \$50 and \$80. The maximum out-of-pocket today is \$500, a thousand, and we propose that that go up to 750, 1500, individual/family.

CHAIRMAN KURK: Question. Are there any provisions either for the Over 65s or the Under 65s or both to deal with hardship cases?

MS. KEANE: We have no capacity right now to deal with hardship cases. And I would add further that this is an analysis of how do we manage a \$10.6 million deficit. So I don't have a cushion in this proposal that would allow for hardship cases.

CHAIRMAN KURK: I appreciate that. I was asking generally.

MS. KEANE: Yeah.

CHAIRMAN KURK: Even under the current plan there are hardship cases, and there is no particular mechanism for someone to say, I can't afford this and here's my data, like some towns they'll abate taxes if you're poor.

MS. KEANE: Right. They would have to go to the community available programs for any help.

CHAIRMAN KURK: Not to the program.

MS. KEANE: Not within the Retiree Health Plan.

CHAIRMAN KURK: Thank you. Representative Eaton.

MS. KEANE: Yes.

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REP. EATON: Cassie, just a follow-up. Even if you wanted to be able to do that, you don't have the legal authority to do that; is that correct?

MS. KEANE: I have no legal authority to do that.

REP. EATON: Okay.

CHAIRMAN KURK: And you have to have legal authority to do it?

MS. KEANE: To provide hardship. In other words, to -- it would be, in my view, an expansion of the plan design. If I had a plan design approved, for example, that requires these co-pays and someone came to us and said I can't afford to pay them, I don't have authority to say you don't have to pay the co-pay.

CHAIRMAN KURK: And you don't believe that that's inherent in your ability to design a plan that would be approved by the Fiscal Committee?

MS. KEANE: I don't. I also don't think that I have authority to request from a retiree the documentation that I would need to verify hardship.

CHAIRMAN KURK: I see. Thank you. Representative Weyler.

REP. WEYLER: Thank you, Mr. Chair. The Affordable Care Act has caused a lot of problems and seems to have raised the cost of medical care in everything, including those of us that are guaranteed, like myself, I'm military retiree. My costs have gone up even though they were guaranteed when I retired to stay the same or go down. But they have gone up because of this Affordable Care Act making everything unaffordable. I guess that's the trigger on a lot of these plans.

MS. KEANE: If I may? Hum --

CHAIRMAN KURK: Tread carefully.

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MS. KEANE: I will. Hum -- in the presentation that we provided to you on August 26th, we have a slide that speaks to the variables that impact our health care costs. And speaking to the \$10.6 million deficit that is, again, driven by an increase in our cost trend for pharmacy and unexpected and unfortunate reduction in Federal revenue. But the original \$5.5 million deficit was what we -- what we did during the budget process was begin by looking at enrollment, our head count, how many people did we project would meet -- would enter the retiree health plan and cost. What do we project the costs are for an individual on a monthly and annual basis and that's how we built our budget. So thank you.

CHAIRMAN KURK: May I follow-up with another question not related to the Affordable Care Act? When you built your budget in the budget that we adopted that's now law, how did you deal with the \$5.6 million deficit?

MS. KEANE: We identified -- if I'm understanding how to address your question, we identified throughout the process, Governor, House and Senate, that we had our projected budget and that there would be a \$5 million deficit. So that we, in fact, you have in the presentation from August 26th, and I think it might be visually familiar with you, a two-page document that we spoke to in Division I in the House and before Senate Finance that this was a point in time plan. And it considered what -- how would we meet a five and a half million dollar deficit. And at that point in time, we proposed using surplus, changing plan design, and change both retail and medical, and an increase in the premium contribution for Under 65s.

CHAIRMAN KURK: How much surplus?

MS. KEANE: At that point in time? 1.9 million.

CHAIRMAN KURK: How much money did the funds lose as a result of the Governor's and Legislature's action to reduce the reserves in this?

MS. KEANE: I'm going to turn to Sarah.

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SARAH TRASK, Senior Analyst, Bureau of Risk and Benefits, Department of Administrative Services: I think it was a total of about 3 million, and then there was about -- General Funds was about 1.6 million as a result of reducing the reserves from 5% to 3%. I think it was about --

CHAIRMAN KURK: And that reduced your reserves by \$3 million of which --

MS. TRASK: I think about 1.6 was General Funds, and I don't have those numbers right in front of me. Approximately.

CHAIRMAN KURK: In addition to that, you propose to eliminate 1.6 million in surplus to meet your \$5.6 million problem. So that means you were taking 3 million, plus 1.6 out of the fund, and now the proposal is to change that 1.6 to 4 so you're taking a total of -- not you, but a total of \$7 million has been taken out of surplus and reserves if this plan is approved and because part of it is the budget.

MS. KEANE: If I could take a moment and explain the difference between surplus and reserve. I think it might help you understand.

CHAIRMAN KURK: Are my numbers accurate?

MS. TRASK: Yes. The surplus though that we're proposing using we are still leaving a same amount of surplus in the fund with this new plan that we were proposing using with the original plan. So it still leaves, I think, about 2 million of surplus in the fund after we use surplus in the plan.

CHAIRMAN KURK: How did that miracle of fishes and loaves occur?

MS. KEANE: That gets to what is a reserve and what is a surplus. The reserve, as you know, is established by law. And, in fact, House Bill 2 just has the provision that reduced it from 5% to 3%. But we -- and, in fact, if you -- if you

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turn -- I have an exhibit that will help you see this. Go back to this document.

CHAIRMAN KURK: The document is which one?

REP. OBER: More than just this.

MS. KEANE: The talking points. Okay.

CHAIRMAN KURK: Dated 25th?

MS. KEANE: Correct. Second page there's a table. It looks like this.

CHAIRMAN KURK: This is the one that says at the top DAS 16-17 Proposed Changes for Information Senate 5/4?

MS. KEANE: No, I'm sorry, you're in the wrong --

MS. QUIRAM: It says Table 1, Health Plan Surplus Detail.

REP. OBER: That's Page 3.

MS. KEANE: Page 3, yes. Should have numbered the pages, I'm sorry.

So what I'm looking at Table 1 where we start out with an accrual fund balance and this is something you might be familiar with from our bi-monthly report that we provide to you about the status of the health benefit plan. And so you can see that accrual fund balance and then it says IBNR and Reserves. IBNR is Incurred But Not Reported. It's required by statute and its purpose is that the health benefit plan has funds on hand should the fund terminate, should the plan terminate, so that we can pay bills that come in at a later date. Or let's say we went from being self-funded to fully insured, we'd be paying bills in both places for a period of time. So that's the purpose of IBNR. Again, it's required by statute. And you can see that we account for actives, retirees, and we account for retirees over and under in a single account and Troopers separately.

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There's also below the IBNR the estimated statutory reserve. In here it's listed as 5%, because we just simply haven't gotten to the work to change our accounting to the 3% and we will do that. So the statutory reserve is available to us should we have an overrun in costs. That's the reason why we keep a reserve on hand. That's the reason why you find it in the law.

Surplus is something different. Every month we collect premium from -- just on a real simple basis -- we collect premium, and we pay our expenses. The bills come in from Anthem. The bills come in from Express Scripts. We pay out. So at any given point in a Calendar Year, we might have collected more for this month than we paid out. And from that month we carry a surplus into the following month. Next month same thing happens. We are running a business. We collect our revenue. We pay our bills. And that surplus might go up or down over the course of a year. What I'm trying to help you understand is that the difference between what's a reserve and what's a surplus.

CHAIRMAN KURK: I understand that. But as a result of the \$3 million the State took out and as a result of the reserves and the result of your proposal for \$4 million to be taken out of surplus and used to offset the increased costs, the total amount of money available in the entire fund has gone down by \$7 million to be able to deal with emergencies. I understand you're still meeting your reserves. Instead of a 5% cushion you have 3% cushion. I understand you have a surplus which could be used for premium holiday which will go back to the agencies and perhaps the individuals who are paying in. There are all sorts of things that you could do with it. But one of the things that could be done is to reduce the premium in the future, for example. You've decided not to do that. You've decided your recommendation is to use this to reduce the impact on retirees for -- is it one or two years? I guess it's two.

MS. KEANE: It's for the biennium.

MS. QUIRAM: Two, it's for the biennium.

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MS. KEANE: Yes.

CHAIRMAN KURK: So the fund is \$7 million weaker partially for what the Legislature and Governor did but 4 million for what you're doing.

MS. KEANE: Four million for the proposed use of the surplus.

CHAIRMAN KURK: Yes.

MS. KEANE: One of the reasons why we consistently left \$2 million surplus in our account is, again, getting back to those variables. Our biggest concern is head count, and we talked about this last time we were here. Thirty-three percent of State Employees are eligible to retire. So we call that the silver tsunami. So we wanted to leave funds available to us to accommodate any increase in head count.

CHAIRMAN KURK: Thank you. Representative Weyler.

REP. WEYLER: Thank you. Thank you for your presentation. When you have a premium holiday, what are the savings both to the agencies and to the members?

MS. TRASK: It's given back in the proportion that it was paid in.

REP. WEYLER: What's the dollar amount?

MS. TRASK: Well, it depends on the total holiday that we would be having. So depends on the total amount of surplus that we would give back.

REP. WEYLER: If you had one paycheck holiday.

MS. TRASK: Per pay period?

REP. WEYLER: Two weeks.

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MS. TRASK: If it were for active employee?

REP. WEYLER: If you take it out every paycheck.

MS. TRASK: I think it's about 7 million for active employees only. I'm not talking about retirees. I think that's the per pay period premium amount we select for just active employees.

REP. WEYLER: You collect it from both -- excuse me.

MS. TRASK: Employer and employee.

REP. WEYLER: What's the breakdown? 10% employees, 90% --

MS. TRASK: No, it's less than that. I'm not sure. I don't have it right in front of me. It is less than 10% though for employees.

CHAIRMAN KURK: Have you ever had a -- what you call a premium holiday?

MS. KEANE: Yes.

CHAIRMAN KURK: Have you had a premium holiday for employees?

MS. TRASK: Yes.

CHAIRMAN KURK: When?

MS. TRASK: 2011?

CHAIRMAN KURK: Before that?

MS. TRASK: I'm not aware of any before that. I know we have had one in 2011.

CHAIRMAN KURK: When was the -- how many have you had and when was the last one for active employees?

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MS. TRASK: If you consider the health benefit savings incentive payment a holiday for actives, payment for health, that was the last one we had for health.

MS. KEANE: We had a dental rate, working rate holiday and that was in --

MS. TRASK: May. I think May of this --

MS. KEANE: May of 2015. So we had accrued in our dental account, which is also something that you see in your bi-monthly report from us. I think it was \$1.1 million in surplus in the dental. It's a lot less volatile than the health care accounts. So we implemented a working rate holiday for the dental. And -- okay.

CHAIRMAN KURK: Is it possible if you're in a position to provide these holidays that the premiums are excessive because the holidays are paid for out of surplus, not reserves?

MS. KEANE: That gets to the very difficult job when you're running a health benefit plan to predict the cost of health care in a given year. And we have the responsibility under the law for both actives and retirees to operate the plan within the appropriated fund. So we collect -- we estimate our premium for -- on a Calendar Year basis, and we implement that for active employees, for example, through our agency Fund 60 -- Class 60 accounts, I'm sorry. And all year long we are watching how are we doing. Working rates are, in theory, built for the mid-point of a Calendar Year. So that in the early part of a Calendar Year you are accruing surplus and you expect to be doing so. And you expect to be spending down at the second half of year. And so we are a self-funded plan and that began in 2003. And it's, I think, I've been with the plan three years. But it's fair to say it's been a learning experience. And so we've gotten more sophisticated about our premiums that we charge, but we have also gotten more sophisticated with regard to keeping money in agency budgets that we don't need and we do that through the working rate holiday.

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CHAIRMAN KURK: Have you ever received General Fund money for retiree benefits?

MS. KEANE: Yes. There's --

CHAIRMAN KURK: I don't mean in terms of premiums. I mean, to offset increases.

MS. KEANE: I'm not aware of that.

CHAIRMAN KURK: It's not in the budget, for example, as part of your plan to produce a \$5.6 million savings?

MS. KEANE: You mean additional funding?

CHAIRMAN KURK: Yes.

MS. KEANE: I'm not aware of any history of there being additional funding.

CHAIRMAN KURK: Representative Rosenwald.

REP. ROSENWALD: Thank you, Mr. Chairman. My question is not about prescription drugs, but I'm wondering if under the health plan for both the active employees and the retirees whether hospitals are able to add that 15% facility fee on to doctor visits when the hospital owns the practice or is that prohibited?

MS. QUIRAM: I don't think we know the answer to that question. I do -- I do think it's interesting though to note that our health care trend for actually the doctors and the hospitals and things like that is actually trending downward. And it's largely because some of the changes that we've made in the plan that are pushing people to go to the lower cost places to get their health care. There's a lot of different programs that the State has put together. So that trend is downward. And, really, this increase is all a growing pharmacy trend. We are not the only state that's seeing it. Everybody is seeing it and it's, of course largely due to the specialty medications, the

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medications we see every day. They are wonderful medications. They're very needed for people who need -- people are very lucky to get them that have these diseases, but they are very, very expensive. So as these new drugs come out, the pharmacy trends for how much money we're spending on medicine in the state is going very high.

REP. ROSENWALD: If I could follow-up?

CHAIRMAN KURK: Follow-up.

REP. ROSENWALD: Thank you. So I think we assume that -- well, first of all, I'd like to see the answer to my question, including whether you would need statutory authority to do that.

MS. KEANE: Okay.

MS. QUIRAM: We will do that.

REP. ROSENWALD: If these new medications that are expensive are so effective, are we also seeing a decrease in costs for hospitalization or other outpatient surgical procedures?

MS. QUIRAM: I don't think we have had time to see the trend for that. We do have a lot of data that we make these decisions based upon.

MS. KEANE: I would add that Vicki just told you overall it was Calendar Year 13 to Calendar Year 14 where we had the negative trend. It was a negative 1.6% trend on the medical side. So that's very positive. And there are many factors influencing that trend. So it's hard for us to attribute to any single factor.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. I guess I start out by saying reading this has truly made me continue to appreciate the House and your ability to drill down at such incredible levels,

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and I appreciate all the comments and questions. Although, Mr. Chair, I kind of ask if maybe we can back up to 100,000 feet a little bit, although I think I'm feeling at this point I know how people in London felt like in the Second World War getting shelled every single month because it's kind of how I feel today. It seems like this body and the Legislature is just getting shelled about once a month of some new bomb coming down from the Executive Branch, putting us in an incredibly difficult position to try and solve problems. And, ladies, I'm not trying to pick on you. You do an awesome job. Please don't take this to you personally, but it's frustrating on our side, right? We get this stuff coming down from the Governor's Office and it's landing on our desk and it's at the last second and it's very difficult and very frustrating for us, my hundred thousand foot level.

So for full disclosure, I'm Chair of Health and Human Services. I've been on Commerce as well. Owning a small business I understand a fair amount of health insurance. I've yet to receive any phone calls and conversation from anyone at the Executive Branch. So I'm trying to understand at that 100,000 foot level what are we doing at this point 'cause we're not talking about long-term costs. We are not talking about federal subsidies. You know, I'm concerned that I'm getting documents from our State itself that's making promises that when you get hired we will, quote, fully pay your health insurance for the state. Yet, we are sitting here talking about making adjustments to people's health care costs that are such a significant part of their income at this point because these people retired on meager, at best, retirements.

So as opposed to government always looking towards those who pay to dig further into their pocket every time there's something of a crisis, talk to us about what are we doing? You know, we have Anthem who's the plan administrator. Have we gone out? Are we doing RFPs? Are we trying to find someone to cut the administrative cost? What specifically are we doing about the plan to truly make it more affordable, understanding we have a multi-year contract going out? I want to know what the heck the CAFR is going to say because maybe we can look to the State

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and do something that we can either do what the State suggested these people we should be doing which, frankly, says we're supposed to be paying for it. Or maybe there's a way to break it up. I still haven't heard that as the fine Senator from Manchester had say earlier this morning, at one point we went to a self-funded plan because it was saving us money. Is it still saving us money and maybe do we need to look about funding some sort of Medicare supplement because that might be more affordable anyway?

So, for me, it's just whole hundred thousand foot level that I feel I am missing a huge part of the conversation 'cause I don't see where we are going to solve the problem except maybe a memo from the Governor once a month telling me there's a problem, we'll lay it on your desk, and you need to make a decision by Monday or the world is going to collapse and I reject that premise.

MS. KEANE: I think I'll start by saying that all of government has known that retiree health has been under pressure since at least the House Bill 2 passed in 2013. That bill had a provision that required us to do a spending plan to make sure that we operated the funds within appropriation. At that time, I think we were funded at 97%/100%.

Sarah and I were both relatively new to the plan at that point in time, and we refined the budget analysis and we refined it by drilling down and looking at how many – it sounds simplistic, but this is something we unveiled – looking at how many Under 65 Retirees we have and how many Over 65 Retirees we have. That is significant when it comes to budgeting. Because we do have our Over 65 population is eligible for Medicare. And, in fact, their premium that the State pays on a monthly basis is about a third of the cost of the Under 65 Retiree. So the premium, just for you to hear, the premiums are \$333 for the Over 65s, and about 900 and -- 910 for Under 65s.

So back in 2013 we did this analysis and when we broke it down, when we broke down the enrollment and took a look at who do we have, we came to this body and we said that we think we

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are going to be all right. And I was here with Linda Hodgdon. We did a presentation and we said, you know, we have done this more detailed analysis and for the time being we think we are going to be all right. But if we have any changes, the same variables we're talking about today, head counts, cost trends, we're going to be back here and talking about what it is that we need to do to manage our budget. So I just want to at least let you know that -- that all of us have been aware that we are under pressure in the retiree health budget.

On a day-to-day basis what we do in DAS in Risk Management is we work very hard to keep health care costs down. We regularly procure for contracts for our third-party administrators. So, for example, Anthem is a third-party administrator. Express Scripts is. We have a flexible spending administrator, HRA, Health Reimbursement Account administrator. So on your outline, not the Fiscal item, but Page 2 of your outline, the very last major bullet speaks to some of the cost-saving initiatives that we have accomplished in at least recently.

So we procure for our third-party administrator contracts at least or let me say, generally speaking, every three years. Our contracts might include an authority to extend a contract for an additional two years. And in December of 2014 we negotiated with Anthem. We were at that point in year two of a three-year contract with authority to extend for two years. We negotiated with Anthem a reduction in our administrative costs for a million dollars for the third year of the contract which is the year 2015 that we're in. And we extended the contract for two years building in that \$1 million reduction that we negotiated.

And you might say, why did Anthem want to do that? It was both -- we told them that we were not interested in extending unless they would bring significant cost savings to the table. And we told them that we were concerned that we were over paying them for the Compass Program at that period of time and that we were working hard to control State costs any way. And Anthem's interest is that we're a very big client. We're very

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significant to them. And, in truth, in the course of that negotiation I never expected them to agree to a million dollar reduction in the year and they did. That's one example.

SEN. SANBORN: I apologize to interrupt. Are we paying them a percentage of the claims at a fixed amount?

MS. KEANE: No, we pay them a per member/per month administrative fee.

SEN. SANBORN: How much is that?

MS. TRASK: Per month it's about 525,000 right now per month.

MS. KEANE: What is it for a member? Do you remember? I just don't remember off the top of my head.

SEN. SANBORN: Now I'm going detail, huh?

MS. KEANE: Yeah. So --

SEN. SANBORN: Five hundred twenty-five thousand. Is that for 13,000 members in this universe, the 8,000 --

MS. TRASK: Per member/per month.

MS. KEANE: It's in the 20 to \$25 range. I can get you that number.

MS. TRASK: 27.91.

MS. KEANE: Is it 27.91?

MS. TRASK: No, I'm sorry, \$25.00.

MS. KEANE: Twenty-five.

SEN. SANBORN: So it's \$25.00. So it's under 10% of the monthly cost of our proportionate share on the \$335 per member.

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We are spending \$335 per member on the Over 65 universe and of that \$25.00 of it's going to admin.

MS. QUIRAM: Hm-hum.

SEN. SANBORN: Right?

MS. QUIRAM: Hm-hum.

SEN. SANBORN: 67%.

MS. KEANE: Yes, it is.

REP. WEYLER: That's a bargain.

SEN. SANBORN: That's what I'm thinking. What's the national average?

MS. KEANE: I can get you that figure, but I know that we've -- I know working with Linda that we have worked very hard to keep our administrative expenses down, and we've been proud of it.

SEN. SANBORN: I'm not trying to suggest you haven't done your jobs. Please, you guys are doing an awesome job; But just holistically we're struggling over here.

MS. KEANE: And I'm trying to provide the information.

SEN. SANBORN: I appreciate that.

MS. KEANE: So I have some other examples here. So it's through the contracting process that we go out to competitive bid. So we -- a plan as large as ours is, generally speaking, something that we receive multiple bids on. We compare the admin costs generally of what a bidder is proposing for something like medical and pharmacy. We also assess and rank bidders by how much -- how much would our claims cost us in -- if we went with Anthem, if we went with CIGNA, if we went with another bidder. So we're comparing. There's different components of how it cost

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for us. So we are comparing what's the admin cost to what are our claims cost. So I can assure you that we go through this competitive bidding process and it helps us get the best possible price.

SEN. SANBORN: So one follow-up.

CHAIRMAN KURK: Just let me make one comment. You're aware that Anthem and CIGNA are proposing to merge?

MS. KEANE: I am.

CHAIRMAN KURK: Have you written to the Insurance Department and expressed your dismay at the fact you would now get fewer bidders on your contract?

MS. KEANE: I haven't done that yet. I've been busy.

CHAIRMAN KURK: You might want to consider that.

REP. OBER: In her spare time, should she ever have a minute.

SEN. SANBORN: So we are spending 335 per belly button which comes out just to over \$4,000 a year for our, essentially, supplemental place of the Over 65 'cause they're getting Medicare on top of that. I don't know of anyone who has a Medicare donut hole package to overcome that that's saving that kind of money. So why aren't we just redesigning the plan to go back to an AARP type product which could be as low as \$95 a month or, you know, \$150 a month.

MS. KEANE: I think your question gets to the short-term/long-term planning that we need to do. And in the short-term what we're doing -- I'm sorry, my throat is getting dry. We are proposing a plan to manage the proposed deficit and operate the plan within budget; but Vicki has said, both last time we were here and today, that we understand that we have long-term planning to look at. What is the future of the retiree health plan? And it has to take into account increasing costs

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and increasing enrollment and other factors. I think that's a lot of work, I want you to understand that, and we have a very important responsibility to our retirees to do the best we possibly can. And so we have researched. We have to look at models that are available out there. We have to evaluate them. We have -- it would likely involve a procurement process which is lengthy because we draft an RFP. Then we release the RFP. We wait for bids to come in. Thank you very much. We wait for bids to come in. We evaluate them. That's a lengthy process. We negotiate contracts and then we implement. And we educate retirees. So we know we need to do this. It is a long-term process.

CHAIRMAN KURK: Representative Ober and then Senator Morse.

REP. OBER: Thank you, Mr. Chairman. Just a couple of points, and I think they need to be very clear. This is not a bombshell that just arrived on our table. The Governor made her speech about the budget February 15th and I can tell you every one of us sits at one of the two finance committees. I don't know what the Senators did, but the House Finance Committee came up to this room and we waited until the budgets were delivered because we were getting them that afternoon.

When DAS Commissioner Hodgdon came to Division I, she brought the plan we're looking at. And I know she also took it to the Senate. And she said quite distinctly in Division I, I'm going to go to Fiscal in August, and I'm going to ask to raise the premium to 15%. And she presented the plan that had co-pay of 15% premium and a 20% premium.

I asked Mr. Shea to prepare an amendment, which we put into House Bill 2, that raised that premium to 20%, which was the highest that Commissioner Hodgdon said she was going to do. I felt that retirees should know then and not wait till a premium came to Fiscal in August. And they should know then that the Governor and Commissioner Hodgdon had chosen to plug the line at less than 5.5 million of what was needed. That said, that budget line item went up a lot. Every year the budget line item goes up a lot. They chose not to put it up to the maximum amount. And

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they chose to tell the two finance committees that they were going to come in August to Fiscal and ask for the 15% raise.

As Chairman of Division I in House Finance, I chose to put that in House Bill 2 and make it as transparent as possible to every retiree. And I can't tell you how many ugly e-mail messages I got, but I still think it was the right thing to do. You don't hide that stuff.

I expected when that went to the Senate that it would come back at the 15% increase, not the 20%. I fully expected there to be negotiation. I was surprised when it came back at the twelve and a half knowing that the Commissioner was still going to have to come here because no money had been added to that budget line item. So this is not a bomb that just dropped on our desk. We have been struggling with this since we got the budget on February 15th, 2015.

CHAIRMAN KURK: Thank you, Representative.

REP. OBER: I have a couple of questions I want to ask her. Let me tell you that none of us are happy about this. Earlier, my colleague here on my right asked you a question about the prescriptions, the newer prescriptions, the more expensive ones and were we seeing hospital costs go down which made me think, and I appreciate that, and I started thinking. I think, Commissioner Quiram, you said that that was helping people dramatically. So, basically, when you think about that, aren't we trying to estimate what the hospital costs we've avoided because the person actually didn't go to the hospital as opposed to it going down? I'm trying to think about the impact those new drugs are having just based on what you said. It just seems to me if I'm taking two new drugs that are pretty expensive and suddenly I don't go to the doctor much or I don't go to the hospital as much, it's impossible to estimate how much you've avoided because I'm taking the prescription.

MS. QUIRAM: And that is correct. And it is very hard to estimate how much will be avoided. You know, one of the things that we certainly have talked about and considered is as you're

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taking specialty drugs that cures a disease or a condition, then if it's cured you won't have to have the long-term care from the other drugs. So that particular trend we've asked the experts, you know, how do we account for these kinds of avoidance negative trends and things like that? And what we don't know so far because it's really just the last six months that we are starting to see these trends for pharmacy go so far up. And what they keep telling us, too, is that there is the -- there's a new drug on the market every single day, and it is not stopping. And the generics will not be available for these drugs for --

MS. KEANE: Decades.

MS. QUIRAM: -- decades. So although, yes, we may be seeing some avoidance, we may be seeing some people that are cured; but because of the other drugs on the market, we will probably -- it will offset it and we will continue to see these costs go up.

REP. OBER: Thank you.

CHAIRMAN KURK: Senator Morse.

SEN. MORSE: I guess I'm at two different stages. I would like to respond to Representative because it was the Senate's intent that retirees, essentially Over 65, don't get hit with any fee increases. Because when the House sent us the budget, we basically said this is basically a group of people that are in a different situation with nobody representing them. Their lobbyist was, quite honestly, very upfront on this and worked with us to get something done in the budget phase. And our intent still stands today, and I want to make that clear.

REP. OBER: I agree with that.

CHAIRMAN KURK: Excuse me, Representative Ober.

SEN. MORSE: The Senate does not believe that those people should be paying additional money. The ones Under 65, and what Senator Sanborn was suggesting looking at other alternatives,

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where is the Executive Branch on this? Did they bless this plan?

MS. QUIRAM: They did work with us on this plan.

SEN. MORSE: Did they bless the plan? Did the Governor say this is the plan we should move forward with?

MS. QUIRAM: Well, we've met with the Governor's Office on this plan.

SEN. MORSE: The Governor or Chief of Staff?

MS. QUIRAM: We met with the Chief of Staff and the Budget Director and other people and that are on her staff and certainly are communicating with her about the plan. We did the best we possibly could to put together a plan with their input.

SEN. MORSE: I think everybody agrees, Vicki, you're doing the best you possibly can.

MS. QUIRAM: Hm-hum.

SEN. MORSE: I think our concern here is we are sending a leadership message that the Senate certainly doesn't agree with. We want to find a way to take care of the Over 65s. And maybe in the future you can't retire until 65 to get the benefits. Before that, I don't know what happens but it's been suggested.

Mr. Chairman, I don't think we are ready to act on it in the Senate today. I know we have talked about this earlier today, but I don't believe we're ready to act on this plan today, because I think there's too many things open. But I would be open to some kind of process that we could implement as a Fiscal Committee to get more involved in this.

REP. OBER: Mr. Chairman, I do have a suggestion, also.

CHAIRMAN KURK: Representative Ober.

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REP. OBER: My amendment, Senator Morse, if I was not clear, was for a retiree premium increase on the Under 65s only. If you read that amendment it was Under 65s. I agree with you. I met yesterday for two hours with the Commissioner and with Ms. Keane, and one of the things that could be done, and I do have legislation filed, is that you could, and correct me if I misstate this, because you guys helped me with the figures, you could look at the program and in that legislation if you look on Page 4, Table 1 of the -- I'm in the document that is called 15-201 Replacement.

CHAIRMAN KURK: Date?

REP. OBER: That is 15-221 Replacement.

MS. KEANE: September 22nd.

CHAIRMAN KURK: Okay.

REP. OBER: There is \$2.7 million. And if you approve the plan outside of this table, and then if you said you have to tie two things together on a piece of legislation, which I do have filed and we could do, you would provide an additional \$2.7 million of funding which would wipe this down to zero. You'd have to fast-track this legislation. But the piece you would tie with it is that as retirees effective July 1st, 2016, turn 65, they would carry their co-pay with them and their partial premiums. That would grandfather people above 65 which is what I tried to do with my amendment in House Bill 2 as well, but I didn't know it was going to grow to an \$11.6 million problem. So I tried to take care of that in House Bill 2.

This fast-track legislation would allow us to eliminate Table 1, eliminate co-pay, the deductibles on the Over 65s. That as it is provide an additional 2.7 million. And we are assuming, and I have spoken to the Speaker about this, so I do have his blessing to talk about it. And then we are assuming that as people turn 65 effective July 1st, 2016, they would carry those co-pays with them. They could go forward and we could protect the people who retired when salaries were the lowest. There was

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a time when we did not use pay points to pay compatible wages as we do now in the state. So that protects those really vulnerable people and keeps what I think we are all trying to do and let us move forward with that protection for those people. And, Commissioner, if I misstated that, please --

MS. QUIRAM: No, I think that is what we discussed. And I don't -- I think that everybody would be very happy if we could, you know, had additional money and could basically reduce some of these cuts.

CHAIRMAN KURK: And this should go to the retirees rather than to the developmentally disabled? Never mind.

MS. QUIRAM: Not our decision.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. I'm not sure they want to answer that one this morning.

So one of the surprises we're talking about this morning and on the Senate side it's a surprise to get a memo that none of us have seen before that says we have to make a decision by Monday morning. So for us, members of the Fiscal of Senate and Members of Finance and Senate never saw a memo that said, oh, by the way, we are sitting here on a Friday morning having to make a decision. If we don't make it by Monday, there's some significant ramifications to include that we can't come back and make another change until January 2017, and those are the types of bombs and surprises that, obviously, we don't like.

So if we're considering any of the things that we are all discussing today and, Mr. Chair, with that I know we want to finish our conversation, but I will be making a motion to table this thing after our discussion. What is the ramification? I see CMS put stakes in the ground all the time and drag them around the room. But my concern is what is this decision by Monday or 2017 challenge we're facing? Do we truly have the capacity to take a deep breath, get some more information, come

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up with some additional options, and either fast-track legislation or change it in Fiscal? Where's our risk at this point?

MS. QUIRAM: Well, I will start by saying that we did present this timeline last month to Fiscal Committee, and we went over this issue of the timing of this, how important the timing of this was and how we would be impacted by this. But to go over what the exact issue is on timing, as far as Monday, we found as we were sitting here today we did find that the Monday date had been changed to October 20th.

MS. KEANE: Yes, if I can just elaborate there. Pushing, pushing, pushing Express Scripts to give us more time. And this morning they notified us that they would give us until October 20th. And what we are talking about, Senator, is with respect to our Over 65 prescription drug plan. It's called the Employer Group Waiver Plan. We have to comply with Medicare regulation. And so we were required to notify Express Scripts by August 31 about any plan design changes that would go into effect relative to prescription drug co-pay for the Over 65 population. And we -- we talked about this here at the Fiscal Committee, and we did that, and then the real question became, okay, if we do this and we don't have approval, when can we pull it back. Okay. So we were just trying to keep our options open. And so up until this morning their drop dead date to us was Monday, which is the 28th I think we said. And again, pushing, and this is what happens when we work. This is a regular part of our business. We need more time, we need more time, push, push. They came back with August 20th.

SEN. SANBORN: August 20th or October 20th?

MS. KEANE: October 20th.

MS. QUIRAM: The part of this it affects is the part on Table 1 which is for Medicare eligible Over 65 retirees and it is two lines that deal with their co-payments. The retail co-payment and the mail co-payment. So that is the -- those are the two line items that are affected by this date.

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CHAIRMAN KURK: So if we were to delay this we would have to schedule our next meeting before the 20th of October, which would be the 15th -- 16th.

MS. QUIRAM: In order to make a decision on these two line items, which equate to about \$1.1 million of saving, so if we don't do these, and we weren't to get money, additional money as Representative Ober has discussed, then we would have to make this decision by 10/20 on these co-payments.

MS. KEANE: And just for further clarification. We would be delayed until January 1 of '17, and we would have to let them know presumably by the end of August in 2016.

CHAIRMAN KURK: What happens if this plan were approved as it is today, and sometime, let's say, in February of next year legislation went through and we wanted to change the plan to reduce co-pays, can that be done?

MS. KEANE: It can be done effective 1/1/17.

CHAIRMAN KURK: Not 1/1 --

MS. KEANE: Right. It's the Medicare regulations. They're rigid. And we can only make plan design changes for an actual Calendar Year. They don't allow us to do it on any kind of interval within the year.

CHAIRMAN KURK: I'd like to clarify something that was said before about, quote, promises, unquote, made to folks. The statute which requires us to provide retiree health care has since its inception always been, quote, subject to appropriations. It has never been absolute promise. It was the practice of the Legislature for, I think, decades to, in fact, pay 100%. But starting, I believe, in 2008 that changed, and the Legislature changed co-pays, changed premiums, and so forth. And we are now in the situation where I won't say that's the norm, but that certainly has been done a number of times. So the expectations that folks might have had were based not on statute, but were based on practice. And perhaps there was some

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misinformation that went out or information presented was not correctly understood. And so, in fact, there is an expectation on the part of many retirees that they were supposed to get free health care on retirement from state service. In point of fact, the statute authorizes the Legislature to appropriate less than the amount necessary to provide 100% free care and since 2008 that has been exercised on a number of occasions.

I think we need to take a recess, unless there's more discussion.

REP. OBER: No, recess would be good.

CHAIRMAN KURK: Okay. We'll come back at 20 to 12.

(Recessed at 11:23 a.m.)

(Reconvened at 11:38 a.m.)

CHAIRMAN KURK: Committee will come out of recess and resume its discussion of Fiscal 15-201. Senator Sanborn and is Senator Reagan -- there we go. And Dan will be back. Is there any further discussion? Chair recognizes Senator Sanborn for a motion.

** SEN. SANBORN: I move to table, Mr. Chair.

CHAIRMAN KURK: Is there a second?

SEN. LITTLE: Second.

CHAIRMAN KURK: Moved by Senator Sanborn, seconded by Senator Little. Are you ready for the question? The motion is to table 15-201. If you're in favor of that motion, please now indicate by saying aye? Opposed?

REP. ROSENWALD: No.

CHAIRMAN KURK: The ayes have it and the motion is adopted.

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*** {MOTION TO TABLE ADOPTED}

(8) Miscellaneous:

CHAIRMAN KURK: We turn now to item number (8) on the agenda, Fiscal 15-206.

** REP. WEYLER: Move to approve.

CHAIRMAN KURK: Wait a minute. Fiscal 15-206, a request by the Office of the Legislative Budget Assistant for approval to appoint Christopher Shea as Deputy Legislative Budget Assistant and to set his salary at Labor Grade P, Step 7, effective September 25, 2015. Representative Weyler moves to approve, Senator Little seconds. Mr. Kane.

MR. KANE: Sure. Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Michael Kane. I'm the Legislative Budget Assistant. Before you is Item 15-206. Pursuant to RSA 14:34, our office -- I have the authority to appoint and make my recommendation for a Deputy Legislative Budget Assistant. I do make that a high recommendation for Chris Shea. I've worked with Chris Shea for over 16 years. He has experience in both performance audit, as well as the Budget Division, and I believe he will serve this office well and continue to support the Legislature. So I would ask for your approval of Chris as Deputy.

CHAIRMAN KURK: Thank you. Questions? Discussion?

SEN. D'ALLESANDRO: Point of information, Mr. Chairman.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: I've been around here a long time as many of you know. I've worked with Chris. I think he's very responsible and very capable and if Brother Kane thinks he's the man for the job, then he's the man for the job.

CHAIRMAN KURK: Senator, was Mr. Shea a student of yours?

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SEN. D'ALLESANDRO: He probably wishes he was.

REP. WEYLER: Maybe a player.

SEN. D'ALLESANDRO: He could have been a player.

REP. KURK: The motion before us is to approve the request of the LBA to appoint Christopher Shea as Deputy LBA. Are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it unanimously. Congratulations, Mr. Shea.

CHRISTOPHER SHEA, Deputy Legislative Budget Assistant, Office of Legislative Budget Assistant: Thank you.

CHAIRMAN KURK: Thank you, Mr. Kane.

MR. KANE: Thank you. Mr. Chairman, if I could, I do have one other item. I'd like to request, due to the vacancy relative to Jeff Pattison's retirement, I would request the ability to fill an assistant budget officer position in our office.

CHAIRMAN KURK: Moved by Representative Weyler, seconded by Senator Little. Discussion? All those in favor please indicate by saying aye? Opposed? The ayes have it and your request is approved.

MR. KANE: Thank you.

*** {MOTION ADOPTED}

(9) Informational Materials:

CHAIRMAN KURK: There are a number of informational items before us, and I believe Representative Ober has a question about 15-185 from the Administrative Office of the Courts. Is there -- Mr. Goodnow is here.

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REP. OBER: Mr. Chairman, I spoke to him briefly. This report -- the Legislature requires a report on expenditures and this report and the following report does not actually contain details on expenditures. If you go to Page 3 of the first report, they just lump things together. And I already talked to them and said I'd like to see some of the details behind those expenditures so we would actually know, especially given the fact that most of the report was spent talking about a lack of money. So I felt we needed to know where the money went and he is going to get me those so we can look at that. We can think about the future. Thank you.

DONALD GOODNOW, Director, Administrative Office of the Courts: Happy to provide greater detail.

CHAIRMAN KURK: Thank you. And I think that was the only issue.

REP. OBER: Yes.

CHAIRMAN KURK: Thank you both.

MR. GOODNOW: Thank you.

CHAIRMAN KURK: Any other questions about any of the other information items? I'd like to thank the folks from DRED for the information on Cannon Mountain Ski Area. I'm sure they noted, as I did, that some of the comparisons suggest real questions about administrative costs and profit margins for Cannon.

Audits:

CHAIRMAN KURK: If there are no other questions on information materials, we'll move then to the audit.

This is the audit of the Health and Human Services Food Protection section. Members will recall that when -- that at our last meeting while we did not hear the audit, we voted to approve it and to -- or to accept it and to make it available to

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the public, and we postponed because of the lengthy calendar we had hearing of that to today. I'm sure members have read this and recognize that the problems detailed here are, to my memory, some of the most serious of any audit that we've received. So I think there's going to be a lot of actions that have to be taken, both administratively and legislatively in response to this. So I hope we'll hear this carefully and thoughtfully.

Commissioner, good morning. And, Mr. Smith, good morning.
And --

STEVEN GRADY, Senior Audit Manager, Audit Division, Office of Legislative Budget Assistant: Grady.

CHAIRMAN KURK: Good morning. Mr. Smith, the floor is yours.

STEPHEN SMITH, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Mr. Chair and Members of the Committee. For the record, I'm Steve Smith, the Director of Audits for the Office of Legislative Budget Assistant. As you stated, we are here to present the audit of the Food Protection Section of the Department of Health and Human Services. Our audit period was Fiscal Years 13-14 and joining me at the table is the manager on the engagement, Steve Grady. And Commissioner Toumpas is here as well to answer any questions, perhaps have some comments afterwards. So with your permission, I'll turn it over to Steve.

MR. GRADY: Thank you. Good morning. For the record, I am Steve Grady. I was the in-charge auditor for the Food Protection Section performance audit. The audit objective was to determine how efficient and effective the Department of Health and Human Services was in preventing foodborne illness in New Hampshire during State Fiscal Years 2013 and 2014. Our Executive Summary begins on Page 1 and our Recommendation Summary begins on Page 3.

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During my presentation today, I'll be summarizing most of the report and observations and recommendations and focus on a few key findings. Seven observations --

CHAIRMAN KURK: Just before you go through this, could you tell us whether since you've done this report you've eaten out in any New Hampshire restaurants?

MR. GRADY: I continue to patronize a number of establishments that I have done in the past, yes.

CHAIRMAN KURK: You do. Does that say something about this report that we should know?

MR. GRADY: I think we said a lot in the report, and I don't know that I -- my choices have any real bearing on that. But yes, I continue to eat out.

CHAIRMAN KURK: Thank you.

MR. GRADY: Absolutely. Seven observations and recommendations may require legislative action. The Department concurred with 18 and concurred, in part, with 11 of the observations and recommendations that we made. Management controls over data systems and incomplete and inaccurate data within those systems reduce the liability of agency data we use in this report and require that we qualify those elements of this report that rely on agency data.

The section on foodborne illness starts on Page 9. Foodborne illness can spread in various ways. Annually hundreds of people in New Hampshire are diagnosed with these ailments. Potentially, thousands more are afflicted but not included in illness totals because of underreporting and underdiagnosing. Also, food safety risks are increasing due to globalization of supply chain and several other factors. A well-designed regulatory program can increase the likelihood of adequately protecting the State's systems and uniformity regulating the industry.

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The Food Protection Section or FPS was the primary State Agency responsible for regulating food intended for human and other animal consumption, from production and processing, to transportation and storage, to retail sale and service. In addition, several other State Agencies, 16 local governments, and the Federal Government had a role in ensuring food safety.

To accomplish this mission of protecting the safety of the State's food supply and in reducing foodborne illness, the FPS conducted inspections, sampled certain foods, accredited many establishments in the industry, investigated complaints, and sanctioned non-conforming establishments. Understanding the performance of each of these systems can provide an understanding of overall program effectiveness. Our discussion on effectiveness begins on Page 10 with Observation No. 1.

In Observation No. 1, we find trends in available data suggest the State lost ground on food safety during the audit period. However, data limitations and lack of demonstrated causation prevented attributing to the FPS positive or negative outcomes. Outcomes derived from agency data can only be correlated to the FPS's activities. Figure 1 on Page 12 illustrates and characterizes those which included foodborne illness increased in Calendar Year 2004 through 2014.

Figure 2 on Page 13 illustrates outbreaks increased but those related to food decreased during the same period. Also, while food establishments accounted for about one-third of foodborne outbreaks and associated illnesses from 2004 through 2014, they accounted for half of foodborne outbreaks and over three-quarters of illnesses associated with an outbreak during the years encompassed in our audit period.

Figure 3 on Page 15 illustrates that while the FPS food establishment infection decreased during State Fiscal Years 2013 and 2014, those uncovering deficiencies or an increase in proportion of all inspection results and other data indicate the percent of re-inspections required also increased. Together, these data indicate increases in unresolved food safety deficiencies.

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Figure 4 on Page 17 illustrates complaints made to the FPS increased overall, but illness-related complaints decreased. Additionally, the FPS did not operate a comprehensive risk-based food sampling program and did not obtain aggregate - or did not obtain or aggregate sampling results from other jurisdictions. Consequently, the FPS lacked comprehensive data on food quality statewide.

We recommend FPS management systematically review its policies, procedures, practices and role, coordinate with other regulators to develop centralized reporting of complaints, sampling results and other data; analyze performance and the Food Protection Section's contributions to outcomes and develop a strategic plan for improving its effectiveness.

CHAIRMAN KURK: Do you recommend that they need more personnel or not?

MR. GRADY: We have not made that recommendation in this report.

CHAIRMAN KURK: So you believe they could do what you're asking them to change with their current personnel?

MR. GRADY: What I believe is that there are a number of structural issues that need to be addressed, both statutorily and regulatory. And that before we start talking about who needs more staff or how many more staff they might need, those structural changes probably should precede that discussion.

CHAIRMAN KURK: Thank you.

MR. GRADY: Absolutely. Observation No. 2 begins on Page 19.

In Observation No. 2, we discuss how the Food Protection Section and completely operationalize aspects of its statutory food safety responsibilities leaving segments of the State's food related industry effectively unregulated. By redirecting its scope from systemic, statewide risks, and narrowing

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inspection activities to only those establishments it accredited, and discontinuing sampling, the Section limited its own effectiveness. We recommend that the Food Protection Section examine the scope of its operation to include the full extent of its statutory obligations.

Observation No. 3 begins on Page 22. Observation No. 3 describes gaps in the statutory construct the FPS was responsible for implementing. These gaps were due to improper operationalization by the FPS and inconsistencies and conflict within and among statutes. For example, statutes inconsistently define food, created inconsistent sanctioned regimes, allowed duplicate regulation of the same establishment by multiple FPS sub programs, imposed inconsistent inspection requirements for similar activities, and were outdated, some substantially unchanged since the late 1800's or early 1900's.

We recommend the Legislature consider repealing six chapters of food safety related statutes and replacing them with a single, comprehensive food safety act. We also recommend the Department consolidate and standardize rules for common elements in statute.

In Observation No. 4 through 18 beginning on Page 29, we discuss the operation of the systems intended to accomplish the Food Protection Section's mission. In summary, these 15 Observations describe improperly issued accreditations, including 62 issued to establishments violating statutory or regulatory requirements. Several categories of establishments that were not inspected as often as required or not inspected at all. For example, over 27% of food establishments and nearly 18% of the highest risk food establishments were not inspected during our two-year audit period. Also, nearly 88% of required follow-up inspections for provisionally licensed establishments were not conducted.

Additionally, follow-up inspections after a previous inspection discovered deficiencies were inconsistently completed. There were limited efforts to oversee self-inspecting towns. Some complaints were not referred for investigation.

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Nineteen referred complaints were not closed and remained open for an average of 344 days at the end of our audit period. Some complaints were closed before complaint intake and based on inspections that predated the complaint. Complaint closure took as long as 200 days and some allegations of unlicensed operation were not addressed.

We also found inconsistently enforced administrative and sanitary requirements and inconsistently applied sanctions. For example, seven establishments with a priority item deficiency, those with a direct public health implication, remained uncorrected during our two-year audit period. Also, an establishment with a priority item violation was subsequently the subject of complaint, completed three annual license renewals, and was the subject of four routine or follow-up inspections with the same priority item deficiency noted over a 53-month period. No fines were imposed nor action taken against any of the licensees.

Our recommendation includes a number of changes to statutes and rules. We also recommend the Food Protection Section develop a risk-based inspection, include sampling system and timely conduct all required inspections; consistently enforce statutory and regulatory requirements; investigate and close all complaints within its jurisdiction; formalize or implement policies and procedures in several areas, and improve oversight of self-inspecting towns.

The section of our report entitled Management Control begins on Page 79.

This section contains 11 Observations numbered 19 through 29. In them we detail numerous issues with management control which, in summary, include statutory and regulatory non-compliance, substantial regulatory requirements not adopted in rule, unnecessarily complex rules, and inadequate fiscal controls, mismanaged dedicated funds and uncollected fees resulting in an estimated net loss to the General Fund during the audit period of \$1.2 million, and which we describe more fully in Observation No. 23.

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Additionally, we observed inefficient practices resulting in the loss of over one full-time equivalent inspector's time to administrative tasks and inefficient expenditures of over \$48,000 during State Fiscal Year 2014 alone.

Our recommendations include improving statutory compliance, rules, efficiency, and numerous other management controls.

This concludes my remarks. I'd like to thank the Department and its staff for their assistance during this audit. I would also like to thank those who responded to our survey as self-inspected jurisdictions and others who aided our work. I'd be happy to answer any questions you may have at this time.

CHAIRMAN KURK: Senator Little.

SEN. LITTLE: I'm good. I'm fine.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. There are two statements in this audit that affect me quite dramatically and that's in the third paragraph of your Executive Summary, the last sentence. Improper collection of required fees and management of a dedicated fund during the audit period resulted in an estimated net loss to the General Fund of \$1.1 million. That's kind of extraordinary.

I think the last thing that really shook me, to be honest with you, information technology controls and resources were so unreliable, so unreliable, and you use one, two and three to emphasize that, that you can't run a business. You cannot run a business if your information technology controls and resources are totally unreliable. You just can't exist, particularly in this world of technology. Those are profound statements. Auditors don't make those kinds of statements without some very, very significant backup.

Now, the question is, how can that be corrected? That's got to be corrected. We have lost money. It seems to me that's

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history. But the information technology controls and resources that are unreliable that has to be dealt with on an immediate basis. Otherwise, there's no sense in performing the functions at all.

CHAIRMAN KURK: Let me comment on that, if I may? I'm concerned about losses to the General Fund, but I'm concerned about running an administrative program effectively and efficiently. But I think the most significant point of this report is that people in this state who rely on the Department for assurance that the food they eat at fairs, and the food they eat at restaurants, and the food that they order for take-out is safe and healthy because the establishments have been licensed and inspected by the Department; and, therefore, we can go home and my earlier question and not expect to wake up in the middle of the night with salmonella poisoning or craps or some other problems. I think the health issues and the health consequences of this to the State's population are the most striking feature of this report. And the fact that you're having trouble getting data in order to even make these statements is even more problematic.

Commissioner, before we take any more questions, perhaps you'd like to present the Department's response.

NICK TOUMPAS, Commissioner, Department of Health and Human Services: Thank you, Mr. Chair. For the record, Nick Toumpas, Commissioner of Health and Human Services. I do want to thank the LBA for a very comprehensive and thorough, painful audit for us to take a look at. We take the issues that have been raised in this thing very seriously. As you can see, for the most part, we concurred with the Observations of the LBA on this.

I will say that the issue -- one of the core issues is the system issue. I have been in this role for eight years, and every budget that I have come here to the Legislature I have asked for money for Food Protection database. And we did not get that until this past -- until this past biennium. So we are on the cusp of having that data system which the LBA auditors rightfully point out that the amount of data that we have, as

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well as the manual work-arounds and things that we needed to do that make the process in terms of doing work very, very inefficient. I'm not going to dispute that. So we are at the point now we are -- the Legislature did appropriate the dollars in the Capital Budget, and we are within a couple of months of having that come on-line and be live for us.

You had asked Steve regarding -- regarding the staffing. I do think the staffing is an issue for us. We have lost several staff. The number of establishments have increased that we need to -- we need to oversee. And because of the geographic nature in terms of where these things are located and the -- all the manual processes that need to be done, it adds up to a level of inefficiency that none of us are proud of.

But what we've done is even before the audit, even before we had the exit conference with the LBA, our team began developing a multi-faceted corrective action plan that has issues related to the systems, issues related to looking at the organization. We have already been in touch with the Health and Human Services Oversight Committee as a -- as a vehicle in order to basically start dealing with many of the regulatory issues that were pointed out, the statute, as well as the rules side of it, in terms of at least having starting that. We have already been in touch with the Chair of that Committee, Representative Frank Kotowski, in terms of beginning that particular process.

Again, I cannot sit here in front of the Committee and say that I'm particularly proud of this; but it brings -- it brings to focus, you know, a number of things that we have been dealing with over a period of years and now we are -- we have put together a plan in order to try to correct that. I will -- I commit to the Fiscal Committee and the General Court to come back, whether it's on a quarterly basis or on an every six months, with a report in terms of how we are -- how we are doing against the issues that have been raised in this particular report.

I do believe -- you had mentioned, Representative Kurk, about the issues related to fairs, if you will, one of the

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areas. That is an area that we do not have under jurisdiction in terms of licensing that. So the Hopkinton Fair or the Deerfield Fair and so forth, that is not something that we do. You know, they come in for a week and then they go away.

We also have -- there are a sizeable number of establishments across the community that -- across the state that are self-inspecting towns. And I, one, feel very confident in terms of going out to eat in the state, despite what you see here. But the -- but I do believe that, again, with the other controls and the other things that we have within our Division of Public Health Services in terms of monitoring disease, disease outbreaks and other types of things that we have the controls in place. If something does happen, we are able to get on that.

Now, that's -- the point you're making it's after the fact, and I understand that. But we need to look at this thing in a more systemic way and say, you know, we have -- we have lost staff over -- again, there's a fair amount of staff that we have lost in this particular program. At the same time, the number of demands that we have on this, along with some of the ambiguities that -- that the audit has really pointed out. So, again, I am certainly not going to sit here and make any excuses for what is in this report. I have to accept the responsibility for this in terms -- as in my role as Commissioner of the Department; but I also have to commit to you that we are -- we are taking this seriously and putting together a plan of action in order to address it.

CHAIRMAN KURK: Without looking back but looking ahead. Assume you go ahead with your plan. You've got the resources that you need for the technology systems. If this -- if there were another audit like this, when is the earliest time it could be done where you would pass with flying colors? In other words, when as you're now doing things, assuming you get the statutory changes you're looking for, assuming you get the resources you're looking for, when at the earliest will this system be working so that this -- the next audit will give you an "A" as opposed to an "F"?

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MR. TOUMPAS: It's a fair question. I'm not sure I'm in a position to basically answer that, and I'm not sure if it's -- if it's just an end -- end game or whether there are the steps every step along the way. Because there are some things, for example, the risk-based -- risk-based corridors that the audit points out. We are already looking at that in terms of looking at the highest risk establishments. There's four categories of risk in terms of doing it. So we are already starting that. So there are a number of things that we're doing right now, but I can't -- I can't tell you whether it be six months, a year, or five years or, two years, when it would be. But I clearly think once we get the system in place, and right now the target date for the system is January of 2016 in order to get the system into place, we are already working on some of the other things and I do think that that is going to have a significant -- significant part of a turnaround on this thing. But, again, I can't tell you what -- how long it would be, Representative Kurk. But I don't see it being a multi-year effort, in spite of what I just -- part of it is going to be around whatever the legislation and some of the rules and getting those things cleaned up.

CHAIRMAN KURK: Why don't we accept your offer for quarterly reports as to what you're doing, what remains to be done, and including the legislative issues that were raised that need to be resolved. Apparently, you're taking a step to have that bill introduced.

MR. TOUMPAS: We have already --

REP. WEYLER: The reason that I asked this report be accepted in August was to in order to make the deadline for filing in September, which has passed. Then I called the Chairman Kotowski of Health and Human Services House Committee and said that I'd like you to co-sponsor and I gave him a copy of this audit. He called me back and said what his plan is and, obviously, you and he have talked, is to appoint an ad hoc committee and begin working immediately because should this go through as a bill, really no action would be taken and would likely be a study committee just because it's the changes to the

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legislation that you point out are so extensive it's not going to happen in one bill, one session. So I would -- I put in a bill for a study committee. He said he can appoint an ad hoc committee and probably be ready a lot sooner so that the legislation can be introduced perhaps next September, because there's so many extensive changes that are called for in the audit and, you know, the complete six sections of the law and make them into one, that's not going to happen quickly enough. Ad hoc committee if they begin soon can be working from now for months rather than waiting till the study committee passes next May or June.

So I'll leave that bill in unless Representative Kotowski says, you know, need it. We made enough progress. But I am surprised that we don't see the head of the Food Protection Services before us.

MR. TOUMPAS: He's behind me.

REP. WEYLER: Okay.

MR. TOUMPAS: We have the -- I have my team here. I have the Public Health Director. I have the Food Protection Section chief as well as I have the Bureau Chief within that reports. So they're here. But, again, this is something that I think a number of the variables that are involved on this thing are outside of the control that they had. And, therefore, it really requires the Commissioner of the Department to be held accountable to that. They're accountable to me, as well as to others. But, clearly, this is something that, you know, it's -- it's on my watch in terms of what we need to do. And we -- again, we take it seriously. We are working on it.

I will say the areas -- there are a number of things you point out in terms of the legislation that needs to be done or the rules. But there are a number of things that are completely within our control. We can influence that. But the things that are within our control, implementation of the system, changing the process and procedures, looking at the supplemental job descriptions, looking at the organization, all the different

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operational aspects of it, those are things we can address immediately so that quarterly report that we would provide to the Committee should be able to show you the progress on that.

CHAIRMAN KURK: Let's try to make that eight quarters and then the report goes away because the problem is resolved.

MR. TOUMPAS: You're on.

CHAIRMAN KURK: Thank you. Representative Weyler.

REP. WEYLER: Thank you. I guess we don't need to make the motion to accept the report.

CHAIRMAN KURK: No, but there are other questions.

REP. WEYLER: Okay. I think that it shows the value of performance audits that we can really get into something and see what the problems are and give us guidelines for how to fix them. So I appreciate the working. I guess that's why it took two years. That's one of the more most extensive audits I've seen.

MR. GRADY: We began work on this in the fall of last year.

REP. WEYLER: And you look back?

MR. GRADY: We looked back many years, yes. We had to go back quite a ways and understanding the whys behind some of this. Why we're seeing what we're seeing. We had to go back to the '70s and even before so -- but yes.

REP. WEYLER: Thank you.

CHAIRMAN KURK: Representative Rosenwald.

REP. ROSENWALD: Thank you, Mr. Chairman. The first bill I worked on in 2005 over in the health committee had to do with food protection and it was about redefining the -- redefining what is a shellfish, and particularly focused on scallops. And

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I don't think I'll ever forget that bill, because I didn't know you could change what a scallop was. But it seemed to me that the public just absolutely expects to be able to eat safely in a restaurant or a health care facility. And so, personally, I'd be reluctant to wait another year, and I am hoping the Department would commit to filing a bill in the Senate. I see we still have one Senator here. So that even if language wasn't ready immediately, there's the whole session to refine at least the parts of these Observations that the Department concurs with. And so I'm asking for your commitment to not wait another year and a half but to put something in through the Senate.

MR. TOUMPAS: Understand that -- I certainly am not going -- don't misinterpret what I'm saying. We aren't going to wait on any of this. We are already working on this. We've already been in touch on the legislation when we -- and there are things that we can take a look at. We know that there's some of the areas because when we had conversations with the LBA on this, we know where some of the ambiguities are. We know where some of the issues are and we know where some of the priorities are. Those are the things we are beginning to work. But the team has got to be working on the things that would take control right now and those are the -- and a number of the areas and observations that were pointed out and that really sets some of the priorities in terms of what we need to do. So I'm not -- please don't say that we are going to wait another year or two years in order to do this. There are things that we need to do and we can do right now and where there is ambiguity those are the areas that we will really bring up as a priority.

REP. ROSENWALD: If I could just follow-up.

CHAIRMAN KURK: Please.

REP. ROSENWALD: I guess I'm not questioning your commitment, but I'm asking for the areas where you can't move forward without legislative action. I'd be willing to go to the Rules Committee in the House and say there's new information. I'd like to request late drafting and introduction if you don't

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find a Senate sponsor, which I assume you could. But I'm just asking that we not wait another year on legislative action.

MR. TOUMPAS: I have my legislative director. I have my team from Public Health here listening to this so they are taking that in. I'm sure that we will act on that.

CHAIRMAN KURK: Let me echo the basic premise of Representative Rosenwald's statements. The United States compared to many other countries, not necessarily only European countries, but many other countries, no one thinks about drinking water wherever we go. The water is safe. Nobody thinks about going into a restaurant as to whether or not this restaurant might be serving food that would cause illness. The expectation, our entire culture assumes that these things are absolutely safe and that the various health departments throughout the United States are dealing with this. I don't want that expectation to be upset in New Hampshire. It is imperative that we continue to go about our business without even giving a second thought to this subject and anything the Department can do to immediately continue the assurance that we currently have is essential.

MR. TOUMPAS: I will -- I can't agree with you more, Representative Kurk. I will also just point out that with the exception of the self-inspecting towns, every facility that you walk into that you're going to have something to eat has my signature. There is a little plaque of some sort that is close to the cash register or where the public can see that says that the Department of Health and Human Services has taken a look at that and has my signature on it. So all I'm saying is that I take this -- that's why I'm sitting here. I take this very, very seriously in terms of what we are doing. We embrace that. We are a healthy state. Again, we have -- the risks are there in terms of what was pointed out; but from all the other areas that we have within Public Health, as well as elsewhere within the Department, I'm -- I don't believe that we have compromised. There are areas that we do not inspect that they're outside of our jurisdiction and I have -- I have the concerns on those as well.

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CHAIRMAN KURK: Thank you. Senator Little.

SEN. LITTLE: Yes, thank you. First, thank you for the time you spent with me yesterday. I really appreciate it. Helped me understand this and gave me a level of confidence that you're taking action to work on this.

As you pointed out, there are things in here that can be dealt with immediately that don't require legislation or that don't require an updated data system. That sort of raises the question how did these certain things happen to begin with. And you've mentioned the fact that your name is on the certificate that's in the restaurants; but one of the areas that this audit speaks to is sanctions that are required by statute and rule that are not being followed, which is how we get to the point there's \$1.2 million to the General Fund that is -- that is not collected.

Some of those have to do with the fact that inspections have to happen before a license can be reissued but that those inspections don't happen, which calls into question the value of the license if the license is to be an indicia that says this place has been inspected. The statute says the inspection will happen before the license is placed but inspections don't happen. That does raise a question about the value of that certificate that people see when they walk into a restaurant or a store to buy sea food. Sea food is another issue. I can't put my hand on it right now, but there's a comment about vessels and vehicles are to be inspected on a regular basis and tested but that they don't happen. That there is a concern about -- some sort of concern about security for some reason. If our inspectors are concerned about entering the hole of a ship or the back of a truck because they fear for their life that's, in fact, the security issue that we are worried about, then there should be some way to address that to give them the level of sense of safety that they need to be able to do the inspections. Because hundreds, if not thousands of people have, I think, a right to question whether or not the food that they're eating or purchasing is, in fact, safe.

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And I think the one that bothers me the most is the conversation in the audit about sampling. Where there is a statute and rule that requires that your foods for sale are sampled on a regular basis. But it says here on Page 67 that reportedly prior FPS management discontinued sampling efforts over concerns with how to respond to positive results in State liability. In other words, if we did a sample and we determined that there was salmonella, we're not sure what we would do. I think it's clear what you would do; but for some reason we have stopped doing samplings, even though it's required by statute. So these are things that it would seem to me, and again, thank you for the time you spent with me yesterday, but that it would be as simple as saying to people we will enforce and observe every statute and rule that's on the books.

MR. TOUMPAS: You have my commitment to do that. Again, Representative Kurk, you asked early on in the conversation whether we had sufficient staff. I can't tell you whether -- I can tell you I don't believe we have sufficient staff. Whether that means I need one or two or three, I don't -- three is the number we have lost over the past several years. Not just holding things vacant from a budget management standpoint but basically the positions are abolished. So those are the things that I have to take a look at our responsibilities and I have to take a look at the available resources that we have to do that. But the point it is a troubling report to read. There's no question about it. But, again, it's not my place to sit here and, you know, again, I can't respond at a level of detail but it is what it is. That's what's there, now what we have to do. That's really, as Representative Weyler talked about, the value of the LBA audit and the performance audit that really sheds some light on an aspect of the operation that clearly needed to have some light shed on it. Now it's very clear the type of things that we need to do.

CHAIRMAN KURK: Representative Barry, who is sitting in for Representative Ober, is recognized for a question.

REP. BARRY: Thank you, Mr. Chair. Good morning, Commissioner.

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MR. TOUMPAS: Afternoon now.

REP. BARRY: Is it afternoon again? Thank you. Like elevator certificates that are in there, somehow they have kind of gone away and tucked away someplace. Does the certificate that the restaurant or food establishment have, is it displayed prominently and is there an expiration date on there that the patron could say I better not come in here.

MR. TOUMPAS: Yes. Yes to both.

REP. BARRY: Thank you.

CHAIRMAN KURK: Further questions? Thank you for your -- thank you. First of all, thank you for the LBA audit staff for bringing this to our attention. Very damning but eye opening audit. Appreciate it. And, Commissioner, thank you for taking responsibility for this; and, more importantly, for assuring us that things are being done and will be done at breathtaking speed to make sure that the confidence that the people have in the food supply is justified.

MR. TOUMPAS: I do also want to again thank Steve Smith and Steve Grady for the work that they have done on this. They were -- Steve recognized early on that this is a problem. There's going to be a number of different observations. So I appreciated the fact that they have a job to do in terms of doing it, but it wasn't -- it wasn't a --

CHAIRMAN KURK: Gotcha.

MR. TOUMPAS: -- gotcha type of attitude. Clearly, working collaboratively and having the discussion about some of the observations that, you know, we had some very good give and take in terms of that. But, again, I just -- where we -- they have a role to do. We all respected that, but I really respect how they went about doing it as well. So I just wanted to put that out there.

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CHAIRMAN KURK: Thank you. Chair recognizes Representative Weyler.

REP. WEYLER: I guess we've already made the motion to accept and place on file. So we don't need further --

CHAIRMAN KURK: Fine. Gentlemen, thank you. The next meeting will be on Friday, October 16th, four days before October 20th, which is the -- apparently the current drop dead date for acting on the request dealing with retiree health care. Any other business to come before us? If not, Mr. Kane.

MR. KANE: Point of clarification. 10:00 a.m.?

CHAIRMAN KURK: 10:00 a.m., yes. If there's no other business to come before us, we stand --

REP. WEYLER: Move to adjourn.

CHAIRMAN KURK: -- we stand adjourned.

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(Adjourned at 12:24 p.m.)

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CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

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