



SEN. DEBORAH L. SIMPSON, CHAIR  
REP. DAWN HILL, CHAIR

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SEN. JOSEPH C. BRANNIGAN  
SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
SEN. DAVID TRAHAN  
REP. EVERETT W. MCLEOD, SR.  
REP. BRUCE A. BICKFORD  
REP. DAVID C. BURNS  
REP. PEGGY A. PENDLETON  
REP. MARGARET R. ROTUNDO

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**

**March 27, 2009**

**Accepted May 8, 2009**

**CALL TO ORDER**

The Chair, Senator Simpson, called the Government Oversight Committee to order at 9:37 a.m. in the Burton Cross Building.

Rep. McLeod was welcomed back by the Committee.

**ATTENDANCE**

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

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

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

Executive Branch Officers  
and Staff Providing  
Information to the Committee: Brenda Harvey, Commissioner, DHHS

**INTRODUCTION OF THE GOVERNMENT OVERSIGHT COMMITTEE**

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

**SUMMARY OF THE MARCH 13, 2009 MEETING**

**Motion:** That the Meeting Summary of March 13, 2009 be accepted as written. (Motion by Sen. Nass, second by Chair Hill, PASSED by unanimous vote 10-0).

## OPEGA FINAL REPORT

### • **MaineCare Children's Outpatient Mental Health Services**

Chair Simpson reminded members that the public comment period on the MaineCare Children's Outpatient Mental Health Services Report was held at the March 13, 2009 meeting and the Committee will now have its work session on the Report.

Chair Simpson requested that Director Ashcroft review the next step and process for Committee action. She also said there were issues brought up during the public comment period that the Director should have the opportunity to respond to.

#### **- Committee Work Session**

Director Ashcroft said that work sessions on reports typically involve a GOC vote on the report as is allowed in Statute and Committee discussion as to whether to take specific action with regard to reported results and recommendations.

Director Ashcroft then addressed issues raised by the Department of Health and Human Services (DHHS) in Commissioner Harvey's agency response letter to the Report and Deputy Commissioner Green's testimony at the last GOC meeting. The GOC's discussion in response to those comments led the Director to clarify exactly what OPEGA said in the Report and the intent behind some of the statements highlighted in DHHS' comments. As regards to OPEGA's statements in the report about Deloitte's work, the Director noted that OPEGA developed its estimates of providers' administrative costs based on assumptions made by DHHS that were validated by Deloitte's work. OPEGA did not discount anything that Deloitte had reported and, in fact, relied upon Deloitte's work as an independent party with national expertise, as sufficient confirmation that DHHS' assumptions were reasonable for OPEGA to use in developing its estimates. The Director had anticipated that providers may claim that all of their costs were not sufficiently covered by the assumptions in DHHS cost-based rate calculations. Consequently, the statement in the report describing that OPEGA did not verify to what degree Deloitte had considered actual provider costs is nothing more than OPEGA being clear about the limitations of our work and what we were able to say about it as a result.

As regards to including unvalidated provider perspective in the reports, OPEGA understands DHHS' sensitivity to giving a forum for providers' comments to come forward and be discussed with the Legislature. However, what OPEGA reported in the Report Summary is not a conclusion that administrative burdens are excessive or that the ASO is imposing things it should not. What OPEGA reported was what it heard from providers and the language in the report reflects that. OPEGA was very careful to use language that would indicate to the reader that these were unvalidated perspectives only and the Director referred the GOC to specific language in the report meant to make that clear. OPEGA only noted that, by its observations, there seemed to be some differences in perspectives between the providers and DHHS on the level of administrative burdens. That was OPEGA's observation, not a conclusion, and was used to support the recommendation that it is a situation that might warrant monitoring, or further review, because it could be a barrier to fully implementing cost-containment efforts directed by the Legislature. If the entire section regarding provider perspectives were taken out of the report, OPEGA's recommendations would not really change because they were primarily developed from other work done during the review.

The Director noted that the comments of some GOC members indicated they were concerned about including unvalidated perspectives in the report because readers would assume they were actual. If the GOC is concerned that readers will automatically assume what is in a report is validated fact regardless of what OPEGA actually said, or had stated the limitations of the information were, then that is a totally separate conversation for OPEGA and the GOC. Director Ashcroft believes that restricting what is reported to only what OPEGA has independently verified will affect what OPEGA reports to the GOC in the future, what it does for work and how long the work takes. She believes that sometimes the benefit of the work OPEGA

does is to be a conduit for information that comes from the bottom of a chain to the top. Often when OPEGA gets stakeholder perspectives, it is in a situation of theming up the information received and making the GOC aware of the issues that may have to be addressed.

As regards to why OPEGA did not validate the provider perspectives included in this report, the Director agrees fully with DHHS that the best value that could be provided from OPEGA's work would be to bring everything to a point where OPEGA described the actual situation and not just what people tell us about it. However, OPEGA is always working within three constraints – (1) timeframe; (2) resources; and (3) the quality or quantity of work it can get done. In this particular instance, validating perspectives on administrative burdens was determined to be less of a priority than trying to deliver on other items the Legislature seemed very interested in. For example, Legislators wanted an understanding of the provider network, therefore, OPEGA took the time to illustrate what the network looked like and describe it. Also, the Legislature wanted to know how much was being spent on administrative costs because it had not had that information previously - so estimating those costs is where OPEGA put most of its resources. It became clear when providers were surveyed about administrative burdens that attempting to confirm the variety of burdens would be a significant piece of work all by itself. Since she had committed to the 123<sup>rd</sup> GOC that the Report would be out by early part of the 124<sup>th</sup> session, the Director made the decision that OPEGA did not have time to pursue that confirmation in this project. Director Ashcroft said in every review she has to make a decision about which issues raised OPEGA will follow all the way through on. In this case, OPEGA stopped, reported to the GOC that there was a difference of opinions that might warrant further inquiry as part of the monitoring OPEGA recommended.

Lastly, Director Ashcroft addressed the issue of OPEGA reporting providers' statements that they had to complete a multiple page form even though DHHS had shown OPEGA that the form had been revised and was only one page. DHHS did provide OPEGA with a copy of the 1 page form at the point in the review when we were talking with DHHS about providers' perspectives. The Director pointed out that in the Report, OPEGA had noted DHHS' description of how the required form had been shortened along with discussion about all the other efforts DHHS and APS had underway to reduce burdens. However, the main point of the concern that providers expressed was that completing the documentation was a burden because it was time consuming and required clinicians to be involved. Director Ashcroft said that even though DHHS provided a 1 page form, she did not feel it fully invalidated the provider's perspective because she still did not know how much time it is taking the providers to complete the 1 page form. She made the decision that OPEGA did not have the resources to take the question all the way to the end, and instead OPEGA presented both sides.

The Government Oversight Committee members' concerns and questions included the following:

GOC: Chair Simpson asked whether OPEGA staff gave providers advance notice of the purpose of the meetings or telephone interviews.

A: Director Ashcroft said OPEGA contacted the providers by email, set up times to interview them over the telephone and sent, in advance, the questions that would be covered in that interview. Some of those questions were regarding what providers saw as their administrative burdens and what was driving their administrative costs. Several providers also submitted detailed information on cost studies they had conducted to determine the administrative time they were spending.

GOC: Chair Simpson expressed concern that providers reported the need to complete a multiple page form even though, at the time OPEGA was receiving information from them, the form had been changed to 1 page. She felt the Report language should have stated the information regarding the multiple page form in the past tense.

A: Director Ashcroft said OPEGA was trying to stay true to what providers had actually given for information. She said OPEGA talked with the providers in late December, 2008 and early January, 2009 and they were still telling OPEGA they had multiple pages of data to complete even though it

was four months after the form had changed from multiple pages to 1. The Director thought it might be possible that the 1 page form expanded to multiple pages as it was completed but made the decision that OPEGA was not going to take the time to get into those details at that juncture in the review.

GOC: Chair Simpson thought that information may have been important for the Health and Human Services (HHS) Committee.

Sen. Trahan said OPEGA is not accusing anyone of anything, they are just bringing information to the GOC, the GOC sorts out that information and then decides how to proceed.

Sen. Brannigan said the administrative burden has been complained about among the providers for a long time. APS, DHHS and providers have been working to address the burdens. One of the concerns that had been talked about was that DHHS chose a group, APS, that could not dovetail their computerization with anyone else. He did not see that concern mentioned in the report. He felt a great deal has been done to reduce the administrative burdens and that work has been in flux for several months. He thought the major piece has been taken care of pretty well by the providers, groups and department.

A: Director Ashcroft said that was exactly what OPEGA was attempting to portray. Providers still have concerns about their burdens and DHHS reports there is a lot being done around that. OPEGA did see those efforts appear to be on-going and recommends that DHHS and APS be kept to task to make sure that the efforts continue and that they are effective in reducing burdens, and therefore costs. Success in getting the real concerns dealt with may eventually mean the standard rate could be reduced further without negative impacts on providers.

GOC: Sen. Brannigan asked what was included in administrative costs.

A: Director Ashcroft said that, as reported in the methodology section of the report, OPEGA did attempt to find a common definition of what constituted administrative costs in a health care setting. That research showed quite a bit of variation in definition of those costs even at the federal level. For the purpose of this review, OPEGA's approach was to try to define what the direct costs of providing the service were and then to consider all other costs as administrative or indirect. DHHS indicated that the 25% allowance for indirect costs that was in the standard rate OPEGA based its estimates on was meant to cover organizational overhead costs such as information technology, human resources, executive administrative costs, payroll and accounting functions. Therefore, it is those types of expenses that are included in OPEGA's estimates of provider administrative costs.

Director Ashcroft referred back to Chair Simpson's point that OPEGA reported the form was multiple pages when OPEGA could have validated whether or not a multiple page form continued to be a problem. The Director sees this more as a discussion about whether she should have made the decision not to pursue validating this concern rather than about how OPEGA reported it. Validation would have lengthened the time of the work but if that is what the GOC expects going forward, she would want to understand that.

GOC: Chair Simpson said her only point was that OPEGA could have asked for a copy of the form providers were complaining about so that it would have been clearer what they were referring to. She feels that would have been more helpful to the HHS Committee in their work.

Rep. Burns said OPEGA has to bring all the information it receives to the GOC, it should not be deciding what information it receives will be passed on to the Committee, and it is the Committee's decision as to how to proceed with the information provided.

Sen. Trahan said he thought the responsible way to deal with an item such as this in a report is for the GOC to simply say, when it votes on the report that this item within the report needs further follow-up and perhaps suggest to the committee of jurisdiction that it be reviewed further. He would not want the GOC to get drawn away from the focus of the report into what OPEGA does and its function because he doesn't think that is very constructive.

Rep. Pendleton said it was the 123<sup>rd</sup> GOC that asked OPEGA to conduct this review and perhaps the Committee was not entirely clear on what it wanted. She is satisfied with the report, it contains the good, bad and ugly and now it is up to the GOC to decide the next steps.

Chair Hill said it is unfair for the 124<sup>th</sup> GOC to hold OPEGA and the Director to a standard that the present GOC wants when, in fact, they were taking direction from the prior Committee.

**Motion:** That the Government Oversight Committee endorses the MaineCare Children's Outpatient Mental Health Services Report. (Motion by Rep. Pendleton, second by Sen. Trahan, PASSED by unanimous vote 12-0).

Director Ashcroft then proceeded to answer questions asked by the Committee at its last meeting.

GOC: An explanation of where the 25% allowance for indirect costs was derived from.

A: The information OPEGA had received from Deputy Commissioner Green was that the 25% indirect load rate DHHS used in their cost based calculation was an estimate of what had been previously included in providers' budgets. He also said that Deloitte indicated it seemed reasonable based on what they had seen in other rate setting work they had done.

GOC: A summary of the specific administrative burdens reported by providers.

A: That document had previously been provided to the GOC.

GOC: More specifics on how the provider network and the quality access issues should be monitored.

A: Director Ashcroft said the GOC may want to talk through each of the recommendations in the Report and decide as a Committee what it may want to do with them. These specifics would be part of that discussion.

GOC: The cost for the review.

A: OPEGA spent 1,075 staff hours on the review. The average hourly salary rate was \$28.11 per hour, for a total project cost, when considering just salaries, of \$30,223. Using a fully loaded rate, the average hourly rate was \$41.92, for a total project cost of \$45,075. The review began the week of July 19, 2008 and all substantial work was complete with a final draft of the report on February 9, 2009.

GOC: The concern raised by KidsPeace that what was in the Report may lead to a misunderstanding about their organization and the services they provide.

A: OPEGA researched the issue brought up by that provider and did identify that the reason the information in the report on KidsPeace appeared incomplete was because OPEGA had performed its analysis on provider ID's that had billed for outpatient services. Since KidsPeace billed under separate provider ID's for different services, not all of the services were captured in the data OPEGA used from MECMS. OPEGA made some additional clarifications to the Report by adding notations that the information included only provider ID that billed MECMS for outpatient services and that additional

services may have been provided under other provider IDs. We also made it clear in a notation that this does not mean that these are the only services any of the providers provide because it very well could apply to other providers besides KidsPeace.

Chair Hill moved to the recommendations contained in the Report.

- **Recommendation 1, More Detailed Review of Contract With APS Would be Prudent**

Director Ashcroft reviewed the Report discussion about this recommendation. She noted that DHHS had commented that this was a new initiative, and it may be better to wait until it had matured and more data was available to measure the results. Director Ashcroft said she does not disagree with that approach, but her concern is that savings have already been booked from the initiative. If DHHS is indicating that the Legislature should not expect to see any savings yet, then she feels the Legislature should be made aware that they probably did not get what they had expected. If there are barriers being experienced by either APS, DHHS or providers in getting to the outcomes the Legislature was hoping to achieve, those barriers should be identified, talked about and worked through, and that would be all the more reason for a review. A review, even in a new program, might facilitate a faster improvement of that program as opposed to waiting.

Committee questions and comments included:

GOC: Chair Hill asked how resource intensive the work would be for OPEGA.

A: Director Ashcroft said it would be a full project, 1,000-1,500 hours. OPEGA would attempt to scope it to stay within whatever timeframe the GOC wanted.

GOC: Chair Hill asked if the GOC were to move forward on the recommendation, what the timeline to begin the review should be.

A: Director Ashcroft said within 6 months to a year. The GOC may want to ask DHHS' perspective.

GOC: Rep. Burns asked if the State has an agency or department that analyzes contracts.

A: Director Ashcroft said she was not aware of any agency that does this to the degree that OPEGA is recommending. The Division of Purchases does help monitor contract administration and certainly, within each agency, the program managers or the individuals who have responsibility for the contract, should have some obligation and process for how they monitor compliance with a contract. OPEGA did look at the contract with APS and it is fairly detailed, contains a lot of performance expectations, and there is a lot of data that is supposed to be getting collected through the process. Part of the review OPEGA envisioned would be to take a look at the terms and conditions of the contract, is all the data being collected being fully utilized, is it all necessary, and is it part of what is contributing to the sense of burden.

GOC: Chair Simpson said she believed DHHS must be monitoring how the APS contract is working and how it is working with providers and wondered if the legislative action should be to direct DHHS to do a review and report back to the GOC or the HHS Committee. The HHS Committee could send a letter back to the GOC suggesting that a follow up be done if they found there to be disconnections between what DHHS was reporting to the HHS Committee and what providers may be saying in terms of that contract.

A: Director Ashcroft said that is an option. Her suggestions would be, if the GOC wanted to move in that direction, that the GOC be very specific with DHHS about what is to be reviewed and reported back on. OPEGA was talking about, not only contract administration, but also trying to look at the results that were actually being achieved by APS. Part of where DHHS hoped to achieve costs

savings, was not necessarily in denying services to children, but in the idea that providers will start to make different decisions about treatment plans for children that ultimately result in reduced costs. OPEGA can envision taking an approach that looks at whether that impact had been achieved in the way DHHS had hoped and whether costs are down as a result. The Director believes that there should be some measures and trends that could be observed that would indicate whether the impact is as desired.

GOC: Sen. Brannigan mentioned that if the GOC referred this recommendation and others to the HHS Committee, they would be melded with all the other work of the Committee. The HHS Committee would not just look at this particular piece apart from adult mental health or other pieces that APS is involved in.

Chair Hill asked what kind of follow up would be done by OPEGA or the GOC if the GOC decided to refer this recommendation to another agency rather than have OPEGA do the review. She felt the GOC has an obligation to follow up to make sure recommendations and actions have been carried through.

A: Director Ashcroft said that if the GOC decided it wanted to refer this recommendation to the HHS Committee and allow them to take whatever action they deem appropriate, then OPEGA would, on the GOC's behalf, follow what went on in the HHS Committee. If the GOC directed action be taken by DHHS, OPEGA would follow up to make sure DHHS actually did it to the point where it got reported back to HHS Committee. The follow-up process is an ongoing operation within OPEGA.

GOC: Rep. Bickford asked if there was more objectivity when OPEGA does the follow up rather than the Department monitoring itself and reporting back to the committee of jurisdiction. He had concerns about asking the fox to guard the henhouse.

A: Director Ashcroft said the Department would be reporting on its own initiatives, but there are safeguards the GOC could try to build in so that the Department ends up providing the information the Committee desired. The GOC would have to ask the Department to respond to very specific questions. Once the Department's report came back to the joint standing committee, OPEGA could then review it and work with the Department to understand what methodology was used in performing the review and developing the information. However, there still will be some risk that the report is from an insider's rather than an outsider's perspective.

GOC: Committee Chairs asked for direction from Director Ashcroft.

A: Director Ashcroft said if the GOC wanted to send recommendations to the HHS Committee for action, she would suggest a letter from the GOC to the HHS Committee stating what the Committee thinks needs to happen. Include in the letter that the GOC will follow up on whether the HHS Committee takes any action or not and to let the GOC know if their decision is to take no action. If the GOC wants to direct DHHS to take action that directive could be formalized via a letter from the GOC to DHHS detailing what the GOC expected to happen.

Chair Simpson recognized Brenda Harvey, Commissioner of DHHS and asked if she would like to input to the discussion about DHHS following up on the Report. The GOC wants to make sure that there is follow-up on whether the APS contract is achieving the savings and to assure cost-savings initiatives are not causing issues with the provider networks. What process does the Commissioner believe would be the most likely to guarantee that the GOC's concerns are taken care of.

Commissioner Harvey said the APS contract DHHS has is an initiative to achieve budget savings and to improve the quality of the oversight of the behavioral health services. It is a new initiative and the State of Maine is new at managing care using those kinds of tools. She would describe what has been put in place to date as the baby steps to utilization review because providers were significantly concerned about another

new effort in the mental health world. DHHS completely understands the responsibility it has to oversee the contract, to manage the savings, and the quality of the work. Commissioner Harvey said she would submit to the GOC that to study APS, is not a cost that only OPEGA incurs, but it is a cost DHHS incurs as well. DHHS spends an equal number, if not twice, the hours responding to the many questions of OPEGA. The Commissioner said it would be a duplicative effort for OPEGA to pursue APS because Geoff Green, Deputy Commissioner for Health Care Management, and his staff in the Office of Quality Improvement is already looking at what it is APS is doing. DHHS measures the outcomes of children in our Children's Behavioral Health Program via a scientific tool that measures whether or not children got better as a result of services. That is an indicator that the outpatient services are legitimate and legitimately used. DHHS just reported to Appropriations on its savings initiatives and, in fact, can show that Children's Outpatient, actually all outpatient costs, have gone down. There is not a simple mathematical calculation that can be done to say how much of the savings achieved are as a result of individual efforts. There is a combination of factors within the Medicaid Program that determines whether or not we have had savings. Commissioner Harvey would welcome further reporting out to the GOC of any of the work they are doing to monitor APS. The GOC can just direct DHHS to take action or if it wants something more formal can write a letter.

Following Commissioner Harvey's presentation the GOC's discussion included:

GOC: Chair Simpson said OPEGA recommends that a review should include the details of results APS has achieved, the administration of the contract with APS and the cost the provider network has absorbed as a result of APS requirements. Would those be the issues DHHS is monitoring and reporting back to the HHS Committee on?

DHHS: Commissioner Harvey said yes and also reporting to Appropriations.

GOC: Sen. Trahan said it is one thing to save money in administration, but it is another to ratchet down rates without considering the consequences to DHHS and providers.

DHHS: Commissioner Harvey said DHHS has the same concern because the system has to have sufficient capacity to meet the needs of the children and adults in outpatient services. However, over time costs had increased to a point the State could no longer sustain. Other states provide the services for less costs and that is why DHHS began the discussion about managed care. Commissioner Harvey said the impact of having providers employ their outpatient clinicians as independent practitioners and then not paying them benefits was not a result of APS, it was a result of some for-profit providers that developed a methodology for hiring clinicians, particularly in the rural part of the State, that worked out of their home. DHHS paid the agency and the agency took away the administrative cost of providing health benefits to clinicians. It became fairly profitable for providers to not offer health benefits to clinicians and DHHS has concerns about that particular profit being in a Medicaid program. DHHS is now developing a plan with providers to look at how outpatient services can be delivered in a nonprofit accredited type of environment where cost can be covered, but profits are not made. Commissioner Harvey said people have to make a living, but that is different than a profit.

GOC: Chair Hill asked if the savings that Commissioner Harvey stated DHHS was starting to see is a few pennies on the dollar, or were significant savings?

DHHS: Commissioner Harvey said \$6.5 million were booked in FY08 and only half of that was achieved - primarily because of a ramp up period. APS was not in operation for as long as expected when DHHS put the budget initiative in the Governor's budget. In this fiscal year, they are to achieve \$8.5 million. When that initiative combined with the rate reduction initiative, which was \$14 million, are considered the expected savings is significant and it is General Fund dollars.

GOC: Chair Hill asked whether the GOC or HHS Committee could receive a report back from DHHS in 6 months regarding APS.

DHHS: Commissioner Harvey said that whatever interval the GOC felt appropriate, DHHS would be happy to report back, in writing or orally. She also mentioned that APS could be at a GOC meeting so members could ask their own questions.

GOC: Rep. Bickford asked for an explanation between making a living and profiting.

DHHS: Commissioner Harvey said they want to be sure the contracts and reimbursements provided are sufficient, but in the Medicaid environment it is DHHS' obligation to reimburse the nonprofit communities at a level where they are sustained, but not so that they make a profit.

GOC: Rep. Bickford asked why DHHS is concerned about provider profits if it pays all providers at the same rate.

DHHS: Commissioner Harvey said the nonprofit agencies switched to not providing health benefits to clinicians because that is what the for profit companies had done, it was not anything DHHS drove. She said if the CEO of a company makes a profit at the expense of clinicians having to treat clients with less quality, that is what DHHS would have a concern with.

GOC: Sen. McCormick said he had a conversation with an independent based health care provider and she had told him that she had to bill through a nonprofit provider service because she was not recognized by DHHS as a payee. She billed \$65 an hour and the agency she billed through charged DHHS \$135 an hour. He asked if this was one of the things the Commissioner was referring to when she stated some things had been taken care of or eliminated.

DHHS: Commissioner Harvey said that is the benefit of a standard rate.

GOC: Chair Simpson referred to the Appendix in the Report detailing services and noted that Possibilities Counseling Services, Inc.'s outpatient services had a significantly higher expense and asked why theirs would be 50% higher, stating that Sweetser was \$1 million less.

DHHS: Commissioner Harvey said she did not know the answer to that question, but will certainly look into it.

There was Committee discussion about the procedure on report recommendations. Director Ashcroft said it was the GOC's decision, but in the past, members had voted on what action they took on the recommendations. She also reminded the GOC they had previously discussed having GOC members go before the committees of jurisdiction to communicate the GOC's concerns resulting from OPEGA reports.

#### - **Recommendation 2, Outpatient Provider Network Needs Ongoing Monitoring**

Director Ashcroft said from OPEGA's point of view, this recommendation is about putting the State in the position to proactively identify whether recent changes are having impacts that were unintended. Are providers leaving the network over time and are there accessibility or quality issues with the services being provided. Regardless of which body might take on the task of monitoring for these impacts, it is important to come to some agreement with the Department about what are the right indicators to be watching and what data needs to be collected to be able to objectively assess the indicators. Given all the factors, OPEGA thinks proactive monitoring would be a prudent thing to do and there may be a number of options of where that responsibility may land. OPEGA suggested either the HHS Committee, or perhaps, reconstituting the Children's Mental Health Oversight Committee, as possibilities.

GOC: Chair Hill asked if anyone knew what it would cost to resurrect the Children's Mental Health Oversight Committee and the ongoing expenses that might be involved?

A: Director Ashcroft said she did not know what the costs would be.

GOC: Chair Hill is concerned about bringing another committee back when the Legislature is looking at committees and commissions to dispense with, and said it would be helpful if the GOC could get a better understanding of exactly what the Children's Cabinet does and whether it would be able to address the concerns.

A: Director Ashcroft referred the GOC to the information in their notebooks on the Children's Cabinet.

GOC: Chair Hill noted that it appears the membership of the Children's Cabinet is the Governor's Commissioners and wondered whether they would have the balance of getting information from the outside.

A: Director Ashcroft noted that OPEGA's suggestion was regarding the Children's Mental Health Oversight Committee which had a different membership than the Children's Cabinet. DHHS had said this Cabinet is also working on children's issues and did not know if there was a way to bring that all together.

GOC: Chair Hill asked if there was a subcommittee to the Cabinet that included individuals representing part of the State in different industries that could funnel the information the GOC is looking for.

DHHS: Commissioner Harvey said the Children's Cabinet is a subgroup of the Cabinet consisting of 5 Commissioners of the child serving agencies with the First Lady chairing. There is also the Regional Children's Cabinet that includes community members who come together in the regions of the State who focus on, not just outpatient services, but all children's services, and report to the Children's Cabinet. There are also two structures in the Children's Cabinet. The Maine Growth Council, which includes legislators, Attorney General's Office and several community groups who look at children in the early years and another group looking at children ages 9 to 21 who are transitioning out of children services. In children's mental health specifically, there is also the Quality Improvement Council chaired by parents and family members and they are significant participants along with providers. DHHS is required to have this group under the block grant with the Substance Abuse and Mental Health Administration and Medicaid. Another possibility is the Medicaid Advisory Council which is made up of stakeholders, advocates, and providers who look at what is happening in Medicaid services. The Commissioner believes there is a lot of oversight of children services right now.

GOC: Chair Hill asked if the Commissioner saw a way of improving it so it is more keeping with OPEGA's concerns.

DHHS: Commissioner Harvey feels that every group she described is looking at whether changes DHHS makes are having unintended negative consequences. Maine's system is recognized as outstanding for children's mental health services, but if the GOC recommends and the Legislature establishes such a committee, of course DHHS will be available to report as required.

GOC: Chair Simpson asked Director Ashcroft if the Recommendation was for individuals, providers, and families to have an avenue to address their concerns regarding children's mental health services.

A: Director Ashcroft said what OPEGA is advocating for is to get to a place where we are objectively measuring, in a proactive way, what impact the changes are having. Chair Hill had asked OPEGA to provide more detail of what that monitoring would include.

For example, OPEGA thinks it would be worth monitoring whether or not providers are leaving or entering the network. OPEGA was not able to obtain the information on all the providers' service locations. There is a lack of readily available data about who is accessing what and where that would help show accessibility issues. Data on service locations could potentially be gathered at the time providers sign up to provide services. DHHS could require the provider to list which locations they are going to provide services out of and over time you would know where the services were being provided and could keep track of whether providers were dropping off or entering the system. The HHS Committee would be able to see if there are changes in the number of providers or the locations of the sites for services.

GOC: Chair Hill asked what entity did that.

A: Director Ashcroft said, based on all the different organizations Commissioner Harvey listed, the GOC may want OPEGA to learn a little more about each of those entities. If the GOC needs more information to make a decision about what to do with any of the recommendations, the GOC can ask OPEGA or DHHS for more information.

GOC: Rep. Pendleton said the Children's Mental Health Oversight Committee did not have any power so the Children's Cabinet was created. The reason it was created at a Cabinet level was to give it more clout and the Commissioners from Corrections, Education, and DHHS were appointed members because they represented agencies providing services to children. She said contained in the Children's Cabinet statute is language to create subcommittees, so if the Cabinet is asked to form a subcommittee that could be done.

A: Director Ashcroft said it might be helpful for OPEGA to define more specifically what tasks and responsibilities it is advocating for. She also suggested that OPEGA get additional information on the different bodies and what their missions are and report back to the GOC.

GOC: The GOC concurred. Chair Hill thought it would be more efficient for OPEGA to work on some details of the recommendations. She also wanted OPEGA to send a letter to the HHS Committee requesting an opportunity to present the recommendations to them with the GOC Chairs and/or members accompanying the Director to that presentation.

**Motion:** That the Government Oversight Committee asks OPEGA to get more detail on the Recommendations and bring that information back to the GOC for further consideration and to send a letter to the Health and Human Services Committee requesting an opportunity to present the report recommendations and discuss further actions. (Motion by Rep. Pendleton, second Rep. Bickford, PASSED by unanimous vote 10-0).

Chair Simpson recognized Commissioner Harvey.

Commissioner Harvey furnished the GOC with information of all of the audits that the Maine Department of Health and Human Services is engaged in.

The GOC thanked Commissioner Harvey for the information she provided to the Committee.

## **NEW BUSINESS**

None.

## **RECESS**

The Government Oversight Committee recessed at 11:31 a.m. on the motion of Chair Simpson.

## RECONVENED

Chair Hill reconvened the meeting at 12:27 p.m.

## UNFINISHED BUSINESS

### • Workplan Development – Discussion of Potential Topics

Director Ashcroft referred GOC members to the information in their notebooks regarding topics. She told the GOC that OPEGA had also been processing some additional requests that she wanted to present consideration.

Director Ashcroft described that one of these requests had a variety of alleged concerns related to it and many were quite serious in nature. Several have been referred to the State Controller's Internal Audit Division and the Attorney General's Office. There are two areas of concern from the request that OPEGA has not found another home for as of yet. Under OPEGA's process it is now time to bring those potential topics to the GOC's attention for a decision on how to proceed. Both are topics related to the Department of Corrections. The first is medical services in the prison system. While this was mentioned in a citizen request, it has also come in separately as a legislator request, from a legislator not connected to the citizens that put forward the citizen request. In addition OPEGA has briefly reviewed the contract for those services as part of work it has done on prior reviews and can provide the GOC with some context around that particular topic. The other topic relates to management issues and working conditions at the Maine State Prison. Due to the nature of the allegations, she would rather not say much more than that, but the allegations are serious. OPEGA has not validated them at this point.

Other topics that have been requested since last meeting include:

- the Maine Turnpike Authority which Chair Hill can speak to;
- the Bottle Bill which Sen. Nass can speak to;
- a couple of substance abuse treatment programs in the prison system, specifically the Correctional Recovery Academy and the Intensive Outpatient Program;
- the Offices of Innovation in DECD and DEP;
- the Boat Launch Programs in the Department of Conservation and Inland Fisheries and Wildlife; and
- the Committee on Judicial Responsibility and Disability and the Maine Board of Overseers of the Bar.

Chair Hill presented her request for a review of the Maine Turnpike Authority describing her concern over the Authority's exclusive dealings with only one engineering firm, NHTB, and the language in the Authority's Statute that says the engineering estimates are never accessible to the public. She also noted that Statute calls for the Maine Turnpike Authority to turn its annual surplus over to the Department of Transportation to go toward the upkeep of Maine's roads and bridges. No surpluses have been turned over since 1997, but in the ten years prior to that the Authority had turned over to the Department of Transportation approximately \$100 million. A rough estimate of what should have been paid to the Department of Transportation since 1997 would be about \$87 million.

**Motion:** That the Government Oversight Committee move the Maine Turnpike Authority review to OPEGA's "On Deck" topic list. (Motion by Sen. Trahan, second by Sen. Nass, PASSED by unanimous vote 10-0).

Sen. Nass introduced his request for a review of the beverage container laws in the context of existing municipal recycling programs with a focus on the environmental effects that these laws and programs generate.

**Motion:** That the Government Oversight Committee move the beverage container review to OPEGA's "On Deck" topic list. (Motion by Sen. Trahan, second by Rep. Bickford).

Following further GOC discussion, Sen. Trahan withdrew his motion and Rep. Bickford withdrew his second.

The GOC continued to discuss Sen. Nass' request and the following motion was made.

**Motion:** That the Government Oversight Committee move the beverage retainer and recycling review to OPEGA's "On Deck" topic list. (Motion by Sen. Trahan, second by Rep. Bickford, PASSED by unanimous vote 10-0).

**Motion:** That the Government Oversight Committee moves to OPEGA's current Work Plan the topic of Medical Services in the Prison System. (Motion by Sen. Trahan, second by Chair Hill, PASSED by unanimous vote 12-0).

**Motion:** That the Government Oversight Committee moves to OPEGA's current Work Plan the topic of Issues Related to Management and Working Conditions at the Maine State Prison. (Motion by Sen. Trahan, second by Chair Hill, PASSED by unanimous vote 12-0).

The remaining new requests that the GOC had not yet taken action on were considered by the GOC. Following Committee discussion the following motions were offered:

**Motion:** That the Government Oversight Committee moves the request on Substance Abuse Treatment Programs in the Prison System to OPEGA's "On Deck" topics list. (Motion by Sen. Trahan, second by Rep. Burns, PASSED by unanimous vote 9-0).

**Motion:** That the Government Oversight Committee moves the request regarding the Committee on Judicial Responsibility and Maine Board of Overseers of the Bar to OPEGA's "On Deck" topics list. (Motion by Rep. Bickford, second by Sen. Nass, PASSED by unanimous vote 9-0).

**Motion:** That the Government Oversight Committee moves the review requests on the Offices of Innovation in the Department of Economic and Community Development and Department of Environmental Protection, and the Boat Launch Programs in the Department of Conservation and Department of Inland Fisheries and Wildlife to OPEGA's "On Deck" topics list. (Motion by Sen. Nass, second by Rep. Bickford, PASSED by unanimous vote 8-0).

The Committee moved to the OPEGA Reviews – Topics for Consideration and Reconsideration to decide whether there were any topics currently on that list they wanted to take off. The following topics were removed:

- ASPIRE Program – (after Director Ashcroft's explanation of how this topic is covered by the State Auditor) that this topic be taken off the list. (Motion by Sen. Nass, second by Sen. Brannigan, PASSED by unanimous vote 8-0).
- Emergency Room Stays for Persons in Mental Health Crises – (after explanation by Sen. Brannigan that HHS Committee was monitoring this) that this topic be taken off the list. (Motion by Sen. Brannigan, second by Chair Hill, PASSED by unanimous vote 8-0).
- Access to Services for MaineCare Members – (after Director Ashcroft explained that she had never received the written request she was expecting on this) that this topic be taken off the list. (Motion by Sen. Brannigan, second by Sen. Nass, PASSED by unanimous vote 8-0).
- Animal Welfare Department – (after Director Ashcroft explained that she had never received the written request she had expected on this) that this topic be taken off the list. (Motion by Sen. Nass, second by Sen. Brannigan, PASSED by unanimous vote 8-0).

The GOC discussed what process it would use moving forward to add topics to OPEGA's Work Plan and to determine what priority order topics would be placed in. It was decided that Director Ashcroft will prepare and distribute to Committee members a list of topics to review and a work sheet for them to rank each topic. This information will be distributed to members early next week. GOC members will be asked to return their rankings to OPEGA by the end of next week. Director Ashcroft will have the average rankings calculated for the next GOC meeting. Some members of the Committee wanted to add to OPEGA's Work Plan the Maine Turnpike Authority Review.

**Motion:** That the Government Oversight Committee move the Maine Turnpike Authority review onto OPEGA's Work Plan. (Motion by Rep. Burns, second by Rep. Bickford)

**Discussion:** Rep. Burns said he made the motion because the public has the right to know what has taken place by the Maine Turnpike Authority in the past and present and that placing the topic on OPEGA's Work Plan is the venue to get those answers. Sen. Brannigan raised the concern of quasi governmental agencies and bonds. Chair Hill did not believe it opened it up to all quasi government agencies, the issues related to the Maine Turnpike Authority activity only. Sen. McCormick was not comfortable putting three topics on OPEGA's Work Plan after only learning of them today. He would prefer to have this topic remain on the list to be prioritized with others.

Rep. Burns withdrew his motion and Rep. Bickford withdrew his second.

Rep. Burns said that he has had several Legislators ask how they could get a request before the GOC and asked if information could be sent out regarding the process. Chair Hill asked Director Ashcroft to draft a memo from the Chairs explaining the process for requesting reviews.

Chair Hill asked if there were other items on the agenda that the Committee should discuss. Director Ashcroft was looking for GOC guidance regarding OPEGA's consulting budget. Hearing no objection the Chair moved to **Report From the Director -Discussion of Potential Needs for OPEGA's Consulting Budget**

## **REPORT FROM OPEGA DIRECTOR**

- **Status of Action Items From Last Meeting**  
-Discussion of Potential Needs for OPEGA's Consulting Budget

Director Ashcroft notified the GOC that the Legislative Council Budget Subcommittee had asked for further specifics on plans for use of OPEGA's consulting budget in FY10 and FY11. Since a work plan has not yet been established, the Director will use the GOC's rankings of topics as a basis for assessing which projects may end up on the work plan and whether a consultant may be desirable. She asked if the GOC would want to be involved in presenting that information to the Budget Subcommittee. Chair Hill said at a minimum, she would want the Chairs involved and would be happy to have the whole Committee weigh in. If the Budget Subcommittee meeting is scheduled before the next GOC meeting, the Director will meet with the Chairs to discuss what will be shared at the Budget Subcommittee meeting. Chair Hill said considering the reviews added to OPEGA's Work Plan today and that may be added, OPEGA should retain its consulting budget. Sen. Nass asked if that meant the GOC was agreeing to possibly lapsing whatever might be left in FY 09 but trying to hold on to the now reduced consulting budget which is at \$100,000 each year. Chair Hill said that is what she would like to see the GOC stay with but would like to verify the need for that based on our work plan. The Legislative Council has that information and OPEGA will verify the need for the consulting money based on its Work Plan.

## **REPORT FROM OPEGA DIRECTOR**

- **Project Status Report**

Not discussed.

- **Proposed Legislation With Impact to OPEGA**

Not discussed

## **NEXT COMMITTEE MEETING**

April 10, 2009, 9:30 a.m.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 1:57 p.m. on the motion of Sen. Nass, second Sen. Brannigan, unanimous 9-0.