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MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
February 28, 2014
Accepted March 14, 2014

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 9:10 a.m. in the Cross Office Building.

ATTENDANCE

Senators:	Sen. Cain, Sen. Katz, Sen. Burns, Sen. Craven, Sen. Johnson, and Sen. Youngblood
Representatives:	Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Cotta, and Rep. Peterson Joining the meeting in progress: Rep. Harvell
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 Kim Robbins, Health Services Coordinator, Department of Corrections Timothy Schneider, Public Advocate, Public Advocate's Office

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 FEBRUARY 21, 2014 GOC MEETING

The Meeting Summary of February 21, 2014 was accepted as written.

NEW BUSINESS

- **Request for OPEGA Review of the Department of Health and Human Services' Licensing and Regulation of Child Care Providers**

Director Ashcroft said Senator Craven and Rep. Farnsworth are requesting an OPEGA review regarding licensing and regulation of child care providers under the Department of Health and Human Services (DHHS), Bureau of Licensing and Regulatory Services (Bureau).

Sen. Craven said they were contacted by some social workers responsible for investigating and licensing child care providers. She said there are thousands of child care providers in the State who are doing a great job, but there are some that need extra oversight. The social workers provided information and documentation of the failure of the Bureau to follow through on investigations for some child care providers who were not reaching standards, and in fact, had some great concerns from parents and the investigating social workers.

Sen. Craven said their second concern was that two of the social workers had been dismissed - one with a settlement, but the worker still employed said he was in fear of losing his job. A meeting had been set up to discuss his work and asked if Sen. Craven would intervene for him. She called the Commissioner who said it was a confidential matter between Human Resources and the employees and she could not intervene. Two days prior to the meeting the employee gave his notice and quit.

Director Ashcroft said OPEGA has spoken with individuals who are familiar with the work in the Bureau. She thinks even if there were no specific allegations, certainly a review of the timeliness and effectiveness with which the Agency responds to concerns that are raised, complaints or issues identified during normal investigations, is a subject matter that OPEGA would typically review. She believes there are adequate reasons to consider going forward with a review at some point. If the GOC decided to move forward with a review, Director Ashcroft said she would want to be focused on the processes, procedures, and practices the DHHS employs in the Bureau's work. OPEGA continues to hear about the cultural issues and treatment of employees at DHHS and that there is a review regarding DHHS Workplace Culture and Environment already on OPEGA's Work Plan that would cover those concerns.

Chair Cain asked if the Director was suggesting that if the GOC moved forward with a review that it would be about the timeliness and effectiveness of response to complaints, the processes, procedures and practices and that the treatment of staff be put with the DHHS Workplace Culture and Environment review currently on OPEGA's Work Plan. Director Ashcroft said she would also want to know what priority the GOC would give to this review request noting it would be a medium size review and how soon it could be completed would also depend on how quickly OPEGA can get the documentation that would need to be reviewed.

Chair Cain said timeliness in response to complaints is a serious issue and asked if there was information to explain exactly what that means. Director Ashcroft said there is a Bureau within DHHS that has responsibility for licensing and regulations of child care providers, whether those are facilities or individual providers and there are licensing requirements. Ms. Cherubini said the Bureau licenses child care providers whether they are family care providers or center based care. The licenses are good for two years and there is supposed to be a visit within that period to the providers or centers to ensure they are meeting all of their licensing requirements. More frequent visits occur if there are issues, and there are a number of disciplinary steps that can be put into place including correction action plans, conditional licenses or revocation of a license. A conditional license can be issued for up to a year. Regular licensing visits and non-compliance issues of child care providers are done by community care workers, social workers, or the front line workers.

When there is a complaint of abuse, or neglect, there is a different group of employees within the Bureau called "Out of Home" workers who go in to inspect and investigate complaints of child abuse and neglect. This goes through a slightly different process with the same implications of conditional license or license revocation, should those complaints be substantiated. Ms. Cherubini explained that child abuse and neglect in the home

would be handled by Child Protection Services. Child abuse and neglect complaints reported in a child care center are investigated by the Bureau of Licensing and Regulatory Services and done by the out-of-home workers. OPEGA also spoke with people in regard to the number of community care workers the Bureau currently has to adequately ensure that child care providers are regularly monitored, provided technical assistance, and checked on for compliance with State licensing rules and then the extent to which the practices, policies and procedures are adequate to ensure that complaints are followed-up in a timely manner and addressed appropriately to ensure the safety of children.

Sen. Burns asked about the time frame for the DHHS Workplace Culture review. Director Ashcroft said it has not been started yet and OPEGA would be primarily relying on a consultant to do the review and an RFP would need to be issued. Assuming a suitable consultant is found, she would hope to have the review completed by the end of 2014. Ms. Cherubini said she was not talking about the cultural issues, but rather the concerns with compliance, licensure and whether the practices in place are sufficient to ensure the safety of children. The organizational culture issues OPEGA has heard specific to this review request are whether the culture is supportive of employees and respectful of professional opinions and criticisms offered by frontline staff who raise concerns or question departmental action. Those are similar to the issues the GOC has talked about before with regard to organizational culture at DHHS.

Sen. Burns said he has been hearing about some mid-level management people stifling the process for the frontline workers. Director Ashcroft said the GOC/OPEGA have continued to hear that. Director Ashcroft said OPEGA has been told that there have recently been organizational changes made within this particular Bureau. They are in the process of hiring an additional eleven employees – nine more community care workers to perform child care inspections; one supervisor; and one support staff - using funding that will not impact the General Fund.

Director Ashcroft noted that from what OPEGA had looked at thus far, she did not think that just adding additional staff is the whole answer. There are some issues related to expectations around what the practices and procedures themselves will be, and the timeliness of follow-up that would still warrant review. Chair Cain, a member of the Appropriations and Financial Affairs (AFA) Committee, said she has not seen that change in DHHS' budget for request of funding. Sen. Craven has not seen that change come through the Health and Human Services (HHS) Committee either.

Chair Cain referred members to the Check List for considering reviews in their notebooks and noted each of the following factors as regards to this review request.

1. The topic is not outside of the GOC's mission and OPEGA's statutory authority.
2. On the factor of whether the subject matter was already addressed by an OPEGA review planned or in progress, or covered by a topic already on the On Deck List is this review request would seem to be split into two pieces. The culture piece is addressed in the DHHS Workplace Culture and Environment review on OPEGA's Work Plan. Members of the GOC discussed whether the review needs to be a priority and will plan to discuss OPEGA project priorities at the March 14th meeting. The issue of the neglect or follow through by the Bureau of Licensing and Regulatory Services regarding child care providers is not already addressed by an OPEGA review planned or in progress, or covered by a topic already on the On Deck List.
3. The issue has not been satisfactorily covered by a recent audit, investigation or review by another other administrative body, judicial entity, or legislative study committee.
4. Are there other appropriate avenues for addressing the issue that have not yet been pursued and the GOC would like to see pursued first?

Motion: That the Government Oversight Committee moves the Department of Health and Human Services' Licensing and Regulation of Child Care Providers review on to OPEGA's Work Plan. (Motion by Chair Kruger, second Sen. Johnson, passed unanimous vote 12-0).

Director Ashcroft said the next step is for the GOC to prioritize the review. When OPEGA starts the review they will do preliminary research and report back to the Committee the suggested questions to ask for the scope of the review. Chair Cain said at the Committee's next meeting it will look at the prioritization questions and asked Director Ashcroft to be prepared to explain how this would impact the other projects on OPEGA's Work Plan.

UNFINISHED BUSINESS

- **Follow-up on OPEGA's Health Care Services in Maine State Correctional Facilities Report**

- **Joseph Ponte, Commissioner, Department of Corrections**

Chair Cain referred to the letter the Committee received at an earlier meeting from the Maine Prisoner Advocacy Coalition (MPAC), American Civil Liberties Union (ACLU) of Maine, Maine Council of Churches and the NAACP Portland Branch. At the meeting were people from those agencies and Commissioner Ponte and other staff from Department of Corrections (MDOC). She said because not all the current members were on the Committee in 2011 she asked Director Ashcroft what the current status was on OPEGA's Report and what action the GOC and OPEGA had taken in relation to follow-up.

Director Ashcroft said OPEGA had hired a consultant to assist with this review back in 2011. The objectives were to take a look at how well the State's current contractors were providing health care services in the correctional systems with regard to expected standards of care for inmates and also to look at how well the MDOC was managing and administering that contract and monitoring the contractors' performance as well.

In OPEGA's Report there were issues identified with regard to consistency of practice, documentation issues around medication provision, etc. The primary issue was the need to strengthen, on the part of the MDOC, their monitoring and oversight of the contractor on a regular basis. Director Ashcroft gave a brief overview of what OPEGA had learned about what actions MDOC has taken so far.

Director Ashcroft said when the report was released MDOC questioned whether some of the consultant's findings were really representative of the health care being provided. MDOC took the recommendations seriously and followed up with additional monitoring on their own.

Recommendation 1 – MDOC Should Periodically Verify Contractor Compliance with Contract Terms, MDOC Policies and Health Care Standards

Director Ashcroft said there were a number of compliance issues that OPEGA's consultant noted with regard to medication administration and practices and documentation, timeliness of response to sick call and sick call procedures, and consistent and appropriate maintenance of medical records. At the time of the Review there was not an electronic medical records system in place and required annual health and dental assessments were not being provided. The information MDOC was using to monitor the contractor was coming from the contractor themselves so Recommendation 1 and **Recommendation 2 (MDOC Should Strengthen Quality Assurance System)** were around putting in place a more robust system for monitoring the performance of the contractor, and in particular, their compliance with standards, policies, procedures and expectations of MDOC. The Department did do some reorganizing of its monitoring function and assigned some specific roles and responsibilities to various individuals. Now there is a person with a health care background who has the responsibility of monitoring the health care services. There are also separate individuals who are monitoring the fiscal aspects of the contract. MDOC is putting together quality and performance measures that are part of a larger national system of benchmarks so they have quality assurance work going on at a broader level. Director Ashcroft said from conversation with MDOC, there are now a number of reports they regularly receive from the contractor and which are reviewed and discussed with the contractor on a regular basis. OPEGA is in the process of looking through all those reports, but it appears there is a lot of information now shared between MDOC and the contractor on performance type issues on a regular basis.

OPEGA is still assessing whether there is adequate independent review being done on the part of MDOC. The vendor changed in 2012 and there is also now an electronic medical records system the new vendor has implemented.

Director Ashcroft said MDOC has identified the need for at least an additional part-time resource in order to do all of the monitoring work they want to do, particularly to be onsite in the facilities, on a more regular basis.

Recommendation 3 – MDOC Should Ensure staff involved in Health Care Service Delivery are Sufficiently Trained and Knowledgeable of Relevant Policies and Standards

This was a concern about whether all the contractor staff and MDOC staff were adequately trained on the various policies and procedures in place with regard to health care and the security practices associated with health care in the institution. The Review found that not all staff were adequately trained with regard to what those policies were and that was complicating the delivery of healthcare services in a timely and effective manner. The Department has taken steps that they can speak to in more detail to enhance training and to make sure that folks are aware of policies.

Recommendation 4 – Medical Records Should be Maintained Consistently Across the Correctional System

The electronic medical records system has been implemented and that should be allowing for much more consistent record keeping of all of the aspects of medical care for inmates. MDOC also described what is being used to record the medications given to prisoners. An issue that came up in the OPEGA review was that not all of the signoffs had been getting put on the physical hard copy sheet when inmates were given their medications so there were questions about whether somebody got the medication and when. There is now an electronic system that requires sign offs before the person giving the medications can go on to the next medication or the next prisoner.

Recommendation 5 – MDOC Should Continue to Pursue Cost Containment Strategies Through New Health Care Services Contract(s)

Director Ashcroft said Commissioner Ponte would be the one to speak more specifically to exactly what is in the current contract that provides for cost containment, but she said she did know that MDOC, at the time OPEGA issued the Report, did come before the GOC and talked specifically about a number of approaches that they were taking to try to reduce cost. One was the new approach to what was going to be provided for care being brought to the standard of what was the necessary care. Director Ashcroft said OPEGA's first question about the recent issues raised by the advocacy groups was whether the complaints being received were because of disagreements over MDOC's new policy of what they were willing to provide versus what had been provided in the past. From the categorization of the issues in MPAC's letter it seemed like a number of those categories would not necessarily be driven by the change in policy that MDOC has been employing to try to contain costs.

Director Ashcroft thinks MDOC has done what it planned and committed to do with regard to implementing the Recommendations in OPEGA's Report. Nonetheless, there are additional questions as to why the Advocacy groups are continuing to see the large volume of requests from individual prisoners. OPEGA does see that there is a lot of communication between the groups and MDOC staff and the contractors and it appears they want to be responsive to try to figure out what the resolution is. That does leave the question hanging as to why they do not seem to get some issues resolved in a manner that the advocates feel is timely and appropriate.

Director Ashcroft reminded the GOC that in MPAC's letter they are specifically asking for OPEGA to do additional work with regard to assessing the adequacy and quality of services for prisoners in the Correctional System. OPEGA would normally have been processing that as a new request, but because the Office is still

in an active follow-up mode with the prior report, it seemed reasonable to bring this request forward to the GOC in this context to see where the Committee may want to go with it.

Chair Cain said that MPAC's letter outlines four ongoing issues that were part of OPEGA's 2011 report: (1) Medical information inaccurately recorded. (2) Untimely delivery of care. (3) Review of MDOC's system for monitoring contractor performance. (4) Problems with availability of medication.

She also noted that MPAC's letter listed eight new issues. (1) Inaccurate transfer of medical records and information between facilities. (2) Medical Grievances Unanswered. (3) Special dietary needs unmet. (4) Issues in quality and availability of dental services. (5) Inadequate provision of mental health services. (6) Dismissal of outside specialists' recommendations. (7) Inadequate accommodations for elderly prisoners and prisoners with disabilities. (8) Pain medication.

Chair Cain said she can see how the ongoing issues listed relate to the original Report and asked Director Ashcroft if any of the new issues were also addressed in the original Report. The Director said medical grievances were looked at generally as part of the review the consultant did, but response to them was not specifically raised as an issue. Issues with medical records in general were raised, but none of the issues were addressed specifically in the report.

Rep. Boland said she did raise the dietary needs issue and encouraged positive actions to be taken to enhance nutritional intake of prisoners, particularly in a way to help avoid medical treatment.

Sen. Craven said with regard to not having adequate services for the elderly, she would like to see seniors transferred into nursing homes that would provide adequate care for them and also allow for Medicare to pay for the elderly group as opposed to paying straight out of General Fund dollars for the care. When she toured the prison there was a prisoner with very advanced dementia and staff were doing their best, but it is not a place for that type of prisoner. Chair Cain thinks there are legal considerations around releasing someone from the prison system that would have to be addressed. Rep. Boland noted that there had been a lot of work done to pass legislation to address Sen. Craven's issue and it has regularly been defeated, but not yet going away.

Chair Cain suggested that the Committee hear from the individuals regarding the MPAC letter who can outline all of their concerns and then hear from Commissioner Ponte who can respond to where MDOC is in relation to the initial recommendations and also respond to the concerns.

Chair Cain asked if one or two people would like to come forward to address the concerns raised in MPAC's letter.

Grainne Dunne, an organizer with the American Civil Liberties Union of Maine and Joseph Jackson, Associate Coordinator of the Maine Prisoner Advocacy Coalition stepped forward.

Ms. Dunne said the ACLU of Maine, Maine Prisoner Advocacy Coalition, NAACP Portland and the Maine Council of Churches are concerned about the high volume of inmate correspondence they have received related to serious unresolved medical issues. They recognized there exists significant challenges to providing health care services in a correctional setting, but within the correctional setting prisoners have limited power over selection of their own health care provider and treatment causing them to be vulnerable to cost cutting measures with little to no avenue for address. When health care services are tied to profit it is of utmost importance that there exists extensive oversight to ensure that bottom line considerations do not overtake Eighth Amendment rights.

Ms. Dunne said MPAC received 400 letters from 310 prisoners between July 2012 and October 2013. She noted that it appears the issues are particularly acute among elderly and aging portions of the population whose specialized healthcare is increasing going unmet. Of the 310 who wrote to MPAC 58% were over the age of 50.

Ms. Dunne said because so many of the problems brought to their attention involve new issues not in OPEGA's 2011 Report, they would strongly recommend that the GOC undertake a new review. They think it is particularly important as Correct Care Solutions (CCS) just received a contract for the new mental health unit created by LD 1515 and will be overseeing the care of patients formerly under the custody of Maine DHHS. She said if the review is undertaken they would strongly recommend that direct prisoner feedback be incorporated.

Mr. Jackson said along with being an Associate Coordinator of the Maine Prisoner Advocacy Coalition he was also a prisoner for twenty years. He has been in five of the six correctional facilities and experienced health care through both the old and new medical contract. He wanted to reiterate concerns with the continuity of care, or lack of continuity of care, within MDOC. If a specialist prescribes treatment for an individual, what happens is that treatment is constantly interrupted because they want to make sure they use the medication they have. His medication was interrupted at least six times since the new contractor has taken over. He also saw other inmates go up to the window for their medication and it was not available. He said that was very troubling for him because that was one of the problems that was going on with the previous medical provider contractor.

Mr. Jackson also believes an OPEGA review is vital for the continuity of treatment to inmates and while there has been improvement, there is still a long way to go.

Sen. Craven asked what type of medication Mr. Jackson was referring to. He said he was referring to prescription medication for a terminal condition and he is not supposed to miss any dosages. He was not the only prisoner that happened to and even after he tried to work with the new contractor the problems kept occurring. Mr. Jackson said the missed dosages would occur every other month.

Chair Kruger asked whether it is a medical professional dispensing the medication on a regular basis. Mr. Jackson said medications are given by medical professionals. Chair Kruger assumed a medical professional would see in an inmate's order that it is a prescription that the prisoner needs on an ongoing basis. Mr. Jackson said the person dispensing the medication may not have the knowledge of how much you need the medication. Their job is to dispense and order.

Sen. Youngblood asked if Mr. Jackson knew if the issue of availability is more prevalent in one facility than another, or one part of a facility, or the entire facility. Mr. Jackson said has been in five of the six facilities and it seems to be a reoccurring theme in each facility and throughout each facility.

Sen. Katz asked if Mr. Jackson could estimate, out of 365 days, how many days he did not get his prescribed medication. Mr. Jackson said it was missed at least five times and each one of those times it was for about four days.

Chair Cain asked if Ms. Dunne could be more specific about where she has seen improvement in the health care because she was trying to see where the was gap between what OPEGA had recommended, what steps were taken and what gaps still exist. Ms. Dunne said she was not with the ACLU at the time of OPEGA's 2011 Report, but said she could speak to some improvements she has been made aware of. Most notable is transparency between MDOC and the open line of communication with contractor CCS. Advocates have been appreciative of both the willingness of the Department and CCS to be very transparent in trying to seek resolution in a lot of the cases. They continue to see issues with medical file inaccuracies even with the electronic medical system. It was still seen recently that medical information is not being transferred accurately between facilities.

Rep. Boland asked Mr. Jackson if he had seen improvements in the nutritional issues the prisoners. Mr. Jackson thought food was a continuing issue. You have to look at the underlying issue of MDOC trying to cut costs, and food is an area to do that. He said they do have more fresh fruits, but the other is processed food.

Chair Cain recognized Commissioner Ponte.

Commissioner Ponte introduced Dr. Robert Clinton, Regional Medical Director, Correct Care Solutions.

Commissioner Ponte said he did not disagree with a lot of what was in OPEGA's 2011 Report and had approached it though as they had issues and problems that needed to be fixed. MDOC wrote the new medical contract based on many of the recommendations in the Report. They now have medical people directly overseeing the contract and how it works, and the contract is under one vendor so would have one stop shopping if there is a complaint, there is one person to go to.

Commissioner Ponte said conversations keep going back to cost, and as a member of the Executive Branch of government, the Department has to pay attention to costs, but no one has cut anything in the Agency just because it would cost too much. They did implement a revised standard of care. They also looked at narcotics and bringing people addicted to narcotics into the prison system and keeping them on narcotics for years. That is bad medical practice. MDOC changed a number of those things, not because of costs, but because it was bad medical practice. He said MDOC has not saved a penny in food service in the three years he has been there, they have not cut anything. All meals in the correctional facilities are approved and signed off by a dietician and all the special diets are signed off by a dietician. Commissioner Ponte thinks MDOC has given OPEGA's Report a great deal of attention.

Commissioner Ponte said in conversations with Director Ashcroft he has asked what else could MDOC do in the way of oversight that would give the GOC comfort that they are doing due diligence. He said they were always going to have some level of complaints and they treat every complaint seriously, no matter who receives it. MDOC and the medical vendor have regular open meetings with advocates, are open in talking about issues and problems, and try to work those out as they occur. Commissioner Ponte said they are not perfect, they admit to mistakes and try to improve from them. He thinks they have addressed 99% of the issues raised in OPEGA's Report.

Dr. Clinton said CCS has processes for continuous quality improvement, monitoring and measurements. They mirror what is done in the community. They review health employment data insurance subsets where different corporations can view how care is being delivered based on insurance companies data so they have a comparison. When there is an issue that arises he will do face-to-face visits with their patients to find out what the problems are and find resolutions.

Dr. Clinton said there are two physicians at the Maine State Prison, a nurse practitioner who has practiced at the Maine Correctional Center for fourteen years, a nurse practitioner that has done medicine in both jails and corrections for four years, and doctors from the community that visit Down East and Charleston. He said when he speaks to physicians in the community, people agree that the care CCS delivers is very good and consistent.

Dr. Clinton said CCS has been in front of the Maine Board of Registration of Medicine and they have been supporting their efforts in terms of their practices. A number of complaints go to the Board, each is analyzed and feedback is given. He oversees the group of practitioners so is responsible for all the health care delivered in the correction facilities. He has a Chief Medical Officer and a number of different specialists within CCS' organization who are always available to him when he has questions.

Sen. Johnson asked if there was any information on what frequency running out of prescription medicines was still occurring. Dr. Clinton explained the two ways of taking medications within the correctional setting. One is "keep on person" medications which is a card of medications that an inmate will keep in their cell in a locked cabinet. The other way is directly observed treatments. For the "keep on person" medications when a card is near the due time for renewal the card is brought to the medication window and is scanned in. Once it is scanned in, the pharmacy vendor sends that card and then the inmate returns to the window and the refilled

card is provided to him/her. Medications ordered are received within twenty-four hours and deliveries are made every day but Sunday.

Commissioner Ponte said the inmate brings his card to the window so if they do not bring the card up, or waits until it is empty, there would be a delay in order. On other medications the prescriber is responsible to ensure that there is a timely renewal. Dr. Clinton said what they have done to address the concern about availability of medications is order stock on high risk medications so the stock is available to be dispensed in the event that there is a high level medication that is not available for that patient specifically.

Ms. Robbins said she looked at the medication records for February 22nd at the Maine Correctional Center. There were 2,084 medications scheduled to be given to inmates that day. Of those on the electronic system, which records all the dosages given and not given, there was no documentation for three. They do not know if they were not available or the person did not show up. At the Maine State Prison on the same date 1,562 medications were prescribed to be given and two were not documented on the electronic systems.

Sen. Johnson said that was interesting as a one day snapshot, but what he was trying to get to was not just how good one day looks, but at what frequency it was occurring, is it an ongoing problem and to what extent so they will know if further action is appropriate. He said because there was no record as to why the medication was not dispensed, it gives no information of what the problem is that needs to be corrected to prevent it from happening. Sen. Johnson doesn't understand why they are not trying to collect that kind of information.

Dr. Clinton said there should be information in the electronic system to explain no shows so if the data was not available to Ms. Robbins, then training is needed for the individual nurses dispensing the medications. Commissioner Ponte said they will gather that information and get it back to the GOC.

Sen. Burns asked if the number of overall complaints had gone up, down or stayed the same. Commissioner Ponte said the overall level of complaints have gone down and the number of grievances has also significantly been reduced.

Sen. Katz remembered from a couple of years ago talking about the inpatient costs for inmates when they went to the hospital and asked if that had changed, and if so, from what to what in terms of costs. Commissioner Ponte said it has changed because between MDOC and CCS they are paying the bill because most of the inmates are not covered by Medicare. He did not know what the amount is, but will find out and send that information to the GOC.

Sen. Katz asked if Commissioner Ponte could give information on MDOC's oversight of the contract in terms of who is doing what and what it involves. Commissioner Ponte said MDOC hired one individual whose sole job is to look at the contract and make sure that the company is meeting the deliverables in the contract. Ms. Robbins, a registered nurse, has the medical professional clinical aspect of oversight. Joseph Fitzpatrick, a clinical psychologist has the clinical overview for mental health and medical. In total, MDOC has three different people looking at different parts of the contract. The company reports monthly on the lengths of stays in the hospital and costs.

Rep. Boland asked if the change in the level of meds that MDOC now averages, has resulted in improvement in the health of the patients. Dr. Clinton said it has approved. She asked if CCS works with nutritional supplementation for people who may need that, or be able to benefit from that, as a way of reducing their need for medical interventions. Dr. Clinton said they have a list of therapeutic doctors and depending on the medical condition that supports the need for a special diet, CCS matches them up to the diet that the licensed nutritionist has provided. For patients who have extreme calories needs, there are supplements that people get.

Rep. Cotta asked how MDOC dealt with the inmates who are either eligible for or receiving medication, from the Veterans' Administration. Commissioner Ponte said they do have inmates that would be eligible, but

while they are incarcerated, they are not entitled to those resources. He and Jody Breton went to the VA Hospital about two years ago to ask that question. They do begin to work with the inmates who are getting out, but while they are incarcerated, they are not entitled to the veteran's resources. Rep. Cotta asked if that was a federal policy. Chair Cain said that was the same for Maine Care or Medicare as well. Even if they are eligible, because they are incarcerated they were ineligible during that time.

Chair Cain asked Commissioner Ponte what the total prison population in Maine was. He said, not counting jails, it is about 2,300 for adults. She said MPAC's letter was specific and raises concern. She did not know what the number of complaints was before, but there still appears to be a substantial amount of complaints being made beyond the specific scope of the original report. At some point the Committee would have to make a decision about whether to incorporate the concerns in the letter into the traditional follow-up or whether they are different enough to consider a new investigation. The GOC tries to separate if what happened was human error versus something that can be corrected to improve a system. She would like to get MDOC's responses. Commissioner Ponte said his problem is that all the numbers are nonspecific to them. Part of the conversation they have had with Director Ashcroft is what could they do, could the advocates give MDOC 15 or so names out of the total so they can do follow-up work. He said they are always going to get complaints. Some may have been when they eliminated some of the narcotics, but it is like chasing ghosts. Commissioner Ponte said inmates have access to him and to anyone on his staff so if they have an issue that needs to be addressed, he will go talk with them. Chair Cain said that seems like a consistent challenge for the Commissioner and unless he gets the complaint directly from the inmate, it is a challenge.

Sen. Johnson said the answer to the concerns raised by Commissioner Ponte would be to have good data.

Sen. Craven asked if MDOC could report back to the GOC of what the volume of dosages was that was cut back, what happened, and how it was determined to withdraw or wean people from certain medication. Sen. Johnson asked if there was a check off in the course of a prisoner transfer and records kept to ensure that when they arrive at a new facility their records arrive with them. Ms. Pickett said CCS implemented their electronic medical records system in Maine in all the MDOC facilities in 2013. The system is a centralized repository for patient electronic medical records for the Correction System. CCS and MDOC staff have access to the system through MDOC policies, state and federal law so access is governed by that and is fully secured. In regard to inmate transfers and transfer of medical records, the System is a central system so the health care staff at all facilities has access to all the patient records. When a patient moves from one facility to another, the medical record does not need to move with the patient because it is a centralized data base. It may be that the transition to electronic medical records where records are no longer printed to paper, packed and transported with the patient has raised some of the concern. If a patient is transferring to a non-MDOC facility that electronic medical record is printed to paper and is packed and accompanied with the patient to the non-MDOC facility.

Sen. Johnson asked if there were issues with staff at the receiving facility being aware of the right ID for that prisoner, or their staff having access to the records of the prisoner transferred. Ms. Pickett said the electronic medical system is not an open system and that only authorized CCS medical staff employed at the facility and authorized MDOC users have access to the medical records. The medical records system is updated with patient information in terms of the MDOC number, the patient name, housing location, and facility every twenty minutes by MDOC's system that contains all the location information. That information does not change as the patient moves except for their housing location and their facility. All the information is available in ERMA and is searchable by patient name or ID number so any medical staff person authorized can see any patient in the system at any time. Sen. Johnson said that leads him to think that the incident reported last November or December bears investigation to figure out what went wrong. Did something happen to that patient's records or what precipitated the observation that records were not transferred with the prisoner as of last fall. He said what Ms. Pickett described is not consistent with what happened and thought perhaps there was a problem with the system or with people knowing how to use the system correctly. Ms. Pickett said there was no transfer of information because it is a centralized data base. She said CCS has a training program for their staff, have training manuals on site, have super users or educated users who are available to staff members to answer questions, and help with training so she would have to receive

information about the specific case to understand what the source of the problem might have been. Sen. Johnson asked if a prisoner's medical records remain in the system after being discharged. Ms. Pickett said they do. The electronic medical records system adheres to the archive policy and the record retention policies of MDOC. He said it sounded like a misunderstanding or a bug somewhere in the software

Ms. Robbins said for sick calls, chronic care visits, the yearly physical exams, and the dental care, she asks CCS for weekly electronic reports which would show how many people were scheduled to have a sick call for a particular day, week, or quarter and of that number how many actually did have their sick call completed. She uses the same procedure for chronic care and has information of why if those visits did not happen. Ms. Robbins said she is not seeing the numbers reported by MPAC and is not seeing the delay in care. She would be happy to share her information with the GOC. Chair Cain said that can be added to the material the Committee wants a report back on.

Chair Cain said the GOC has received a request from the advocacy groups for a new investigation of the medical services in the correctional facilities and the Committee already has things they are working on related to customary follow-up. The Committee was trying to sort out what was within the scope for normal follow-up versus what would warrant a new investigation. Director Ashcroft thought they had reached the extent of what would be OPEGA's normal follow-up, which is typically to monitor what the Department has taken for action to assess whether they think that action reasonably addresses the issues that were raised. Typically as a result of that they do not get into what impact actions taken was as to whether it did in fact effectively address the issue. Director Ashcroft said that any additional work that OPEGA did would be in the stead of a formal follow-up review similar to what the GOC is having them do with the Office of Information Technology around issues that OPEGA had previously raised.

Director Ashcroft said there is a disconnect between what MDOC sees, believes and feels is going on within the system and what the advocates believe in terms of inmate complaints. In between that, as alluded to by the Commissioner, it is very difficult to understand whether there are any themes to the root causes that might be underpinning the complaints without taking some of the specific situations and following them through to understand if the issues are real or already addressed. OPEGA has not gone to those lengths yet. She thinks for some complaints there might be some data available as part of the electronic records system that might be able to shed some light on it, but for others it would be taking a look at some particular cases, particularly since one of the concerns heard from MPAC as reoccurring is that there are delays in addressing care and needs to the point of people becoming more chronic than they otherwise would be. Director Ashcroft did not think OPEGA would see that by analyzing the data that might come out of a system. She has talked with Commissioner Ponte about whether it would be a helpful exercise to take ten or fifteen of the specific complaints, perhaps ones that the advocates would pick out as the most troubling to them, or most egregious, and to look at the records. There are some sharing of information issues that might make OPEGA a conduit between the MDOC and the advocates and then report back to the GOC. The question remains for her of why the advocacy groups are seeing the complaints they are.

Sen. Burns said in reviewing the letter from the advocacy groups, he was pleased to see that they took his suggestion and interacted with the Board of Visitors, but he takes issue that they want the matter to stay solely with the GOC. He thinks a lot of the issues are policy and there should be interaction in everything that the GOC has done, and everything they are doing, shared with the policy committee. The Criminal Justice and Public Safety (CJPS) Committee is intimately familiar with MDOC and interacts with them on a regular basis. He thinks the GOC may be getting deeper into policy and it may be beyond their venue.

Director Ashcroft said she has not had any recent interaction with the CJPS Committee. When OPEGA's Report was first released they were looking for that Committee to play a role in monitoring actions, etc. and she did brief them on the Report. She said she would respectfully suggest that perhaps not everything talked about at the meeting here is related to policy. There are some possible breakdowns in procedures or systems. Director Ashcroft said she was suggesting OPEGA play a role where the advocates could share with OPEGA a list of particular cases that they might want analysis for root cause of why they think something has not been done. For OPEGA to work with MDOC to ask them to go through and line out specifically what has occurred

in a case with regard to the issues that were raised. OPEGA would report back to the GOC on whether it looked like the concerns were validated, whether the Department took whatever action would have been appropriate, or somewhere in between. OPEGA could give the GOC an additional read on whether the things clearly represent additional ongoing issues that have not been identified and addressed already by MDOC. Director Ashcroft was suggesting that action because they have access to confidential information.

Sen. Johnson said there is the role for confidentiality that the CJPS not have and agreed with Director Ashcroft's suggestion of doing a limited scope investigation.

Rep. Cotta agreed with both Sens. Burns and Johnson. The CJPS Committee does have a role in this, but agrees with Director Ashcroft's suggestion of letting the advocates bring some complaints forward and having OPEGA review them.

Rep. Boland noted the remarks in the letter received from the MPAC stating that "The Eighth Amendment of the Constitution guarantees prisoners a right to medical care . . ." and said that prisoners are often subjected to inaccurate assumptions by medical staff about why they are seeking treatment and medication. They are also exceedingly vulnerable to cost cutting measures with little or no redress through the grievance system. At the same time geriatric health issues are rising steeply. It is her understanding that an effort has been made to communicate better with the prisoners, but it seems somehow there is something missing in that aspect of the program as well. Rep. Boland wondered if those inmates might like to talk directly rather than through the advocacy groups when something like this takes place knowing that they are guaranteed confidentiality.

Chair Cain said that there have been three pieces that have been suggested.

1. They have specific information that the GOC has requested that MDOC said they will bring back to them.
2. To communicate with the CJPS Committee. The GOC can forward MPAC's letter with background information because a lot of the members on that Committee are new and have not had the benefit of the 2011 OPEGA Report.
3. The question around specific cases being looked at, even with an initial look, by OPEGA staff.

Chair Kruger said he joined the GOC towards the end of the development part of OPEGA's Report and remembered as the new medical contractor came on board that it was too early to try to assess at that time what was going on and whether the contractor had a grasp of what needed to improve. He is getting the sense from MDOC and CCS that they are more sensitive and aware of the problems and potential solutions, but he is not ready to dismiss the complaints from the advocacy groups. Chair Kruger would like to see some research by OPEGA staff done on how the complaints flush out in the confidential format that OPEGA can do and then report their findings to the GOC and forward that information to the CJPS Committee.

Sen. Youngblood agreed and said the only way to find out what are valid complaints is to have someone review the complaints.

Chair Cain said the Legislature would only be in session another six weeks and her concern is that the GOC would need to take some step now to include the CJPS Committee, because they do not meet year round. She suggested that in addition to whatever steps the Committee directs OPEGA to take, they send direct communication to the CJPS Committee with a copy of the advocacy groups letter and the Recommendations from OPEGA's Report. Director Ashcroft can work with the Analyst for the CJPS Committee and perhaps do a briefing for them on the Report. She would like the benefit of their perspective on the issue in case they have particular things they are already working on. She asked if Director Ashcroft felt she had enough information or did she need additional direction from the GOC. Director Ashcroft said what would be appropriate would be a vote of the Committee to put the additional project of a formal follow-up of the Correctional Health Care Report on OPEGA's Work Plan.

Motion: The Government Oversight Committee move forward with a formal follow-up of the Health Care Services in the Maine State Correctional Facilities. (Motion by Sen. Craven, second by Sen. Johnson, passed unanimous vote 12-0).

Chair Cain suggested that the information requested regarding the follow-up work be on the March 28, 2014 Committee Agenda so that the CJPS Committee can respond to the GOC by that date. Other members of the Committee agreed.

The Committee thanked all of those who attended the meeting and either provided information or sat in the audience for this agenda item.

• **OPEGA's Report on Public Utilities Commission**

- **Work Session**

-- **Draft Legislation Regarding Ombudsman Position in Public Advocate's Office**

Director Ashcroft said the GOC's now needs to determine what actions it wants to take if any, on any of the matters included in their letter to the Energy, Utilities and Technology (EUT) Committee and the EUT Committee's response.

In the GOC's letter to the EUT Committee they noted concerns about the issues raised in OPEGA's Public Utilities Commission Report and heard through the Public Comment period. Some issues seemed to be broader policy issues which may require changes to statute or rules. The matters of concern are:

- PUC should explore ways to assist consumers appearing pro se in Commission proceedings.
- PUC should continue to improve the usability and accessibility of its on-line case file system.
- PUC should clarify how different types of information submitted in a case can be used in the Commission's decision-making.
- PUC should take steps to address the need for time extensions in ten-person complaints.
- PUC should establish a more structured approach for identifying and addressing issues potentially affecting multiple consumers.
- PUC should take additional steps to minimize risk of actual or perceived bias in its regulatory activities.

It was noted in the letter to the EUT Committee that OPEGA's Report included a recommendation that the Legislature consider revisions to PUC's statute to address both the risk and perception of bias and suggested potential revisions of:

- increasing the number of Commissioners;
- requiring certain interests to be represented on the Commission;
- requiring Commissioners to have certain qualifications; and
- creating independent advocates within the PUC to represent contrarian viewpoints.

Other issues raised during the Public Comment period included:

- sworn testimony;
- evidence in cases;
- confidential documents; and
- public health considerations.

The following is Director Ashcroft's summary of PUC's and the EUT Committee's responses.

The PUC and the Office of the Public Advocate (OPA) have worked together on exploring ways to facilitate consumers' ability to effectively represent themselves in adjudicatory proceedings before the

Commission. Specifically the idea of establishing a function in one of those agency's that would be available to assist rate payers through that process. They both agreed that function is a good idea and the EUT Committee thinks it is a good idea. Director Ashcroft said there is some funding that has become available in the OPA to establish a position, at least through the end of the biennium, FY15, and the EUT Committee would appreciate the GOC providing a legislative vehicle in the form of a bill for them to consider establishing the temporary position. She referred the Committee to the draft legislation included in their notebooks regarding that request. Director Ashcroft said Jean Guzzetti, OPLA Legislative Analyst for the EUT Committee assisted by drafting the legislation. The legislation would go to the EUT Committee for further work. The legislation includes minor changes to statute to allow the Public Advocate to have the authority to establish the Consumer Advisor position in salary range 25. It also includes language that the position will be repealed on June 30, 2015. Director Ashcroft thinks the idea is if it works well, and is helpful, it is something they would pursue on a more permanent basis. She noted that Tim Schneider from OPA was at the meeting to talk through the Consumer Advisor position description should the Committee have questions in deciding whether they wanted to introduce the legislation as part of its work from OPEGA's Report.

Chair Cain said she understood why the language of repealing the position at the end of FY15, but her concern is not getting someone who wants the job if potential applications know it is going away. She thinks the position has a tendency to be very important, and if OPA establishes a position so that it comes and goes so quickly they will not get anybody to apply and that might undermine its effectiveness. Mr. Schneider said the discussion in the EUT Committee was they thought the creation of the position was a good idea but they were not sure that, given budgetary limitations, it was something to do long term. OPA ran the numbers and came to the conclusion that if the EUT Committee was interested, they could do it at least through FY15 with existing funds. They would accomplish that by using funds from their consultant budget without any budget impact or the need for a fiscal note in 2015. The EUT Committee was comfortable with that and this is the reason for the limitation. Mr. Schneider said to the GOC's concern about hiring, the bill as drafted includes a requirement to report back to the Committee on what the position has done. He shares the GOC's concern and is hopeful OPA will be able to find somebody to do the job well, and said he is of the mind if they can do that then, he can come back before the Committee to make the case based on the OPEGA Report and the work the person in the new position has done, to recommend the position be continued. If it does not seem useful, then not. He will be very clear that the first six to eight months of their job will be intense because they will be justifying the future of the position. Chair Cain thinks the position is a good idea and does not want to see it false started because it has potentially been set up to not be able to do the job in the first year.

Motion: That the GOC moves ahead with the legislation to create the Consumer Advisor position in the Public Advocates' Office. (Motion by Chair Cain, second by Sen. Craven)

Discussion: Sen. Burns asked if the motion kept the existing language of the position ending June 30, 2015. Chair Cain said her motion would put the bill forward as drafted, but if the Committee wants to, they could raise the concern of the language being repealed June 30, 2015 to the EUT Committee, perhaps through Sen. Youngblood, and asking them to consider extending that date. Sen. Youngblood committed to seeing that the subject gets brought up when the bill comes before the EUT Committee.

Motion: The above motion passed unanimously, 12-0.

The Committee thanked Mr. Schneider for attending the meeting.

Director Ashcroft continued with reviewing the PUC and EUT Committee responses to issues raised in the GOC letter to EUT.

OPEGA had recommended that the PUC should clarify how different types of information submitted in a case can be used in the Commission's decision-making. In response to that the PUC has taken action it believes will suffice by changing some of the communications that are available on its website describing

how sworn and unsworn testimony and comments will be used by the Commission. Director Ashcroft is not certain there is anything more specific that would have been asked of the PUC and it was not a recommendation that the EUT Committee directly address with further input. If the GOC is good with the actions taken by the PUC, there is not anything additional from the EUT Committee, so the question would be, are there additional actions the GOC thinks ought to be taken. Rep. Boland said it is a key issue to interveners on how different types of information submitted in a case can be used in the Commission decision-making and asked if an answer has been received. Director Ashcroft said there was an explanation given and PUC was going to make sure that it was clear to all parties that were participating. Rep. Boland asked if that explanation by the PUC was in writing. Director Ashcroft said it is documented in the Meeting Summary where Commissioner Welch described it to the GOC. The PUC has also changed the way it describes that information on their website, and it has always been described on OPA's website. The action that has been taken is more about improving the clarity of communication around the issue. Rep. Boland said there is still the issue of bringing in information that is not considered sworn so it did not have a certain level of credibility, attention, or value and she thought that was part of the issue. Director Ashcroft said it was and that unsworn testimony cannot be relied on as facts by the Commission in its decision. However, the comments and unsworn testimony does inform the Commissioners on what additional questions or lines of questioning they might pursue. Rep. Boland asked if that was an improvement and Director Ashcroft said no, it was just the way it is. Rep. Boland said the way it is what was causing a problem. Director Ashcroft said OPEGA's observation was that there was confusion for folks around what could, or could not, be relied on by the Commission so OPEGA's recommendation was to make sure that it is clear from the start to all the parties that are participating, as well as on the website for folks that might be submitting comments, so they know how those are going to be used by the Commission. It was an education piece rather than looking at whether it should be different than what it is. Rep. Boland confirmed that there was a commitment to informing people upfront and that action has been taken and documented. Director Ashcroft said yes and the PUC had previously submitted to the GOC the changes they had made to the language that is on their website.

Sen. Youngblood noted that the PUC did also clarify that they do swear people in over the telephone so you do not have to be present and that procedure is well documented.

Sen. Johnson said the Consumer Advisor position is an avenue for people to better understand how they can participate effectively and perhaps help them make arrangements to be sworn in over the phone. He does not think there is a lot more the GOC can do in that area.

Chair Cain suggested the Committee continue this item until after lunch or to the next meeting. It is not an emergency item and they have already moved the draft legislation ahead from the EUT Committee. Other members agreed.

RECESS

Chair Kruger recessed the Government Oversight Committee at 12:05 p.m.

RECONVENED

Chair Cain reconvened the meeting at 12:40 p.m.

- **Report on Healthy Maine Partnerships' FY13 Contracts and Funding**
- **Committee Work Session Continued**

Director Ashcroft reported that the subpoenas were issued on February 26, 2014 and confirmation has been received from all parties that service had been accepted. She reminded the Committee that they had a

discussion with representatives from the Attorney General's Office on what might be done in the records retention and FOAA arena and had asked Director Ashcroft to summarize the ideas that were put forth.

The GOC talked about the formation of a staff level working group that included the Assistant Attorney General's Brenda Kielty, the State Archives' Office, the Office of Information Technology, and State Auditor to work toward clarifying records retention expectations and policies around making sure drafts and working documents were considered in the same vein for possible retention as other documents. Also what kinds of documents needed to be created and retained with regard to specific matters that affected large contract awards and policies to support decisions and justifications.

Director Ashcroft thinks the AG's Office is in a position to put together a letter about what they will be willing to spearhead with regard to such a group and then report back to the GOC rather than have the GOC prepare a Resolve to direct somebody to do that.

Chief Deputy Pistner said to ensure that the AG's Office was capturing what the GOC is asking, she will outline something along the line of what was in her earlier letter, review it in-house to make sure everything is covered, and then will send it to Director Ashcroft. The information will then be sent to the GOC members for their review and they will have the opportunity to ask the AG to include whatever they decide. Chair Cain asked if that was amenable to the Committee as the next step. It was.

Director Ashcroft said the GOC had to decide the procedural questions about what might occur at the March 14th GOC meeting. The Committee also received an additional letter from the Wabanaki Public Health HMP.

Chair Cain said through informal discussion with Committee members there have been a lot of questions about the procedure for the meeting on the 14th. She said questions would only come from the Committee not from any other parties as part of the hearing. Rep. Davis asked if the whole Committee would ask questions or just the Chairs and Leads. Chair Cain said it came forward that the Chairs and Leads be the one asking the questions of the people that come before the Committee. She wanted to make sure that if questions arise that are not answered during the question and answer, that other Committee members have the opportunity to send those questions through the Chairs and Leads to be considered. She also wanted to make sure that there is a time allotted at the end of each of those interviews for Committee members to ask those questions. She said that would also include Director Ashcroft. Rep. Davis said he would not object to a follow-up by other members of the Committee, but he does not want to prolong it and ask twenty questions, when one or two questions would do. He asked other Committee members what they thought about that. Sen. Youngblood agreed and that the questions should be asked by the Chairs and Leads.

Sen. Johnson was hesitant about writing questions to Chairs and Leads because members would have to do a lot of writing and figuring to make sure they sent them the right questions. If other members agree to do it that way he agrees, but thinks it is a bit stifling. Chair Cain wanted to make sure the process was not stifling and suggested the Committee have initial questions prepared in advance and the Chairs and Leads will review them with caucus members prior to the 14th. She thought it would be reasonable to have a window of time after the initial questions to each person to give Committee members a few minutes should they come up with questions. Chair Cain thought it was important before the 14th for members, on their own or with other members, to read through OPEGA's Report and review the questions they want to have answered.

Sen. Johnson said in asking questions it was important to keep in mind the scope of the inquiry.

Rep. Boland said members should know what the questions were going to be.

Chair Cain said at the Committee's prior meeting she articulated publicly the scope of what the GOC was doing. She was hesitant to have the Committee prepare questions in writing in advance because that would not be in the Committee's best interest and would not allow for as much opportunity for back and forth. They will do some prep, but for preparing questions for everyone to review, does not allow for what may come forward for information.

Director Ashcroft referred to the February 21, 2014 Meeting Summary regarding Chair Cain's stating the scope would be to further obtain information about what was contained in, and issues and concerns arising from OPEGA's Healthy Maine Partnerships' FY13 Contracts and Funding Report in relation to MCDC's decisions to change the structure of the delivery of services and funding for the HMPS, the process used and decisions made in selecting the lead HMP and the maintenance of documentation supporting that effort. She also noted that those are the areas outlined in the subpoena for the individuals that were served.

Chair Cain referred members to the information on the various statutes they are under.

Rep. Davis asked if the questioning would be done in Executive Session. Chair Cain said no, it would not typically be and the GOC has not received a request for that. They would have, as a Committee, the ability to make that decision about whether or not that would be appropriate and whether or not it would be helpful to the scope of the GOC's inquiry.

Rep. Cotta asked for the history of using Executive Session. Director Ashcroft said Executive Sessions under the Freedom of Access Act is limited to only particular topic areas. She has been working with the AG's Office to understand how the Freedom of Access law relates to the provisions that are specifically in the investigating committee statute that speaks to Executive Sessions. The GOC's use of Executive Sessions in the past has been very limited because FOAA does not allow an Executive Session for just anything. Director Ashcroft said the GOC has done it twice for different reasons and the only other time the Committee has taken the step to subpoena and take testimony under oath was with the Maine Turnpike Authority. Executive Sessions were not requested and not provided in that instance.

Chair Cain asked if there were any other procedural questions about the Committee's meeting on March 14th.

Director Ashcroft noted that the subpoenas issued also required the individuals to produce any records they have relating to the criteria or descriptions or discussions of the criteria, as well as the scoring and the scoring methodology that they had not already directly provided to OPEGA. There were some individuals who had already given that information to OPEGA directly and they are not expected to reproduce those records, but for those who might have records that did not come directly to OPEGA from them, it was requested that they produce them at the March 14th meeting. Sen. Katz asked that the GOC be sent a copy of one of the Subpoenas. A copy will be provided to the members.

Chair Cain said questioning will be done by the Chairs and Leads and they will make sure there is adequate time for other Committee members and staff to bring questions forward. Prior to that point the Chairs and Leads will work together with Director Ashcroft to make sure they are prepared.

Chair Cain referred to the letter from Kristi Ricker, Program Director, Wabanaki Public Health, dated January 20, 2014 and said it was a follow-up to the public comment period that the GOC held. At a previous meeting the GOC edited Recommendation 4 in OPEGA's Report to reflect more accurately some of the concerns that had been raised.

Director Ashcroft said Ms. Ricker is asking the GOC to reconsider making changes to OPEGA's Report with regard to the description of the funding that was in the contract for that particular Healthy Maine Partnership. Director Ashcroft felt the description in the Report was accurate and mirrored their own description of where the dollars were coming from and what they were related to in that contract. There is a footnote on the Table where the figures are presented, so she did not feel it warranted revision to the Report because it was factually correct. Wabanaki Public Health continues to be concerned about how people are going to perceive the dollar amount of the contract and want it to be made very clear that part of the funding in that contract is for work that is not related to a Healthy Maine Partnership. Director Ashcroft said she believes OPEGA described that in their Report, but will do whatever the GOC feels needs to be done.

Sen. Craven said she did not have a question about the letter but wanted to speak publicly to the mention of her being culturally or racially insensitive. She did send a letter to the Tribe apologizing if it caused any pain or any kind of bad feelings. Sen. Craven did not believe she was racially insensitive and again would apologize publicly if she caused any discomfort at all. Their complaint stated that she had compared the Lewiston immigrants to the Tribes. In reviewing the meeting tapes what she had said was they could never make up for all of the abuse and neglect that we have caused the Tribes, but that we have vulnerable populations that need to be cared for as well. That was perceived as comparing the new immigrants to the Tribe. Sen. Craven said she was sorry if it continued to cause pain for the Tribes. They did call her speech unprofessional and she wanted to defend herself and say publicly that she always intends to conduct herself in a very professional manner.

Sen. Johnson asked if it was clear what the source of the concern was and the parties that are misconstruing it. Director Ashcroft said her conversation with them and what is in their letter to the GOC, referenced that the press was alluding to the dollar amount in the contract. Ms. Ricker said they were getting a lot of questions from folks about the dollar amount of their contracts and what the money was spent on. Sen. Johnson suggested doing a short press release pointing to where that information is. Director Ashcroft said that even before the letter was received from Wabanaki Public Health, she had already done follow-up with the reporters when she saw articles that she thought were not expressing the facts correctly from OPEGA's Report. Director Ashcroft said she can do a press release, but thinks she has already pursued that.

Chair Kruger said he reviewed OPEGA's Report and the revisions that have been made are adequate. It was his opinion, and was not expressing it as Chair, but as a member of the Committee who read the revisions, understood the revisions, and didn't feel any further revisions were necessary.

Chair Cain said she is extremely sensitive to the concerns outlined in Ms. Ricker's letter of some individuals misconstruing the information regarding treating the Tribal HMP contract differently even though the Report effectively outlines that it is structured differently. She said the GOC understood the differences, but did not know what more the Committee could do to clarify that difference. Director Ashcroft said this occurs with, or has the potential to occur with nearly every report that OPEGA puts out and is part of the reason they are supposed to submit them to the GOC first. She said the other changes made were factual inaccuracies. OPEGA is never going to be able to guard against what any individual legislator or the press is going to choose to take away from OPEGA's Report. It is OPEGA's Report to the GOC, it is their best objective analysis conveyed in a way OPEGA thinks the GOC will be able to use the information. She did not see how to do something without setting a precedent that would be applicable to every review done by OPEGA.

Chair Cain asked if there were other comments regarding Ms. Ricker's letter. Hearing none, she said the GOC would keep it on their plate in relation to OPEGA's Report.

Rep. Cotta said in the Meeting Summary of February 21 there was a comment that the GOC was going to outline and solidify areas that members were interested in at today's GOC meeting and asked if that was still the plan. Chair Cain said she thinks they are trying to address that. The scope was identified and she wanted to see if there were any additions or questions to that, and as requested by Sen. Katz a copy of a subpoena will be provided. She thinks that was the Committee's attempt to address that, but if there was anything additional that Rep. Cotta or other members would like to raise around areas to be prepared she welcomed their suggestions. Director Ashcroft said she could give a bulleted list of areas where the GOC had lingering questionings. Those include:

- questions around the decision to go to a change in structure and to change the funding allocations for it;
- the decision to proceed without an RFP and whether that continued to make sense and the rationale for that;
- what occurred with regard to changing the criteria that occurred over the course of the process and why there were some criteria dropped and other ones added;
- similar questions around the scoring methodology that was used and why the scoring methodology was designed as it was, why there continued to be changes to it and the weighting of different criteria throughout the process as opposed to just upfront;

- OPEGA suggested in the Report that there were indications of possible manipulation of the outcomes so there were questions around whether that was in fact the case; and
- questions around the documentation that MCDC chose to retain, or not retain, with regard to supporting their process and the decisions they made.

- **Committee Vote**

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

• **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**

Chair Cain said on April 24, 2013 Rep. Kruger sent a request to the GOC related to unemployment insurance. Yesterday a letter had been received from the US Department of Labor regarding the review they conducted. She suggested that Director Ashcroft walk the Committee through the letter as OPEGA staff had been communicating regularly with the federal government, as well as following the Blue Ribbon Commission. She thought the Committee's plan for this meeting would be to have Director Ashcroft bring the GOC up to speed, and as the requester is a member of the Committee, would hear from Rep. Kruger, open it up for Committee discussion and then plan to take it up at another meeting in the future.

Sen. Katz said he had not had a chance to read the letter from DOL and would like to have the opportunity to digest it himself before the Committee starts discussing it. He was not trying to delay the GOC's work on the issue, but he would like a chance to think through the report. It is the classic case that it has been on the back burner and he did recall most of what the Committee had discussed.

Chair Cain said she was looking for Director Ashcroft to talk the Committee through DOL's letter. She was interested in Director Ashcroft describing her perspective. The plan was to take the issue up at a future meeting so all Committee members will have time to digest it on their own, come up with additional questions or areas of concern.

Sen. Burns agreed with Sen. Katz's sentiments and said he has not looked at the letter and before somebody walks him through it, he would prefer to read it and digest it himself prior to the GOC discussing the request.

Rep. Davis said he had read the letter, had met with his colleagues and understands their hesitation. He moved to table the matter.

Motion: That the Government Oversight Committee table the Re-consideration of Request for OPEGA Review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearings. (Motion by Rep. Davis, second by Sen. Burns, failed 6-6).

Chair Cain said that the item has been on OPEGA's agenda for months and at every meeting the Committee asks Director Ashcroft if the letter from DOL arrived, or had she heard anything. Yesterday when the letter arrived Director Ashcroft got it out to the Committee because the Committee has had this issue on its mind. She said she has made sure the Committee had a lot of communication in advance of meetings and it was disconcerting to her that the request was not made yesterday knowing it was on the Committee Agenda.

Sen. Katz apologized for not making the request yesterday, but it was not on his radar until last night.

Rep. Harvell said he was ready to proceed, but thought if other members of the Committee wanted to table the matter, he was willing to do that.

Chair Cain reminded the Committee that it was not a conversation that was going to start and be finished that meeting. OPEGA staff have been engaged in the matter for months and because the matter will not be taken up again until the end of March, suggested that Director Ashcroft walk through the letter and then the Committee will move ahead.

Director Ashcroft referred members to OPEGA's Summary of Points made in the letter. The main points being a little bit of background that the US Department of Labor did conduct a fact finding review on the first level of appeals component of Maine's Unemployment Compensation Program and that the review was prompted by a combination of factors. Their review included a case file review of appeals records and a series of interviews and document reviews. DOL's overall conclusion is that they suggest there are legitimate concerns about the practices in Maine's first level appeal hearings and important questions about how and whether those practices, particularly with regard to certain evidentiary standards and the failure to assign precedent to second level appeal decisions, comply with federal US hearing requirements. Director Ashcroft said those same concerns were heard from Justice Wathen as a result of the Blue Ribbon Commission's work.

Director Ashcroft said there was evidence that DOL suggested even before the Governor's direct participation on March 21st, that there were political appointments in the Maine Department of Labor that had intervened in hearings, operations and quasi-judicial decision-making and those actions might be perceived as bias toward employers, thus endangering the fair hearing process. The review concluded that hearing officers therefore might have interpreted the expectations communicated by the Governor on March 21st as pressure to be more sympathetic to employers.

Director Ashcroft said the case review yielded no statistical evidence to indicate that the meeting of March 21st had an immediate impact on decision-making by the Maine hearings appeals officers. The review, coupled with information of the case files, together with information from interviews, did suggest reasons for concern that there might be outlying implications from that and it was going to warrant continued attention from the US Department of Labor over time. In addition to their regular monitoring of the performance of the Unemployment Compensation Program in Maine they were going to be paying particular attention to that going forward.

DOL had several actions they felt ought to be taken to address the concerns they raised in their fact finding and to ensure the integrity of an impartial hearings process. They encouraged the State to take the following steps.

- Maine should review state statutes, regulations and practices and consider some of the more generous evidentiary US appeals practices suggested in the Guide to Unemployment Insurance Benefit Appeals Principals and Procedures to cure what appears to be a longstanding prejudice against certain types of evidence. Director Ashcroft noted that the GOC had a discussion with Justice Wathen, and this is also a direct issue from the Blue Ribbon Commission regarding using or not using hearsay evidence.
- Maine should establish uniform standards for inclusion of agency documents in the case file and determine the weight those documents should be given under evidentiary law of the State of Maine.
- The group of officials with a stake in the state's UC program, officials from MDOL, the Unemployment Insurance Commission and the Maine AG's Office, should resume negotiations to settle the evidentiary and practice issues identified.
- The Maine AG should identify and the Department of Labor and UI Commission implement, improvements in the appeals process to achieve greater consistency with state law and fairness and integrity in the program.
- The Governor and his appointees should ensure that the appeals process is isolated from outside pressures that might compromise even the appearance of fairness and impartiality. To ensure that hearing officers are

free from actual, or perceived, intimidation and to make clear that there will be no personnel action taken against any hearing officers over this matter.

Director Ashcroft said OPEGA found that several of the findings and recommendations from the federal review are similar to those reported to the GOC as a result of the Blue Ribbon Commission.

Chair Kruger said as the originator of the complaint that he was interested in finding facts, sorting rumors out and the questions related to responsible governance. The Governor charged bias, his Blue Ribbon Commission found none and now the Federal DOL found none, but he thinks there are still more facts that need to be found and any talk of legal or political action today is premature. Members need and want the GOC to stay above those battles. Now that the other two inquiries are completed, he said it was time to take a look with OPEGA staff. The outcome is going to be a decision on how to maximize government accountability.

Rep. Harvell said he was satisfied from reading both reports, and DOL's letter said thanks, but no thanks. Eighty percent of their recommendations came directly from the Blue Ribbon Commission, and in fact, looks like they cut from it. The entirety of the problem seems to have been evidentiary hearings at the first level where it led to a \$45 million overpayment to the Unemployment Insurance Department. Rep. Harvell said he was proud that the Governor, or any governor, would protect that safety net and wished the federal government would have shared the same concern. The Governor probably did over step his boundary, he is not saying he didn't, but there is no evidence it came to anything.

Sen. Johnson thought Maine has to make the improvements suggested regarding the rules of evidence and procedure, figure out what to do in the Statutes to ensure that there are no actions that are biased, or creating a perception of bias, in the process. He thinks that is appropriate for the GOC's work.

Rep. Harvell said the fact that there was \$45 million in overpayments does not imply bias, but it does imply the failure was on the side of overpayments. The reports both say it is involved around what was considered hearsay evidence at the first level where the written records of employers were almost fundamentally dismissed because they did not understand hearsay evidence.

Rep. Cotta said the Chief Executive, not only has the authority, but he has the responsibility and the obligation to ask questions if there seems to be inconsistency within an agency he is the boss and oversees. By recognizing that discrepancy and bringing them together to iron out exactly how the hearing officers handled evidence, is commendable. He did not know of any changes afterwards, in the administrative law as a result of the Governor's meeting, so thinks the Governor should be commended for doing it as his responsibility as the Chief Executive.

Sen. Johnson said as he read the letter, it didn't say to him that he called the meeting to raise the issue of whether evidence was being weighed appropriately. That is not the observation they are making about what happened. There is nothing in the letter about \$45 million being spent or charged the wrong way. The information he sees is about their examination of cases and reviews, just as the Blue Ribbon Commission did, finding that there were just as many overturned upon appeal in either direction and it was an observation that there was not inherent bias, but some inefficiencies in making determinations at the first stage review and were subsequently overturned.

Chair Cain said the letter explicitly says that when there is pressure, real or perceived that is exerted upon first level appeals hearings officers to rule in favor of one side or another, the persons or entities exerting that pressure are interfering with a decision affecting an individual's rights rather than having that decision made on merit DOL staff.. She said that statement can go either way and is proving the point that the GOC is going to have more work before it on the topic in the coming months because clearly there are issues that need to be settled about the hearing process and about the question of real or perceived influence over the officers. Chair Cain said they take that very serious on the employee side and on the employer side equally.

Rep. Harvell reminded the Committee that Justice Wathen said when he was asked if the Governor's meeting with the hearing officers was inappropriate, he said it is very normal for judges to meet together to discuss discrepancies within the system. That is the comparison he gave when talking about the three different tiers of unemployment and he saw it along the same lines as that. The fact was there was a \$45 million in overpayments and asked if that could be confirmed. Director Ashcroft said it may have been in the Blue Ribbon Commission Report, but she would have to go back and check on that.

Chair Cain asked if the members wanted to see if somebody from the Federal DOL could come to a meeting to talk about their Report and also someone from the State DOL. She said that is something the Committee could think about. Chair Kruger said he was interested in inviting them to come and talk with the Committee and would like to have OPEGA talk with some of the hearing officers because they have never had the opportunity to do that.

Director Ashcroft said the status of the request for a review is still pending. Chair Cain said members wanted more time to review the Federal DOL's letter so the GOC did not have to take any particular action at the meeting. She said because there appears to be interest going forward, they may want to ask certain people to a meeting.

Director Ashcroft said normally when the GOC is considering a request for a review, they do not hear from the agency so she wanted time make sure they are being as consistent as possible with the GOC/OPEGA practices in the next phase of the process. Chair Cain said the Committee's further discussion of the review request will follow the Committee's Check List regarding request for reviews.

Sen. Youngblood asked if the Committee could get a copy of the Blue Ribbon Commission Report. Director Ashcroft said that will be provided.

Chair Cain said the request for review will be on the March 28, 2014 meeting agenda.

Sen. Katz said members of the Committee tries hard to try to keep the GOC the one non-partisan, bi-partisan committee in the Legislature and said it was not at all helpful when people from outside the GOC are suggesting there should be some action taken against the Governor which does nothing but completely attempt to politicize the issue and makes all the members' job that much harder. He said it is too bad it has come to that. Chair Cain said she agreed and was appreciative that it was not the direction the Committee went at the meeting and as Chair Kruger said earlier that any talk of political action at this point, is inconsistent with what they are seeing on the issue.

Director Ashcroft said the Committee was going to revisit what priority they wanted to place on the topics added to OPEGA's Work Plan. Chair Cain thought the only item talked about would be the Child Care Licensing and the Director indicated that she did not think that would be an extensive review. Director Ashcroft said you don't know until you get in to it. She does see a clear path as how to go forward and does not think the preliminary research phase would take long. Chair Cain asked if, for the March 14th meeting, Director Ashcroft could do a little work to let the Committee know what that would entail.

Director Ashcroft said she was also looking for guidance and clarification about the Department of Correction's follow-up Review work OPEGA was going to do and when and what the GOC was expecting regarding that for the March 28th meeting because the Director was not sure they will have completed the review of case files.

Rep. Boland said she had been trying to get to the continuation of the PUC issue and would like to have that seriously considered because there are issues that can be difficult for people as a result of some of the cultural concerns that she has expressed and also the status of some work in whether or not the PUC was fully compliant with the law that was passed. She would ask that the Committee allocate some time to dealing with her issues because she sees it as a continuation of the PUC Report where the Committee looked at whether there is a cultural issue. Chair Cain said the GOC does want to come back to the issue and was trying to figure out whether the initial review done by OPEGA met its purpose, or whether the issues that are coming up now would fall under a

new investigation. OPEGA's PUC Report has not been wrapped up yet. She was interested in hearing from Committee members about whether or not they are talking about a separate investigation with a new type of questioning or can it fall within the Report they are already in the midst of. Rep. Boland said she does not think, because of the way the study was defined, that it falls exactly within OPEGA's Report, but the Report brought back the issue of whether there is a cultural issue. It was not meant to be the subject matter of OPEGA's Report and when the Report was accepted it was with understanding that they continue to look at the cultural issue, so in a way, she does think of it as a continuation of OPEGA's Report. Rep. Boland said she is trying to move it along because the issue impacts current urgent concerns before the Legislature. In her estimation, and others, it relates to the ability of the anticipated opportunity to do legislation to move forward and also adds on to what was seen from the discussion of the handling of the smart meter case.

Director Ashcroft said whether Rep. Boland's issue is a separate discussion or not, the GOC still has a lot to process in terms of a work session with the Public Utilities Commission regarding issues the GOC was struggling with regarding OPEGA's PUC Report. She said whatever agenda the GOC decides to add it to, they should allow a block of time for discussion. Chair Cain suggested putting the item first on OPEGA's agenda for their meeting on March 28th. Rep. Boland agreed

- **Update on Status of Draft Tax Expenditure Review Process Legislation**

Director Ashcroft said it was the legislation that the Taxation Committee currently had before it, Committee Amendment to LD 1463, is the process for ongoing legislative review of tax expenditure programs that was reviewed at a prior GOC meeting. It does involve a significant role for the GOC and OPEGA.

Sen. Youngblood said the work is beyond what the reason was for creating OPEGA. The work needs to be done and it needs to be done correctly with assurances that you can have faith in it. He does not know of any office more capable than OPEGA, but he does not want to see other things that may come up for OPEGA reviews suffer because of OPEGA's lack of personnel. If he could get a reasonable assurance that other OPEGA reviews will not suffer, he would be willing to agree with the legislation. Director Ashcroft said tax expenditures are evaluations of State activities and programs so she thinks they are within OPEGA's purview, but what is unusual about it is that it would be a statutory requirement for OPEGA to do particular evaluations. In conversations she has had with the Tax Expenditure Task Force, Taxation Committee and the GOC is the acknowledgement that this would only come about if they put on additional dedicated staff that were specifically working on the tax reviews so the current staff in OPEGA would continue to work in the same manner and on the types of reviews that they are now. Director Ashcroft said the bill currently includes the establishment of an additional Sr. Analyst position in OPEGA to get started with one evaluation to see what the workload will be. Her expectation is there would be additional positions, either a half position or another full position, that would be needed and the Director would need to be requesting that as part of the biennial budget process. She said that is the plan and understanding of all parties that have been involved in the discussion so far.

Director Ashcroft noted that there are things in the legislation that the GOC is responsible for and she wanted to make sure they were aware and comfortable with. From the last Committee discussion members were comfortable with it so moved forward on the legislation and incorporated whatever suggestions were made. She said this would be the time for the Committee to act if they had any reservations about the legislation.

Sen. Johnson said the scope of information that will be gathered is from reviewing how programs are being operating within the State, is a fit for OPEGA.

Sen. Youngblood said from the perspective of legislators it is good to have the reviews being done by an entity that is responsible to the Legislature as opposed to having it in the Executive Branch. It is being done for the benefit of legislators who have to make decision regarding tax expenditures.

Sen. Johnson said there is a line drawn between the review to provide objective data about the tax expenditure programs and making policy decisions and is not trying to do the job of the Taxation Committee. He said the

Taxation Committee has been unable to do their job absent sufficient data about the benefits and costs of the tax programs.

REPORT FROM OPEGA DIRECTOR

Director Ashcroft said she did not have any new information to share regarding the status of reviews.

The posting on OPEGA's Analyst position closed today so over the next couple of weeks they will be engaged in reviewing applications and interviewing candidates.

GOC ANNOUNCEMENTS AND COMMENTS

Rep. Davis said he has asked for inquiry into the activities of some of the non-partisan staff and he would respectfully request that the GOC give it the consideration needed. He has no desire to cause any anxiety among the employees.

Rep. Davis moved to adjourn.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for March 14, 2014 at 9:00 a.m.

ADJOURNMENT

The Government Oversight Committee adjourned at 2:05 p.m.