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REP. DAVID C. BURNS, CHAIR

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REP. LESLIE T. FOSSEL  
REP. CHUCK KRUGER

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**February 10, 2012**  
**Accepted February 24, 2012**

**CALL TO ORDER**

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

**ATTENDANCE**

Senators:	Sen. Katz, Sen. Craven, Sen. Diamond, and Sen. McCormick Absent: Sen. Mason and Sen. Sullivan
Representatives:	Rep. Burns, Rep. Pilon, Rep. Boland, Rep. Fossel, Rep. Fitzpatrick, and Rep. Kruger
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Wendy Cherubini, Senior Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Joseph Ponte, Commissioner, Department of Corrections Jonathan Nass, Sr. Policy Advisor, Office of the Governor

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**SUMMARY OF THE JANUARY 27, 2012 GOC MEETING**

The Meeting Summary of January 27, 2012 was accepted as written.

## HEALTH CARE SERVICES IN STATE CORRECTIONAL FACILITIES

### - Committee Work Session

The Health Care Services in State Correctional Facilities Report was presented at the November 15, 2011 GOC meeting and the Public Comment Period was held January 6, 2012.

Director Ashcroft reported back the information requested by the GOC.

- The Committee asked how the consultant hired by OPEGA, MGT, tested the medical administration records (MARs) and what those results meant. She reported that the standard for completion of such a document is 100% and that is the standard applied in testing MGT did. Therefore, if there was just one blank on the MAR, it did not meet the 100% criteria. The numbers in OPEGA's Report reflect that level of testing. Following the release of the Report, DOC had their Health Care Services Administrator, Ms. Robbins, perform a similar review of the MARs in a couple of the correctional facilities. Mr. Amberger, Regional Vice President, Corizon said they had done a similar review as well. Both results have been shared with Director Ashcroft.

DOC tested 24 Mars for the month of December, 2011. Twelve at the Maine State Prison, 12 at the Women's Center at MCC, which are two facilities MGT had also visited. Twenty-three of the 24 MARs would have been exceptions if using MGT's standard because they had at least one blank. Three of the 23 had 1 blank when reviewed by DOC so the remaining 20 had multiple blanks that ranged from 2 to 16 blanks on 1 MAR. Eleven of the MARs, 55%, had more than 5 blanks. Similar results were found in the testing done by Corizon itself at the Maine State Prison, with better results for the files at MCC.

The GOC had also wanted to know what kinds of medications were not getting signed off. As Ms. Robbins did her review, she noted which types of medications had blanks. For 9 of the 23 MARs tested, 1 or more of the blanks were for over the counter medications with the remainder being for regular prescription medications that were not opiate medications. Out of a total of 5,785 cells that had been filled in there were 148 cells that were not completed, 124 for prescription non-opiate medications. That is a completion rate of 97.5% overall for the MARs, and the completion rate on the individual MARs range from 94% to 100%. Director Ashcroft felt it was fair to say that Corizon's own testing at Maine State Prison had an overall completion rate of 92%, and by their own admission, is not as well as they would like to be doing.

Director Ashcroft asked MGT for a general sense of how things in Maine compared to their experience nationwide. MGT found management and oversight more casual in Maine than in many other jurisdictions, with the actual operational practices appearing consistent with prevailing standards of care. However, documentation of performance and practice is not as much a priority in Maine as in other systems. From MGT's brief exposure to the facilities, it appeared it was more of an organizational culture issue for the entire department, as opposed to a specific CMS deficiency.

In response to Chair Burns' question regarding DOC also being casual about documentation, Director Ashcroft noted that the larger finding from OPEGA's Report is that DOC's system for monitoring the vendor was not strong, and has not been strong. The consultant addressed the need to strengthen the system, and thought it was partly that the long term relationship that had evolved for delivery of care had become more of a partnership. There may be benefits to that, but the downside is not holding the vendor as accountable and monitoring their performance independently.

It was asked if the Director thought the kind of culture she has described with respect to the Department's involvement is changing with the new Administration. Director Ashcroft said based on the fact that the

Commissioner is moving forward with setting up a specific Quality Assurance Department, she would say yes.

-- The GOC had also wanted to know why the facilities were able to achieve ACA accreditation if these issues existed. Director Ashcroft said ACA does not look at the same kinds of things. MGT's answer was the ACA review addresses the presence of policies, forms and systems as they relate to standards. ACA does not get into the operational compliance with the standard, and their bar is pretty low, particularly in the medical area. The other accreditation body, NCCHC, is more stringent and gets into operational compliance with standards. NCCHC was formerly a requirement in the CMS contract, but was amended out several years ago.

Chair Katz asked if Corizon wanted to address the Committee. They did not.

Chair Katz recognized Commissioner Ponte.

Commissioner Ponte reported that DOC now has stringent processes in place on oversight. Repeated audits are being done and the QA Team is being trained by Ms. Robbins to be able to review basic information in a file. They are not only looking at the processes and quality of the process, but also talking with inmates to see what their satisfaction is. DOC is moving toward not what inmates want, but making sure they are receiving a good quality of care. The Commissioner thinks that is happening.

The Commissioner understands the percentage regarding the MARs, saying 98% is good so their first goal is to get to the 98% and is working with Corizon to do that.

Commissioner Ponte said the RFP is on schedule. The pre-bid meeting has taken place, the tours of the facilities have been done, and DOC is now answering written questions received from vendors.

In response to Chair Katz' question regarding the different accreditation standards, ACA vs. NCCHS, Commissioner Ponte could not answer for sure whether using NCCHS for accreditation was used in the RFP, but it may be something they can add as they are negotiating the contract. He said NCCHS standards are a much better quality assurance measure of the medical provider and a lot of other states do add that to their medical contracts.

Sen. Craven and other members of the Committee would like a report back regarding the outcome of the RFP and what the plan of care will be. Commissioner Ponte will report back to the GOC at an April or May meeting.

The Committee thanked Commissioner Ponte for his report to them and for answering their questions.

#### - **Committee Vote**

**Motion:** That the Government Oversight Committee accept OPEGA's Health Care Services in State Correctional Facilities Report as presented. (Motion by Sen. Diamond, second by Rep. Kruger, PASSED, 10-0).

## **NEW BUSINESS**

### • **OPEGA's Annual Report for 2011**

Director Ashcroft presented OPEGA's 2011 Annual Report. A copy is attached to the Meeting Summary.

Committee members expressed their appreciation for the work done by OPEGA.

The Director did note that a concern for her is follow up work on Reports that have been issued by OPEGA and she is struggling with how they are going to manage to do the follow up work well, and also complete the work that the GOC continues to assign. Director Ashcroft would, at some point, like the Committee's opinion regarding follow up work. Members of the Committee also expressed their concern for the need of follow-up.

Director Ashcroft noted that the Committee would not be able to determine the ramifications of the recommendations from the information in OPEGA's Annual Report so she will prepare a summary of what has not been followed up on that might be of importance.

OPEGA's Annual Report will be on the next committee meeting for further discussion.

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **Unfinished Business, Review of Draft Legislation Regarding Quasi-Governmental Agencies.**

- **Review of Draft Legislation Regarding Quasi-Governmental Agencies**

Director Ashcroft said OPEGA started with the organizational chart in the Maine State Annual Report which lists quasi-governmental agencies. Also listed in the Report are all of the independent agencies and boards. She also went through Title 5 and tried to assess from the powers and duties that were in statute which might meet the criteria of organizations the GOC was concerned about. First she considered whether it was a component unit of State government for purposes of the State's financial statements, or an entity assigned to a joint standing committee to undergo a Government Evaluation Act review. OPEGA tried to get information on number of employees, annual revenues or annual expenses on each entity. A review of their statutes that authorized and created each of the agencies was done to determine whether it was an entity created by the Legislature as an independent body, whether it clearly stated in the legislation that it had been assigned a governmental purpose, whether it has a board, and/or an executive director that has specific duties to administer and manage the organization and whether it has powers and duties to sue or be sued, to hire outside staff and experts, to enter into contracts, to establish and collect fees, to issue bonds, to make loans, accept grants, acquire or manage property and establish rules.

Based on this research, the Director removed a number of entities from the previous list of quasi-governmental agencies the GOC had seen. These are: the Baxter State Park Authority, Commission on Governmental Ethics and Election Practices, Harness Racing Promotional Board, Land for Maine's Futures Board, Lobster Promotion Council, Maine Dairy Promotion Board, Maine Military Authority and Wild Blueberry Commission.

Following Committee discussion regarding Maine Public Broadcasting Corporation, the members of the GOC agreed to take it off the list for quasi-government agencies.

Director Ashcroft was looking for the Committee's direction of whether they wanted to add some agencies to the list of quasi-government agencies because they meet the same tests as the others, in particular, they are considered component units of state government. They included: Loring Development Authority, Mid-Coast Regional Development Authority, Northern New England Passenger Rail Authority, Small Enterprise Growth Council and ConnectMe Authority. Chair Burns noted that the Washington County Development Authority should be added to list. It doesn't have as much money right now, but may have in the future and is similar to the others mentioned in all other ways. The GOC members agreed that the above listed agencies be added to the draft legislation for quasi-government agencies.

Following Committee discussion the following motions were made:

**Motion:** That the Government Oversight Committee remove the Maine Development Foundation from the list of agencies in the legislation regarding quasi-governmental agencies. (Motion by Sen. Craven, second by Rep. Pilon, Passed, 7 – 3, Sen. McCormick, Sen. Diamond and Chair Burns opposed).

**Motion:** That the Government Oversight Committee remove the Maine International Trade Center from the list of agencies in the legislation regarding quasi-governmental agencies. (Motion by Sen. Craven, second by Rep. Boland, Passed, 6 – 4, Sen. McCormick, Sen. Diamond, Chair Burns and Rep. Fitzpatrick opposed).

**Motion:** That the Government Oversight Committee remove the Maine State Library and the Maine State Museum from the list of agencies in the legislation regarding quasi-governmental agencies. (Motion by Sen. Craven, second by Rep. Fossel, Passed, 10 – 0).

The GOC discussed occupational and professional licensing boards listed under section 12004-A. Those Boards include the Board of Dental Examiners, Board of Licensure in Medicine, Board of Osteopathic Licensure, Licensure for Professional Engineers, State Board of Nursing and State Board of Optometry. There are other boards, but they are encompassed under the Department of Professional and Financial Regulation (PFR). The above listed boards are affiliated with PFR, but are independent. GOC members would be considering removing the above listed boards from the list of quasi-government agencies if their fees come back through the State Treasurer and they do not have the ability to cut checks independently. Director Ashcroft will research whether the above listed boards meet that criteria and either keep or remove them from the list depending on the outcome of that research.

The Committee agreed they did not object to Director Ashcroft changing the word bidding to procurement in § 12022 – Financial Policies and Procedures, 3 A.

Following Committee discussion it was decided not to change the \$10,000 amount for the procurement level in § 12022 – Financial Policies and Procedures, 3 C.

Director Ashcroft reported that some entities thought it would be helpful to reference the definition of lobbying that is already in statute. That definition of lobbying is to communicate directly with any official in the legislative branch, or any official in the executive branch, or with a constitutional officer for the purpose of influencing any legislative action, or with the governor or governor's cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures, or compensation is made, for those activities. Under the definition, lobbying includes the time spent to prepare and submit to the governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee, oral and written proposals for, or testimony or analysis concerning a legislative action. Lobbying does not include time spent by any person providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding a legislative action by the appointment, or at the request of the governor, a legislator or legislative committee, constitutional officer, state agency commissioner, or the chair of a State board or commission.

The Committee debated whether or not the legislation should include an absolute prohibition against hiring external lobbyists. Some members felt this was being too restrictive.

**Motion:** That the Government Oversight Committee agrees that the definition of lobbyist be added to the legislation regarding quasi-governmental agencies in § 12022 – Financial Policies and Procedures, 6 and that there be a prohibition on use of hiring outside lobbyists. (Motion by Rep. Kruger, second by Rep. Burns, Passed, 7 – 2, Sen. Craven and Rep. Boland opposed).

Following the motion there was Committee discussion about the need to keep the provision requiring quasis to report on any lobbyist they hired when the legislation prohibited it. The GOC members agreed to take that language out of the draft.

Following Director Ashcroft's summary of §12023, Reports to the Legislature, Committee members agreed that 2. C. be removed.

Director Ashcroft will revise the draft legislation to reflect the GOC's changes, will email it to members for their approval and/or changes, and will submit it to the Revisor's Office. The legislation will be a Committee bill, and will follow the legislative process for a bill. The Director believes the bill will go before the State and Local

Government Committee. It was noted by Sen. McCormick that some GOC members should attend the public hearing on the bill to show support.

**Motion:** That the Government Oversight Committee approves the suggested language to be presented as a Committee bill to the Legislature. (Motion by Rep. Fossel, second by Rep. Fitzpatrick, Passed, 9 – 0).

## UNFINISHED BUSINESS

- **DAFS State-wide Policy on Real Estate Sales**

- **Report Back from Director Ashcroft regarding rules and the Attorney General's Office interpretation of 17 MRSA § 3104.**

At the last GOC meeting there was discussion regarding DAFS' policy for the sale of real estate. There was a question of whether just having a policy was enough or whether the GOC members wanted to introduce legislation to require the policy to take the form of rules, and whether the rules should be routine technical or major substantive rules. Director Ashcroft was to provide information on the difference between the two types of rules so the GOC could make a decision. The Director referred members to that information in their notebooks. The routine technical rules are not subject to a formal legislative review before they are adopted and major substantive rules are. The key consideration is whether the Legislature wishes to review the rule before it is finally adopted by the agency. Because this would be a new rule, either type will have to have a public notice that goes out. The agency has to take comments and schedule a public hearing if one is requested by at least 5 interested persons. The rules also have to be reviewed for legality by the Office of the Attorney General. Once the process is completed and it is a routine technical rule, the agency can move ahead and adopt it. If it is a major substantive rule, the agency then has to submit it to the Legislature for formal review. The process for legislative review is that there is an acceptance period by which the rule goes to the Legislature and gets referred to the appropriate joint standing committee. That committee holds a public hearing and work session on the resolve in the same manner as other bills. Rep. Boland provided a copy of a diagram illustrating the Administrative Procedure Act process for both types of rules.

Chair Katz recognized Mr. Nass. If the GOC members were pleased with DAFS' policy for the sale of real estate and their administrative process, he asked what the need was to put the additional time and expense into the process of rules.

Chair Katz's concern was that a future Administration might choose to change or not follow the policy created by the current Administration. Mr. Nass said if it is the GOC's decision to proceed by rules, he thinks the routine technical rule is a quicker way to codify the policy.

Chair Katz thanked Mr. Nass.

**Motion:** That the Government Oversight Committee agrees that DAFS' State-wide Policy on Real Estate Sales should become a routine technical rule. (Motion by Rep. Kruger, second by Rep. Pilon, Passed 8 – 1, Rep. Fossel opposed).

The GOC will introduce legislation that lays out the general expectations they have of how real estate sales are going to be conducted and requires the Department to establish rules to implement the statutory requirement. By this means, the policy they have would become the rule. The Committee members agreed to exclude the Department of Transportation.

The GOC wanted Inland Fisheries and Wildlife and a few Bureaus within the Department of Conservation to have the same standards that DAFS has to follow. Director Ashcroft will check with IFW and Conservation to see if they have reviewed DAFS' policy to make sure there is not anything unique about their own situation

that would not allow them to follow the policy. She will also get their feedback on what is in place. DAFS will contact those Departments to go over their new policy.

The GOC will send a letter to IFW and Conservation recommending that the Committee would like to see them adopt a policy for the sale of real estate and letting them know that DAFS will be in contact with them to get feedback on how the policy they have developed would work for them.

Director Ashcroft has not yet received information from the AG's Office regarding the statutory provision related to contracts with State employees that all agree needs to be clarified. She will report that information back to the Committee when it is received.

- **Memo From Energy, Utilities and Technology Committee Regarding Request for Review of Public Utilities Commission**

A memo has been received from the EUT Committee that they did not believe an OPEGA review of the Public Utilities Commission was necessary. The original request for a review was made by Rep. Guerin. The request will be discussed at the GOC's next meeting.

## **REPORT FROM OPEGA DIRECTOR**

- **Project Status Report**

**Child Development Services** – OPEGA is currently conducting detailed data analysis and will be in a position to share with the Legislature, if there is a need before the Legislature is out, what information they have. Director Ashcroft is not sure the final written report will be complete before the end of the session.

**Cost Per Prisoner** is also in the same position and will have information that can be shared with Legislative Committees prior to the formal completion of the Report if that becomes of interest.

**Maine State Housing Authority** - OPEGA has had its entrance conference with the Agency and is working out getting the data needed.

## **SCHEDULE NEXT COMMITTEE MEETING**

The next GOC meeting is scheduled for Friday, February 24, 2012 at 9:00 a.m.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 12:37 p.m. on the motion of Rep. Boland, second by Rep. Fitzpatrick, unanimous.