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REP. DAWN HILL, CHAIR

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SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
SEN. DAVID TRAHAN  
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REP. PEGGY A. PENDLETON  
REP. MARGARET R. ROTUNDO

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**June 14, 2010**  
**Accepted July 14, 2010**  
**With One Correction**

**CALL TO ORDER**

The Chair, Senator Simpson, called the Government Oversight Committee to order at 9:56 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators: Sen. Simpson, Sen. Nass, and Sen. McCormick  
Absent: Sen. Brannigan, Sen. Diamond and Sen. Trahan

Representatives: Rep. Hill, Rep. McLeod, Rep. Burns, and Rep. Bickford  
Absent: Rep. Rotundo, and Rep. Pendleton

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Jennifer Henderson, Principal Analyst, OPEGA  
Etta Begin, Adm. Secretary, OPEGA

Executive Branch Officers  
and Staff Providing  
Information to the Committee: Marty Magnusson, Commissioner, Department of Corrections  
Patricia Barnhart, Warden, Maine State Prison  
Herb Downs, Director, Audit-MaineCare & Social Services, DHHS  
Marc Fecteau, Director, SURS, DHHS  
Lucky Hollander, Director Legislative Relations, DHHS

**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 MAY 27, 2010 GOC MEETING**

**Motion:** That the Government Oversight Committee accept the May 27, 2010 Summary as written. (Motion by Sen. Nass, second by Chair Hill, unanimous 7-0).

## NEW BUSINESS

None

## UNFINISHED BUSINESS

### • Follow-up on OPEGA Reports

Director Ashcroft noted that the purpose of the follow-ups on OPEGA reports is to allow the GOC to:

- be apprised of what actions have been taken on past issues identified by OPEGA;
- assess whether appropriate and sufficient action has been taken on the issues; and
- decide if there is further action they would like taken.

The GOC may want to schedule a formal OPEGA follow-up review to determine if actions taken have been effective in addressing issues raised. Additional actions the GOC might take with regard to past issues that have not been sufficiently addressed are to initiate legislation, refer items to the policy committees, or make formal directives to the agency.

Director Ashcroft noted OPEGA has now stopped tracking actions on specific items from the Statewide Information Technology Planning and Management Report. It will continue to receive the reports from the IT Auditor and will monitor and flag anything that might warrant the GOC's attention.

The Director also noted that management and the Legislature had taken action on all but one issue included in the Emergency Communications in Kennebec County Report. Therefore, OPEGA is considering these items closed. OPEGA will continue follow-up on the issue of cell phone charges and how they are going to be handled that is being addressed by the PUC. That action item is not yet due.

GOC: Sen. Nass noted that PSAP will continue to be discussed and gave the example of the Fire Protection Services Commission meeting held last week. Rep. Fletcher invited the Chairs of the U&E Committee and the PUC to that meeting to discuss PSAP Centers.

OPEGA: Director Ashcroft believes the meeting Sen. Nass referred to is a result of the Kimball Study and the U&E Committee had directed the PUC to work on devising how the recommendations from that Study could be implemented.

### - Follow-up on OPEGA's Maine State Prison Management Issues Report

Director Ashcroft reminded the GOC that OPEGA wrapped up its work on this review after the preliminary research because the Department committed to establishing an action plan to deal with the cultural concerns that OPEGA had observed at the Prison. She referred the members to the updated Maine State Prison's Strategic Action Plan included in their meeting materials.

Chair Simpson recognized Commissioner Magnusson.

Commissioner Magnusson said after his presentation to the GOC in May, 2009 the overall conditions at the Prison got worse in June, July and August due to vacancies. Many prison employees took advantage of the retirement incentive. As a result, the Prison lost 80% of the mental health staff and case workers, and 45 correctional officers. The Prison was on the edge of not having enough staff to cover the facility. There was a major drive to hire correctional officers and a major push to get permission to fill the mental health positions. The Prison was not providing appropriate mental health care. Things started to improve in September.

Commissioner Magnusson explained their hiring process for the Prison's Warden and introduced Warden Patricia Barnhart.

Ms. Barnhart summarized what actions she has taken so far to change the culture at the Prison and the Bolduc facility. She has involved staff in decision making and Department-wide they are creating definitive processes and tracking mechanisms. For example, in the past it had taken too long to get employees promoted, and they are now streamlining that process.

The GOC's questions and comments included:

- GOC: Chair Hill asked how many years Ms. Barnhart was a Warden in Michigan, how many Deputy Wardens are under her, and the staff count at the Prison.
- DOC: Ms. Barnhart said she had been the Acting Warden for over a year in Michigan. There are 5 Deputy Wardens, and 450 staff at the Prison.
- GOC: Chair Hill said OPEGA's report focused on cultural issues, and she was curious whether those employees hired within the last year are more willing to work, be heard, and listen.
- DOC: Ms. Barnhart said the Prison is experiencing the same thing that everyone is and it is an economy that is impacting folks in a variety of ways. The Prison is not located in a big town so it is not unusual for staff to be driving 45 minutes to an hour, so some of the Prison vacancies were a result of staff transferring to another facility closer to their home. However, there were others that left employment completely that needed to go.
- DOC: Commissioner Magnusson clarified that the Warden was not yet at the Prison when they had the major vacancies because of retirement. The Prison lost wonderful people, especially those in the mental health and case worker positions and it was a major blow to other staff and inmates.
- GOC: Rep. Burns said OPEGA addressed the cultural issues in its Report and asked for Ms. Barnhart's perspective as to what she sees. Is the "good old boy" system 5% of the staff or is it a larger number in regards to lack of respect for management?
- DOC: Ms. Barnhart said they are at a point where staff is realizing that change is there. She thinks there was legitimacy in OPEGA's findings. There is a variety of reasons why management either, legitimately or through their own self-sabotage, was not accomplishing things. She does not know details so cannot comment on what occurred before she was hired. Now, however, it is not acceptable to sit back and watch, management staff needs to be engaged.
- GOC: Sen. Nass referred to Carol Flaherty Zonis, the consultant MSP management team had planned to engage. He asked if she did a site visit at the Prison, and if so, whether it was a positive influence.
- DOC: Ms. Barnhart said she met with Ms. Zonis before she actually was hired at the Prison.
- DOC: Commissioner Magnusson said Ms. Zonis had visited before Ms. Barnhart arrived. Ms. Zonis found a lot of the issues similar to her previous visits to still be there and although she saw some improvement in several areas, she also saw a lot of negative things. It is too soon now, but he would be interested in having Ms. Zonis come back, because a lot of the improvements being implemented by Ms. Barnhart had not yet happened when she was here.
- GOC: Sen. Nass said he has consistently heard about staffing shortages from the Commissioner ever since he has been at the Legislature and asked if it would ever stabilize.
- DOC: Commissioner Magnusson said at this time throughout the Correction's Department, and in all their facilities, they are at good staffing levels. They lost 90 positions during the budget process, and have the problem with staff shortages at the Prison. They need to be continually hiring and testing for correctional officers because of the turnover. He noted that some of the turnover has been due to people who have been involved in disciplinary actions and needed to go, but there is also the turnover where people start working at the Prison and then find out the job is not for them.

- GOC: Sen. Nass asked if the entry level benefits for a correction's job make it difficult to attract people to do it or is it the job itself.
- DOC: Commissioner Magnusson said it does not happen anywhere else in the Corrections system, and every State employee has had pay and benefit reductions hit them during the budget crisis. He said the Prison is a tough job for correctional officers. At the old Prison no correctional officer was alone, but at the current facility there is only 1 officer in units where there are 56 or 64 inmates. Although they try to train officers to be ready for this situation on the first day, there has been a lot of shock to those officers. Commissioner Magnusson said the new Warden is trying to establish a much stronger peer support network for those officers. A Recruitment and Retention Committee has been formed and they are doing exit surveys when staff leave in an effort to determine what all the factors are that have resulted in the decision to leave.
- GOC: Rep. McLeod asked what the capacity is of the new Prison and its current number of inmates.
- DOC: Commissioner Magnusson said the capacity is approximately 1,100 and the Prison is currently at its capacity. In the summer of 2009, they had to move some inmates to county jails because they did not have the staff to cover two of the Prison's units. Those units will remain vacant through this fiscal year, but he expects they will have to reopen both units in the next fiscal year. System-wide, the adult side has approximately 2,200 inmates and their capacity is about 2,000 so we are over capacity. The Commissioner noted, however, that their growth rate has slowed down.
- GOC: Chair Hill asked what was being done at the front end so that people are being screened as best possible for their aptitude for the job.
- DOC: Ms. Barnhart said part of it has to do with the screening mechanisms themselves, which they are working on, and the contents of the training to make sure they are addressing all the issues. They have been researching nationally what other states do. They use whatever they can to make the training practical and hands on.
- GOC: Chair Hill asked if Corrections trains 10 people, how many are likely not to survive past the initial stage of being left by themselves.
- DOC: Ms. Barnhart said she is not sure that data is available. They now have a new exit interview process and will now be able to get that information.
- DOC: Commissioner Magnusson noted that one of the most important things they can do at the Prison, and he thinks they are making improvement on, is getting senior officers to support the new officers being hired. In the new peer support system, the sergeants spend more time mentoring and developing the new staff to make them feel like part of a team. He believes progress is being made in that area.
- GOC: Chair Hill said the Commissioner noted he had to give 90 positions up because of the budget cuts. She asked how many of the 90 positions had people in the position at the time of the cut versus vacant positions.
- DOC: Commissioner Magnusson estimates that in the total process since Corrections had to make position cuts, there were 10 to 15 people that actually had to be laid off. They tried, as much as possible, to find jobs either within the State system or Department of Corrections. Several of those laid off had bumping rights to other positions so the majority of positions the Department lost, were vacant positions.
- GOC: Chair Simpson asked for clarification regarding the vacant positions the Commissioner had referred to and asked if they were always vacant or just became vacant. Will they need to fill vacancies in order to open the 2 units at the Prison that are now closed?

- DOC: Commissioner Magnusson said they had to maintain so many vacancies because of the budget cutting. They would not ask for new positions in order to open the closed units at the Prison but would need to be very close to being fully staffed with correctional officers in the next fiscal year in order to open one of the closed units.
- GOC: Chair Simpson referred to Strategy 5 on the Strategic Action Plan related to Diversity Training. She said she could not determine by what was written what the status on the action item was. She would like to know the status of processes to get input from prisoners, separate from their grievance process.
- DOC: Ms. Barnhart thinks it speaks to the approach she is using. It is not just about the staff, it is about the prisoners also. If they have issues, they ask questions and are getting answers. She also meets with the inmate civic groups and is being more visible, giving them the opportunity to talk with her 1-on-1 and she is responding to the notes they send to her.
- GOC: Chair Hill asked the Commissioner, Deputy Commissioner and Warden if there was a way that the GOC can help move things along, or bring something to the Legislature for them. They don't have to answer her question right now, but wanted them to consider how the GOC could help.
- DOC: Ms. Barnhart said she appreciates the support. The majority of the staff at the Prison are good people. They are striving to do the best they can.
- DOC: Commissioner Magnusson noted that this Report was one of two pieces that were reviewed at the Prison. The other was the Cars Behind Bars Program and said he thought they were both important reviews. There were issues brought to his attention that he was not aware of in the Cars Behind Bars Program. Through the GOC process and OPEGA's reviews, he was able to correct the problems found. He thinks outside reviews are an important part of how to improve an organization and in the future they are wide open to any reviews in any area that the GOC feels they want to do.
- GOC: Rep. Burns noted that the Maine State Prison belongs to the Legislature also, so if something is needed to prevent what happened last year, either the GOC or the Criminal Justice and Public Safety Committee are great forums to ask for needed help.

Chair Hill thanked Commissioner Magnusson, Warden Barnhart and Deputy Commissioner Lord for their follow-up on report the Maine State Prison Management Issues Strategic Action Plan.

Chair Hill asked if Director Ashcroft had questions. She also asked the Committee how they would like to proceed, and if they were comfortable with what they heard from the Department of Corrections.

OPEGA: Director Ashcroft said the new Warden appears to be making advances in changing the culture with new processes she is putting in place and Director Ashcroft said she was comfortable with the progress that was described. However, the GOC's specific action plan was to have Corrections give updates on their actions so OPEGA will continue to ask for updates to monitor what is going on with some of the specific processes that were issues.

GOC: Sen. Nass asked whether there are problems or cultural issues at the other facilities in the Correctional system.

OPEGA: Director Ashcroft said OPEGA has not heard of similar cultural problems currently existing at other facilities. The Department of Corrections did talk with OPEGA about past issues in the juvenile units and the advances made there to address them. This is what gave her some sense that the Department of Corrections was capable of turning the situation around if they turned their attention to it because they have apparently done it in other facilities.

GOC: Rep. Burns said he has experience with Mountain View Youth Center and Downeast Correctional and had found a good environment when visiting there.

Chair Hill asked if there was objection to taking items out of order. Hearing none she moved to **Follow-up on OPEGA's Fund for a Healthy Maine Programs Report**

**- Follow-up on OPEGA's Fund for a Healthy Maine Programs Report**

- Recommendation 1 – Allocation of FHM Funds Should be Reviewed in Context of Changing Health Environment and Goals**
- Recommendation 2 – Budgetary Programs Should be Better Aligned with State's Health Goals, Efforts and Related Performance Information**
- Recommendation 3 – Budget Descriptions Should be Updated and More Specific**
- Recommendation 4 – Costs for Major Activities Within Budgetary Programs Should be Tracked Within the State's Accounting System**

Director Ashcroft said to her knowledge none of the recommendations in the Report have had any action taken on them. She did contact Commissioner Low to check if the Executive Branch had taken any actions as part of gearing up for the next cycle. Commissioner Low said he had not had any time to think about it. She reminded the GOC that all of the recommendations had been suggestions for legislative actions, so OPEGA had not been looking for the Executive Branch to take any certain action at this time.

She reminded the Committee that they had forwarded Recommendation 1 to the Health and Human Services (HHS) Committee and asked them to consider it and possibly take action on it. She does not believe the HHS Committee had a chance to deal with the Report recommendation. She believes Sen. Brannigan had previously suggested that the GOC should think about putting something in place that would get the issue before HHS Committee or the rest of the Legislature. The Recommendation is in regard to revisiting which health priorities the Fund for Healthy Maine is focused on. It has been 10 years since the original priorities were set. The Department of Health and Human Services agreed with OPEGA's recommendation. There is a very large stake holder group, so doing a review of how the monies should be split out would likely involve the stake holder groups, as well as folks from the Executive and Legislative branches.

Director Ashcroft also reminded the GOC that they had agreed to hold off action on Recommendations 2 and 4 until the end of the session, and then decide what action to take. She does not believe the Executive Branch has taken any action on Recommendation 3, which was to make sure that the budget descriptions were more specific and updated. DAFS had indicated they were going to work toward that, but she does not believe there has been any specific guidance issued except to make sure that the descriptions are as accurate as possible.

GOC: Sen. Nass said it is a unique opportunity because the Administration will be changed. He thinks the GOC should put bills in to propose legislative actions to address the recommendations. The Fund for a Healthy Maine needs its own fund code.

GOC: Rep. Bickford agreed and said the Committee should get the necessary legislation filed with the Revisor's Office.

GOC: Chair Hill also agreed and said because the GOC referred it first to the Department and Committee of jurisdiction and no action has been taken, the GOC would be remiss not to take action as a Committee. Many Committee members will be back for the next Legislature and can get involved with the bill this GOC files. There is nothing preventing the Committee from drafting proposed legislation and submitting it.

GOC: Sen. Nass asked what the status of a bill would be that the GOC files.

OPEGA: Director Ashcroft said the bill did not need a particular sponsor or co-sponsor because it was a committee initiated bill by virtue of statute.

GOC: Rep. Burns asked why the Departments were not required to take action on some of the recommendations.

- OPEGA: Director Ashcroft said FHM money gets split among a number of different departments and agencies and it is somewhat unclear how much of the responsibility for how the Fund is used lies with DHHS versus DAFS for example. Although Commissioner Low said he was the one who was supposed to oversee how the funds got allocated, she does not believe there was one entity that truly was assigned responsibility for assuring FHM allocations were aligned with State health priorities.
- GOC: Chair Hill said Rep. Burns' point was good and is what she perceives as the problem. It is a very fragmented situation where there are a number of agencies and departments that have a piece of the Fund and pulling it all together is something that has proven to be difficult. It would behoove the GOC, if members are in accord, to draft a bill and file it.
- GOC: Sen. Nass said legislators have backed away from taking action on the Fund because the advocacy group is so big and he thinks it is time that the Legislature took back control of the Fund.
- GOC: Chair Hill said that is all the more reason for the GOC to file a bill because the Fund was set up for the people of Maine and their health needs, not for the stake holders.
- GOC: Rep. Burns thinks the transparency of the Fund is important and agrees that a bill should be filed.
- GOC: Sen. Nass hopes that the GOC makes sure that the current Administration knows that the Committee has filed the bills because they may be motivated to tie up loose ends. This is a significant problem they could move ahead on because they are working on the budget now or will be in the near future. Even though a new Administration will be coming in, they will pick up the work of this Administration. He suggested the GOC, either by letter or telephone call, make sure that Commissioner Low knows that the GOC is moving ahead.
- GOC: Rep. McLeod agreed with the other members.
- GOC: Chair Hill said how the GOC packages the bill is very important in terms of it being directed towards the right Committee. She also agrees with Sen. Nass that apprising the Executive Branch of this may have them work it along and eliminate some of the need to have the Legislature have a bill unless no one takes action.
- OPEGA: Director Ashcroft said that before the next meeting she could talk with other non-partisan offices as appropriate to figure out what a bill would need to include if the Committee wanted to move forward and could bring that information back to the GOC for consideration.
- GOC: Chair Hill suggested also talking with Sen. Diamond because of his experience and being the Chair of the AFA Committee he would be able to give good advice. She also suggested contacting the AG's Office asking them to review the Tobacco Master Settlement Agreement so the GOC would be able to see what had been expected or intended by that Agreement versus what was interpreted and what the funds have been used for over the years.
- OPEGA: Director Ashcroft said she did not think the Agreement spoke to how the State was expected to use the money, but more to establish how much money the State would get, the formulas for that. The AG's Office still monitors that very closely, and in fact, the Fund for a Healthy Maine supports an attorney in the AG's Office that does that monitoring. The State has decided that the grouping of activities that the Fund is supporting all have some tie to advancing public health.
- GOC: Chair Hill suggested the Director contact the AG's Office when drafting the proposed legislation because they may have suggestions.
- GOC: Sen. Nass said the GOC may find it interesting to hear from the AG's Office because ongoing litigation and changes in the Master Settlement Agreement are sometimes substantial.

GOC: Chair Hill recapped that Director Ashcroft will contact Sen. Diamond to get his guidance and also the AG's Office to obtain the status of the Fund and invite someone from that office to attend a meeting.

• **Using Government Evaluation Act as a Basis for Developing OPEGA Work Plans**

Director Ashcroft reminded the GOC that at the last meeting she had introduced the idea of potentially finding a way to use the Government Evaluation Act (GEA) as a foundation for OPEGA's work plan. Possibly the topics for OPEGA's work plan could be selected from the agencies that are already up for review under the GEA each biennium. That led to Committee discussion of how to improve the GEA process and whether there should be some changes to it overall in order to make it more effective for the Legislature.

As of the last meeting, GOC members were contemplating talking with their Leaders about getting the Legislative Council to consider whether improvements should be made to the GEA itself.

GOC: Sen. Nass reported that he and Sen. McCormick talked with Sen. Courtney, Assistant Leader. Sen. Courtney was initially skeptical because he had served on the GOC and was concerned about changing the role of OPEGA. But Sen. Nass thinks they were able to convince him it was a positive way to go and asked him to bring the matter before the Legislative Council for discussion because it is a major structural change.

GOC: Rep. Burns has not had the opportunity to talk with his Leaders, but plans to do so. He said he has an uncomfortable feeling about the whole thing and asked what methodology was used by most of OPEGA's counterparts in other states. He sees the GEA as a convoluted process and understands why the joint standing committees don't follow through on it.

OPEGA: Director Ashcroft said OPEGA had researched how other states select topics. Some follow a Sunset law and look at agencies in a particular order, many take their requests from legislators, the legislative community, or from bills. She said that what she is interested in right now is to establish a process for selecting review topics that:

- a) allow the Committee to be efficient about deciding what is worth while for OPEGA to review; and
- b) addresses concerns she was hearing earlier this year that OPEGA was not getting to reviews of whole agencies, departments, or programs in ways that would identify real structural issues or have significant impacts.

The potential benefit to basing OPEGA's work plan on the GEA is that topics would be mostly selected from a set arena. If OPEGA could gather enough information from those agencies scheduled for GEA review on the front end, then the Office could employ a risk assessment process by which to select areas from those agencies that might be most valuable to review. Director Ashcroft is concerned that the current topic selection process always seems to be a challenge and the Committee struggles to decide what information is needed before it can make a decision.

GOC: Rep. Burns noted that the Director was talking more of the selection process than the actual methodology. He thought they were also talking about following the methodology that is in statute for the GEA.

OPEGA: Director Ashcroft said the GEA process currently goes to the policy committees. At the last meeting, GOC members were saying they had not found that to be a particularly effective process and thought the process itself should be revamped. However, even if everything is not revamped, she is still looking for a way to improve the GOC's process for choosing what OPEGA is going to be working on.

GOC: Rep. Burns clarified that OPEGA was not looking for a way to change its methodology once a topic is selected for review. He was uncomfortable to think that OPEGA was going to change its process.

OPEGA: Director Ashcroft confirmed that at this point she was only talking about how to select what got on OPEGA's work plan.

GOC: Chair Hill expressed concern that OPEGA could get burdened with the GEA requests and not be able to react to issues with more priority. She asked how big the offices like OPEGA are in other States.

OPEGA: Director Ashcroft said most of the offices like OPEGA in other States have a lot more staff. She also referred back to Rep. Pendleton's comments at the last meeting, that the GOC and OPEGA were established originally to help legislators get answers to questions they had. The Director noted that this is something of a different charge than saying OPEGA should be a function that can go in and do comprehensive reviews of whole agencies.

Director Ashcroft thinks the GOC still has work to do in better defining what it wants for outcomes from OPEGA. If she know what the expectation is then she can help guide what kind of a process is needed to get there. There has been a mix of expectations and it is difficult for her to meet all of them.

Director Ashcroft said the GOC can continue with the review selection process they have, but she is concerned from what she heard earlier in the year that OPEGA was not getting to the kinds of issues that had been expected of the Office.

GOC: Rep. McLeod does not believe each review could be a blanket review of an agency because the agencies function differently.

GOC: Sen. Nass noted comments Sen. Diamond has made over the last few months about OPEGA not producing enough that was helpful and that the efforts were not broad enough. He thinks the GEA offers a way to expand the scope of what OPEGA does to get bigger ideas for reviews and to make sure OPEGA stays viable going forward. He does not think the GEA, in its present form, has been working and using the GEA for OPEGA would solve a couple of problems. It would get OPEGA working on something bigger and would get everyone working together.

GOC: Rep. Burns does not see how an Office the size of OPEGA could possibly keep its head above water if it tried to tackle the topics laid out in the GEA on that kind of a schedule.

GOC: Rep. Bickford said using GEA as the basis of OPEGA's work plan would mean that whatever items are due for review in that particular biennium is what would be considered for OPEGA's work plan. It would be up to the GOC to decide what it wanted to review first, put "on deck" or may decide not to add the topic. Using the GEA would give the GOC a basis for selecting what OPEGA should take up.

OPEGA: Director Ashcroft described how using the GEA might work. Some time toward the middle part of the year proceeding the next biennium OPEGA would send out an information request to all of those entities up for GEA review in that biennium. That request would ask the agencies to provide certain information about their programs and activities and the dollars associated with them. OPEGA would assess the information provided by the agencies to make suggestions to the GOC as to what reviews should be considered for the work plan. The down side to this is that currently, under the GEA, the policy committee doesn't consider whether it wants to go ahead with a GEA review for the agency until the first regular session. If they decide to go ahead with a review, that occurs in the second regular session and the agency prepares its GEA Report in the interim. OPEGA would be ahead of that schedule and it could potentially put the GOC and OPEGA in a position of deciding to review something that the policy committee either has not yet gotten a hold of, or had decided it does not care about. The timing of coordinating with the policy committees and getting their input would have to be worked out. She said the other possibility is that, knowing which GEA reviews were coming up, the GOC or OPEGA could work more closely with the policy committees to try to get suggestions from them on what they would like a more detailed review on.

GOC: Sen. McCormick agreed that if fellow legislators knew in advance what items are potentially on the list for review, the GOC may get good feedback as to what is important to them about those items.

GOC: Chair Hill asked if information OPEGA would seek from the agencies that the Director referred to would match up with the GEA report requirements.

- OPEGA: Some would fit what is required by the GEA already, but there are some other things OPEGA would ask for that are not currently specified. She compared it to what OPEGA did for Economic Development and the Fund for Healthy Maine Reports where OPEGA was trying to break down information by programs.
- GOC: Chair Hill said the GEA strikes her as a self-evaluation process by the department or agency and then a review of that ultimate report by the committee of jurisdiction, but the committee of jurisdiction may not have the depth of knowledge to probe behind the report.
- OPEGA: Director Ashcroft said that could be an issue, but the bigger issue is that the committees don't have the time available to probe.
- GOC: Chair Simpson said the GEA is a lot of work for the agencies now. She thinks it would be important to bring those agencies, as well as the Revisor's Office, who does legislation, and David Boulter into the discussions about how the GEA could be altered and what kind of legislative changes might be necessary to streamline the process that would be more helpful to committees. Chair Simpson thinks, in terms of time and resources, it would be more helpful to revisit the GEA and make it more efficient and useful than to just find a way to dovetail OPEGA's work with it as it exists.
- GOC: Sen. Nass agreed, but wondered who is going to do that and whether its possible to get it underway as this session winds down. He believes that Sen. Diamond was saying that leaving the GEA up to policy committees is not working and that he found the format of the old Audit and Program Review Committee more useful.
- GOC: Chair Hill wondered whether the threshold issue is – should OPEGA be looking at the GEA. It appears the statute is from 1995 and given the changes since then, maybe new questions have to be asked. OPEGA did not exist at the time and there may be suggestions the GOC can make to the committee of jurisdiction to improve the process and probe for the more important things going on in departments today.
- OPEGA: Director Ashcroft said, as discussed at the last meeting, OPLA currently shepherds the GEA process. Both OPLA and David Boulter have indicated to her that they would like to participate in the discussion, but they feel they need a directive from the Legislative Council to do that as that is whom they report to. The Director believes this should definitely be a group effort.
- GOC: Chair Hill said she understands that, but was saying that maybe the Act needs to be revisited to make sure it still represents the kind of information the Legislature actually needs to perform its oversight effectively. She thinks OPEGA could provide good input on what should be in the Act.
- OPEGA: Director Ashcroft thought OPEGA could input on what might be some of the key information that legislators should be receiving out of the GEA. She had provided similar input in 2005 to the special committee that was looking at getting rid of the Performance Budgeting Act and she had drawn from the GEA and some other statutorily required reporting in developing that input.
- GOC: Rep. Burns believes that was what Chair Simpson was referring to, looking at GEA to see if it may need to be streamlined or brought into current times. He asked, in regards to Sen. Diamond's suggestion at the last meeting, if that responsibility were turned over to the GOC, how would the GOC and OPEGA ever carry that responsibility. There are 26 bureaus up for review in 2010-2011.
- GOC: Sen. Nass said if the work that the GEA was supposed to accomplish is not getting done and folks are looking for a different way to accomplish the same thing, then OPEGA has the skills and authority to dig deeper. The only question is, how fast do the agencies have to be cycled through OPEGA for review? It does not have to be the current list, it could be a slower cycle. That may not be as timely, but if it is done more effectively, then isn't everyone involved further ahead. The schedule for the reviews can be changed, the question is how can the reviews be done effectively.

OPEGA: Director Ashcroft noted that another piece might be to first decide what population of topics, agencies or programs should be considered for review. If the GOC stays with the current topic selection procedure, the next important piece is to have established criteria by which to select what will get reviewed. OPEGA can not do them all and there needs to be some better way of identifying which ones the GOC feels should be a higher priority than others. So, the second piece for everyone to agree on is what those criteria are. Is it a priority because it has more General Fund money, because it is serving a large portion of the population, or is it because it is critical to people's wellbeing? Those kinds of criteria can be built and used as the basis on which to make the decision of which topics can get reviewed and how many.

GOC: Chair Hill asked if the Director thought the criteria needed to be decided even if the GOC did not move forward with the GEA.

OPEGA: Director Ashcroft said yes. The GOC's process for selecting topics currently calls for the Committee to make that decision based on whether the topic meets the Committee's criteria, but it seems the GOC has been using various criteria over the years. She believes having clearer and consistent criteria could help the Committee in the decision making process.

GOC: Chair Hill says her take on what Director Ashcroft is saying is that no matter what is done about the GEA, the GOC needs to further define some of its current processes. Revising the GEA, as suggested by Sen. Diamond, is a separate issue and the GOC's processes would carry over to that. She also thinks the GOC should discuss whether it needs to establish Guiding Principles or a Code of Conduct to avoid some of the past issues that have come up.

Chair Hill asked, if the GOC was involved in the GEA in terms of looking at the GEA reports done by the agencies, would it work better if OPEGA ended up auditing the reports versus being at the front end of it. Could it be helpful to the joint standing committees if OPEGA were reading the GEA reports and highlighting some areas that need further probing or some questions the committee members should be asking, given the short amount of time they have to do their review.

OPEGA: Director Ashcroft envisioned that GOC/OPEGA might be able to support the policy committees and the other nonpartisan offices in that way. However, how valuable OPEGA's input could be in that situation would depend in part on the information included in the agency's GEA report.

The Director also pointed out that the GEA statute contains a provision stating that the Joint Standing Committee on State and Local Government matters are supposed to review the provisions and effects of the Chapter no later than June 30, 2000 and at least once every 10 years after that. That may be another possible forum for thinking about the broader Act, and what could and should be done to change it, that would get everyone involved.

GOC: Chair Simpson said the State and Local Government Committee does have to meet in the fall. She thought it might be a good time for Director Ashcroft to sit down with David Boulter in advance of the Committee meeting to come up with information to give them. That may be a good way to get feedback from that Committee to the GOC.

GOC: Chair Hill asked what triggered the 10-year review of the GEA statute and who is monitoring that schedule.

OPEGA: Director Ashcroft believes OPLA monitors the GEA schedule.

GOC: Chair Hill said it is 2010 and asked when OPLA intended for the State and Local Government to review this since the Legislature is out. She is concerned, in general, about this and similar requirements getting overlooked. She thinks it is a big issue in government overall but shouldn't be with today's technologies. Every statute that requires some type of review should be set up in the system to come up no matter who is there.

OPEGA: Director Ashcroft noted that is not a responsibility that falls to OPEGA, and she cannot speak to the other offices as to what they have in place for systems and processes.

GOC: Chair Hill wanted Director Ashcroft to make a note about her concern as to who is tracking due dates listed in the statutes, what department and how are they tracking them. It might be a question she would like to ask the GOC to consider for OPEGA.

OPEGA: Director Ashcroft said she will check with OPLA and David Boulter to find out where the topic is on the State and Local Government Committee's agenda. She will also talk with them about how to move forward on improvements to the GEA. She would still like to focus on how the GOC is going to select topics if that does not happen. Perhaps the Committee can talk about criteria for selecting topics and what criteria can be used to make sure that every topic considered is one the GOC thought would be of high priority and value.

## RECESS

The Government Oversight Committee recessed at 12:16 p.m. on the motion of Chair Simpson.

## RECONVENED

Chair Hill reconvened the meeting at 1:05 p.m.

- **Follow-up on OPEGA Reports con't**

- **Follow-up on OPEGA's MaineCare Durable Medical Equipment and Medical Supplies Report**

The Committee moved to DHHS' follow-up and recognized Herb Downs, Director, Audit MaineCare and Social Services Unit.

- 1. Program Integrity Unit's Capacity to Monitor MaineCare Claims Needs Strengthening**

Director Downs said the JSURS tool that would be the solution to this issue would be coming on line effective with the transition to the new fiscal agent. That transition was originally planned for March 1<sup>st</sup> but has been delayed to August 1st. DHHS is currently not focusing much on Durable Medical Equipment because it is in other areas, such as home health, transportation, etc., where they are finding big recoupments.

GOC: Sen. Nass asked if the fiscal agent was the replacement for the MECMS system and wanted to clarify that JSURS was part of the replacement.

DHHS: Director Downs said JSURS is a separate stand alone software package, but it will attach to the new MIHMS claims system and do the analytical work.

GOC: Rep. Burns asked why there was such a delay from March to August in transitioning the system. He wanted to know if it was caused by the vendor or the State.

DHHS: Director Downs did not have the answer and said he would get that information for the GOC.

- 2. Communication and Action Needed on Issues Identified by Program Integrity Unit**

Director Downs said DHHS had originally planned to address this recommendation through bi-weekly staff meetings to discuss the issues identified and make sure they got passed on to the Directors of OMS and the policy people. However, the Department has recently formed an Audit Committee to monitor all audit activities of the Department and related corrective actions. The Audit Committee consists of the Commissioner, Deputy Commissioners, the internal auditor of the Department and himself. The Program Integrity Unit now does reports on any area where it starts a review, and those reports include recommendations they have to strengthen their system. The reports go to the Audit Committee and the internal auditor tracks all audits in the department. The internal auditor will develop a corrective action plan, distribute it to the proper people in the Department

and then will do the follow-up to make sure they are actually implementing the changes based on the recommendations.

GOC: Chair Hill asked how often the Audit Committee met and what kind of timeline is there from the time they meet and review the reports to when action is taken.

DHHS: Director Downs said the Audit Committee meets quarterly. As the reports come in, they go right to the internal auditor. He sets them up in his tracking data base and monitors all the findings they have. It is an ongoing process. The internal auditor enters reports into the data base within a week of receipt and has the corrective action plan established within another week. Within a month or two after that, he will go out to make sure it is being implemented or determine that the recommendation is not worth following up on.

GOC: Rep. Bickford asked what DHHS considered not worth pursuing, is it a dollar value?

DHHS: Director Downs said the dollar value was a factor, or it could be a policy issue that does not make sense to pursue because federal policy changes are coming.

GOC: Sen. Nass asked if DHHS will be extracting data from the fiscal agent system once it is set up.

DHHS: Director Downs said DHHS is not sure what type of volume they will get from the JSURS system. He does not project that they will have thousands of policy recommendations coming from the Program Integrity Unit, but they may identify situations where, for example, there is a need to change a policy because the way it is written now is too vague. That type of work will be different than the recoupment activity that the Program Integrity Unit does where they are going to go out to a provider to try to recoup overpayments from incorrect billings. This will be looking more at the underlying root problem of why that is and trying to solve the bigger issue versus the individual provider cases one-on-one.

GOC: Sen. McCormick asked if Program Integrity would take input from the general public or is DHHS only working from their own audits.

DHHS: Director Downs said the Program Integrity Unit gets its cases a variety of ways. One will be from the new JSURS system. They also do get complaints called in directly to them and DHHS follows up on every one of them. They also could get a recommendation from the Federal Government on an area they want them to look at, or could receive a call from a legislator. They get suggestions on what to look at from a lot of places.

GOC: Sen. McCormick noted that he was contacted regarding someone who has a feeding tube and gets her nutrition through the tube. He said Medicare provides the help, but said every time the provider delivers the product they provide a syringe for every day even though she does not use one every day. They claim that is the rule. So, every month there is a charge of \$200 to \$300 worth of syringes that she does not use. There should be a mechanism to provide them only if the person needs them. He asked if the Director knew if it was a requirement.

DHHS: Director Downs guessed it was a federal requirement, but he will look into it because that is the type of thing DHHS would want to look at as to whether they can change a policy that does not make sense or is not efficient.

### **3. Correlate Units of Measure for Quantities Billed With Allowed Rates to Prevent Overpayments**

Director Downs said that this issue will be resolved under the new claim system coming in August. This problem has been taken care of because the provider will have to bill at the unit level and at the price for each unit. In the meantime, DHHS is generating a system report that shows by provider the number of units that they have billed for and the amount DHHS has paid so they can calculate the average cost per unit and address those that seem unreasonable.

- GOC: Rep. McLeod asked what DHHS does when they want to recoup overpayments from a provider that goes out of business.
- DHHS: Director Downs said if the provider files for bankruptcy, DHHS shows the federal government that they have gone through bankruptcy and the State recoups the federal share back from the federal government. The State is out that money if there is no way to get the federal share. If there is property, DHHS will try to put a lien on the property.
- GOC: Rep. McLeod ask if the new system will be able to determine what the amount will be that the State can not recoup versus what it did.
- DHHS: Director Downs said DHHS will definitely be tracking, and currently do, how much it actually recovers versus the amount of recoupment they have sent out.
- GOC: Rep. Bickford noted that DHHS said their Program Integrity Unit recently sought recoupment of \$416,712.16 from 24 vendors and asked at what point they determine whether they will be able to recoup it all. Is bankruptcy the only situation where the Department may not collect?
- DHHS: Director Downs said the \$416,712.16 was found when they did their review on incontinence supplies. Forty percent of that actually turned out not to be actual overpayments because the providers had billed the correct amount, but used the wrong code for what they were billing for. For those where DHHS is due money back, they monitor every month to make sure they are still trying to collect on it and making contact with the provider, or whoever, to make sure they can get the money. If a provider goes out of business without filing bankruptcy, there may still be nothing the State can get back.
- GOC: Rep. Bickford asked whether DHHS is able to stop all services of an existing business that continues do business with DHHS and owes recoupment money.
- DHHS: Director Downs said if the business is still billing DHHS, DHHS will offset future payments to get the money back. If they aren't still billing, DHHS will stop having them as a provider until they catch up.
- GOC: Sen. Nass noted DHHS' work was under Medicaid or other State programs and asked if DHHS dealt with Medicare.
- DHHS: Director Downs said DHHS does not audit the Medicare part, just Medicaid.
- GOC: Chair Hill asked how prevalent is the problem of non-recoupment for DHHS?
- DHHS: Director Downs referred the question to Marc Fecteau, Manager of the Program Integrity Unit at DHHS. Mr. Fecteau said his Unit recovers approximately 55% to 60% of every dollar they originally identify. Forty percent or so, the provider has either been able to show that they were actually covered services and had documentation that they were properly billed, or the provider is going out of business or has filed for bankruptcy.
- GOC: Chair Hill asked how Maine rates in terms of recoupment compared to other States.
- DHHS: Mr. Fecteau said last year Maine recouped \$22 million and he thinks that is good compared to other states.
- GOC: Rep. Bickford asked what steps DHHS was taking to reduce the amount they have to try to recoup.
- DHHS: Director Downs said they are looking at the rate structure itself to make sure that the rates paid on the front end match more closely with what they should. Second is provider education on proper billing. The Office of MaineCare Services interacts with the provider through the internet to communicate issues they see as problematic in the billing. DHHS is getting those issues out to the association so the providers can see the common problems being seen by DHHS and correct them.

Mr. Fecteau said DHHS is trying to promote more self-audits. Each provider should have compliance officers and some of DHHS' larger providers contact him when they notice they have erroneously billed for a service. He would like to see more of the smaller providers do self audits to reduce what DHHS has to do.

GOC: Chair Hill asked if the self-audits were strictly a good faith effort on the part of the providers or does DHHS have some way of letting them know of concerns and asking that they do an audit.

DHHS: Mr. Fecteau said usually if DHHS contacts the provider, DHHS will conduct the audit. The self-audit is initiated by the provider. If a provider does a good faith effort in doing a self-audit, they can avoid some severe penalties at the federal level. The feds have very severe penalties if they discover certain areas that they feel the provider should have known about, so there is a financial incentive.

Director Downs said DHHS is creating a self-audit check list for each of the service areas they have. The check list identifies all the compliance criteria the provider has and the information DHHS would normally look at if they were going to do the audit.

GOC: Chair Hill was concerned about how many other half million dollars could be sitting out there that was a mistake that DHHS was not aware of.

DHHS: Mr. Fecteau said DHHS does not know about them. However, whenever they hear from a provider on a certain billing issue, staff would normally check to see if it could have happened somewhere else. They are referred to fishing expeditions, but staff do try a good faith effort to see if that billing error could have occurred somewhere else.

#### **4. Contracted Rates for Items Under Bulk Purchase Agreements Should be Established in Rate Tables**

Director Downs said the problem was a limitation with MECMS where you could have multiple rates for a certain procedure code. If you did not set the highest procedure code, then it would not pay the claims correctly, so in some cases, a flat rate was put into the System. DHHS has since gone in, it is part of making sure the provider bills the unit correctly, and has tried to change it so they are billing at the correct unit rate so that it is a consistent price in the system for everything. Under the new claims system it will all be taken care of because claims will go to the code exactly.

GOC: Chair Hill asked what the reality was of getting all the systems coordinated and the timeframe for it.

DHHS: Director Downs said as far as he knew, everything was on pace with the new financial management system for August 1<sup>st</sup>. JSURS fits into that so there should be no problems.

GOC: Sen. Nass asked what DHHS was presently using.

DHHS: Director Downs said MECMS is still functioning and DHHS has updated all the rates in the rate tables in that system to match what the contract rate is.

GOC: Sen. Nass said there is a new health program passed by the federal government, it is Director Downs' Unit within DHHS that deals with some of it, and asked if he knew where they were going in the next year as far as the new requirements.

DHHS: Director Downs said he is not sure if they know what all the new federal requirements are, but one of the initiatives at the federal level is the Federal Medicaid Integrity Program. Under that program there is a contractor who does a review of all the claims that a State has. This started in the last year or so. DHHS had its entrance conference with them last December. They will review all the claims processed through DHHS' system that go to a clearing house. They are looking for trends in inappropriate billing and when such trends are identified they will contact DHHS to see if Maine has followed up on it already. If they think it should be followed-up on the Federal Program will have their contracted auditor come in and look at the claims and do a lot of the work for DHHS. The State works closely with the Federal Program to avoid duplication of work.

GOC: Sen. Nass asked if the AG's Office picked up cases from DHHS' Audit Office.

DHHS: Director Downs said the AG's Office has a Health Care Crimes Unit. If his office finds something they think may be fraud, they refer it to that Unit and they are responsible for investigating and prosecuting it.

### **5. Procedure Code Modifiers in Rate Tables Should be Addressed to Prevent Overpayment Payments to Vendors**

Director Downs said DHHS has corrected this problem. Effective October 1, 2009, they broke away from the CMS Fee Table and created their own Fee Table so you cannot have the modifier null and "NU at the same time. He said this problem will also be taken care of under the fiscal agent.

### **6. DHHS Should Research Questionable Claims Activity Identified by OPEGA**

Director Downs said there were 3 major areas that OPEGA identified as questionable activity for follow-up by the Program Integrity Unit. One group was 17 vendors flagged for additional reviews based on 8 tests they had performed on claims. PIU met with OPEGA to discuss the tests and why they may or may not be useful for determining whether a follow-up for a possible fraudulent vendor should be done. DHHS did follow-up on a couple of cases where the member had only DME transactions. However, since DHHS did not know exactly which members had come up in the tests, it was difficult to do the follow-up. Members with only DME transactions was a relatively small percentage of the total from a dollar standpoint and there did not appear to be much risk or exposure there.

GOC: Sen. Nass asked if high volume member was referring to a patient at a doctor's office.

DHHS: Mr. Fecteau said a high volume member is a recipient that received a lot of DME products.

Mr. Fecteau said there were 17 providers that were listed as exceeding some of the tests and one of the test was for high volume members, but DHHS did not have the names of those members. There were almost 9,000 recipients that were served by these 17 providers.

Mr. Fecteau said Test 3- curious cases – DHHS did not know who they were at first, but OPEGA did provide them with a spreadsheet that included client's ID number or other information that allowed DHHS to do some research on the individual cases. Most dealt with third-party payments and why \$1,000 was being paid for a service when there was no prior authorization for the service. In many of the cases, Medicare was the primary payer. DHHS is obligated to pay the co-insurance and deductible. He said Medicare pays 80% of what they allow and send DHHS the remainder to pay.

Director Downs said OPEGA had asked if DHHS had visited the DME providers to make sure they were legitimate providers. As part of DHHS' site visits to pharmacies, they are checking the DME providers in the same area.

The second group of questionable activity OPEGA had referred to PIU for follow-up was vendors with addresses that matched DHHS employee addresses. Director Downs said there were 5 employees identified who had the same home address as a provider. The first case was referred to the AG's Health Care Crimes Unit and was an employee of DHHS also operating as a MaineCare provider. The employee has since terminated. The second case was a psychologist working at a State facility. This was determined not to be a violation because he was not seeing clients that he was working with at the State facility in his own private practice. Third was a psychiatrist in a similar situation, and based on the information he supplied, he was not referring any State clients to his private practices. The fourth case was an employee who lived in the same building as a MaineCare provider practice but there was no relationship. In the last case, it was determined that the individual in question was not a State employee at the time the claims activity occurred.

GOC: Rep. Burns asked if the 5 cases identified by OPEGA were the result of a sampling or the totality of cases.

OPEGA: Director Ashcroft said the test OPEGA ran was to match the addresses of all the providers who had submitted claims for members with DME claims in our time period against addresses of State employees.

GOC: Chair Hill asked if DHHS was now running tests of their own, or have a system now to identify if there are other address matches.

DHHS: Director Downs said they did not have access to employees' Human Resource records that list employees' addresses so do not have that ability.

GOC: Chair Hill asked who would do it.

DHHS: Director Downs said every employee in the Department is informed of the confidentiality and what they can and can't do as far as dealing with providers. He does not know that anyone is checking to see if somebody has the same address as a provider and he does not know who would do that, but his group does not have that capability.

GOC: Chair Hill asked Director Ashcroft to look into whether this was something that could be done through Human Resources as there must be a way to cross check addresses periodically.

Chair Hill asked if new employees were just told about confidentiality, etc. or was there something in writing.

DHHS: Director Downs said it is a signed document, a confidentiality statement. He knows everyone in Audit has to sign the form, but not sure if it is required Department wide.

Director Hollander said that all providers also sign an agreement so they know what the rules are. If there was a State employee that was also providing clinical services in a private practice, they would also have the provider agreement to go by. All executed forms are in the MaineCare system.

GOC: Rep. Bickford would challenge why an Audit Department is not given the ability to view employee records, as well as records of any entity they deal with.

DHHS: Director Downs said they will follow-up on that.

The third group of questionable claims OPEGA had identified were transactions that appear to be overpayments due to duplicate claims, split billings, etc. There were 12 of these that OPEGA initially referred for follow-up. Director Downs said DHHS has reviewed all of them and there was about \$7,000 of overpayments they were able to determine from the 12 cases. They have recovered this amount.

## **7. PIU Should Investigate Possible Additional Overpayments for Incontinence Supplies**

As Director Downs had previously explained to the Committee, the Program Integrity Unit had performed an audit on incontinent supplies and identified \$416,000 of potential overpayments. In attempting to recoup those from providers it was determined that about 40% of those dollars were not actually overpayments but were coding errors. OPEGA reviewed claims for incontinent supplies for a subsequent time period and reported that it had identified another \$79,000 of potential overpayments and estimated that it could be as much as \$238,000 for the fiscal year 2009. DHHS does not agree that the amount could be that high because some of the claims OPEGA reviewed fell within the time period that DHHS had already audited. Also, potentially 40% is likely the result of the same coding errors that DHHS discovered and are not actually overpayments. Consequently, DHHS does not think there is a lot left out there to pursue for recoupment on supplies. DHHS did do another review of them from August 1, 2009 to present and found nearly 100% compliance.

GOC: Sen. Nass said Director Downs suggested there was some kind of an overlap between OPEGA's work and the work PIU had done. Does that mean DHHS had already determined that there was no problem, or you had already uncovered the problem?

DHHS: Director Downs said they had already discovered it. He believes there was overlap in the work done because OPEGA looked at claims by paid date and PIU had audited claims by service date. This means that some of the claims reviewed by OPEGA because they were paid in the fiscal year time period OPEGA focused on actually had an earlier service date that fell in the time period DHHS had already reviewed.

Director Downs said one provider also did a self-review and identified another \$150,000 in overpayments and has paid DHHS back. They are part of the same sample that OPEGA was using. He does not think there is anything left to go after.

GOC: Rep. Burns asked if there was an incentive plan for the agencies doing the self-audit.

DHHS: Director Downs said he has heard other states do it although he does not know the details. Maine does not have an incentive plan at this point.

GOC: Chair Hill asked who approves who becomes a provider.

DHHS: Approvals are done at the State level.

GOC: Chair Hill asked if the State considered having a requirement that in order to be approved as a provider, they would need to self-assess every so many years.

DHHS: Mr. Fecteau supposed the State could do that. It is not done anywhere else as a formal requirement other than the Feds strongly suggest that providers do self-auditing and thinks Maine is also trying to push it. Pennsylvania has clear guidelines of how to do the self-audit and he plans to copy theirs. Maine wants to have their check lists on line for all types of providers.

GOC: Chair Hill asked if the guidelines Maine has, and those in Pennsylvania, were in statute or are they through rules and regulations.

DHHS: Mr. Fecteau said self-audits are already promulgated, are all ready part of DHHS' rules. Providers are required to pay back any overpayments. There are no penalties if a provider does not other than if the State does the audit, they can use the AG's Office to apply penalties. He believes it is internal rules and regulations.

GOC: Rep. McLeod asked, based on the volume a vendor does with DHHS, would it be proper to require that vendor to be bonded.

DHHS: Mr. Fecteau said for a while Home Health had bonds, although he does not know how that worked. He can check with his counterparts as to what other states might be doing.

GOC: Rep. McLeod said it seems it would be worth checking in order to protect all parties of interest.

GOC: Sen. Nass said he was unclear about the penalty issue. He said it appears that DHHS is able to assess penalties, but does not do it very often. He asked whether DHHS collects the overpayment money plus penalties.

DHHS: Mr. Fecteau said DHHS has not pursued penalties. There is a State Statute regarding the false claims act that would allow that and that would normally be done through the AG's Office.

Director Downs said pursuing penalties would go beyond a regular recoupment where DHHS has identified an overpayment and they are just trying to get the overpayment back. If fraudulent activity is suspected or something that qualifies as a false claim, then the AG's Office gets involved and that is where the penalty phase would come in.

GOC: Sen. Nass said he would be interested in whether other states are routinely charging penalties.

**8. Procedure Codes With Reimbursement Rates of Zero Should be Proactively Addressed to Prevent Rejection of Vendor Claims.**

Director Downs said DHHS has developed a quarterly report in MECMS to check all the zero rates to try to stop this. They ran the first report, have made necessary changes, and still continue to review these to make sure there are no zero dollar rates in the system that will cause a claim to get rejected.

**9. Programming Error Should be Corrected to Assure Transactions Without Required Prior Authorization are Not Paid.**

Director Downs acknowledged the programming error. He believes the situation OPEGA identified is a rare occurrence so even though there is a programming bug there would be low risk. Mr. Fecteau is now looking into how rare of an occurrence it is.

GOC: Chair Hill asked if DHHS will give that information to OPEGA once they have it.

DHHS: Mr. Fecteau said he would.

GOC: Chair Hill, on behalf of the GOC, thanked DHHS for the follow-up report they provided and for answering the Committee's questions. She noted that although it may have caused a lot of work for DHHS, it was needed and they now have greater integrity in the system overall.

DHHS: Director Downs said there were items from OPEGA's review that were very helpful and the Audit Committee for DHHS is going to be looking at its internal controls and risks Department wide. They have never had the ability to measure risk, but they are trying to do that now because it is very important. You cannot measure how you are doing without measuring your risk and looking at your total control structure. The Commissioner recognizes this as a high priority and expects by the end of summer to have done the initial internal control assessment on the Department. The new certified system should be much more stable, and hopefully, will catch some of the issues found in this review going forward.

GOC: Chair Hill said one thing they want to get across from the GOC is that when an agency is first targeted for a review or audit, it is probably not welcomed. When the results come out in the end, however, hopefully everyone realizes the GOC was not targeting anyone in particular it was for the betterment of the whole program and State. She asked if there was anything further the GOC should consider doing in order to help move things forward and improve the situation.

DHHS: Mr. Fecteau said once they get answers to the bonding and penalties questions, maybe there would be.

GOC: Rep. McLeod asked how many employees there are in DHHS' Auditing Department.

DHHS: Director Downs said he has approximately 45 employees in 5 Units.

GOC: Rep. Bickford noted that it said in the material DHHS' provided that the Program Integrity Unit generally does not seek recoupments for amounts less than \$2,000. He thought that was a good sum of money, and asked why they would not go after it.

DHHS: Director Downs said it had to with the materiality of \$2,000 in the big scheme of the program. The State Auditor has recommended to DHHS in the past that it was not worth the resources to go after \$2,000.

Mr. Fecteau said they don't just forgive the \$2,000 if it is a straight billing error. They turn it over to the Adjustment Unit and they pursue it in a much simpler fashion than going through all the logistics that the Integrity Unit has to for a recoupment.

GOC: Chair Hill asked how many \$2,000 and under amounts are there.

- DHHS: Mr. Fecteau said DHHS had a lot of MECMS errors where MECMS did not pay claims accurately so had hundreds of cases where providers were overpaid. Many of them were overpaid by less than \$2,500, and these were turned over to the Adjustment Unit to do automatic adjustments. Providers who were overpaid by \$2,500 or more received a recoupment letter noting their appeal rights. He thinks it treats the provider fairly and said State Statute prevents routine adjustments for anything over \$2,500.
- GOC: Sen. Nass noted that a lot of the providers probably provide services covered by both Medicaid and Medicare. He asked if there was coordination with the Federal Government working on Medicare fraud issues or overpayments.
- DHHS: Mr. Fecteau said the Office of the Inspector General, US Attorney's Office, will generally inform DHHS if they are investigating a case and know the provider is also a Medicaid provider.
- OPEGA: Director Ashcroft noted that 5 of the 9 findings are relying on the new MIHMS system to put in place the proper controls. She asked whether DHHS already had plans to test the new system for the controls related to these issues and what that testing was.
- DHHS: Director Downs said he is not involved in testing the new system, but he knows there is an involved testing plan for it. There is a group doing a self-audit continuously to make sure it is meeting those needs. He talked with the Director running the self-audits and they are testing the system to make sure that the type of problems discovered in MECMS do not come up again. They have been in the testing phase for several months so he would assume that they will correct all of this.
- GOC: Chair Hill asked who they are that Director Downs was referring to - is it an OIT or within DHHS. She wants to know who Director Ashcroft should speak with to follow-up on the questions about testing.
- DHHS: Director Downs said it is all part of DHHS. Robin Chacon is the project manager and would be the best person to answer the questions.
- DHHS: Director Hollander said the Commissioner has a team of both consultants and staff that are meeting every week to go through, not only this, but every aspect of the new system, and a plan for its implementation. They do monthly reports to the AFA and HHS Committees about how this plan is unfolding and she said she was sure the Commissioner would be happy to come to a GOC meeting to answer their questions.
- OPEGA: Director Ashcroft wanted to address a couple of statements by DHHS regarding OPEGA's work on this review. First, she explained that OPEGA had referred the 17 vendors to PIU for further review because those vendors had at least one member that met multiple indicators for potential fraud. Theoretically this means there is a higher risk that those vendors may be involved in improper activity. OPEGA understood that individually there could be an explanation for why any particular member might have met one of the tests, but OPEGA's intent was that PIU would look at the vendor's activity as a whole, not just the individual member transactions to find out why there may or may not have been a problem. Consequently, OPEGA did not provide DHHS the individual member ID's. The work Director Downs referred to in checking out whether these vendors had actual physical locations is more along the lines of what OPEGA had envisioned for follow-up. She acknowledges that analyzing all of a vendor's claim activity for questionable patterns would appear to be a time consuming for PIU at this point. It sounds as though the JSURS that is coming should be doing some of this kind of analysis and hopefully will identify any on-going issues with these vendors if there are any.

Director Ashcroft also wants to make it clear that OPEGA did use service dates when reviewing the claims for incontinent supplies. We did get a claim file pulled by paid dates but then sorted it by service date when doing the analysis specifically to assure there was no overlap with claims DHHS had already reviewed. She does not know if there is enough money to be going after, but she does not

believe much, if any, of what OPEGA included in its potential overpayment estimates would be duplicative of what DHHS already reviewed on incontinence supplies.

GOC: Chair Hill said she was glad Director Ashcroft addressed that because Director Downs' comments made her wonder about how OPEGA approaches analyzing data to look at it most efficiently and be sufficiently coordinated with the agency they are working with. She says it sounds like OPEGA was. Her second concern is that OPEGA is coming up with different numbers than DHHS, so clearly there is still something out of whack.

OPEGA: Director Ashcroft said OPEGA's estimates were based on actual claims that appeared overpaid in the sample we were using. It is just an estimate and some of the other reasons DHHS gave for why any actual overpayments are likely lower than that, i.e. the 40% they had found not to be overpayments in their previous review, could be valid. They were not factors that OPEGA took in account when estimating. OPEGA had taken steps to assure there was not duplication, however, and she could look at the claims line by line to be sure. She didn't know if that would be worth doing at this point.

DHHS: Director Downs said he agreed that it was not worth looking line by line. He clarified that if the original pull came by pay order date, even when you sort it by service date, you will have service dates that fall into DHHS' period because their query clearly goes by service date. If DHHS looked at July through December, 2007 and OPEGA did a query for January through December, 2008 by pay order date, you will have some of the same service dates in their data that DHHS had. Once they have been sorted, they should match up.

OPEGA: Director Ashcroft noted that OPEGA had sorted them out, and excluded from its analysis, claims with the service dates that fell into the period DHHS had looked at before.

GOC: Rep. McLeod wanted to know if the vendors referred by OPEGA for further review were all in State.

DHHS: Mr. Fecteau said DHHS is tracking all the in State vendors. According to the State's policy, all DME providers have to have a store front in the State of Maine unless there is a product that cannot be supplied by a Maine DME provider.

GOC: Rep. Burns questioned whether OPEGA had the ability to look at employees' addresses, and that's how the address matches were found.

OPEGA: Director Ashcroft said that OPEGA, by virtue of the authority it has in statute, was able to get access to both the employees' addresses that are maintained within Human Resources and also the vendor addresses from MECMS. She was not certain what would be involved in terms of privacy and confidentiality laws around providing DHHS access to employee addresses and would have to investigate further. She does not know what the State Controller's Office has for access to both addresses and if that Office could be doing a match of them periodically. Director Ashcroft said OPEGA could explore this with the State Controller.

Chair Hill thanked the staff from DHHS again for answering the GOC's questions and looked forward to receiving the answers to the GOC's questions.

## **REPORT FROM OPEGA DIRECTOR**

### **• Project Status Report**

Director Ashcroft said there is no new information from what she had reported at the May 27<sup>th</sup> GOC meeting.

Maine Turnpike Authority is ongoing and all OPEGA staff are engaged on the review. OPEGA is still pursuing a consultant.

Medical Services in the Correctional System – OPEGA intends to put out an RFP to several organizations we have identified that appear to have the experience and capabilities to either assist OPEGA or perform the review in total. We will find out what the cost would be through the RFP responses.

• **Action Items From Last Meeting**

Director Ashcroft referred members to the email she had sent them following the last meeting that summarized their conversation about the GEA.

GOC: Sen. Nass asked if Chair Hill had a chance to talk with the Speaker about the GEA and OPEGA. He thought the GOC wanted to bring the matter before the Legislative Council.

GOC: Chair Hill said she would be happy to talk with Speaker Pingree about the GEA for the House side, but she does not know the position of Chair Simpson. Even if they could have the GEA reviewed to make sure it addressed current legislative information needs that would be a great first step.

OPEGA: Director Ashcroft will check with the OPLA Analyst for the State and Local Government Committee to see if they took up the statutorily required review of GEA. If they have not, she will talk with OPLA and David Boulter as to the chance that that process could get started during the interim and serve as an avenue to have all of these discussions.

Chair Hill referred back to OPEGA's MaineCare Durable Medical Equipment Report and asked if the Director could give the GOC a ballpark figure of what OPEGA identified as potential money that is now going to be saved, or not spent, on an annual basis based on the changes that DHHS is implementing from OPEGA's Report.

OPEGA: Director Ashcroft said that information had been calculated for OPEGA's Annual Report and she will email the information to GOC members. She noted that the case that is with the AG's Office was estimated to be about \$180,000 worth of transactions but does not know if there is more beyond that associated with that case or what the outcome of it will be.

GOC: Chair Hill said small figures can add up to be significant amounts. The improvements DHHS is implementing should mean that potential overpayments OPEGA identified will not happen again and will be a very realistic number in terms of the difference OPEGA's Report made.

GOC: Rep. Bickford said he recalled OPEGA had found fraud in one of its other reviews and said the GOC has not been told if any charges were filed, money recouped, etc. He thinks it is important to find out the results.

OPEGA: Director Ashcroft said that was the review of the Bureau of Rehabilitation Services and dealt with getting jobs for people with disabilities. It is her understanding that on one of the cases that had been referred to the AG's Office, the AG was looking to issue an indictment and found that the former employee had moved out of State and had passed away. Director Ashcroft does not know what transpired out of the other cases. She believes another former employee had made full restitution but she does not know if they pursued it any further. She will check into the status of these and report back.

GOC: Sen. Nass said he was still unsure based on the discussion at today's meeting whether DHHS was committed to testing the new system for the issues the GOC is following. He assumes the GOC will continue to follow-up.

OPEGA: Director Ashcroft said she will follow-up with Robin Chacon and find out if certain things are being tested for. She is not sure what the plan is for an entire review of all the controls in that system when it goes live. The State Auditor audits Medicaid and will likely be looking at some of the controls as part of their normal audit. At the very least, OPEGA can make the Auditor's Office aware of what OPEGA found in this review that they could keep an eye out for. Once the system is implemented, the GOC might want OPEGA to research whether there are any plans for an audit of the system controls, or any review of the testing done before implementation to assure these controls are working as intended.

- GOC: Chair Hill likes the Director's suggestion of making the State Auditor aware of the issues. She'd like to see that done in the form of a letter from the GOC and indicate that the GOC is going to keep it on a list to follow-up.
- OPEGA: Director Ashcroft asked for the GOC's feedback on whether this approach of doing follow-up through getting departments back before the Committee to brief the members and address the issues in the Reports was helpful.
- GOC: Sen. Nass said nobody else follow-ups because it is not their job or they do not have time to do it. He thinks one thing that adds value to the GOC is the follow-up and the GOC needs to keep doing it.
- GOC: Chair Hill finds it helpful in terms of getting a grip, not only on OPEGA's report, but on the follow-up on the part of the agency. Having them here for the GOC's questions sends the message that the GOC values the work they did, and that the GOC is staying on top of it. It also gives the GOC the chance to ask if there is anything the Committee can help them with.
- GOC: Sen. Nass said he found the Report Highlights that were included in the Committee's material to be very helpful.
- GOC: Chair Hill would like to see this GOC wrap up much of the work they have done with the agencies and the reports. Bring the departments back in, get the information reported back to the GOC. She thinks it will help the agency or department, and it certainly would let the GOC walk away feeling like they were not leaving loose ends. She asked for the GOC's thoughts.
- GOC: Rep. Bickford said follow-up and hearing from the departments is very important. It also gives the GOC and OPEGA, going into the next session, a way to celebrate the success they have had over the past 2 years.
- OPEGA: Director Ashcroft said she had planned, through the rest of the interim, to have the GOC get a follow-up briefing on every OPEGA report that has items outstanding. In the fall she will prepare a summary of whether there was anything outstanding from any of the reports that will carry over to the next GOC.

- **Review of OPEGA/GOC Processes**

- **OPEGA Review Selection Process**

- Not discussed.

- **Process for Handling Request for OPEGA Reviews**

- Not discussed.

- **OPEGA Review Process**

- Not discussed.

- **Process and Procedure for Receiving OPEGA Reports**

- Director Ashcroft said she wanted to discuss whether the GOC wants to have more input to, or assist in developing, the recommendations included in OPEGA's reports before they become final. At present, OPEGA does the work, comes up with what issues they think need to be addressed and gives the GOC their best thoughts in terms of recommendations about how the situation could or should be addressed. OPEGA includes its recommendations in its final reports that are issued to the GOC. There have been times in the past when she has felt that the Committee understands the issue OPEGA identified, but the GOC may have preferred a different solution than what OPEGA suggested. While the GOC can choose to take whatever action it wants to on a finding, regardless of what OPEGA has recommended, she has sensed at times that some GOC members feel

uncomfortable disagreeing with OPEGA's recommendation. Director Ashcroft is also sensitive to the discussions GOC has been having about further defining its role. So she thought it would be worth discussing whether the GOC would like to change the process regarding recommendations included in the reports. OPEGA would still be telling the GOC what the issues are based on its factual, objective work, but the process could be set up, if the GOC so desired, for the GOC to be weighing in on what the recommendations to solve the issues should be.

GOC: Rep. Burns worries that OPEGA's conclusions would be tainted by the GOC's prejudice.

OPEGA: Director Ashcroft said the conclusions would stay as they are and would still be based on OPEGA's work and what the issues are would be the same. The only piece she is talking about is the recommendations that are then made to the Legislature, or to the agency, about how to address the problem.

GOC: Rep. Burns noted that there is still a mechanism, even if OPEGA makes a recommendation, for the GOC to revise it to some extent.

OPEGA: Director Ashcroft said that is true but it does not get reflected in the printed report. In the final analysis, the GOC can decide to take a different approach and introduce the legislation to do so. That is a conversation that the GOC should always have, but in the printed report it is OPEGA's recommendations that are in the public document, partly because of the way the statute requires the report to be released.

GOC: Rep. Burns asked if an addendum could be added to the printed report if the GOC concludes that the recommendation needs to be something else.

OPEGA: Director Ashcroft said the process could be changed so that there would be an opportunity for that to happen.

GOC: Rep. Burns said he is not concerned about the printed report being fully received as long as it is factual based and he believes that is what has given rise to this. When OPEGA comes to a conclusion and then makes recommendations, it is put in print and some entities choose to become very defensive. He does not have any problem with OPEGA's conclusions and recommendations being what is reflected in the public report.

OPEGA: Director Ashcroft said that was the way it was intended to work, but she has gauged that sometimes the GOC feels stuck and may not want to do what OPEGA has suggested, but they do not want to be seen as disagreeing with OPEGA on the recommendations.

GOC: Chair Hill said besides seeing that the Committee may want to weigh in earlier, is there any benefit to that in terms of documentation of the recommendations going forward when a new Committee is formed or for legislative record. Does it have to be part of the report to survive going forward?

OPEGA: Director Ashcroft thinks it does. If the GOC wanted their recommendations to be recognized it would be nice to have that somehow memorialized.

GOC: Chair Hill asked if it can be designated what OPEGA's recommendation is and then also designated what the GOC's recommendation is if different than OPEGA's.

OPEGA: Director Ashcroft said that could be done. The critical piece is whether the GOC wants the recommendations to come from OPEGA or do they want them to be Committee recommendations. That is the real distinction.

GOC: Sen. Nass said he is aware of what the Director is concerned about, having heard some whining about the recommendations or results, but he thinks one of the founding purposes was emphasis on OPEGA's independence. He has a natural partisan inclination and is not there defending the current administration, but if that changed, he would be sympathetic to sitting on the Committee and being

somewhat defensive. The value of OPEGA is its independence and its skill at analysis and wherever the shoe drops, that is what everyone has to work with. The partisanship takes place after that, some of which includes the whining about OPEGA's results. He likes the independence.

OPEGA: Director Ashcroft noted that OPEGA's findings would not change.

GOC: Sen. Nass said the independence is more important than making everybody happy.

OPEGA: Director Ashcroft gave the example of the Children's Mental Health Report. OPEGA had recommended that the provider network be more closely monitored for specific things to see if there were indicators that we were losing access to providers because of the actions DHHS was taking, and being told to take, by the Legislature. OPEGA suggested that it should be the Health and Human Services Committee or somebody like that who took that on. That is just an idea about how to do it. GOC members may see a better solution. Even though the GOC can say that at any time, she has found people either tend to go with OPEGA's recommendation or nothing happens. That might be a situation where legislators' thoughts about what the solution should be, how to monitor it, would come out differently than OPEGA's suggestion. OPEGA would always be prepared to provide the GOC with their recommendations. She is not trying to push the GOC into this. She is just being sensitive to what she has picked up on in the past. For example, there have been comments like "why is the agency taking action when the Committee has not told them to yet, why are they doing it based on what OPEGA said, and why is it not coming from the GOC". The Director wants the Committee to know that it can be done differently if the GOC wanted the recommendations to come from the Committee as opposed to from OPEGA.

GOC: Rep. Bickford agreed with Sen. Nass. OPEGA is independent and bipartisan and by being that way offers its recommendations on how to proceed. It is up to the GOC to endorse it. If the Committee were to do it any other way, they would need a variety of recommendations that they had time to look at because GOC members would not necessarily have an alternative recommendation to what OPEGA's is. He would like to see it stay the way it is, OPEGA gives their best recommendation and then it is up to the GOC to endorse it or not.

GOC: Rep. McLeod suggested comparing this to a town report. You have the selectmen who meet and they bring their recommendations to the budget committee. The budget committee and selectmen review all the items in the report and at the final analysis on each article, the budget committee recommends. He sees no harm in OPEGA making recommendations and the GOC follows up with a plan of action or recommendation. He does not think that would take away from OPEGA's independence.

OPEGA: Director Ashcroft said she believes what Rep. McLeod described was exactly what was intended to be the purpose of the vote to endorse the report, not endorse or endorse in part. May be it was just a matter of having a fuller conversation and reminding the GOC that even though OPEGA has made the recommendation, it does not mean they can't come up with a different idea of how they would like to proceed.

GOC: Chair Hill thought it may be a good idea for the GOC to think about the discussion and also that the Director would have a chance to contact the members not at the meeting to get their thoughts. She is struggling to understand if it has been a problem in the last year or two and asked if it was presenting a problem for the Director.

OPEGA: Director Ashcroft said it is not creating a problem for her. It is the conversations the GOC has been having about elevating the role of the Committee and the Committee driving more of what is going on that made her think they may want an opportunity to input to the recommendations.

GOC: Chair Hill said if the GOC is acting beyond its authority, that is something she would want to know, but she does not feel that the members of the Committee have indicated a reluctance to recommend what they think is correct.

Chair Hill asked if Director Ashcroft would forward this information to those members not at the meeting because the GOC should come to a conclusion regarding it. She also thinks it is important to pin down the processes, especially in regard to who speaks, and who doesn't speak at meetings, etc. so everyone is on the same playing field.

GOC: Rep. Burns said he recalls specific comments from the GOC about the fact that things should not be put in writing out there in the community that may be premature because you can't undo that. If it is based on fact, it needs to become a public document when the time is appropriate. What the GOC's comments are afterward is a different situation. He asked if the information given to the GOC contained information on what other States do regarding recommendations. He asked what Florida's procedure was.

OPEGA: Director Ashcroft said there is only 1 State she knows of where the Office that is like OPEGA does not include their own recommendations in their report.

## **NEXT COMMITTEE MEETING**

The Committee set July 14, 2010 at 9:30 a.m. for the next GOC meeting.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 3:06 p.m. (Motion by Sen. Nass, second by Rep. McLeod, unanimous).