



SEN. EMILY ANN CAIN, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

MAINE STATE LEGISLATURE GOVERNMENT OVERSIGHT COMMITTEE

MEMBERS:

SEN. ROGER KATZ
SEN. DAVID C. BURNS
SEN. MARGARET M. CRAVEN
SEN. CHRISTOPHER K. JOHNSON
SEN. EDWARD M. YOUNGBLOOD
REP. PAUL T. DAVIS, SR.
REP. ANDREA M. BOLAND
REP. H. DAVID COTTA
REP. LANCE E. HARVELL
REP. MATTHEW J. PETERSON

MEETING SUMMARY January 10, 2014 Approved January 24, 2014

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 9:08 a.m. in the Cross Office Building.

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

ATTENDANCE

Senators: Sen. Cain, Sen. Katz, Sen. Burns, Sen. Craven, Sen. Johnson, and Sen. Youngblood

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland and Rep. Cotta
Absent: Rep. Harvell and Rep. Peterson

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Matthew Kruk, Analyst, OPEGA
Kirk Duplessis, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Executive Branch Officers and Staff Providing Information to the Committee: William Boeschstein, Chief Operating Officer, Dept. of Health and Human Services
Kevin Wells, General Counsel, Dept. of Health and Human Services
David Cheever, State Archivist, State Archives Office
Michael Wenzel, Director, Division of Purchases
Linda Pistner, Chief Deputy Attorney General, Office of the Attorney General
Jim Smith, Chief Information Officer, Dept. of Administration and Financial Affairs

SUMMARY OF THE DECEMBER 12, 2013 GOC MEETING

The Meeting Summary of December 12, 2013 was accepted as written. (Motion by Sen. Craven, second by Chair Kruger, 10-0).

NEW BUSINESS

- **Report on Healthy Maine Partnerships' FY13 Contracts and Funding**

- **Public Comment Period**

For the individuals who gave public comments at the GOC meeting a copy of their testimony is attached to the Meeting Summary. Also included in the Meeting Summary are the GOC members' questions and comments.

William Boeschstein, Chief Operating Officer, DHHS

Sen. Craven asked whether DHHS has addressed the culture within the Department that created distrust for people and especially with legislators. She said a bipartisan group of legislators met three times with the Commissioner of DHHS, and the Director and other staff from MCDC after the award of the FY13 HMP contracts and they denied at each meeting that anything was wrong, that there was no misconduct, that the legislators were being unreasonable to come before them and ask them questions. Sen. Craven said she is very frustrated and now has a lack of trust regarding DHHS. Mr. Boeschstein said not only MCDC, but the Department as a whole, are continually looking to improve their processes and cultures within the departments to the most cost effective and efficient way to deliver services to people who need them. DHHS is continually working to try to improve the performance of the Department.

Sen. Craven noted that if a similar situation happened in the private sector there would be consequences for the employees and asked what was going to happen within the Department to the individuals involved. Mr. Boeschstein said on the advice of counsel he was not allowed to discuss personnel related issues. He said DHHS continues to always evaluate everything that is done within the Department.

Sen. Youngblood asked if DHHS was undertaking the entire effort with Department staff or were they considering hiring outside consultants to help with the process. Mr. Boeschstein said in some areas within the DHHS they do hire consultants if they feel they do not have the expertise in-house, but when addressing improvements throughout the organization, they have the Office of Continuous Quality Improvement and that Office, in addition to other resources within the Department, are continually working to try to improve processes throughout the Department.

Rep. Boland referred to "We are working with the State Archives Office to ensure that our staff is well-informed regarding the proper handling and management of documents . . ." in Mr. Boeschstein's testimony and said it seemed odd to her that they had to go to the State Archives Office to inform DHHS staff about how to handle documents. Mr. Boeschstein said he would refer the question of document retention to the Department's General Counsel to be answered later in the meeting.

Rep. Boland asked how DHHS responds to FOAA requests to ensure compliance. Mr. Boeschstein believes that the Department always tries to comply with a FOAA. When a request is received they review it to make sure that it does not contain personnel issues, and that DHHS is in compliance with making documents available.

Sen. Johnson said when the scope of the contract was subsequently changed by the decision to no longer fund the School Health Coordinators and to add that function to the HMPs, that should have triggered the need to go to an RFP process. He asked what the Department was doing to address that shortcoming in terms of administrative procedures and awareness. Mr. Boeschstein said it was his understanding that DHHS did not have the time to do an RFP as the budget for the HMPs was cut about one third from \$7.5 million to \$4.7 million at the end of the legislative session in May 2012. That would have only allowed 6 weeks to prepare and issue an RFP and have the contracts in place by July 1, 2012. That was not sufficient time to issue an RFP. It was a selection process that was outside the normal processes that DHHS would typically want to engage in.

Sen. Johnson asked for clarity as to how one can make a decision out of necessity to not do something that is required by administrative procedures. The scope of the contract was changing, it was not just reducing the number of agencies being contracted under existing contracts. Mr. Boeschstein believed the MCDC team discussed the situation with DAFS' Department of Purchases and their guidance was that because it was a deappropriation and a reduction in contract costs, an RFP was not necessary. Sen. Johnson said OPEGA's Report is clear that was what occurred initially, but subsequently when it was determined that the School Health Coordinator function would be required to be back filled by HMPs, that was a different matter and not part of the initial discussion. That changed the circumstances and should have triggered a re-review of what was necessary and appropriate. Mr. Boeschstein agreed there were parts of the whole process that were flawed and going forward the Department is going to try to have enough time to abide by and pursue the RFP process.

Sen. Craven said MCDC's procedure was new when the Sun Journal made a FOAA request and were told it would cost \$500 to get the information. She thought that was a barrier and asked if DHHS has looked at that. Mr. Boeschstein said he has not personally reviewed it, but believes the \$500 charge was waived and he would defer to the Department's counsel to answer further questions regarding the FOAA request.

Chair Cain said that while MCDC did not use an RFP process, and there was a quicker turnaround than typically, the MCDC is very familiar with how to do an RFP and could have used similar elements based on the RFP process and applied a similar procedure for documentation it maintained. She asked Mr. Boeschstein if he agreed. He said there were flaws in the process. There were inconsistencies in the scoring and methodology and thinks it was a work in progress in some respects and admitted it was weak and needs improvement. They engaged the Department's Office of Continuous Quality Improvement to assess and look at the weaknesses in the process. That Office issued their report in April 2013 before OPEGA began their review.

Chair Kruger asked if Mr. Boeschstein was at DHHS in a similar position at the time the decisions regarding HMP contracts were made? Mr. Boeschstein said he started his employment at DHHS in February 2011 in his present position so he was in the Department at the time decisions were being made regarding the process for HMP Contracts for FY13.

Sharon Leahy-Lind, Portland, ME

Cynthia Dill introduced herself and said she is Ms. Leahy-Lind's lawyer, and was asked to accompany her in answering the GOC's questions.

Sen. Craven thanked Ms. Leahy-Lind for her courage and bravery for standing up. She has spoken to several staff at the Department who were not willing to say things publicly for fear of losing their job or other retribution.

Sen. Craven asked Ms. Leahy-Lind's opinion of OPEGA's Report. Ms. Leahy-Lind said the Report was excellent with a well-defined scope for the Report of particular questions. However, it merely scratched the surface of what occurred at MCDC during the funding process.

Sen. Burns referred to Ms. Leahy-Lind's description of a July, 2012 meeting with Dr. Pinette where Ms. Leahy-Lind told Dr. Pinette the Deputy Director had grabbed her arm. He asked what Dr. Pinette's response was to what was told to her. Ms. Leahy-Lind said Dr. Pinette said the Deputy Director does that to her all the time, but that they could not have documents shredded and she was going to consult the Commissioner. Dr. Pinette said she would follow-up with her, but did not. Ms. Leahy-Lind went back to Dr. Pinette in August 2012 because things had gotten incredibly worse because of the retaliation toward her for not following instructions.

Sen. Johnson asked if Ms. Leahy-Lind knew Andy Finch's, the HMP Sr. Program Manager, involvement and did he have conversations with anyone in the chain of command regarding shredding documents. She said the only time she was aware of it was when Deb Wigand acknowledged that Mr. Finch had contacted her. Ms. Leahy-Lind did not discuss the situation with Mr. Finch from that day forward.

Chair Kruger asked Ms. Leahy-Lind how long she had worked at DHHS. She said she was employed at DHHS for about twelve years. He asked if that kind of behavior from a fellow employee was part of what is recognized as the culture there or was it something very different. Ms. Leahy-Lind said it was the antithesis of the Department that she had worked in for 12 years.

Becky Smith, Director, Government Relations for the American Heart Association

Rep. Boland asked Ms. Smith if she thought there should be some consequence to shredding public documents. Ms. Smith said if laws were broken, and if documents were shredded that should not have been, there should be consequences. She could not speak on behalf of the American Cancer Society or the Maine Public Health Association, but what she heard and read in the Report, and if what is said is true, there should be consequences. Rep. Boland wondered how an outside person working with the MCDC would see this. Ms. Smith said that is why they felt it was important to be at the public comment to make sure that folks know that they will continue to work with MCDC, and that they need to, but hope in the future the public will be able to trust MCDC's processes and that what they are doing benefits the public health first. If MCDC is saying something is critically important for the public to do, they have to make sure the public is listening to them.

Sen. Craven wanted to know, for example, whether River Valley was holding on to money or whether they have gotten applications to distribute it. Ms. Smith did not know. MCDC does ask her organizations' advice on what sorts of programs they should be doing, but she was not aware of how the financial arrangements work within the Healthy Maine Partnerships.

Judith Meyer, Managing Editor, Sun Journal, Lewiston, ME

Sen. Johnson asked Ms. Meyer if there should be additional staffing in the office of the ombudsman to implement some of her suggestions. Ms. Meyers said the ombudsman position was created about 8 years ago, but was only filled last year because of budget reasons. Before then the AG's Office picked up those tasks with Chief Deputy Linda Pistner being the point person. The job description for the ombudsman requires that the person be an attorney should there be a need to file a lawsuit. It was not intended to be just a FOAA advocate, but someone who could also take legal action. However, the position was not granted the authority to do that. Ms. Meyer said job duties would increase and require more personnel.

Rep. Boland asked Ms. Meyer what the nature of the documents created were and how she was certain they were created. Ms. Meyer said the OPEGA Report says they were created and the Sun Journal had no way of knowing because they were not stamped draft, final copy, etc. OPEGA found that through their investigation.

Rep. Cotta had concerns about Ms. Meyer's testimony because she really did not know if the documents were falsified or fraudulent. Ms. Meyers said it was her understanding that was the finding in the OPEGA investigation. Documents were created to satisfy their request. Rep. Cotta noted that OPEGA's Report only said they were documents that were created not that they were false or fraudulent and that was the only

distinction he was trying to make in order to maintain some objectivity moving forward. Ms. Meyer said according to OPEGA's investigation the documents were not created until after the HMP funding was distributed and the Sun Journal's FOAA request had been submitted.

Ms. Meyer's noted that when OPEGA's Report was issued the Right to Know Advisory Committee had a meeting the following week and talked about the confusion over retaining working papers and whether they should be kept as part of the permanent record. There was general agreement by the Committee that unless there is a specific exemption in FOAA, working papers and drafts must be kept. The ombudsman is to update the training materials used for public officials to make that abundantly clear.

Sen. Johnson asked Ms. Meyer who told her there were working documents and then subsequently said they did not exist. Ms. Meyer said the initial information came from John Martins, the Sun Journal's DHHS contact for FOAA requests. When the contact moved to Christine Zukas was when they were told those records were not available to them. She said it took a month for the Sun Journal to receive the limited amount of documents they had asked for originally.

Chair Cain said she appreciated Ms. Meyer's suggestions regarding the ombudsman. She asked if Ms. Meyer's testimony reflects any conversations the Right to Know Advisory Committee has had around the strengthen of the role of the ombudsman, or is that something the Committee expects to take up and make a formal recommendation to the Judiciary Committee or GOC. Ms. Meyer said the Committee has talked about it informally over the years, but never felt the need to do it and that she had always argued that it was not necessary. The Sun Journal's position shifted and she contacted Sen. Valentino, Chair of the Judiciary Committee to let her know that.

Ed Miller, Senior Vice President, American Lung Association

Sen. Craven noted that she does not resent that the Tribal HMP got more money than any of the other HMPs. It was the process used that is disturbing.

Kristi Ricker, Director, Wabanaki Public Health District

Sen. Johnson asked how Ms. Ricker knew what the alternative motives are, and what individual was she referring to. Ms. Ricker said she did not know what the alternative motives were, but the person she is referring to is the person who made the allegation that there was wrong doing when it came to the scoring of Healthy Androscoggin as well as the Tribe receiving more money than other HMPs. Both are false. Sen. Johnson said Ms. Ricker is not aware of what the alternative motives are, but is describing them just the same.

Sen. Craven asked whether Ms. Ricker thought it was correct to shred papers, be ordered to shred papers or not be able to follow a trail of how public monies are being spent. Ms. Ricker said she does not believe it is correct. She is not aware whether or not that actually happened. She said the staff they work with at MCDC have been very supportive of the Tribes and she finds it hard to believe that the instances described occurred.

Chair Cain referred to Ms. Ricker's testimony of the contract being set up differently for the Tribal Health District. She wanted to clarify that in Recommendation 4 of OPEGA's Report Ms. Ricker was not opposed to being held to the same types of standards for the contract, just that the way that contract is awarded is appropriate as it now is. Ms. Ricker said yes.

Clarissa Webber, former Director, Wabanaki Public Health District

Rep. Boland asked how Ms. Webber tried to make the corrections regarding information on the tribal contracts. Ms. Webber said they sent letters of everything Ms. Ricker and she have documented. This was provided to the press, MCDC and DHHS. Rep. Boland asked if information was also sent to OPEGA and Ms. Webber said this is the first time information had been provided to OPEGA

Megan Hannan, Executive Director, Frannie Peabody Center

Sen. Craven said there is a lot of worry being expressed in the testimony today about the Tribe's funding and that was not the question at all in OPEGA's review. As a matter of fact, the GOC did not know about the disparity until OPEGA's Report was issued. She said they will never make-up for the neglect caused to all of the Indian Nations and especially in Maine, but there are vulnerable populations other places in Maine as well.

Chair Cain asked if there were others wishing to comment on the Healthy Maine Partnerships' FY13 Contracts and Funding Report. Noting that no one responded closed the public comment period.

RECESS

Chair Cain recessed the Government Oversight Committee meeting at 10:55 a.m.

RECONVENED

Chair Cain reconvened the meeting at 11:05 a.m.

-Committee Work Session

Director Ashcroft addressed the concerns about the Tribal Contract expressed during the Public Comment period. OPEGA took no issue with the funding and the way it was distributed through the process. The funding was consistent across the HMPs based on role and OPEGA described in the Report why the Contract with the Tribes had more money than the others. It is exactly what the Committee heard at the meeting earlier that there was additional funding for Tribal District Liaisons that was put into the Contract as well. OPEGA does describe that, but do not call it out as an issue or problem. Director Ashcroft thinks the concerns expressed derive from some of the publicity around Ms. Leahy-Lind's lawsuit and what was reported in the newspaper about additional funding for the Tribes. That does not come from OPEGA.

With regard to Recommendation 4 and the suggestion that MCDC clarify roles and responsibilities for the Tribal Contract and make them as consistent as possible with those of other HMPs, OPEGA did not intend to imply that there should be a cookie cutter approach to the Tribal Contracts. OPEGA's concern was that in interviewing a number of individuals who were involved in developing the HMP Contracts for FY13, OPEGA had difficulties discerning who had been responsible, or played a role in developing the Tribal Contract. It was concerning to OPEGA that MCDC managers, including the Director of the Office of Health Equity, could not specify who had responsibility for that Contract. The Director of that Office said she signed it, but could not tell OPEGA who developed the Contract. Director Ashcroft acknowledged that OPEGA reported what the Director said and did not cross-check what the Director had told them with what is on the actual document and signatures. OPEGA is not suggesting this contract should be bid, but it is a contract that is of significant dollars and that it would make sense for MCDC to make sure that everyone is clear about what the roles and responsibilities are regarding the Tribal Contract. Staff in DHHS Contracting also told OPEGA that they had not seen the Tribal HMP Contract. It was OPEGA's observation generally that there is something different going on with the contract that should be well defined in DHHS so there are no questions in the future.

Director Ashcroft referred to the document that had been mentioned several times and is addressed on page 29 of OPEGA's Report. She said OPEGA did identify a document that appeared to have been created in response to a FOAA request. That document was the rationale that supported the scores given for the category of Support for Developing Public Health Infrastructure two individuals within MCDC. The document provided in response to the FOAA was an excel spreadsheet that had written narrative justification with the scoring for each HMP. OPEGA determined that the creation date and modification date on the

document was not until July 2012 which indicated to OPEGA that it was not created during the process. It may have been an expansion of a document created during the process, but in order to respond fully to that piece of the FOAA request, it does appear MCDC created a particular version of that document. Director Ashcroft would not necessarily call it fraudulent or false, but it is not something that was derived from what OPEGA had seen for documentation kept during the process. In response to several Committee members' questions and comments regarding the document, Director Ashcroft said she would have to go back and look specifically at what the FOAA request had asked for. She could not recall if it asked specifically for documents that showed the rationale, or if it asked for an explanation of the rationale. OPEGA's observation was that it was a document that was provided in response to the FOAA, it was created after the process ended, and therefore, was an indication again that there wasn't certain documentation created and maintained during the process. This is why OPEGA used it as an example.

Director Ashcroft noted that the public documents MCDC posted on their website after they made the public announcement regarding the HMPs, were specifically created to provide an explanation to the public as to what had gone on, and not something that had been created as the process proceeded. In fact, some of the descriptions OPEGA found were inconsistent with what OPEGA saw the process to be. Even the public documents that people drew on for information were created to publicly explain after the fact.

Chair Cain recognized David Cheever, State Archivist.

Mr. Cheever said the whole question of record retention and differentiation between a record and an archival document takes a minute to go in to, particularly now that there are not just the hard copies, but electronic documents. The electronic document, in light of when a document is created, and whether it is a continuation of a process or post process, gets into questions of computer forensics. The difference between what is a record and what is an archival piece will make a distinction of how long you hang on to it, and who has the custody of it and how do you access that for a FOAA request or legislative request. At some point you need to know, not just to hold the record, but how to retrieve it for those who wish to see it.

Sen. Craven asked how long is practical to keep working documents created during a process. She noted that the FOAA request in this case was made about a week after the grants were made. Mr. Cheever said she touched upon another challenge in that each department, each generating agency of a document, looks at how long that document has utility, not just to the generating agency, but to the public, and the rest of government. The State Archives Office helps the generating agencies determine what the retention schedule is for a record. If your agency is talking about millions of dollars and statewide responsibilities, policy decisions that are made at whatever level, etc. you start to consider what the retention schedule should be. Archives ask that each agency have a records officer. In this instance he was not sure that the retention schedules were necessarily known, or the records officers were in tune to what was going on at the time. The Bureau of Purchases has policies and procedures and has their own records retention schedules. Mr. Cheever was not sure those were followed either because when you make the kind of decisions that were involved in this instance, the amount of money, the number of partners and parties to the process, you are looking at a requirement to hang on to records, in part to defend and support your decisions, as opposed to mask how you arrived at your conclusions.

Sen. Craven asked if records retention was part of the training for new employees at the Department. Mr. Cheever said it should be, particularly when talking about the electronic record. One of the challenges not only to the Office of Information Technology, but other Information Services people is that standard emails have a retention schedule of three years. The question is where are you going to keep that information and how are you going to get it back. If it is a record it belongs to the generating agency. Historically the Archives and Management people have been willing to hold on to records, but they are not Archives' records. They belong to the generating agency and when the generating agency wants them back, you give them back. Archives is different, that is the permanent record of the State. Everyone that comes into State government should have a grasp of record retention. He noted that on November 1, 2012 the Secretary of State sent a letter to every State employee with respect to their responsibilities relating to electronic transmissions. It was unfortunate that had to be done, but the State has a good amount of turnover and even those that were not new

employees, it was new information to them. When emails relate to policies, decisions relating to money, and matters that are important to the State, that information has to be able to be retrieved. It mirrors and expands upon that for the hard copy.

Chair Kruger asked if Mr. Cheever could give any insight from the record retention perspective of why information would not be retained. It raised suspicion and wrong doing to him. Mr. Cheever said they do not have a history of decisions being made, and certainly not at this level, where records do not exist. There is a process to be followed and whether it is to satisfy the Bureau of Purchases, Chief Executive, Commissioner, Secretary of State, etc. at some point you need to be able to follow the trail. To mitigate that to a degree is the question of whether the criteria involved in the selection is subjective or objective. Anything that is measurable would be able to stand up to scrutiny. When dealing with government you need a level of transparency and accountability. You need to be able to explain how decisions were arrived at and to provide that explanation, not only to those who were on the short end, but the general public.

In response to Rep. Boland's question regarding record officers in DHHS, Mr. Cheever said within DHHS they know they do not have a current file of who the record officers are in the various bureaus. Many departments have retention schedules for records, but the schedules need to be reviewed, known by the department and the records officers need to be able to apply them. In this instance they had changes and vacancies so it is possible they did not know what the record retention schedules were or the policies. He said it is the agencies', as well as Archives, responsibility to know them.

Sen. Burns asked whether most State agencies have policies and procedures in place pertaining to retention of important documents and whether that management level people would know those policies and procedures. Mr. Cheever said the agencies do have policies and procedures and he would hope that those at the management level knew them. Sen. Burns asked if Mr. Cheever knew whether MCDC had policies and procedures in place pertaining to important documents. Mr. Cheever said the documents might not be archival because they are fairly short term contracts, but in terms of having a retention schedule for that record, considering the money involved, there probably ought to be a retention schedule and that schedule should have been known.

Sen. Burns asked what Mr. Cheever thought, in his position of chief keeper of the records and Archivist, his opinion when he hears accusations about destroying records because of a possibility of a forthcoming FOIA request. Mr. Cheever said legally that is an allegation and not a known fact. There might be an allegation that something is occurring, and the motivation behind it might be that there is a FOIA request pending, but in this instance from what he has read in OPEGA's Report there could have been an anticipation that somebody would want to know how the decision was reached. It would behoove the Department to be able to answer that question, but if an agency made the decision early on that documents were going to be destroyed on the way through, in part because they may disclose personal information, etc., that rationale rests with the people who made the decision. The fact that you are talking about a spending decision and a process to arrive at that spending decision, would suggest that the records would have been kept.

Chair Cain said the question of who should have known does not change the fact that it is still the policy if there is a policy for certain records to be kept. Mr. Cheever said normative order would hold that they would be aware that these are items that should be kept because of the process undertaken. Although there was guidance sought from the Bureau of Purchases, it is not Purchases responsibility to ask for the records pertaining to the decision-making process. That rests with the generating agency making the decision on that purchase. He did not want to speak for Purchases, but knows from what he has seen in the past, they inform agencies that if they are going to make a purchase, they need to have a record, and that record needs to be retrievable for the period of time covered by the retention schedule.

Chair Cain asked about the common sense element that comes into play, and in this particular case in the Report it is talked about how MCDC is an agency that is certainly familiar with RFP processes. In this case, their initial determination from DAFS Purchases was they did not have to do a formal RFP, but as things evolved, they did not go back and ask that question again. She asked whether Mr. Cheever would have

advised that common sense be used and say although it is not a formal RFP process, it is a lot of money, it still changes programs that mirror elements that would be in an RFP. Mr. Cheever said there are elements of self-preservation and self-promotion. You want to assure everyone that you have reached a decision that is defensible and want to be sure you will be free from a charge of whatever the issue is that might be slung at you. He understands the pressure of time because you have to have a quick turn around, but you still have to follow a process. That process may have put an ordinate amount of pressure on people to make decisions quickly, and is all the more reason that it might have made sense to keep the record.

Sen. Katz asked if there was anything specific in the standards Mr. Cheever has seen that say this record should have been kept. Mr. Cheever said given the magnitude of the Healthy Maine Partnerships and millions of dollars, it is more than common sense to say you would abide by even the Bureau of Purchases standards to make sure that the decisions made in that process had a defensible mechanism that could be demonstrated to the public and to your own people. Sen. Katz hoped that moving ahead, the State's record retention policies could be made as definite as possible so that not only can it be seen that the person violated common sense in not keeping a document, but also show provisions in the records retention policies says it should have been kept. Mr. Cheever said MCDC will have a retention schedule, every agency has a number of retention schedules, and there may be one that specifically refers to the Healthy Maine Partnerships. It may be in process, it may already exist. He would get the details of that, but in terms of across the board, there is a certain amount that is going to be guided just by the Bureau of Purchases' Policies. Archives has policies as well. Such across the board policies would not be specific to Health and Human Services any more than it would be for the Department of Transportation.

Chair Cain noted that Mr. Cheever was going to get back with information for the GOC. A question she had was around defining what is a working document and if there are existing definitions that he is aware of, either around Maine State Government, or with his colleagues around the country that he may be able to ask. The GOC would be interested in that as well. What do those definitions look like, how varied are they and how much do they apply to Maine or not.

The members of the Committee thanked Mr. Cheever for attending the meeting and for the information he provided.

RECESS

Chair Cain recessed the Government Oversight Committee at 12:02 p.m..

RECONVENED

Chair Cain reconvened the meeting at 12:47 p.m.

Chair Cain referred members to the memo from John Gallagher, Director of MaineHousing, and letter from Rick McCarthy, Senior Advisor to the Maine Community Action Association, that had been distributed during the Committee recess regarding the agenda item of the **Report Back from MaineHousing on Status of Actions from OPEGA's Review of LIHEAP and WAP Programs as well as Status of Improvements to the ECOS System**. She asked that the Committee review the documents and let Director Ashcroft know if they had questions or wanted Mr. Gallagher or Mr. McCarthy to attend the next meeting. (Copies of the memo and letter are attached to the Meeting Summary).

The Committee continued the work session on the Healthy Maine Partnerships FY13 Contracts and Funding Report.

Chair Cain recognized Michael Wenzel from the Division of Purchases.

Chair Cain asked Mr. Wenzel whether, knowing what they do now about how the scope changed and all the elements that were in play, he would have recommended an RFP. Mr. Wenzel said no. During the initial discussion comments came up about the time constraints and, after discussing the constraints with his colleagues, an RFP could not have been done within those time constraints. He did inform DHHS that the process had to be scalable because at the time the money was dynamic and they were not sure what they were going to receive. He told them it had to be scalable because if they received more money, they did not want to set up something they could not deal with. He also said it had to be fair and transparent. When you consider the four variables – scalable, fair, transparent and preserve as much of the public health infrastructure as possible given the time constraints, it would be difficult to do an RFP. Mr. Wenzel said the year before MCDC had RFP'd it and established essentially all the components already. Those were competitively bid so in his mind the infrastructure was established and it made sense that you could scope that down and the challenge was that they could bring it back out if they received more money.

Chair Cain said Mr. Wenzel's piece around transparency gets to the heart of the matter around documents being preserved as part of the process across all of State government.

Rep. Boland asked if Purchases would be looking to make sure agencies had document officers. Mr. Wenzel said the selection process is relegated to the Department. He said the HMP incident is rare and they had not had previous experience with that, so they took the most logical approach to figuring out how to proceed without going to an RFP. It is not codified in public procurement where you have an established contract for five years and then funding gets pulled just before the renewal. He said in the meeting with the Department, they were trying to figure out a process of how they were going to do it fairly because knew that people would ask questions.

Sen. Johnson asked if Mr. Wenzel would consider it fair to establish criteria, rank the entities based on that and then change the criteria. Mr. Wenzel said that would not be normal. In a normal RFP process you establish your evaluation criteria first and that is codified in concrete. Sen. Johnson asked what the normal process would be for dealing with a change of scope in the procurement in the midst of a selection process going on. Mr. Wenzel said in the normal RFP process that would not be allowed, you would pull the RFP and rewrite it.

Chair Cain asked if there is a standard set of do's and don'ts or standard advice given from Purchasing to any entity in State government around recordkeeping that says to hold on to these documents. Mr. Wenzel said yes there is. They have three certified public procurement officials who give advice and would tell someone to look at their Archive retention schedule or contact their records officers because it can differ from department to department.

Sen. Johnson asked Mr. Wenzel if he provided MCDC the same sort of advice he would have given for an RFP regarding their actions on retaining records and contacting their records officer. Mr. Wenzel said his advice was silent to record retention. He did not give advice on records retention.

The Committee thanked Mr. Wenzel for answering their questions and providing information.

Chair Cain recognized Mr. Boeschstein and Kevin Wells, General Council, DHHS

Rep. Boland asked if the person who ordered documents to be shredded was a new employee. Mr. Boeschstein said that person is not new to the Department. She asked if there was a policy in place at the time, or was that person going by a retention schedule. Mr. Boeschstein was unaware whether there was a policy in place at the time or if that person was going by that. It is a question that he would be happy to get an answer to for the GOC.

Sen. Johnson asked if the person who ordered the shredding had been aware of DAFS advice regarding the process and that it needed to be scalable, fair, transparent, and preserve public health infrastructure. Mr. Boeschstein said the person certainly would have been aware of DAFS' guidance to be transparent and to put a consistent policy in place. Sen. Johnson asked if ordering the shredding of documents in Mr. Boeschstein's estimation was consistent with that transparency. Mr. Boeschstein said if a person knew the document was to

be retained and they ordered the shredding, then that is wrong. However, as heard from Mr. Cheever and the AG's Office, there is a lot of gray area about what documents should be retained. Sen. Johnson asked if information was in existence and was specifically requested in a FOAA request for one of the twenty-seven copies of the evaluation matrix that Mr. Martins informed the Sun Journal existed, should this person have ordered the shredding of that material. Would that be consistent with transparency? Mr. Boeschstein said he was uncomfortable answering the question with respect to the pending litigation. Mr. Wells advised Mr. Boeschstein that assuming the question was hypothetical, thought he could answer Sen. Johnson's question. Mr. Boeschstein said no, it would not have been consistent with transparency. He said there is a policy that those documents should be retained and anytime DHHS receives a FOAA request they are to be complicit with that policy unless there are personnel issues involved. Sen. Johnson asked if the people making the determination on the evaluation and selection process for reducing the number of contracts should have been familiar with typical RFP processes. Mr. Boeschstein said he did not know if the people in the core group had been involved in previous RFPs, but would suspect that most, if not all, would be and should have been aware of that process. Sen. Johnson asked if when there was a change in scope Mr. Boeschstein felt that the process should have been started from scratch to reflect the change and the selection. Mr. Boeschstein said if there is a significant change of scope, they would typically go through an RFP process, but as Mr. Wenzel previously said, with only six weeks to get the contracts established and encumbered, an RFP process was virtually impossible to do in that timeframe. Given the reality of the situation from an operation perspective, the ideal does not work, unfortunately. If contracts are not encumbered people do not get paid. If HMPs are operating without a contract they are operating at risk and do not get paid until a contract is encumbered.

Sen. Johnson asked if it was fair to revise the criteria after you have already applied the first set of criteria to all of the applicants in the evaluation process. Mr. Boeschstein said they accept that the process was flawed in changing criteria and not necessarily being consistent across different districts. It was a flawed process and DHHS recognized that through the review done by its Office of Continuous Quality Improvement Services. They have said as much and OPEGA confirmed that finding in their Report, so he accepts that.

Sen. Burns clarified that Mr. Boeschstein said he would provide the policies and procedures for document retention. Mr. Boeschstein said he did not know if they had them, but if they do, they will be provided. He will let the GOC know one way or the other. Mr. Wells said like all other departments, DHHS' retention schedules are published on the State Archives website so they are available. Chair Cain said that raises a question for her because if it is online anybody could see it any anytime. Mr. Wells said if you review the schedules he thinks you will see that they are not necessarily as clear as one might like and they certainly don't address the issue that Mr. Cheever spoke about as to what is a working document. Chair Cain said the GOC shares that concern and that is why they asked for some definitions.

Sen. Katz asked if anyone was in possession of written statements from the person or persons in question who allegedly ordered the shredding of documents, or are they on record as to their side of the story. Do statements exist from those individuals giving their version of what happened, and if so, where are they. Mr. Wells said those are personnel issues and they have been advised that they should not be publicly discussing personnel issues. In addition, all that information would be relevant to the litigation. Sen. Katz asked what was going on internally, is there an investigation going on within the Department or State government. Mr. Wells said they could not answer that.

Sen. Katz asked Director Ashcroft if OPEGA was in possession of any written statements, or has OPEGA staff interviewed the individuals involved and does OPEGA know what their version of events is. Director Ashcroft said yes. OPEGA spoke with everyone that was involved and has their version of the key events. OPEGA received inconsistent information from those interviews. What OPEGA could glean and felt could be most consistently described is reflected in the Report.

The GOC thanked both Mr. Boeschstein and Mr. Wells for attending the meeting and asked if they would attend the next GOC meeting for the continued GOC work session regarding OPEGA's Report.

Rep. Cotta noted that John Martins said DHHS had the documents in response to the FOAA request and would provide them. He asked if anyone has asked Mr. Martins if he actually saw those documents, or did he assume that he had them. Mr. Wells said he was afraid he could not answer the questions. It is a factual question and is directly related to litigation and on the advice of their counsel, that is an area that they have been advised not to discuss. Sen. Johnson suggested that the GOC ask Ms. Meyer to answer that question. Chair Cain said the GOC had asked for a copy of the FOAA request.

Sen. Burns asked what the GOC can legally know and what they can't. What is in OPEGA's possession that the Committee cannot get copies of. Director Ashcroft said she did not think there was anything in her possession that the GOC could not know about. She might consider whether the source of certain pieces of information need to be made public if she feels there might be some jeopardy to whoever provided it. The Director believes she can share with the GOC what OPEGA heard or saw. OPEGA does have a lot of documents that were provided, for example, the copy of the FOAA request, so to whatever degree she can make it more efficient in obtaining documents the GOC is going to ask for, then perhaps OPEGA can bring those forward. Director Ashcroft said because someone else can't answer the Committee's questions does not mean she does not have an answer based on the work OPEGA did that she can share with them from OPEGA's perspective. Sen. Burns said there is so much point and counterpoint going on he is trying to discern what the GOC's place is and whether it is the proper venue.

Sen. Katz asked if OPEGA had a written statement from the person who allegedly ordered the shredding of documents. Director Ashcroft said OPEGA created a summary of the conversation, the person did not submit a written statement and the interview was not recorded. He asked if, under OPEGA's statute, the Director could disclose that summary to the GOC and/or is it a public record anyway that anyone could request. Director Ashcroft said under OPEGA's statute it would be considered a confidential working document and therefore would not be subject to FOAA. If there is something in particular the Committee felt they needed to see rather than have the Director's narrative on what it includes, that would be up to the GOC. Sen. Katz said one thing the GOC could consider, as a Committee, is whether they want to hear more from Director Ashcroft and whether they want to receive the document.

Chair Kruger asked if OPEGA had the records retention policy from the time the event occurred. Director Ashcroft said OPEGA requested from the Department, as part of their review, any written policies, procedures or guidance that they had in place that might have related to the process. OPEGA did not receive any such policies or procedures. OPEGA understood from talking with DAFS, etc. that there probably was a records retention schedule and the State Archivist has just provided her with the Department's record retention schedule so the GOC could review that. Director Ashcroft said she briefly reviewed it now, and it does not in any way come close to dealing in any specificity with the types of documents that the Committee is now discussing. OPEGA was left with it being a very gray area.

Rep. Cotta asked if the person who actually agreed to the interview, did they have the expectation that what they said would be held in private. Director Ashcroft believes, given the nature of the way OPEGA's statute is structured and the work they typically do, that the people being interviewed do know that whatever OPEGA is going to create from our conversation and notes are confidential working documents and are not subject to FOAA. Often if OPEGA thinks there is going to be an opportunity for them to provide information they might otherwise be reluctant to provide, she does offer them opportunity to provide the information as a confidential source. There is a provision in OPEGA's statute that allows OPEGA to keep their identity confidential if they choose to avail themselves of that. In this particular case no one took that stance for their whole interview. Director Ashcroft has hesitation personally about what it will mean for OPEGA if they start releasing their summaries of conversations with individuals. She understands the seriousness of the situation and hopes the GOC/OPEGA will be able to find the right middle ground on that because it could jeopardize future reviews. Director Ashcroft thinks that when people talk with OPEGA, it is important that the information provided will not end up as a public display without there being a reason for that to happen. Rep. Cotta asked what the person who is being interviewed by OPEGA thought they had for confidentiality protection under the statute, the legal position of the GOC to request that information, and OPEGA's obligation to either defend or release it. Director Ashcroft asked for time to answer in order to confer with Chief Deputy Attorney Pistner. She did say that

OPEGA's Report includes information from interviews they had with everyone that had been involved in the shredding of document discussions and that OPEGA did not get consistent descriptions of the tenor of those conversations, the environment in which they took place, and the reasons behind them. That is why in the Report OPEGA says employees were either instructed or advised to destroy documents and there is even discrepancies about what documents anybody was talking about getting rid of at the time. OPEGA talked to a lot of people, but did not get a consistent story.

Sen. Burns said he wanted to protect OPEGA's ability to gather information in future reviews with the air of confidentiality and wants to make sure that the GOC does not unnecessarily divulge someone's name until there is a fact-finding done in a different environment that would make that appropriate. He would be interested in hearing the content of the rebuttal of the allegations, if possible, but not the particular person. Director Ashcroft referred to an instance where they received inconsistent stories. OPEGA has the explanation from one of the individuals involved that certain people were concerned about maintaining the confidentiality of the project officers and the district liaisons who took the survey and felt that confidentiality had been promised. They were concerned that those survey results may become public. Consequently the Deputy Director gave the advice that if they did not want them to be released they should no longer be retained. That is a different tenor than being instructed to definitely destroy everything that had to do with Healthy Maine Partnerships. One of the other individuals who was told to get rid of documents, did not describe that conversation the same way. It sounded more like it had come about in a general meeting where a discussion took place about whether or not to retain working documents. It did not come across with the tenor of being a directive necessarily in the same way OPEGA heard it from some other individuals. At the higher level of management, there was this explanation that they didn't necessarily intend for staff to be retaining every working document. That would put the GOC right back to where they were earlier about what is a working document and when does it become important and she thinks that is key to the question. They intended to keep all of the final results that would support their final decision, but that there was not really any need or expectation to keep the other documents. Director Ashcroft said she did not know if that was an explanation after the fact, but that is the explanation that OPEGA received about why documents may not have necessarily been retained.

Sen. Johnson asked if OPEGA had any information regarding the change in criteria. He thinks the people involved in the process should have been aware of normal RFP expectations and DAFS advice of fairness and transparency, so he did not find it credible that someone could believe that altering the criteria in the middle and subsequently destroying the record of the prior evaluation is anything approaching fair. He wanted to know, not only that there was proper procedure and evidence of who made what decision, but whether this was brought to upper management's attention, what they knew about the change in mid-stream of the process and the decision not to retain the information about the earlier evaluation. Sen. Johnson said that is different than the question of keeping every record, every reiteration of a document. When one uses an evaluative instrument to evaluate all the contract entities, it becomes important in the evaluating process, and a record of importance. It is no longer just a revision of that document which ultimately was used for evaluation. He wanted to know what the conversations were between the different levels of management regarding the nature of those documents and whether they should be destroyed or not. He asked if OPEGA had any information regarding that from the information collected. Director Ashcroft said that is another area where OPEGA has inconsistent descriptions as to exactly what was said to whom, and when, that goes all the way up through the management chain. OPEGA does not have a consistent view that she could tell the GOC for sure what went on. She is also unclear how comprehensive was any discussion regarding whether or not they were keeping documents, versus one or two people's decision of how documents were going to be handled. It is still unclear to Director Ashcroft how comprehensive that awareness was that only final documents would be kept or at what point in the process that became an issue.

Sen. Johnson said management should have had clear understanding of what was going on and what advice was being given regarding the department's liability and responsibility to the public. He has a hard time believing there are different stories and understanding at different levels of management unless someone is manufacturing some of those stories. Director Ashcroft said at the beginning of the review OPEGA did hear consistently from all the folks who were trying to establish what the right criteria might be, that they were all looking for something that could be as objective as possible and brainstormed different criteria. OPEGA did see evidence that there were a couple of iterations about what they thought they might use, there were problems getting measurable data

around some of the things they thought they would like to have, and in the end, they arrived at some criteria that they went forward with. Even though the criteria was changing at that point did not carry the same implications for OPEGA as the observation made that at some point, much later in the process, very near the end, there was additional change made to the criteria and weighing after the results of the other criteria had been totaled. She thinks that takes on a whole different aspect than what the folks that were working with it at the beginning of the process and what it seemed like they were setting out to achieve.

Rep. Cotta thought MCDC was concerned about the completed surveys and while they were used as part of the criteria, the person completing the survey would not want their answers known. Given that set of circumstances the survey would be public, but the responses would not be. He asked if that was a fair assumption. Director Ashcroft said that was one of the explanations OPEGA received. That the folks who completed the surveys did so not knowing what the true purpose of the survey was and they were given some expectation that it would be held in confidence. The survey responses are one of the sets of documents that was described as potentially being discussed for getting rid of.

Chair Cain recognized Chief Deputy Attorney General Pistner.

Chief Deputy Pistner told the GOC she was not at liberty to share with them whether any further action will be taken by the State in response to the Report and the information that was collected by OPEGA. She is also not at the meeting to let the GOC know whether some particular action taken by a particular person is in violation of law. Neither of those would be appropriate.

Sen. Katz said he knows personnel actions are confidential, but asked if there were disciplinary action taken at the Department level, would it be public information. Chief Deputy Pistner said if there is a final decision of discipline that becomes publicly available. Sen. Katz asked when the pending lawsuit was filed. She said there was a human rights complaint filed first back in April and after the six month window went by with no action by the Human Rights Commission, there was a Federal Court suit filed. The AG's Office defends the State so there are members of that office who are defending the State in that case. Those attorneys, the Attorney General and herself were involved in a cooperative effort with DHHS and OIT to try to make sure that all the documents that existed covered by the FOAA request were in fact produced. Sen. Katz asked if there was a schedule in order that was issued in terms of when the case is likely to get to trial, if it goes that far. Chief Deputy Pistner said a motion to dismiss has been filed and depending on what other documents are filed with the Court that could affect the timeframe.

Sen. Craven asked if the Chief Deputy considered it a crime to shred documents that are publicly owned. She said there was not a simple answer because there is a fundamental structure to the Freedom of Access Law and record retention. There is nothing in the FOAA law itself that says you should keep anything. The State has a process, which the State Archivist has explained, that every agency has to devise its own schedule. She encouraged the GOC to look at the schedules to get an example of what is contained in them. DHHS is a huge Department with a lot of paper, and the schedules do not include any information about working documents so the system depends on a certain amount of judgment and good faith. When the State runs into a problem, as here, and you start looking into it, you may see that maybe the law didn't require it to be kept. Chief Deputy Pistner thinks it is a violation of law if you have knowledge that there is a FOAA request that has been submitted to your agency and you intentionally destroy the records requested.

Sen. Craven asked what would the next step be if there was not a lawsuit pending and OPEGA had produced the Report just for the Legislature. Chief Deputy Pistner thinks it would be a question of whether, in your judgment, the restrictions that are in the law are adequate. The Freedom of Access law has been on the books a long time, with only a little change over that time. There is now a provision for a \$500 fine for an intentional violation that is a civil violation. Destruction and mutilation of records is a crime, but it does not say a lot about what the circumstances are and if you do not have an obligation to retain it, how do you draw the line between the things that you can throw out and those that you can't. It is clear that everybody, with the exception of the Legislature, cannot give the documents because they are drafts or working papers. State agencies do not get to hold back on any drafts, and on the other hand, they are not required to keep all drafts. If you have a document that you share

with people and it has been used as a basis for a decision, good government would say that you keep that. A prospective action, to prevent this from happening again, would be to think of the records retention requirements that are clear for RFPs as a rule for people involved in any scoring or selection process. Should the same rule apply when you get outside the RFP process, and should you keep the same kind of documents as you do with an RFP, as a policy matter. That is something you could decide without creating a definition of working documents that would apply across the board.

Chair Cain said the GOC had questions about how to strengthen the ombudsman position in the AG's Office related to FOAA requests. Suggestions offered were that the position be able to bring suit, or have the authority to make someone give them the information. Also the issue of there not being any official forensic IT people on staff to deal with how to retrieve information. She asked for Chief Deputy Pistner's opinion. Chief Deputy Pistner said what the AG's Office sees in the amount of activity the ombudsman has had is the crest of something that has been building for the last ten years. FOAA law has been on the books since 1965 in one form or another, but there has been a lot more awareness of it lately. Citizens are aware that they have rights under the law to get copies of things and they have been complaining all along. What is excellent about the ombudsman position is you now have somebody who could coordinate. Apart from records officers, each agency in state government has to have a FOAA request person. The question of whether that office should have more power is complicated. The ombudsman has the authority to issue advisory opinions, but not to issue binding opinions. The rest of the AG's Office advises State agencies all the time about compliance with FOAA requests. The normal thing people complain about is they did not receive information requested. The records are found and provided if that is appropriate. So to have the same office engaging in the function of working alongside the agency, trying to get everything out that should be out there, and then turning around, and fining you, could create some problems in terms of agencies' interest in cooperating with the ombudsman. There is a huge difference between State government and local government where a lot of people are volunteers, and many of the complaints come from local government. She is sure the Right to Know Advisory Committee would be happy to work on that issue.

Chair Cain said she would like to have Chief Deputy Pistner attend the next GOC meeting where the Committee will continue its work session after members have had an opportunity to think about what information they have learned today. The Committee thanked Chief Deputy Pistner for the information she provided.

Chair Cain said she did not see the GOC voting on OPEGA's Report at this meeting because there are so many questions still to be answered. The Committee has some clarity in some areas and more questions in others. She asked Director Ashcroft if there were any questions she had. Director Ashcroft wanted to know what the GOC would like OPEGA to put together for their next meeting. She will forward the link to the guidelines and retention schedules to the GOC. Sen. Johnson thought it would be helpful to have a time line of when the evaluation was performed and if the Director was aware of what the timing was of the original evaluation that was subsequently changed and different criteria applied. Also the FOAA request, Director Ashcroft said OPEGA will get that information and thinks the exchanges between Mr. Martins and the Sun Journal were an email and is something that she could get the dates around.

Sen. Burns asked where the GOC thought they may be going with the Report. Were they looking for some type of policy recommendation or statute change that will require agencies to be more careful, or increased oversight of the process. Chair Cain said that was up to the GOC, but from what she heard at the meeting and the discussion they first had when the Report was released it was to make some formal recommendations to the departments. The first question is does the GOC agree with OPEGA's Report Recommendations and do they want to make sure they are the recommendations that go forward in the specific case of MCDC. Does the GOC want to expand that to other places and who should they communicate that to. The GOC had questions raised at this meeting about recordkeeping and what the schedules are, what is a working document and whether or not there should be more definition around that for the GOC's purposes in this case or broader. There were suggestions related to the ombudsman and whether or not that needs to be changed or strengthened and how. Chair Cain said there are a lot of issues for the GOC to discuss in the Report and none of them apply going backwards. First they should look at what the Report recommends. Then what did they hear in the public comment, or came up during the work session, that might lead the Committee to take additional action either through recommendations or other policy documents by initiating the Committee's own legislation or establishing

some schedule for reviewing the actual implementation of the recommendations in the coming months. Sen. Burns did not think the GOC was going to progress much on the issue of culpability. Sen. Johnson said that touches on an area the GOC might want to add to the recommendations. The examination of the FOAA law and what the responsibilities are for managing to ensure that all employees are aware of their obligations under that and responsibility if anything comes to their attention to ensure that those are complied with. If that is not covered in law sufficiently, then it should be.

Chair Kruger agreed with adding more authority in the ombudsman office. He was unaware of how little they can do. Rep. Cotta said ombudsman throughout the State are always a conduit, connector and advocate rather than an enforcement, adjudicator, etc. so thinks the GOC needs to be careful because they are generally there to assist and advise, not to impeach and interrogate. He said there may not be a legislative remedy regarding the FOAA law, but may be directional in nature to the Commissioners advising them that they will need a records officers of program and policy that will outline their department's policies on what a working paper is. The Legislature is not going to tell them what it is, but he does think it would be appropriate for the GOC to say review what you have. Chair Cain said to that she would add, as noted from Chief Deputy Pistner, that the State's penalties needed to be modernized.

Sen. Craven did not think it was not of much use to have a FOAA law if it couldn't be enforced and MCDC is not the only one that has been out of compliance recently. She wondered if there was some way the GOC could find out whether the lead HMPs were able to dispense their monies, if there were applications for it, or how is that working. Could the GOC find out if that money is being distributed and being effectively used or if it is just sitting there.

Rep. Boland said the representatives from the Tribes said they had sent information regarding their opinions/assertions to the press and she would be interested to know what that information was since they were making remarks about the OPEGA Report not being accurate. Rep. Boland said she would like to find out whether there was information distributed that was in conflict with OPEGA's Report. Chair Cain said perhaps Director Ashcroft could ask those who testified at the public comment if there were things that were not included in their testimony today that they felt the GOC would benefit from. Director Ashcroft will review their testimony and follow-up as necessary.

Director Ashcroft said Mr. Cheever mentioned a communication that was sent out by the Secretary of State earlier in the year to all employees and said Jennifer Smith of DAFS just provided that to her and told her that all employees were required to sign it. She has not had a chance to review it to see how it might dovetail with anything the GOC is talking about in terms of people being aware and how to hold them accountable. Director Ashcroft will do that for the Committee. She said part of what the GOC is talking about is the retention of something that was created, and whether or not it should have been created. She also wonders if part of the question is about whether there should be guidance or policy about what is required to be created to document a process, the justifications for how they are putting the process together, or the changes. Director Ashcroft said OPEGA heard from more than one individual and it is mentioned in the Report that MCDC intended to have limited documentation to start with. If you decide not to create a lot then there is not a lot of documentation, whether you decide to destroy it or not. In this particular situation the limited documentation was also part of the problem. Chair Cain said it seems clear from what they heard at the meeting that there was a failure of common sense in some cases where the advice was actually given to be transparent and that standard was clearly not met. Whether there was something lost in the translation or it needs to be codified more specifically in the laws, policies or processes she thinks is the question. Sen. Youngblood noted that it would be hard to write every single thing that every member of Maine government is going to do. Chair Cain said you cannot legislate common sense, but it should not be too much to expect it.

Sen. Burns cautioned that the GOC has to be careful postulating about what the intentions were alleged to have been. He heard testimony at the meeting that it may very well have been for legitimate reasons – protection of confidentiality. He does not know the answers because the GOC has not interrogated individuals. He said the GOC had to be careful about coming to the consensus that wrong was done. The process followed may have been sloppy, but he is not sure what people's intentions were and does not want that hanging out there over people's

head until it is proven. Chair Cain said in her comments she was simply reflecting what was heard at the meeting - which was everybody said it should have been done better.

Sen. Johnson said it is a problem for him if people think it is okay to destroy information sought in a FOAA just because they keep it in the first place. If it is legitimate to keep some of the information used in evaluation in a public process confidential then it should have been identified as confidential and authorized to be retained as such at the outset. It is not okay to go out and gather information, use it to make a decision that is public information at that point, and then claim not to like releasing some of the information that was the basis of that, so destroy it. That is a fundamental failure.

Sen. Craven said she has received five letters and several telephone calls talking about the culture in that agency and how afraid employees are. One person had left the agency, but was still afraid to tell her what was going inside. Every one of them that spoke to Sen. Craven personally told her how unbelievably difficult it was to work there and she is convinced that there was intent and problems. When people who work there, or have worked there, are so upset and afraid of retribution she thinks that is wrong.

Chair Cain said the GOC will continue the work session on OPEGA's Healthy Maine Partnerships' FY13 Contracts and Funding Report at their meeting on January 24th.

- Committee Vote

The GOC did not take a vote on OPEGA's Healthy Maine Partnerships' FY13 Contracts and Funding Report.

UNFINISHED BUSINESS

- **Report Back from Maine Housing on Status of Actions from OPEGA's Review of LIHEAP and WAP Programs as well as Status of Improvements to the ECOS System**

Material was distributed to the GOC earlier in the meeting and is attached to the Meeting Summary

Chair Cain asked if there was objection to taking an item out of order. Hearing none moved to **Review of Draft Legislation Establishing On-going Legislative Review Process for Tax Expenditure Programs.**

- **Review of Draft Legislation Establishing On-going Legislative Review Process for Tax Expenditure Programs**

Director Ashcroft said the process that was proposed and outlined to the Task Force involved OPEGA and the GOC. The Task Force, as part of their Report, was to submit draft legislation. They took the proposed process and asked Julies Jones, Analyst, Taxation Committee, to draft the legislation for it. That legislation will be going to the Appropriations and Financial Affairs (AFA) Committee. She referred members to the draft legislation in their notebook that included her edits and comments. Director Ashcroft has not yet finalized it with Ms. Jones. Because this is going to be so integral to the GOC and OPEGA, they are looking for the GOC members' comments or changes in the draft legislation before it goes to AFA Committee.

Chair Cain asked when the Director said it was going to the AFA Committee, did she mean the draft legislation is going there or there is a bill going there. Director Ashcroft said the draft legislation was going in conjunction with the Task Force's Report.

Sen. Katz said he was on the Tax Expenditure Task Force so was included in the effort to put the legislation together. He knew it has been of interest to the GOC for some time. This is an effort to try to put into place a periodic review of all tax expenditure issues, tax breaks, deductions, credits and the like to see if they are still fulfilling the purpose for which they were intended and perhaps get rid of some or even beef some up. One of the central questions was where should that evaluation review process sit in State government, and the

conclusion the Tax Force reached was that OPEGA was the right place for it to go. There was no need to create another entity. The proposed process has OPEGA regularly involved in the evaluations, helping to set up the criteria for the evaluations and then making periodic reports to the Taxation Committee once the evaluations are complete. The Task Force unanimously thought that was how to proceed.

Director Ashcroft noted that as currently drafted the legislation creates an additional section to OPEGA's statute. She thinks that is appropriate so it is clear that all of the provisions that apply to OPEGA reviews typically would also apply to these reviews. In the legislation there is a place holder for an additional section to go in with regard to an appropriation for additional resources. They had a discussion that it would require dedicated resources in OPEGA and Ms. Jones is working on lining that out. Director Ashcroft has proposed that that appropriation would initially be for one Senior Analyst to get the process moving because until they develop the schedule for when all of the reviews need to be done and which kind of evaluation needs to be done for each, she cannot judge well all of the additional resources that would be needed. To meet what is required of OPEGA in the draft legislation by the end of 2014 the position would need to be filled by July or August 2014. According to the draft legislation the review schedule piece is complete, the GOC would assess the resources that are going to be needed and make a proposal as part of the biennial budget.

Sen. Youngblood said his first thoughts were that OPEGA was created so that the Legislature had a way of having somebody look at issues that were of great concern to an individual or a committee. OPEGA has never been staffed to the point of the original intent and the GOC has a list of topics they would like reviewed, but OPEGA does not have the staff to do so. He said reviewing tax expenditure programs is a big task and will not be done easily with one person. He hopes the GOC is in a position to say that unless OPEGA gets the staff necessary to do the additional work they will not take this on.

Sen. Johnson said he understood one of the additional difficulties was identifying what the intent was for any particular tax expenditure. He asked how those will be addressed in an ongoing basis. Director Ashcroft said under the draft legislation the intent is for OPEGA to lay out what it sees for the goals or objectives that are relevant to the programs are, and if they do not already exist, propose them for any particular expenditure. The GOC would approve the goals and objectives, after conferring to the degree necessary with the Taxation Committee and whoever else might be appropriate to make sure everyone is on the same page before OPEGA evaluates it. There is also that same process around the performance measures that will be used to evaluate whether the program is meeting its goals. The GOC would be in the position of determining if the performance measures proposed by OPEGA looked appropriate and calls for the GOC to be able to draw on policy committees' expertise as well as outside consultants' expertise or members of the Economic Forecasting Commission in making that determination. The GOC would approve all of those before OPEGA starts a cycle of evaluation. Sen. Johnson is very enthusiastic about what this is accomplishing and the structure.

Sen. Katz agreed with Sen. Youngblood's comments and said the Task Force wanted to make sure it was clear that if the Legislature is going to do this, wherever it is, it is not going to be done within existing resources. They felt it was worth spending a little bit more money to be able to figure out whether the State is spending \$2 billion wisely. Whether it is done in OPEGA, some separate entity or beefing up of the Taxation Committee, it is going to require additional resources. Director Ashcroft noted that she believes it is going to require more than one position because the evaluations are to be done on an eight year cycle, but feels uninformed at this time to give the GOC a good sense of how many positions will be needed until the work is done that lays out the schedules.

Rep. Boland suggested an addition to the draft legislation. She finds the words tax expenditures can be confusing and thought it would be good to have definitions of the other related words such as exception, deduction, special credit, deferral of tax liability that are mentioned at the top of page 7. Director Ashcroft said that section of statute is what is currently existing related to development of the State budget and is not part of what will go in OPEGA's statute, but she will pass that suggestion on to Ms. Jones.

Director Ashcroft said if any Committee member has any additional comments or suggestions, that they get those to her.

- **Update on OPEGA's Formal Follow-Up Review of Office of Information Technology**

Director Ashcroft said OPEGA is doing a formal follow-up review of OIT's progress in three particular areas. The GOC had asked OIT to establish improvement of goals and an action plan for getting to a future state by the end of two years. She referred the GOC to the material in their notebooks. OPEGA's work to date has been monitoring what is going on by periodically checking in with OIT and asking what the status is of their action plan. Director Ashcroft said in the areas of project management, business continuity and disaster recovery, she thinks OIT is making forward progress and are actively implementing their action plan, although OIT is a little behind where they had hoped to be on some action items.

Director Ashcroft thinks the project management piece is evolving well. Their key action items were to restructure the Project Management Office and to introduce a new project management methodology which they call Agile. They are well into implementing that new methodology on a number of projects in State government and are able to describe to OPEGA projects they felt like that had been successful with, and other projects where there are challenges that they are working on. OPEGA had an informal independent confirmation from one of those departments that they were pleased with the way the new project management methodology was working for the project in their department. OPEGA has also heard good things about the new Director of the Project Management Office and OIT itself feels like they are making very good progress. The area where OIT admits there is a lot of challenge and OPEGA continues to see that is with regard to the third area of data analytics. It is an area that requires the agencies to be cognizant of what their data needs might be, and how they want to use their data. There are some agencies that have people within them that are very data savvy and are the point people to deal with to bring data out of the system, but other agencies do not have that resource. OIT feels that they are limited in what they alone can do to bring improvements in this area. There are resources needed to make significant improvements in that, not only in OIT, but in the agencies themselves. OIT's challenge is there is nobody spearheading this at a statewide level to say what are their data needs and challenges that are not being met and which they want to find a definite solution for. It is not a very coordinated effort at this point. OIT is going out to each of the agencies trying to talk with them about their data needs, but at this point they are calling it an unfunded mandate for both them and the agencies. The Director is concerned about what will actually be seen for improvement at the end 2014 in this area and it is not because OIT is ignoring it, but it seems to be requiring a different solution than what was imagined in the beginning.

Chair Cain said there are great examples around the country of how data analytics are being used in government. New York City has been doing it with their crime system for ages. She also mentioned Baltimore and Maryland. They have articulated goals, data points and they utilize an incredible effort to coordinate that data in appropriate ways between agencies to look at the geography of their area, where are things happening, where do they overlap with corrections, poverty, education statistics, etc. If that is not part of the articulated strategy it is hard to impose it and is a challenge in a term limited environment. Where it has been done is in certain policy areas where the Legislature wants things measured regularly and we ask OIT to be a part of that conversation - then those reports come to legislators in different policy areas. Chair Cain thinks it is an interesting question and challenge. She does not know if the solution lies in the action of the GOC, but it is certainly something that would be worth doing.

Sen. Johnson said there have been various kinds of computer issues over the past several years. Large scale systems that do not integrate well, causing other problems and he can't see OIT getting a handle on all the analytics out of a data system in a department when the department cannot get them to work with each other. He agrees that it does deserve a cabinet level responsibility and that responsibility would be larger than just the data analytics aspects. It is trying to improve the integrity of the alignment of the data models and the processes around that. It is a tough problem, but it is important and deserves some high level attention and priority to approach it.

Director Ashcroft said there are some places where OIT is making steps toward improvement in data analytic capabilities. When new applications get put in, part of the design considerations are what are we going to have

for data, how might we want to get at this data and how might it be reported out. OIT is also currently undertaking a business process management initiative with each of the agencies, and as they improve business processes they are also asking the questions of what might we want to use for data that will tell them how a process is going. In a one at a time basis the departments will build data capability, but she said what seems to be missing is the piece where there is somebody in State government thinking about how the State would want to use all the data that is now being captured electronically and to coordinate the information that will allow the State to do that easily. Director Ashcroft would agree with OIT that there needs to be somebody in each agency who is that agency's data expert and knows that agency's data and application who can then work with someone in OIT. That requires resources that some of the agencies don't have right now.

Chair Kruger recognized Jim Smith, Deputy Commissioner, DAFS and Chief Information Officer for OIT.

Mr. Smith said with regard to data analytics, there needs to be a business owner to look across State agencies. Sometimes a problem is more than just a computer problem. Sen. Johnson said Mr. Smith's challenges are bigger than collecting good data. The nature of the overall data model and the application environments which have to communicate with each other are also challenged right now. To get the information you need, you have those underlying architectural issues that you have to resolve before you have good integrity and correlation of data. Mr. Smith agreed noting that is what private companies have wrestled with also.

Mr. Smith thanked the GOC for their time.

- **Re-consideration of Request for OPEGA Review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearings**

- **Update on status of federal review of unemployment compensation matters**

Director Ashcroft said the GOC has been awaiting the release of the results from the investigation. From her contact at DOL they expected that letter to be issued today, but Director Ashcroft has not seen it yet. The GOC asked that when Director Ashcroft receives the information she forward it to the GOC immediately.

- **Update on HHS Committee Consideration of OPEGA Recommendations in MaineCare Children's Outpatient Mental Health Report**

Director Ashcroft met with the HHS Committee and they are considering the Recommendations. They will be sending a communication to the GOC. This item will be on the agenda for the next GOC meeting.

- **Update on EUT Committee Consideration of OPEGA Recommendations and Other Concerns Regarding the PUC**

A letter from the GOC went to the EUT Committee regarding OPEGA's PUC Report Recommendations and other concerns of the GOC regarding PUC. Director Ashcroft reported that she is scheduled to meet with the EUT Committee on January 30th to review OPEGA's Report and the GOC's letter.

REPORT FROM OPEGA DIRECTOR

- **Status of Projects In Progress**

No Committee discussion.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for January 24, 2014 at 9:00 a.m.

ADJOURNMENT

Chair Cain adjourned the Government Oversight Committee meeting at 3:15 p.m.

**Testimony of the
Department of Health and Human Services**

Before the Joint Standing Committee on Government Oversight Committee

Hearing Date: January 10, 2014

Good morning, Senator Cain, Representative Kruger, and Members of the Joint Standing Committee on Government Oversight my name is William Boeschstein and I am the Chief Operating Officer for the Maine Department of Health and Human Services. I am here today representing the Department and the Maine Center for Disease Control and Prevention, an office within DHHS, regarding the Office of Program Evaluation and Government Accountability's (OPEGA) review of the contracts and funding of the Healthy Maine Partnerships (HMPs) in State Fiscal Year 2013. While I am happy to answer questions that you may have today, because of pending litigation facing the Department, I will be limited as to what I can address.

As previously stated, the Maine CDC found itself in uncharted territory when it needed to reduce funding to the HMPs and was forced to establish an evaluation process of the HMPs' performance within a very brief timeframe. The reality is that following the traditional "Request for Proposals" process would have created an unsustainable gap in HMP funding. We established a process that, upon extensive review initially by the Department's Office of Quality Improvement Services and later, OPEGA, was poorly implemented. Weaknesses were found in the methodology used and the approach taken in the selection of the lead HMPs.

We appreciate the work of OPEGA and agree with the report's findings. We have learned from this process and have taken several steps to address concerns relating to selection and funding decisions that both the Department and OPEGA identified. We are working with the State Archives Office to ensure that our staff is well-informed regarding the proper handling and management of documents and other Department records. We are reviewing current policies, as well, to strengthen the consistency of document retention and to define protocols regarding version control.

We are also working with our quality improvement staff to ensure that all future efforts to create a selection or scoring process are steeped in sound statistical methodology. It is critical that any funding decision made in the future is based on accurate information and measurable performance.

The Maine CDC has begun working with the Healthy Maine Partnerships to review current measures and define the program's future objectives. This work will lead to a "Request for Proposals" in the next funding cycle for these grants.

In closing, I would like to recognize the good work of the Healthy Maine Partnerships across the state and express my appreciation to our partners. I look forward to the continuance of this important initiative which supports the improved health and well-being of the people of Maine.

Thank you



Troubh Heisler

ATTORNEYS AT LAW

Comments of Sharon Leahy-Lind in response to the December 2013 Healthy Maine Partnerships' FY13 Contracts and Funding Report, OPEGA

Government Oversight Committee, State of Maine

January 10, 2014

Thank you for the opportunity to be here today, for your public service and for authorizing OPEGA to prepare this report.

The report is excellent; and because I am the "former Director of Local Public Health" referenced in the report, I am here to offer clarification on just a few points. My personal experience with the Maine CDC and the HMP process exceeds the scope of this report and the work of the Committee, as you may be aware, and I am not here to tell my story.

I am here to offer public comment on this report with regard to three issues. This is not to say I agree with everything else in the report, but for purposes of your work, these three points of clarification may be helpful.

1. On page 3 of the report under question #2, it says: *MCDC management acknowledged that there was direction or guidance that only documentation showing final results of the process should be retained; not "working copies"*.

To clarify: At no time during the HMP scoring or selection process was I ever made aware of this directive or guidance, *i.e.*, to retain only final results.

On at least two occasions, during meetings (HMP scoring work review sessions) that I attended with Andy Finch and Chris Zukas, Deputy Director Zukas handed out hard copies of the working scoring sheets for review and collected these copies at the end of the meetings. (In preparation for these meetings, I believe these score sheets were most likely copied on the 8th floor color copy machine outside of Deputy Zukas's and Dr. Pinette's office. From what I understand, this copier records and saves all electronic copies of documents that are copied or scanned on this machine. Perhaps the missing working spreadsheets can be recovered.)

I did, by happenstance, end up with the working draft (the so-called "next to final" document referred to in the report) of the June 6th scoring results after the core group meeting that showed another HMP having the highest score in the Penquis District, not Bangor Regional. This spreadsheet was in my file when I left the CDC and is now allegedly missing. Through counsel I requested a complete copy of my file pursuant to Maine's Freedom of Access Act, and this particular document was not included in the response.

2. On page 6 of the report it reads: *Two members of the core group said they had been instructed to destroy documents by a superior because only the final products should remain at the end of the process.*

For clarification, in June 2012, I was ordered to shred public documents related to the entire HMP process by the Maine CDC Deputy Director, and the stated reason was because she anticipated there would be a FOAA request for these documents.

I was also ordered to go downstairs and tell Andy Finch to destroy all documents in his possession and to delete the online survey that was administered to project officers and district liaisons. I refused to tell Andy Finch to shred documents or destroy the online survey. The Deputy Director said she would tell Andy herself.

In July 2012, after Maine CDC received a FOAA request for these same documents from the Sun Journal, the Maine CDC Deputy Director asked me if I shredded the documents as previously instructed. I told her I did not shred the documents. She then grabbed me very aggressively and ordered me to take the documents home and destroy them there. I did not destroy the documents or take them home.

3. Finally, on page 25 of the OPEGA report, it reads: *Two other staff members at Maine CDC, including a senior manager, told OPEGA these employees had come to them at the time with concerns and to seek advice about whether to shred documents. The senior manager in this instance advised one of the employees to do "what they thought was right." The employees' concerns were not further escalated.*

To clarify: I never asked for clarification about what to do or sought advice as to whether or not I should shred public documents. It was clear to me the moment the order was given that I was not going to destroy public documents because that would be illegal and unethical. What I did do was report it up the chain of command.

Immediately upon receiving the order to shred documents in June 2012, I reported it to the division responsible for oversight of the Healthy Maine Partnership funding. I ran to the 7th floor and told Valerie Ricker, Assistant Division Director for the Division of Population Health, that the Maine CDC Deputy Director just ordered me to shred public documents and that she was on her way down to Andy's office to tell him the same. I told Valerie I was coming to her because Deb Wigand was out of town so I believed she was Andy's supervisor in Deb's absence. Valerie thanked me for letting her know.

Next I ran down to Andy's office and asked him if the Deputy Director had come down to talk to him. He said she had. He said she told him to shred the HMP documents and he was not going to do it. I told him that I was given the same order and I was not going to destroy documents either. I added that I believed the request was illegal and that he and I need to stand together and not destroy the documents. Andy agreed.

That evening I spoke to the Director of the Office of Health Equity on the phone and reported to her that the Deputy Director ordered me to destroy the public HMP documents.

The following week, when Deb Wigand returned to work, I called her immediately and told her she needed to know that the Maine CDC Deputy Director ordered Andy Finch and me to shred public documents. She said she already knew. She said that Andy had come to her that morning and told her. She said Andy was upset by the request but that he did not destroy anything.

Even though I was not supposed to talk to or email Dr. Pinette directly (I was ordered that all communication with Dr. Pinette had to go through the Deputy Director), I met with her in July 2012 and again in August 2012 to report that I was ordered to shred public documents and was assaulted and being harassed by the Deputy Director.

Moreover, the "version control" explanation given by the Department as to why they destroyed documents is not consistent with anything I have ever dealt with in my years as a public employee.

Thank you.



**American Heart Association/American Stroke Association
American Cancer Society Cancer Action Network
Maine Public Health Association
Comments on
Report No. SR-CDCHMP-13
Healthy Maine Partnerships' FY13 Contracts and Funding**

January 10, 2014

Senator Cain, Representative Kruger, and members of the Government Oversight Committee, my name is Becky Smith. I am Maine's Director of Government Relations for the American Heart Association. I am offering this testimony on behalf of the organizations listed above.

Maine is different from many states, in that we don't have a city or county-based public health infrastructure. Portland and Bangor do have local health departments, and for this we are grateful, however the rest of the state relies almost exclusively on the Maine Centers for Disease Control and Prevention for information on public health threats, emergencies, data collection and the important prevention and health messages that keep our friends and neighbors safe and healthy. The Maine CDC is an important partner in our efforts to improve the cardiovascular health of all Maine residents; to prevent and detect cancer and to improve the public's health.

When the Fund for a Healthy Maine was created in 1999, an opportunity arose to create the beginnings of a more local public health system. The Healthy Maine Partnerships were created to form integrated infrastructure that could be tailored to the specific needs of a community, but that focused primarily on the number one preventable cause of death—tobacco use. Over time HMP focus broadened to include obesity and substance abuse. They were instrumental in the flu-vaccine clinics during the flu pandemic in 2009 and, where appropriate, have dealt with other public health threats faced by their specific community. They have also educated local community members about obesity prevention, sun safety, and cancer screening programs like the Maine Breast and Cervical Health program. They are considered the ‘boots on the ground’ throughout Maine.

For the past 15 years, due to their importance in our burgeoning public health infrastructure, our organizations have fought to maintain and enhance the Healthy Maine Partnerships. We have testified time and again to ensure their funding because we trust that any and all programs of the HMPs are evidence-based and are appropriately evaluated by the Maine CDC.

Appropriate funding for, and accountability of, these organizations is essential to successful public health outcomes. In addition, public trust in the HMPs and the Maine CDC is critical to the ability of these entities to carry out public health work in Maine. As such, these entities must employ processes that are

evidence-based and non-partisan or else their effectiveness will be undermined. For these reasons, we are concerned about the findings of this report and its impact on public trust and the effectiveness of our public health programs. We are hopeful steps will be taken to improve the processes in the future to ensure funding is allocated appropriately through a process that is not subject to partisanship or factors that are not evidence-based.

Our organizations will continue to work with the Maine CDC and other public health partners to ensure our public health infrastructure is well-funded, effective, evidence-based and has the trust of the public.

Thank you.

PUBLIC COMMENT OF JUDITH MEYER

**REGARDING THE OPEGA REPORT ON
HEALTHY MAINE PARTNERSHIPS' FY 13 CONTRACTS AND FUNDING
January 10, 2014**

Sen. Cain, Rep. Kruger, members of the Government Oversight Committee, my name is Judith Meyer. I am a managing editor at the Sun Journal in Lewiston and serve as vice president of the Maine Freedom of Information Coalition. I am also a member of the Right to Know Advisory Committee, where I have the pleasure to serve as chairman of that Committee's Legislative Subcommittee. I am here today to offer comment on the OPEGA report on Healthy Maine Partnerships' FY 13 Contracts and Funding.

I stand here to request that this Committee consider significantly increasing the statutory authority of Maine's Public Access Ombudsman in response to the proven deliberate attempts by the Department of Health and Human Services to evade Maine's Freedom of Access Act, not only by shredding documents to escape a FOAA request from the Sun Journal, but also in hiding the existence of an internal review of that incident and, more recently, by denying access to the so-called Alexander Report just this week.

* * * *

I. The Sun Journal's request to DHHS/CDC for access to public records

On June 21, 2012, after the Department of Health and Human Services announced a massive shift in Healthy Maine Partnerships structure and funding, the Sun Journal filed a written Freedom of Access Act request with DHHS for access to documents used to evaluate the HMPs.

Five days later, we expanded that request to include copies of all drafts of HMP scoring sheets. The next day, we received a response from DHHS/CDC that the records would be made available and the Department was working on our request.

On June 29, DHHS/CDC posted a number of documents online and directed the Sun Journal to view that material, noting the web post fulfilled our FOAA request. However, much of what the newspaper requested was not posted and we reiterated our original FOAA.

On July 3, Deputy Director Christine Zukas responded to the Sun Journal's FOAA noting it would take 51 hours of staff time to compile the requested documents, anticipating the documents would be available by July 25 at an estimated cost of \$500, not including copying costs.

It's preposterous to think it would take longer than three weeks to search for and compile records that took less than two weeks to create, and we said so.

In the end, CDC revised its estimate to \$60 and provided limited records three weeks later, which was more than a month after our initial request. The Department has never produced all the public records requested by the Sun Journal.

At the time, based on interviews with sources at the CDC, we had cause to believe the data provided was incomplete, particularly since draft documents that we were initially told would be made available were never produced.

II. Complaints of directive to shred public documents

About nine months later, on April 3, 2013, former CDC official Sharon Leahy-Lind filed a complaint with the Human Rights Commission asserting that her bosses ordered her to shred public records regarding the HMP funding to prevent the Sun Journal and the public from seeing them — and assaulted and harassed her when she refused.

The next day, the Sun Journal filed a formal complaint with Maine's Public Access Ombudsman and requested an investigation into Ms. Leahy-Lind's allegations concerning the specific directive by public officials to destroy documents to evade a FOIA request from the Sun Journal.

On Sept. 4, 2013, the Sun Journal's executive editor, Rex Rhoades, and I met with Attorney General Janet Mills, Deputy Attorney General Linda Pistner and Ombudsman Brenda Kielty to discuss the findings of that investigation.

At the start of the meeting, Ms. Kielty made it very clear that her work was to be considered a "review" of the Sun Journal's complaint, not an investigation, because she does not have investigative authority. She was equally clear that she did not interview anyone at CDC because she does not have the statutory authority to compel someone to talk to her nor does her office have authority to subpoena records.

Ms. Kielty reviewed 2,358 emails between CDC Director Dr. Sheila Pinette, CDC Deputy Director Zukas and Lisa Sockabasin, director of the Office of Minority Health, and found what she described as a "curious lack of email communication" during the time period in which DHHS/CDC established HMP funding guidelines and awarded funding. The lack of communication was "notable," Ms. Kielty said, based on previous email patterns on other CDC projects.

As a result of this limited review, she could make no determination whether documents were missing or whether anyone directed another person to destroy documents.

Ms. Kielty volunteered to put her findings in writing for the Sun Journal, but said she hesitated to do so because a letter "could be interpreted to mean CDC was cleared, and that is not what happened."

Ms. Kielty and AG Mills each mentioned that OPEGA's investigative authority was more far-reaching and suggested the Sun Journal reach out to OPEGA — which was investigating the shredding allegations at this committee's request — and express our concerns regarding CDC's response to the newspaper's public records request. And, we did.

III. OPEGA findings

OPEGA's investigation, released Dec. 12, concluded that supervisors at DHHS/CDC ordered staff to destroy documents related to the redistribution of healthy community coalition state funding last year.

And, investigators found, the CDC "ended up developing some documents in response to FOIA requests because relevant documentation had not been maintained."

According to the report, the staffers were told by their supervisors "only the final product should remain at the end of the process, not the working documents."

The Sun Journal's allegation of FOIA violation was substantiated by the OPEGA report. The investigation also found that the methodology used by the CDC to determine healthy coalition funding was flawed, unorganized and not well documented, and that the criteria

changed multiple times during the scoring process, which is contrary to standard practice under the RFP process.

Information about this methodology is precisely what the Sun Journal was attempting to report to our readers so they might understand DHHS decisions to fund what are essentially their local health departments.

Then, after the OPEGA report was released, information about an internal DHHS review was revealed. The Sun Journal had repeatedly asked for access to any DHHS/CDC internal review and had been told any review was considered a personnel record and we were denied. But there was a review after all and it was a public document, but only after OPEGA announced its existence did DHHS release it to the public.

IV. Alexander Report

On Nov. 29, the Sun Journal filed an advance FOAA seeking access to the so-called Alexander Report that was due to be filed with the state on Dec. 1. DHHS denied access to the report on Dec. 2, noting it would need to review the report internally before releasing it publicly.

There is no provision in FOAA for government to withhold a public record so it can be reviewed before being released.

On Dec. 9, DHHS reiterated its denial and then denied the Sun Journal's request again on Dec. 20. The Alexander Report was delivered to DHHS on Dec. 16.

Worth noting is that the signed contract with the Alexander Group clearly spells out the report is subject to Maine's FOAA laws, including a directive that copies of the report "shall" be furnished if requested.

The Sun Journal made numerous and repeated requests for this document and we were told that if we want access we can file a lawsuit, and if we do the administration will release the records before the case can be adjudicated.

On Wednesday, as a result of the Sun Journal's complaint to the ombudsman, AG Mills sent a terse letter to Gov. LePage and DHHS Commissioner Mary Mayhew demanding the immediate release of the Alexander Report. Commissioner Mayhew never responded; the governor told AG Mills she would have to "sue" him to force its release.

That strategy is a FOAA violation and an absolute challenge to the public's right to know. It cannot be tolerated.

V. Structure of ombudsman offices in other states

The public, the press and public officials have found Maine's Public Access Ombudsman to be a terrific resource and her informal mediation skills have been very successful but, unlike many other states, her statutory powers are limited.

In Connecticut, the Office of Governmental Accountability is empowered to adjudicate complaints and is authorized to order government officials to disclose public records.

In New Jersey, the Government Records Council issues binding advisory opinions on accessibility of government records and mediates disputes.

The Committee on Open Government in New York is also empowered to issue legal advisory opinions, as are offices in Virginia, Hawaii and Minnesota.

The Massachusetts Office of Records hears appeals and issues opinions.

Public records offices in Kentucky, Texas and Arkansas also have the statutory authority to issue binding opinions.

Maine's ombudsman does not have that authority, nor does she have subpoena power or the authority to compel people to talk with her.

So, is the public expected to seek an OPEGA investigation each time a person suspects wrongdoing, as happened with the CDC incident?

No. That would be impractical and impossible.

But, in reality, if a dispute over a FOAA request cannot be resolved through informal mediation with the ombudsman, the public must either seek an OPEGA investigation or file a civil lawsuit.

VI. Conclusion

So, should Maine go the way of Connecticut and New Jersey and empower our ombudsman to conduct hearings, issue written decisions and compel government to produce documents?

Yes, we believe, Maine should.

We also ask that the ombudsman be empowered to conduct regular and random FOAA compliance audits to ensure that entities, such as the CDC, adhere with the law, and that her office be given the authority to sanction public officials who violate the law.

The OPEGA findings that an official at DHHS/CDC ordered the destruction of public documents to avoid public scrutiny has destroyed the public's trust in that agency.

That's meaningful because we must be able to trust that our government will obey the law and honor our right to know, but also because – other than Bangor and Portland – cities and towns in Maine do not have local health departments and we rely on state-funded HMPs to guard the public's health through policies, education and administration.

We must be sure that funding and policy decisions regarding public health programs are made openly and fairly, and not on the basis of personal or political favoritism.

Trust was lost because of the HMP funding process, the destruction of records and the secrecy that followed.

That trust was further eroded when DHHS denied existence of its internal review of circumstances surrounding the HMP funding, and eroded even more with the Department's refusal to release the Alexander Report until the Sun Journal filed a complaint with the ombudsman's office and the Attorney General demanded its release. The public can't call OPEGA every time one of these questions comes up and authorize an investigation if records are not provided. And it can't be pushed to the brink of filing a civil suit every time a government official ignores a valid FOAA request.

The only way to re-establish public trust is to implement a better system to hold government accountable, enable the ombudsman's office to conduct hearings, authorize that office to audit FOAA responses and create meaningful sanctions for wrongdoing.

* * * *

I thank you in advance for your consideration and am happy to answer any questions you may have.

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Comments on OPEGA Report on Healthy Maine Partnerships

January 10, 2014

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(Industry)

William A. Turner, PE (Harrison)

Rhonda Vosmus, RRT, NPS, AE-C
(Portland)

Allen Wicken, PT (Rangeley)

Good morning Senator Cain, Representative Kruger and members of the Government Oversight Committee. My name is Ed Miller and I am the Senior Vice President of the American Lung Association of the Northeast in our Augusta office and a resident of Hallowell. Thank you for the opportunity to speak this morning.

It is apparent from the staff report and the Department's response that there were serious deficiencies in the management and oversight of the Healthy Maine Partnership (HMP) program. We are confident that the Department will take the necessary steps to effectively address these issues in a timely manner.

I will limit my comments to the fourth recommendation in the report—"MCDC Should Clarify the Roles and Responsibilities for the Tribal Contract and Make Them Consistent with Those for Other HMPs". I could not **disagree** more strongly. The Tribal Health District and the Tribal HMP are not similar to the other health districts or HMPs. It is a district and HMP defined by a population not by geography. But it is not just any population. It is a population where institutional racism (i.e. societal patterns that have the net effect of imposing oppressive or otherwise negative conditions against identifiable groups on the basis of race or ethnicity) and genocide over hundreds of years has resulted in a population with the poorest health status in the state. This is a population where the average life expectancy is 50 years compared to 79 years for the rest of Maine.

Prior to working at the Lung Association I was a Division Director at the Maine Bureau of Health (now the Maine CDC). I was responsible for managing many of the disease prevention programs including those focused on tobacco use, high blood pressure and diabetes. I worked closely with other Division Directors, especially Maternal and Child Health, where we jointly managed millions of dollars in grants. I am ashamed to say that in my 13 years working in this position I cannot think of a single initiative we funded that focused on improving the health of the Tribes. Even when we began to do telephone surveys to document health problems in the state in the 1980s, the Tribes were never included in a manner that would identify their health status. No one even thought about doing it. So the pattern of institutional racism continued.

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January 10, 2014

During my 22 years as CEO of the American Lung Association in Maine, working with the Tribes was not a top priority. I am not proud of this since they have the highest smoking rates of any group in Maine. I was involved in the design of the original HMP structure following the Master Settlement Agreement. Once again, no one even mentioned the Tribes during the design process. In fact, it wasn't until the creation of the Office of Health Equity that the health of Tribal members surfaced as an issue to be addressed by Public Health Work Group. This group was proposing the redesign of Maine's public health system. But once again, the original Public Health Districts did not include a Tribal Public Health District. This was added later.

The Maine CDC is to be commended for establishing both a Tribal Health District and a Tribal HMP that are culturally sensitive to the needs of the tribal members. They also designed both entities to serve a population that is spread across miles of rural Maine. The American Lung Association had the privilege of working with Tribal Health Directors four years ago on their first Tribal Health Assessment. Finally there would be data to document the health disparities that have existed for generations. It clearly documented that in some Tribal communities the smoking rates are over 50%. That rate is almost two and a half times higher than for the rest of Maine.

For the past two years our organization has been working with the Tribal Health District to address the issue of smoking on the reservations. Our focus has been on increasing the number of smoke free events and locations to provide the kind of smoke free environment needed to create a generation of non-smokers. We have learned a great deal through this partnership about working in a culturally sensitive manner. One thing is very clear. This is not like working with other HMPs.

There is also the implication in the report that the Tribal Health District is getting more than their fair share of the HMP funding. But this is an unfair comparison. The functions performed by the Tribal HMP are beyond the scope of those performed by the other HMPs. As one example, the Tribal HMP contract includes funding for District Liaisons. In the other public health districts these liaisons are MCDC employees so their expense is not part of the HMP budget.

Given the health status of the Tribes and the years of neglect, we believe that a strong case could and should be made to increase funding to this district. Based on need it should have been the first HMP to be funded rather than the last.

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We feel that it is totally appropriate and necessary for the state to enter into a sole source contract with the Tribes. It is unclear what the alternative would be. Unlike the other HMPs, this is an agreement between the state and a sovereign nation, not with a not-for-profit organization or municipality. As in any contract, we agree that roles, responsibilities and deliverables for both parties need to be clearly identified and agreed upon.

In conclusion, the Tribal Health District and Tribal HMP are not just another district and HMP. They are unique and present an opportunity to significantly improve the health of a population that has been tragically ignored for far too long.

Thank you once again for the opportunity to comment.

January 10, 2014

Good Morning Committee,

I am Kristi Ricker, the Director of Wabanaki Public Health, also referred to as the Tribal Public Health District which holds the Tribal Healthy Maine Partnership (HMP) contract. I want to share with you information that will give you a better understanding of our district. For the past nine months the tribes have witnessed in the media an attack on Maine Center for Disease Control (CDC), as well as the tribes ourselves. It is our strong belief that we are all operating with a lack of accurate information of what is really going on. Our district knows all parties involved very well. We also know that the Tribal Public Health District has been a success because of the support of Governor Paul LePage, Dr. Shelia Pinette, Christine Zukas and Lisa Sockabasin.

Let me begin with explaining the Tribal contract concerns highlighted in the OPEGA report. This contract is under the authority of the four Tribal nations in Maine. The structure of the district and thus the contract was developed per the needs of the tribal nations. Let me be clear, we the Tribal HMP were awarded the exact same amount of funding as every other district lead HMP. The contract highlighted in the report was the combinations of two separate programs. Having one master contract was a result of the thoughtfulness of the Maine CDC and at the request of the tribes. So, keeping this in mind, the \$235,00 in Tribal Liaison funding should not be considered when comparing funding awarded to other lead HMP's. The Tribal Liaison positions perform district wide work outside of the Tribal HMP and is ultimately another program within the district. The Tribal HMP received the following funding for FY13:

- \$120,000 for programmatic work
- \$134,605 for development of the public health infrastructure and capacity building
- \$28,336 for subcontract administration

This break down was what each lead HMP received. The increase noted from FY12 to FY13 was because the FY12 contract included the Tribal Liaisons and a small amount of start up funding for the Tribal HMP. FY13 was the first year of full, regular funding equal to the other districts.

Questions were also raised in the OPEGA report regarding the Tribal contract being handled differently than those of the other HMP's. Frankly, this contract needed to be handled differently because it is based on a government to government relationship which is unique to the Tribal District. This contract could not and cannot be handled exactly the same because of this. It also should not be put out to RFP because there is no other entity that can serve the Tribal population in such a culturally appropriate manner as Wabanaki Public Health, a tribal based organization. We have one Tribal Public Health District that was developed by statute. Maine CDC is actually ahead of any other state agency regarding positive Tribal-State relations. We commend their leadership for this. Furthermore, we are grateful for the leadership in the Office of Health Equity for their thoughtfulness and commitment to all vulnerable populations.

Although, the contract is set up differently for the Tribal Public Health District, the Tribal HMP is still held to the same performance requirements and contract compliance as the other HMP's. Our HMP has the same workplan and deliverables, reports through the Knowledge-based Information Technology (KIT) program, have hosted site visits, and works with the evaluation team.

The development of this contract was in collaboration with the Office of Health Equity, the Tribal District Liaisons and the Tribal governments. Lisa Sockabasin was not directly involved, nor did she sign the contract as stated in the OPEGA report, as you can see from the cover page from the FY13 Tribal District contract included in the folder. It disturbs us that OPEGA names her as the person responsible for the entire contracting process. You can also see that the statement by DHHS that they had not seen the Tribal contract, nor were they involved in it's development is untrue. Two of the signatures encumbering the contract were DHHS employees. You can also see by the letter included in your folder, that prior to development of the FY13 contract, Maryann Harkall, was named the DHHS Single Point of Contact for all Tribal contract management. We thank her for the support she provided through the contract development process. Debra Wigand, the Director of Population Health at the Maine CDC, is named as the Contract Administrator on the Tribal contract, as in all other HMP contracts and has a long history of working with us.

Due to the inconsistencies that we have highlighted in this report, we would like to remind everyone what sparked this investigation and the OPEGA review initially. It was alleged that Healthy Androscoggin was treated unfairly, however after close investigation there was evidence that they would not have been chosen as the lead HMP for the Western District in any scoring scenario. As we have learned through the media, the same person making these allegations also made the allegations against the tribes, which we have also proven false.

Prior to closing I would like to share with you the supporting documentation that I have included in your packet:

- The letter from the Commissioner identifying our Single Point of Contact for Contract Management for all Tribal contracts.
- The cover page of the FY13 Tribal Contract agreement which includes the signatures involved.
- The Standard Agreement Cover Page with the funding breakdown for DHHS Agreement # CDC-13-1423, the FY13 Tribal Contract.

In closing I would like you to consider that the leadership at Maine CDC, especially those accused of wrongdoing, are strong and the individual making the allegations has ulterior motives. Thank you for listening today and I am open to answer any and all questions you have of me.

Kristi Ricker, RN
Program Director
Wabanaki Public Health



**STATE OF MAINE
STANDARD AGREEMENT COVER PAGE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**DHHS Agreement # CDC-13-1423
AdvantageME CT # 10A 20120702.0002**

Community Agency Name: Houlton Band Maliseet Indians

Address: 88 Bell Rd STE 1, Littleton ME 04730

Program Name:

Service: HMP

Geographic Area Served:

DHHS District #

DHHS Region #

Vendor/Customer #: VC1000036869

Agency Fiscal Year: Jul to Jun

FOR DEPARTMENT USE ONLY

Agreement Period

Type of Agreement

Effective Date: 07/01/2012

Termination Date: 06/30/2013

Amended Effective Date: _____

Amended Termination Date: _____

Contract-State Services

Grant- Client Services

New

Renewal

Amendment

Budget Revision

CFDA #	ACCOUNT #	FY 2013 Encumbrance	FY 2014 Encumbrance	Agreement Total
1.	014-10A-9970-07-6401 (Liaisons)	\$235,000.00		\$235,000.00
2.	014-10A-9970-07-6401	\$148,336.00		\$148,336.00
3.	014-10A-9950-08-6401	\$134,605.00		\$134,605.00
4. 93.959	015-14G-1513-01-6401-SAPTBG F2011	\$20,000.00		\$20,000.00
5. 93.959	015-14G-1513-01-6401-SAPTBG F2012	\$60,000.00		\$60,000.00
6.				
7.				
8.				
9.				
10.				
TOTALS		\$597,941.00		\$597,941.00

Agreement Routing: **Agreement Administrator:** Maryann Harakall

Clarissa Webber cwebber@maliseets.com



Department of Health
and Human Services
*Maine People Living
Safe, Healthy, and Productive Lives*

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 287-3707
Fax (207) 287-3005; TTY: 1-800-606-0215

May 2, 2012

Dear DHHS Contracted Provider:

In an effort to better meet your needs and to make it easier to work with the Department of Health and Human Services (DHHS), the Contract Management Process for the DHHS is changing. These changes are in response to your feedback that the current process is burdensome, confusing and that effective customer service must improve.

Our goal is to reduce the burden to providers throughout the contract process and increase the quality of customer service. The specific changes that will impact you are:

- **Single Point of Contact (SPOC)**: The new process designates a *Single Point of Contact* for each provider. The Single Point of Contact will administer *all* the contracts for a provider.
- **Your designated SPOC** is the contact person for all communications pertaining to contracts beginning July 1, 2012 (Fiscal 2013). The process for these contracts begins with the attached allocation plan and budget worksheet.
- **Service Performance Expectations**: The respective program administrator within each DHHS Office will continue to be the person you work with regarding Scope of Services in Rider A.
- **Invoices, Provider financial reporting** will be sent to the SPOC to ensure compliance with Terms of Rider B.

How will these changes affect me as a service provider?

- You will continue to establish the Scope of Services for Rider A with your respective DHHS Office program administrator and continue your regular communication on services provided during the course of the contract period.
- Any amendments to the Scope of Services during the contract period should be agreed upon with your respective state program administrator.
- The remaining administrative work will take place internally and be executed by the Division of Contract Management.
- All communications and amended documents will be handled through your Single Point of Contact (SPOC).

- Once the contract is executed and signed, any questions regarding payments, reporting or other issues will be directed through your designated SPOC.

Your Single Point of Contact

Name: Maryann Harakall
Email Address: maryann.harakall@maine.gov
Phone Number: 207-557-2470
Address: Department of Health and Human Services, 221 State Street, #11 SHS,
Augusta, Maine 04333-0011

Other Information:

- The Division of Purchased Services has been renamed the Division of Contract Management.

This is only the beginning of a process that we hope will transform contract management, provide you with exemplary customer service, and will allow you to build stronger relationships with those who oversee your contract. We continue to welcome your feedback on how we may improve this process.

Sincerely,



Mary C. Mayhew
Commissioner

MCM/klv

Enclosures

Encumbrance #: 10A 20120702.0002
DHHS Agreement #: CDC-13-1423
Vendor/Customer #: VC1000036869

**STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Agreement to Purchase Services**

THIS AGREEMENT, made this 1st day of July 2012, is by and between the State of Maine, Department of Health and Human Services, hereinafter called "Department," and Houlton Band Maliseet Indians, mailing address 88 Bell Rd STE 1, Littleton ME 04730, physical address 3 Clover Circle, Houlton ME 04730, hereinafter called "Provider," for the period of 07/01/2012 to 06/30/2013.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement.

The following Riders and Attachments are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Rider B Exceptions
- Rider D - Additional Requirements
- Rider E - Program Requirements
- Rider F - Budget; F-1 Agreement Settlement Form; F-2 Agreement Compliance Form
- Rider G - Identification of Country In Which Contracted Work Will Be Performed
- Rider I - Assurance of Compliance

WITNESSETH, that this contract is consistent with Executive Order 01 FY 11/12 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: Robert E. Rude

~~William W. Boeschstein, Jr., Chief Operating Officer~~

And Robert E. Rude - Deputy Commissioner of Finance

HOULTON BAND MALISEET INDIANS

By: Brenda S. Council

for Brenda Commander, Tribal Chief

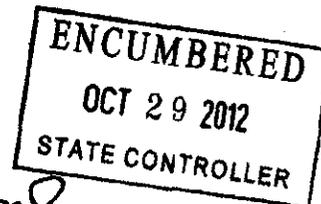
Total Agreement Amount: \$597,941.00

Approved: Michael Alan Wenzel

Chair, State Purchases Review

Committee

BP54 (Rev 6/04)



OCT 29 2012

Good Morning Committee,

I am Clarissa Webber, the former Director of Wabanaki Public Health District. I would first like to say that during my time working with the Tribes in Maine, I have witnessed marked improvement in the level of trust and willingness to work with the Maine CDC and DHHS under this administration.

Many of you are aware that District public health was created during the previous administration. At that time the Tribes were purposely left out of this important statute. This was done even though this unit existed and held a contract to carry out public health deliverables for the Maine CDC. Thanks to the leadership of Dr. Pinette and her senior level staff this inequity was corrected. In June 2011, during the 125th Maine State Legislature, An Act to Amend the Laws Regarding Public Health Infrastructure (LD121) was passed. This law states that "as funds are available, a minimum of one tribal comprehensive community coalition must be provided funding as a member of the Healthy Maine Partnership Coalition". The fiscal note attached to this read "...state costs resulting from this bill would be met by a re-distribution of existing budgeted resources".

It is of deep concern of the Tribes that the very person who was aware of how the funding was set up, and not only was this person aware, but supportive, and met with us regularly, now expresses that the funding was somehow inequitable. The former director of Local Public Health was always intimately involved with our district and had in-depth knowledge of our budget, deliverables and supported us fully. Her accusations regarding the Tribal funding and the Office of Health Equity are insulting and false.

The Tribal HMP and Liaisons serve a population that has significant documented health disparities. The Tribes in Maine have life expectancies that are less than that of some third world countries. Chronic disease rates are two to three times greater than that of the state and country in some cases, although the prevention efforts of the Tribes meet and in many cases exceed the expectations of Healthy People 2020. We are talking about a population that has historically been excluded from funding opportunities, until leadership at the Maine CDC began the hard work of trust and relationship building with the Tribes. It is unfortunate that our Tribal population is continuing to be accused and ridiculed in the press and that reports, such as OPEGA continue to be inaccurate.

In closing, I want to thank the committee for listening to what I have to share. Tribal leaders, Wabanaki public health staff and many others have written to the press and state leadership to correct the allegations made, until today we had not been heard.

An Act to Amend the Laws Regarding Public Health Infrastructure

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §411, as enacted by PL 2009, c. 355, §5, is amended to read:

§ 411. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Accreditation. "Accreditation" means a national federally recognized credentialing process resulting in the approval of a state, local or Tribal public health system or a municipal health department by a national federally recognized review board certifying that a state, local or Tribal public health system or a municipal health department has met specific performance requirements and standards. Accreditation provides quality assurance, credibility and accountability to the public, to government officials and to public health fund sources. For the purposes of this subsection, federal law, the national Public Health Accreditation Board and the National Indian Health Board recognize a Tribal health department or clinic managed by an Indian Tribe as the legal entity responsible for delivery of Tribal public health programs and services and thus potentially eligible for national accreditation.

2. Comprehensive community health coalition. "Comprehensive community health coalition" means a multi-sector coalition that serves a defined local geographic area and is composed of designated organizational representatives and interested community members who share a commitment to improving their communities' health and quality of life and that includes public health in its core mission. If a comprehensive community health coalition's defined local geographic area includes Tribal lands and Tribal members, the coalition cannot legally represent the Tribe(s) but can pursue a consultative relationship with the Tribe(s) and should reference Native American health status and disparities. Tribal representatives can elect to participate in the coalition as members or with the coalition in a consultative role. The Tribal District or any individual Tribe may elect to establish its own comprehensive community health coalition to address Tribal health status.

3. District coordinating council for public health. "District coordinating council for public health" means a representative district-wide body of local public health stakeholders in each district working toward collaborative public health planning and coordination to ensure effectiveness and efficiencies in the district public health system. If the district jurisdiction includes Tribal lands and Tribal members, the district council may not officially represent the Tribe(s), but should reference Native American health status and pursue a consultative relationship with the Tribe(s). Tribal representatives may choose to participate in the district coordinating council as members or function in a consultative relationship.

Functionally, the four Tribal Health Center Directors serve as the Tribal District Coordinating Council in terms of an advisory role to the Tribal District. The Tribal

Coordinating Council may elect to establish additional subcommittees to work on specific projects approved by the Tribal District Coordinating Council.

4. District public health unit. "District public health unit" means a unit of public health staff set up whenever possible in a district in Department of Health and Human Services (DHHS) offices. A staff must include when possible public health nurses, field epidemiologists, drinking water engineers, health inspectors and district public health liaisons. An individual Tribal Health Center for these purposes is not required to have the same staffing profile. The functional equivalent of a "Tribal Public Health Unit" is the entity that includes the Tribal District Public Health Liaisons, who for the purposes of personnel management and planning are employees one or more of the four tribes.

5. District. "District" means one of the 8 geographic districts of the Department of Health and Human Services, including Aroostook District, composed of Aroostook County; Penquis District, composed of Penobscot County and Piscataquis County; Downeast District, composed of Washington County and Hancock County; Midcoast District, composed of Waldo County, Lincoln County, Knox County and Sagadahoc County; Central District, composed of Kennebec County and Somerset County; Western District, composed of Androscoggin County, Franklin County and Oxford County; Cumberland District, composed of Cumberland County; and York District, composed of York County. A ninth district, the Tribal District, is composed of Indian Country in Maine: the collective homelands, Tribal Health Centers, and members of the four Tribal Nations anywhere in Maine.

6. Tribal District. "Tribal District" means an administrative district established via Memorandum of Understanding or legal contract among all four Tribal Nations and recognized by the Department of Health and Human Services. The District jurisdiction includes the collective homelands, Tribal Health Centers, and members of Maine's four Tribal Nations anywhere in Maine. The District delivers components of the essential public health services through the activities of Tribal District Public Health Liaisons who are Tribal employees, and who report to the Tribes, the DHHS Office of Minority Health, and other funders as identified. Responses to federal and state RFAs may be issued by one Tribe, several or all Tribes collectively, or by the Tribal District entity as the recipient of funds.

67. Essential public health services. "Essential public health services" means core public health functions as identified in the federal National Public Health Performance Standards Program, national Public Health Accreditation Board, and National Indian Health Board defined from time to time by the United States Centers for Disease Control and Prevention that help provide the guiding framework for the work and accreditation of state and local public health systems or municipal health departments and Tribal public health systems.

78. Health risk assessment. "Health risk assessment" means a customized process by which an individual confidentially responds to questions and receives a feedback report to help that individual understand the individual's personal risks of developing preventable health problems, know what preventive actions the individual can take and learn what local and state resources are available to help the individual take these actions.

89. Healthy Maine Partnerships. "Healthy Maine Partnerships" means a statewide system of comprehensive community health coalitions that meet the standards for

Department funding that is established under section 412. The Tribal District will be informed of and considered eligible by DHHS for the same HMP-related funding opportunities offered to all other Districts. The Tribal District or a single Tribe is eligible to partner with any other HMPs for collaborative funding opportunities upon Tribal Coordinating Council or Tribal Health Director approval.

10. Indian tribe. "Indian tribe" means a federally recognized Indian nation, tribe or band in the State.

911. Local health officer. "Local health officer" means a municipal employee who has knowledge of the employee's community and meets educational, training and experience standards as set by the Department in rule to comply with section 451.

1012. Municipal health department. "Municipal health department" means a health department or division that is established pursuant to municipal charter or ordinance in accordance with Title 30-A, chapter 141 and accredited by a national federally recognized credentialing process.

13. Tribal health department or health clinic. "Tribal health department or health clinic" means a health department or health clinic managed by a federally-recognized Tribe and eligible for Indian Health Service and other federal funds. For the purposes of this subsection, each director of a Tribal Health Department or Clinic has a Tribal- and IHS-defined scope of role which is equivalent to directors of accreditation-eligible Municipal Health Departments.

1114. Statewide Coordinating Council for Public Health. "Statewide Coordinating Council for Public Health" means the council established under Title 5, section 12004-G, subsection 14-G. A designee from the Tribal District is a standing representative appointed by all Tribes as a voting member of the SCC.

Sec. 2. 22 MRSA §412, as enacted by PL 2009, c. 355, §5, is amended to read:

§ 412. Coordination of public health infrastructure components

1. Local health officers. Local health officers shall provide a link between the Maine Center for Disease Control and Prevention and every municipality. Duties of local health officers are set out in section 454-A.

2. Healthy Maine Partnerships. Healthy Maine Partnerships is established to provide appropriate essential public health services at the local level, including coordinated community-based public health promotion, active community engagement in local, district and state public health priorities and standardized community-based health assessment that inform and link to district-wide and statewide public health system activities.

Healthy Maine Partnerships must include interested community members; leaders of formal and informal civic groups; leaders of youth, parent and older adult groups; leaders of

hospitals, health centers, mental health and substance abuse providers; emergency responders; local government officials; leaders in early childhood development and education; leaders of school administrative units and colleges and universities; community, social service and other nonprofit agency leaders; leaders of issue-specific networks, coalitions and associations; business leaders; leaders of faith-based groups; and law enforcement representatives. Where HMP service areas include Tribal Indian Health Departments and clinics, HMPs will seek a membership or consultative relationship with leaders and members of Indian tribes, designees of health departments, or health clinics of Indian tribes.

The department and other appropriate state agencies shall provide funds as available to coalitions in Healthy Maine Partnerships that meet measurable criteria as set by the department for comprehensive community health coalitions. As funds are available, a minimum of one Tribal comprehensive community health coalition shall be provided funding as a Healthy Maine Partnership at any given time.

3. District public health units. District public health units shall help to improve the efficiency of the administration and coordination of state public health programs and policies and communications at the district and local levels and shall ensure that state policy reflects the different needs of each district.

Tribal public health programs and services as delivered by the Tribal District and/or Tribal health departments and clinics will help improve the efficiency of the administration and coordination of publically and privately funded public health programs and policies and communications at local, district, state and federal levels.

4. District coordinating councils for public health. The Maine Center for Disease Control and Prevention, in consultation with Healthy Maine Partnerships, shall maintain a district coordinating council for public health in each of the 8 DHHS and Tribal districts as resources permit.

A. A DHHS district coordinating councils for public health shall:

- (1) Participate as appropriate in district-level activities to help ensure the state public health system in each district is ready and maintained for accreditation;
- (2) Provide a mechanism for district-wide input to the state health plan under Title 2, section 103;
- (3) Ensure that the goals and strategies of the state health plan are addressed in the district; and
- (4) Ensure that the essential public health services and resources are provided for in each district in the most efficient, effective and evidence-based manner possible.

B. A Tribal district Coordinating Council for public health or its designated representatives shall:

(1) Participate as appropriate in DHHS district level activities to help support the Tribal public health system in each district is ready and maintained for Tribal public health accreditation;

(2) Provide a mechanism for contributing to DHHS district wide input to the state health plan under Title 2, section 103 particularly in relation to Tribal health status and disparities;

(3) Ensure that the Maine state health plan goals and strategies are relevant and appropriately aligned with Tribal health activities within the appropriate DHHS District and that essential public health services and resources are provided in the most efficient, effective, and evidence-based manner possible; and

(4) Ensure that the national goals and strategies for health in Indian Country and the Maine Tribal Health District goals and strategies are aligned and appropriately tailored for each and every Maine Tribe and Tribal Health Department or Center.

BC. The Maine Center for Disease Control and Prevention, in consultation with Healthy Maine Partnerships, shall ensure the invitation of persons to participate on a district coordinating council for public health and shall strive to include persons who represent the Maine Center for Disease Control and Prevention, county governments, municipal governments, the Tribal nations and their health departments and health clinics, city health departments, local health officers, hospitals, health systems, emergency management agencies, emergency medical services, Healthy Maine Partnerships, school districts, institutions of higher education, physicians and other health care providers, clinics and community health centers, voluntary health organizations, family planning organizations, area agencies on aging, mental health services, substance abuse services, organizations seeking to improve environmental health and other community-based organizations.

D. In DHHS districts containing tribal communities, population health assessments and health improvement plans and strategies developed by municipal, HMP, and District Coordinating Councils must include reference to Native American health status and disparities. Data used for these assessments must be sound and at the most local level publically available. Assessments must include any quantitative or qualitative data the Tribes agree to share. Tribal health assessments and tribal health improvement plans and strategies may focus exclusively on Tribal members, but shall be conducted only at any Tribe's discretion.

E. Population and personal health programs, interventions and services that formally include or focus on Tribal members must be developed in close consultation with Tribes in advance, and be culturally competent in design and implementation. In addition, Tribes must be consulted prior to assumed inclusion in any grant applications.

A district coordinating council for public health, after consulting with the Maine Center for Disease Control and Prevention, shall develop membership and governance structures that are subject to approval by the Statewide Coordinating Council for Public Health, except that approval of the Statewide Coordinating Council for Public Health is not required for the membership and governance structures of a the Tribal district coordinating council.

5. Municipal and Tribal health departments. Municipal health departments may enter into data-sharing agreements with the department for the exchange of public health data determined by the department to be necessary for protection of the public health. A data-sharing agreement under this subsection must protect the confidentiality and security of individually identifiable health information as required by state and federal law. A health department or health clinic of a Tribal nation may enter into data-sharing agreements with the Department as provided in this subsection as determined by the health department or health clinic and the Department.

6. Statewide Coordinating Council for Public Health. The Statewide Coordinating Council for Public Health, established under Title 5, section 12004-G, subsection 14-G, is a representative statewide body of public health stakeholders for collaborative public health planning and coordination.

A. The Statewide Coordinating Council for Public Health shall:

- (1) Participate as appropriate to help ensure the state public health system is ready and maintained for accreditation;
- (2) Provide a mechanism for the Advisory Council on Health Systems Development under Title 2, section 104 to obtain statewide input for the state health plan under Title 2, section 103;
- (3) Provide a mechanism for disseminating and implementing the state health plan; and
- (4) Assist the Maine Center for Disease Control and Prevention in planning for the essential public health services and resources to be provided in each district and across the State in the most efficient, effective and evidence-based manner possible.
- (5) Receive reports from the Tribal Health District Coordinating Council regarding readiness for Tribal Public Health Systems for accreditation if offered.
- (6) Participate as appropriate to help support Tribal public health systems becoming ready and maintained for accreditation if assistance is requested from any Tribe as resources permit.

The Maine Center for Disease Control and Prevention shall provide staff support to the Statewide Coordinating Council for Public Health as resources permit. Other agencies of State Government as necessary and appropriate shall provide additional staff support or assistance to the Statewide Coordinating Council for Public Health as resources permit.

B. Members of the Statewide Coordinating Council for Public Health are appointed as follows.

(1) Each district coordinating council for public health shall appoint one member.

(2) The Director of the Maine Center for Disease Control and Prevention or the director's designee shall serve as a member.

(3) The commissioner shall appoint an expert in behavioral health from the department to serve as a member.

(4) The Commissioner of Education shall appoint a health expert from the Department of Education to serve as a member.

(5) The Commissioner of Environmental Protection shall appoint an environmental health expert from the Department of Environmental Protection to serve as a member.

(6) The Director of the Maine Center for Disease Control and Prevention, in collaboration with the co-chairs of the Statewide Coordinating Council for Public Health, shall convene a membership committee. After evaluation of the appointments to the Statewide Coordinating Council for Public Health, the membership committee shall appoint no more than 10 additional members and ensure that the total membership has at least one member who is a recognized content expert in each of the essential public health services, has representation from populations in the State facing health disparities and has at least 2 members from the Advisory Council on Health Systems Development under Title 2, section 104. The membership committee shall also strive to ensure diverse representation on the Statewide Coordinating Council for Public Health from county governments, municipal governments, ~~tribal~~ the governments Tribal nations and their health departments and health clinics, city health departments, local health officers, hospitals, health systems, emergency management agencies, emergency medical services, Healthy Maine Partnerships, school districts, institutions of higher education, physicians and other health care providers, clinics and community health centers, voluntary health organizations, family planning organizations, area agencies on aging, mental health services, substance abuse services, organizations seeking to improve environmental health and other community-based organizations.

C. The term of office of each member is 3 years. All vacancies must be filled for the balance of the unexpired term in the same manner as the original appointment.

D. Members of the Statewide Coordinating Council for Public Health shall elect annually a chair and co-chair. The chair is the presiding member of the Statewide Coordinating Council for Public Health.

E. The Statewide Coordinating Council for Public Health shall meet at least quarterly, must be staffed by the department as resources permit and shall develop a governance structure, including determining criteria for what constitutes a member in good standing.

F. The Statewide Coordinating Council for Public Health shall report annually to the Advisory Council on Health Systems Development under Title 2, section 104 on progress made by the statewide public health system in addressing the designated public health goals, objectives and strategies in the state health plan under Title 2, section 103. In years when a new state health plan is being developed, the Statewide Coordinating Council for Public Health shall provide input from its own members and from the district coordinating councils for public health stating goals, objectives and strategies that should be addressed in the state health plan.

The Statewide Coordinating Council for Public Health shall report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the Governor's office on progress made toward achieving and maintaining accreditation of the state public health system and on district-wide and statewide streamlining and other strategies leading to improved efficiencies and effectiveness in the delivery of essential public health services.

Sec. 3. 22 MRSA §413, as enacted by PL 2009, c. 355, §5, is amended to read:

§ 413. Universal wellness initiative

The Maine Center for Disease Control and Prevention, the Statewide Coordinating Council for Public Health, the district coordinating councils for public health, the Tribal District and Healthy Maine Partnerships shall undertake a universal wellness initiative to ensure that all people of the State and Tribal members have access to resources and evidence-based interventions in order to know, understand and address health risks and to improve health and prevent disease. A particular focus must be on the uninsured and others facing health disparities.

1. Resource toolkit for the uninsured. The Maine Center for Disease Control and Prevention and the Governor's office shall develop a resource toolkit for the uninsured with information on access to disease prevention, health care and other methods for health improvement. Healthy Maine Partnerships, the district coordinating councils for public health, the Maine Center for Disease Control and Prevention and the Statewide Coordinating Council for Public Health shall promote and distribute the toolkit materials, in particular through small businesses, schools, school-based health centers, health departments and health clinics of the Tribal nations and other health centers. Healthy Maine Partnerships, each district coordinating council for public health and the Statewide Coordinating Council for Public Health shall report annually to the Maine Center for Disease Control and Prevention on strategies employed for promotion of the toolkit materials.

2. Health risk assessment. Healthy Maine Partnerships, the district coordinating councils for public health, the Statewide Coordinating Council for Public Health and the Maine Center for Disease Control and Prevention shall promote an evidence-based health

risk assessment that is available to all people of the State, with a particular emphasis on outreach to the uninsured population, members of Tribal nations and others facing health disparities. These health risk assessments and their promotion must provide linkages to existing local disease prevention efforts and be collaborative with and not duplicative of existing efforts.

3. Report card on health. The Maine Center for Disease Control and Prevention, in consultation with the Statewide Coordinating Council for Public Health, shall develop, distribute and publicize an annual brief report card on health status statewide and for each DHHS district by June 1st of each year. The report card must include major diseases, evidence-based health risks and determinants that impact health.

The Maine Center for Disease Control and Prevention and the Governor's Office of Health Policy and Finance shall provide staff support to implement the universal wellness initiative in this section as resources permit. Other agencies of State Government as necessary and appropriate shall provide additional staff support or assistance.

SUMMARY

This bill extends to the federally recognized Tribal nations, tribes and bands in the State and to their health departments and health clinics the laws on comprehensive community health coalitions, district and state coordinating councils for public health, district public health units, Healthy Maine Partnerships, the universal wellness initiative and health risk assessment.

Megan D. Hannan

**Frannie Peabody Center Comments on the Healthy Maine Partnerships' FY13 Contracts and Funding –HMP Lead Selection Approach Appropriate but Process Poorly Implemented and Allowed for Manipulation; Funding Consistent Across HMPs Based on Role; Documentation Insufficient to Support Key Decisions
Report No. SR-CDCHMP-13**

Senator Cain, Representative Kruger, Members of the Government Oversight Committee:

Thank you for the opportunity to comment on the above referenced report on the Healthy Maine Partnerships' FY13 Contracts and Funding decisions. I am currently the Executive Director of the Frannie Peabody Center, but for 15 years was the Director of Government Relations for the American Cancer Society, Maine and then New England Divisions. It was in that capacity that I worked very closely with the Maine Centers for Disease Control and Prevention (MeCDC) before the advent of the Healthy Maine Partnerships (HMP) and as they grew, matured, and came to the present iteration.

The history of funding local public health coalitions is quite long – first only a few were funded with federal and some state funds, then the tobacco tax of 1996 brought some more funding, and finally the tobacco manufacturer's Master Settlement Agreement of 1999 enabled the state to fund more local coalitions, which became known as the Healthy Maine Partnerships. Funding has varied almost every year since, and the number has also varied over time. Some HMP directors have maintained that the state funding has been, or should be, steady over time, and have expressed entitlement to the funds. While all public health advocates agree the work the HMPs do is important work that will impact the state's health and well-being, the reality is that no state contract is an entitlement. In my experience, the request for this report is based on some HPM directors who were unhappy with the results of an ever-changing environment and a single state employee's unravelling mental health, which has parallel consequences.

While I was not at all involved in the scoring or funding criteria for the FY13 grant cycle, I served as an HMP grant reviewer several times, and worked on the process which determined how to weight issues such as poverty, rural, geography, and other socioeconomic public health indicators in funding the HMPs when the number of HMPs had to be reduced a few years ago. In those more than ten years, I have never seen or suspected any wrong doing in scoring, weighting, or data used to determine the best coalitions received the funds to do the public health work.

Reading the report, and having been in the Appropriations Committee during the budget negotiations which resulted in the drastic cuts to all of the Fund for a Healthy Maine programs, not limited to the HMPs, I understand that decisions had to be made quickly, and that there was no time to go through the very long, arduous, and costly process of producing another RFP. I thought then, as I do now, that the people in the Maine CDC did the best they could under the circumstances to be as fair as possible with the newly limited funds.

The Report's finding that "existing HMP performance data were not useful" is particularly disturbing, as those of us in the public health community have been adamant that the HMP work

be data driven, outcome oriented, and evaluated – all the criteria which would be used to determine “lead agencies” in an event such as this. Whether such data were manipulated I cannot say, but knowing the people I know in the MeCDC, I find it hard to believe. Was there room for error or misinterpretation? Perhaps, but I saw no evidence of it in this report, only here say.

Finally, I want to address the fourth finding, that the contract for the Tribal District HMP was handled differently than the other HMPs. Yes, it certainly was, and for good reason. The Tribal District has District Liaisons which are not funded directly as state employees; they are funded in a separate, but combined, contract. Combining the contracts makes good fiscal sense, and it is my understanding that the Office was given this information during its investigation. I am sure others from the Tribes and public health organizations working closely with them will shed further light on this subject.

To be sure, our state public health system’s emphasis on Tribal health is relatively new, and I am proud to say I was a part of creating the Office of Minority Health, now the Office of Health Equity, while working on the issue of eliminating health disparities with a New England wide coalition from 1999 to 2009, and I still work passionately for health equality. Creating the Office in 2007, the last in New England, was a crowning achievement for those of us who care about this issue – but it was the first step, not the end of the problem. We need to fund the Tribes appropriately, and yes that means more, for them to begin to catch up. Tribal life expectancies are far shorter; chronic disease rates are far higher; substance abuse and violence rates are higher; and not because Tribal Members are more prone to disease, but because of ongoing and institutional racism and other well documented socioeconomic factors. The Tribes are not getting something and taking away from others. We are all Mainers, and we all deserve the same access to health – public health and health care.

Like you, I am concerned about our limited state dollars, and want to be sure we are spending our funds where they do the most good, in an equitable way, to achieve desired outcomes. This report is somewhat vague, and if there was any wrongdoing while creating the new HMP structure, the person who did it should be spoken to and systems should be changed so that it won’t happen again. I see no wrongdoing in the case of the Tribes’ funding, however.

Thank you very much for your time and attention.

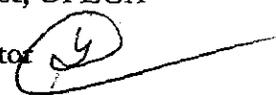
A handwritten signature in black ink, appearing to read "MDH", with a long, sweeping horizontal line extending to the right.

Megan D. Hannan
Executive Director, Frannie Peabody Center
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Memorandum

To: Sen. Emily Cain, Chair, Government Oversight Committee
Rep. Chuck Kruger, Chair, Government Oversight Committee

cc: Beth Ashcroft, Director, OPEGA

From: John Gallagher, Director 

Date: January 10, 2014

Subject: Status of Actions from OPEGA's review of LIHEAP and Weatherization Programs

MaineHousing has continued to enhance existing controls and implement new controls in response to OPEGA's recommendations in July of 2103. The following describes our progress in each of the four major areas.

1. MaineHousing Should Strengthen LIHEAP Controls to Minimize Potential for Abuse

- A. MaineHousing has established seven "Healthy Data Queries" that are run weekly against the MERAC data base. These queries identify individuals included on more than one LIHEAP Eligible application, as well as flag Social Security Number anomalies and applicant age discrepancies. The number of data issues within the MERAC system has continued to drop significantly over the years. In program year 2014 (which runs October 1 through Sept. 30), only three applications (out of more than 24,300 eligible applications) have been flagged to date, and MaineHousing immediately followed up on each one with the originating CAA.
- B. As reported to the GOC on September 19, 2013, MaineHousing completed its review of the records containing data anomalies identified by OPEGA. This information was submitted to the MERAC Steering Committee, who subsequently directed the MERAC developer to implement two system enhancements to ensure that these issues do not continue to occur in the future. Service Release (SR) 22 is expected to be implemented this summer.

MaineHousing continues to research all claims of fraud within the LIHEAP program. In calendar year 2013, a total of 149 instances of possible fraud were identified. Of those, MaineHousing is pursuing repayment in 50 cases, totaling \$47,159.82. Of that \$10,584.45 has been recovered to date. Total funds recouped in 2013 (including cases from prior years) amounted to \$27,161.35.

- C. In collaboration with the CAAs, MaineHousing established a ratio of income to expenses to be used by certifiers to verify that all household income has been disclosed. The LIHEAP program handbook issued prior to the start of the October, 2013 new program year states: *"If a household spends 50 percent or more of their income on housing (mortgage or rent) ... the Primary Applicant will need to complete a Minimal/Zero Income Worksheet to explain how basic necessities are being met or provide supporting documentation for past due bills."* MaineHousing provided training to all CAA intake workers and certifiers on August 13, 2013.

- D. At this time, MaineHousing believes that existing fraud prevention and detection controls, in conjunction with the "Healthy Data Queries" described above and the data integrity improvements planned for the MERAC system, are sufficient to prevent or detect the potential abuse situations that OPEGA identified in their review.
- E. MaineHousing has established a procedure whereby the CAA must submit to MaineHousing an Employee Benefit Disclosure form for any LIHEAP Applicant whose household includes a MaineHousing or CAA employee. MaineHousing must review and approve all certifications and determinations of LIHEAP benefits prior to the employee receiving benefits. This change was communicated to all the CAAs and included in the LIHEAP program handbook prior to the October, 2013 start of the new program year.

2. MaineHousing Should Strengthen Procurement Guidance and Oversight in the WAP Program to Ensure Quality Goods and Services are Consistently Obtained at Best Price

MaineHousing has worked to improve the procurement process with the CAAs. Following MaineHousing review, each CAA issues invitations to bid (ITB) for the Weatherization program in January. Energy and Housing Services (EHS) department staff participate in all sub grantee meetings, including contractor pre-bid and bid opening meetings. At the bid opening, a designated CAA staff member initials and dates all bids received as they are opened, as does an EHS employee. EHS also retains copies of all original bids for verification later that nothing was altered on the original bid. The CAA performs the scoring of the bids and sends the bid file to MaineHousing for a detailed review. Following approval, an EHS employee is then responsible for uploading the information to ECOS. This procedure ensures MaineHousing oversight during each step of the procurement process, while still allowing flexibility for regional geographic and demographic differences across the State.

3. MaineHousing Should Establish Performance Benchmarks and Utilize New Data System ECOS for Improving Management and Performance Monitoring of the WAP Program.

The establishment of performance benchmarks to help improve the management and monitoring of the Weatherization program continues to be a MaineHousing goal. We have requested that MaineHousing's new Information Technology Director and the new Director of Energy and Housing Services review the business requirements and implementation plan for the next phase of ECOS. Once their evaluation is complete, MaineHousing will determine how best to obtain the information needed to improve performance monitoring over established benchmarks.

4. MaineHousing Should Continue to Improve Its Oversight and Support of WAP Sub-grantees

In the past six months, MaineHousing's Grants Management Compliance Specialist has visited and provided audit reports for all nine CAAs who administer the Weatherization program. In addition, a follow-up audit is planned for each CAA six months following approval of its Corrective Action Plan.

If you have any questions, please contact me or Peter Merrill.



Helping People. Changing Lives.

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January 10, 2014

Senator Emily Cain, Chair
Representative Chuck Kruger, Chair
Government Oversight Committee
82 State House Station
Augusta, ME 04333-0082

Dear Senator Cain, Representative Kruger, and Honorable Committee Members,

My name is Rick McCarthy and I serve as a Senior Advisor to the Maine Community Action Association (MCAA). MCAA is comprised of Maine's ten community action agencies (CAPs).

The CAP's mission is to eliminate and alleviate the causes and conditions of poverty by assisting low-income individuals to move toward self-sufficiency. Each year we serve 200,000 Maine residents providing a variety of services, including Head Start, transportation, and housing. Nine of the 10 community action agencies serve as sub grantees to MSHA for LIHEAP and the Weatherization Assistance Program (WAP). Together, we serve every community in the state.

I appeared before this Committee back in September and made some comments on the OPEGA review of MSHA. One comment in particular caught the attention of members of this Committee. That was CAP agencies concerns about the ECOS system for managing Weatherization projects. At that meeting, I stated ECOS had increased time for Weatherization projects from 6 hours to as much as 30. The Committee asked MCAA and MSHA for further information on that issue.

The CAP agencies have completed the time study of Weatherization work and the results are attached. As you can see, the result of the study is that the average project takes 30 hours of staff time **in total**. That figure includes much work not directly related to ECOS. The average time spent on ECOS related items was 970 minutes or about 16 hours. That is significantly less than the 30 hours on ECOS that I mentioned in September.

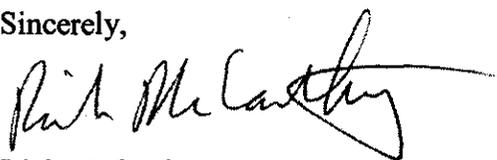
My apologies for coming to this Committee with information that turned out to not be accurate.

Since September the situation with ECOS has improved. MSHA leadership has made a strong commitment to addressing its problems. John Gallagher has directed Michael Baran, the new Weatherization program manager, to conduct a thorough review of ECOS to improve its operations, including identifying unnecessary information gathering, if any. Gallagher and Baran have both committed to make the system work as efficiently as possible and have followed through on those commitments. ECOS is not perfect (what computer system is), but we are seeing progress.

Just as important as the changes in ECOS has been a renewed commitment from MSHA to work together with CAP agencies to deliver Weatherization services in as efficient and high quality a manner as possible. We are enjoying working with Executive Director Gallagher and his staff and appreciate and respect their efforts in this area.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick McCarthy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rick McCarthy
Senior Advisor

Maine Community Action Association, Inc. is incorporated and is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. All contributions, grants and bequests to Maine Community Action Association, Inc. are tax deductible.

Maine Weatherization Program Statewide Time Study of Direct Client Activities

Client:	AVERAGES	
	Minutes per Task	# of Miles per Task
Call to client to schedule the audit	24.5	
File Packet Generation - Client Ed, agreements, etc		
Travel to site to complete audit	37	29.1
Perform ECOS audit on site	254	
Return travel back to office from site	38	29.1
Enter the completed audit within ECOS software; complete contractor work order	457	
Travel to site to complete pre-construction conference	38	29.1
Perform pre-construction conference with client & contractor	67	
Return travel back to office from site	38	29.1
Travel to site for in progress inspection	38	29.1
Perform in progress inspection	60	
Return travel back to office from site	38	29.1
Create applicable change orders	69	
Reconcile contractor invoice & enter into ECOS	89	
Travel to site for final inspection	38	29.1
Perform final inspection	191	
Return travel back to office from site	38	29.1
Travel to site for another final inspection because of a rework	42	34
Perform another final inspection because of rework	60	
Return travel back to office from site	46	34
Enter final inspection details within ECOS	170	
TOTAL CAP MINUTES FOR PROJECT & Miles	1,831	300.8
TOTAL CAP HOURS FOR PROJECT & Miles	30.52	300.8
Average number of segments in home to determine size		29
Average minutes per Segment Time		67.53
Housing Type (MH, SF, Duplex, MF)		19 SF; 6 MH