



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

MEMBERS:

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

July 14, 2010

Accepted August 19, 2010

With Correction

CALL TO ORDER

The Chair, Rep. Hill, called the Government Oversight Committee to order at 9:40 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Nass, Sen. Brannigan, Sen. Diamond, and Sen. McCormick Joining the meeting in progress: Sen. Trahan Absent: Sen. Simpson
Representatives:	Rep. Hill, Rep. Rotundo, Rep. Pendleton, and Rep. Burns Absent: Rep. McLeod and Rep. Bickford
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Etta Begin, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information To the Committee:	Herb Downs, Director, Audit-MaineCare & Social Services, DHHS Marc Fecteau, Director, SURS, DHHS Lucky Hollander, Director Legislative Relations, DHHS Jennifer Willis, Assistant Attorney General, Office of the Attorney General

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Chair Hill asked if there was objection to taking items out of order. Hearing none she moved to **Unfinished Business, Consideration of Possible Enhancements to OPEGA/GOC Processes.**

UNFINISHED BUSINESS

- **Consideration of Possible Enhancements to OPEGA/GOC Processes**

- **OPEGA Review Selection Process and Process for Handling Requests for OPEGA Reviews**

The GOC considered several questions Director Ashcroft had drafted concerning the related processes for selecting which topics OPEGA will review and handling requests for OPEGA reviews that are received by OPEGA throughout the year.

Should there be any changes, or more specificity established, for the avenues through which OPEGA/GOC get the topics that are considered for OPEGA reviews?

All GOC members attending the meeting participated in the discussion and agreed that requests for OPEGA reviews being considered by the GOC should be coming primarily from legislators. This would be consistent with OPEGA's mission and why it was created – to assist legislators. Citizens that come to OPEGA with issues they wanted looked at should be directed to talk with their legislators, or any legislator, to find one that would be willing to support them and submit a request for review. They agreed that citizens have adequate access to legislators and, through them to OPEGA. Requiring a legislator to sponsor a request should still give a citizen adequate access to OPEGA. Generally, if a citizen could not convince any legislator to bring forward a request then it was probably not a matter that was worth OPEGA spending time on.

However, the members also acknowledged there may be times when an individual wanted to have his/her identity remain confidential. Or, times when legislators may be unresponsive or don't recognize all the implications of the citizen's concerns. Therefore, members also liked the idea of leaving some limited avenue available for a citizen to file their own request with OPEGA, and for the Director to bring that to the GOC if she thought it was something they should consider.

There was also discussion about limiting in some way the types of topics or concerns a legislator would consider forwarding to OPEGA/GOC on a constituent's behalf. The Director referred to parameters that the State of California Auditor's Office has set for its complaint process. There they will only take in allegations or complaints that have to do with an improper government activity - which is defined as any action that violates the law, is economically wasteful, involves gross misconduct, incompetency or inefficiency. The complaint or allegation must also be in writing and the person with the complaint has to provide some evidence to support the complaint. If the GOC set similar parameters, it would also want to leave open the door to consider complaints that might suggest programmatic issues. But aside from that, allegations or complaints lodged by individuals would only get considered by the GOC if they were of a very serious nature that might warrant an investigation.

The Director was asked to incorporate some of these ideas into the proposed process revisions for the GOC to further consider. Chair Hill voiced a concern that an individual with a legitimate allegation or complaint may not always have access to physical "proof" he or she could provide. The Director explained that in such situations, OPEGA has been asking the individual to at least describe what evidence might be existing that would support their allegation.

Should the processes require that requests be submitted in writing in order for the GOC to consider them?

The Director noted that this particular GOC had early on established that it did not want to consider any requests that had not been submitted in writing, but that this requirement was not currently specified in the current written process and procedures.

Members in attendance at the meeting were in agreement that this requirement should be added to the written process and procedure. They clarified that the requirement was also meant to apply to requests received from legislators. If a legislator submits a request for a review that is related to a constituent's concerns, the legislator could have the constituent fill out the Review Request Form, but the legislator would need to review, sign and submit the Form. Director Ashcroft noted that in that instance it would also be helpful to have the legislator

provide the constituent's name in case OPEGA needed to obtain any information from that person. She noted that the constituent's identity could still be kept confidential if desired.

Rep. Rotundo asked whether a request coming through a legislator was subject to the Freedom of Access Act (FOAA). The Director said that OPEGA has been treating any requests received as confidential working papers under OPEGA's statute that are not subject to FOAA. She will contact the Attorney General's Office with that question, however, so as to be sure how it would be treated in the possession of the legislator.

Should specific criteria be established as a basis for the GOC to make decisions on whether topics should be put On Deck or moved to the Work Plan? If so, what should those criteria be?

Director Ashcroft does not think the GOC has formally or consistently used any criteria over the years in determining what should be added to OPEGA's Work Plan, or in processing requests for reviews that have been received. She suggested that having some standard criteria that are applied in a formal manner every time the GOC is considering a topic might make the GOC's decision-making process more efficient and also help assure OPEGA is working on projects that are of most interest, importance or value to the Legislature. She said the key would be to select criteria that would lead to high value projects. She referred the GOC to some examples of possible criteria that she had provided and described how they might be used.

Committee discussion ensued with Chair Hill, Rep. Rotundo and Senators Nass, Brannigan and McCormick participating. They supported the concept of having criteria both to help choose high value reviews, but also to be consistent and fair in dealing with topics affecting different agencies. They also liked the idea of having the criteria in the form of a checklist that they could go through on each topic being considered.

The Director was asked to create such a checklist using the criteria she felt was relevant for the GOC to review. Senators Brannigan and Nass were interested in running a couple of OPEGA's past reviews through the checklist to see how they would have come out. The Director was asked to prepare that information for the next meeting using the Emergency Communications in Kennebec County and Maine State Prison reviews, as well as a topic the GOC had eliminated from further consideration.

Rep. Rotundo asked that the criteria currently expressed as the question "Is the issue currently being audited, investigated, or reviewed by any other legislative, administrative, or judicial entities?" be changed. She suggested that the words "or has recently been" be added after the word "currently". The question with the change would read – "Is the issue currently being, or has recently been audited, . . ."

The Director also pointed out that one of the criteria OPEGA has been using to determine whether to bring a request for review to the GOC was whether the topic was within the GOC's mission and OPEGA's jurisdiction. At a past meeting, the Director had mentioned that currently both the GOC's mission and OPEGA's jurisdiction under statute were quite broad. She wondered whether the GOC was at a point where they wanted a more specific focus for OPEGA and the GOC in terms of types of reviews being done. If so, perhaps refining the GOC's Mission Statement would be a way to help do that.

Chair Hill was interested in how the GOC's Mission Statement compared to those for legislative oversight committees in other states. The Director will research that and bring back any other options the GOC might entertain.

Should GOC define more specifically what information it wants to have before making a decision on what to do with a topic (beyond anything related to any established criteria), who they want to receive that information from and what process will be used in receiving it?

Director Ashcroft said she would expect that a checklist like the one being discussed would drive the kind of information that OPEGA tries to pull together for the GOC and would at least partly answer the question of what information the GOC wants to receive before making a decision. Even with using a checklist, the GOC may want more information, and to date there have been different approaches of getting that - including hearing from the agency, the policy committee, or asking OPEGA to get more information. Does the GOC want to formalize any expectations or preferences for sources of information being factored into topic selection?

Director Ashcroft gave the example of the recent Maine Community College System request for a review that the GOC considered. The GOC had tried to get input from the Education and Cultural Affairs Committee through correspondence, but it did not seem that procedure worked very well. The agency came before the GOC to say why they did not think they needed to be reviewed. Perhaps it might have been better for the GOC to invite the Chairs and Leads of the Education Committee to a meeting to discuss whether there was anything OPEGA should be reviewing.

Chair Hill, Senator Nass and Rep. Burns commented that they felt there was a difference between having the agency versus the Committee Chairs and Leads coming to a GOC meeting to input on topics the GOC was considering. There was some concern about giving the agency an opportunity to make a presentation to the GOC on why it should not be reviewed. There was also a desire for the GOC to have the flexibility to ask questions and get information from whomever necessary to make a good decision.

The Director noted that a key point for her is understanding whether the GOC wants to give the agency the opportunity to weigh in on these decisions. Chair Hill thought the GOC could set boundaries for the agency's appearance before the Committee to keep it to the agency responding to GOC questions rather than giving justification why they should not be reviewed. Director Ashcroft said another safeguard could be giving OPEGA an opportunity to advise the GOC about anything the agency has presented that runs contrary to what OPEGA has learned, or understands about the topic or situation.

Should a general scope for a potential review be defined before the GOC decides whether to put it On Deck or include it in the Work Plan?

Director Ashcroft said topics have sometimes been put on OPEGA's Work Plan in the past without a defined scope of what the review would be focused on. OPEGA typically does not suggest a detailed scope for a review until after completing the preliminary research phase on a project. The question here is whether the GOC should at least establish a general scope for a review when making a decision to put a topic on the Work Plan or On Deck.

Chair Hill asked the Director whether establishing a general scope at the time a review is put On Deck or on the Work Plan would be helpful for OPEGA.

Director Ashcroft said it may be inefficient trying to establish a scope when putting a topic On Deck but she thinks it would be worthwhile to make sure that a general scope is at least considered when a topic is moved to the Work Plan. She also thinks this would be helpful for the agency. Unfortunately, there is still a perception that if a program or agency is on the list for a review there must be concern something is wrong. She is in hopes of eventually getting away from that and refining some of these processes may help.

Chair Hill asked if the GOC was in accord with the above and noted they were.

Is the On Deck listing necessary or meaningful any longer? If so, should additional expectations for the On Deck items be established. For example, how many topics will be carried On Deck, how often will GOC review On Deck items for their continued interest, should On Deck items be ranked somehow and should On Deck items receive priority for consideration when deciding what topics to add to the Work Plan.

Chair Hill, Rep. Burns and Senators Nass, Brannigan and McCormick participated in the discussion about the On Deck list. It was noted that:

- the On Deck list has some value as a way to keep track of potential topics of interest or concern that OPEGA has not spent any resources on yet;
- topics remain on the list year after year and that sometimes topics not On Deck have been added to OPEGA's Work Plan;
- if the On Deck list is continued, perhaps it should be a list of a very limited nature, and the GOC should take topics off, move them ahead, or give them some type of status; and

- having a topic “On Deck” with a narrow focus may result in agencies taking initiative to address known problems without OPEGA having to do a review.

Director Ashcroft noted that the checklist of criteria that has been discussed might be useful in prioritizing the topics put on the On Deck list. Chair Hill commented that perhaps additional criteria should be established for deciding about moving a topic from On Deck to the Work Plan.

Summary of GOC Discussion on Review Request and Selection Processes

Director Ashcroft summarized the Committee’s thoughts on changes to these processes as follows:

In general, the Committee would like to have OPEGA get topics for the GOC’s consideration from legislative committees or legislators, but if something comes from another source and appears to warrant a review, the Director should present it to the GOC Chairs for consideration. OPEGA should also offer for GOC consideration topic suggestions it may have based on its experience or knowledge, but the primary source for topics should be legislative committees and legislators.

Requests for reviews must be submitted in writing – even from legislators.

Citizens who contact OPEGA to request a review would be directed to contact a legislator. If they report back that they have tried without success, she would allow citizens to submit a written request and take the matter to the Chairs of the GOC if she thought it was an issue that deserved the Committee’s attention.

The GOC would like to explore using a checklist with criteria to use in making decisions about what to do with proposed review topics. The criteria should allow the GOC to compare topics against each other and assure GOC is consistent in what it considers about each topic.

The GOC wants to have flexibility to get input directly from policy committees or question agencies directly during the process of deciding what action to take on a proposed review topic. The GOC would set parameters for an agency’s appearance before the Committee so as not to allow the agency to unduly influence the GOC’s decision.

The On Deck list will remain for now but there should be additional discussion about how best to manage it to keep it relevant.

For the next meeting, the Director will draft revisions to the process to reflect the GOC’s discussion today for the Committee to review. Chair Hill requests that Director Ashcroft also let the GOC know how she would make it known to the public what the process is for making a request for a review. She suggested that information might be added to the website that lists all legislators and their contact information.

- OPEGA Review Process

The Committee considered the question of whether they wanted to build into the process an avenue for interacting more directly with the relevant policy committee, and/or responsible agency at the point in the process where the GOC is considering OPEGA’s Recommendation for Project Direction on a review that is in progress.

Director Ashcroft said this is the point where OPEGA has completed its preliminary research and has come before the GOC with a summary of that research - as well as with suggestions of what questions, if any, would be of value to pursue in proceeding with a more detailed review. She said that the preliminary research usually involves talking with legislators on the relevant policy committees. However, this Committee has had at least one review where some members felt they wanted to hear from the policy committee or the agency about some of the questions that OPEGA was suggesting. That was a departure from the previous process used. The Director thought it would help to formalize what the expectations or parameters are for engaging others at that particular juncture when the GOC is making a decision about what the scope of the detailed review should be.

Chair Hill, Representatives Rotundo and Burns, and Senators Nass, Brannigan and Trahan participated in the discussion of this matter. The members noted that they had found it very helpful in those instances where

members of the policy committees had engaged directly with the GOC about a review. There was general agreement that hearing from the policy committee could be useful in helping the GOC define the scope questions better and would help advance cooperation among the GOC and the policy committees. Members were in favor of building in an opportunity to hear from policy committee members when deciding on the scope of a more detailed review.

The members were divided on whether it would be appropriate, or of value, for the GOC to engage directly with the agency at the scoping point in a review. Some felt this would give the agency too much opportunity to shape the scope of the review to be in their best interest. Others thought having the GOC question the agency could be beneficial in identifying additional review questions that would provide helpful information for improving the agency's effectiveness or efficiency. Or it could help eliminate from scope questions OPEGA has proposed that may yield little beyond what was already known.

Director Ashcroft pointed out that OPEGA proposes the scope questions after having given quite a bit of thought to the information they have received from the agency and putting that together with other information gathered. OPEGA does not offer the questions up lightly. It is possible that OPEGA could have missed something or misunderstood some situation. But the answers agencies are going to give in response to GOC questions may not reflect all of the pieces of the puzzle. Questions suggested by OPEGA should not necessarily be dismissed just because the agency seems to have a ready answer for it.

Following the discussion, the Committee was in general agreement that the GOC would continue, for now, with the current process as regards to additional information needed from the agency – which is to direct OPEGA to obtain whatever information the GOC needs.

- Process and Procedure for Receiving OPEGA Reports

The GOC considered the questions the OPEGA Director had drafted on whether to get policy committees more formally involved in the reporting process, whether the GOC wanted to be able to input to report recommendations and whether it should be specified as to what a vote of endorsement means.

Director Ashcroft said OPEGA typically informs the policy committee when OPEGA is going to be presenting to the GOC a report topic within their jurisdiction. She wanted to know whether the GOC was interested in setting up a more formal process that perhaps involved OPEGA presenting the report to a joint meeting of the GOC and the policy committee or the GOC Chairs issuing a formal letter of invitation for the policy committee to attend the meeting.

After a brief discussion, it was decided that the present process for including policy committees in the report presentation would remain the same other than making sure invitations for the relevant joint standing committees to attend the report presentation were sent more consistently and included all the members of a joint standing committee. GOC members noted that it is always helpful to have members of the policy committees interested in the report and perhaps getting them more involved on the front end of the review process would make them more interested in following the report presentation. However, trying to involve a policy committee further than is presently done could be problematic in terms of scheduling, particularly when the Legislature is not in session.

The Committee next discussed the matter of whether to specify a written policy or procedure of what the GOC's vote of endorsement on a report meant. Chair Hill and Senators Diamond, Nass, Brannigan and Trahan participated in the discussion.

Director Ashcroft noted that OPEGA's statute says the Committee may vote to endorse, endorse in part or not endorse the report, but it does not specify what that vote means or what endorsement means. She thinks endorsement is the GOC's signal to the rest of the Legislature that they think OPEGA did a credible job, the issues and ideas contained in the report are worth consideration, and the GOC does not see any major flaws in OPEGA's work. It is unclear whether endorsement also means that the GOC would recommend implementation of the recommendations included in the report. She does not know what was originally envisioned when that provision was built into the statute, but it might be helpful to clarify somewhere what the GOC thinks it means.

Members agreed that it would be worthwhile to specify what the vote of endorsement meant particularly since there would likely come a time when the GOC disagreed with something in OPEGA's report or when Committee members themselves were divided over something in a report. Members also felt that making a distinction between endorsing OPEGA's recommendations versus the quality of its work and the conclusions/findings could also be important.

Sen. Diamond suggested that, instead of spending time trying to specifically define what endorsement meant and what parts of the OPEGA report it applied to, perhaps the GOC should begin a practice of issuing its own letter to the Legislature about its perspective on each OPEGA report. The letter could contain specifics on the GOC's view of any items in the report that the GOC strongly supported or was uncomfortable with. It would also be a vehicle for the GOC to comment on what the Committee thought of OPEGA's recommendations or to provide alternative recommendations. If the GOC was divided on something in a report, the letter could also be used to document that.

The rest of the members liked this idea, but there was also interest in finding out what the practices were in other states. Director Ashcroft will check with other offices like OPEGA and report back.

Considering the possibility of implementing Sen. Diamond's suggestion, or something similar, the Committee agreed not to make any changes to the way OPEGA's recommendations were developed at this time. Sen. Nass noted the GOC should seek to get the full value out of OPEGA and its independence and he felt that included having OPEGA's recommendations be presented as they currently are. Members agreed there were other ways for the GOC to take action on or provide their input on recommendations rather than to input to them before they were reported out by OPEGA.

Director Ashcroft proposed that the written process for receiving OPEGA reports also include those options the GOC typically considers for actions to be taken on an OPEGA report. For example, referring recommendations to another committee or introducing legislation. There are certain actions the GOC usually considers but it is currently not in writing anywhere.

The Committee agreed the options for actions to take should be described in the written process. The Director will include that in her draft revisions for the GOC to review.

- **Follow-up on OPEGA Reports**

- **Follow-up on OPEGA's Durable Medical Equipment Report - Responses to GOC Questions From Last Meeting**

Director Ashcroft referred the Committee to the list of their questions from the last GOC meeting regarding the Durable Medical Equipment Report. Some of the questions will be responded to by DHHS and others the Director had done the research on and will brief the GOC on the results.

Q: How is the new MIHMS system being tested to make sure that system problems identified in OPEGA's report are resolved and that additional risks are properly controlled?

OPEGA: Director Ashcroft did follow up with Robin Chacon who is the Project Manager overseeing the testing. She said there is a significant amount of testing being done and would be willing to specify what testing has been done around each of the areas of concern raised by GOC/OPEGA. Director Ashcroft forwarded to Ms. Chacon the specific follow-up requests. The DHHS' Commissioner has informed the Director that since everybody is in the middle of intense testing it will likely be after the testing is completed before Ms. Chacon will be able to respond.

The GOC had also asked the Director to find out whether the State Audit Department might be able to follow up on some of these issues during the Single Audit work on Medicaid. Director Ashcroft proposed waiting to do that until she hears back about what testing has been done because that may sufficiently respond to OPEGA's concerns or would allow OPEGA to provide greater specifics to the State Auditor when forwarding the request on.

Q: Going forward, how does DHHS plan to check for instances of matching addresses between State employees and providers so that they can be followed up on to assure there is no fraudulent activity occurring?

OPEGA: Director Ashcroft has confirmed with the State Controller that DHHS does not have access to State employees' addresses. The State Controller's Office would be willing to perform the address match by getting the vendor addresses from DHHS and doing the match in that Office. So, there could be a process in place to ensure that a match does occur periodically. It would require coordination between DHHS and the State Controller's Office. If the GOC wants to ensure that control is established it may want to send a letter the State Controller and DHHS asking that a process be set up.

Motion: That the Government Oversight Committee send a letter to the State Controller and DHHS requesting that the State Controller's Office perform an address match of State employees' address to DHHS' vendor addresses and that the comparison occur periodically. (Motion by Sen. Trahan, second by Sen. Nass, PASSED, unanimous vote of 9-0).

Q: What amount of money does OPEGA estimate DHHS will avoid paying out to providers on an annual basis once the issues identified in the DME review are resolved?

OPEGA: Director Ashcroft identified four control issues and attempted to estimate the dollar amount. Fully addressing those weaknesses could result in DHHS reducing its overpayments to providers by \$229,000 annually based on the claims OPEGA reviewed. On one of the issues related to the incontinence supplies DHHS said their past experience had found that 40% of transactions that appeared to be overpayments when doing this kind of an analysis, were actually not. If OPEGA factors that into its estimate, the reduction in annual overpayments would be \$133,600. She also noted that, in addition to the annual savings, OPEGA had identified claims or situations that represented one time potential overpayments of \$188,921. Some of this has already been recouped by DHHS. OPEGA also identified other system weaknesses that are likely resulting in overpayments, but there is no reasonable basis for estimating how much.

Q: Senator McCormick said a constituent is being given syringes everyday and she believes only needs one per week. He asked if there was a way to cut down on the number of syringes provided.

GOC: Sen. McCormick noted that DHHS' written response to the inquiry was based on the syringe being a needle but he was referring to a set up that is more of a feeding tube with a large plastic syringe attachment. He believes this is probably more costly than a needle and the feeding is done three times a day.

DHHS: Lucky Hollander, Director, Legislative Relations, DHHS said DHHS did not respond to the right situation and will follow-up with Sen. McCormick directly to get the details and provide a response.

Q: Why was the implementation of MIHMS postponed from March 1st to August 1st? Was this because of the vendor or the State?

DHHS: Herb Downs, Director of Audit, DHHS, said DHHS has been reporting to the Appropriations and Financial Affairs (AFA) Committee monthly on the implementation of MIHMS and referred the GOC to the information provided to the AFA Committee that was being distributed. He pointed out that there is specific criteria that have to be met in order for the system to go live.

GOC: Sen. Trahan asked for clarification regarding DHHS' statement saying they needed more time to complete testing and wanted to know why. In answering that question, he would also like the timeframe, noting that September 1st had been mentioned.

OPEGA: Director Ashcroft said she listened to DHHS' most recent briefing before the AFA Committee. Her recollection was that the delay of the start up date for the system was a result of them wanting to make sure these particular parameters are met before they turn the system on so they will be confident that it is

ready to go. Their continuing assessment of where they are on the criteria for MIHMS to go live is driving the decision and their best estimate is September 1st.

DHHS: Ms. Hollander said DHHS has a briefing with the AFA Committee monthly and those questions and answers are gone through, but it is not all put into writing. If the GOC would like that level of detail, the Commissioner would be the person to be at the GOC meeting. She said a group of providers have started pilot testing the System, and this will give DHHS another level of information about readiness. Ms. Hollander said she was not certain if it would be helpful to have the Commissioner at a GOC meeting to talk about that level of detail, but DHHS staff don't have the specific knowledge to do so.

GOC: Sen. Trahan would be interested in, if DHHS has a more detailed briefing in writing, of what is given to AFA Committee that it be forwarded to the GOC either by email or hard copies.

DHHS: Ms. Hollander said the Health and Human Services (HHS) Committee receives copies of any information that DHHS gives to the AFA Committee. The GOC can get DHHS' whole packet of information that is given to AFA, but because DHHS cannot anticipate what the AFA Committee's questions and concerns are going to be, the Commissioner often has a dialogue with AFA.

GOC: Sen. Trahan requested a little more detail than what was provided for information at today's GOC meeting.

GOC: Sen. Diamond said the last DHHS briefing was June 29th and AFA will have another briefing at their July 27th meeting. The AFA Committee follows the status of MIHMS very closely. He said in addition to the material being provided to the GOC, he invited the members to listen or attend the July 27th AFA meeting.

Q: Should the State require providers that have a substantial MaineCare claims volume to be bonded?

DHHS: Mr. Downs said DHHS did a poll of the 50 states asking if they do require bonds and only three responded affirmatively. Wisconsin has a statute in place but does not enforce it; Florida requires their DME providers to be bonded; Texas requires a nursing facility to be bonded if it holds any resident's funds (Maine has the same policy); and Minnesota requires personal care providers to be bonded.

In 1998, MaineCare had drafted regulations to comply with the Balanced Budget Act of 1997, requiring home health agencies and DME providers to purchase surety bonds of \$50,000 or an amount equal to 15% of their annual Medicaid payments. The federal rule, however, never became effective. Congress delayed the implementation of the requirement citing concerns that the cost for many of the agencies that did business with individual Medicaid programs would be prohibitive since many would have to have a surety bond in multiple states.

Medicare requires home health agencies and DME providers to purchase surety bonds. One bond per billing number that covers all their Medicare business.

Q: Are other states routinely assessing penalties against providers that are found to have been over billing as a motivator for providers to be more accurate in their claims?

DHHS: Mr. Downs said the answer to that question is basically no. Only Florida has reported applying penalties for policy violations. Most other states, including Maine, are able to apply civil penalties when appropriate. Assessment of a penalty is usually reserved for those situations where the overpayment is a result of a provider's submission of a claim that the provider does not believe to be true and accurate. There are existing laws, at both the state and federal level, that allow monetary penalties to be applied in civil and criminal cases. Federal law provides treble damages and up to \$10,000 per claim in additional penalties. Title 22 MRSA § 15 provides civil penalties of treble damages or \$2,000 per claim whichever is greater.

Chair Hill asked if members of the Committee had questions.

- GOC: Sen. Trahan said Mr. Downs talked about providers who over bill and asked if DHHS has an idea of which of those providers were the worse offenders and do they identify them to remedy that problem in the future.
- DHHS: Mr. Downs said he does not think DHHS can off hand say who the biggest over billers are, but they do look at an area if they see a problem. It is not uncommon that if one provider is billing incorrectly it may be throughout the whole program in that particular service area. If that is the case, they will inform the provider of what is going on and try to educate them so as to prevent it in the future.
- DHHS: Mr. Fecteau, Audit Manager, Program Integrity Unit, said DHHS has not targeted any specific group, nor would they say any particular group of providers is more apt to commit fraud and abuse.
- GOC: Chair Hill said she applauds DHHS for wanting to get the MIHMS System right before they start using it, but asked if it was costing the State money each month that the testing is ongoing, or was it all built into the contract.
- GOC: Sen. Diamond believes it was part of the contract that the testing has to be done.
- GOC: Sen. McCormick asked if there was a way, for somebody getting home visitations to find out and verify that DHHS is only being billed for the home visits actually received. For example, could DHHS be billed for 9 home visits when the client only had 5.
- DHHS: Ms. Hollander said that is a quality control issue and there is a lot of layers to that question. If DHHS does know how many visits have been approved under a contract with a provider. She is sure there are checks and balances that would show if the provider is not showing up for the approved visits. She does not know exactly what they are but she could find out.
- DHHS: Mr. Downs said if the system was working the way DHHS had hoped originally, they would be sending out an explanation of Medicaid Benefits that would let the consumer know exactly what DHHS was charged. With the new MIHMS System that will be happening, and they are in the process of using a contractor right now to start doing that. The explanation of benefits goes directly to the Medicaid client who can review it for the services they received. To go back and check that for a certain time period while they have been running MECMS, to see if services billed were actually received would be difficult.

The GOC thanked DHHS staff for attending the meeting and answering questions.

SUMMARY OF THE JUNE 14, 2010 GOC MEETING

Sen. Nass noted that on page 2 of **Unfinished Business** there was reference to him saying “Fire Chief Commission” and that should be changed to Fire Protection Services Commission.

Motion: That the Government Oversight Committee accept the June 14, 2010 Summary with the one correction made. (Motion by Sen. Diamond, second by Sen. Nass, Passed, unanimous 7-0).

REPORT FROM OPEGA DIRECTOR

• Budget Status

Director Ashcroft gave the GOC the status of OPEGA’s budget for the end of the Fiscal Year, June 30, 2010. She referred the members to the information in their notebooks that had been provided by the Office of the Executive Director for the Legislative Council. Rose Breton, Legislative Finance Director, said it is a preliminary budget because not all of the final pieces have been put together, but she did not expect it to change.

OPEGA came in under budget in Personal Services by \$70,764.93. Ms. Breton had reminded her that money is due to be swept back to the General Fund as part of legislation that was passed in the last Session. In the All Other category OPEGA was under budget by \$56,726.57 and that amount is not currently due to lapse back.

Director Ashcroft noted that OPEGA has one analyst position still open.

GOC: Sen. Diamond asked if the Director was going through the curtailment process for the new curtailment order.

OPEGA: Director Ashcroft said she knew the curtailment order had been issued to the Executive Branch, but does not recall receiving any specific instructions from the Legislature, but will check for certain.

No Government Oversight Committee action necessary.

GOC: Chair Hill asked the Director for the status of the RFPs for the bonding expert.

OPEGA: Director Ashcroft said OPEGA has not issued RFPs yet because she is going to have conversations with the firms that have been identified first to make sure OPEGA knows what it is asking for. The RFPs for the medical services in the correctional system have been issued and are due back July 20th.

- **Follow-up on OPEGA Reports con't**

- **Follow-up on OPEGA's Fund for Healthy Maine Report**

- **Briefing from Attorney General's Office on Status of Master Settlement Agreement**

Director Ashcroft introduced Jennifer Willis, Assistant Attorney General, who has the responsibility of overseeing the Tobacco Master Settlement Agreement (MSA). The GOC wanted an understanding of what Maine could expect to receive in the future from the Fund before considering what action or legislation they might want to put forth on OPEGA's recommendations related to the Fund for Healthy Maine Report.

Ms. Willis said she has the responsibility in the Attorney General's (AG) Office for handling Maine's rights and responsibilities related to the MSA and gave a brief overview of its history and then oriented the GOC on the payment provisions.

The MSA began with a large number of lawsuits filed by Maine and other states against the big four tobacco companies alleging widespread conspiracy and fraud, among other allegations, and seeking to recoup, among other damages, the health care costs imposed by tobacco related illnesses. Those lawsuits resulted in the MSA. They got the tobacco companies to agree to two basic provisions at that time. One set is called the Permanent Relief Provisions and deals specifically with the targeted marketing efforts, the promotional efforts, the tobacco companies were making to reach kids. The States got them to limit those practices. The second, and most relevant to the GOC's inquiry, are the payment provisions. Under the payment provisions Maine receives two different payments on an annual basis. One is called the Annual Payment and is set up under the MSA to be received in perpetuity, so Maine will always receive the Annual Payment. The amount has been approximately \$50 million. The second payment Maine receives, and will receive from 2008 to 2017, is called the Strategic Contribution Payment and that has been about \$10 million annually. Maine income from the MSA from 2008 to 2017 is approximately \$60 million.

Ms. Willis noted there are three primary reductions that could occur in the payment amounts. (1) Decreased sales volume. The MSA payments are hinged on the tobacco companies' sale volumes. So, as their volumes go down, the payment is less. (2) Another reduction arises out of disputes that come up under the various adjustments that are provided for in the MSA. The largest one is the "Nonparticipating Manufacturer Adjustment" (NPA). The AG's office is in the process of arbitrating those disputes. The disputes are lodged on an annual basis and deal with each annual payment. (3) If any of the participating manufacturers, tobacco companies, go bankrupt during the year they may default on their MSA payment. There has not been great success in recovering dollar-for-dollar in bankruptcy. The three reductions listed above have reduced Maine's payment amount.

The greatest area of uncertainty around each annual payment amount is the NPA. The history of it is that the participating manufacturers, each year, have claimed that they are entitled to that adjustment so most of them have reduced the amount that they pay. Maine, and other states, had not received money that they may be entitled to and currently are in arbitration. Each state under the MSA is incentivized to enact a qualifying statute, which Maine has, in order to avoid the NPA. If the State diligently enforces that statute, it is not subject to the adjustment. Each year since the payment in 2004, the participating manufacturers have either completely withheld money that was owed to Maine or placed it in a disputed payments account. One manufacturer has paid Maine, but claim they are entitled to getting it back. The national figure for the dispute is \$1.2 billion. Maine's share is anywhere from \$0, if found to have diligently enforced the qualifying statute, up to approximately \$38 million, which is 80% of Maine's total annual payment. Because Maine has entered an agreement with the participating manufacturers regarding the specific arbitration, that caps its liability at 80% if found non-diligent. Every other year Maine's liability goes up to its full payment amount, which for the 2004 year that they are currently arbitrating, is roughly \$48 million. The NPA is based on a percentage and depends on the market share of non-participating manufactures calculated at the national level. Ms. Willis said to give the GOC an idea of what impact that could have on Maine's payments, it is ranged between 10% and 18%.

Ms. Willis said, as stated above, the AG's Office has commenced arbitration and is focused on the payment received in 2004 and noted the lag time in terms of recouping the dollars. All the states who signed the MSA, except Montana, who is not required to arbitrate, and all the tobacco manufacturers who have signed the Agreement, will be participating in the arbitration. Again, Maine's share is between \$0 to \$38 million. Because this is the first arbitration under the MSA many of its terms will be interpreted for the first time. They are expecting the results of this particular proceeding to resolve some of the current uncertainties around when and how the NPM adjustment is paid, or not paid, to the States. Currently the manufacturers are withholding the money, but there is a question in the arbitration of do they get to withhold the money or do they have to pay it to the States and then prove that the State was not diligent. Or do they get to withhold it and the States have to prove they were diligent in order to get the money back. When this has been resolved it will give Maine a greater degree of certainty around the NPM adjustment.

GOC: Rep. Rotundo noted that when the AFA Committee has received the information on the Agreement it was interesting to hear about the diligence and non-diligence, and what that involves. She asked Ms. Willis if she could explain that, and also how the non-participating companies impact it all. Rep. Rotundo asked who the arbitrators were and who does the arbitration.

AG: Ms. Willis said the MSA specifies that the arbitrators are three former Article 3 federal judges, and noted that they had just been selected.

The non-participating component centers around the adjustment. The statute requires that any tobacco manufacturer who sells cigarettes or roll your own tobacco in the State, must either participate in the MSA or they have to meet certain requirements, including establishing an escrow account, and pay to the State a certain amount specified in the statute for each unit sold. Units sold are cigarettes and roll your own tobacco on which State excise tax has been collected, and in the case of cigarettes, also bears the Excise Stamp of the State. The way the statute is administered is that they require distributors to file quarterly reports with them indicating how many units were sold for each nonparticipating manufacturer and participating manufacturer. They also receive reports from the manufacturers themselves that allow them to track what products were sold here and how much is owed. Requests for Reports are sent out to all Maine licensed distributors which is information the AG's Office gets from Maine's Revenue Department. The issue regarding the NPM adjustment is how much market share has shifted to the nonparticipating manufacturers and is a preliminary step in the process of determining whether the participating manufacturers are entitled to an NPM adjustment. The participating manufacturers have to have lost market share to the nonparticipating manufacturers. Even if there is market share loss, if Maine was diligent in enforcing its qualifying statute, it will not be subject to the adjustment. They have carefully monitored all reporting that comes in and have not been in the position of having to file enforcement actions against nonparticipating manufacturers. In the early days, though they filed numerous lawsuits against nonparticipating manufacturers who failed to comply with their escrow obligations.

- GOC: Sen. Diamond said he needed to be reminded if the 80%, which is applicable to the annual payment, is that also applicable to the 2008 to 2017 \$10 million.
- AG: Ms. Willis said it is only applicable to the 2004 payment. They had entered an agreement regarding this particular arbitration with the participating manufacturers. Since this is the first arbitration, she believes the participating manufacturers were trying to incentivize states to join the arbitration so offered an incentive to join by agreeing to cap their liability at 80%. Every state that joined the agreement regarding arbitration is at least guaranteed they will not lose their entire payment for that year.
- GOC: Sen. Diamond said the criteria for the amount of payment or continued payment is decreased sales and asked if it goes the other direction when there are increased sales. He noted the tobacco sales in the State of Maine for the month of June was extremely high, and if that was consistent around the country, does that mean there would be more payments made to the States?
- AG: Ms. Willis said it would if it were consistent around the country. If cigarette and roll your own tobacco sales, for the original four tobacco companies were higher than their 1997 sales volumes, their payment would not be adjusted down, so Maine would not experience a reduction. They have seen general trends that have shown decreases in the sales of those products, some shifting to other products. If the trend were reversed and started to climb, it would result in an increase of Maine's payments.
- GOC: Sen. Nass referred to comments regarding collection of money in bankruptcies and asked who is going to continue to pay if bankruptcy proceedings and the activity in court don't continue to be effective.
- AG: Ms. Willis said the big 4 manufacturers, now really the big 3 because two have merged together, those companies are still around and are who pay the vast majority of the settlement payments. There are also 60 plus manufacturers who joined after those companies joined as a result of the statutory option to join the MSA. It is those small manufacturers that have filed for bankruptcy and there may be 1 or 2 a year. The State does recovery something in bankruptcy, they just have not been able to get dollar-for-dollar of its MSA payments back because the State is seen an equal creditor.
- GOC: Sen. Nass asked if one or more of the smaller manufacturers files for bankruptcy, who is proceeding against them. Is it the major manufacturers or is it the States.
- AG: Ms. Willis said it is the States and they use the National Association of Attorney Generals' Bankruptcy Counsel to assist in that process. The Counsel, on the State's behalf, will enter an appearance in the bankruptcy proceedings and claim that Maine is a creditor in the bankruptcy. There are several of those going on now.
- GOC: Sen. Nass asked if Ms. Willis still felt good about the "in perpetuity" concept.
- AG: Ms. Willis said that is the provision of the MSA and so long as that Agreement is in place, that is the definition of annual payment, it will be paid in perpetuity by the participating manufacturers.
- The participating manufacturers make a payment into the independent auditors' escrow fund. The independent auditor then adjusts it up or down and allocates it to the States according to what they are due. The participating manufacturers make a large base payment which includes an adjustment for inflation, a volume adjustment, a nonparticipating manufacturer adjustment, and adjustment for states that have not joined. She said they are getting very close to the base payments being \$9 billion on an annual basis received from the big 3 tobacco companies and then the subsequent participating manufacturers chip into it as well. There is a base payment amount and that amount then is simply reduced or adjusted if there is a volume decrease, it is not wiped out by a volume decrease.
- GOC: Chair Hill was not clear of how many of the years potentially may go to arbitration.

- AG: Ms. Willis said they would begin with the payment for 2004 and come forward. All future payments after 2004 are all payments that have been made and currently the participating manufactures have indicated that they dispute those payments as well and have withheld money.
- GOC: Chair Hill asked where the money was that they are withholding, is it an escrow or do they hold the money.
- AG: Ms. Willis said it depends. The MSA allows them, when they dispute a payment amount, to either pay it to the States with the provision that they get an interest penalty that is relatively severe, prime plus 3%, if they prevail. They can pay it into the disputed payments account, which is an escrow account, and there is no penalty to either party no matter who wins or, they can withhold the money with them having to pay the states the same interest penalty payment if Maine prevails. Each company is allowed to make that determination. Altrius/Philip Morris has made the choice to pay us, RJ Reynolds, for a long time, has paid the money into the disputed payments account, but has started to withhold the money. Some of the small companies often withhold the money. Maine feels the RJ Reynolds NPM adjustment most dramatically as it is the manufacturer with the biggest stake. Maine has seen a reduction every year beginning in 2004. Each payment related to the adjustment, the companies have either paid it into the disputed payments account or withheld the money.
- GOC: Chair Hill noted that even though the interest seems to be a high penalty, just withholding that massive amount of money can earn a great deal of money for those companies while it is being held. She asked how long the arbitration will take from commencement to completion.
- AG: Ms. Willis agreed saying by withholding the money they enjoy the time value of it.
- The States have been in the process of getting to arbitration since 2005. This arbitration is particularly unique because it is the first one. The panel was just seated at the beginning of July and they already are having conferences with the panel to set out the schedule. Ms. Willis does not have a solid idea of the schedule yet. It is possible that, with the preliminary items it could be as far as next June or July before they get to an evidentiary hearing for Maine. Then under the agreement regarding arbitration, 80% of the States' cases have to be completely heard, the panel then has to deliberate and decide before they have a decision out. She also anticipates this arbitration is going to take the longest because it is the first one and there are major outstanding questions, like what does the standard of diligent enforcement mean. Once the panel decides there may be some clarity that will speed the process up. Ms. Willis said there are 52 jurisdictions, 46 settling states and 6 territories. If they each have a multi day hearing it could take until at least to 2012 before a decision is made.
- GOC: Chair Hill asked about the amount in escrow versus that which is being withheld.
- AG: Ms. Willis said they did not have the number relevant to Maine. She thinks they have access to the independent auditors' statements about what has been paid into the disputed payments account for each year, but it is a mingling of multiple entities. For this particular year it is not \$10 million, but it was a significant amount of Maine's payment and has been every year. She can get that figure for the Committee.
- GOC: Sen. Nass said there has not been any discussion regarding the use of the money by each State and assumes that has been resolved. An issue for him is what Maine chooses to do with the money, and is part of the issue that came before the GOC. He asked Ms. Willis if that has been resolved and there are no restrictions or new activity about what Maine can do with the money.
- AG: Ms. Willis said the MSA does not specify how each State should allocate the money. The participating manufacturers have in both press and in court filings, tried to make a lot out of States that do not use the money for health care purposes. Maine has gotten very good marks for its use of the money for health care purposes and for a long time was getting straight As for funding smoking prevention programs. Maine's grades are not as high as they used to be in that regard. The grades are generated by the Center for Disease Control and Prevention.

GOC: Sen. Nass asked if the use of the money would become a focus of either the arbitration or other court activity?

AG: Ms. Willis said while it may be something that the participating manufacturers raised in the arbitration, it will be in the form of atmospherics. She does not anticipate they will allege that Maine violated the contract in any way, or any State has violated the contract in anyway, by not using the money for specific purpose or health care purposes. There has never been a challenge from them like that. The Agreement does not have any provisions that state how a recipient State should spend the money.

GOC: Chair Hill asked if the grading is based on the use of the funds or the results of the use of the funds.

AG: Ms. Willis said it is a funding measure. The Center for Disease and Prevention creates a target mark of what dollar amount each State should be spending on tobacco prevention and control programs and grades them on how close they get to that number. She can provide those reports to the GOC so they can see how they are broken out. They are based on the funding, not the results.

The Government Oversight Committee thanked Ms. Willis for her presentation on the Agreement, noting that it was very well presented.

Director Ashcroft reminded the GOC that they wanted the presentation from the AG's Office because of their previous discussion of possibly drafting legislation related to the recommendations in OPEGA's Fund for Healthy Maine Report. She has talked with the Office of Fiscal and Program Review, Sen. Diamond and intends to talk with DHHS and the Controller's Office. She hopes to have something for the GOC to get started with for the next meeting.

NEW BUSINESS

• OPEGA Suggestion for Topics to Move to the Work Plan

Director Ashcroft said OPEGA has two projects in the process, one of which they are evaluating whether to get a consultant. She thinks they are at a point to have another review added to the Work Plan to get started on as resources are available. A topic currently on the "On Deck" list is the Governor's Training Initiative and she suggests this topic be moved to the Work Plan. She reviewed her reasons for suggesting this particular topic which are laid out in the memo she previously sent to the GOC and that is attached to this Meeting Summary.

GOC: Rep. Rotundo said if the GOC does proceed with that program, and she has no reason not to, she would want OPEGA's research to include looking at the history of the program. It comes up every year in the AFA Committee and it is Rep. Millett who has an historical perspective on it. He talks about the importance of the program and the role it has played in Maine in the past in terms of being able to bring jobs to Maine that would not have come otherwise. The program is unique in its nature and provides the Governor with a funding tool that he or she would not have otherwise. If the GOC does decide to review the program, it is important to think about the role that it plays in the DECD tool chest in terms of bringing companies to Maine, and the role it has played historically in terms of making it more appealing to have companies come.

GOC: Sen. Diamond concurred with Rep. Rotundo that it is a valuable program and is also one that the Legislature always ends up taking money from. He thinks the reason this would be valuable research to the Committee to proceed with is because of that very reason. It is not just the AFA Committee, the Labor Committee also will suggest taking money from this account because often times they feel like they have no other choice. As Rep. Rotundo said, the Governor's Training Initiative program is a key part of Maine's economic development in bringing business to the State.

OPEGA: Director Ashcroft noted that in previous years it had gotten small cuts, but the last one was a significant cut, so she felt an OPEGA review could help the Legislature figure out if they need to protect what they have left.

GOC: Sen. Nass said he has talked with Rep. Millett about this, and asked if the program was initiated by Governor McKernan.

OPEGA: Director Ashcroft said she believes the program was established in 1996.

GOC: Sen. Nass thinks they should move forward with the review of the Governor's Training Initiative.

GOC: Chair Hill asked that OPEGA look at the historical perspective mentioned by Rep. Rotundo, and would also appreciate knowing what type of jobs were created, what types of companies were brought in, and how many.

Motion: That the Government Oversight Committee moves the Governor's Training Initiative on to OPEGA's Work Plan. (Motion by Sen. Nass, second by Sen. Brannigan, PASSED, unanimous, 9-0).

Director Ashcroft will send communication to the Labor Committee, DECD and the Department of Labor on this action of the GOC.

- **Review of Quarterly List of Requests Received for OPEGA Reviews**

Director Ashcroft reported that OPEGA received several requests for reviews. Two of the requests are included on the Quarterly List for the GOC's consideration.

Three other concerns received by OPEGA not presented for GOC consideration as a possible OPEGA review are:

Penquis CAP Vendor Pricing for Wood: OPEGA received a written request regarding the price approved by Penquis CAP for wood under the federal Low Income Home Emergency Assistance Program. Requestor was concerned that the price charged by the approved vendor was higher than the current market price. OPEGA contacted the Maine State Housing Authority and ultimately referred requestor to a MSHA Program Specialist. MSHA explained to the vendor that he could submit differential prices for deliveries to different geographic areas. The vendor was unaware of this option and therefore had submitted just one price for the heating season.

DHHS Ellsworth Office – Child Protective Services: OPEGA received a verbal request for a review of the DHHS Ellsworth Office from a parent whose parental rights had been terminated. No written request has been submitted to date as required by OPEGA/GOC's process for handling requests for reviews.

Based solely on information provided by the requestor it appears that the DHHS and judicial processes (as understood by OPEGA based on work done in its review of Guardians Ad Litem) were followed appropriately. Requestor was represented by four different attorneys over the course of this process and three of them were dismissed by the requestor. OPEGA also reviewed the Ombudsman's 2009 Annual Report and did not note indications of particular problems with cases involving the Ellsworth Office.

GOC: Rep. Rotundo asked for an approximate amount of hours OPEGA spent getting the information on the request. These are the requests that she worries about OPEGA's staff time.

OPEGA: Director Ashcroft said in this case, not many. OPEGA had two telephone conversations with the requestor for no more than 20 to 30 minutes each and researched the Ombudsman's Office for about an hour.

Piscataquis County Decision to Remove Trash Containers in Unorganized Territories: A written request for an OPEGA review of a decision by the Penquis County Commissioners to stop using county tax revenue to fund the provision of a dumpster on Ebeemee Lake Road. OPEGA questions whether this issue falls within OPEGA/GOC jurisdiction or mission.

The dump available to this citizen is a considerable distance away and has inconvenient hours. Therefore, requestor feels she, other residents of Ebeemee Lake Road, and visitors to the area are not being provided adequate access to a trash disposal facility thus endangering general health, safety and environmental protection of the area. She has been discussing this issue with the County Commissioners who appear to have made the decision to

remove the three remaining dumpsters in Ebeemee, Katahdin Iron Works and Williamsburg in an effort to provide equitable services to all residents of unorganized territories.

OPEGA determined the request was out of its jurisdiction, did not see any State statute that required counties to be providing trash services and did not see any State administered money. OPEGA referred this person back to their County Commissioners to deal with the issue.

GOC: Rep. Rotundo referred back to the DHHS request and said Rep. Pendleton and her had talked about OPEGA only spending an hour or so on the request, but if you add all those request the time involved becomes significant. Is there something in OPEGA's process whereby if there is an Ombudsman Program and the person has gone through that, it stops there. If the Legislature has set up an Ombudsman Program it is nonpartisan and objective, and is concerned that OPEGA then ends up doing the work they have already done.

OPEGA: Director Ashcroft noted that is the process discussed earlier in the meeting. Under OPEGA's current process those requests have to be brought before the GOC. OPEGA brings the request forward and informs the Committee that it has been through the Ombudsman process and then the GOC can make the decision. OPEGA does not stop at that point, and in this particular case, had not received anything in writing so did not officially refer the person to the Ombudsman. If the request had been received in writing, they probably would have tried contacting the Ombudsman, but it still would have been brought to the GOC if it was determined to be within OPEGA's jurisdiction. She said that is why the earlier conversation regarding requests for reviews was important because now OPEGA can refer the person to the Ombudsman or Legislator and that would be a filter.

Director Ashcroft said all of the requests that OPEGA receives are real concerns to the requestors and she did not want to cast any dispersions on that in any way, but she does have a concern about the resources OPEGA is spending on these types of requests.

Director Ashcroft discussed the requests OPEGA has received from inmates in the Correctional System. She noted that a couple of the requests have come before the GOC as individual requests at different times, but OPEGA has more recently been holding off presenting them individually and instead has themed them up. There have been 9 requests from inmates since January, 2008 and there has been an increase in the requests since OPEGA did the Maine State Prison Review in 2009. Three out of the 9 requests have had concerns about the use of the Inmate Benefit Fund and this was one of the issues that also came up in OPEGA's recent review of the Maine State Prison. The State Controller's Office reported to the GOC that they intended to conduct a review of the Inmate Benefit Fund. Director Ashcroft has contacted Ruth Quirion in the Controller's Office and was told it is still on their work plan, but she is not sure when they will get to it. There were also 3 requests that related to medical care and OPEGA currently has a review for medical services in the Correction System ongoing. She does not feel there is anything that OPEGA can do to solve the individual situations, but have catalogued them for the Medical Services Review.

GOC: Chair Hill asked if Director Ashcroft had shared the summary of these requests with Warden Barnhart, Maine State Prison.

OPEGA: Director Ashcroft said the information has been forwarded to Denise Lord, Associate Commissioner, Department of Corrections.

GOC: Chair Hill asked if the Director could forward the information to the Warden.

GOC: Sen. Nass asked if inmate requests were handled any differently than other citizen requests.

OPEGA: Director Ashcroft said she has not been giving them any different status than other requests, with the exception that it is not easy to call the inmates to discuss their issues. Typically OPEGA receives a letter from an inmate, gleans what they can from the letter, writes to the inmate letting them know their letter was received, and then their request is brought before the GOC.

- GOC: Chair Hill referred back to the Inmate Benefit Fund and asked if the Controller's Office had given the Director a sense as to when they may move on to it.
- OPEGA: Director Ashcroft said Ms. Quirion did not know when the Controller's Office could get to the Inmate Fund, and she did not ask for a general estimate of time.
- GOC: Chair Hill thinks it is an important question to ask because if the Controller cannot look at the matter for a year or 2 it may be something the GOC may want to consider doing.
- GOC: Sen. Brannigan noted that these requests did not come through legislators. Given what the GOC talked about earlier, these are topics that would be brought up with the GOC Chairs, who would help the Director decide whether the GOC should consider each request.
- OPEGA: Director Ashcroft asked if Sen. Brannigan meant they would like to implement the new process in dealing with inmate requests as a trial pilot run.
- GOC: Sen. Brannigan said yes. Other members may want to go over the individual requests and that will weigh in on their decision of whether the GOC adopts that policy.
- GOC: Rep. Rotundo thinks inmates can be referred back to their hometown legislators. She asked if the information has been forwarded to the Criminal Justice and Public Safety (CJPS) Committee.
- OPEGA: Director Ashcroft presents the information to the GOC so they could see what was trending. She will forward it to the CJPS Committee and Warden Barnhart and direct the inmates who have sent a request to contact their legislators if they have not already. OPEGA will also follow up with the Controller's Office on the Inmate Benefit Fund Audit.
- GOC: Chair Hill said the topics on the Quarterly List of Audit Requests could be used for the new review process that is being talked about as a test run for the next meeting. The requests are:
- Maine Art Commission
 - Board of Dental Examiners
- OPEGA: Director Ashcroft said there have been ongoing efforts with each of the topics. It would be too soon to use a new process of the checklist for the Board of Dental Examiners request because the Commissioner of Professional and Financial Regulation is currently working with a special committee and commission as directed by the Legislature to address the very issue that had come up under the request. There is a report due February, 2011 to the BRED Committee and the Director thinks it would be premature to do anything with that request.

The request on the Maine Arts Commission involved specific concerns related to a contract situation with a former Commissioner. The requestor also raised those concerns to the Department of Administrative and Financial Services, and together with the Chair of the Commission, DAFS requested a review by the State EEO Officer. OPEGA has reviewed the results of that review. The specifics of the situation bear out some of the facts that had prompted the requestor's concerns.

Director Ashcroft said in order for OPEGA to follow through on the requestor's issues, it would, at the very least, require her spending more time talking with the woman who had done the review and those at DAFS to understand the work they had done on decisions they made. There were no specific conclusions drawn on the questions of possible violations of certain policies or procedures the requestor had raised. The Director would also want to understand what the Maine Arts Commission expects to take for action. She said any further action would take OPEGA resources and the Director did not want to proceed without bringing it before the GOC for their permission to proceed. She does not know if there was any intentional wrong doing here but it might be good to bring the request to a point where she could report to the GOC of what had happened and whether there were any recommendations OPEGA might make.

GOC: Sen. Brannigan said if it was not on OPEGA's Work Plan or "On Deck" what exactly was the Director asking the GOC.

OPEGA: Director Ashcroft said under the process where the GOC is considering a request for a review there is an option that the GOC may want more information before it makes that decision.

GOC: Sen. Brannigan noted the Director was saying OPEGA did not have enough information of whether to move forward on the request and asked why the GOC would get involved at this point.

OPEGA: Director Ashcroft said OPEGA has had the request for awhile, the work done on it has come out and she did not want to proceed and spend any more time understanding it more if the GOC had no interest in OPEGA doing that.

Motion: That the Government Oversight Committee approves OPEGA going forward to gather more information on the Maine Arts Commission request. (Motion by Sen. Brannigan, second by Sen. Nass, PASSED, unanimous).

GOC: Rep. Rotundo said it is her understanding that steps have been taken, and things put in place that would prevent this from happening in the future, but if OPEGA can look into it and report back to the GOC and assure them of that, then she thinks it lays it to rest.

- **Using Government Evaluation Act as a Basis for Developing OPEGA Work Plans**
Not discussed.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**
Not discussed
- **Action Items From Last Meeting**
Not discussed

NEXT COMMITTEE MEETING

The next Committee meeting was scheduled for August 19, 2010 at 9:30 a.m.

GOC: Rep. Rotundo asked what the regulations for the RFP were in terms of sending them and when is it not necessary.

OPEGA: Director Ashcroft said there is a State Statute and an Executive Branch purchasing policy which she tries to adhere to. She believes if you expect to spend above \$10,000, then you should seek a competitive bid although you can give justification for sole source if it meets the criteria in Statute.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 1:10 p.m. on the motion of Sen. Nass, second by Sen. Brannigan, unanimous).

To: Government Oversight Committee Members

From: Beth L. Ashcroft, Director

Date: July 8, 2010

Re: Suggestion for Topic to Move to the Work Plan

I would like to have another topic moved to OPEGA's current work plan so that we could have something else to get started on as we hit lulls in the other projects and/or do decide to hire a consultant to conduct the remainder of the Medical Services in Correctional System review. Attached is a listing of the topics that were on the On Deck list as of May 2009 when you last took any action on adding or deleting anything from the list. Also attached is the spreadsheet showing the rankings you gave to each of the topics at that time, although there were subsequent discussions about whether or not to proceed with some of them. The only topic on the On Deck list that you did not rank is #24 - the Governor's Training Initiative. This is because you did not consider the request from the Labor Committee for this review until after you had done the ranking of the other topics.

I suggest that you consider moving the Governor's Training Initiative to OPEGA's Work Plan at this time for the following reasons:

- The request came from a policy committee with some thoughtful concerns and questions about how well this program was meeting its intent and whether it is structured in a way that is still in the best interest of the State.
- OPEGA already has some information about this program available from our review of Economic Development Programs. This is one of the programs that OPEGA had recommended should be subjected to a more in-depth evaluation for effectiveness, efficiency and economical use of resources.
- This is a program review that I believe we could get done in a timely manner, especially if we hire a consultant for the Medical Services review. At the very least, I believe we could have results available during the Legislature's consideration of the biennial budget for 2012-13. Given that the funding levels in this program have continued to get cut over time and there have been questions raised about its

relevance in its current form, I believe an OPEGA review could contribute information that would be quite helpful to legislators that are trying to assess the appropriate level of resources for it.

- The program is funded entirely with General Fund. Although it ended up being appropriated for only about \$755,000 in FY11, it is normally funded at over \$1 million. Should the results of an OPEGA review indicate these resources are not producing what was expected, there would be opportunity to improve the program or use the resources elsewhere. Should OPEGA's results show that the program is very worthwhile, then perhaps efforts should be made to avoid cutting resources any further.

For more information on the Governor's Training Initiative see item #24 on the attached list of On Deck topics.

I look forward to discussing this with you at the upcoming meeting.

Attachments