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MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**Government Oversight Committee  
Minutes of Informal Discussion  
March 3, 2008**

**1. Fiscal Opportunities Related to Contracting for Health and Human Services**

At the February 27, 2008 GOC meeting OPEGA submitted a memo regarding fiscal opportunities related to the work it had done to date on Contracting for Health and Human Services at DHHS. The Committee had questions for the Commissioner of DHHS. Commissioner Harvey had a prior commitment and unable to attend on the 27<sup>th</sup>. Director Ashcroft forwarded the GOC's questions to Commissioner Harvey who was at this meeting to respond to those questions and other questions the GOC may have related to contracting for Health and Human Services.

Chair Mitchell recognized Commissioner Harvey and the Commissioner introduced Kirsten Figueroa, Deputy Commissioner of Finance, DHHS.

Commissioner Harvey said when DHS and BDS merged the Department combined two ways of contracting for non-Medicaid services. It has been working on bringing the purchasing of services into alignment with the way it accounts for resources. DHHS also had to work through the MECMS situation and the consolidation of the service centers across State government. When DHHS' Service Center was created and Ms. Figueroa was hired as Deputy Commissioner of Finance, it was discovered that some controls for managing DHHS money were significantly lacking. DHHS did not have good accounting procedures for money providers were sending back or even to track what was due DHHS in terms of an accounts receivable. The Department is working to change that by FY 10.

Questions and responses included:

**Have delayed cost settlements been going on for a period of time?**

Depending on the size of the contract the provider has either 4 months or up to 9 months to submit their final report. A settlement then takes place so an audit has to be done followed by the time needed for the appeals process. It is not unreasonable that from the end of the fiscal year to the end of that process, there would be a 2 year time delay.

### **How large are the businesses or organizations involved in these contracts?**

Commissioner Harvey said they can be very small in size or a multi-million dollar organization. DHHS has 34 contracts that are over \$8 million and in FY 07 there were 341 agencies that received 1,380 contracts. One challenge is that DHHS has multiple agencies with multiple contracts. It is DHHS' intent to go to a one contract per agency environment, but the right kind of accounting procedures and structure within the Department's appropriations has to be in place to do that. They have been working with all of the accounting staff to get a new structure in place by FY 10. Commissioner Harvey doesn't know if they are going to hit FY 10 now given the complexities of what we are undergoing right now with the budget cuts. It is the intent to align the appropriations structure with the right accounts reflecting DHHS and then we can do one contract per agency.

### **Can OPEGA be helpful to you as you are doing your 2010 change-up?**

Commissioner Harvey said she would welcome any help. In a previous session there was a bill before the Health and Human Services Committee that included legislation for the Controller and DHHS to establish a process for developing a realigned accounting structure. Because of all the dilemmas with the merger of Departments, it could not get the support. Commissioner Harvey said the AdvantageME transition also affected their ability to go forward but believes DHHS is at a point where the process can begin. She does not think she needs any statute to move forward, they already have the mandates.

### **What is the history of uncollectible amounts related to these contracts?**

Commissioner Harvey said DHHS Audit staff believes there are not significant amounts of money that providers don't ultimately pay. If some providers who are in financial difficulty were asked to pay this fiscal year, a number of significant providers' businesses would close. A DHHS Deputy or Associate Commissioner can decide whether there can be a repayment plan for a provider but we are trying to avoid having to have those kinds of discussions with providers. Beginning with contracts in FY 06, boiler plate language has been added that says if you know you have an overpayment or a surplus, you must send a check when you send your final report. The Department is attempting not to have auditors find at cost settlement time that the provider owes money. \$80 million is owed in the interim recover payment process. DHHS is sending out letters of debt and there is language in its supplement budget asking for authority to have Maine Revenue Services become the ultimate collector. Providers would have an easier time right now in reconciling all their accounts if reductions were not being made to their service dollars. They are being hit with multiple arrows to the same target so DHHS is trying to make sure organizations continue to survive. Because of this process of appeals and the time periods by which contractors submit their final report, DHHS does anticipate in its baseline budget a certain amount of collectables each year.

Deputy Commissioner Figueroa said the Service Center now has an accounts receivable group. The process has been improved to ensure that every receivable is booked, in the past that did not happen, and somebody tracks those booked receivables. Reconciliation is done each month. All the procedures have been put into place. The process is being written in a book called the Book of Knowledge. It does not matter if somebody comes or goes, the process will be written and anyone can follow it when they take over the position. To ensure that this work does not get overwhelming and then confused again, we are going through all the Medicaid-related

receivables and then bringing in other parts of the organization, like the non-Medicaid dollar receivables. They will be rolled into the same group and the same process. Ninety days after a year-end, the provider knows they have a surplus, they will send a check. If a check is not received, the plan is to call the provider to let them know their check was not received, that DHHS is booking a receivable, and will send an invoice. It then becomes part of that tracking process. This will be a standard step. We expect the Medicaid-related ones to be done within the next six months, and these non-Medicaid related accounts will follow into that process.

Commissioner Harvey said that over the last 2 years, DHHS has restructured divisions and now all report to Deputy Commissioner Figueroa. The divisions include purchase social service employees, those who contract, employees who reconcile expenditures to budget variance reports, and the auditors. When an auditor finds a vendor owes DHHS, purchase social services now can do one of two things. They can try to collect the money through the Service Center or DHHS can take it through the provider's contract payment for the coming year.

**Does DHHS have money related to contracting it can at this time give up from its budget?**

Commissioner Harvey said there are some specific contracts where there were actually dollars identified, and if they came in this fiscal year they would be a cash finding. \$1.6 million is due from vendors and \$161,000 of interest. DHHS has not been able to reconcile how much of that was already counted in the base line budget. There are vendors owing DHHS \$1.1 million from prior years. She thinks a number of these vendors are the same ones who owe substantial money on interims and DHHS is trying to figure that out. If it is the same vendors that owe for both and DHHS requests immediate payment, they may have to close their doors.

**Does DHHS have the technical expertise and the people to successfully collect monies owed the State?**

Commissioner Harvey said before she was Commissioner, a review was performed by Price Waterhouse who determined the Service Center, which was formerly part of DHHS, had insufficient people with advanced degrees and expertise necessary for a Department that handles as much money as DHHS. Reorganization started to take place. In FY 06, Deloitte was hired for their organizational expertise. Deloitte presented a development plan for moving this organization to a more sophisticated accounting and fiscal organization. DHHS does not have the kind of financial expertise as other organizations the size of it would have. The plan is moving DHHS through the maturity scale for any organizational structure and the Commissioner believes DHHS now has a more structured process. It has fewer audit findings, but when one is found, is able to put the controls in place quickly; and know better where the money is and what the expenditures are. The Commissioner thinks DHHS has another 3 – 5 years before it will be a sophisticated fiscal management organization.

**Are there a lot of vendors who do not pay DHHS back, what is the float and how does it work?**

Commissioner Harvey said nonpayment happens very seldom. The Commissioner said the world of social services is driven by non-profits. In the 1980s and 90s Maine grew the nonprofit community significantly so there would be choices of services for consumers. She thinks DHHS has a long history of very flexible negotiations and interactions with its provider community that has disappeared because of the current fiscal climate. There is a recognition that government has

to manage itself differently, particularly Human Services. If you were talking to the provider community that interacts with us, they would tell you that there is no more negotiating surpluses. The Department has done away with negotiating surpluses, it is hardnosed about collecting overpayments, whether on contracts or the interim payments, and audit staff is more readily on their doorstep auditing their books. When we have a fiscal problem, we take the hard decision.

**When using the term providers, aside from hospitals, doctors, mental health professionals, dentists and nursing homes, what or who is the Commissioner referring to?**

Commissioner Harvey said doctors, dentists, and nursing homes would be in the Medicaid Program, would not be in this group. Providers would be mental health providers, and people providing services to individuals with physical disabilities, the elderly that are on Medicaid services. Some are MR providers and substance abuse providers.

**How many entities is DHHS contracted with?**

Deputy Commissioner Figueroa said 341.

**Are any of these providers for-profit private sector providers?**

Commissioner Harvey estimated approximately 5% are for profit.

**How are providers chosen?**

Commissioner Harvey said they have to demonstrate as part of the licensing process that they meet all the standards of being a legitimate organization with the expertise, staffing and fiscal foundation to be able to provide services. She thinks they are all licensed.

**Do you have a number of how much is being paid out to these providers?**

Deputy Commissioner Figueroa said \$230 million was being paid out.

Commissioner Harvey said DHHS just issued a report on the contracted services and will make sure the GOC receives copies.

**Is there any effort with the providers to redesign the way they deliver their services so the same people can be served more efficiently and have examples from other states been looked at?**

Commissioner Harvey said to look at other states for comparisons is difficult because none are structured the same and the way providers organize themselves and deliver services requires a look back through time. At one time the perception was that big providers doing all the multiple services for a geographic area was the most efficient way of providing service, but many of the services that people needed did not get delivered by those organizations. In the 1980s and early 90s, there were lots of small single service providers that grew around the large organizations and the full compliment of those services responded to the needs of Maine people. It is not necessarily true that one mega organization is going to save you money.

## **Has anyone looked at whether there is any overlapping in services?**

Commissioner Harvey said there are multiple providers in any geographic area providing the same type of services. What they can't be doing is providing that same service to the same client. In Medicaid, you cannot bill for the same service to the same recipient. There are multiple providers because the federal government actually requires that there be a choice of providers.

The GOC members thanked the Commissioner and Deputy Commissioner for attending the meeting and answering their questions.

## **2. Changes to OPEGA Statute – LD 2212**

Director Ashcroft was seeking guidance from the GOC as to how to proceed with the Judiciary Joint Standing Committee on LD 2212 and introduced Linda Pistner, Chief Deputy, Attorney General's Office, who is most familiar with OPEGA's statute. The Director noted that when questions arise regarding the statute, she seeks guidance from Attorney Pistner.

Director Ashcroft said OPEGA's working papers are kept very confidential under the current statute. The Right To Know Advisory Committee is assisting the Judiciary Committee in reviewing all the statutes in State Government that have exemptions to public disclosure. Attorney Pistner was a part of that effort and can speak to its intent. As part of that process, OPEGA was asked to respond to several questions regarding the statutory language that provided the exemptions and was asked to give specific ideas about how she would change the statute to reduce confusion. Director Ashcroft believes there were sections that were confusing because of the way they were structured and readers might misinterpret what the confidentiality of OPEGA's working papers is. She did suggest specific language that ended up being put in LD 2212, which is not what she thought was going to happen. Consequently the Judiciary Committee is going to be hearing that bill. She would have wanted to confer with Attorney Pistner more closely before language was put into a bill.

**The GOC understands that Director Ashcroft did not think she had introduced legislation. LD 2212 is now before the Judiciary Committee and the Committee should weigh in on that legislation and asked if it was just involving working papers.**

Director Ashcroft said OPEGA's working papers remain confidential both during the review and after the final report is released. The final report is a public document and under the statute, the Director currently has discretion to disclose working papers to the agency that is being reviewed. It can be done before the report is released as long as it is not going to jeopardize any of OPEGA's work or it can be after the report is out as necessary. She said the legislation involved working papers only.

Committee concerns and questions followed and included:

### **What was Director Ashcroft trying to change about the working papers?**

Director Ashcroft said the piece on confidentiality that currently exists, or is most well stated in OPEGA's statute is in the current Section 5, but in Section 3 there is another piece that talks about the confidentiality of OPEGA's work papers in a way that might lead someone to believe

that at some point, the work papers do become public records. She was not changing anything, but clarifying what she believed to be the current intent and practice. In addition, situations have come up where OPEGA might have, or been asked to, share working papers with entities other than the agency that was subject to the review, specifically the State Auditor and the Controller's Office. The Director suggested adding language to the Statute that would allow her to share working papers with these entities and others. The language is similar to that existing in the State Auditor's statute.

**Is the language typical of all auditors, that working papers are forever confidential?**

Director Ashcroft could not speak for all auditors in government, but there was a question sent out to offices similar to OPEGA across the country, and from that, there are a large number that do have confidentiality of their work papers as OPEGA does. She did not have the information as to how many offices there are like OPEGA where the working papers became public, but she could ask other offices and get that information back to the GOC.

**If OPEGA shared the working papers with the Department being reviewed, does that Department have an obligation to maintain that confidentiality and how much discretion do they have to talk about it amongst themselves?**

Director Ashcroft said this has been one of the gray areas in the current statute and Attorney Pistner may be more helpful in laying that groundwork. If OPEGA's confidential work papers are shared with an agency, OPEGA should be involved in determining whether or not they are released to someone else. OPEGA cannot release confidential information received from an agency or department without referring to that department or agency. She said revision should be made to the current language in LD 2212. Director Ashcroft suggested the revision "working papers may only be released by the director and entities receiving requests for disclosure of working papers shall refer those requests to the office." If asked to provide information that was an OPEGA working paper, they would refer that person to OPEGA and OPEGA would make the decision about disclosing it under the existing statute.

**It would have to be stated very clearly that when confidential working papers are released to the various departments, that no one else have access to that information and that it could not be circulated around a department.**

Attorney Pistner said the statute keeps referring to the confidentiality of working papers, and specifically, before the report is released. If you read the entire statute you will see that they were intended to be kept confidential period and believes that to be consistent with the State Auditor's statute and with general auditing principles.

**If the working papers remain confidential, is there some check and balance to protect the person who may be the target of accusations?**

Director Ashcroft said OPEGA's process as auditors is to be objective, and is the standing on which we base ourselves. Even if information is collected during a review from a person that may be personally damaging to someone else, the auditor does not base what is going to be said on that one person's say so. If the information or issue raised cannot be validated and corroborated, then the information is not used.

## **Who are OPEGA auditors accountable to?**

Director Ashcroft said OPEGA is accountable to the Government Oversight Committee and believes there is a very public process to what OPEGA does that would alert the GOC if OPEGA was not doing its job well. OPEGA gets the facts out, talks about them with the agency and they are brought forward in a public report. She thinks the agency would tell the GOC that OPEGA missed the mark and it was not a fair and objective report. OPEGA's work has a very public process. Director Ashcroft believes there is accountability for OPEGA in the way it does its work and thinks to its credit, each and every report released so far, the people that have been before the GOC have said that OPEGA has hit the issues and even the agencies have said they do not disagree.

OPEGA complies with the Yellow Book standards, which are the standards of the Government Accountability Office, and requires a peer review of audit organizations every three years. In the near future, OPEGA will be hiring NLPES, or someone, to do a review of its work. Part of the review looks at OPEGA's working papers and what it based reported findings on. The hired reviewer will be issuing a report to the GOC on whether OPEGA has been adhering to its own standards and process. That is the way in which auditing organizations make the auditors accountable to their overseers.

Attorney Pistner said it is a balance issue. The policy issues are something that was discussed at the Right To Know Advisory Committee. Some think transparency in everything is the right way to go. With OPEGA, the cumulative effect of all that is looked at is what goes into the conclusions of a report, which is why it is hard for the agencies to say what is found is not an accurate view of their program. The question is whether you under mine the value of the report by giving out the pieces, working papers, and have the inflammatory parts become the stories in the newspapers rather than the conclusions of the report.

Director Ashcroft said because of the way OPEGA has to document information to be able to show objectivity to the auditors who will be auditing the Office, as well as in its own quality assurance process, it needs to keep details that people could pick and choose, not everything is on one piece of paper. That is the risk she guards against and really feels that it is critical to the effectiveness of the organization. She does not believe OPEGA would see the same level of cooperation that it gets from some of the folks that speak with staff if they thought there was a chance that would be on the front page of the paper or even in front of their supervisor at some point in time.

## **Is there a component in place to protect whistle blower information?**

Director Ashcroft said what is in the statute does protect the whistle blower. A particular section talks about being able to keep sources confidential if they desire to remain anonymous. If she believes the information they will provide is important to OPEGA, then she can make their identity confidential through even a more specific process. Yes, the way it is currently designed would protect those folks.

Attorney Pistner commented on the legal analysis. The clarifications that Director Ashcroft has for the bill, LD 2212, are consistent with what she believes the statute now means but is a little muddy in some respects. She believes one of the reasons the statute is as tight as it is, is because of the controversy around the process and the fear that it will become politicized.

Director Ashcroft said she does not feel she can let the bill go forward with the language in it the way it is and will be testifying and suggesting further revisions at the Judiciary Committee meeting.

**Are Director Ashcroft's revisions straying from what the Advisory Committee recommended or has the Advisory Committee signed off on the language?**

Director Ashcroft said she thought she was giving language to the Advisory Committee, that it was an informal suggestion and there was going to be more discussion. She did not know the language was going to be put into a bill.

Chair Mitchell said the purpose for this meeting was to have this discussion and if anyone else wishes to weigh in, please do. Director Ashcroft has done all that she can do to educate the Committee. Committee members will have to think about it, it is a policy question in terms of balancing. This matter is scheduled to go before the Judiciary Committee on March 10, 2008. Chair Mitchell said that, the Committee, in her opinion, had no position on it because it has not met to vote on the matter.

Director Ashcroft suggested that once the Legislature was out of session, the GOC could discuss the policy question.

The GOC thanked Attorney Pistner for the information she provided to the Committee.