MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
March 8, 2013
Approved April 2, 2013

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 10:01 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Cain, Sen. Craven, and Sen. Youngblood Joining the meeting in progress: Sen. Johnson Absent: Sen. Katz and Sen. Burns
Representatives:	Rep. Kruger, Rep. Davis, Rep. Boland, and Rep. Harvell Absent: Rep. Cotta and Rep. Peterson
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Jennifer Henderson, Principal Analyst, OPEGA Wendy Cherubini, Senior Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Cindy Brown, Director, Child Development Services, Department of Education

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 22, 2013 GOC MEETING

Chair Kruger noted on page 3, "Conversation" should be Conservation. With that correction the Committee approved the Meeting Summary of February 22, 2013. (Motion by Chair Kruger, second by Rep. Harvell, passed unanimous vote 7-0.)

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NEW BUSINESS

- **Report Back From Child Development Services on Status of Actions Related to OPEGA's Report**

Director Brown, before proceeding with her update of the management actions taken in response to OPEGA's Report, said CDS has been informed by Risk Management that their premium for workers compensation insurance will be reduced $50,000 this year because its primary losses are less than expected for an organization of its size and industry. The GOC congratulated her.

Director Brown provided the Committee a copy of the CDS Action Plan from the OPEGA Report with updated information on the current status of each action item. She then briefed the GOC on the status of key actions. Director Brown said CDS created a new internal organizational structure for the CDS team stationed in the Augusta Office and have done a revised organization chart, which she will provide to the GOC. CDS has not added any additional staff, but has reorganized, redistributed tasks and added a Deputy Director position. They are now working more effectively as a leadership team. CDS has also created a cross department team and is working more closely with the Department of Education (DOE) staff and meeting regularly with the Deputy Commissioner, staff from the Fiscal Department and the Project Manager for the State Longitudinal Data System.

She found that CDS needed to upgrade its software and hardware in order to easily get financial data to the DOE in a way that was usable and understandable. Both have been upgraded and CDS has trained the State's fiscal staff on the upgrades.

The CDS Leadership Team meets on a regular basis and works with the North East Regional Resource Center (NERRC), a federally funded entity that offers technical assistance to the New England States. They are also holding staff meetings twice a month with the State staff and the regional site directors. About 80% of DOE's Early Childhood Consultant's time has now been assigned directly to CDS.

CDS investigated options to manage human resources including time and billing and staff productivity, and found that the software used by the current payroll vendor, ADP, is not a viable option. CDS is in the process of reviewing other billing software, and how to integrate their functions into a new data system. Director Brown noted that CDS is also investigating and working with the Office of Information Technology (OIT) to develop an RFP, hopefully available this spring, to acquire a new child data system. Sen. Johnson said CDS may want the federal reporting requirements included in the RFP scope.

CDS has also undertaken development of productivity standards for the CDS staff and data is now being collected and analyzed for monitoring that.

CDS has begun work on its Public Policy Manual, and looking at the templates for the public schools' policies. Chair Cain noted that one of the challenges in the past for legislative committees is the inconsistency in delivery of CDS services throughout the State. There were inconsistences in a number of areas including: leadership, how children were identified, determinations on the level of services needed, the data collection, and how communications flowed. She asked Director Brown to discuss those issues. Director Brown said, with the change in Statute last year, CDS sites are no longer independent entities with independent governing boards. She is now the overall Director and Leader for the entire CDS system, and regional directors report directly to her. She has already noticed more consistency and improvement in communication. CDS is changing the roles of case managers and developing specific Team facilitators so only certain case managers around the State will be chairing meetings. That will improve the communication, training, and consistency in identification and services provided to children. It is a more uniform way to achieve equity statewide.

Director Brown reported that CDS operated preschool programs are being established as Cost Centers. The costs for those programs are being directly tracked and will be able to be reported on for the first time. The next phase will be to develop the capacity for increased level of detailed reporting for more discrete comparisons.

Director Brown said CDS has developed statewide internal forms and everyone is now using the same forms and format. The CDS management staff have been included into the DOE management training that Commissioner Bowen initiated and aspects of that will be incorporated into the performance evaluations of the site directors.

Sen. Craven asked Director Brown to speak to how CDS was working with contracted providers given the concerns raised in the past about CDS providing services with its own staff. Director Brown said CDS has the legal obligation to make sure that children are being evaluated, identified and served so CDS has to be able to respond and make sure those kids are served. They do want to partner with their private community providers, but have to be responsive and keep employed staff so the children don't fall through the cracks in areas where contracted providers can't meet the need. Director Brown has been reaching out a lot to CDS contractors trying to have a higher level of communication with them, and would like to develop a list serve of providers to facilitate communications.

Director Brown said CDS has centralized their contracting and will be generating contracts from the Augusta Office. CDS is working on the procurement process, and have developed the RFP template.

The sliding fee scale, or system of payments, for early intervention services from birth to age 2 has been reviewed and a new draft will be presented to the Commissioner and the Attorney General for review. The draft has been posted on CDS' website for public comment and sent to their federal contact in Washington for review and comment.

The members of the GOC thanked Director Brown for the information provided.

Chair Cain noted that as LD 34 moves forward and as CDS implements the various elements of its action plan, it may be helpful for the GOC to receive another update. Director Brown said she would be happy to report back at the Committee's pleasure. Director Ashcroft noted that OPEGA will be working with Director Brown to confirm that actions reported as complete have been done. Items that have not been fully addressed, OPEGA will continue to track as open items and will bring that information back to the GOC. Director Ashcroft said CDS is scheduled to report back in August, but the GOC may want to reconsider that date. DHHS is also scheduled to report back in August regarding their involvement in CDS.

- **OPEGA Proposal for Formalized OPEGA/GOC Follow-Up Process and Procedure**
  - Review of OPEGA Recommendations Still in Active Follow-up Status

  Director Ashcroft said the approach OPEGA has been using to follow-up and monitor what actions are taken on OPEGA report recommendations has varied over the years. She has prepared a draft OPEGA follow-up process for the Committee's consideration. Before discussing that, however, she thought it would be helpful to briefly review the open recommendations OPEGA is still tracking. She referred the GOC to the list of OPEGA Recommendations Still Unaddressed or in Progress as of December 2012 (a copy is attached to the Meeting Summary) and gave a brief overview of the recommendations.

  Sen. Craven referred to the MaineCare Children's Mental Health Report and said that has changed a lot since 2009 and thinks it warrants being looked at even more now. One problem was the State's reduction for reimbursement for community services which has now resulted in the services moving into hospitals, which receive much higher dollars for the same service. She would like to see the follow-up on this Report moved up because of the expenses involved. Director Ashcroft will talk with the Committee Chairs about bringing the Report before the GOC for discussion.

Director Ashcroft then referred the GOC to the flow chart depicting the proposed formal follow-up process. She said she has assigned a specific staff person in OPEGA the role of follow-up coordinator. The coordinator will be responsible for tracking follow-up as part of their job duties, and will determine the appropriate time to do follow up on each report and work with her to assign the follow-up work to OPEGA staff. Under the proposed follow-up process, OPEGA would report to the GOC every six months on follow-up efforts and status of actions taken on reports still in active follow-up status. OPEGA would also automatically cease active follow-up on reports older than 2 years unless the GOC gave specific direction to continue.

Chair Kruger noted that when the GOC discusses reviews, members need to remember that OPEGA's work on their reports continue after they are released.

Sen. Youngblood asked at what point OPEGA determines if the agency/department did in fact do as they said they would do. Director Ashcroft said before agencies commit to their action items, OPEGA tries to get them to establish reasonable time frames in which they expect to complete the work. OPEGA uses their timelines to determine what actions should have been completed and will go back to the agency at those intervals to confirm completion. If a timeline for completion is not given by the agency, OPEGA will set its own timeline for checking in on what has been completed.

Chair Kruger thought the draft follow-up process was a good way for the GOC to approach follow-up. Director Ashcroft said under this process, report backs from agencies would not be scheduled automatically when an OPEGA report is issued. OPEGA would report semiannually to the GOC the status of actions the agency had taken and which projects and recommendations remain in follow-up. The GOC will then decide, based on what OPEGA reported, whether they would like the agency to come before them to answer particular questions.

Chair Cain said with legislators having 2 year terms and the administration a 4-year term, the GOC's process should be independent of elections and clear regardless of the administration. It seemed this follow-up process would be helpful in doing that.

Sen. Johnson said it might clarify the process if the box - "GOC takes further action, including possibly: ..:" related to both the follow-up work being done while standard follow-up is in progress and after standard follow-up is completed.

Motion: That the Government Oversight Committee moves to formerly adopt OPEGA's Follow-up Process as amended and discussed. (Motion by Chair Kruger, second by Rep. Harvell, passed unanimously 9-0).

- **Update on Status of OPEGA Progress in Drafting GOC Legislation on Economic Development Programs and Current Issues**

Director Ashcroft said the previous GOC had determined that they wanted to introduce legislation to implement the recommendations that remained unaddressed from OPEGA's 2006 Report on Economic Development Programs. OPEGA has been researching what has not been addressed yet that the GOC might want included in the legislation. Director Ashcroft also contacted DECD to review the current status of the management actions they had agreed to. DECD did take action on some of the issues raised in OPEGA's Report, but some are now stalled, out of date, or they were never effectively implemented. Additionally, some elements of the legislation that was passed when the report was first issued did not get implemented effectively.

Director Ashcroft thinks it would still be a worthwhile effort for the GOC, with OPEGA's support, to introduce legislation to move the pieces forward. The issue of how to evaluate economic development programs and/or tax expenditure programs keeps coming back year-after-year, and because some of the recommendations in OPEGA's Report have not been addressed, the State continues to lack a good framework on which to even undertake an evaluation of the programs. She did want the GOC to be aware, however, putting this draft legislation together, will be quite involved and a significant effort for OPEGA.

Director Ashcroft also said that, in talking with DECD, she learned that the Department currently has some actions in progress that she has concerns about. In 2008 DECD contracted for an independent consultant to do a comprehensive evaluation of economic development programs in response to OPEGA's Report. When the Comprehensive Economic Development Evaluation Report was completed it was not met with a lot of satisfaction among legislators – it was at a higher level than what legislators were looking for. The consultant had problems getting responses back from the businesses that were surveyed as part of that evaluation so the Report did not include much program specific information. A funding mechanism was established in statute to support making the evaluation an annual event with the intent of improving upon the evaluation as it went along. However, the funding mechanism fell through because of an error in statute and, even though the error has now been corrected, DECD is still not sure whether there will be sufficient funding to support an on-going evaluation.

The next Comprehensive Evaluation Report is due to the Legislature and the Governor by February 1, 2014. Consequently, DECD is preparing to issue a Request for Proposal (RFP) in the very near future for a consultant to do an independent evaluation. Director Ashcroft has reviewed the RFP and was concerned that the content and format of the RFP did not seem sufficient for getting good proposals for bidders or for laying the foundation for an end result of an evaluation report that would be useful for oversight and policy-making. She shared her concerns with DECD management who agreed with her observations.

Director Ashcroft knows that DECD is concerned about meeting their statutory deadline, but she wanted to make the GOC aware that not everything is in place to ensure best results if DECD moves forward as they are right now.

Chair Cain thinks the more important element would be to get the RFP right rather than meeting the deadline. She noted that any changes in DECD's statute would fall within the LCRED Committee's purview, and asked if that Committee was aware of this. Director Ashcroft did not believe they were yet.

Sen. Johnson asked how much time it would take to get an appropriate RFP drafted. Director Ashcroft said it became apparent when talking with DECD that the Department did not have the expertise on staff to lay out well what the evaluation objectives and desired approach were to properly clarify the desired scope of services and deliverables. She thought DECD was now considering a subject matter expert to help design the RFP that would seek a consultant to do the economic development programs review. DECD is discussing how best to accomplish that.

Chair Cain wanted to respect the policy committees and their purview. Since the deadline is not until next February, she asked if the GOC wanted to have Director Ashcroft draft a letter to LCRED outlining the concerns. She believes there may be existing vehicles and enough time for LCRED to address them. Chair Cain recommended starting with a letter to LCRED that included offering OPEGA, and members of the GOC, to talk with them about the concerns and a potential solution, so that DECD is not inadvertently put in a position of failing to meet statutory requirements, or invest in a report that the Legislature cannot use.

Motion: That the Government Oversight Committee asks Director Ashcroft to draft a letter from the Committee to the Labor, Commerce, Research and Economic Development Committee, copying the Department of Economic and Community Development, for the purposes of outlining the concerns, and possible solution, to DECD's current issues regarding the evaluation of economic development programs, with an offer to meet with the Committee. (Motion by Sen. Johnson, second by Sen. Youngblood, passed unanimously, 9-0.)

UNFINISHED BUSINESS

- **Continued Review of Potential Topics for Addition to OPEGA's Work Plan**
  - List of Topics Under Consideration as of 3-8-13

  Following discussion with Chair Kruger, Chair Cain proposed that the GOC skip the discussion of the **List of Topics Under Consideration,** the **Maine Economic Improvement Fund** topic until the next GOC meeting as the GOC members most interested in some of those topics were not present. Hearing no objection, the Committee moved to **DHHS Audit Functions.**

  - Summary of OPEGA Research on:

  › **DHHS Audit Functions**

  Director Ashcroft said the topic the GOC discussed last meeting was whether there are adequate staffing levels and capabilities within the auditing functions at DHHS to be able to do an effective job of identifying waste and abuse in MaineCare and other programs. She summarized the information OPEGA was able to gather since the February 22nd GOC meeting regarding this topic. (A copy of OPEGA's Summary of DHHS' auditing functions is attached to this Meeting Summary.)

  Rep. Harvell referred to the Fraud Investigation and Recovery Unit and noted that approximately two-thirds of the cases were still open and asked for the total amount of money involved in the prosecutions. Director Ashcroft did not have that information, but will get it for the Committee. Sen. Craven said the Attorney General's Office would have that information and it is available on request.

  Chair Cain said one of the things you hear about anecdotally is that there used to be more auditors in DHHS and then a decision was made, as part of a budget, to get rid of some auditors and that DHHS has been playing catch up ever since. She asked if there were more auditors in the past. Director Ashcroft did not know, but has also heard the same thing. Chair Cain was interested in going back 25 years to look at the Audit Department to see how staffing levels in DHHS' auditing has changed, and what the motivator was for the change.

  Several members of the GOC expressed concerns regarding fraud and over billing. Director Ashcroft said DHHS was to have a component of the new MaineCare claims system called JSURS. It was the understanding of DHHS and OPEGA that the module would be a prepackaged application that had certain data analytics built into it to flag unusual situations or patterns that should be reviewed for fraud and abuse. In OPEGA's follow-up it was discovered that the vendor had installed the software, but it was not producing the exception reports envisioned. Instead, it was up to the DHHS Program Integrity staff to develop and run their own queries of data in the system. The end result is DHHS does not have the tool that OPEGA thought, and what the Department thought, was going to be in place. If the GOC's major concern is what is being reviewed in the Program Integrity Unit that might be an area of focus to review.

Rep. Harvell asked for clarification of the number of vacancies for fraud investigators and was told there are 10 vacancies. Rep. Davis asked if the information regarding vacancies was current and how long has DHHS had to fill them. Director Ashcroft said the information was presented to the HHS Committee on February 20th and OPEGA recalled seeing some of the positions posted on the State's website. She assumed they were in the process of hiring for the positions, but will ask DHHS where they are in the hiring process.

Chair Cain noted from the Committee members' discussion it appears they were looking for more historical information regarding DHHS auditors, and had questions regarding the Program Integrity Unit.

› **Maine Economic Improvement Fund**

Not discussed.

› **Tax Expenditures: BETR and BETE**

Chair Cain noted that the AFA Committee is scheduled to have a public hearing on the budget initiative for BETR and BETE on Wednesday, March 13th and suggested that OPEGA listen or attend that hearing. OPEGA can then coordinate with OFPR staff to discuss the concerns, suggestions and impacts raised related to BETR and BETE identified at the public hearing to see if there is anything OPEGA can assist with. Director Ashcroft will report back on BETR and BETE at the next GOC meeting.

Sen. Youngblood said the Tax Increment Financing (TIF) program is also a big issue and is often times tied to the BETR program. Apparently the TIF money will no longer be sheltered from the town's valuation. He gave the example of the $60 million that will automatically become part of Bucksport's valuation which effects that municipality's education allotment, profit sharing, county government contributions, etc. He has not seen TIF addressed anywhere. Chair Cain thought that might be something to add into the interaction. Director Ashcroft noted that in the last GOC questions were coming up regarding BETR, BETE and TIF and OPEGA did do some preliminary research. She did not recall any information regarding Sen. Youngblood's valuation concern, but OPEGA's work was more on the question of whether companies were getting more help than they should have been getting because they were eligible for TIF and BETR or BETE. OPEGA determined there would be difficulties getting the information on which companies were receiving what money so the GOC decided not to pursue the topic further at that time. Chair Cain said it may become clearer what concerns there are after the AFA Committee's public hearing. (OPEGA's Summary of BETR and BETE Tax Incentive Programs is attached to the Meeting Summary).

› **Tree Growth Program**

Director Ashcroft reported that Rep. Davis had asked about both the Tree Growth and Open Space Programs and OPEGA only had enough time to prepare the summary on Tree Growth before this meeting. Research is continuing on the Open Space Program. Both will be discussed at the GOC's March 22nd meeting.

REPORT FROM OPEGA DIRECTOR

- **Status of Projects In Progress**

Director Ashcroft noted that the State Lottery Review has been added to OPEGA's Work Plan.

- **Status of Other Tasks Assigned to OPEGA**

  Director Ashcroft said, as discussed earlier, OPEGA is working on 2 pieces of draft legislation - one in regard to the Maine Green Energy Alliance and the other is Economic Development Programs.

  The previous GOC voted to send a letter to the Taxation and LCRED Committees with regard to what OPEGA had learned about BETR, BETE, and TIF and the difficulties OPEGA had in getting data for its research. Given that the topic is back before the GOC for discussion again, Director Ashcroft asked if the Committee still wanted to send that letter. The letter was to include what the challenges were for OPEGA in regard to reviewing the programs and where the data resides. Rep. Boland thought it might be helpful to the Committees at this time to have the benefit of the information OPEGA has, with a notation that the GOC is in the process of looking further at the topic. Other members of the Committee agreed. Director Ashcroft will draft the letter to the Taxation and LCRED Committees.

- **Update on OPEGA Assistance to Joint Standing Committees**

  Director Ashcroft said she had attended the AFA Committee meeting when they were getting a briefing related to the budget initiative to shifting more of the support of the State Police from the Highway Fund to the General Fund because OPEGA had done a study on that topic a few years ago. The AFA Committee also received an update on the evaluation of economic development programs and she was also at that meeting and answered questions about work OPEGA had done on this topic, actions OPEGA has been tracking and OPEGA's perspective on the challenges in being able to evaluate the programs.

  Director Ashcroft attended the work session for LD 34 at the Education and Cultural Affairs Committee. That LD was voted out of Committee as ought to pass as amended.

  She also presented OPEGA's Annual Report to the Legislative Council.

NEXT GOC MEETING DATE

The next GOC meeting is scheduled for Friday, March 22, 2013 at 10:00 a.m.

Chair Kruger asked that if members are not going to be able to attend GOC meetings that they let either Chair or OPEGA know because it does hamper the Committee's ability to do their work.

ADJOURNMENT

The Government Oversight Committee was adjourned at 12:02 p.m. (Motion by Rep. Davis, second by Sen. Johnson, unanimous vote.)

BETH L. ASHCROFT
DIRECTOR

MAINE STATE LEGISLATURE

OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY

To: Senator Emily Ann Cain, Senate Chair
Representative Chuck Kruger, House Chair
And Members of the Government Oversight Committee

Speaker Mark W. Eves, Chair
President Justin L. Alfond, Vice-chair
And Members of the Legislative Council

From: Beth L. Ashcroft, Director

Re: OPEGA Recommendations Unaddressed or In Progress as of December 2012

OPEGA's Annual Report on Activities and Performance for 2012 noted that 74 of the 178 recommendations OPEGA has made since 2005 remained unaddressed or in progress as of the end of 2012. (See pages 11 and 12 of the Annual Report.) Attached is a detailed listing of those 74 recommendations grouped according to the current follow-up status. Recommendations from reports OPEGA is still actively following up are in the first group while those that we are no longer doing active follow-up on are in the second group.

Please note the following in regards to the implementation status of these 74 recommendations:

- OPEGA recommendations remain in an "open" status (unaddressed or in progress) until OPEGA is able to confirm that agencies, or the Legislature, have either implemented our recommendation or taken alternative actions reasonably expected to improve the issues we identified. Since OPEGA's follow-up activities were limited in 2011 and 2012 due to other priority work, it is possible actions have been taken that we are not yet aware of or have not yet had a chance to confirm.

- The 74 open recommendations include 33 from six reports that OPEGA is no longer conducting active follow-up on. Twenty-six of these 33 recommendations are from the reports OPEGA issued in 2006 on State-wide Information Technology Planning and Management and Guardians ad litem for Children in Child Protection Cases. In both instances, the responsible agencies have noted resource constraints, or a need for additional resources, as barriers to implementing OPEGA's recommendations or otherwise addressing the issues reported. In 2012, the GOC considered two separate requests for new OPEGA reviews of the Office of Information Technology and Guardians ad litem for Children. The requests were based on concerns and issues that mirrored those OPEGA had reported on in 2006, indicating that improvements in these programs and activities since 2006 have indeed been limited. The GOC directed OPEGA to conduct a formal follow-up review of certain issues in OIT and that review is in progress. OPEGA is also aware of current bills and proposals being considered by the Legislature this session that address guardians ad litem issues we reported on in 2006.

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- The format OPEGA has followed in reporting issues and recommendations has evolved over the years as we have worked to define more specific and actionable recommendations. You will note in the attached list that some of the recommendations from OPEGA's older reports are tagged as "observations". These were general suggestions on longer-term improvement opportunities rather than situations requiring action in the short-term. While OPEGA still includes discussion of such opportunities in its reports when appropriate, they are reported differently and action on these suggestions is no longer tracked as part of OPEGA's active follow-up on "open" recommendations.

I would be pleased to answer any questions you may have on this information.

Attachment
Cc: David Boulter, Executive Director, Legislative Council

OPEGA Recommendations Still Unaddressed or In Progress as of December 2012 (as per OPEGA's last follow-up)		
REPORTS STILL IN ACTIVE FOLLOW-UP -- 41 Recommendations Open (24 currently in progress*)		
Economic Development Programs in Maine (2006) There were originally 14 recommendations across 6 findings. 7 recommendations remain unaddressed or in progress.		
1	Legislature should consider establishing a process for assuring that future economic development proposals are compared to existing programs to determine if the purpose of the new proposal can be effectively met by modifying or replacing an existing program or whether new proposals should replace existing programs.	*
2	DECD should review all new economic development proposals and report to Legislature as required by statute.	*
3	Once a decision has been made on establishing a broader definition of economic development programs (see Finding 2), the Legislature should consider directing all agencies administering programs that meet the new definition to report to the JSC of jurisdiction in writing on whether each program adequately incorporates the criteria required in §13070-O.	*
4	The Legislature should create a process, with mandates established as necessary, to ensure that DECD is made aware of all new economic development programs proposed in legislation.	*
5	The Legislature should consider giving data collectors the authority needed to compel businesses to provide data required for measuring performance of economic development programs. Meaningful incentives and/or penalties should be established and should be included in enacting statutes and rules.	*
6	DECD should require all programs to formally report on their results. The report formats and content should be standardized to provide info policy makers need in a consistent format and should be made more widely available.	*
7	The Commissioner of DECD should satisfy his reporting requirement in 5 MRSA §13058-5 by submitting a formal written report to the Governor and full Legislature. The Legislature should consider modifying 5 MRSA §13058-5 to specify that the Commissioner's reports be in writing.	*
State Administration Staffing (2008) There were originally 4 recommendations. 2 recommendations remain unaddressed.		
8	The State should continue with a comprehensive, longer term approach to evaluating the State's organizational structure and resources devoted to administration.	
9	The Legislature should consider establishing a mechanism for more comprehensively monitoring department and State-wide trends or patterns in position changes over time, and whether the cumulative effects of individual position changes are as expected given the changing nature of work and past restructuring efforts.	
State Boards, Committees, Commissions, and Councils (2008) There were originally 10 recommendations. 8 recommendations remain unaddressed.		
10	The Legislature should consider repealing a percentage of the State's advisory boards.	
11	The Legislature should consider implementing sunrise and sunset processes for all boards and commissions included in 5 MRSA Chapter 379.	
12	The Legislature should reconsider the number of seats on those boards with many expired seats, or reconsider the need for the boards themselves.	
13	The Legislature should consider eliminating a percentage of boards with little or no activity.	
14	The Legislature should consider evaluating the disparate levels of compensation currently authorized for board members.	
15	The Legislature should consider reducing expenditures on refreshments and facilities for all boards.	
16	The Legislature should consider consolidating the administration for all licensing boards.	
17	The Legislature should consider reviewing the current list of boards included in 5 MRSA Chapter 379 to determine whether the list is still comprehensive and appropriate given the chapter's intent.	
MaineCare Children's Outpatient Mental Health Services - An Assessment of Administrative Costs and Their Drivers (2009) There were originally 4 recommendations across 4 findings. 3 recommendations remain unaddressed.		
18	The Legislature may want to consider either removing the Children's Mental Health Oversight Committee from statute, or else taking steps to revive the Committee and ensure its effectiveness.	
19	The Legislature should consider directing OPEGA (or some other entity) to perform an in depth evaluation of the contract and services provided by APS.	
20	The Legislature should monitor the health of the outpatient provider network, the quality of service children are receiving and on-going efforts to increase efficiencies in providers' administrative requirements.	

OPEGA Recommendations Still Unaddressed or In Progress as of December 2012 (as per OPEGA's last follow-up)		
Mainecare Durable Medical Equipment And Medical Supplies (2009) There were originally 9 recommendations across 9 findings. Only 1 recommendation remains unaddressed.		
21	The Program Integrity Unit (PIU) expects routine, systematic monitoring of MaineCare transactions to once again become standard in March 2010 with implementation of the new claims processing system, MIHMS. OPEGA also recommends that DHHS take any additional steps necessary to ensure the PIU is poised to make effective and efficient use of the information expected to be generated by JSURS.	
Fund for a Healthy Maine Programs (2009) There were originally 7 recommendations across 4 findings. 3 recommendations remain unaddressed or in progress.		
22	In order to ensure critical documents supporting budgetary decisions contain accurate and meaningful program descriptions, the Legislature should consider giving guidance for the program descriptions that are submitted with the Governor's Budget and requiring agencies to adhere to that guidance. For example, the Legislature could specify that the description include a listing of the key activities or functions associated with the program and, where applicable, the populations targeted. The Legislature might also specify that the descriptions should reference the names and program numbers of other associated programs.	*
23	The Department of Administrative and Financial Services Bureau of the Budget should develop and implement the policies and procedures necessary to ensure budgetary descriptions are updated each budget cycle and are as complete and accurate as is practical.	*
24	The Legislature, with input from the Administration, should consider improving the alignment of existing FHM activities and programs by moving the allocations related to School Nutrition/Breakfast, Tobacco Enforcement and Local Public Health Liaisons activities from the Community/School Grants program to the programs and goals they seem more closely related to.	*
Maine Green Energy Alliance (2011) There were originally 4 recommendations across 2 findings. 2 recommendations remain unaddressed or in progress.		
25	The Legislature should consider establishing statutory criteria by which non-State entities can be acceptably designated as subrecipients in grant applications submitted by State or quasi-independent State agencies. Such criteria could require those non-State entities to have been selected via a competitive process unless there is acceptable, documented justification for sole source selection. Similar criteria should apply to any non-State entities selected to be subrecipients or contractors after the grant is awarded. The statutory criteria could allow for waivers of these requirements in appropriate situations, i.e. time sensitive.	*
26	The Legislature should consider establishing a statutory requirement for State agencies and quasi-independent State agencies to ensure subrecipients have the capacity, controls and structure in place to properly administer and account for public funds before disbursing them.	*
Health Care Services in State Correctional Facilities (2011) There were originally 8 recommendations across 5 findings. 7 recommendations remain unaddressed or in progress.		
27	MDOC should ensure all contracts for health care services are adequately monitored for compliance with specific contract terms, critical MDOC policies and relevant correctional health care standards. MDOC should implement a formal plan for periodically verifying compliance independent of the contractor and contract staff. Such auditing or testing should be incorporated as a key component of an overall quality assurance process as described in Recommendation 2. MDOC should require the contractor to take corrective action when non-compliance is identified and follow-up to assure the corrective action was effective in correcting non-compliance issues. MDOC should also assess any penalties allowed under the contract.	*
28	MDOC should strengthen its quality assurance plan for health care services, assign responsibility for analyzing monthly statistical reports and identifying trends, and review the types of statistics being gathered to determine if other kinds of information would be of greater use. In addition, responsibility should be assigned for ensuring action plans are developed to address areas of concern identified through the QA process with regular follow up to assure the expected actions were taken.	*
29	MDOC should take steps to reinforce and ensure a mutual understanding of policy content among all affected parties in the organization, including contract staff. It should also hold its health care services contractor responsible for all training required under the contract, and should require the contractor to provide documentation demonstrating when the training occurred, what topics were covered, and who was in attendance. A training file for each staff person to document whether and when they received annual policy update training and other required training should be kept.	*
30	MDOC management should hold the health services contractors accountable for ensuring that medical files at all MDOC medical facilities are organized consistently, updated to reflect services provided to prisoners, and maintained in compliance with MDOC procedures and standards.	*
31	MDOC should also require the contractor to implement an appropriate, standardized system for tracking of required prisoner health services, i.e. annual physical assessments, for all facilities. An EMR system would be beneficial to accomplishing these goals efficiently and MDOC should continue to pursue implementation of an EMR system.	*

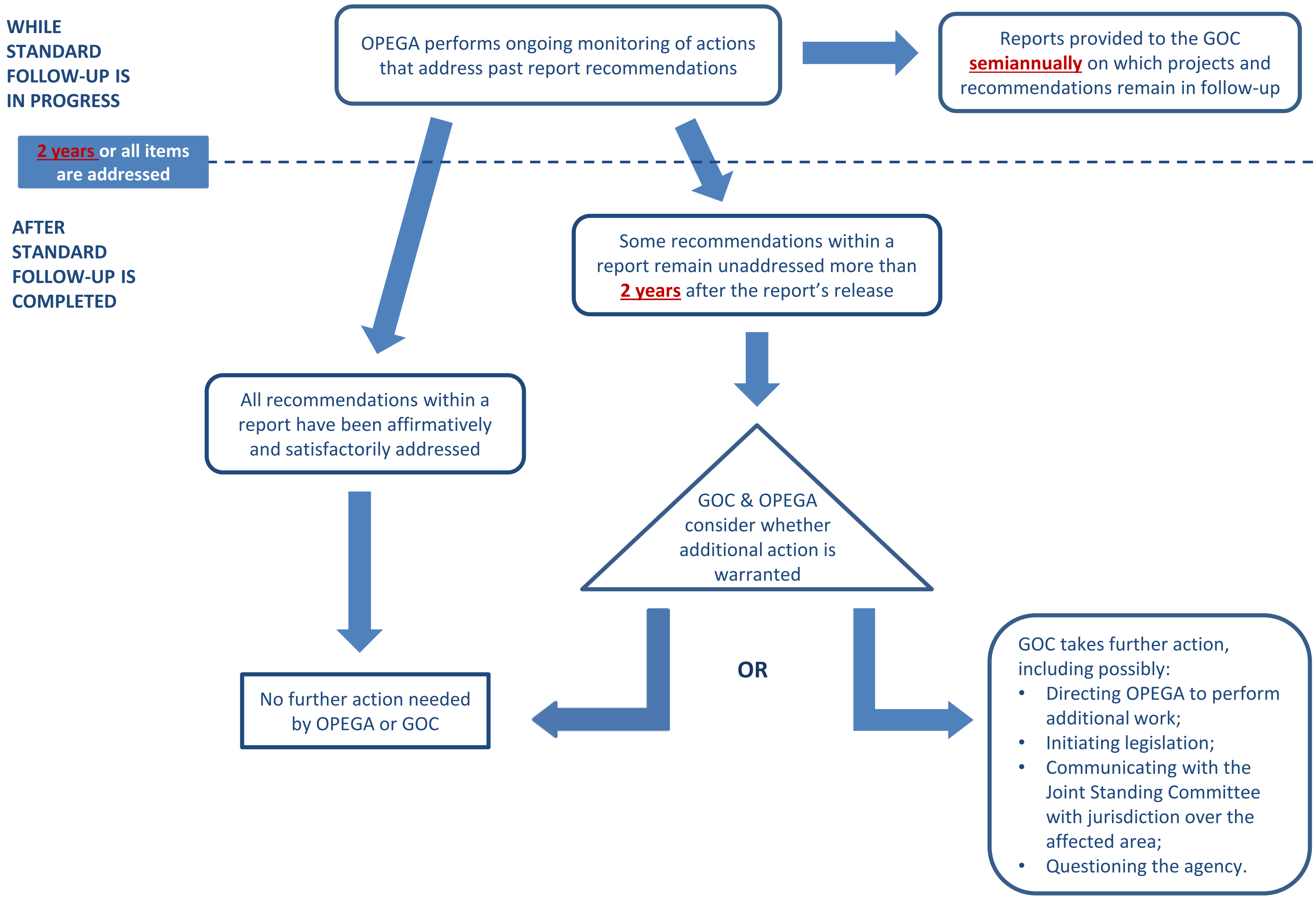
OPEGA Recommendations Still Unaddressed or In Progress as of December 2012 (as per OPEGA's last follow-up)		
Health Care Services in State Correctional Facilities (2011) continued		
32	Once a new health care services contract is finalized, the Department should report back to the Legislature's Joint Standing Committee on Criminal Justice and Public Safety on what cost management measures are contained in the contract and how they can be expected to affect overall prisoner health costs.	*
33	MDOC should monitor its new vendor(s) closely, as outlined in Recommendations 1 and 2, to ensure that all expected cost containment measures are implemented effectively and that all cost savings due to the Department are captured.	*
Child Development Services (2012) There were originally 8 recommendations across 8 findings. All recommendations remain unaddressed or in progress.		
34	MDOE and the SIEU should continue to re-assess the CDS System structure and relationships among the entities involved. MDOE should initiate additional changes as necessary to create clear lines of authority and defined roles and responsibilities that facilitate sound program management, accountability and quality service delivery. MDOE and the SIEU should also determine the data, systems, tools and staff skill sets needed for more comprehensive, system-wide management of the CDS program and take steps to expand those capabilities in the SIEU.	*
35	MDOE and the SIEU should emphasize the responsible stewardship of State and federal resources in delivering appropriate services to children. This adjustment in culture and mindset should be promoted and supported throughout the CDS System when establishing the service levels in children's Plans and considering the most efficient and cost-effective means of providing those services. See additional details in report or TeamMate	*
36	A system-wide budget that accurately reflects projected program resource needs should be developed and used as the basis for the Governor's Biennial Budget proposal to the Legislature. MDOE should require formal written financial reports from the SIEU comparing actual to budgeted expenses including explanations for budget variances. MDOE should also require additional written detail on expenditures, or explanation of current fiscal situation as necessary, to adequately support the release of funds to the SIEU. Lastly, MDOE should consider its need for independent and better access to the financial detail for the CDS program and, if desired, take steps to obtain that access.	
37	CDS should develop standard methods to track and monitor CDS direct service staff time by activity and services provided, as well as related costs. Data on service units provided by CDS employees should be compared against children's Plans and entered in Case-e. CDS should establish a consistent and appropriate process for calculating and monitoring staff productivity and costs per unit of service provided. CDS should use that data to develop site and system-wide budgets, understand the true cost of services provided by CDS staff and to make choices about the most cost-effective ways to deliver quality services.	
38	The SIEU should improve or establish necessary policies, processes and procedures to ensure that critical data captured in CDS' computer applications is current, standardized and accurate. The following data, in particular, should be addressed: Case-e planned services data when CDS staff is to be the provider including service type, frequency and intensity of service units, and service provider name; Case-e MaineCare and insurance eligibility information; vendor/provider names in both Case-e and Great Plains; Great Plains account codes, and Case-e contracted provider rates. Access to view and change this data should be limited to only those CDS employees who need such access to perform their jobs.	*
39	Contract management for contracted direct service and transportation providers should be centralized. See report or TM for additional details. Professional services should be contracted for via competitive procurement processes. CDS should also employ, rather than contract with, individuals who provide regular, ongoing administrative services in order to ensure compliance with federal labor and tax laws.	
40	CDS should maximize all potential revenue sources by improving capability for billing individual insurance companies where additional revenue would justify the additional expense. Sliding fee scales being used for Part C in other states should be explored and assess whether Maine's scale should be restructured. Sliding fee scale should be implemented more consistently system-wide or MDOE and the SIEU should consider abolishing this potential revenue stream altogether so that families across the State are treated equitably. CDS should also explore opportunities for maximizing revenue from MaineCare/insurance companies within the requirements of existing Medicaid/insurance laws and regulations. Billing to MaineCare for Section 28 services and new laws allowing services to be billed to private insurers are areas to be explored.	*
41	DHHS' Program Integrity Unit, in conjunction with MDOE, should analyze MaineCare claims paid for services provided to children in the CDS program to determine whether there are indicators of fraud, abuse or error associated with the risks OPEGA identified. The Program Integrity Unit should then follow up with an investigation of any potential fraud or abuse identified. Additionally, the DHHS Internal Audit group should assess the effectiveness of the preauthorization process conducted by the Office of MaineCare Services with regard to Section 28 providers and services associated with children in the CDS program.	*

OPEGA Recommendations Still Unaddressed or In Progress as of December 2012 (as per OPEGA's last follow-up)	
REPORTS NO LONGER IN ACTIVE FOLLOW-UP -- 33 Recommendations Open	
Review of MECMS Stabilization Reporting (2005) There were originally 8 recommendations across 1 finding and 4 observations. 2 recommendations remain unaddressed.	
42	OBSERVATION: Legislature should provide opportunities for fuller discussion of status, challenges and risks by creating a special MECMS oversight committee or increasing time spent on the subject during regular JS Committee meetings.
43	OBSERVATION: Non-partisan staff should be utilized to help JS Committee members obtain an adequate frame of reference for identifying areas of concern.
State-Wide Information Technology Planning and Management (2006) There were originally 27 recommendations across 10 findings and 8 observations. 10 recommendations remain unaddressed.	
44	OIT should develop workable business continuity plans for IT infrastructure and critical applications.
45	Each agency, in all three branches of State government, should develop its own Business Continuity Plan. The plan should detail how operations will be continued if critical information systems and/or the agency's current physical location(s) are unavailable.
46	OBSERVATION: As OIT matures, Judicial and Legislative branches should explore opportunities to contract with OIT for services (which they may outsource) as an alternative to directly contracting with entities outside State government.
47	OBSERVATION: OIT should design new or upgraded systems to collect or produce data needed for effectively monitoring performance of programs, functions or activities. These features should also link performance data to allocated resources.
48	OBSERVATION: OIT should use automated tools to establish and monitor performance metrics for information systems across the enterprise in order to have the information necessary to manage the enterprise architecture and related investments by identifying systems with poor performance.
49	OBSERVATION: Legislative bodies responsible for oversight of information system implementations should take an interest in whether, and how, the system is being designed to provide accountability, and allow the impact of enacted legislation to be evaluated.
50	OBSERVATION: OIT should develop a common data dictionary for data elements that are duplicated across systems and explore the possibility of developing a shared database for duplicated data elements that can be accessed by all systems rather than stored individually in each system.
51	OBSERVATION: OIT should assure that knowledge held by those nearing retirement age is captured in written form or otherwise appropriately transferred to other IT employees.
52	OBSERVATION: OIT should work to increase the use of technology for information sharing over time as resources permit.
53	OBSERVATION: Legislature should further mitigate risk of changes in IT leadership through: • actively providing legislative support and oversight from the responsible Joint Standing Committees of jurisdiction; • continuing independent reviews by OPEGA of various aspects of information technology; and • enacting legislation that requires CIO to have particular knowledge and capabilities.
Guardians ad litem for Children in Child Protection Cases (2006) There were originally 21 recommendations across 11 findings. 16 recommendations remain unaddressed.	
54	GAL services should be reconfigured as a program with appropriate management components and controls.
55	The Court should update its accounting codes and time reporting processes so they can accurately capture and classify all costs associated with providing GAL services. Financial analysis of these costs should be performed and communicated in a way that shows the impact of providing GAL services on the Court's budget.
56	The Legislature should update Title 22 to clarify the role of the GAL and to assign specific responsibility for GAL accountability. Revisions to Title 22 should also incorporate any language necessary to implement changes that ensue from the anticipated assessment of GAL service delivery approaches.
57	The Legislature should consider whether the 3-month visitation requirement that exists in Title 22 is still adequate for effective GAL representation. The Legislature may seek perspective and recommendations on this matter from the Court and the DHHS Office of Child and Family Services.
58	The Court should implement a compliance and performance monitoring and evaluation system for GALs that will identify GALs who are: not complying with mandated requirements; not sufficiently involved in the lives of the children to effectively represent their best interests; or, are behaving in a manner that is negatively affecting children or others.
59	The Court should immediately begin tracking GAL compliance with basic activity requirements.
60	The Court should establish an independent advisory board (perhaps expanding the role of the Court Services Advisory committee) to solicit feedback on GAL performance from people involved in CPS cases that do not have access to judges.

OPEGA Recommendations Still Unaddressed or In Progress as of December 2012 (as per OPEGA's last follow-up)	
Guardians ad litem for Children in Child Protection Cases (2006) continued	
61	The Maine Supreme Judicial Court should develop, as part of its Rules and Standards for GALs, a Code of Conduct, expressly for GALs, specifying acceptable behavior and behavioral prohibitions. The Code should include a feasible and timely set of sanctions for violations.
62	The Court should use supervision methods for GALs that are consistent with best practices in human services.
63	The Court should enhance the current Rules related to complaints to include: clear criteria to serve as the basis for legitimate complaints; transparent policies and procedures for handling complaints; clear process, policy and procedures for using complaints to address poor performing GALs.
64	The Court should create a central file to log complaints and track their status. Complaint info could be reviewed by judges in assigning cases to particular GALs and to monitor trends that indicate need for more training or mentoring and support.
65	The Court and OCFS should open an avenue to allow OCFS caseworkers and supervisors to communicate their concerns about GAL performance to the Family Division or presiding judges.
66	The Court should make efforts to recruit professionals other than attorneys to serve as paid GALs, especially in geographic areas where there are shortages. The Court should modify the Rules for GAL qualifications and create a differentiated pay scale to accomplish this.
67	The Court should create an incentive system to recognize and benefit from high-performing and effective GALs.
68	The Court should purchase and implement an electronic case management system to record and track GAL activity and court events, as well as share information among GALs and other parties to cases. The Court should use the data captured in the case management system to electronically generate, maintain and share management information for planning, managing and assuring the quality of GAL services.
69	The Court should standardize the information and level of detail that must be submitted with GAL invoice forms and capture the data electronically to faciliate the production of financial and management information. The Court should use the data captured in the financial system to electronically generate, maintain and share management information for planning, managing and assuring the quality of GAL services.
Bureau of Rehabilitation Services: Procurements for Consumers (2007) There were originally 10 recommendations across 7 findings and 2 observations. 2 recommendations remain unaddressed.	
70	OBSERVATION: BRS management should gather data necessary to better evaluate the potential benefits of seeking consumer contributions on a more routine basis and then reconsider its policy of not seeking consumer contributions.
71	OBSERVATION: BRS should continue to pursue the full centralization of ORSIS with OIT, perhaps collecting data on the financial and service consequences of the current configuration to help justify it as a priority.
Special Project on Professional & Administrative Contracts (2010) There were originally 5 recommendations. 2 recommendations remain unaddressed.	
72	The Legislature should direct agencies to analyze historical actual expenditures associated with procuring professional and administrative contracted services over the last two full fiscal years and report back on how those expenditures compare to the most current contracted budget for those services. If historical actual expenditures have typically been substantially lower than the current budget, there may be opportunity to reduce the budgets (and related appropriations) for contracted services that will be continuing.
73	The Legislature should review and consider whether there is a continuing need to maintain the Maine Education Policy Research Institute (MEPRI) as it is currently designed in 20-A MRSA §10. It is unclear whether the Legislature's intent for this entity is still being met or whether this entity specifically is still needed to meet the Legislature's needs. We also observed that the role of the Steering Committee is unclear, and it may not be necessary to continue the Steering Committee even if MEPRI continues.
Emergency Communications in Kennebec County (2010) There were originally 9 recommendations across 8 findings. Only 1 recommendation remains unaddressed.	
74	DPS management should re-assess their space needs as the network evolves. If it continues to seem unlikely that CMRCC will acquire the level of external customer workload that was originally envisioned, DPS should work with the Department of Administrative and Financial Service's Division of Leased Spaces to optimize the use of space through the remainder of the lease period and potentially seek to reduce space when the period has ended.

∗ Recommendations with this symbol beside them were reported in OPEGA's 2012 Annual Report as being "In Progress". This means OPEGA believes the responsible agency is currently taking action and/or there is legislative activity that is likely to result in implementation of the recommendation or an acceptable alternative solution.

Draft OPEGA Follow-Up Process for Discussion



Department of Health and Human Services Auditing Functions
OPEGA Summary for the Government Oversight Committee
March 8, 2013

Department of Health & Human Services - Division of Audit

The Division of Audit is part of the Financial Management Services within the Department of Health and Human Services. Financial Management is responsible for managing the resources entrusted to the Department in an efficient and effective manner. The Division of Audit is comprised of five units. Table 1 is a summary of each unit's activities and staffing levels.

Table 1. DHHS Audit Units – Staffing and 2012 Activity

Unit	Brief Description	Staff[1]	2012 Activity	Over/Underpayments, Recoupments, Prosecutions
MaineCare Cost Settlement	Conducts cost settlement reviews on MaineCare providers receiving reimbursement on a cost basis such as Nursing Facilities, Hospitals, Residential Care Facilities, Private Non-Medical Institutions and Intermediate Care Facilities for the Mentally Retarded (ICF/MR)	1 Manager 16 Auditors (I-III) – (1 vacancy)	355 Audits	$7.1M over / $5.6M underpayments identified
Social Services	Conducts desk reviews on A-133 audits submitted by community agencies as well as close-out reviews on all Department contracts to sub-recipients	1 Manager 5 Auditors (II-III)	240 Examinations	$1.9M recovered
Program Integrity	Monitors payments under MaineCare for non-cost settled programs, conducts post payment reviews to prevent/limit fraud abuse and waste	1 Manager 14 Staff[2] – (4 vacancies)	190 Recoupment Letters	$16.7M recovered
Fraud Investigation & Recovery	Investigates fraud, attempted fraud, commingling or misapplication of funds administered by DHHS	1 Manager 17 Fraud Investigators – (10 vacancies)[3] 2 Office Associate II – (2 vacancies) 1 Office Assistant II –	2028 cases opened 778 cases closed	31 individuals 60 crimes 57 pending prosecutions
Internal Audit	Oversees all auditing of DHHS conducted by external agencies, assures corrective action plans are implemented and meeting their objective and conducts specialized audits as needed	1 Manager 1 Auditor II		
Source: Power Point presentation prepared by DHHS for the Joint Standing Committee on Health and Human Services				

[1] Each unit is overseen by a "Program Audit Manager" who, according to the job specifications, needs to be either a Certified Public Accountant or a Certified Internal Auditor. The other positions in all of the units require varying levels of experience and education in fields such as accounting, business administration and auditing, but do not required certification in these fields.

[2] Staff positions include: 2 Comprehensive Health Planner II; 4 Comprehensive Health Planner I (3 vacancies); 4 Auditor II; 1 Management Analyst II (vacancy); 1 Planning & Research Associate; 1 Medical Surv. & Utilization Supervisor; 1 Office Associate II

[3] Eight of the vacant Fraud Investigator positions and both vacant Office Associate II positions were just recently created.

DHHS Division of Audit: Program Unit Descriptions

MaineCare Cost Settlement

The MaineCare audit section conducts compliance audits and issues final cost settlements on all MaineCare cost reimbursed programs. These programs include Nursing Facilities, Intermediate Care Facilities for the Mentally Retarded, Residential Care Facilities, Private Non-Medical Institutions, Day Habilitation Services and Hospitals. These audits are conducted to ensure that MaineCare funds are expended in accordance with the MaineCare Benefits Manual, the Provider Reimbursement Manual, and the Code of Federal Regulations. This Unit processes over 600 cost reports annually representing approximately $1 billion in MaineCare funding.

Social Services

The Social Service unit of the Division of Audit has oversight responsibilities for State and Federal grants that pass through the Department to community agencies. Part of these oversight duties includes advising community agencies, Independent Public Accountants (IPA) and Department grant administrators of the requirements imposed on grant dollars by existing State and/or Federal legislation, statutes and regulations.

Community agencies that receive state and/or federal pass-through funds are compliance with the requirements of the Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP). One of those requirements is for agencies that expend $500,000 or more of state or federal pass through funds to have an audit performed by an Independent Public Accountant. Agencies expending $500,000 or more of federal funds in a fiscal year, must also meet the audit requirements of Federal Circular OMB A-133 (Single Audit) and the Social Services unit ensures agencies comply with those requirements. The Unit has the responsibility of issuing a management decision on the findings and corrective action plan that result from a single audit of a community agency as to what corrective action is necessary.

At the end of a community agency's fiscal year Social Services performs an examination/review of an agency's records to ensure compliance with applicable State and/or Federal legislation, statutes and regulations.

Internal Audit

Internal Audit (IA) is responsible for monitoring all audits completed on the Department of Health and Human Services (DHHS). This includes the A-133 financial audit conducted by the State Department of Audit as well as compliance audits conducted by the various Federal Agencies which fund DHHS programs.

Other areas of responsibility of IA include:

- Act as a liaison between DHHS program management and audit agencies ensuring audit related questions are fully responded to in a timely manner.
- Review corrective action plans and helps formulate DHHS responses to audit findings.
- Assist in the implementation of internal controls to correct deficiencies identified in audit findings.
- Monitor the effectiveness of controls and recommend changes as necessary.
- Conduct audits and reviews within the Department as directed by the DHHS Audit Committee.

Program Integrity

Program Integrity (PI) is responsible for monitoring and safeguarding the MaineCare Program against fraud, abuse and waste. It conducts analysis of MaineCare billings to detect utilization patterns or trends that may indicate fraud, abuse or waste. Based on data analysis or referrals/complaints received from other state agencies, health care providers or members, PI may perform retrospective audits/reviews of MaineCare Providers and members to validate the allegations of fraud, abuse or waste.

Fraud, Investigation and Recovery Unit (FIRU)

The Fraud, Investigation and Recovery Unit (FIRU) is authorized under 22 MRSA § 13 to investigate fraud, attempted fraud, commingling or misapplication of funds administered by the Department of Health and Human Services. In addition to investigation of potential welfare fraud and abuse which are referred by other Departments of the State and its political subdivisions as well as the public. In 2011, the unit was equipped with a Fraud Hotline with state-wide toll free access and a general fraud reporting email. Fraud may also be reported to the unit through an online form maintained by the Department. FIRU investigates more than 3,000 allegations per year.

FIRU is also responsible for the recovery of established improper payments in TANF, Food Supplement Program (Food Stamps), Medicaid and the General Assistance programs pursuant to 22 MRSA 3811 et al and promulgated in the Fraud Investigation and Recovery Manual.

Outstanding Questions

The information provided in this summary was obtained from DHHS' website or other public documents prepared by the Department. OPEGA is awaiting a response from DHHS on the following questions:

- Are there audit units in any of the respective DHHS Offices? If so, how do they coordinate with the Division of Audit?
- Are there sub-units to any of the identified 5 units in the Division of Audit?
- The [previously provided] presentation states that DHHS is required to have three of the units; what rule(s) or agencies, State or Federal, require them?
- How do you select what to audit in the MaineCare Cost Settlement Unit and Social Service Unit? Is there a target number each year?
- How many programs or contracts did DHHS select to audit in 2012?
- How many cases in the Fraud Investigation and Recovery Unit were initiated by:
    - Complaints – hotline/web reporting
    - Referrals from eligibility specialists
    - Front end detection work
    - Legal
- How many cases in the Program Integrity Unit were initiated by:
    - Complaints
    - Referrals from State or Federal agencies
    - Global cases (and which ones if available)
    - Exception Reporting using SURS
    - Review of MaineCare policy sections

BETR & BETE Tax Incentive Programs
OPEGA Summary for the Government Oversight Committee
March 8, 2013

Program Background

- Business Equipment Tax Reimbursement (BETR)
  - Subject to 36 MRSA Chapter 915 and administered by Maine Revenue Service (MRS).
  - Companies submit applications to MRS seeking reimbursement of property taxes paid to municipalities on eligible qualified business property as defined in the statute. MRS determines eligibility and reimbursement amount based, in part, on information in the application supplied by the municipal assessor. MRS sends reimbursement directly to the companies.
  - Qualified business property is generally eligible for BETR if it was first placed in service in Maine between April 1, 1995 and April 1, 2007. Property placed in service after that is generally covered by the BETE program instead. Certain retail equipment, however, qualifies for BETR even if placed in service after April 1, 2007.
  - Certain businesses are ineligible for the BETR program, including public utilities, cable television companies and providers of radio paging, mobile communications, satellite TV or TV distribution services. Similarly certain items of property are ineligible including furniture, lighting, buildings, land, and certain gambling equipment. Property associated with retail sales facilities larger than 100,000 square feet ("big box stores) is also ineligible unless a particular revenue test specified in statute is met.
  - Reimbursements under BETR are a specified percentage of the property taxes assessed and paid with respect to each item of eligible property. The reimbursement rate is 100% for each of the first twelve years for which a reimbursement is made. The rate falls to 75% for the 13th year in which a reimbursement is made and decreases by 5% for each subsequent year of reimbursement until reaching the 18th year when it is 50% for that year and every year thereafter.
  - MRS estimates that approximately 2,000 taxpayers are receiving reimbursements under BETR and estimates close to $47.6 million in reimbursements will be paid in FY13.

- Business Equipment Tax Exemption (BETE)
  - Subject to 36 MRSA §691 and administered by MRS and municipalities.
  - The program reimburses municipalities for loss of municipal revenue arising from the exemption of qualified business equipment, as defined in the statute, from property tax. Companies submit applications for exemption directly to the municipality which determines eligibility and grants the exemptions. Municipalities provide MRS with the number and dollar amount of the total exemptions granted for each property tax year. On the basis of this information, MRS reimburses municipalities a certain percentage of property tax revenue lost as a result of the exemption.
  - Qualified business equipment is generally eligible for BETE if it was first placed in service in Maine after April 1, 2007.

- Businesses and equipment items that are ineligible for BETE are the same as those that are ineligible for BETR. In addition, equipment associated with retail sales facilities is generally ineligible under BETE unless particular conditions specified in statute are met.
- BETE reimbursements to the municipalities are a specified percentage of the total property tax revenue lost by reason of the exemptions granted. The reimbursement rate was 100% for exemptions granted in the property tax year beginning April 1, 2008 and declined 10% for each of the subsequent property tax years until reaching the property tax year beginning April 1, 2013. The reimbursement rate for that property tax year and for all subsequent tax years is 50%.
- MRS estimates that approximately 3,000 taxpayers are receiving property tax exemptions and 246 municipalities reported BETE exemptions to MRS in 2010. MRS estimates that close to $21.4 million in reimbursements will be paid to municipalities in FY13.

Reporting and Evaluation

- Both programs are included in two tax expenditure reports provided to the Legislature on a biennial basis. The first report, as per 5 MRSA §1664, is released as part of the documentation for the biennial budget recommendations. It provides the estimated revenue loss from each tax expenditure program during the most recently completed fiscal year and the year in progress, as well as projected losses for each fiscal year in the coming biennium. The second report, as per 36 MRSA §199-B, is provided to the Joint Standing Committee on Taxation. It provides a bit more detail as it includes a summary on each provision, information regarding beneficiaries, estimates of the costs and any issues or recommendations MRS might have regarding a particular provision.
- BETR was one of 46 programs reviewed in OPEGA's 2006 report on Economic Development Programs in Maine. BETE was not an established program at the time of that review. OPEGA assessed the risk of each program related to potential inefficiency and ineffectiveness using 13 different factors. Information used in the risk assessment was provided by the agencies responsible for administering the programs. BETR was one of the higher risk programs, rating as "high risk" for 8 of the 13 different factors: goals and objectives; performance measures; reports; overlap; administrative costs; funding review; external audit; and amount of funding.
- It is unclear to what degree both BETR and BETE were encompassed in the independent evaluation that produced the 2008 Maine Comprehensive Economic Development report contracted for by the Department of Economic and Community Development. It appears that the surveys sent to organizations receiving assistance from State economic development programs went to BETR recipients but not BETE recipients. Some percentage of the BETR recipients surveyed were probably also BETE recipients. The report itself contains little data related specifically to BETR or BETE, but survey data related to these programs may be available from the evaluators who conducted the independent review. OPEGA had previously obtained a listing of free form comments survey respondents had provided. There were a number of comments specific to BETR that related to the following areas: importance of the program to the company, administrative burden for organizations applying, and the timeliness of reimbursement payments from MRS.

- Both BETR and BETE were included in the 2010 report required under Resolve Chapter 199 (To Increase Transparency and Accountability and Assess the Impact of the Tax Expenditure Programs). The working group that produced this report provided information on the purposes and functioning of the respective programs but stopped short of providing an assessment of the programs' risk or success as this was not the intent of the report. The report did, however, provide recommendations in regard to an approach for measuring the economic impact of tax expenditure programs in the future. It does not appear that these recommendations have been enacted.
- Detailed data on the items of property each company seeks BETR reimbursement for, and the municipalities the items are located in, is available at the State level on the reimbursement applications submitted to, and maintained by, MRS. However, the amount of detailed data readily available in electronic format for reporting and analysis is limited. Detailed data on companies and items of property receiving exemptions under BETE is not available at the State level. The detail on which companies are seeking property tax exemptions, and which items of property are included, should reside at the municipalities granting the exemption. OPEGA does not know what BETE records municipalities maintain, what level of detailed data those records include or what form (electronic or hard copy) the records may be in. These data limitations mean that any analysis requiring detailed data, or a comparison of those companies who receive assistance under both programs, would likely involve significant time and resources to request, process and analyze individual company applications – from MRS in the case of BETR, and from each municipality MRS has reimbursed in the case of BETE.

Proposals in the Governor's Proposed FY14/15 Budget

- The Governor's proposed budget for the FY14/15 biennium contains the following, which results in approximately $11.7 million of revenue recognition over the biennium from the repeal of the BETR program and the expansion of the BETE program:
    - Part K
        - Eliminates eligibility under the Business Equipment Tax Exemption (BETE) program for property located at certain large retail sales facilities (those that exceed 100,000 square feet and whose Maine based operations derive less than 30% of their total annual revenue from sales made at a retail facility located in the state).
        - Sunsets the Business Equipment Tax Reimbursement (BETR) program with respect to property taxes paid after 2012. Property that would have otherwise qualified for the BETR program, except the property located at retail sales facilities, is to be treated as eligible business equipment for purposes of the BETE program for property tax years beginning on or after April 1, 2014.
        - Increases the municipal reimbursement rate under the BETE program from 50% to 60% for the property tax year beginning April 1, 2014, and 55% for the property tax year beginning April 1, 2015. The rate for subsequent property tax years would return to 50%.

- Part O
  - Provides that the additional reimbursement under the Business Equipment Tax Exemption of certain qualified property is conditioned on the municipality including an approved professional appraisal with its claim for reimbursement.

- If enacted, the proposed budget initiative would make BETE the primary tax incentive program for property taxes on business equipment. It also appears to effectively make all property associated with any retail sales facilities ineligible for the program. Other equipment that was eligible under BETR would be made eligible under BETE. The proposal also modifies the eligibility criteria as well as the reimbursement rate for BETE.