State of New Mexico
LEGISLATIVE FINANCE COMMITTEE

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DAVID ABBEY
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December 6, 2005

MEMORANDUM

TO: Pamela S. Hyde, Secretary, Human Services Department

FROM: Charles Sallee, Performance Auditor, Legislative Finance Committee

SUBJECT: Performance Review of Human Services Department: Revenue Maximization Initiatives

EXECUTIVE SUMMARY

The objectives of this review were to:

- Assess the status of the Human Services Department (department) collaboration with MAXIMUS, Inc. (MAXIMUS) for the provision of revenue maximization and fraud abuse detection initiatives.
- Assess whether other appropriate opportunities and initiatives for increased revenues and cost savings should be pursued by the state.
- Review the contracting methodology and payments to MAXIMUS for implementation of the initiatives and services.
- Verify the statewide savings and revenue enhancements attributed to MAXIMUS initiatives, and how they are being captured.

Key findings are:

- The department has spent about $1.2 million on revenue maximization services that have generated $4.3 million in new state and federal revenue.
- The contract's current payment structure makes the department's total financial obligation to MAXIMUS unclear.
- The complex structure of the contract proves difficult for the department to manage effectively.
- Lack of comprehensive revenue and savings reporting limits agency and legislative budget planning.

Key recommendations include:

- Provide Legislative Finance Committee (LFC) staff with an estimate of contract costs and recoveries expected during FY06 and FY07 by December 15, 2005.
- Request a direct appropriation to fund the MAXIMUS contract in FY07 based on FY07 expected recoveries.

- Revise approved management letters to include a limitation on the compensation amount for that initiative, and detailed accounting of expected recoveries and/or savings as required by the contract.
- Submit a plan to the LFC and Department of Finance and Administration (DFA) for the proposed use of revenue collected as a result of MAXIMUS initiatives by January 15, 2005.

BACKGROUND

The department contracted with MAXIMUS for revenue maximization and fraud and abuse detection services in 2004. The department issued the request for proposals (RFP) in September 2003 and signed the contract with MAXIMUS in June 2004. The new administration under Governor Richardson believed opportunities existed to maximize the use of state and federal funds to expand health and human services to more New Mexicans. Responding to a recommendation of Governor Richardson's Performance Review, the department also sought services and computer software to help identify Medicaid fraud and abuse.

MAXIMUS provides consulting, management and service delivery, and computer systems support to federal, state, and local governments, including some foreign governments. MAXIMUS has three subcontractors, Health Management Systems (HMS), Health Watch Technologies (HWT), and Sellers Feinberg (SF), performing certain initiatives.

Revenue maximization initiatives seek to identify under-used or unclaimed federal funds in an effort to better leverage state funds. For example, MAXIMUS helped the department identify about $2.1 million in previously unclaimed federal funds. In prior years, the department had not accurately, or fully, sought federal reimbursement for Medicaid expenditures related to ensuring welfare clients continued coverage while transitioning to work. As a result, the department was paying more than the state should have. The department used the extra funds to cover a shortfall in its administrative budget. Fraud and abuse initiatives focus on identifying overpayments made by the department's fiscal agent and recover overpayments from providers.

FINDINGS

HSD has spent about $1.2 million on revenue maximization services that have generated $4.3 million in new state and federal revenue. Out of 26 identified initiatives, the department has approved 14, but only five have generated any revenue. The department manages the activities of MAXIMUS through a series of "Management Letters" for each revenue maximization initiative. Management letters serve as one, among many, contract deliverables. The letters describe revenue maximization opportunities, the department and contractor responsibilities, work plan and schedule, and project budget and payment schedule. The department uses this document to authorize MAXIMUS to provide work on each initiative. The department has also approved MAXIMUS to work with the Children, Youth and Families Department (CYFD), Department of Health (DOH) and has initiatives under review for services at the Corrections Department (Corrections). The chart, *Status of Revenue Maximization Initiatives*, shows the number of initiatives at each agency and amount of revenue captured.

About $3.2 million of the $4.3 million captured are state funds. Because some initiatives capture overpayments made in Medicaid, the department must revert or credit the federal matching portion of the funds recovered to the federal government.

Status of Revenue Maximization Initiatives

Agency	Status of Initiatives		Revenue Captured
	Approved	*Pending/Under Review*	
HSD	8	6	$3,592,044
CYFD	3	1	$667,421
DOH	3	4	$0
Corrections	0	1	$0
Total	14	12	$4,259,465

Source: LFC Analysis

The department has paid MAXIMUS almost the full contract amount of $1.2 million. The contract currently provides for a maximum of $1.2 million in compensation, and an option for the department to extend the contract through June 30, 2007. A balance of $16,009 remains. The department originally entered into a one-year $600,000 contract agreement with MAXIMUS beginning June 30, 2004. In January, 2005, another $600,000 was added for a total maximum contract amount of $1.2 million. By far, the largest payment was for about $460,000 for a series of assessments completed by MAXIMUS to determine how much revenue could be generated in certain areas of the health and human services enterprise. The Department paid for the other services at an hourly rate of $225 per hour.

<u>The contract's current payment structure makes the department's total financial obligation to MAXIMUS unclear.</u> The department amended the contract's payment methodology from a maximum hourly rate of $225 to a contingency fee in June 2005. The contingency fee requires the department to pay MAXIMUS an amount up to seven percent of revenue generated for revenue maximization initiatives, and up to 12 percent of retroactive, and six percent ongoing, claims recovered for fraud and abuse initiatives.

The department has obligated the state to an uncertain amount of total payment to MAXIMUS. Despite having expended almost the entire balance of the contract, the department did not include any additional funds in the contract for anticipated costs in FY06. The contingency fee amendment obligates the department to pay a fee based on the percentage of revenue recovered or saved by MAXIMUS. Moving to a contingency fee requires a better assessment of the total revenue and savings expected in order to effective plan for amounts needed to pay the contractor and for budget purposes. Without an agreed upon projection, the department has no way to determine the maximum amount that it could owe MAXIMUS, and amend the maximum contract amount accordingly.

The department cannot pay for MAXIMUS services provided in FY06 without requesting budget adjustments. By the end of FY05, the department had expended all but $16,000 of the $1.2 total funds allowed under the MAXIMUS contract. The department did not increase the contract amount when it authorized a contingency fee payment rate at the end of FY05. As a result, the department has no additional encumbered funds to cover new services ordered or provided during FY06.

However, the department does have specific budget adjustment request (BAR) authority for the MAXIMUS contract. The department may request up to $3 million from other funds to pay MAXIMUS during FY06. This authority was intended to protect against the uncertainty in the amount of revenue that MAXIMUS could bring to the state above available contract funds.

Using budget adjustment authority to pay MAXIMUS under these circumstances is inefficient, gives the appearance of an open ended contract, and results in the department ordering services before having any funds available to pay the contractor. Paying MAXIMUS in FY06 will require multiple steps that include:

- Budget adjustment request and approval.
- Receipt and encumbrance of approved funds.
- Contract amendment approval.
- Payment to MAXIMUS.

The department has ordered some services that may not allow for payment using the BAR authority. Not all revenue maximization services will result in deposits of actual revenue in the treasury. Instead, some will simply help the state reduce future General Fund expenditures and be reflected as "savings." Thus, no excess revenue in the "other funds" category will be available to pay MAXIMUS under the BAR authority for those initiatives.

The department amended the MAXIMUS contract to allow for contingency fee payments despite previous objections from the AG. The Contracts Review Bureau at DFA reviews and approves agency's professional services contracts. Before a DFA rule change in January 2005, AG also reviewed and approved professional services contracts of more than $200,000. The rule change removed the AG authority to review and approve professional services contracts.

During initial contract negotiations the department proposed to pay MAXIMUS a contingency fee based on the percentage of revenue collected as a result of the contractor's services. However, according to the department staff the AG had concerns with the contingency fee structure and lack of clear appropriation authority. In response, the department implemented a contract fee of up to $225 per hour instead of the contingency fee. The department also identified an appropriation of $600,000 to fund the payment of the contract.

In June 2005, the department amended the MAXIMUS contract to allow for the same type of contingency fee arrangement that the AG previously would not approve. Because of the DFA rule change, the AG did not have an opportunity to review and approve the contract amendment.

The department is at risk for overpaying for initiatives in-progress at the time of the contract amendment. The contract amendment fails to address how the department will transition from paying MAXIMUS an hourly rate to a contingency fee for initiatives generating revenue prior to the contract amendment. The department paid MAXIMUS on an hourly basis for three initiatives in FY05 that resulted in revenue collections in FY06 and after the amendment authorizing a contingency fee. The department indicates that MAXIMUS will begin submitting $0 invoices as the agency collects additional revenue on these initiatives. This process is an attempt to convert those initiatives already in progress from a fee for service payment structure to a contingency fee structure.

The department lacks any written agreement either in the contract or management letters to formalize this transition and the contract does not provide for any retroactive changes to payments. Tracking this type of arrangement complicates the overall management of this contract. As a result, the department is at risk of paying a contingency fee amount based on revenue generated as a result of work already paid for under the previous fee-for-service arrangement.

The contract and associated management letters lack clear definitions of new revenue which makes determining the proper contingency fee amount difficult. The contract requires the department to pay MAXIMUS an amount up to seven percent of the "net increase in federally funded program revenues" for revenue maximization initiatives, and up to 12 percent of retroactive "claims," and six percent ongoing "claims" recovered for fraud and abuse initiatives. The contract does not define these terms, but does require each approved management letters to define the terms and potential amounts of payment due. However, the management letters do not always provide a clear definition of revenue or specify a payment amount. Without clear definitions and figures, the department cannot properly credit the contractor for a change in revenue.

The contract provides for payments beyond the term date of the contract. The department's request for proposal provides an option to extend the contract through June 2007. The contract contains conflicting payment provisions. Specifically, the contract provides for payment to MAXIMUS for a period of eight three-month quarters after the department begins to draw the additional revenue, which could result in the payment period extending two years beyond the contract's termination date.

The complex structure of the contract proves difficult for the department to manage effectively. The department paid MAXIMUS nearly $740,000 without knowing the full cost of services before approving work. All initiatives the department has made payments on lack appropriate budgets or estimates of total payments required to implement the initiatives. Budgets in fee for service contracts help set a clear expectation on the amount of funds needed to carry out services. According to the contract, management letters should document the estimated compensation amount on an hourly basis to perform the revenue recovery initiatives. Specifically, the contract requires management letters to include the following details.

- "The amount of compensation based on the number of estimated hours expected by the Contractor for each initiative, including a limitation on the compensation amount for that initiative.
- A timeline for completion on the initiative, including a detailed accounting of expected recoveries and/or costs avoided."

Some management letters do meet the budget and payment requirements of the contract, however many do not. Without the budget or payment amount the department does not know how much each initiative could cost and limits the ability to control for excessive payments.

For example, the department has paid MAXIMUS $162,450 for activities under an initiative to recover Medicaid overpayments and detect fraud and abuse. The management letter does not provide an estimate of the total cost or the number of hours needed to complete each activity within the initiative. This management letter's activities have resulted in only $1,362 in revenue recovered as of September 2005, of which the state portion is $395.

The department has approved initiatives and made payments contrary to the contract. As stated above, the department paid MAXIMUS about $460,000 in assessment fees. The department has approved and made payments on management letters that outline payment schedules that include offsets from prior payments. MAXIMUS would offset, or reduce, the first fee payment due under the management letter by the same amount the department previously had paid for the assessment related to the same initiative. As a result, the department and MAXIMUS have retroactively changed payments, which are not contemplated in the contract. In some case the department did not even pay according to the management letter. This offset arrangement puts state funds at risk, further complicates oversight of the contract and makes tracking appropriate payments to MAXIMUS difficult.

The department has also approved a payment schedule for an initiative that contradicts the payment methods allowed under the contract; however it has not made any payments at the time of this review. In July 2005, the department approved a management letter to reconcile past drug rebate invoices to ensure the state was obtaining all available rebates for the Medicaid program. The management letter provides for an initial amount of MAXIMUS work paid on an hourly rate and a second phase paid on a contingency fee of 12 percent of recovered funds. The contract does not provide for duel payment methods in an initiative and does not allow for contingency fee above seven percent for revenue maximization services.

CYFD and DOH have received MAXIMUS services without clear authority. The revenue maximization contract is between the department and MAXIMUS and does not provide for other state agencies as a party to the contract. The request for proposal contemplates MAXIMUS providing services to other state agencies but CYFD, DOH nor Corrections was part of the contract negotiations. The department has approved management letters between CYFD, DOH, Corrections and MAXIMUS. However, no other agreements between the three agencies exist to define the appropriate use of the contractor's services, process for approving initiatives, payment, and method to track and report savings. During the course of this review, the department and the other agencies began negotiating joint powers agreements to define these elements.

The broad scope of the contract increases the risk of allowing agencies to circumvent the competitive procurement process and allows the contractor to provide non-competitive services. The contract and RFP do not tightly define the extent of revenue maximization services that MAXIMUS may provide. The department does not have any other criteria to determine whether a proposed initiative should be provided under the contract or not. The lack of clearly defined criteria provides maximum flexibility to use MAXIMUS services, but also opportunities for the department, CYFD, DOH and Corrections to enter into management letter agreements with MAXIMUS that would otherwise be a separate contract. Without a clearer set of criteria the contractor is in a position to sell additional services or create new work without going through the competitive procurement process.

Lack of comprehensive revenue and savings reporting limits agency and legislative budget planning. The department has struggled to regularly track revenues recovered as a result of MAXIMUS services and relies too heavily on contractor revenue reports. Three initiatives allow MAXIMUS subcontractors to set up non-department lockbox accounts to receive checks. As a result of numerous inquires by LFC staff to verify revenue recoveries during the course of this review, the department discovered some revenue was improperly credited to another agency in the General Fund at the State Treasurer's Office. The department has corrected the problem and is working with MAXIMUS to reconcile the accounts. However, the lack of monthly reconciliation with contractor reports puts the state at risk for not receiving the proper amount of revenue and makes it difficult to effectively monitor revenues for certain programs such as Medicaid.

No mechanism exists for tracking and reporting revenues collected across agencies and initiatives. The department does not regularly compile an internal report on revenue and savings collected under the contract across all agencies and initiatives. The lack of an agreement over the use of MAXIMUS contract between the department and other agencies makes determining responsibility for overall tracking of revenue difficult. Department staff indicates that tracking of MAXIMUS initiatives that generate regular revenue for Medicaid does occur, but does not include other agencies or programs.

MAXIMUS estimates it can help increase revenue by almost $21 million in fiscal year 2006. Much of this estimate depends on efficient cooperation of state agencies, the federal government and the speed at which MAXIMUS can recover excess payments for certain initiatives. LFC staff recognizes not all MAXIMUS revenue projections can be built into the budget, but some plan should exist for how to use any additional revenue should it appear after the appropriations process.

No evidence exists that the department or any other agency has projected MAXIMUS revenue as part of the fiscal year 2007 budget request. According to LFC staff any dollar of revenue collected as part of the MAXIMUS contract should be reverted to the general fund or the agency should request a budget adjustment to spend the funds on another use. For example, the department did receive a budget adjustment approval in FY05 for $2.1 million as a result of MAXIMUS services and used the funds to cover a shortfall in its administrative budget. The department indicates that it has budgeted expected MAXIMUS revenues in its FY07 request. However, LFC staff was unable to verify this claim. In addition, budgeted revenues in the areas of Medicaid fraud and abuse and third-party liability appear flat despite having both MAXIMUS and the department now conducting these activities.

The department, along with the other agencies, has not created a plan to prioritize the use of the additional funding as part of any budget adjustment request process. Excess revenue could be used in a variety of ways to accomplish the missions of the department, CYFD and DOH such as expanding Medicaid coverage to poor children, providing additional child care slots for working families, or reducing community-based services waiting lists for people with developmental disabilities. According to department staff, some initiative funds will simply be used to make up potential shortfalls in administrative programs. Because potential MAXIMUS revenue is not built into the FY06 budget, the Legislature is at a disadvantage to appropriate these funds for purposes it considers a priority.

RECOMMENDATIONS

1. **Provide LFC staff with an estimate of contract costs and recoveries expected during FY06 and FY07 by December 15, 2005.** This estimate should include all costs and recoveries expected by the department and other agencies using the MAXIMUS contract. Recovery estimates should include all revenue, savings (or reduction in need for General Funds), and costs avoided.

2. **Request a direct appropriation to fund the MAXIMUS contract in FY07, based on FY07 expected recoveries.** Budgeting a portion of anticipated FY07 recoveries will provide the department a method to finance the MAXIMUS contract on the front-end, reduce the need for using the budget adjustment process to pay a contractor, and provide the Legislature more control over this contract appropriation. The department should anticipate covering the contract costs associated with services received by the department and any other agencies participating in the MAXIMUS contract when requesting this appropriation. The department should then encumber final appropriated funds, and amend the total contract amount.

3. **Implement a formal agreement with MAXIMUS that limits or excludes further payments using the contingency fee rate on revenue received as a result of services performed before the contingency fee amendment.**

4. **Revise approved management letters to include a limitation on the compensation amount for that initiative, and detailed accounting of expected recoveries and/or savings as required by the contract.**

5. **Finalize joint powers agreements with CYFD, DOH and Corrections by December 15, 2005.** At a minimum, the agreements should detail the process for the department to approve initiatives at each of the agencies, payment methods, deadlines for review and approval by the department, and criteria to determine whether an initiative legally falls in the scope of the contract.

6. **Submit a plan to the LFC and DFA for the proposed use of revenue collected as a result of MAXIMUS initiatives by January 15, 2005.** The plan should include projected revenue and savings for FY07. The department should work with DOH,

CYFD, Corrections and MAXIMUS to develop a joint revenue projection. The plan should also include prioritized requests on how the agencies would use the increased revenue in order to assist LFC and DFA staff in budget planning and oversight requests related to MAXIMUS initiatives from the department, CYFD, DOH and Corrections. The plan should detail how savings will be redirected to other expenditures or programs in future years.

7. **Implement a centralized tracking mechanism to collect revenue collection information and report results monthly.** The department should designate one staff member to collect documentation and verify revenue collected as a result of MAXIMUS initiatives and report that information on a monthly basis to the department's Deputy Secretary of Finance overseeing the contract. This person should also be responsible for collecting and verifying revenue information from other agencies involved in MAXIMUS initiatives.

8. **Reconcile revenue collection information with MAXIMUS reports monthly.**

Exit Conference. The contents of this report were discussed on November 28, 2005, with Pamela Hyde, Secretary, HSD and senior department staff.

CS/yr

cc: Representative Luciano "Lucky" Varela, Chair, Legislative Finance Committee
Senator Joseph A. Fidel, Vice Chair, Legislative Finance Committee
Representative Henry "Kiki" Saavedra, Chair, LFC Audit, Computer Systems and Capital Outlay Subcommittee
Senator Phil A. Griego, Vice Chair, LFC Audit, Computer Systems and Capital Outlay Subcommittee

HUMAN SERVICES DEPARTMENT RESPONSE TO RECOMMENDATIONS

1. Provide LFC staff with an estimate of contract costs and recoveries expected during FY06 and FY07 by December 15, 2005.

"HSD will develop such an estimate, and provide it to LFC staff as soon as possible."

2. Request a direct appropriation to fund the MAXIMUS contract in FY07, based on FY07 expected recoveries.

"HSD concurs in this recommendation, and will make the necessary arrangements."

3. Implement a formal agreement with MAXIMUS that limits or excludes further payments using the contingency fee rate on revenue received as a result of services performed before the contingency fee amendment.

"HSD disagrees with this recommendation, as it contradicts the terms of the existing agreement."

4. Revise approved management letters to include a limitation on the compensation amount for that initiative and detailed accounting of expected recoveries and/or savings as required by the contract.

"HSD agrees that management of the contract has been cumbersome, and will consider modifications. However, HSD does not agree with the recommendation to revise management letters to set maximum budgets, as they would be disincentives to maximum contractor performance."

5. Finalize joint powers agreements with CYFD, DOH and Corrections by December 15, 2005.

"HSD finalized the JPA with DOH, which has been approved by DFA. HSD is currently working on JPAs with CYFD and Corrections."

6. Submit a plan to the LFC and DFA for the proposed use of revenue collected as a result of MAXIMUS initiatives by January 15, 2005.

"HSD agrees that a plan for the State-wide use of revenues collected as a result of the MAXIMUS initiatives is desirable, and suggests that the annual appropriations process, during the legislative session, would be a suitable opportunity for such State-wide prioritization to occur. As many of the enhanced revenues are going to come into agencies other than HSD, HSD should not be held to submitting a spending plan for DOH, UNM, etc. Within HSD, these revenues have already been incorporated into the Medicaid projection. In essence, HSD's spending plan has been in place since it started the contract. Without this enhanced revenue,

HSD would simply be requesting more dollars be appropriated to the Medicaid program. It was always the intention for this contract to go beyond Medicaid, and beyond HSD. The RFP includes the potential for initiatives that would benefit other state agencies. It is not, however, HSD's intention to manage activities outside of HSD."

7. Implement a centralized tracking mechanism to collect revenue collection information and report results monthly.

"HSD concurs in this recommendation, for HSD activities only. This function is currently handled by ASD's Accounts Receivable Bureau."

8. Reconcile revenue collection information with MAXIMUS reports monthly.

"HSD notes that it is already doing this. ASD's Accounts Receivable Bureau is performing monthly reconciliations -- both of HMS and HWT lockbock activity -- among the contractor, STO, and the bank."

Attachment: Human Services Department's (HSD's) comments and responses to recommendations, at 12/02/05.

Human Services Department's (HSD's) comments and responses to recommendations, at 12/02/05:

HSD appreciates the LFC's review of its activities in this document. HSD's management wishes to reiterate several of the points that we have made during the course of this review, both in writing and in discussion at the Exit Conference held on November 28, 2005. HSD's responses to the recommendations contained in this document appear below, as well.

A. HSD's responses to statements in this LFC report

1. LFC report statement (p. 1):
   The contract's current payment structure makes the department's total financial obligation to MAXIMUS unclear.
   HSD response:
   HSD states that it will not pay more than the contingency maximum.

2. LFC report statement (p. 1):
   The complex structure of the contract proves difficult for the department to manage effectively.
   HSD response:
   HSD concurs that improvements are desirable; however, due to the complex nature of the work, particularly the numerous and varying approaches to accomplishing the work, HSD believes that management letters are the best mechanism for managing this contract. HSD notes that they can be improved, and will endeavor to make improvements in future management letters.

3. LFC report statement (p. 3):

The department has paid MAXIMUS almost the full contract amount of $1.2 million. The contract currently provides for a maximum of $1.2 million in compensation, and an option for the department to extend the contract through June 30, 2007. A balance of $16,009 remains. The department originally entered into a one-year $600,000 contract agreement with MAXIMUS beginning June 30, 2004. In January, 2005, another $600,000 was added for a total maximum contract amount of $1.2 million. By far, the largest payment was for about $460,000 for a series of assessments completed by MAXIMUS to determine how much revenue could be generated in certain areas of the health and human services enterprise. The Department paid for the other services at an hourly rate of $225 per hour.

HSD response:
HSD notes that part of the problem with payment was caused by the fact that the AG's office forced HSD into an hourly rate arrangement rather than a contingency fee arrangement. Under the latter, the contractor would have been paid less and waited until there were recoveries for the Department. Under the hourly rate arrangement,

the contractor was billing for start up and assessment costs even when there had been no recoveries.

The aforementioned assessment and start up fees will be offsets in future billings. HSD will receive a number of $0 invoices until the recoveries catch up to the contingency fee payments. For example, HSD has been making monthly payments for work under the TPL initiative. If total recoveries end up being $5 million, HSD would owe them $600,000. If HSD has already paid them $500,000 in start up and assessment fees, it would only pay an additional $100,000. Therefore, the numbers on this contract will look better a year from now than they do currently.

4. LFC report statement (p. 3):
The department amended the contract's payment methodology from a maximum hourly rate of $225 to a contingency fee in June 2005.

HSD response:
We reiterate, yet again, that the amendment to the contract payment methodology was at the requirement of the Attorney General's Office.

5. LFC report statement (p. 3):
The department has obligated the state to an uncertain amount of total payment to MAXIMUS. Despite having expended almost the entire balance of the contract, the department did not include any additional funds in the contract for anticipated costs in FY06. The contingency fee amendment obligates the department to pay a fee based on the percentage of revenue recovered or saved by MAXIMUS. Moving to a contingency fee requires a better assessment of the total revenue and savings expected in order to effective plan for amounts needed to pay the contractor and for budget purposes. Without an agreed upon projection, the department has no way to determine the maximum amount that it could owe MAXIMUS, and amend the maximum contract amount accordingly.

HSD response:
HSD disagrees with this perspective, noting that many contractors approached HSD with suggestions that very large amounts of additional revenues could be generated. HSD did not accept such suggestions, noting that it would be impossible to tell exactly what additional revenues might be generated, and whether they would be on-going or one-time increases. So, HSD intentionally excluded total amounts from the contract.

6. LFC report statement (p. 5):
The department is at risk for overpaying for initiatives in-progress at the time of the contract amendment. The contract amendment fails to address how the department will transition from paying MAXIMUS an hourly rate to a contingency fee for initiatives generating revenue prior to the contract amendment. The department paid MAXIMUS on

an hourly basis for three initiatives in FY05 that resulted in revenue collections in FY06 and after the amendment authorizing a contingency fee. The department indicates that MAXIMUS will begin submitting $0 invoices as the agency collects additional revenue on these initiatives. This process is an attempt to convert those initiatives already in progress from a fee for service payment structure to a contingency fee structure.

The department lacks any written agreement either in the contract or management letters to formalize this transition and the contract does not provide for any retroactive changes to payments. Tracking this type of arrangement complicates the overall management of this contract. As a result, the department is at risk of paying a contingency fee amount based on revenue generated as a result of work already paid for under the previous fee-for-service arrangement.

HSD response:
HSD disagrees with this assessment, noting as an example the following excerpt from Management Letter No. 2005-06: "*Payment for services under the initiative will be made upon receipt of the additional Medicaid funds less the assessment fee. ... The first fee payment from HSD, as outlined in the contract, would be reduced by the prorate amount associated with the Assessment fee that was paid to MAXIMUS of $33,300 plus the associated GRT. This assessment for UPL, IGT's and Provider Assessments encompassed four assessments. MAXIMUS would allocate 25% of the received fee to this initiative or $8,325. This recovery will only be applied once against the submission for payment from MAXIMUS.*"

HSD doesn't believe that it is "at risk for overpaying for initiatives" because HSD will not pay more than the agreed upon percentage (between 7% and 12% depending on the initiative) regardless of how much is recovered. If $100,000 is recovered, HSD would pay $12,000. If $1 million is recovered, HSD would pay $120,000. If HSD has already paid, in accordance with the hourly rate methodology, more than what the percentage basis would dictate, HSD can offset that amount in future invoices.
HSD further notes that MAXIMUS performed significant amounts of work at the "front end" of the contract, in anticipation of receiving contingency payments later in the course of its contract work. HSD has paid hourly rates to the contingency maximum, and will thus, not pay any more to MAXIMUS as additional services are provided.

7. LFC report statement (p. 5):
The contract and associated management letters lack clear definitions of new revenue which makes determining the proper contingency fee amount difficult. The contract requires the department to pay MAXIMUS an amount up to seven percent of the "net increase in federally funded program revenues" for revenue maximization initiatives, and up to 12 percent of retroactive "claims," and six percent ongoing "claims" recovered for fraud and abuse initiatives. The contract does not define these terms, but does require each approved management letters to define the terms and potential amounts of payment due. However, the management letters do not always provide a clear definition of

revenue or specify a payment amount. Without clear definitions and figures, the department cannot properly credit the contractor for a change in revenue.

HSD response:
HSD agrees that future management letters should be clearer than some in the past. However, HSD doesn't believe that specific payment amounts should be included, since the contract already specifies payment provisions.

8. LFC report statement (p. 5):
The contract provides for payments beyond the term date of the contract. The department's request for proposal provides an option to extend the contract through June 2007. The contract contains conflicting payment provisions. Specifically, the contract provides for payment to MAXIMUS for a period of eight three-month quarters after the department begins to draw the additional revenue, which could result in the payment period extending two years beyond the contract's termination date.

HSD response:
HSD will review this observation, to assure that payments are proper.

9. LFC report statement (p. 5):
The complex structure of the contract proves difficult for the department to manage effectively. During FY06, the department paid MAXIMUS nearly $740,000…

HSD response:
HSD has not paid anything in FY06. HSD agrees that management of the contract has been cumbersome. The Department-wide and even State-wide nature of this contract means that project management has been the responsibility of the Deputy Secretary. HSD will consider modifications to this approach by setting clear responsibilities at lower levels while keeping the higher level oversight.

HSD does not agree with the recommendation to revise management letters to set maximum budgets. HSD believes that it can improve its management of the financials aspects of this contract, but doesn't believe that maximum budgets would be a good idea. Right now, there is an incentive for the contractor to recover every available dollar that might be out there. Having fixed rate or maximum budgets takes away that incentive.

10. LFC report statement (p. 6):
The department has approved initiatives and made payments contrary to the contract. As stated above, the department paid MAXIMUS about $460,000 in assessment fees.

HSD response:
HSD states that no payments contrary to the contract have been made. HSD notes that

the aforementioned assessment and start up fees will be offsets in future billings. HSD will receive a number of $0 invoices until the recoveries catch up to the contingency fee payments.

11. LFC report statement (p. 7):
CYFD and DOH have received MAXIMUS services without clear authority. The revenue maximization contract is between the department and MAXIMUS and does not provide for other state agencies as a party to the contract.

HSD response:
As discussed at the Exit Conference, this is not an HSD issue. In addition, HSD notes that the RFP specifically provided for this type of arrangement with other agencies.

12. LFC report statement (p. 7):
Lack of comprehensive revenue and savings reporting limits agency and legislative budget planning. The department has struggled to regularly track revenues recovered as a result of MAXIMUS services and relies too heavily on contractor revenue reports. Three initiatives allow MAXIMUS subcontractors to set up non-department lockbox accounts to receive checks. As a result of numerous inquires by LFC staff to verify revenue recoveries during the course of this review, the department discovered some revenue was improperly credited to another agency in the General Fund at the State Treasurer's Office. The department has corrected the problem and is working with MAXIMUS to reconcile the accounts. However, the lack of monthly reconciliation with contractor reports puts the state at risk for not receiving the proper amount of revenue and makes it difficult to effectively monitor revenues for certain programs such as Medicaid.

HSD response:
HSD disagrees with this assessment, noting that it has had a reporting mechanism since FY05, and will make arrangements to provide future reports to its LFC Budget Analyst on a regular basis. Further, HSD notes that the lockboxes mentioned here are agency accounts. Finally, HSD notes that ASD's Accounts Receivable Bureau is performing monthly reconciliations -- both of HMS and HWT lockbock activity -- among the contractor, STO, and the bank.

13. LFC report statement (p. 7):
No mechanism exists for tracking and reporting revenues collected across agencies and initiatives. The department does not regularly compile an internal report on revenue and savings collected under the contract across all agencies and initiatives. The lack of an agreement over the use of MAXIMUS contract between the department and other agencies makes determining responsibility for overall tracking of revenue difficult. Department staff indicates that tracking of MAXIMUS initiatives that generate regular revenue for Medicaid does occur, but does not include other agencies or programs.

HSD response:
HSD does compile such reports regularly, and has provided documentation as requested. HSD does not agree that it is responsible for tracking or reporting revenues collected outside of HSD.

14. LFC report statement (p. 8):
MAXIMUS estimates it can help increase revenue by almost $21 million in fiscal year 2006. Much of this estimate depends on efficient cooperation of state agencies, the federal government and the speed at which MAXIMUS can recover excess payments for certain initiatives. LFC staff recognizes not all MAXIMUS revenue projections can be built into the budget, but some plan should exist for how to use any additional revenue should it appear after the appropriations process.

HSD response:
HSD notes that additional revenues will routinely be used to offset the need for General Fund support to the Medicaid program; or identified for reversion to the General Fund, provided that recoupments are from reverting sources.

15. LFC report statement (p. 8):
No evidence exists that the department or any other agency has projected MAXIMUS revenue as part of the fiscal year 2007 budget request.

HSD response:
HSD disagrees, noting that its Medicaid program projections, used as the foundation of its FY07 Budget Request, incorporate these anticipated revenues In addition, HSD staff has provided all requested documentation and information.

16. LFC report statement (p. 8):
The department, along with the other agencies, has not created a plan to prioritize the use of the additional funding as part of any budget adjustment request process.

HSD response:
HSD agrees that a plan for the State-wide use of revenues collected as a result of the MAXIMUS initiatives is desirable, and suggests that the annual appropriations process, during the legislative session, would be a suitable opportunity for such State-wide prioritization to occur. As many of the enhanced revenues are going to come into agencies other than HSD, HSD should not be held to submitting a spending plan for DOH, UNM, etc. Within HSD, these revenues have already been incorporated into the Medicaid projection. In essence, HSD's spending plan has been in place since it started the contract. Without this enhanced revenue, HSD would simply be requesting more dollars be appropriated to the Medicaid program.
It was always the intention for this contract to go beyond Medicaid, and beyond HSD. The RFP includes the potential for initiatives that would benefit other state agencies.

B. HSD's responses to Recommendations in this LFC report

1. Provide LFC staff with an estimate of contract costs and recoveries expected during FY06 and FY07 by December 15, 2005.

HSD will develop such an estimate, and provide it to LFC staff as soon as possible.

2. Request a direct appropriation to fund the MAXIMUS contract in FY07, based on FY07 expected recoveries.

HSD concurs in this recommendation, and will make the necessary arrangements.

3. Implement a formal agreement with MAXIMUS that limits or excludes further payments using the contingency fee rate on revenue received as a result of services performed before the contingency fee amendment.

HSD disagrees with this recommendation, as it contradicts the terms of the exiting agreement.

4. Revise approved management letters to include a limitation on the compensation amount for that initiative, and detailed accounting of expected recoveries and/or savings as required by the contract.

HSD agrees that management of the contract has been cumbersome, and will consider modifications. However, HSD does not agree with the recommendation to revise management letters to set maximum budgets, as they would be disincentives to maximum contractor performance.

5. Finalize joint powers agreements with CYFD, DOH and Corrections by December 15, 2005.

HSD finalized the JPA with DOH, which has been approved by DFA. HSD is currently working on JPAs with CYFD and Corrections.

6. Submit a plan to the LFC and DFA for the proposed use of revenue collected as a result of MAXIMUS initiatives by January 15, 2005.

HSD agrees that a plan for the State-wide use of revenues collected as a result of the MAXIMUS initiatives is desirable, and suggests that the annual appropriations process, during the legislative session, would be a suitable opportunity for such State-wide prioritization to occur. As many of the enhanced revenues are going to come into agencies other than HSD, HSD should not be held to submitting a spending plan for DOH, UNM, etc. Within HSD, these revenues have already been incorporated into the

Medicaid projection. In essence, HSD's spending plan has been in place since it started the contract. Without this enhanced revenue, HSD would simply be requesting more dollars be appropriated to the Medicaid program. It was always the intention for this contract to go beyond Medicaid, and beyond HSD. The RFP includes the potential for initiatives that would benefit other state agencies. It is not, however, HSD's intention to manage activities outside of HSD.

7. Implement a centralized tracking mechanism to collect revenue collection information and report results monthly.

HSD concurs in this recommendation, for HSD activities only. This function is currently handled by ASD's Accounts Receivable Bureau.

8. Reconcile revenue collection information with MAXIMUS reports monthly.

HSD notes that it is already doing this. ASD's Accounts Receivable Bureau is performing monthly reconciliations -- both of HMS and HWT lockbock activity -- among the contractor, STO, and the bank.