



SEN. ROGER J. KATZ, SENATE CHAIR  
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

MEMBERS:

SEN. NATHAN L. LIBBY  
SEN. PAUL T. DAVIS, SR.  
SEN. BILL DIAMOND  
SEN. GEOFFREY M. GRATWICK  
SEN. THOMAS B. SAVIELLO  
REP. JEFFREY K. PIERCE  
REP. JENNIFER L. DECHANT  
REP. MATTHEW A. HARRINGTON  
REP. DEANE RYKERSON  
REP. PAULA G. SUTTON

**MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY  
March 23, 2018  
Accepted May 24, 2018**

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:13 a.m. in the Burton Cross Building.

Senators:	Sen. Katz, Sen. Davis, Sen. Gratwick, Sen. Libby and Sen. Saviello Absent: Sen. Diamond
Representatives:	Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Rykerson and Rep. Sutton Absent: Rep. Harrington,
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Matthew Kruk, Principal Analyst, OPEGA Ariel Ricci, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Legislators:	Rep. Ryan Fecteau, House Chair, Labor, Commerce, Research and Economic Development Committee
Others Providing Information to the Committee	Justice Daniel E. Wathen, Court Master, Riverview Psychiatric Center

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves.

**SUMMARY OF THE MARCH 9, 2018 GOC MEETING**

The March 9, 2018 Meeting Summary was accepted as written.

## NEW BUSINESS

### • Request for Review of Matters Related to Sale of Timber From Public Lands

Sen. Davis, Senate Chair of the Agriculture, Conservation and Forestry (ACF) Committee, said they had a meeting earlier in the week regarding the sale of timber from public lands. Governor LePage was at the ACF Committee meeting and Sen. Davis asked the Governor if he wanted the matter of the sale of timber from public lands to be brought before the GOC or for the matter to stay before the ACF Committee. Governor LePage said he wanted the matter to go to the GOC. Consequently, ACF Committee has put forward a request for an OPEGA review. (A copy of ACF Committee's review request letter is attached to the Meeting Summary.)

Sen. Saviello, a member of the ACF Committee, said he did not initiate the request for review of the sale of timber from public lands. Because of his background as a forester and knowledge of forest management practices, individuals came to him requesting he pull information together.

Sen. Saviello gave the example of having three Spruce trees on the public lands. One tree goes to Moose River Lumber, which is owned by the Brochus, and one goes to Stratton Lumber, which is owned by the Fontaines, and one goes to Canada. Somebody decided that the tree no longer needed to go to the Brochus, the Moose River Lumber site and to send it to Stratton Lumber, but we do not know why. If you review the history, it may appear it is a possible retribution because of the Brochus' stance on the tariffs coming in or it may be just the irony of it. The Governor shared with the ACF Committee that he thought it had to do with a skidder that was damaged in the woods that could not supply fiber to Stratton Lumber. The ACF Committee did not get a definite answer. Sen. Saviello said he could not find any laws that were violated, but what he could find is that a bad business decision was made which is picking winners and losers with public wood. He does not think that is appropriate and that is why he would ask the GOC for an OPEGA review of the sale of timber from public lands. He and Sen. Davis will work with the GOC Chairs to develop questions for the review. He hoped that the review be approved as requested by the Governor.

Rep. Rykerson asked if there were issues regarding profits from cutting on public lands that are unconstitutional. Sen. Saviello said he did not look at it from that perspective because the Constitution is clear about how we spend the money. There are two things they can spend it on – education and religious institutions. What is interesting is there is nothing about sales of state property. Sen. Saviello said when the public lands bills was put through, they took full responsibility for its' budget. If they decided to make up this wood from another part the State and took a lower price to keep Maine's saw mills in business, he thinks that would have come before the ACF Committee and they would have approved it.

Rep. Pierce asked if wood had been diverted by previous Governors to different sawmills as a past practice. If one mill is out of wood, do they try to resupply that mill so it keeps the employees and the mill operating? Sen. Saviello the ACF Committee asked that question in their packet of questions to the Governor, but the answer was not provided and that is information that has to be found. Is this a policy that has been done before and, if so, do we continue to support it? The ACF Committee was not provided the answer to that question.

Sen. Libby noted that at the ACF Committee meeting the Governor appeared to want OPEGA to take on a review of the sale of timber from public lands because he expressed his doubts about the trustworthiness of the ACF Committee members. The Governor thought the GOC members would be under oath and he preferred that setting. Sen. Saviello said that was his impression. Sen. Katz noted that the GOC members will not be under oath. That is confusing what the Committee's role is. Sen. Saviello said legislators took an oath to protect the Constitution when they were sworn in and thinks that is more than enough for what they need to do.

Sen. Libby referred to the request for review of the Development and Implementation of the ReEmployME system on the agenda. The gravity of that request affects several thousand Maine people who are unemployed and having difficulty accessing benefits compared with the sale of timber request, which appears to impact a couple of

sawmills. The scale seems to be different and asked if Sen. Saviello would be amendable, if the GOC decided to approve his review request, that it be taken up after. Sen. Saviello said he would leave that decision to the GOC Chairs, and supports Sen. Libby's suggestion.

Sen. Katz said if the request for review of the sale of timber goes forward, it should not be a huge demand on OPEGA staff time because it is a fairly limited inquiry of what happened. The Committee Chairs talked with Director Ashcroft before the meeting and she thought this review would not interfere much with the other reviews going on in OPEGA. His understanding of the review request is to look at this particular case and see if there is evidence that one particular business was retaliated against because of some political position they took. Sen. Katz was not suggesting that happened or didn't happen, but that is the nature of the inquiry Sen. Saviello is seeking. Sen. Saviello agreed and said the ACF Committee is not interested in the tariff debate.

Rep. Pierce confirmed that if the review request goes forward OPEGA will look to see if it has been the practice to divert lumber to mills by other administrations and was there anything improper that went on with this particular case.

Sen. Gratwick asked if the GOC was the appropriate place for the sale of timber to come. Sen. Katz thinks this matter, initially, is under the jurisdiction of the ACF Committee. The question is has that Committee been able to review it. Sen. Davis thought the ACF Committee was capable of handling the matter, but the Governor requested that the ACF Committee bring it to the GOC. Sen. Saviello noted that the ACF Committee approached the Commissioner of the Department of Agriculture and the Governor's Office and out of the Committee's twenty-two questions sent to the Governor, two were answered.

Sen. Saviello said there may be individuals who need to be subpoenaed because there are some individuals who normally may not be available to the ACF Committee. Sen. Gratwick said if putting people under oath would be valuable to the ACF Committee then that would be the one reason he thinks the request should be before the GOC. Sen. Saviello said it is to protect individuals who would never be allowed to speak in front of the ACF Committee and the only way to get them before a Legislative Committee is by subpoena.

Rep. Pierce asked if Sen. Saviello had whistleblowers or would individuals be uncooperative unless they are subpoenaed. Sen. Saviello said some may be in fear of their jobs or may be individuals who normally do not testify in front of the Legislature, but have been asked to implement the decision. Those individuals will never be made available to the ACF Committee and would be afraid of jeopardizing their positions.

Rep. Sutton asked for clarification of Sen. Saviello's earlier statement that the Legislature should not be picking winners and losers. Sen. Saviello said somebody made the decision to move the wood from one Maine mill to the other Maine mill and the reason given for that choice was that someone said the one mill that received the wood was low on their wood supply. However, the other mill was also low on their wood supply. This time of the year it is tough to keep your wood yards running and somebody made a decision to move wood from one to the other and were not told why. In this case there was a business decision, a hand shake contract, to deliver pine tree "a" to one mill and pine tree "b" to the other mill. Somebody made the decision to no longer do that. Somebody made a decision of picking a winner and loser in business, which in this case, without going through the legislative process is inappropriate.

**Motion:** That the Government Oversight Committee tasks OPEGA with a review of matters related to the sale of timber from public lands. (Motion by Rep. Mastraccio, second by Rep. Pierce)

**Discussion:** Sen. Katz asked Sen. Saviello for the timeframe of when the problem regarding the sale of timber started. Sen. Saviello said the problem started in August, 2017 to stop giving the wood and continues to the present time.

**Vote:** The above motion passed by unanimous vote 11-0. (Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's rules. Rep. Harrington did not vote on the motion.)

Sen. Katz said the GOC Chairs will work with Director Ashcroft on documents that are appropriate to request regarding the sale of timber from public lands and will get the request out as quickly as possible. As for how quickly the review will be done, in fairness to OPEGA, the GOC has already taken on a large project with respect to the Child Protection System, so that answer is not known.

Sen. Saviello wanted to get word out to those that may be asked to gather information and/or subpoenaed to make sure they keep all the records related to this review request.

- **Request for Review of Matters Related to the Development and Implementation of the ReEmployME System**

Rep. Fecteau presented his request for an OPEGA Review of matters related to the development and implementation of the ReEmployME System. (A copy of Rep. Fecteau's request is attached to the Meeting Summary.)

Rep. Fecteau said he was first contacted by a whistleblower in October 2017. He received an anonymous letter in the mail saying the new on-line system was going to be launched despite concerns about its functionality and he met with the employee in mid-January. By that time the new ReEmployME System had been launched and the issues relating to that System were abundant. On February 1<sup>st</sup> an email from Laura Hudson at the Department of Labor (DOL) said that all weekly claim certifications and work searches can only be done on-line. Rep. Fecteau said having only one method of filing is a violation of Federal law. DOL has provided a memo that refuted the claim that there is an alternative filing means. He said that conflicts with the information that DOL has provided in a notification to claimants. The Department provides the following guidance "We have heard from many of our claimants who file their claims on the automated phone filing system that they are not getting paid. All claimants must file your weekly work searches online on the ReEmployME System. Even if you file your weekly certification on the automated phone filing system, if you do not file your work searches online we cannot process your claim and your payment." Rep. Fecteau said this contradicts the information DOL provided to the GOC and LCRED Committee in memos released on March 22, 2018. There is a requirement that they have to file online even if they are filing their work search over the phone. Again, that contradicts and conflicts with federal law.

Rep. Fecteau said the LCRED Committee had LD 1770 before them, a housekeeping bill relating to the unemployment system. Sen. Volk, Senate Chair of the LCRED Committee and he sent a letter to DOL requesting that representatives from the Unemployment Office come before the Committee to discuss this matter. The Chief Executive sent a letter back to the LCRED Committee saying that any questions the Committee had could be provided in writing and there would not be representatives from DOL present at an LCRED Committee meeting. He brought LD 1770 up because as a result of that bill the LCRED Committee did have the opportunity to question John Feeney, Director, Unemployment Office, in February 2018. Director Feeney brought with him Dale Smith, Director of the Unemployment Office in Mississippi. Mississippi was the State that initiated the consortium for the system of which Maine is a part. The LCRED Committee had the opportunity to ask questions of Directors Smith and Feeney. Some of the information that was provided to the LCRED Committee at the meeting conflicts with information that is now provided in DOL's memo.

Rep. Fecteau said there are allegations and information from whistleblowers and former and current employees at DOL and OIT being provided that conflicts. The Legislature needs an independent investigation where DOL's internal emails and communications can be retrieved to clarify whether DOL has done something negligent in releasing and launching the ReEmployME System prematurely and is destroying voice mails and documentation from claimants who are having issues.

Sen. Katz confirmed that the LCRED Committee is the Committee of jurisdiction with respect to DOL and normally the ReEmployME System would be an inquiry that took place at the LCRED Committee. He asked why the review request had to come before the GOC. Rep. Fecteau said a request for discussing this specific matter was impeded by the Chief Executive's Office asking that questions be submitted in writing. The LCRED

Committee did have the opportunity to question Directors Feeney and Smith by chance when LD 1770 was before them, but the other issue is that there are internal communications that the Committee cannot obtain and he thinks it is extremely important that OPEGA have the opportunity to review those communications. The Morning Sentinel sent three FOAA requests to DOL between January 26 and 30, 2018 and none of them have been responded to by the Department. The other issue is there are whistleblowers afraid to come forward except in the privacy of the conversation between Sen. Bellows and himself. The LCRED Committee will not have the opportunity to ask questions of those people without them risking their employment at DOL or OIT. Because of that, the nature of review request is sensitive and there needs to be an entity like OPEGA to be able to confidentially talk with folks.

Sen. Saviello asked if some of the whistleblowers would come before the GOC. Rep. Fecteau thought employees would be happy to come forward and speak in interviews with OPEGA, but he was not sure if they would be comfortable coming before the Committee.

Sen. Libby thought one of the concerning parts of Rep. Fecteau's review request is hearing allegations of shredding documents and that is not something you hear often. He believes the last situation was regarding CDC and in that situation the GOC authorized OPEGA to investigate. He is concerned because it is not just one person making the allegation of shredding documents and the matter relates to several thousand requests for assistance that had been unanswered. At the very least, for that question alone, the GOC should consider opening an investigation to get to the bottom of that allegation among the other issues Rep. Fecteau is requesting the GOC to look into.

Rep. Pierce asked if Rep. Fecteau contacted anyone at DOL when he received the information in October 2017. Rep. Fecteau did not contact anyone from DOL, but had a conversation with staff in the Speaker's Office and also the Union because some of the concerns raised by the employee also had to do with changes in staff. At the time it seemed to him that the staff changes were more pressing because he was not fully aware of the seriousness on the new unemployment system launch. Rep. Pierce asked if DOL's online system has been fixed. Rep. Fecteau is not confident that it is fixed. When the LCRED Committee asked questions of Directors Smith and Feeney in February, Director Smith indicated that there were two hundred defects with the System and believes the Governor issued two financial orders totaling over \$1 million to bring Tata, the company that developed the System, back in. It is his belief that those financial orders were for bringing those employees back on a temporary basis to fix problems within the System, but he could not speak confidently about whether all of the two hundred defects have been fixed. He is not certain whether or not there are folks who initially were eligible to receive benefits who could not access the System and gave up.

Rep. Pierce asked if the former employees of OIT would be willing to come before the LCRED Committee. Rep. Fecteau thinks the former OIT employees might be willing to come before the LCRED Committee, but said OIT is only going to tell part of the story and there would be a significant part of the story that would be left unanswered.

Rep. Pierce said there is a Whistleblower Protection Act and asked how many individuals was Rep. Fecteau referring to as being whistleblowers. Rep. Fecteau thought between himself and Sen. Bellows they have talked to thirteen former or current DOL employees and two OIT employees. There is a Whistleblower Protection Act, but he thinks there are some questions about how strong the Act is in protecting employees and ultimately there is still fear for losing their job. Rep. Fecteau said Sen. Bellows has heard from five current DOL employees with concerns about the System being rolled out over internal objections and concerns from employees who said it was not ready to deploy. Other employee concerns included it was a bad time of year for a new system roll out, staffing shortages because of unfilled positions, inadequate staff to handle call volume and processing, retirements since December due to stresses of mandatory overtime and involuntary internal assignments. Staff are instructed to ignore phone messages from the public, destruction of voice mails from claimants that have not been recorded or responded to, violation of federal law because work search is only possible by claiming online and wrong directions for log in mail for claimants already in the system at onset. There are a lot of complaints from DOL employees.

Rep. Pierce asked if the LCRED Committee was involved with requesting a review of the ReEmployME System to the GOC. Rep. Fecteau said the LCRED Committee Chairs sent a letter to DOL requesting that this matter be taken up in a hearing format. That letter was responded to by the Chief Executive's Office advising LCRED that their questions could be submitted in writing and would be responded to. That was the only response the LCRED Committee received. He could not speak for Sen. Volk as to what she believes the right thing to do is. Rep. Pierce asked if it was Rep. Fecteau and Sen. Bellows requesting an OPEGA review of the ReEmployME System. Rep. Fecteau said it is his request for review and the LCRED Committee did not take a vote on requesting an OPEGA review.

Rep. Sutton thought it was a good opportunity to talk about how to treat people when they come before a Committee. She has seen people being treated rudely at an LCRED Committee meeting in the past and thinks it is a reason why sometimes requests are not granted to allow individuals to come before a committee if they have reason to believe they will be treated without the respect they are due.

Rep. Mastraccio, a member of the LCRED Committee, respectfully disagreed with Rep. Sutton. The nature of what they do in the Committee often has many different opinions and thinks they have been long refused by the Department to appear before the Committee. She concurs with Rep. Fecteau's request for review of the ReEmployME System and thinks the majority of the members of LCRED would have voted to send the request to OPEGA.

**Motion:** That the Government Oversight Committee approve the Review Request for matters related to the development and implementation of the ReEmployME System. (Motion by Sen. Saviello, second by Rep. Mastraccio.)

**Discussion:** Sen. Gratwick thought if he was subpoenaed and regardless of the Whistleblower statute, his job could be made difficult for the rest of his tenure at a department by his bosses. He asked if people coming before the Committee could be put behind a screen, or done some other way to protect the individual. Sen. Katz said a subpoena would be to appear before the GOC in public and in deciding whether or not to issue a subpoena the Committee can have those discussions.

Sen. Gratwick said what distresses him is the potential destruction of documents and understands that the roll out of the ReEmployME System was a mess and that is inexcusable.

**Vote:** The above Motion passed by vote of 9-2. (Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's rules. Rep. Harrington did not vote on the motion)

Director Ashcroft said the above Motion that was made was for the GOC to accept the request for the review of the ReEmployME System and she suggested that the Committee vote on a motion that puts the review on OPEGA's Work Plan.

**Motion:** That the approved Review of Matters Related to the Development and Implementation of the ReEmployME System be placed on OPEGA's Work Plan. (Motion by Sen. Saviello, second by Rep. Mastraccio, motion passed by vote of 9-2.) (Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's rules. Rep. Harrington did not vote on the motion. )

Sen. Katz thanked Rep. Fecteau for being at the GOC meeting to present his review request and answering Committee members' questions.

Director Ashcroft commented that she thought folks who are listening who may, or may not, have been the whistleblowers that were being referred to, may be misconstrued from the GOC's discussion of what will happen from here. Although the GOC does have subpoena power to bring people before it, that is not typically the first step that is done in OPEGA reviews. Individuals that OPEGA needs to reach out to, or who are willing to come forward themselves, is how OPEGA starts a review and information is gathered. OPEGA has authority under its

statute to maintain the confidentiality of any information and/or identities of folks who speak with them. She wanted folks to understand that even though the Committee voted to put the ReEmployME System review on OPEGA's Work Plan does not mean that they are automatically going to get subpoenaed to appear before the GOC. As Sen. Katz said, that comes at a later stage once OPEGA has gathered information and presented it to the Committee.

Sen. Katz noted that this is the third review the Committee has approved in a brief period of time on matters that have been brought to the Committee's attention. OPEGA will conduct the reviews without bias or prejudice and the GOC will review that work and conduct any public hearings fairly and in a nonpartisan way. The Committee will go where the facts lead them on the reviews.

## UNFINISHED BUSINESS

### • Review Status of Actions Taken on Prior OPEGA Report - Riverview Psychiatric Center

The Director summarized RPC Follow-Up to OPEGA and OPEGA Evaluation of RPC's Actions on Recommendations. (Both documents are attached to the Meeting Summary.) She apologized for not forwarding the Riverview Psychiatric Center (RPC) information to Justice Wathen prior to this meeting.

Director Ashcroft thanked the Department of Health and Human Services (DHHS) and RPC for taking the results of OPEGA's review seriously and for making a number of changes, with a lot of the changes being on policies and procedures that needed review, updating and clarification. She appreciated the work done to make the corrections, changes and improvements that OPEGA had suggested.

Sen. Libby asked if it was possible that there are unacceptable behaviors that do not make it into the discipline log. Director Ashcroft said that is possible, but they are still expected to be dealt with through a supervisory process and that was OPEGA's point. OPEGA thought that if RPC collected data on it, they would be able to see trends in particular units or with particular people. RPC feels strongly that by virtue of the fact that every single incident is reviewed at a high level in the hospital, they would recognize those kinds of trends and those would be discussed during their debriefing process. Director Ashcroft could not take specific issue on RPC's decision. It would have been a nice improvement, but it is not critical for them to have for additional information. Justice Wathen agreed and was satisfied with their conclusion.

Rep. Rykerson asked if OPEGA had hard data on overtime hours. Director Ashcroft said she did not look at what the Department sent for supporting information. OPEGA staff did review the information, but she did not know if the information DHHS sent was at that level of detail. She will check and get that information to the GOC.

Sen. Gratwick said he made an unannounced visit to Riverview so he would have a better understanding of OPEGA's review of RPC. He was introduced to Superintendent Bouffard who gave him a tour of RPC. Sen. Gratwick said all of his preconceptions of RPC are wrong. RPC is neat, clean, calm, very organized, and has happy employees. RPC staff deal with difficult clients, but they have a structured environment and the Superintendent is a remarkable individual. It appeared to him to be a very well managed place. Can he be fooled with an hour and half visit, the answer is yes and no because he has been around psychiatric centers for a while and you get a sense of what is going on.

Sen. Gratwick said his concern is the potential outsourcing of the out-patient transition unit to Bangor because it is important to keep continuity. The cat fight between the Legislature and the Executive Branch over the potential out-patient unit is inappropriate in terms of taking care of patients. He said the Committee has been presented with one part of a very human institution, dealing with the most difficult people and he came away from his visit impressed with how well State employees are doing under difficult circumstances and they need the Legislature's support.

**Motion:** That the Government Oversight Committee close OPEGA's follow-up work of the Riverview Psychiatric Center Report. (Motion by Rep. Pierce, second by Sen. Gratwick.)

**Discussion:** Sen. Libby said Director Ashcroft brought up the concerns of the overall work environment at RPC and asked if Justice Wathen would be willing to speak to that.

Justice Wathen said he is attending meetings at RPC at least twice a week. He meets with higher end staff and not the direct care workers, although he does know some of the direct care staff and custodians. His impression is consistent with that of Sen. Gratwick. There is not a more difficult place to work in the State of Maine, but he thinks since Mr. Bouffard has been the Superintendent the overtime is under control, including the mandated shifts. There are five or six vacancies out of 400 positions and that is a big improvement compared to when the GOC/OPEGA got involved with the Review. RPC staff are good people, doing good work and achieving remarkable results.

Sen. Katz asked what Justice Wathen's role was as the Court Master for RPC. Justice Wathen said the Consent Decree continues until the Court does something with it or it is deemed to be in compliance. In candor, we are talking about making a more sensible arrangement and moving on to a different stage, but we are not there yet. He hopes to not be involved someday, at least on a regular basis, with the mental health system. The Hospital and the community mental health system, even though they are not fully in compliance, have reached a stage where they are entitled to try it on their own with less oversight and supervision and less criticism. He thinks they are capable of doing that. At this time the Consent Decree is in full force and effect, he is the Court Master, and usually gets reappointed every two years.

Sen. Gratwick thinks a great deal of credit has to go to the State, Justice Wathen, Legislature and Governor working together to turn around a situation that was pretty grim at one point. They have done a remarkably good job and the specifics of the patient care are good. Justice Wathen agreed and added that what RPC is currently working on is their continuity in the psychiatric staff of psychiatrists and psychiatric providers. There is still too much turnover, but that is not a major reason not to recognize that they are doing good work under difficult circumstances.

Sen. Katz thanked Justice Wathen for being at the meeting and providing information to the Committee.

**Vote:** The above Motion passed by unanimous vote of 10-0. (Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's rules. Rep. Harrington and Sen. Davis did not vote on the motion.)

- **Update on Rapid Response Review of Child Protection System Relevant to Cases of Marissa Kennedy and Kendall Chick**
- **Consideration of Subpoenas for School and Child Development Services Records**

Director Ashcroft gave an update on the status of the rapid response review of Child Protection System Relevant to Cases of Marissa Kennedy and Kendall Chick. Since March 9, 2018 almost all of OPEGA's effort has been framing up and getting out requests for records from the various governmental entities, as well as outreach to some local law enforcement agencies and school systems. Everyone has been cooperative and very responsive in turning around answers to OPEGA's questions and request for input. Everybody wants this review to go smoothly, but there is, however, the reality that there are a lot of little details to pay attention to with regard to the confidentiality under federal and state law of many of the records that OPEGA is requesting. There is also the additional consideration of the ongoing criminal investigation. For that reason, OPEGA has arrived at an arrangement that is a little different in terms of getting records in that the Attorney General's (AG) Office is going to assist OPEGA in their role as advisor on confidentiality of records. The AG's Office is going to help screen records before they come to OPEGA. Director Ashcroft said it has taken OPEGA a couple of weeks to get that work done. As of yesterday OPEGA has sent out, or contacted, all of the folks that they know of currently who might have records at the state or local level.



Director Ashcroft referred members to the OPEGA Request for Subpoenas to Obtain Records Needed For Rapid Response Review of Child Protection System Relevant to Marissa Kennedy and Kendall Chick document in their notebooks. All four organizations that OPEGA is requesting subpoenas for are government agencies that are subject to the federal education law. The provisions in FEPPRA, as it is referred to, are not as broad as in some of the other federal laws in allowing an organization like OPEGA, or the Legislature, to have access to those confidential records. Consequently, the best way to obtain them is through subpoena and the entities listed on OPEGA's Request for Subpoenas have requested a subpoena be provided so that they are within their bounds to turn over records. (A copy of OPEGA Request for Subpoenas is attached to the Meeting Summary.)

Sen. Katz confirmed that the subpoenas are of a friendly nature and the agencies listed are willing to cooperate, but feel they need a subpoena. Director Ashcroft said it is for the records to come to OPEGA and/or the AG's Office, not for the records to come to the GOC or in any public arena. Sen. Katz said there are two issues. One is what records can come to OPEGA staff which may remain confidential, and then which of those records can be made available to the GOC. Director Ashcroft said even for the information OPEGA may be allowed to release under confidentiality laws, there is the consideration of what should be in the public arena given that the criminal case won't have gotten very far along.

Rep. Pierce asked if the law enforcement piece is covered under the AG's Office criminal investigation and should the Penobscot County Sheriff's Office, or the local law enforcement in Stockton Springs, be included in the friendly subpoena request, or are the records going to be turned over to OPEGA from the AG's Office. Director Ashcroft said the law enforcement offices are not included on OPEGA's Request for Subpoenas. The entities on the list are there because of particular federal law. As far as OPEGA knows, there are not any federal considerations as to whether or not OPEGA has access to law enforcement records. OPEGA is still in negotiation with at least one of the local law enforcement agencies about the best way for OPEGA to get records and they have their City Solicitor advising them as to what is in their realm. The AG's Office is assisting OPEGA with explaining OPEGA's role and authority under statute. Director Ashcroft could not promise that she will not be back before the GOC asking for more subpoenas, either for law enforcement or, for example, contracted service providers that OPEGA learns about that might also have records.

Rep. Sutton asked for clarification on the role the AG's Office is playing in obtaining records. Director Ashcroft said OPEGA makes records requests directly to the agencies that have the records and establishes a confidentiality agreement with each agency regarding how OPEGA is going to protect the records. In this particular case, those protocols for making sure that we have everything considered from a confidentiality stand point involved those records going to the AG's Office. The AG's perspective in reviewing the records is to consider whether there is any reason why under federal or state law OPEGA would not have access to the information and is there anything going on with the criminal case that would cause pause about giving the information to OPEGA. From what the AG's Office said, OPEGA does not think there is anything of that nature, but should the AG feel some additional research should be done regarding what the federal law allows, they would withhold that information and provide OPEGA with a log of what it is they are withholding and why. That would give OPEGA opportunity to work with the AG's Office as to whether there is an alternative way for OPEGA to get the information they feel is pertinent to their review without having to have the whole record.

Sen. Gratwick understood the GOC can subpoena documents but asked, for example, about a third grade teacher who does not put everything down in writing, but has a distinct impression of things that occurred, would the GOC subpoena individuals in that way. Director Ashcroft said OPEGA starts with whatever they can see in records. The GOC has given them a quick turnaround on the review and that is the fastest way for OPEGA to see what there is for documentary evidence. OPEGA expects, as with any time they do that, there will be instances where they would just as soon speak to somebody, but that will need some real consideration, given the ongoing criminal investigation, as to whether OPEGA actually interviews some individuals that might have had particular contact with the children. She said that is an open question still and even if OPEGA is able and can do it, she does not know how much of it will be able to get done before the May 2<sup>nd</sup> report date. OPEGA is

trying to make sure they get the bulk of the information that they can get as soon as possible and then will strategically go after places where they think more information is needed. OPEGA is conferring with the AG's Office on whether or not that is an appropriate interview for OPEGA to do. If the individual has already been interviewed as part of the investigatory process, OPEGA may be able to get the write ups of those interviews. OPEGA always has to address and figure out things as they move through the fact findings of a review.

Rep. Mastraccio noted that all of the agencies listed in OPEGA's Request for Subpoenas are waiting for the subpoenas and know they might be issued. Director Ashcroft agreed and said OPEGA is asking for a quick turnaround for the information and hoping many of the records are readily available because they have already been asked to provide them.

**Motion:** That the GOC issue subpoenas to the four education entities OPEGA is seeking information from commanding those agencies to provide the records described by OPEGA with the understanding that those records will be considered "working papers" as defined in Title 3 section 992(7), protected from disclosure under Title 3 section 997(5), and by specific Confidentiality Agreement with the entity. (Motion by Rep. Mastraccio, second by Sen. Libby, motion passed by unanimous vote of 10-0.) (Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's rules. Rep. Harrington and Sen. Davis did not vote on the motion.)

- **Follow-up on Maine State Lottery Report**
  - **Response From Veterans and Legal Affairs Committee**
  - **Consideration of Further GOC Actions**

The GOC asked the Veterans and Legal Affairs (VLA) Committee to weigh in on whether there was legislation that should be introduced to implement one of OPEGA's recommendations, particularly around the reporting that is done by the Bureau of Alcohol Beverages and Lottery Operations (BABLO) to the Legislature. Director Ashcroft referred Committee members to the VLA Committee's memo in their notebook. The VLA Committee does support consideration of legislation that proposes an annual report to be presented to the committee of jurisdiction which includes, but not necessarily limited to the following:

- A review of actions and decisions by the Liquor and Lottery Commission for the preceding year relative to lottery operations;
- A full and complete statement of lottery revenues, prize disbursements and expenses;
- A historical view of the account used to manage lottery operations and from which transfers are made to the General Fund; and
- A statement of expenditures made to promote lottery sales through marketing, advertisement and agent recruitment.

The VLA Committee also supports the elimination of the annual certification of finances to the State Treasurer in the proposed legislation.

It is now for the GOC to decide, based on the VLA Committee's input, whether they want to introduce legislation to accomplish the change in the reporting required from BABLO on State Lottery. OPEGA noted that the same kind of reporting was due from BABLO with regard to the liquor side of the business so had suggested the GOC might want to make those reporting recommendations consistent.

Rep. Rykerson asked for clarification regarding reporting the liquor as well as the lottery. Director Ashcroft explained that there are two separate pieces of statute that address the Lottery Operation versus the Liquor Operation. Both have reporting requirements that are similar. So if the Committee is going to make legislative change to the reporting requirements for one portion of BABLO's business, it should also be making changes to the Liquor Operations reporting so BABLO would only have to do one report for the Legislature that contains consistent information about both of the significant pieces of BABLO's responsibility. It is up to the GOC to decide what will be included in the legislation.

Rep. DeChant said OPEGA's State Lottery review was to look at how the Lottery advertises statewide and whether it targets specific demographics. Reviewing the memo that came from the VLA Committee, she was trying to understand if the VLA Committee was saying in the four bullet points in their memo that it would address the advertising issue. If the thrust of OPEGA's report was to investigate and explore Lottery advertising practices, she did not see how that came out in a proposed annual report. Director Ashcroft said the questions that OPEGA was assigned in the review also had to do with how the Lottery makes decisions about things they are going to do in marketing and what the oversight structure was for State Lottery. The recommendation OPEGA made that is being talked about specifically here had more to do with the question about where is the oversight, transparency and accountability, with some of it reflecting what are the actions and decisions that are being made by the Liquor and Lottery Commission around marketing and advertising. There is a piece of what is being suggested for an annual report that would lead the Legislature then to have a view of what the Lottery has made for major decisions over the past year with regards to new games or anything they are doing that is significant regarding marketing. The scope of OPEGA's review, even though we talked about it at GOC meetings, and it was one of the highlights of what people were interested in, was broader than just marketing and advertising. This piece is more about transparency and oversight by the Legislature and accountability.

Rep. DeChant understands what Director Ashcroft explained was the subtext, but the major thrust of what it was originally was how the Lottery spends its money in marketing and how it buys radio, television and print is definitely connected to a demographic. Even to answer in a subtext, it was important enough to have some relevancy when the GOC initiated the review of the Maine State Lottery. She said if she looks at a full statement of lottery revenues, prize disbursements and expenses that is included in BABLO's report she will be able to deduct that they spent "x" amount of money on advertising, marketing and print, but will not be able to deduct what demographics they targeted through that. Rep. DeChant thinks that would matter and would like to see some indicator of that in an annual report. Director Ashcroft agreed that the way it is currently stated, she does not think you would see that extra layer of detail about where those expenditures were made. If that is something Rep. DeChant thinks is critical to come to the Legislature in BABLO's annual report, then certainly if/when the GOC drafts the legislation they can think about adding that as additional information to be reported. OPEGA found in the review that they did not feel there was any targeting of any specific demographic or geographic going on. Some Committee members were concerned about that and it is not reflected in the list of information currently being considered for annual reporting.

Rep. Pierce referred to the Recommended Legislative Action in OPEGA's Maine State Lottery Report that said "The Legislature should amend statute to:

- Eliminate the requirement for annual certification of finances to the State Treasurer, unless some purpose for this certification is identified.
- Specify the date annual reports are due, which legislative committees they should be submitted to and what the reports should include."

He said he was comfortable with that after reading OPEGA's Report and from the GOC's discussion of it. The Committee realized there was no demographic issues and it was more of a reporting matter. If the GOC decides to introduce legislation the language regarding advertising demographics can be discussed.

Rep. Rykerson referred to the VLA Committee's memo that recommended a statement of expenditures be included in BABLO's annual report and asked if that could include the vendors and would it be enough information to include which vendors they spent the money on. Director Ashcroft said in regard to that particular instance she believed it was relevant to the kind of thing Rep. DeChant is talking about. Asking BABLO to just provide the vendors would not get to it because they contract with an advertising agency and then the advertising is done through that agency.

Rep. Mastraccio said the GOC received OPEGA's Maine State Lottery Report, the Committee sent the recommendations and the Report to the VLA Committee asking if they agreed to the Report recommendations.

The VLA Committee has sent a memo back to this Committee stating they agree there could be more transparency and an annual report would be a good. The GOC will draft legislation and that legislation will go to the VLA Committee where they can have that same discussion again. The GOC is going to take the VLA Committee's recommendations, if they agree, and will put forth legislation. Director Ashcroft noted that there is already annual reporting going on, but is not specific to which Joint Standing Committee it should go to, when it needed to be provided and the need for additional information that should be included. The VLA Committee said they would like to see at least the bulleted items in their memo included in BABLO's annual report. The GOC could start with their suggestions as a base and, if this Committee had additional things they thought were relevant, that could be added and VLA could consider it when they consider the bill.

Rep. DeChant agreed that BABLO's annual report should be more transparent. She thinks that it is relevant to have the advertising information disclosed. She understands there are markets where there is only one radio station and that is not a big deal, but there are also markets in the State of Maine who have a variety of different outlets. When the GOC talked about it, she did not think it was really fleshed out on the relevancy of this so she is going to underscore it again in the sense that when you go to one market and you have one outlet, you get what you get. When you go to Portland, Lewiston or Bangor, which the Maine State Lottery does a great deal of advertising in, she cannot be convinced that when you buy WOBL you are not buying a particular demographic. WOBL's advertising people will tell you that you are buying 35 to 45 year old single people. Having that information would continue to offer transparency such that hopefully the whole Lottery advertising concern would become a non-issue. Director Ashcroft agreed and said that OPEGA had not gone as far for each of the radio stations to determine what that radio station's demographics were.

Rep. Sutton asked if the VLA Committee's memo was from a unanimous report of the Committee to send the letter or is it just an informal letter. Did all the members of the Committee agree with the memo? Director Ashcroft did not have the opportunity to listen to the VLA Committee meeting when the Lottery was discussed, but it was a Committee discussion and a Committee decision. She did not know if they actually took a vote, and if they did, what the record was on the vote.

**Motion:** That the Government Oversight Committee submit legislation to implement the legislative action recommended on page 28 of OPEGA's Maine State Lottery Report in conjunction with the suggestions in the VLA Committee's memo. (Motion by Rep. Pierce, second by Sen. Saviello.)

**Discussion:** Director Ashcroft asked if the GOC wanted the legislation to be introduced this session. The Committee was not scheduled to meet until April 13<sup>th</sup> so she would have to email the draft legislation to members. She is not sure there would be enough time to get legislation through the process for this session and she doesn't think it is a critical matter that has to be done this session. Whatever the Committee wants to do is fine, she was just planning out the timing of the legislation.

**Amended Motion:** That the Government Oversight Committee submit legislation to the 129<sup>th</sup> Legislature to implement the legislative action recommended on page 28 of OPEGA's Maine State Lottery Report in conjunction with the suggestions in the VLA Committee's memo. (Amended Motion by Rep. Pierce, second by Sen. Saviello. Motion passed by a vote of 9-1.) (Sen. Diamond voted on the motion in the allowed time frame in accordance with the GOC's rules. Rep. Harrington and Sen. Davis did not vote on the motion.)

Director Ashcroft recalled that the previous GOC had drafted legislation for the incoming Committee and voted to introduce the legislation. She will check with the Revisor's to see if the legislation can be drafted and approved by this GOC to be introduced to the 129<sup>th</sup> Legislature. She will make an inquiry to the Revisor's Office for procedure.

- **Review Status of Legislation of Interest to GOC**

- **LD 1796 – An Act to Improve the Effectiveness of the New Markets Capital Investment Credit**

Has been passed by the House and Senate and became law without the Governor's signature.

- **LD 1654 – An Act to Protect Economic Competitiveness in Maine by Extending the End Date for Pine Tree Development Zone Benefits**

Has been voted on by the Committee and is due for amendment review this coming week. The LD has not yet been reported out of Committee.

- **LD 1338 – An Act to Create and Sustain Jobs Through Development of Cooperatives and Employee-owned Businesses**

Has been voted on by the Committee and the amendment is being worked on. There have been concerns raised by Maine Revenue Services (MRS) and for a couple of things OPEGA saw in the bill. The amendment is still being worked on and has not been reported out of Committee yet.

Sen. Libby asked what OPEGA's concerns are regarding the amendment. Director Ashcroft said the sponsor of the bill put in the evaluation and reporting sections that OPEGA has been trying to work with sponsors and committees to consistently add to legislation. The way the bill is currently framed out, it looks like it is going to be unallocated language and on the other similar bills those sections are included in statute. There was also a point where the Bureau, which she assumed was MRS, was going to be sending a report directly to OPEGA in addition to the Taxation Committee and she flagged that it is not OPEGA's typical process to have things reported directly to OPEGA. Usually when they get ready to do the review they get information from the agency or from reports that have been released publicly.

Sen. Libby asked if Director Ashcroft had articulated that to the Taxation Committee. Director Ashcroft spoke with Julie Jones, Analyst for the Taxation Committee. Even though it has already been voted on by the Committee, given that MRS also had concerns, Ms. Jones was going to talk with the Chairs of the Taxation Committee about what they wanted to do with regard to that.

- **LD 1781 – An Act To Encourage New Major Investments in Shipbuilding Facilities and the Preservation of Jobs**

Director Ashcroft believes the bill is still in the Taxation Committee. Rep. DeChant said the Taxation Committee did a language review on Tuesday for semi-final review and thinks by Tuesday of next week it will be out of Committee.

Director Ashcroft said when LDs come through that now have the section in them regarding evaluation in accordance with the established Tax Expenditure Program some include a date by which an OPEGA evaluation will be done. She gets asked for the fiscal impact statement on those. In all cases, she says OPEGA can absorb those within existing resources, but for the ones that are new additions and are not already part of OPEGA's population of tax expenditures, she is also saying that it might delay other projects that are scheduled to be up at any particular time. For the Pine Tree Development Zones though, it was already within OPEGA's population so it is just a matter of paying attention to when we schedule it.

## REPORT FROM DIRECTOR

### • Status of Projects in Progress

Director Ashcroft wanted to confirm the suggested meeting dates over the interim. The Chairs had asked Committee members to hold the second and fourth Thursdays of the month so OPEGA has been trying to work with those as possible dates.

The GOC decided that the **Child Protection System** rapid response review would be presented on May 2, 2018 and May 8, 2018 would be the date to hold the public comment period on the review.

OPEGA will be in position to present the report on the **Beverage Container Recycling** on May 24, 2018. That date was picked because it was mentioned that the Committee thought they may want a third meeting in May to discuss phase two of the Child Protection Process.

The date OPEGA has decided they can report out the **Temporary Assistance for Needy Families** Report is June 28, 2018.

Also on the Agenda for the June 28, 2018 GOC meeting will be the public comment period on the Beverage Container Recycling and a July meeting will have the public comment period on the TANF Report.

The presentation of the **Employment Tax Increment Financing** report will be at the end of July or first of August meeting.

The **Maine Citizen Initiative Process** is ready for OPEGA to do their planning for the next phase of the review, but that is on hold given the more time sensitive reviews.

**BETE and BETR** is in progress, but is the lower priority tax expenditure review and it will probably be the first of next year for its release.

The GOC members agreed with the above meeting dates.

### • Status of Director Recruitment

Director Ashcroft said the advertising and postings for the OPEGA Director position has gone out. The applications are due by April 5, 2018. The GOC members who are going to participate in the second round interviews have been determined. Sen. Katz said it will be one member from each caucus and the GOC members who will be participating are Rep. Pierce, Rep. Mastraccio, Sen. Libby and himself.

Some of OPEGA staff, Executive Director Pennoyer and Human Resources Director Jackie Little will be involved in reviewing the applications, selecting applicants for first interviews and conducting the first interviews. They will suggest candidates for the second interview with GOC members. The Committee members will select candidates to propose to the Legislative Council's Personnel Committee and the full Legislative Council.

## ANNOUNCEMENTS AND REMARKS

Sen. Katz said the above meeting dates are scheduled meetings, but wanted members to know that, as OPEGA reviews move forward and there is a need to get together on short notice for purpose of authorizing subpoenas, the Chairs may be asking members to meet on a session day very briefly for that purpose.

Rep. Mastraccio said the Committee currently has regularly scheduled meetings in April, which would be the 13<sup>th</sup> and 27<sup>th</sup>. Neither of those meetings have yet to be cancelled. Director Ashcroft said the Chairs should discuss April meeting dates because she does not know what she will have for the Committee in April. Rep. Mastraccio wanted members to remember those are regularly scheduled meetings, but those dates may be changed.

### **NEXT GOC MEETING**

The Government Oversight Committee set April 13, 2018 at 9:00 a.m. as a tentative date for the next meeting.

### **ADJOURNMENT**

The Chair, Sen. Katz, adjourned the Government Oversight Committee meeting at 11:30 a.m. on the motion of Sen. Libby, second by Rep. Rykerson, unanimous.

SENATE

PAUL T. DAVIS, SR., DISTRICT 4, CHAIR  
THOMAS B. SAVIELLO, DISTRICT 18  
JAMES F. DILL, DISTRICT 5

HILLARY RISLER, LEGISLATIVE ANALYST  
JENNIFER HALL, COMMITTEE CLERK



HOUSE

MICHELLE ANN DUNPHY, OLD TOWN, CHAIR  
RALPH CHAPMAN, BROOKSVILLE  
ROLAND DANNY MARTIN, SINCLAIR  
MARGARET M. O'NEIL, SACO  
RUSSELL J. BLACK, WILTON  
CAROL A. MCELWEE, CARIBOU  
MARYANNE KINNEY, KNOX  
NORMAN E. HIGGINS, DOVER-FOXCROFT  
THOMAS H. SKOLFIELD, WELD  
KENT ACKLEY, MONMOUTH

STATE OF MAINE  
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE  
COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY

**TO:** Senator Roger J. Katz, Senate Chair  
Representative Anne-Marie Mastraccio, House Chair  
Government Oversight Committee

**FROM:** Senator Paul T. Davis, Senate Chair *ETD*  
Representative Michelle Dunphy, House Chair *MD*  
Joint Standing Committee on Agriculture, Conservation and Forestry

**RE:** Request for review of timber harvested on public lands

**DATE:** March 22, 2018

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The Joint Standing Committee on Agriculture, Conservation and Forestry has voted, with the exception of one member, to request that the Government Oversight Committee review information that was brought to the attention of the committee and that the committee has discussed regarding timber harvested on public lands.

Please see the attached correspondence related to this matter, which includes a list of questions that have been sent to the Commissioner of Agriculture, Conservation and Forestry and the Governor.

Cc: Members, Joint Standing Committee on Agriculture, Conservation and Forestry  
Members, Government Oversight Committee  
Beth Ashcroft, Director, Office of Program Evaluation and Government Accountability





# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION

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## Ryan M. Fecteau

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Biddeford, ME 04005

Cell Phone: (207) 289-4478

Ryan.Fecteau@legislature.maine.gov

**To:** Joint Standing Committee on Government Oversight

**From:** Representative Ryan M. Fecteau, Chairman of the Joint Standing Committee on Labor  
Commerce, Research and Economic Development

**Subject:** OPEGA Investigation Request

Chairman Katz, Chairwoman Mastraccio, honorable members of the Joint Standing Committee on Government Oversight (GOC), the Maine Department of Labor (MDOL) launched a new online unemployment compensation system in early December known as ReEmployME. The new system is part of a four-state unemployment consortium that includes Connecticut, Rhode Island and Mississippi. The consortium is spearheaded by Mississippi which launched its online portal in 2015. Maine is the second state to go live. The U.S. Department of Labor (U.S. DOL) provided a \$60-million consortium development grant to Mississippi and awarded an additional \$10 million to Maine.

In the summer of 2017, Representative Ryan Fecteau received an anonymous letter from a MDOL employee who expressed concerns about the anticipated launch of the new system. The individual warned the system was not ready for primetime. On December 6, 2017, MDOL migrated to the new online portal. Soon thereafter, legislators began hearing from constituents who were experiencing issues such as, but not limited to: log-in failures, locked accounts, long waits for help over the phone, issuance of faulty debit cards, waiting weeks after initial filing to receive benefits, lack of access to an alternative filing means such as paper or over the phone and various usability issues with the system's interface. The growing complaints to legislative offices fueled concerns, given how uncommon it is to hear from multiple constituents about a specific government agency issue in such a short period of time. One constituent, for example, noted how she did not receive her benefit during a temporary layoff from the Aroostook County Action Program (ACAP). She was initially told her benefit would be received by Christmas. She was eventually told she was disqualified, because she did not look for work. In her case, however, her temporary unemployment would not necessitate a work search. She reported calling for weeks in order to reach someone for help.<sup>1</sup>

On February 8, 2018, the Joint Standing Committee on Labor, Commerce, Research and Economic Development (LCRED) held a meeting and asked questions of Dale Smith, the deputy executive director of the Mississippi Department of Unemployment Security, and John Feeney,

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<sup>1</sup> <https://www.centralmaine.com/2018/01/28/states-unemployment-filing-system-continues-to-frustrate-mainers/>

the director of the Bureau of Unemployment Compensation at MDOL. Director Feeney was asked about whether or not December, a high-volume period for unemployment claims, was the appropriate time to launch the new system. He responded by saying it was MDOL's hope to launch in October, but issues pushed back the launch date. Director Smith was asked about whether or not issues arose in Mississippi when their system launched. He responded by saying issues persisted for roughly six months. Director Smith acknowledged there were discussions about launching the system during the high-volume claims season and said discussions occurred about the problems Mississippi experienced post-launch. He said the decision ultimately rested with MDOL. Director Smith also remarked that they identified over 200 defects in Maine's system since its launch.<sup>2</sup>

Following several Kennebec Journal articles, Senator Shenna Bellows and Representative Fecteau heard from more whistleblowers at MDOL. Employees noted low morale due to an inability to properly assist claimants, forced overtime, being told to not speak with "politicians" or the public about the system's issues and having not been consulted about what would make a new system work well for Maine. One employee expressed concern about the readiness of the business tax portion of the system set for launch in August 2018 and changes to staffing. Several employees confirmed that concerns raised about the launch being premature were ignored. A former employee at the Office of Information Technology (OIT) noted that an internal audit warned that things were not going well with the system. Another former OIT employee reported faulty oversight of the project, Maine not being involved in procurement of the developer,<sup>3</sup> funds not being available for procurement of preferred cloud-based services and testing being scrapped in favor of meeting the launch date. The culminating whistle-blower account came in the form of a confidential memo provided to Senator Bellows by a MDOL employee. The Kennebec Journal released the memo in full.<sup>4</sup> Among many things, the memo alleges senior management "was involved in the destruction of documents from claimants requesting help."

The issues reported by both claimants and whistleblowers raise many questions and concerns about the development and rollout of the unemployment online portal and the efficacy of delivering services to claimants. They also present issues that appear to violate federal law, including requirements that a state must provide for "methods of administration that are reasonably calculated to ensure prompt payment of benefits when due<sup>5</sup> and that states must provide alternative claim-filing methods to ensure compliance with federal anti-discrimination laws<sup>6</sup>. States must comply with the requirements of federal unemployment insurance law as a condition of receiving federal UI administrative grants, thus these issues also place the state at financial risk. For the sake of brevity, not all issues and accounts from claimants are captured in this request. It should also be noted that claimants with issues referred to MDOL by a legislator have received satisfactory assistance in resolving their issues. Unfortunately, it has yet to be quantified how many individuals of the 17,000 persons, as of February 2018, who registered with ReEmployME did not have their issue resolved or entirely gave up. It has also not been quantified

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<sup>2</sup> <https://www.centralmaine.com/2018/02/08/legislators-criticize-state-department-of-labors-unemployment-claims-process/>

<sup>3</sup> <https://www.pressherald.com/2018/03/18/maine-department-of-labor-still-silent-about-botched-unemployment-system/>

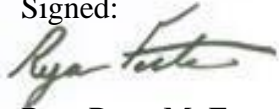
<sup>4</sup> <https://www.centralmaine.com/2018/03/11/document-maine-agency-botched-unemployment-system-rollout-destroyed-records/>

<sup>5</sup> Section 303(a) (1) of the Social Security Act

<sup>6</sup> [https://workforcsecurity.doleta.gov/dmstree/uipl/uipl2k16/uipl\\_0216.pdf](https://workforcsecurity.doleta.gov/dmstree/uipl/uipl2k16/uipl_0216.pdf)

how many individuals never successfully registered with ReEmployME. **The need for an investigation by the Office of Program Evaluation and Government Accountability (OPEGA) into MDOL and OIT as it relates to the unemployment consortium is abundantly clear.** The investigation should consider all the issues raised in this memo, but should consider additional aspects of the consortium's development, rollout and post-launch, as well as MDOL's staffing levels within the Unemployment Insurance (UI) system that are not contemplated in this request.

Signed:

A handwritten signature in black ink, appearing to read "Ryan Fecteau", written in a cursive style.

Rep. Ryan M. Fecteau

Audio from the 08 February 2017 LCRED Hearing (begins at roughly 3:04 PM):

<http://sg001-harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20180208/-1/9231>

News Coverage:

<https://www.centralmaine.com/2018/01/28/states-unemployment-filing-system-continues-to-frustrate-mainers/>

<https://www.centralmaine.com/2018/02/07/problems-with-unemployment-system-still-plaguing-mainers/>

<https://www.centralmaine.com/2018/02/08/legislators-criticize-state-department-of-labors-unemployment-claims-process/>

<https://www.centralmaine.com/2018/02/27/legislators-continue-to-express-concerns-with-unemployment-filing-system/>

<https://www.centralmaine.com/2018/03/07/state-legislators-still-seeking-fix-for-states-unemployment-filing-system/>

<https://www.pressherald.com/2018/03/11/state-bungled-rollout-of-new-unemployment-claims-system/>

<https://www.centralmaine.com/2018/03/12/maine-legislators-call-for-labor-department-to-take-responsibility-for-rushing-unemployment-system-destroying-records/>

<https://www.pressherald.com/2018/03/18/maine-department-of-labor-still-silent-about-botched-unemployment-system/>

<http://wgme.com/news/i-team/i-team-new-unemployment-filing-system-leads-to-double-payments-for-some-mainers>

Internal Memo from MDOL Employee:

<https://cloudup.com/iv-YA-WR80R>

**OPEGA Evaluation of Riverview Psychiatric Center's Actions on Recommendations**

	<b>Recommendation</b>	<b>Recommended Action</b>	<b>OPEGA Summary of Management's Action</b>	<b>Management Report of Status</b>	<b>OPEGA Evaluation of Status</b>
<b>1</b>	RPC should update its reporting policies to reflect current practice and improve clarity and consistency.	Review the full list of specific issues and observations OPEGA identified for each policy and make corrective updates to clarify language and definitions and expectations across related policies.	RPC reported updating policies for clarity and consistency and to reflect current practice. RPC provided OPEGA with evidence of changes that were made.	Completed	Completed
		Update policies to reflect current practice; in particular, policies surrounding allegations of client mistreatment including abuse, neglect, or exploitation should be revised immediately.		Completed	Completed
<b>2</b>	RPC should review and revise, as necessary, certain sections of the incident report form and related policy.	Reevaluate the purpose and process of documenting notifications made and the purpose of the supervisor signature lines on the Incident Report form, and revise policy and form as needed.	RPC has reviewed and revised the Incident Reporting policy and Incident Reporting form. As the result of a Performance Improvement Task Team (PITT) a new electronic form was created. A new process will ensure accurate completion of incident reports and submission. Training on new electronic process will begin week of 3.12.18 with a go live date of 3.19.18. Based on feedback, final implementation expected 06.30.18	In Progress	In Progress, expected Date of Completion 6.30.18
		Train staff on proper notification procedures and proper completion of the notification and supervisor signature lines sections of the Incident Report form.			

3	RPC should improve the use of documentation to monitor adherence to policy requirements for grievance and sentinel events.	Incorporate documentation for proposed grievance resolutions into Grievance form and reinforce with appropriate staff the need to obtain patient signature and require notation if patient refuses or is unable to sign.	RPC decided to continue using a separate document for the proposed solutions to grievances and attach it to the original grievance when the case is closed. The form has been revised to allow patients more space to write. Staff have received additional training and will note if patients refuse to sign.	Completed	Completed
		Establish means to document the notifications required by RPC policy for the reporting of sentinel events.	The Incident Report form has been updated. Sentinel Events policy has been updated.	Completed	Completed
4	RPC should clarify responsibilities of staff who are mandatory reporters of abuse, neglect or exploitation.	Clarify which staff are mandatory reporters and reconcile hospital reporting requirements with individuals' professional mandatory reporting requirements.	RPC clarified policies with Adult Protective Services (APS), updated policy, and staff received training from APS.	Completed	Completed
		Clarify reporting requirements in incidents where there are multiple witnesses to the event.			
5	RPC should develop and implement a method to track and monitor unacceptable staff behaviors.	Develop and implement a method to monitor occurrence of behaviors that undermine a culture of safety and the degree to which they contribute to patient incidents.	RPC noted that the tracking of unacceptable behaviors is done through the Log of Disciplinary Actions and they are not planning additional actions.	Close as not Implemented	Close as not Implemented

6	RPC should clarify expectations for formal administrative follow-up on reported incidents.	Establish in policy the criteria to be used for determining when formal administrative follow-up should occur following an incident, what form it should take and how it should be documented.	RPC revised policies and state that they have established a process that ensures that appropriate administrative action is taken. They are training on the new electronic reporting processes.	Completed	Completed
		Descriptions of follow-up processes shared publicly should reflect the instances in which fact findings, investigations or root cause analyses will actually occur.			
7	RPC should implement controls to ensure reporting of incidents and grievances is accurate and reliable.	Further investigate and confirm the cause of Incident Reports with reportable events being excluded from MEDITECH.	RPC worked with OIT and Meditech to determine technical issues and updated metrics as necessary. RPC anticipated that implementation of a new electronic health record system (EHRS) would contain adequate controls to ensure all reportable incidents were captured in the system. In the meantime, RPC implemented several manual controls to reduce risk. A recent review of that internal tracking process identified potential gaps and flaws that prompted a PITT of the current system. RPC is currently in the final stages of deploying an electronic reporting system for all Incident Reports that should resolve these issues. Anticipated deployment date is 3.19.18. After deployment, quality and accuracy of data will be monitored through monthly internal audits.	In Progress	In Progress, estimated Date for Completion 4.30.18

		Assess and quantify the impact of the issues on the relevant performance metrics based on the duration of this issue and which types of records were impacted, and report back to HHS Committee and GOC.	SAMHS developed new data entry system for grievances. Testing will begin in March or April 2018. In the interim, RPC has worked with SAMHS on programmatic upgrades to the current grievance database.	In Progress	In Progress, estimated Date for Completion Dec. 2018
		Consult with DHHS Internal Audit staff to design and implement additional controls.			
8	RPC should ensure that reported metrics for factors of causation and allegations of ANE are accurate and meaningful	Revise the criteria for the Abuse Neglect Exploitation (ANE) metric presented in the quarterly reports to ensure that both alleged and witnessed events are included. Incorporate these revised criteria into a formal, written procedure. Amend report metrics to reflect the revised criteria.	RPC revised criteria for ANE reporting so that all alleged and witnessed events are included in the Quarterly Report.	Completed	Completed
		Align the reported "factors of causation" categories with specific criteria for utilizing seclusion and restraint from the Consent Decree Settlement Agreement and revise Incident Report forms accordingly	Conversations with the Court Master about alignment of "factors of causation" led to the conclusion that this information is not needed for the hospital to report.	Completed	Completed



9	RPC should proactively monitor overtime for individual direct care staff.	Track shifts and hours being worked by individual direct care staff to proactively identify those regularly working excessive hours in a week and/or contiguous or multiple shifts.	New leadership arrived at the hospital in April 2016 and there was a review of all the contracts. It was determined that the expertise brought forward with the new leadership was sufficient that the consultant was not needed and the contract was cancelled. RPC provided evidence of ongoing monitoring of staff shifts and hours being worked.	Completed	Completed
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Riverview Psychiatric Center Follow-up to OPEGA					
Recommendation	Recommended Management Action	Management's Planned Action	Status: Completed, In progress, Not started (if not, explanation why)	Date Completed or Expected Date of Completion	Documentation
1. RPC should update its reporting policies to reflect current practice and improve clarity and consistency	<p>Review the full list (attached) of specific issues and observations OPEGA identified for each policy and make corrective updates to clarify language and definitions and expectations across related policies.</p> <p>Update policies to reflect current practice; in particular, policies surrounding allegations of client mistreatment including abuse, neglect or exploitation and should be revised immediately.</p>	<p>RPC is in the process of reviewing these policies to update language such that it reflects current practices in the hospital and is clear and consistent.</p> <p>(As per Mgt. Response Letter in Report dated 3-23-16)</p>	<p>RPC has reviewed and updated reporting policies to improve clarity and consistency and reflect current reporting practices. RPC policies are used to train/educate staff on proper procedures, communicate expectations and serve as an on-the-job reference document for staff. For example: where it was noted that sections of the ANE policy were not consistent with current practice, Policy PC 3.10.2 has been revised to reflect these changes, including clarification of responsible parties.</p> <p>Where it was noted that there was a lack of clarity and consistency regarding the definitions of sentinel events; RPC policy PI.2.30.1 has been updated to incorporate the revised DHHS Rules</p>	<p>Complete</p> <p>Training ongoing on an annual basis.</p>	<p>Attachment 1.A. includes:</p> <p>Revised Policies:            HR.37.0 – Workplace Violence            HR.38.0 – Work Related Injuries            LD.2.20 – Administrator on Call            LD.2.20.1 - NOD            PC.3.10.2 – Allegation of Patient Mistreatment and ANE            PC.3.10.4 – Incident Reporting            PC.5.50 – Psychiatric Emergencies            PC.12.10 – Seclusion and Restraint            PI.2.30.1 Sentinel Events            RI.2.120 Patient Concerns Suggestions Grievances</p> <p>Attachment 1.B.</p> <p>Sample Policy Sign Off Sheet</p>

			<p>Governing the Reporting of Sentinel Events.</p> <p>Where it was noted that DHHS Chapter 112 Rules for the Licensing of Hospitals requires APS to be notified within 24 hours of a suspected event of ANE, RPC's policy PC 3.10.2 has been updated to include the 24hour requirement.</p> <p>Where it was noted that the incident reporting process described in the sentinel event policy, was inconsistent between the sentinel event policy and the incident reporting policy RPC has updated Policies PI 2.30.1 and PC 12.10 to align the language regarding incident reporting.</p> <p>Education is ongoing and whenever policy revisions are made all RPC staff are required to review the changes and sign off.</p>		
2. RPC should review and revise, as necessary, certain sections of	Reevaluate the purpose and process of documenting notifications made and the purpose of	RPC has developed procedures and guidance that inform policies to include Incident Reporting. It has implemented	Riverview Psychiatric Center has reviewed and revised Policy PC.3.10.4 Incident Reporting where it	Training completed at orientation and	Attachment 2.A includes:

the incident report form and related policy	the supervisor signature lines on the Incident Report form, and revise policy and form as needed.	an employee training protocol regarding documentation and the hospital's Risk Manager now trains new employees specifically on completing forms.	was noted that the former policy was unclear for the purpose and process of documenting notifications made and the purpose of the supervisor signatures on the incident report. The Incident Reporting Form has been revised to outline the reason for the report being generated. The form now highlights areas such as: Potential Rights Violations, Allegation of Abuse, Neglect or Exploitation, Restraints or Seclusions, medical incidents, accidents etc. All Riverview staff are trained at new employee orientation on how to report and what is mandatory to report. All staff are then expected to complete an annual training and competency. Each incident report is peer reviewed to ensure all proper notifications have taken place and all agencies have been notified per policy. A supervisor will sign off that all notifications are done and that all sections of the IR are completed. Initially the paper form was revised to meet current	then annually thereafter.	Revised Policy PC.3.10.4 – Incident Reporting ( This policy will be reviewed and updated upon implementation of the new electronic format of reporting) 2018 Incident Report Form Old Incident Report Form  Attachment 2.B includes: Incident Report Training Packages  Attachment 2.C includes: Performance Improvement Team Report  Attachment 2.D Sample staff training log-in sheets  Morning Administrative Review Agenda
	Train staff on proper notification procedures and proper completion of the notification and supervisor signature lines sections of the Incident Report form.	(As per Mgt. Response Letter in Report dated 3-23-16)		Training on the new electronic process will begin the week of March 12 <sup>th</sup> , 2018 for supervisor with an expectation of a go live date of March 19 <sup>th</sup> , 2018.  Based on feedback from initial launch and post testing system will be in final implementation by June 30 <sup>th</sup> , 2018.	

			standards, implemented and audited. Upon audits and process review by Risk Management a need was identified for process improvement. A Performance Improvement Task Team (PITT) was formed and as a result of this PITT a new electronic form was created. This new process will ensure accurate completion of incident reports and submission.		
3. RPC should improve the use of documentation to monitor adherence to policy requirements for grievance and sentinel events	Incorporate documentation for proposed grievance resolutions into Grievance form and reinforce with appropriate staff the need to obtain patient signature and require notation if patient refuses or is unable to sign	RPC reviewed the process and decided to continue using a separate document for the proposed solution to grievances. This response form will be attached to the original grievance when the case is closed. The Grievance Form has been revised to allow patients more space to write their complaint. Staff who respond to grievances have participated in training on how to respond which includes having patients sign the form once the resolution has been presented. Staff will note when the patient refuses to sign the Grievance Form.	Riverview Psychiatric Center has reviewed and revised Policy RI.2.120 Patient Concern/ Grievances. The policy outlines specific criteria on assisting patients completing a grievance. RPC continues to use a separate document for the proposed solution to grievances as recommended by Patient Advocates. The form was revised to allow patients more space to write their complaint. The response form is now attached to the original grievance form. The policy explicitly outlines obtaining of the	Complete  Training ongoing on an annual basis.	Attachment 3.A. includes:  Revised Policy RI.2.120 Patient Concern/ Grievances.  Attachment 3.B includes:  Grievance and response forms  Attachment 3.C includes:  Sample Staff Training Log

		(From 6-22-16 memo from R Hamilton in response to OPEGA questions on planned actions.)	patient signature or notation if refused. The timeframes for appropriate response and submission of response is also outlined in Policy RI.2.120. All staff who are responsible for answering grievances have been trained on the process and procedures.		
	Establish means to document the notifications required by RPC policy for the reporting of sentinel events.	DHHS has taken, or is taking, action to update the Sentinel Event policy and Sentinel Event rules to ensure compliance; reviewing and refining the process for Sentinel Event notification.  (As per Mgt. Response Letter in Report dated 3-23-16)	Riverview Psychiatric Center has reviewed and revised Policy PI.2.30.1 Sentinel Events. It systematically outlines the required steps in reporting Sentinel Events. RPC is using the most recent Sentinel Event 2015 reporting form. The Incident Report form has been updated to include all current required notifications as outlined in policy. Hospital personnel, employed, privileged, and contracted will receive education on Sentinel Events and the SE reporting process during initial orientation. RPC is also charged with annually attesting that all sentinel events have been reported to the SET.		Attachment 3.D includes:  Revised PI.2.30.1 Sentinel Event Policy and Procedure  Sentinel Event Reporting Forms  2018 Incident Report Form  Old Incident Report Form   Attachment 3.E  Training Packet  Sample Training Log  Annual Attestation Form

<p>4. RPC should clarify responsibilities of staff who are mandatory reports of abuse, neglect or exploitation</p>	<p>Clarify which staff are mandatory reporters and reconcile hospital reporting requirements with individuals' professional mandatory reporting requirements</p>	<p>RPC upper management team met with APS Program Managers to clarify requirements for meeting statutory requirements regarding mandated reporters. At this meeting, RPC's reporting practices were reviewed and APS confirmed they are congruent with statutory expectations. For each event, APS expects one report from the hospital, not a report from each mandated reporter present. RPC's internal policy augments the statutory requirements by making all employees mandatory reporters. APS staff agreed and acknowledged that this same policy requirement is in place for many healthcare institutions in the State. APS suggested a change regarding internal documentation and RPC has included this suggestion in its reporting procedures.</p>	<p>As previously indicated, whereas Maine Statute lists seven categories of professionals required to immediately report to DHHS when the person knows of, or has reasonable cause to suspect, patient ANE, RPC policy PC 3.10.2 policy and procedure augments the statutory requirements and makes all employees mandatory reporters. This is consistent with the Consent Decree which states all staff shall be required to report instances of patient abuse, neglect and exploitation immediately and reports shall be made to the superintendent with a copy to the patient advocate. This current policy/procedure eliminates the potential for individual staff to be out of compliance with statute, which could lead to loss of their individual professional license as well as eliminating the potential that no report will be</p>	<p>Complete  Training ongoing on an annual basis.</p>	<p>Attachment 4.A. includes  Revised PC.3.10.2 ANE Policy and Procedure PC 3.10.2  Attachment 4.B.  Sample Training Logs</p>
	<p>Clarify reporting requirements in incidents where there are multiple witnesses to the event</p>	<p>APS staff provided training at the Medical Staff Meeting and to the Social Work staff at RPC. In these trainings APS reviewed mandatory reporting and reporting expectations from hospitals. RPC will be training all staff on the minor revisions made to its policy for reporting requirements and</p>			

		<p>documentation expectations. That hospital-wide training will be completed by July 31, 2016.</p> <p>(From 6-22-16 memo)</p>	<p>made if all witnesses believe another witness is reporting.</p> <p>RPC incorporated all clarifications into policy/procedure PC 3.10.2 and all staff were trained on these mandatory requirements and documentation expectations. This initial training was completed by July 31<sup>st</sup>, 2016 and continues in new employee orientation and at least annually thereafter. APS staff provided training at the Medical Staff Meeting and to the staff in the Social Work Department.</p>		
<p>5. RPC should develop and implement a method to track and monitor unacceptable staff behaviors</p>	<p>Develop and implement a method to monitor occurrence of behaviors that undermine a culture of safety and the degree to which they contribute to patient incidents</p>	<p>Tracking of unacceptable behaviors is done through the Log of Disciplinary Actions. RPC is not planning any additional tracking mechanisms now. Violations of this policy would be subject to disciplinary action and, therefore, should be on the log. Other employee behaviors that do not rise to level of policy violations are managed through the course of normal supervision. The steps</p>	<p>Close as Not Implemented: RPC not planning to take any action other than getting supervisors training on managing employee performance and discipline. RPC feels its current practices are sufficient in this regard.</p> <p>RPC Update: See PITT Attachment</p>		



		<p>of progressive discipline would apply if unacceptable behaviors continued. (From 6-22-16 memo)</p> <p>RPC has worked with the DAFS HR and unions to improve staff supervision and monitoring of behaviors. DAFS HR has implemented a training program for supervisors regarding management of employee performance and discipline. (Mgt. Response Letter in Report 3-23-16)</p> <p>RPC currently tracks the number and duration of specific events in the hospital which is reviewed by Executive Leadership on a weekly basis. Trends are evaluated and investigated as appropriate. Additionally, events involving patients are reviewed via the Incident Report system. Questions on employee involvement or possible inappropriate patient treatment are thoroughly investigated. Personnel actions are taken as necessary. (6-22-16 memo)</p>			
6. RPC should clarify expectations for formal administrative	Establish in policy the criteria to be used for determining when formal administrative follow-up should occur following an	RPC is in the process of developing procedures to this effect.	RPC policies and procedures are consistently monitored/ revised to explicitly offer comprehensive guidance to	Complete Training on the new electronic process will begin the week	Attachment 6.A. includes: Incident Reporting Form

follow-up on reported incidents	incident, what form it should take and how it should be documented	(As per Mgt. Response Letter in Report dated 3-23-16)	staff on identifying and reporting all incidents of ANE. RPC has established a process that ensures that appropriate administrative action is taken. In addition, outside regulatory agencies are notified of all reportable events and take action as they deem appropriate.  All future descriptions of follow-up processes (RCA, Fact Findings, Investigations, Sentinel Events) will include information on which analysis techniques were used.	of March 12 <sup>th</sup> , 2018 for supervisor with an expectation of a go live date of March 19 <sup>th</sup> , 2018.  Based on feedback from initial launch and post testing system will be in final implementation by June 30 <sup>th</sup> , 2018.	Revised PC.3.10.4. Incident Reporting Policy and Procedure  Revised PI.2.30.1. Sentinel Event Policy and Procedure  Revised PC.3.10.2. ANE Policy and Procedures  Attachment: PITT on RPC Incident Report Tracking and Reporting Strategies
	Descriptions of follow-up processes shared publicly should reflect the instances in which fact findings, investigations or root cause analyses will actually occur				
7. RPC should implement controls to ensure reporting of incidents and grievances is accurate and reliable	Further investigate and confirm the cause of Incident Reports with reportable events being excluded from MEDITECH.	RPC was satisfied with explanation of cause it had already determined at time of OPEGA's report and was not going to put further resources toward that given that a new EHRS was being implemented by October 2016. RPC expected new system would reduce any risk that Incident reports and Grievances are not getting captured in database for reporting purposes.  (As per 6-22-16 memo)	RPC worked with Maine OIT and Meditech to determine what technical problems caused reportable incidents to be dropped from the system. RPC updated metrics that were missing from the Meditech system and has established controls to ensure that all reportable incidents are included in the system.  An annual review of all data entered into Meditech is conducted to ensure the data are present and reportable.  RPC established a pre-numbering system for all Incident Reports to alleviate	In Process  The new Electronic Health Records System for the hospital has not been implemented at this time. However, RPC will be testing and implementing a new electronic Incident Reporting system in March 2018. Training for	Procedures for data entry and controls relevant to Incident Reports and Grievances are in development to align with the new systems.  Attachment: PITT on RPC Incident Report Tracking and Reporting Strategies
	Assess and quantify the impact of the issues on the relevant performance metrics based on the duration of this issue and which types of records were impacted, and report back to HHS Committee and GOC.				
	Consult with DHHS Internal Audit staff to design and implement additional controls.				

			<p>duplicates. All units/divisions in the hospital maintain a log with their assigned Incident Reports. The Risk Manager assigns Incident Reports and maintains a log of the reports distributed.</p> <p>Based on a recent review of our internal tracking it was discovered that the potential for gaps and flaws existed prompting a PITT of the current system.</p> <p>RPC is in the final stages of testing and deploying an electronic reporting system for all Incident Reports. The anticipated deployment date is March 19, 2018. Internal audits will be conducted on a monthly basis for quality and accuracy of the data submitted. The first month RPC will review 100% of entries and 10% in subsequent months. There will be an annual audit conducted of entries into the system.</p> <p>SAMHS has developed a new data entry system for grievances which will be incorporated into the State Electronic Information System. The hospitals will commence User Acceptance</p>	<p>staff will be developed and provided once user acceptance testing is complete and the system is ready for go-live.</p> <p>Key controls will include required fields, multi-level supervisor signatures, approved levels for permission for data entry, review and editing, data on a secure server, data audits on a scheduled basis, administrative review on a M-F basis for all Incident Reports entered into the system.</p> <p>Anticipated go live will be by December 2018.</p>	
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			<p>Testing in March or April 2018 with a go-live date established after user acceptance. In the interim, RPC has worked with SAMHS on programmatic upgrades to the current Grievance Data Base system.</p> <p>In order to assure more accountability in the grievance process the hospital has changed from a contracted vendor to the Assistant Director of Nursing. In addition, the new electronic system will ensure a higher level of data security, available reports to RPC, and an ability to audit reports.</p>		
8. RPC should ensure that reported metrics for factors of causation and allegations of ANE are accurate and meaningful	Revise the criteria for the ANE metric presented in the quarterly reports to ensure that both alleged and witnessed events are included. Incorporate these revised criteria into a formal, written procedure. Amend report metrics to reflect the revised criteria.	RPC is still reviewing OPEGA's recommendations regarding addressing the criteria and reporting for the Abuse and Neglect metric in the Quarterly Reports. RPC has reported the data in alignment with its long standing practice. Once the review is complete and a decision is made, that information will be incorporated into the RPC data dictionaries for data collection and reporting. RPC expects to complete the review by August 1, 2016 which is when the next quarterly report is due to be released.	RPC revised the criteria for ANE reporting so that all alleged and witnessed events are included in the Quarterly Report. Abuse, Neglect and Exploitation definitions are found in the hospital's ANE Policy and Procedure. In addition, all staff are trained in ANE at new employee orientation and during their annual training.	Complete	<ul style="list-style-type: none"> <li>Attachment 8.A. includes:  Revised PC.3.10.2. ANE Policy and Procedure.</li> <li>Patient Abuse, Neglect, Exploitation Data from Quarterly Report</li> <li>Attachment 8.B. includes: 2018 Incident Report Form</li> </ul>

		(As per 6-22-16 memo)			
	Align the reported “factors of causation” categories with specific criteria for utilizing seclusion and restraint from the Consent Decree Settlement Agreement and revise Incident Report forms accordingly.	RPC is reviewing the Consent Decree requirements and hospital reports on Causation Factors. The determination of the causation factors for many events do not neatly fit into the discrete categories as outlined in the Consent Decree. A thorough review of data definitions, determination of causative factors, and past coding practices are being reviewed to inform RPC staff and the Court Master. The review and any possible recommendations on the data collection and reporting will be discussed with the Court Master at a regularly scheduled monthly meeting.  (As per 6-22-16 memo)	Conversations with the Court Master about alignment of “factors of causation” led to the conclusion that this information is not needed for the hospital to report. The Court Master has confirmed that in an attached written document.	Complete	Attachment 8.C. includes:  Letter from Court Master Wathen regarding causation factors.
9. RPC should proactively monitor overtime for individual direct care staff	Track shifts and hours being worked by individual direct care staff to proactively identify those regularly working excessive	DHHS has engaged a consultant to review RPC’s staffing model and recommend possible updates. Those updates are expected to include	RPC tracks shifts and hours being worked by individual direct care staff on a daily basis in order to proactively	Complete  New leadership arrived at the hospital in April	Attachment 9.A. includes:  Overtime Usage

	<p>hours in a week and/or contiguous or multiple shifts.</p>	<p>recommended measures to monitor and reduce OT for Direct Care staff.</p> <p>(As per Mgt. Response Letter in Report dated 3-23-16)</p>	<p>manage overtime and employees working overtime shifts for each department in the facility. This information is reported out at the hospital Executive Leadership Committee on a weekly basis. This allows RPC management to better assess the level of safety risk associated with overtime across the hospital. It also allows for proactive intervention to reduce overtime hours for particular employees at risk.</p> <p>With the development of a new scheduling process, adjusted/flattened staff scheduling, filled vacancies, addressed Worker's Comp, and addressed absenteeism, the hospital has significantly reduced the number of overtime shifts and mandates to below the national average.</p> <p>A Weekly meeting is held with the Superintendent, Human Resources Manager, Assistant Nursing Director and Recruitment</p>	<p>2016 there was a review of all contracts. It was determined that the expertise brought forward with the new leadership was sufficient that the consultant was not needed and the contract was cancelled.</p>	<p>Mandate Usage Staffing Coverage</p>
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			Specialist to review all staffing issues, vacancies, and recruitment efforts.		
10. The Legislature and Court Master should monitor RPC progress in improving the work environment	HHS Committee, GOC, and Court Master should continue to monitor RPC's progress in improving overall work environment.	Although this recommendation directed to Legislature and Court Master, would appreciate if you could let us know of any occasions on which DHHS has been asked to brief or report to the HHS Committee or the Court Master on progress in improving the overall work environment.			

**OPEGA Request for Subpoenas to Obtain Records  
Needed For Rapid Response Review of Child Protection System  
Relevant to Marissa Kennedy and Kendall Chick**

**Bangor School Department**

All records pertinent to potential child abuse/neglect of Marissa Kennedy or other children in the same household including, but not limited to:

- Enrollment and attendance, including reasons for absences from school;
- Observations made by school personnel of indications of potential abuse/neglect or of risk factors for child abuse/neglect;
- Communications and interactions with the child(ren) or parents/guardians related to potential child abuse/neglect or risk factors for such; and
- Reports or other communications relevant to potential child abuse/neglect between school personnel and the Department of Health and Human Services, law enforcement agencies, social service agencies, medical professionals and any other public/government entity.

**RSU 20 – Searsport Elementary School**

A. All records pertinent to potential child abuse/neglect of Marissa Kennedy or other children in the same household including, but not limited to:

- Enrollment and attendance, including reasons for absences from school;
- Observations made by school personnel of indications of potential abuse/neglect or of risk factors for child abuse/neglect;
- Communications and interactions with the child(ren) or parents/guardians related to potential child abuse/neglect or risk factors for such;
- Reports or other communications relevant to potential child abuse/neglect between school personnel and the Department of Health and Human Services, law enforcement agencies, social service agencies, medical professionals and any other public/government entity; and
- Any other records not already captured above that have been, or will be, provided to any other government agency or media representative investigating the circumstances surrounding Marissa Kennedy.

B. The sets of records known as the Student Cumulative Records for Marissa Kennedy and any other children residing the in same household. (I understood from you that these would have been transferred from Bangor School Department upon the request of Searsport Elementary.)



## Department of Education

All records pertinent to potential child abuse/neglect of Marissa Kennedy or other children in the same household including, but not limited to:

- Enrollment and attendance, including reasons for absences from school and records associated with transfers of children into Maine schools or between Maine schools;
- Observations made by school personnel in RSU 20 and Bangor School Department of indications of potential abuse/neglect or of risk factors for child abuse/neglect;
- Communications and interactions with the child(ren) or parents/guardians related to potential child abuse/neglect or risk factors for such; and
- Reports or other communications relevant to potential child abuse/neglect between school personnel and the Department of Education, the Department of Health and Human Services, law enforcement agencies, social service agencies, medical professionals and any other public/government entity.

## Child Development Services

### Marissa Kennedy

- A. All records, whether electronic or paper, pertinent to enrollment and participation of Marissa Kennedy, or other children in the same household, in the Child Development Services program including, but not limited to:
- Individual Education Plans or Individual Family Service Plans for each child;
  - Service logs for each child that detail types of service provided by CDS or its contracted providers, dates each of those services were provided, and for each date:
    - location service was provided,
    - name of individual providing the service and indication of whether individual was a CDS employee or contracted provider; and
    - all case notes, reports or other documentation.
  - Correspondence or other documentation related to cancellations and rescheduling of service appointments including reasons why cancellation or rescheduling was necessary;
  - Case manager notes;
  - Observations made by CDS personnel or CDS contracted providers of indications of potential abuse/neglect or of risk factors for child abuse/neglect;
  - Communications and interactions with the child(ren) or parents/guardians related to potential child abuse/neglect or risk factors for such; and
  - Reports or other communications relevant to potential child abuse/neglect between CDS, and public school personnel, the Department of Health and Human Services, law enforcement agencies, social service agencies, medical professionals and any other public/government entity.
- B. CDS contract(s) with any service provider that provided CDS services to Marissa Kennedy, or other persons in the Maine household(s) she resided in, from the date of her birth to date of her death.

Kendall Chick

- C. All records, whether electronic or paper, pertinent to enrollment and participation of Kendall Chick, or other children in the same household, in the Child Development Services program including, but not limited to:
- Individual Education Plans or Individual Family Service Plans for each child;
  - Service logs for each child that detail types of service provided by CDS or its contracted providers, dates each of those services were provided, and for each date:
    - location service was provided,
    - name of individual providing the service and indication of whether individual was a CDS employee or contracted provider; and
    - all case notes, reports or other documentation.
  - Correspondence or other documentation related to cancellations and rescheduling of service appointments including reasons why cancellation or rescheduling was necessary;
  - Case manager notes;
  - Observations made by CDS personnel or CDS contracted providers of indications of potential abuse/neglect or of risk factors for child abuse/neglect;
  - Communications and interactions with the child(ren) or parents/guardians related to potential child abuse/neglect or risk factors for such; and
  - Reports or other communications relevant to potential child abuse/neglect between CDS, and public school personnel, the Department of Health and Human Services, law enforcement agencies, social service agencies, medical professionals and any other public/government entity.
- D. CDS contract(s) with any service provider that provided CDS services to Kendall Chick, or other persons in the Maine household(s) she resided in, from the date of her birth to date of her death.