



SEN. ROGER J. KATZ, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

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REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
February 13, 2015

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:03 a.m. in the Cross Office Building.

Senators: Sen. Katz, Sen. Burns, Sen. Davis, and Sen. Diamond
Joining the meeting in progress: Sen. Gerzofsky and Sen. Johnson

Representatives: Rep. Kruger, Rep. McClellan, Rep. Campbell, Rep. Duchesne,
Rep. Mastraccio and Rep. Sanderson

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Matthew Kruk, Senior Analyst, OPEGA
Scott Farwell, Analyst, OPEGA
Lucia Nixon, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

SUMMARY OF THE JANUARY 23, 2015 GOC MEETING

The Summary of the January 23, 2015 Government Oversight Committee meeting was accepted as written.

• Information Brief on Follow-up Review of Health Care in the State Correctional System

Chair Katz said the GOC has dealt with the Health Care in the State Correctional System issue on several occasions. OPEGA presented the Information Brief at the January 23, 2015 GOC meeting and because there was considerable public interest in the topic, the GOC wanted an additional opportunity for public comment on the follow-up work OPEGA had done.

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• **Information Brief on Follow-up Review of Health Care in the State Correctional System**

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- **Public Comment Period**

Joseph Jackson, Coordinator, Maine Prison Advocacy Coalition (MPAC) said a concern for MPAC were the decisions being made by CCS and the Department of Corrections (DOC) with regard to what was medically necessary care. The report found that CCS delivered appropriate medical care to all prisoners in OPEGA's sample so MPAC then questions what care is defined as not medically necessary. He said he had been in prison and one of his biggest struggles inside DOC was medical care. Mr. Jackson had been taken outside the prison for medical care and the specialist gave a recommendation for his treatment. When he was returned to the prison the treatment was followed for a little while and then changed. DOC informed him that the treatment he was going to receive was exactly the same thing, but the treatment DOC started him on had different compounds with different side effects, etc. and he had not been informed of the change until after DOC had already changed it. Mr. Jackson also said he was not seen by DOC medical staff prior to his treatment being changed.

Mr. Jackson noted that the report also said that ability to function within a penal institution was the criteria for determining what treatments were medically necessary and did not know what ability to function meant. He said there are paraplegic prisoners who are deemed to be able to function within the prison.

Mr. Jackson explained to the GOC that many prisoners have well below high school educations. When they are not seen by the person they were expecting to see, they say they have not been seen. When they are examined by a nurse and the treatment is not for the condition they were complaining about they write to him saying they have not been seen. When Mr. Jackson receives such a complaint he has to review it as whether the prisoner got his issues addressed, even if they have been seen by someone.

Mr. Jackson said overall he thinks there has been improvement with the medical care provided by CCS versus the previous vendor. He likes the computerized medication system. While he was in prison he heard complaints many times that the medical provider did not have the prisoner's medication. He said CCS provides the numbers for when prisoners did not receive medications to MPAC. In reviewing those numbers, such as less than 1% of delivery, you have to look at the amount of medication CCS is delivering and the number of people they are delivering to and that number becomes statistically higher than the 1% it indicates. It affects about 20% of the population.

Mr. Jackson said he is interested in improving the issues he referred to and thanked the Committee for the opportunity to speak to them about his concerns. (Mr. Jackson did not provide a written copy of his testimony.)

Sen. Burns asked Mr. Jackson how long he had been under the medical care of CCS. Mr. Jackson said he was under CCS's care for a little over a half a year before he was released from prison. Sen. Burns asked if the medication Mr. Jackson referred to receiving was the generic brand for the same medication prescribed by the specialist. Mr. Jackson said he guessed it was the generic medication. He referred to the previous Commissioner of DOC, Commissioner Ponte, who was trying to reduce medications in the Correctional facilities and said when they changed the medication prescribed by the specialist, he went from one medication to four.

Sen. Burns asked what Mr. Jackson's recourse was when he did not receive the follow-up care for his surgery. Mr. Jackson said he could actively get involved in his treatment and worked with Dr. Clinton to

address his needs, he filed grievances on some medical issues because he did not feel the policies in place were being followed. The policies refer to the continuity of care and Mr. Jackson had concerns with being treated by two different contractors. He said he has been vocal in advocating for himself and was able to address his needs. His situation was different than some of the other inmates because he can advocate for himself and has outside support when he cannot get very far on his own, but many prisoners do not and are afraid of recourse if they do complain. Mr. Jackson said when MPAC addresses the issues they have to look at all the dynamics.

Sen. Burns asked if Mr. Jackson has seen any improvements in DOC's medical care. Mr. Jackson said there is improvement and the medical providers prior to CCS were much worse, but the problem is there are still issues and he hopes to keep moving forward to address the outstanding ones.

Rep. McClellan asked Mr. Jackson what he thought of OPEGA's Information Brief. Mr. Jackson said he was disappointed because since he has been a Coordinator for MPAC he has had two prisoners write him saying they were missing their medication and subsequently died. They died of cancer which was found to be of natural causes. He said that is an example of something that is very concerning to him and in reading OPEGA's report he was hoping there would be more detail. Mr. Jackson gave examples of prisoners now not receiving cold medication or Tums or Rolaid for those with stomach problems. Prisoners have to buy that type of medication themselves and not every prisoner inside DOC gets paid or have family to rely on to purchase those items.

Sen. Diamond said whether in prison or not, there are people who try to manipulate the situation they may be in and asked Mr. Jackson if part of the problem, as he sees it, is because people may be seen as manipulating the system. Mr. Jackson assumed there is always that suspicion and when talking about prisoners, you are talking about a population that has a high drug addiction rate and the favorite drug is prescription pills. However, you are talking about diagnoses that are confirmed with medical testing. He has heard of prisoners breaking their own arm in order to get prescription pills, but that is not the norm of what happens. Mr. Jackson thinks the perception is that CCS is a profit motivated company and therefore some prisoners think there is a bigger profit in not treating them than there is to treat them.

Rep. Duchesne said in order to do the investigation certain metrics had to be used and asked Mr. Jackson if he thought the investigation used the wrong metrics, and if so, how could the review have been conducted from an accounting point of view. Mr. Jackson said one of the concerns MPAC has is they reviewed just the medical records because some medical information is not getting in the records. MPAC receives a lot of complaints from prisoners who request and get their records and some of their medical treatments are not in their files. MPAC was hoping to see more interviewing of the prisoners whose medical records OPEGA was reviewing.

The GOC thanked Mr. Jackson for the information he provided.

Neil Robertson, Assistant Coordinator for MPAC, said he was surprised to see in OPEGA's review that all the complaints were dismissed. Statistically he said that is an odd thing. He does not mean to say that the data was fudged, or anything like that, but was surprised that those reviewing the records had no medical expertise, did not access or utilize any outside medical expertise to help evaluate the complaints. He said MPAC hears a lot about the difference in care that can exist in different places. He gave the example of the policy for a prisoner who had bilateral cataracts that was beginning to have obscure vision and that cataract surgery is only done for one eye. As he understands the reasoning it is that you only need one eye to function in a prison setting and that one eye is just as good as two. Mr. Robertson said that is not the case. Neuro-Optometric Rehabilitation Association (NORA) in a publication details the problems with acquired macular vision and it is not so simple to say one eye is just as good as two. Mr. Robertson said among other problems, cataracts not being treated in both eyes can create havoc with a person's balance. He said access to outside care could be years away for prisoners who are released and have had only one cataract

removed. There is also the risk of losing sight in the one good eye. Mr. Robertson said CCS was not an exception to that process and asked what the medical reason would be to not operate on both cataracts. Rep. Mastraccio said her husband was an optometrist for over 35 years and he in fact had cataract surgery in one eye in 2013 and is still waiting to have cataract surgery on his other eye. She said it is very common for people to have one eye done and the other done much later. She said if you talk with many optometrists they will tell you that one of the reasons they don't do both eyes at the same time is because if something goes wrong then at least you would have one good eye left. Mr. Robertson said he understood that and it is generally accepted practice to do one eye at a time, but in a prisoner's case they are not talking about waiting to do the other, but rather, that the other eye never being done.

Chair Katz asked if Mr. Robertson had any indication that eye surgery was a problem in the prison. Mr. Robertson said he believes it has been a problem in the past and had used cataracts as an example because it is an example of what does occur with the other cataract never being done. He could not say that there was a particular prisoner at the time, but believes there has been in the past.

Rep. Mastraccio asked if Mr. Robertson was saying that when they do the cataract surgery they do not correct the other eye with glasses. Mr. Robertson said no. He asked it as a question because he had read material indicating that is one accepted standard of care in the prison systems. It is not just Maine DOC doing one cataract and then never doing the other one and allowing monocular vision to ensue. It seems this also occurs in other prison systems. He was not saying that is always being done here, but believes it has occurred. Rep. Mastraccio said Medicare also has very stringent parameters for when they will even allow cataract surgery in either eye.

Rep. McClellan noted that the scope of work for OPEGA's review was limited and asked Mr. Robertson what the process was for prisoners who don't like the answers or treatment they received regarding medical care. Mr. Robertson said he thinks Dr. Clinton, Dr. Newby or Mr. Jackson could answer that question better than him. He said there is certainly a standard procedure that needs to be followed.

Sen. Johnson asked for Mr. Robertson's written testimony. He said his testimony contained a lot of other information that he did not want to raise so would like the opportunity to edit his testimony and will email it to OPEGA. (A copy of Mr. Robertson's testimony will be attached to the Meeting Summary when received).

The members of the Committee thanked Mr. Robertson for his testimony.

Mr. Jackson said there is a process for when a prisoner is not satisfied with the medical treatment received. DOC has several procedures for a prisoner to file a grievance. They can go to the Health Services Administrator to file a complaint and if the prisoner is not satisfied with the response of the Administrator, can go to the Warden of the facility and then on up to the Commissioner. Mr. Jackson said the grievance procedure is currently under review with DOC looking at some of the issues regarding the procedure that MPAC had.

Chair Katz closed the public comment period at 9:35 a.m.

- Committee Work Session

Director Ashcroft said there are several things that typically get covered in the Committee's work session on an OPEGA report. The Committee can ask any additional questions they may have of OPEGA staff regarding the review or for anything they have heard. The Committee may request additional information they want in deciding whether to take any particular action with regard to the report. The Statute allows that the Committee may vote to endorse, endorse in part, or not endorse a report that OPEGA has presented.

Rep. Sanderson said earlier it was stated that OPEGA did not utilize professional medical staff during the review and asked Director Ashcroft if she could give an oversight of how the patient records were reviewed to come to the determinations in the Brief. Director Ashcroft said OPEGA's task in the review was to try and determine the root causes for the complaints that were continuing to come to MPAC and other advocacy groups. It was not to second guess the medical treatment that had been provided to any particular prisoner. The way OPEGA approached the review was to have MPAC provide names and specific complaints for 25 prisoners they had the most concerns about. OPEGA then selected a sample of 13 prisoners who appeared to represent a cross section of the types of complaints that showed up in the 25 at large. OPEGA broke each of them out individually and there were 48 specific complaints that OPEGA reviewed the medical records for to confirm what the complaint was about and what could be seen occurring as a result of it. When OPEGA reviewed the medical records, they were looking for the cause of the complaint, did the complaint appear to be valid, and if so, did they see anything else that was an extenuating circumstance related to the reasons the situation was occurring. At no time was OPEGA ever seeking to try to assess the care. As OPEGA reported, and as heard from Mr. Jackson and others, there was a lot of concern around what constitutes a medically necessary procedure or prescription and there were a number of things that were called comfort items that DOC took the stance would be provided through the commissary rather than provided through the medical. What OPEGA can say from what was seen in the records, is that there was evidence of CCS regularly assessing things like a prisoner's ability to perform their own activities of daily living as a bench mark for ability to function in prison. She said the two OPEGA Analysts on this review became very educated through internet research, and other means, on the terminology in the medical records to try to assess whether the response to a complaint could be considered an appropriate response. Although OPEGA did not have an actual medical provider on this review, they did go to great lengths to ascertain if what they were seeing in the records seemed an appropriate course of action for the complaint as it had been determined.

Sen. Johnson said there was mention of the grievance procedure and asked if Director Ashcroft could say what the correlation is between the complaints OPEGA investigated and what sort of complaints might have been raised through the grievance procedure. He did not recall whether in the original Report there was an analysis of grievances that had been filed and whether there was any merit to the grievance about whether this was appropriate, or not appropriate, care for what they are experiencing. Director Ashcroft said because of the approach that OPEGA took for the review, they did not analyze grievances, but she believed that some of the cases and complaints that OPEGA did look at in their sample there had been a grievance filed so they did see a couple of cases where that process had occurred. She said there is also an informal process the prisoner can use to get his concern about his health care reviewed. OPEGA saw some cases that, through that process, there had been a change in what CCS thought ought to be the treatment. OPEGA did see some instances where CCS changed their minds about the ability to function and then provided the procedure, but she could not speak to grievances overall.

Sen. Burns said he has been listening for several years to complaints about the medical treatment in DOC and he thinks they have come a long ways in the culture, treatment and oversight they have of inmates. He said he was satisfied with what he has heard and was ready to make a motion.

- Committee Vote

Motion: That the Government Oversight Committee endorses OPEGA's Information Brief on Follow-up Review of Health Care in the State Correctional System. (Motion by Sen. Burns, second by Sen. Gerzofsky, passed unanimous vote 12-0)

NEW BUSINESS

• Project Direction Statement on DHHS Workplace Culture and Environment

Director Ashcroft said this Review is currently sitting in Suspended status on OPEGA's Work Plan. The past GOC suspended it last year in order for OPEGA to give priority to the current review of the Riverview Psychiatric Center. At the time the review was suspended, OPEGA was at the end of their preliminary research phase. The next step in the review would be to present the GOC with a recommendation for direction on the project of whether to continue the review or not, and if so, what would be the recommended questions that would be of value to answer.

Director Ashcroft said OPEGA was ready to bring that project direction recommendation to the GOC. She introduced Ms. Cherubini, the lead analyst on the review.

Ms. Cherubini summarized OPEGA's Recommendation for Project Direction of DHHS Workplace Culture and Environment. She said OPEGA is recommending not proceeding with a more detailed review of DHHS Workplace Culture and Environment and producing an Information Brief summarizing the results of their preliminary research and suggested opportunities for improvement. (A copy of the Recommendation for Project Direction is attached to the Meeting Summary.)

Rep. Campbell asked if Ms. Cherubini would share with the Committee an example of negative or adverse culture. Ms. Cherubini said it might be that some people felt like they were targeted professionally if they were raising concerns with management, or they were dissatisfied with the way they were treated by management.

Sen. Johnson referred to OPEGA's statement that while DHHS did have, among executive branch agencies, a higher than average rate of grievance and terminations indicating potential dissatisfaction, the Department was in a group of several agencies with relatively higher rates and did not stand out as an extreme case. He asked why that was not a reason for having concern with those other agencies as well, rather than saying it is the norm and is okay. What that indicates to him is that there is a more pervasive cultural problem in State Government. Ms. Cherubini said when OPEGA was looking at the grievance and termination data DHHS is one of a few agencies that has higher rates. It could be related to the nature of the work, or the organizational culture. She said another department with higher rates is Correctional facility staff. DHHS has 3,500 employees with many dealing with the frontline difficult work that is not necessarily similar to somebody in a more administrative type position. She agreed that could be a concern, or an indication of broader issues, but the other thing OPEGA looked at was DHHS' own employee climate survey data which indicates high levels of job satisfaction. When looking at grievances and terminations you are looking at a small group of issues and when you are looking at the survey of the entire department with a high response rate that, compared to other similar surveys the literature shows a high level of satisfaction, it is less of a concern. Ms. Cherubini said that it may still be concerning and there may be people with issues, but it seemed to be less of a concern.

Director Ashcroft said OPEGA was not intending to imply that high rates of dissatisfaction-related grievances and terminations in the other departments would not be seen as an issue. OPEGA was focused on the fact that DHHS was not standing out above and beyond all other agencies in State government. She also wanted to make sure the GOC understood that the grievance and termination data is something OPEGA analyzes at a very high level to get at trends. There are concerns about the reliability of some of that data so in this case OPEGA was using it more of a global indicator. As Ms. Cherubini indicated there are a lot of different factors that could be driving those rates that would have to be explored before OPEGA would be willing to say it is a problem. OPEGA was trying to get a sense of where DHHS fell with regard to others.

Sen. Johnson said there are always questions with the responses from employee climate surveys. Are those answering the survey wondering how it may come back to them, how is the survey conducted, and how the

questions were asked. He said all of that comes to mind as to whether the survey data is a trustworthy indication of satisfaction with the sorts of issues that people were raising. Ms. Cherubini said OPEGA looked at the reports DHHS generated that summarized the survey responses and also looked at the raw data. The surveys were anonymous, and had places for write in comments. They were de-identified by the Office of Continuous Quality Improvement. OPEGA looked at response rates by office and also compared some of the survey questions asked with other surveys in the literature to whether DHHS' were consistent with others around some of those issues. OPEGA did an analysis and has data that can be present to the GOC in an Information Brief.

Rep. Duchesne said any time you have a change of boss, management or ownership in private industry there are baseline levels of people who do not like the change because change is uncomfortable. He asked how OPEGA would develop a metric to indicate that something has gone past that. Is there a lot of punitive action against particular employees, is there an indication of suppression of the ability of employees to voice concerns and do they have any metrics of how they would measure that within the culture. Ms. Cherubini said OPEGA compared it to other employee climate surveys in the public sector, how the rate of dissatisfaction compared and DHHS' results compared favorably with some of the other surveys particularly some that showed some serious problems. OPEGA did try to look at that and did not see that the rates of dissatisfaction were off the charts with regard to DHHS as a whole. However, OPEGA did see higher rates in some DHHS offices and some of those offices were the offices from which they had heard complaints and knew there were issues. Ms. Cherubini noted that common recommendations for making improvements in an organization's culture, as seen in OPEGA's review of relevant literature would be around the areas of improving communication, supervisory training, personnel policies, improving avenues for employee input, general oversight of management, and holding management accountable in different ways. Those kinds of things are what get recommended and OPEGA has information about what DHHS is doing in those areas.

Sen. Burns asked what OPEGA would compare this with. Is there national data that could be used to compare it with to see what a norm is versus what is high, or comparing DHHS versus another agency within the State. Ms. Cherubini said OPEGA did not have national data, but did find other studies that were done in larger organizations, and gave the example of the Securities and Exchange Commission. The Government Accountability Office did a similar survey of the Securities and Exchange Commission which has offices around the country and about 2,700 employees. OPEGA also looked at the results of a study that was done in Oregon and at some research around surveys done at the University of Wisconsin and Madison. Sen. Burns asked if they were public employees. Ms. Cherubini said they were.

Sen. Burns asked if any of the State Agencies take it upon themselves to do a self-survey to see what the satisfaction level is. Ms. Cherubini said DHHS' employee client survey was done through Survey Monkey and it was at the initiative of the Commissioner. They administered the survey Department wide in 2013 and 2014 specifically because of some morale issues and other issues they were trying to get a better understanding of.

Sen. Diamond noted the complaints OPEGA had received came from three offices or units in DHHS, one was the Child Care Licensing Unit. He said that over the years, regardless of the Administration, the Child Protection segment of DHHS has always been a major concern, both within the Department and the public. He asked if OPEGA saw anything under any part of the Child Protection area that raised concerns. Ms. Cherubini said there were no indications of that in the data OPEGA looked at, although she knows that has been an area of high concern. That is a very large Office within the Department, and said that the two largest Offices have recently hired recruitment and retention specialists to deal with some of the employee issues.

Sen. Diamond said the complaints he has heard over the past ten or so years have not been so much from the employees of how they were treated, but the type of protection, for whatever reason, the children were receiving or not receiving. He said he was very concerned about that part of the Department. Ms. Cherubini said that would have been outside the scope of looking at the organizational culture. She said OPEGA has

heard complaints about that in the past and that would be something the GOC might want to consider for a future review by OPEGA.

Director Ashcroft said OPEGA has completed its preliminary research and is recommending not going further with more detailed work. OPEGA thinks the work done to date provides a perspective on where it looks like there are issues, or not, in DHHS. She also does not believe that doing additional work would substantially change the ultimate recommendations that one might make to improve the culture and OPEGA could see that DHHS was already taking some of those actions. OPEGA would like an opportunity to present all that information to the GOC in detail in an Information Brief that the Committee could review. If the GOC decided they had additional work they would like OPEGA to do after reviewing the Information Brief they could assign it at that juncture.

Rep. Sanderson thought an Information Brief was a good idea and then the GOC can decide from there. She asked if OPEGA could include in the Information Brief a synopsis, or breakdown, of the results of the DHHS survey. She thought it would be interesting to see what questions were asked and what the results were. Director Ashcroft said OPEGA would include that information in the brief.

Chair Kruger asked if some of the workplace culture issues would be looked at as part of OPEGA's other project on the Riverview and DHHS Licensing and Regulation of Child Care Providers. Ms. Cherubini said the DHHS Licensing review is in suspended status right now to give the Department a year to implement their strategic plan so OPEGA would be starting the Licensing review in the Summer of 2015. OPEGA is looking at reporting avenues in the Riverview project and it is possible that some of the employee climate issues would be encompassed in that as there is a lot of changes going on at Riverview with the administration and employees. Director Ashcroft noted that OPEGA may touch on some of the culture issues, but is not the primary focus of the review.

Rep. Sanderson asked if the brief would also include any information on what steps the Department is taking to correct the culture problem. Director Ashcroft said it would.

Rep. Campbell asked if there was a concern with the culture throughout State government or was DHHS the only one that was brought to the Committee's attention. Director Ashcroft said it was the only brought to their attention at this point. In the past they have had similar concerns at the Maine State Prison so OPEGA has done culture work before in various departments.

Motion: That the Government Oversight Committee accepts OPEGA's Recommendations for Project Direction on DHHS Workplace Culture and Environment for an Information Brief including the survey questions and the analyses thereof. (Motion by Rep. Sanderson, second by Sen. Diamond, passed unanimous vote, 12-0)

• **Update on Status of Actions at DHHS Division of Licensing and Regulatory Services Regarding Child Care Facilities**

Director Ashcroft said OPEGA had begun a review of DHHS' Division of Licensing and Regulatory Services Regarding Child Care Facilities, finished preliminary research and recommended delaying the review for a year because there had been significant action on the part of DHHS to take many different actions that would directly affect what OPEGA had intended to look at in more detail. As part of that decision the GOC asked that, rather than just hold off for a year, OPEGA ask the Division of Licensing and Investigation Services to provide periodic updates on the status of their action plan. She said the most recent update is in the Committee members' notebooks. (DLRS' Strategic Map SFY 2014-15 is attached to the Meeting Summary.)

Rep. Sanderson referred to the statement in the document that a Project Specialist send open & close letters to parents of children in child care under OOH investigation and asked if OPEGA could explain the

parameters around that. Director Ashcroft said OPEGA has not asked the Department any questions about their actions yet so she is not be in a position to answer that. She said that was a question they could send out to the Department for a response. Rep. Sanderson would like to have an answer as there may be pending legislation regarding notification in the event of an investigation and when notification is triggered. Director Ashcroft asked Rep. Sanderson for clarification on the information she wanted. Rep. Sanderson said she is interested in when are they doing the parental notification, and what criteria are used for notification.

Rep. Mastraccio said she had questions from constituents about the licensing and said she had noticed that you can access more information publicly now and the Department has done a lot of work trying to improve that. She asked how quickly are they able to put that information on the website, and at what point after a complaint is received. Is it only issues that are actually related to their licensing that are on line, or if someone were looking into a daycare center would they know a complaint had been filed even if there was no actual action against the facility yet. Rep. Mastraccio said she would prefer not to have to wait until summer to know that because of the number of people asking her questions about what is going on. She refers them to DHHS' website to show them the Department is doing a lot more in that regard, but she wondered what the lag time might be between when a complaint comes in and the action of notifying a parent of what happened. Director Ashcroft said that question will be included in OPEGA's inquiry to the Department.

Chair Kruger said that Senator Margaret Craven, a former member of the GOC was in the audience and he welcomed her.

• **Status and Discussion of Quasi-Independent Agencies' Annual Reports to Legislature**

Director Ashcroft explained that coming out of OPEGA's review of the Maine Turnpike Authority, and the subsequent investigation by the GOC, the Committee determined to initiate extensive legislation regarding Quasi-independent State Agencies that set out expectations for those entities to have in place financial policies and procedures, travel policy and procedures, procedures that establish competitive procurement as the primary means of obtaining goods and services, and a number of other things. The legislation passed and became statute.

Director Ashcroft directed the GOC's attention to a portion of that statute, Title 5 § 12023. Reports to the Legislature. She said this section requires that a number of specified quasi-independent agencies submit annual reports to the Legislature. (A copy of the Quasi-independent State Agencies and Report information is attached to the Meeting Summary.) The agencies are to provide a list of all the procurements exceeding \$10,000 they had in the preceding year which were not done through competitive procurement – i.e. competitive procurement in favor of a sole source contract under the policies they have adopted. Agencies also are to provide a list of all persons, including organizations, to which they have made contributions greater than \$1,000 in the preceding year and to provide any changes that have been approved by their governing boards to the policies that were required to be implemented by statute.

Director Ashcroft said the Quasi-independent agency reports are submitted to the Executive Director of the Legislative Council who is forwarding them on to the appropriate Joint Standing Committee of jurisdiction for the varies entities. She also asked to receive a copy of those reports so OPEGA could do a follow-up as to how the process was going. When initiating the legislation the GOC had intended to establish some means of accountability for the agencies to the Legislature, but did not want to set up a situation where it was just another report that nobody was doing anything with it.

Director Ashcroft said she did not believe there has been the kind of review of the submitted Annual Reports at the Joint Standing Committee level that the GOC intended. She said the reports are put on the House and Senate Calendars so there is an opportunity for all legislators to see them. She has been accumulating them, but it was never the intent that OPEGA was going to play any role in being the entity that reviewed the reports every year to see if there was anything of concern that ought to be followed-up on. She brought it to

the GOC's attention because she does think the reports are getting done, but, as far as she knows, there is nobody who is taking it on as a task to review them and make sure there is not anything in them that they would want to question the agencies about.

Director Ashcroft is bringing this to the GOC's attention in case there are adjustments to the process the GOC would like to initiate. One option is to leave the situation as it is. Another option is for OPEGA to try to do an educational process with the joint standing committees of jurisdiction, but she does not think it is a lack of interest by the committees that is the problem, but is a lack of time to focus on a report when they have so many bills before them. She said the GOC and/or OPEGA could be the entity that was going to periodically every couple of years, take a look through the reports to see if it raised any issues. Director Ashcroft said her hesitation about that is it is an effort to do that and would mean committing OPEGA resources on a regular basis.

Rep. Duchesne asked if there could be a requirement instituted that there be a sign off by the committee of jurisdiction. He thought that would not be overwhelming and would be part of the committee's overall process.

Rep. Mastraccio said she agreed and felt that the reports submitted to the LCRED Committee were just sitting there even though they are part of the whole process. She said random audits should be done, or have the committee of jurisdiction sign off on them.

Sen. Johnson agreed and said he wanted to make sure that there was attention paid to having that review happen. He would question what the right action would be on Maine Technology Institute noting from the list that the last report they submitted was in 2013. Director Ashcroft believes the Executive Director's Office was trying to follow-up with the Maine Technology Institute on that.

Sen. Gerzofsky asked how this would enhance any future reviews of the quasi-independent entities from OPEGA's point. Director Ashcroft said it does provide OPEGA with a starting point should a scope of questions that come up around the entities include the items reported on. In that case, OPEGA would look to see whether whatever had been reported was accurate and complete. The entities have to have policies that were approved by their boards, so OPEGA would be looking to see if they were complying with the policies and whether those policies are meeting the intent of the Legislature.

Sen. Burns said the GOC had anticipated that this may be the problem and he agreed with the other members about having the committee of jurisdiction review and sign off on the reports. The Quasi-independent agencies should not be put through the extra work of preparing reports if nobody is going to bother to read it.

Rep. Sanderson said she was not sure how the Legislature could affect change inside the different Quasi-independent agencies and would like more information on that. She knew they were developed by the Legislature and enabling statutes, but would like to know how they actually operate and the practices by which they do. Is the criteria set by the Legislature, or are the agencies and authorities able to do that themselves. Director Ashcroft said she thought Rep. Sanderson was describing actual operational processes and how you would affect change in a process. She did not have an answer, but the heart of the matter is they are entities that were created by the Legislature which is how they get their quasi-independent designation, to perform a particular purpose that the Legislature has put forth. Her recollection from looking through the statutes of some of the organizations is that some have very specific parameters laid out in the statute for their purpose, requirements and duties of the entity and others are more general. If OPEGA were going to try to answer a question like Rep. Sanderson posed, they would start with the statute and any rules that the agency might promulgate. The Legislature might be able to effect change in a process through legislation.

Rep. Sanderson mentioned concerns she had about the process being used for Maine Human Rights Commission hearings. The Maine Human Rights Commission is a quasi-independent agency. She said the

folks who the complaint has been levied against have 10 minutes to present their case, the person who levied the complaint has 10 minutes and then one investigator has the opportunity to share what they have done in investigating and what their assessment of the problem is. In almost every case she has heard of there was definitely an opinion formed by the investigator versus a presentation of facts, and unfortunately the people who are having the complaint levied against them, have no opportunity for rebuttal. She questions whether this is a fair process and would like to know who has set out the process under which the Commission hearings are conducted. Was it the Legislature or something the Commission themselves have set up. Director Ashcroft said OPEGA might do research on such a question in the context of a request for a review that the GOC then considers, but generally does not do impromptu research for informational purposes only. Rep. Sanderson said she was looking more for just information regarding process.

Chair Kruger said the policy committee that has oversight of the Maine Human Rights Commission is Judiciary so they might know the answer.

Sen. Burns thinks the generic question is how do the policies get put into place in the quasi-agencies, and if there are policies in place that are not being followed, or are not there, is it within OPEGA's purview to take a look at that systemically. Not just one entity, but any of the agencies. Director Ashcroft said yes, the question of process and implementation of the government purpose, statute and how the agency is running itself are all valid purviews for an OPEGA review. She did not know if Rep. Sanderson had questions beyond what she had expressed, but OPEGA staff would be happy to sit down with her to see if it is something she would want to present for consideration for an OPEGA review, or whether there is some other avenues to get her questions answered. Rep. Sanderson said she would like to meet with OPEGA staff to discuss the issue.

Sen. Diamond said Rep. Sanderson raised excellent points and noted that, with the exception of two agencies on the list, all quasi budgets are reviewed by the Appropriations Committee. The Annual Reports required provide an opportunity for the committee of jurisdiction to examine and then to be the impetus for questioning the agency's budgets. If no satisfaction comes out of that, then he thinks the GOC has a good opportunity. He said the two agencies that do not come under the Appropriations Committee are the Maine Turnpike Authority and Northern New England Passenger Rail Authority. He said the Transportation Committee reviews the Turnpike Authority's budget, but has no say, or approval of it, and that is even more reason why those two agencies' reports should be reviewed and there be evidence that the committee of jurisdiction had reviewed it.

Director Ashcroft said what she will do for the next GOC meeting is explore whether or what changes potentially should be made to Title 5 § 12023 to require a sign off by the joint standing committee. She will see if there is a model out there and will talk with Rep. Duchesne about what process he had mentioned having to do that with.

• **Review and Approval of OPEGA Proposed Budget for FY16 – 17**

Director Ashcroft said one of the GOC's duties is to approve OPEGA's budget. Ultimately the approval and appropriation of it is through the Legislative Council and AFA Committee. Whatever the GOC wants to convey about the budget, whether it is approval as is, or approval with certain changes, the Committee has typically conveyed via a letter to the Legislative Council, the Legislative Council's Budget Subcommittee.

Director Ashcroft said this was an opportunity for the GOC to review the budget and suggest changes if they so desired.

Rep. Campbell asked where the unencumbered funds were held. Director Ashcroft said those funds sit in an unencumbered balance account specific to OPEGA and in the past some of those funds have been swept back

into the General Fund. In the most recent years OPEGA has had some of the balance transferred forward to the current fiscal year to cover the consulting budget.

Rep. Campbell asked the balance of the account. Director Ashcroft apologized for not having that information with her, but will forward it to the Committee.

Sen. Johnson asked if there was enough money in the budget to make sure that OPEGA's data was properly secured, through encryption or security measures given the confidential data that OPEGA handles at various times. Has the Director asked the IT folks about this? Director Ashcroft said she has not specifically asked that question. Sen. Johnson said the IT question would be about where the data is stored and whether it is sufficiently secured with encryption or other measures to prevent unauthorized access. Director Ashcroft will check with the IT Office.

Motion: That the Government Oversight Committee approves OPEGA's Budget as proposed. (Motion by Rep. Campbell, second by Sen. Johnson, passed unanimous vote 12-0)

Director Ashcroft will draft a letter for the Chairs on behalf of the GOC to the Legislative Council regarding OPEGA's budget.

UNFINISHED BUSINESS

• **Consideration of Revisions to GOC Process for Receiving OPEGA Reports Regarding Vote of Endorsement**

Director Ashcroft summarized the draft revisions to GOC Process and Procedure for Receiving OPEGA Reports that attempted to clarify what the GOC was considering when voting to endorse a report and how the vote and related comments would be recorded. (A copy is attached to the Meeting Summary)

Chair Kruger said it was really for clarification of the procedure, it is not for a bold change. He said he has to remind himself that he is not endorsing the findings, he is endorsing the process that the GOC went through to define the review and whether OPEGA did a proper job of doing what the Committee tasked them to do. He thinks the draft is a good clarification.

Director Ashcroft said that in the revisions laid out, endorsement did include being support for the findings and recommendations, but there was opportunity to not endorse certain parts of the report.

Motion: That the Government Oversight Committee approves the revision to the Process and Procedure for Receiving OPEGA Reports and that it accurately reflects the Committee's earlier discussion and intent. (Motion by Sen. Johnson, second by Sen. Davis, passed unanimous vote 12-0)

• **Review and Adopt Committee Rules**

Director Ashcroft said at the last meeting the GOC agreed to a change in Rule 7 "... 15 days after the final report is received by the Committee . . ." to 14 days. She said there was also discussion about the timing allowed for voting if a member was absent from the Committee and it was expected that the Joint Rules Committee was going to meet prior to today and would be discussing that matter. That Committee has not yet met. She said the GOC could approve their Rules as they are and if the Joint Rules Committee ends up changing absentee voting, the GOC can amend their Committee Rules.

Motion: That the Government Oversight Committee approves their Rules for the 127th Legislature. (Motion by Rep. Campbell, second by Rep. Mastraccio, passed unanimous vote 12-0)

• **GOC Consideration of Options for Clarifying/Enhancing Procurement Statutes, Rules and Policies (In response to OPEGA 2013 Report on Healthy Maine Partnerships)**

Director Ashcroft referred Committee members to the information in their notebooks on Healthy Maine Partnerships FY13 Contracts and Funding. (A copy is attached to the Meeting Summary.) The previous GOC wanted to take actions as a result of OPEGA's report and the subsequent public inquiry of Maine CDC officials that the Committee held. She said all of the issues have been acted on with the exception of the third one on page 1 which was to consider possible action to make sure that there were adequate statewide expectations and guidance for those situations where agencies were selecting vendors or awardees, and making funding decisions, among competing entities without an RFP, including what documentation should be generated in such situations.

Director Ashcroft said the HMP situation that CDC was facing was essentially that of a grant award. There was a competitive RFP done in 2012 and from that competition there were 28 different entities that were awarded an amount of money according to a particular formula that CDC had set forth at that time for distribution of those funds. In the next year when they went to do the renewals of the contracts under that competitive award is when they changed, not only the structure, but the funding for the entities. They claimed the impetus for the change was a reduction in funding and also that there was not enough time to go out to RFP for the changes. They also claimed there was no guidance on the process of how to deal with defunding in this type of scenario. They were actually renewing contracts that had been established with multiple awardees from a single original RFP.

The past GOC wanted to make sure there was statewide guidance for such situations that occurred at CDC so it did not continue to occur in the future. In discussions with the Division of Purchases, OPEGA has identified several actions that the Committee might consider taking toward that end. The Director outlined those as:

- A. Introduce legislation to revise 5 MRS §1825-A by adding a definition of the term "contract" with definition written to encompass both contracts and grants as defined in Rules Chapter 110. While, this would help clarify that the statutory provision that requires competitive bidding applies to grants as well as contracts, there is already general acknowledgement among agencies that the statute does apply to grants.
- B. Introduce legislation requiring DAFS Division of Purchases to revise Chapter 110 Rules (Rules for the Purchases of Services and Awards) to include the term "grant" wherever the term "contract" appears, as applicable. This would help clarify that all requirements in the Rules apply to grants as well as contracts. Purchases indicated they were in the process of proposing other revisions to Chapter 110 and would be willing to include these changes as well. Consequently, rather than introduce legislation the GOC could send a letter to Purchases requesting, or recommending, that they include these clarifications as part of their current effort.
- C. Send formal communication to DAFS Division of Purchases recommending that they revise the Purchases Policy on Contract Renewals and/or Amendments to clarify that the policy also applies to grants and to add guidance on situations where, through renewal or amendment, there are going to be decreases or shifts in funding among multiple original awardees. Such guidance would state that decreases or shifts that do not meet the following criteria/conditions would need to be accomplished via a new RFP:
 - a. decrease or shift directly related to elimination of, or decrease in, goods and services to be provided by awardees;
 - b. decrease or shift directly related to unacceptable performance of one or more awardees; or

- c. decrease or shift that is not distributed among awardees equally or on same basis as original distribution of funding.

Such guidance would also require documentation be maintained to show how the amount of decrease or shift was derived under the relevant condition(s) as well as written justification. GOC could request the DAFS Division of Purchase provide a formal response to the recommendation.

The Director said DAFS Purchases indicated such changes and so she suggests sending a letter with formal recommendation to make the changes and asking for a response. The GOC might also include a recommendation for action B above in the same letter.

Rep. Mastraccio asked what recourse a group would have against a department when there was disagreement. She gave the example of HMPs where a process was in place, but they did not follow it. How would that have played out? Director Ashcroft said the proposed changes would give the Division the Purchases something up front to be able to say this is the process that needs to be followed. That was part of what was heard from both Division of Purchases and CDC - that there really was not any guidance specifically about how to address the situation. Now guidance would be there, nobody could claim they did not know the policy and the Division of Purchases would play a role in terms of advising and strongly guiding the agencies so they would know about it. It does not mean that they can stop an agency from doing what it wants to do, but if such a situation arises again as it did with CDC, there is another vehicle to hold accountable those who chose not to follow policy. It would be clearer that there was a nonconformance, or a choice to violate the policy, which they did not have in the CDC review and therefore it was difficult to point to anybody to be held accountable.

Rep. Mastraccio referred to the Director's statement that changing the statute would not be necessary because the same thing might be accomplished through a formal letter. She asked whether a letter would have the force. Director Ashcroft said statute already requires competitive bidding except in particular situations. The problem in CDC arose because they did have a competitive bid, but were renewing and they took that opportunity to make changes beyond what should have been done on a renewal. Technically CDC should have gone back to RFP because there was an increase in the scope of services for some of the HMPs.

Sen. Johnson said that a change in statute would be relatively minor and would make it clear that the statute applies to grants and would make sure that people understand that process. That there is already general acknowledgement among agencies does not constitute an awareness for all people asking whether their process is okay. He thinks the guidance would be helpful, but thinks it should be backed by statute rather than a general understanding.

Sen. Johnson referred to the language for Action C and said he found it problematic because it has more than one occurrence of a double negative and rewriting in an affirmative matter is necessary to be clear about what renewal circumstances would require an RFP rather than just a renewal. Director Ashcroft said that was a point well taken and will revise the wording.

Sen. Johnson also said the last paragraph of C was not clear to him the way it was written whether it is applicable to the ones that do require the RFP, do not require the RFP and that should probably be clarified in that statement. Director Ashcroft will revise the paragraph.

Sen. Burns said Director Ashcroft stated that there should have been an RFP done by CDC on the HMP Contracts and asked what an agency does when they are brought under the gun and required to get something out right away, which is what the GOC saw with these particular grants. Director Ashcroft said CDC could have decided to go one more year with just reducing funding to all the agencies across the board and take the time to do the RFP that was required for the structural change the next year. There was more than one way to do what needed to be done with the decreased funding, but CDC did not want to wait to make the structural change for reasons they described to the GOC.

Sen. Burns referred to the statement of required documents to be maintained and asked if that was referring to working papers or just a narrative as to how the process was followed. Director Ashcroft said under the scenarios in Action C where there is no RFP needed the agency would be distributing the decreases in funding or shifts in funding according to particular formulas they had already had established, or evenly across the board. It is envisioned that the documentation would show their calculations of how they got to the funding amounts and the basis for the funding shifts and their justification.

Sen. Johnson said that is an area where the working group will be coming back with recommendations that guide the RFP process as well as this. Director Ashcroft said she was not sure that group was were working on documentation for the RFP process, but rather the question of what is a working document and when does it need to be retained, regardless of whether it is an RFP or a different process.

Chair Kruger said the GOC can recommend a communication be sent and/or could go the legislative route. Director Ashcroft said if the Committee wanted to do the communication they could do both a recommendation to change the policy and a recommendation to review Rule 110 to clarify that it applied to grants as well as contracts. By the GOC making the recommendations to DAFS, OPEGA would track actions taken so that if those actions are not sufficient, the GOC can decide on another route. If the Committee wants to change statute as described in Action A, she could bring back a draft for their review. It would involve drafting a definition for the term "contract" to include grants.

Sen. Johnson thought there were two questions should someone choose to make a motion that covers both. It is a question of shall the GOC propose a change to statute, and should they send a letter which the Director indicated could cover Actions B and C of the attached document.

Motion: That the Government Oversight Committee moves to draft proposed legislation to address Action A and send a letter with the recommendations for Actions B and C. (Motion by Sen. Johnson, second by Rep. Campbell)

Discussion: Rep. Duchesne said the legislation would change Title 5 so that would affect any grant for any department and knows everyone is thinking about HMPs, but did not know what other grants it would affect that would be similar. Director Ashcroft said she talked through that with the Division of Purchases. There are instances where there are grants that come from the federal government that are basically just passed through to other organizations based on a preset formula and those do not require a competitive bid process, so there are a subset of grants that this would not apply to and that would be their guidance. For all other grant awards the expectation is still that agencies would do a competitive bid process. Even if the amount of funding might be known, the agency would still look for how the bidders are going to use that funding in their budget, what is their plan for providing the services that the State is seeking. There are other considerations in terms of who they are going to make the awards to.

Sen. Diamond asked if the motion was to come back with proposed legislation or is the GOC jumping right to we are now going to have legislation. Chair Kruger said Director Ashcroft is going to present a draft to the GOC. The Committee will discuss the draft.

Vote: The above motion passed by unanimous vote 12-0.

• **Review of on Deck Topics and New Requests for OPEGA Reviews**

Director Ashcroft noted that she had not heard from any Committee members regarding the topics on the On Deck list. She said for this meeting she also did not have new requests to present. Topics can be discussed at a future meeting.

Sen. Diamond asked when would be the best time to submit a topic proposal. Director Ashcroft suggested it be submitted soon if it is something that one of them is interested in now.

Rep. Campbell asked if it would be appropriate to bring the topic of bonds before the GOC. Director Ashcroft said it would and he could stop in the Office and staff will help him with the request.

Rep. Campbell also asked about HMPs and if the future distribution of funds would be looked at. Director Ashcroft said it was her understanding, although she has not recently checked in on their status, that CDC was going back out to competitive bids for the grant awards. Assuming CDC is going to stay with the same structure they have established with lead agencies and sub-awardees, she thought the RFP will be for the lead agency spots and expects that all agencies would have an opportunity to compete to be the lead agency. If CDC decides they do not like the structure, and are going to change it the RFP will reflect that as well. Rep. Campbell said there is tension within the structure and debate on whether it is best. Director Ashcroft said the question of whether that is the best delivery structure for the services is also a review topic and OPEGA could look at it in terms of how it is being implemented and whether the organizational structure was an effective and efficient use of resources.

Sen. Burns asked when the Committee would take topics off the On Deck list. Director Ashcroft said she would be bringing that back to the Committee as soon as she has a view of what topics on the list they might be interested in. The GOC has a meeting or two where they go down the list and vote to take topics off.

REPORT FROM DIRECTOR

• Status of Projects In Progress

Office of Information Technology is in progress and the consultant hired to perform the final piece of the review has begun their work. They are doing an independent assessment of the degree of improvement achieved in the three target areas of the review over the last two years.

Riverview Psychiatric Center is in fieldwork and is receiving priority among OPEGA's projects.

Tax Expenditure Programs – Director Ashcroft said she spent time with the Taxation Committee and got new members of that Committee up to speed on the proposal being developed that will be presented to them by March 1st. That information will also be coming to the GOC. She plans to give the GOC a proposal at their next meeting.

State Lottery is not getting much attention at this time.

Rep. Mastraccio asked what will move “Planned” into “In Progress”. Director Ashcroft said when OPEGA has the resources freed up to begin another project. Rep. Mastraccio asked if the GOC/OPEGA would be getting into the DHHS audit functions this year. Director Ashcroft said yes.

Rep. Sanderson asked what the timeline was for the Riverview review. Director Ashcroft said OPEGA is currently looking at June for the timeframe. Rep. Sanderson asked if the review includes an assessment of what RPC is implementing with the new employees that they are attempting to get in there to change the model of care delivery. Director Ashcroft said that was not in the current scope of the review, however, one question OPEGA was tasked to answer in the review is whether there are other areas of concern at RPC that deserve a more detailed look. OPEGA is following actions on the findings from the Court Master's Report as the primary piece of answering that question. If OPEGA sees anything come up in the Court Master's Report that DHHS has not taken sufficient action on then that would be reported. The Director thinks staffing and staffing levels was one of those issues in the Report. Rep. Sanderson would like to look at the detailed

questions OPEGA was tasked to address. Director Ashcroft said if Rep. Sanderson would stop by OPEGA she would be happy to go over that information and explain how the Committee arrived at the questions for the review.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for Friday, February 27, 2015 at 9:00 a.m.

ANNOUNCEMENTS

Director Ashcroft said LD 237 is a bill that is going to be heard by the Energy, Utilities and Technology Committee on February 26, 2015 at 1:30 p.m. It is a bill to permanently establish a Consumer Advisor position in the Office of the Public Advocate and is in response to a recommendation made by OPEGA in its Public Utilities Commission Report. The GOC, in conjunction with the EUT Committee, introduced a bill last session to create the position on a temporary basis with existing funding. That bill was vetoed, but nonetheless the Office of the Public Advocate did establish the position with funding they had available. LD 237 is now seeking to make the position permanent.

ADJOURNMENT

Chair Kruger adjourned the Government Oversight Committee meeting at 11:45 a.m.