

## Success Story or Missed Opportunity? A Brief History of the Fund for a Healthy Maine

### **The Tobacco Master Settlement Agreement**

In 1998, Maine was one of 46 states that settled a lawsuit with the tobacco industry for illness and death caused by tobacco use. In the [Tobacco Master Settlement Agreement](#) (Tobacco MSA), the states agreed to end their lawsuit in exchange for annual payments in perpetuity from tobacco product manufacturers in order to compensate taxpayers for public costs related to tobacco use. To date, payments from tobacco manufacturers have averaged about [\\$6.3 billion per year](#) (1999-2016) across all states. The payment is calculated as a percentage of smoking-related Medicaid expenditures and smoking-related non-Medicaid health care costs in each state. The State of Maine's share, or "allocation percentage," of the settlement revenue has resulted in payments of about \$50 million per year.

Despite the lawsuit's original intent, the final Tobacco MSA imposed no specific restrictions on how states could spend their payments. According to the [US Government Accountability Office \(GAO\)](#), states used these windfall revenues from the beginning for a host of purposes not directly related to tobacco use: filling budget holes, cutting taxes, other spending, increasing reserves, etc.

A [2007 GAO study](#) shows that while states allocated the largest portion of their payments to "health care" (30.0%), they had not necessarily focused on tobacco-related health care costs. The same study shows the second largest portion of payments going to "budget shortfalls" (22.9%), followed by allocations to "general purposes" (7.1%), "infrastructure" (6.0%), "education" (5.5%), and debt service on the securitization (sale) of the Tobacco MSA annuity (5.4%). In fact, "tobacco control" received the smallest percentage of funding (3.5%) of any category in the GAO study.

### **Maine took a forward-thinking approach**

Maine's governor and legislature recognized and honored the intent of the settlement dollars by creating the Fund for a Healthy Maine. The Fund was designed to receive and allocate Maine's approximately \$50 million per year to programs to prevent chronic disease, promote good health, reduce adverse experiences, lower health costs, and give Maine children and adults every opportunity to live healthy, productive lives – all without supplanting existing state investments or federal grants in these areas.

When the Maine Legislature created the Fund for a Healthy Maine in 1999 ([Public Law 1999, Chapter 401, Part V](#) – the biennial budget bill), it specified for which types of programs the funds were to be used. Subsequent amendments to the purposes of the Fund (underlined below) were made by the Legislature in full consultation with Maine's public health community.

The current statutory framework for the Fund for a Healthy Maine is as follows:

6. *Health promotion purposes. Allocations are limited to the following prevention and health promotion purposes:*

*A. Smoking prevention, cessation and control activities, including, but not limited to, reducing smoking among the children of the State;*

*A-1. Prevention, education and treatment activities concerning unhealthy weight and obesity;*

*B. Prenatal and young children's care including home visits and support for parents of children from birth to 6 years of age;*

*C. Child care for children up to 15 years of age, including after-school care;*

*D. Health care for children and adults, maximizing to the extent possible federal matching funds;*

*E. Prescription drugs for adults who are elderly or disabled, maximizing to the extent possible federal matching funds;*

*F. Dental and oral health care to low-income persons who lack adequate dental coverage;*

*G. Substance abuse prevention and treatment; and*

*H. Comprehensive school health and nutrition programs, including school-based health centers.*

Maine has long been an outlier among states in the way it has protected Tobacco MSA revenues for the preventive health programs that were originally intended. According to a [2009 review](#) by the Maine Office of Program Evaluation and Government Accountability, “Maine has consistently prioritized preventive health services more than other states receiving [Tobacco MSA] funding.”

While Maine’s leadership in prioritizing preventive health programming is important to acknowledge, it masks the equally important fact that allocations from the Fund for a Healthy Maine have not adhered to Maine lawmakers’ founding vision and intent. The 119<sup>th</sup> Maine Legislature designed a framework to assure that Tobacco MSA funds were used to prevent chronic illness, promote good health, and reduce long-term health costs; however, subsequent legislatures have consistently redirected or rebalanced the focus of these funds in ways that have undermined the Fund’s original and statutory objectives.

### **The Fund was intended to supplement, not supplant, other funding streams**

When the Legislature established the Fund for a Healthy Maine in 1999, among the Fund’s purposes was “Health care for children and adults, maximizing to the extent possible federal matching funds” (see above statutory framework). This is a clear reference to the state’s Medicaid program. Historically, the state’s Medicaid program draws down federal matching funds of approximately \$2 for every \$1 of state appropriated funds.

Given the enormity of Medicaid expenditures – approximately [\\$272 million in 2001](#) (see p. 170) – lawmakers were mindful that tobacco settlement funds could be swallowed-up in their entirety by this one program, leaving nothing for investments in disease prevention and health promotion initiatives. This is why, from the beginning, the legislature included another section in the [Fund for a Healthy Maine law](#) (see subsection 4) that states, “Allocations from the fund must be used to supplement, not supplant, appropriations from the General Fund.” The legislature clearly intended to prevent the Fund for a Healthy Maine from being used to support

programming that was already supported by another funding stream, whether the state's General Fund or otherwise.

### **The trend of using the Fund for non-preventive purposes is worsening**

The distinct statutory barrier to supplantation notwithstanding, a substantial and growing proportion of the Fund for a Healthy Maine is being spent in ways that supplant other investments in public health and health care.

In 2001, the first year of program expenditures, Fund for a Healthy Maine spending on Medicaid was limited to expanding Medicaid eligibility to new populations: [pregnant women, children, and their parents](#) (see Parts PP & OO). Approximately \$4.5 million was budgeted from the Fund for a Healthy Maine specifically to cover these costs. Over time, these expenditures grew to include Medicaid costs beyond expansion to vulnerable populations. In just 10 years (2012), the baseline budget for Fund for a Healthy Maine Medicaid expenditures had grown by \$3 million to [\\$7.5 million](#) (p. 653).

Since 2013, however, there has been an even greater growth in the use of the Fund for a Healthy Maine for Medicaid. By the 2014-2015 biennium, the baseline for annual Medicaid expenditures from the Fund for a Healthy Maine had grown to [\\$18.2 million](#) (p. 473) – a 400% increase since the Fund's inception.

For the current biennium (2016-2017), that baseline increased to [\\$25.2 million](#), with the legislature approving final allocations for 2017 exceeding \$26 million (pp. 354 & 365). This six-fold increase in Medicaid allocations from the Fund for a Healthy Maine means that half of the Fund for a Healthy Maine is now being used for Medicaid, despite the 119<sup>th</sup> Legislature's balanced framework for disease prevention and clear statutory restrictions on the supplantation of General Fund spending.

### **Diversions and supplantations have taken a tremendous toll on the Fund for a Healthy Maine**

[Data from the Office of Fiscal and Program Review](#) show that since the Fund for a Healthy Maine was created, more than \$112 million in Tobacco MSA revenue has supported general state operations – a clear diversion from the Fund's intended purpose (see Appendix D (budget)).

At the same time, supplantations can be quantified at a minimum of \$91 million, based on Medicaid expenditures just since 2013, which were over and above the historical average of the Fund's first 12 years (see Appendix D (budget)).

In other words, since the Fund's inception in 1999, \$203 million (\$112 million in diversions plus \$91 million in supplantations) – more than 20% of total revenue – has been used for purposes other than those enumerated under state law (see Appendix A).

This \$203 million loss to diversions and supplantations has meant drastic spending cuts for chronic disease prevention programming, including:

- 32% decrease in anti-tobacco programming;
- 73% decrease in childcare and child development programs;
- 47% decrease in low-cost prescription drug programs;
- 54% decrease in substance use disorder programs; and,
- 44% decrease in other preventive health initiatives (e.g. dental and oral health).

With supplantation reaching this scale, the Fund for a Healthy Maine has become a de facto General Fund reserve account. In fact, while the Fund for a Healthy Maine has seen its balances used to support General Fund programs for [15 of its 16 years](#), the Budget Stabilization Fund (the state's actual rainy-day fund) has seen its balances grow in [all but 4](#) of those years (p. 116). In other words, the Fund for a Healthy Maine is serving as a buffer to protect the Budget Stabilization Fund – it is the rainy-day fund of the rainy-day fund.

### **The Fund's public health purpose is continually threatened by its political environment**

In recent years, the Fund for a Healthy Maine has become a source of extreme partisan division, with Republicans suggesting the Fund be made available for alternate purposes and Democrats largely defending the original intent of prevention services. This divide obscures the true narrative: independent, Democratic and Republican governors have all presented budgets that used the Fund for a Healthy Maine for outside purposes, and these budgets have been supported by legislatures with Democratic majorities and Republican majorities. The vulnerability of the Fund for a Healthy Maine to budget pressures transcends partisanship.

The Fund no longer has the constituency of elected officials it once had. As of this writing only one member of the LePage cabinet, two members of the Senate and six members of the House of Representatives held state office at the time the Fund was established -- and neither the Attorney General nor the State Treasurer (both important institutional defenders of the Fund) held state house positions at the Fund's inception. Without elected officials who are committed to the success of the Fund, the trend of succumbing to budget pressures is likely to worsen.

### **Over the years, there have been many attempts to protect the Fund**

No legislature can bind a subsequent one. This is a simple but important concept. Acts of legislatures are statute, and statute can be changed or negated by successive legislatures. This explains how, despite the law that establishes the purposes of the Fund for a Healthy Maine, every legislature since the Fund's inception, has looked past the limits of the law and used the Fund for alternate purposes. Restricting the legislature's use of the Fund requires an amendment to the Constitution of Maine.

Early in the history of the Fund, supporters recognized the dangerous pattern of diversions and supplantations that had already started to happen. Determined to prevent further loss of the Fund's allocations, advocates undertook a legislative campaign in 2003 designed to protect the Fund permanently through a constitutional amendment. [LD 1612](#) was introduced by Governor John Baldacci, sponsored by House Speaker Patrick Colwell, co-sponsored by Senate President Beth Edmonds, and had significant implied support of more than two thirds

of the Maine Legislature who had formally pledged to protect the Fund (Democrats and Republicans alike). Despite this strong bipartisan expression of support, LD 1612 failed to achieve the supermajority needed to forward it for ratification by Maine voters.

The Maine Public Health Association and its partners have made various other attempts to protect the public health mission of the Fund. Other legislative proposals included a bill to revise the budget process whereby allocations from the Fund for a Healthy Maine would require legislative approval separate from votes on the General Fund budget. Another activity, mentioned above, was a pledge signed by more than 115 legislators to protect the Fund. In addition to these specific and proactive efforts, each year a strong team of public health advocates prioritizes defending against proposals seeking to divert or supplant the Fund for a Healthy Maine.

### **The Fund has delivered a host of significant public health advances in Maine**

Despite diversions and supplantations, Fund for a Healthy Maine investments have resulted in impressive health outcomes, including cutting youth smoking rates in half, helping more than 100,000 smokers who wanted to quit, stabilizing youth obesity rates, driving down Maine's teen pregnancy rate, increasing immunization rates, and reducing youth alcohol consumption. The Fund for a Healthy Maine has made it possible for students to get health care in their schools; created more childcare options for parents; and provided preventive oral health programs in 180 elementary schools across the state (see Appendix B for a more complete list of Fund-related outcomes).

The Fund has also allowed for the creation of a statewide network of community coalitions called Healthy Maine Partnerships (HMPs) which helped fill the void in Maine's public health infrastructure at the county and municipal levels.

The HMPs informed, educated, empowered, and mobilized individuals, families, businesses, schools, municipalities, healthcare and social service organizations, and policymakers since the earliest days of the Fund for a Healthy Maine. They helped prevent tobacco use, improve nutrition, increase access to physical activity, and prevent substance use disorder among youth and young adults. They also provided platforms for communities to draw-down private, state, and federal resources for best-practice education, prevention programming, environmental change, emerging health threats, local policy change, and other traditional public health department services.

The LePage administration [redirected the funding](#) that supported the Healthy Maine Partnerships, thereby recreating a gap in Maine's community health system.

Since the Fund was created, there have been three separate legislative-initiated analyses conducted by Maine's Office of Program Evaluation and Government Accountability (OPEGA) — in 2009, 2011 and 2015. While each report was unique (see Appendix C), all three reached the common conclusion that Maine's tobacco settlement funds should continue to prioritize funding for disease prevention and health promotion programs, especially to reduce the number of youth and adults who use tobacco products.

When chronic illness is prevented rather than treated, there is both a human impact and an economic impact. [Research conducted by the Trust for America's Health](#) has demonstrated that the Return on Investment (ROI) for disease prevention programs in Maine is \$7.50 in economic output for every \$1.00 invested in disease prevention.

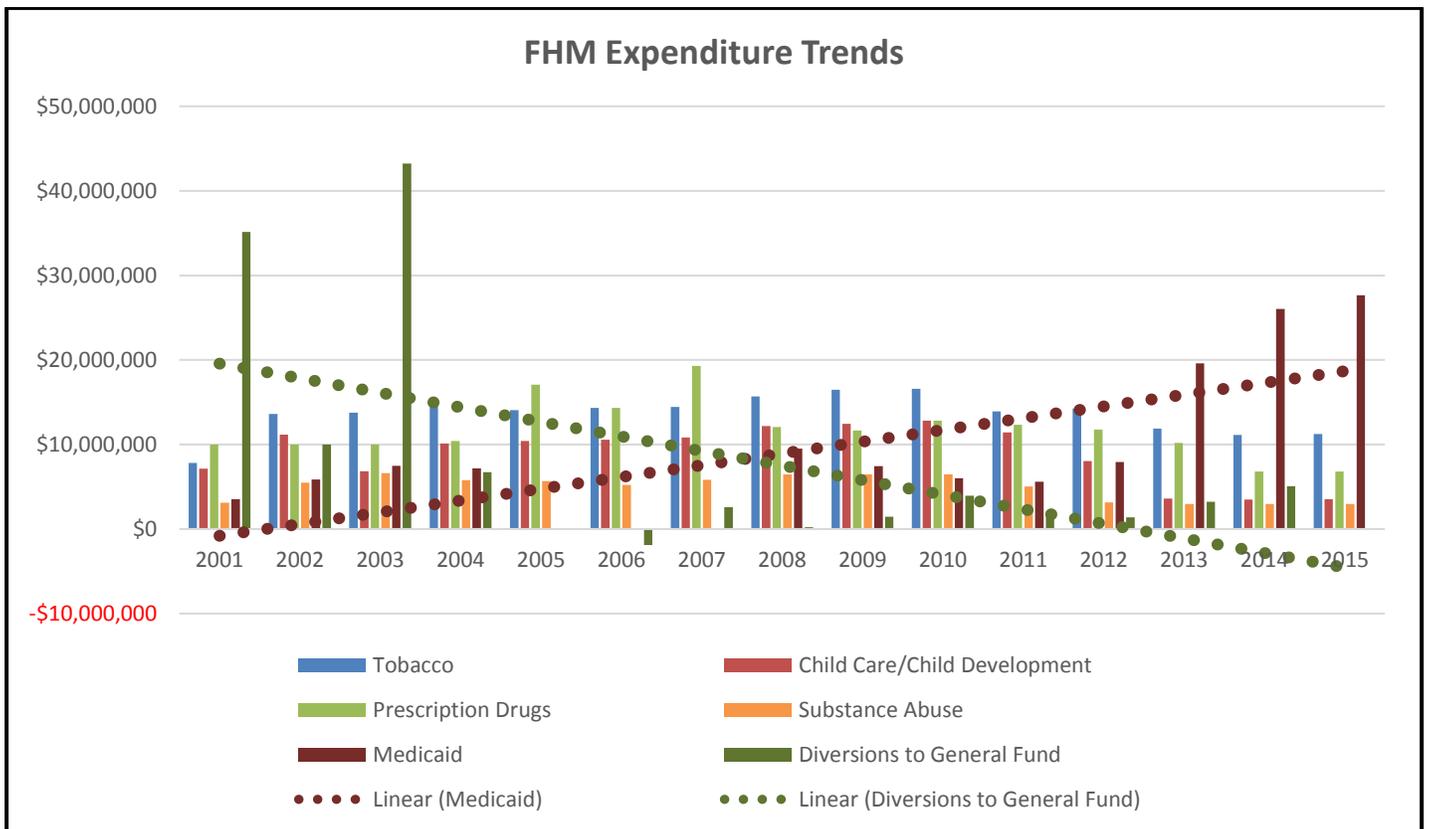
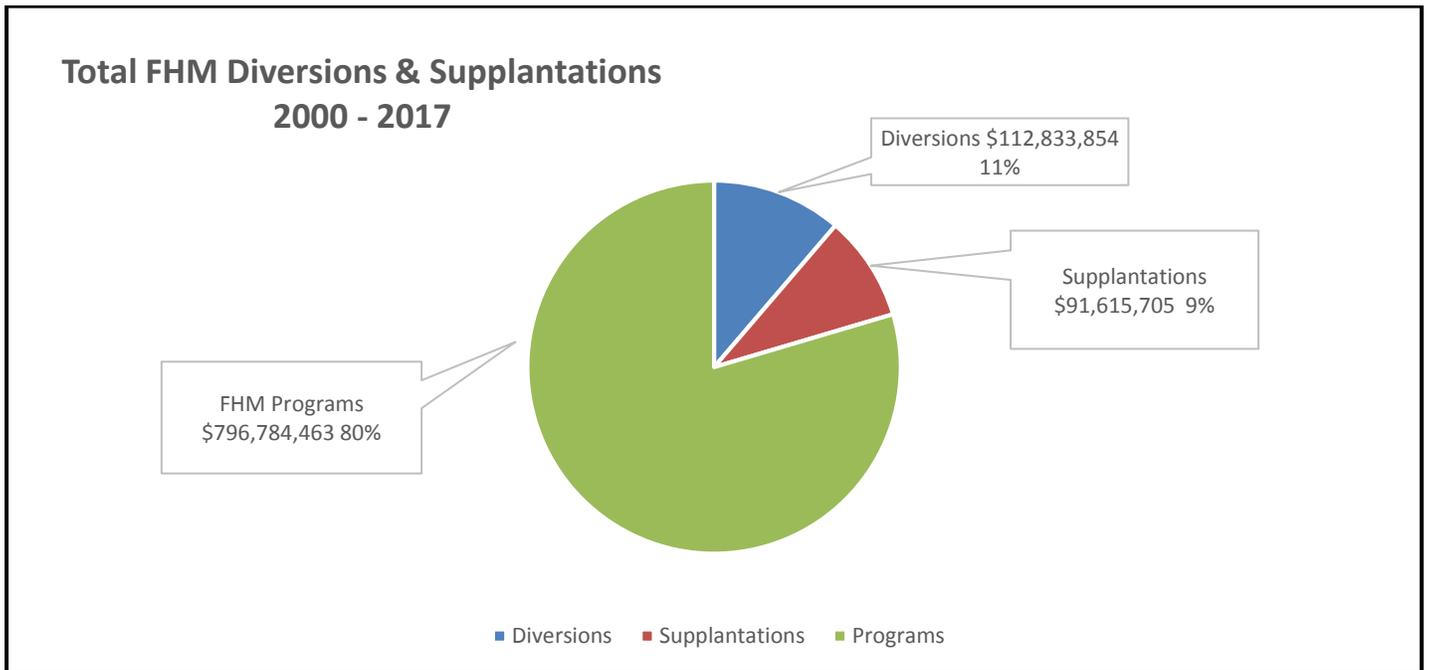
### **What will become of the Fund for a Healthy Maine?**

The history of the Fund for a Healthy Maine can be described as both a forward-thinking investment and a missed opportunity to improve lives, increase productivity, and reinvigorate Maine's economy. Maine did manage to do what most other states could not: invest a significant portion of its tobacco settlement funds in preventing tobacco-related illness and other chronic disease. However, had that \$203 million that was diverted or supplanted away from the Fund been invested in the prevention of chronic disease it could have returned \$1.5 billion in productive economic value for the people of Maine.

Is the Fund for a Healthy Maine a success story or a missed opportunity? The answer today is "both," but the Fund is at a crossroads. Will lawmakers allow the current pattern of diversions and supplantation to continue until the Fund shows very little resemblance to its founding legislative intent? Or will Maine people and policymakers push for a realignment of Fund for a Healthy Maine allocations to their original purpose of preventing chronic illness and promoting good health? The decisions made about the Fund for a Healthy Maine in the next few years could well decide the fate of Maine's public health for decades to come.

**APPENDICES**

**APPENDIX A: Fund for a Healthy Maine diversions, supplantations, and trends: 2000 - 2017**



## **APPENDIX B: Indicators of public health improvements in Maine since the establishment of the Fund for a Health Maine**

### **TOBACCO**

- Youth smoking rates have been cut by 1/3 from 39% to 13% (2001-2013).
- Adult cigarette use has decreased by 24% (2001-2016).
- The Tobacco Helpline has helped more than 100,000 clients quit smoking since its inception.

### **YOUTH SUBSTANCE USE**

- Alcohol use among youth decreased from 65.2% to 53.2% (2009-2015).
- The proportion of high school students who report consuming alcohol in the past month decreased from 31.7% in 2009 to 23.8% in 2015.
- Binge drinking decreased from 19.1% in 2009 to 12.2% in 2015.
- Alcohol and/or drug related crashes among 16-20 year olds decreased by almost 50% (151 crashes in 2009 to 82 crashes in 2013).

### **OBESITY**

- The youth obesity rate has slightly decreased from 12.7% in 2004 to 12.5% in 2011.
- The number of youth who report being physically active (5+ days/week) decreased from 63.2% in 2009 to 58.8% in 2015.
- The adult obesity rate has steadily increased from 18.9% in 2000 to 30.0% in 2015.
- The number of adults who report being physically active (once/month) increased from 74.2% in 2002 to 77.0% in 2011.

### **CHILD CARE**

- About 3,000 children, ages birth – 12 months, currently receive child care, Head Start, or after-school programs through Fund for a Healthy Maine assistance.
- Nearly 2,500 children, ages 12 – 15 years, participate in recreational, cultural, academic, and arts programs after school and in the summer.

### **SCHOOL-BASED HEALTH CENTERS (SBHCs)**

- 15 SBHC's provide access to care for ~12,000 students, allowing parents to stay at work instead of taking children to appointments, decreasing absenteeism and drop-out rates among students and improving worktime for parents.
- 40% of students in a school with a SBHC were enrolled with the center.
- 61% of all SBHC users received a health risk assessment (and those with risk identified received follow-up counseling).
- 51% of medical visits were for preventive screenings, such as immunization or well-child visits.
- 72% of those SBHC users identified as physically inactive received follow-up counseling.
- 87% of those SBHC users identified as having poor nutrition received follow-up counseling.
- Nearly one-quarter (21%) of students who smoke and were seen at a SBHC reported they reduced their smoking or quit smoking because of their visit.

### **ORAL HEALTH**

- 26% of Maine dentists participate in the Donated Dental Services (DDS) Program, providing free comprehensive dental services to qualified disabled and elderly individuals through a DDS paid coordinator (who works part-time). The average value of these services per individual was more than \$3,660 in SFY 16, and the total donated treatment was nearly \$459,000.

- Last fiscal year, \$12.57 worth of care was donated through the DDS Program for every \$1 received through FHM. Since inception, 1,300 vulnerable patients have received more than \$4.1 million in free dental services.
- As of June 2016, FAME's Dental Education Loan & Repayment Program has awarded 40 loans to dental students who already have or will return to Maine (with return service obligations) and 25 loan repayment awards from FHM, to dentists practicing in underserved areas. The overall retention of dentists – that is, of dentists who stayed in Maine to practice after completing their obligations – is about 72%.
- An additional 11 dental loan repayment awards were also given using Northeast Delta and HRSA Federal funds. Note: Without FHM funding, there would be no Dental Program. The NED and HRSA money came to FAME as part of a matching process.
- Statewide, ~180 elementary schools, mostly in rural areas, offer classroom-based education, and about 50% also provide dental sealants and fluoride for second-graders. Between 2013 and 2014 school years, 94 schools provided sealants to more than 1,600 children, who received an average of 3.2 sealants each.

#### TEEN PREGNANCY PREVENTION

- Maine's teen pregnancy rate has decreased from 48 pregnancies per 1,000 females (ages 15-19 years) in 2005 to 25.48 per 1,000 females in 2014.
- The percentage of high school students who have ever had sexual intercourse declined from 52% in 1997 to 38.7% in 2015 – an all-time low.
- Among high school students who are sexually active, the percentage who used a condom during their last sexual intercourse has increased from 51% in 1997 to 62% in 2015. The percentage who use hormonal birth control has increased from 30% in 1997 to 39.4% in 2015.

#### HOME VISITATION

- 92% of Maine Families participants' children were up to date with immunizations because of home visitors providing education and support to address barriers to timely immunizations (compared to 73% statewide).
- As a result of routine screening by professional home visitors, more than 177 children of Maine Families participants were identified with possible developmental delays and provided supports to help address those delays early before more costly remediation is needed in school.
- 99.4% of children of Maine Families participants had an identified primary care provider (36.6% statewide).

*(Appendix C source: Friends of the Fund for a Healthy Maine)*

### **APPENDIX C: Fund for a Healthy Maine Reports by Maine's Office of Program Evaluation and Government Accountability (OPEGA)**

- The 123<sup>rd</sup> Legislature authorized the Office of Program Evaluation and Government Accountability to review the programs funded by the Fund for a Healthy Maine. OPEGA issued an information brief: <http://www.maine.gov/legis/opla/FHMIssuebriefOPEGA.pdf> released in March 2009 and a final report in October, 2009: <http://www.maine.gov/legis/opega/reports/FFHM/FFHM%20Report.pdf>
- The 125<sup>th</sup> First Regular Session of the Legislature, passed *Resolve 2011, chapter 112* based on a recommendation from the Government Oversight Committee. This resolve created The Commission To Study Allocations of The Fund For A Healthy Maine. The Commission was a combination of Legislators, the Director of the Maine CDC, representing the LePage Administration and public health experts. The Commission met 3 times in November of 2011 and issued their final report in December 2011: <http://www.maine.gov/legis/opla/fhmreportdoc1.pdf>
- During the 127<sup>th</sup> Legislature, the Joint Standing Committee on Health and Human Services asked for permission to meet "off-session" to discuss the FHM (*Resolve 2015, chapter 47*). In December, 2015, they issued the following report: [www.maine.gov/legis/opla/FHM2015studyreport.pdf](http://www.maine.gov/legis/opla/FHM2015studyreport.pdf)