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REP. CHUCK KRUGER, HOUSE CHAIR

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REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**February 13, 2015**  
**Approved March 13, 2015**

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:03 a.m. in the Cross Office Building.

Senators: Sen. Katz, Sen. Burns, Sen. Davis, and Sen. Diamond  
Joining the meeting in progress: Sen. Gerzofsky and Sen. Johnson

Representatives: Rep. Kruger, Rep. McClellan, Rep. Campbell, Rep. Duchesne,  
Rep. Mastraccio and Rep. Sanderson

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Wendy Cherubini, Senior Analyst, OPEGA  
Matthew Kruk, Senior Analyst, OPEGA  
Scott Farwell, Analyst, OPEGA  
Lucia Nixon, Analyst, OPEGA  
Etta Connors, Adm. Secretary, OPEGA

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

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

**SUMMARY OF THE JANUARY 23, 2015 GOC MEETING**

The Summary of the January 23, 2015 Government Oversight Committee meeting was accepted as written.

• **Information Brief on Follow-up Review of Health Care in the State Correctional System**

Chair Katz said the GOC has dealt with the Health Care in the State Correctional System issue on several occasions. OPEGA presented the Information Brief at the January 23, 2015 GOC meeting and because there was considerable public interest in the topic, the GOC wanted an additional opportunity for public comment on the follow-up work OPEGA had done.

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- **Public Comment Period**

Joseph Jackson, Coordinator, Maine Prison Advocacy Coalition (MPAC) said a concern for MPAC were the decisions being made by CCS and the Department of Corrections (DOC) with regard to what was medically necessary care. The report found that CCS delivered appropriate medical care to all prisoners in OPEGA's sample so MPAC then questions what care is defined as not medically necessary. He said he had been in prison and one of his biggest struggles inside DOC was medical care. Mr. Jackson had been taken outside the prison for medical care and the specialist gave a recommendation for his treatment. When he was returned to the prison the treatment was followed for a little while and then changed. DOC informed him that the treatment he was going to receive was exactly the same thing, but the treatment DOC started him on had different compounds with different side effects, etc. and he had not been informed of the change until after DOC had already changed it. Mr. Jackson also said he was not seen by DOC medical staff prior to his treatment being changed.

Mr. Jackson noted that the report also said that ability to function within a penal institution was the criteria for determining what treatments were medically necessary and did not know what ability to function meant. He said there are paraplegic prisoners who are deemed to be able to function within the prison.

Mr. Jackson explained to the GOC that many prisoners have well below high school educations. When they are not seen by the person they were expecting to see, they say they have not been seen. When they are examined by a nurse and the treatment is not for the condition they were complaining about they write to him saying they have not been seen. When Mr. Jackson receives such a complaint he has to review it as whether the prisoner got his issues addressed, even if they have been seen by someone.

Mr. Jackson said overall he thinks there has been improvement with the medical care provided by CCS versus the previous vendor. He likes the computerized medication system. While he was in prison he heard complaints many times that the medical provider did not have the prisoner's medication. He said CCS provides the numbers for when prisoners did not receive medications to MPAC. In reviewing those numbers, such as less than 1% of delivery, you have to look at the amount of medication CCS is delivering and the number of people they are delivering to and that number becomes statistically higher than the 1% it indicates. It affects about 20% of the population.

Mr. Jackson said he is interested in improving the issues he referred to and thanked the Committee for the opportunity to speak to them about his concerns. (Mr. Jackson did not provide a written copy of his testimony.)

Sen. Burns asked Mr. Jackson how long he had been under the medical care of CCS. Mr. Jackson said he was under CCS's care for a little over a half a year before he was released from prison. Sen. Burns asked if the medication Mr. Jackson referred to receiving was the generic brand for the same medication prescribed by the specialist. Mr. Jackson said he guessed it was the generic medication. He referred to the previous Commissioner of DOC, Commissioner Ponte, who was trying to reduce medications in the Correctional facilities and said when they changed the medication prescribed by the specialist, he went from one medication to four.

Sen. Burns asked what Mr. Jackson's recourse was when he did not receive the follow-up care for his surgery. Mr. Jackson said he could actively get involved in his treatment and worked with Dr. Clinton to

address his needs, he filed grievances on some medical issues because he did not feel the policies in place were being followed. The policies refer to the continuity of care and Mr. Jackson had concerns with being treated by two different contractors. He said he has been vocal in advocating for himself and was able to address his needs. His situation was different than some of the other inmates because he can advocate for himself and has outside support when he cannot get very far on his own, but many prisoners do not and are afraid of recourse if they do complain. Mr. Jackson said when MPAC addresses the issues they have to look at all the dynamics.

Sen. Burns asked if Mr. Jackson has seen any improvements in DOC's medical care. Mr. Jackson said there is improvement and the medical providers prior to CCS were much worse, but the problem is there are still issues and he hopes to keep moving forward to address the outstanding ones.

Rep. McClellan asked Mr. Jackson what he thought of OPEGA's Information Brief. Mr. Jackson said he was disappointed because since he has been a Coordinator for MPAC he has had two prisoners write him saying they were missing their medication and subsequently died. They died of cancer which was found to be of natural causes. He said that is an example of something that is very concerning to him and in reading OPEGA's report he was hoping there would be more detail. Mr. Jackson gave examples of prisoners now not receiving cold medication or Tums or Rolaid for those with stomach problems. Prisoners have to buy that type of medication themselves and not every prisoner inside DOC gets paid or have family to rely on to purchase those items.

Sen. Diamond said whether in prison or not, there are people who try to manipulate the situation they may be in and asked Mr. Jackson if part of the problem, as he sees it, is because people may be seen as manipulating the system. Mr. Jackson assumed there is always that suspicion and when talking about prisoners, you are talking about a population that has a high drug addiction rate and the favorite drug is prescription pills. However, you are talking about diagnoses that are confirmed with medical testing. He has heard of prisoners breaking their own arm in order to get prescription pills, but that is not the norm of what happens. Mr. Jackson thinks the perception is that CCS is a profit motivated company and therefore some prisoners think there is a bigger profit in not treating them than there is to treat them.

Rep. Duchesne said in order to do the investigation certain metrics had to be used and asked Mr. Jackson if he thought the investigation used the wrong metrics, and if so, how could the review have been conducted from an accounting point of view. Mr. Jackson said one of the concerns MPAC has is they reviewed just the medical records because some medical information is not getting in the records. MPAC receives a lot of complaints from prisoners who request and get their records and some of their medical treatments are not in their files. MPAC was hoping to see more interviewing of the prisoners whose medical records OPEGA was reviewing.

The GOC thanked Mr. Jackson for the information he provided.

Neil Robertson, Assistant Coordinator for MPAC, said he was surprised to see in OPEGA's review that all the complaints were dismissed. Statistically he said that is an odd thing. He does not mean to say that the data was fudged, or anything like that, but was surprised that those reviewing the records had no medical expertise, did not access or utilize any outside medical expertise to help evaluate the complaints. He said MPAC hears a lot about the difference in care that can exist in different places. He gave the example of the policy for a prisoner who had bilateral cataracts that was beginning to have obscure vision and that cataract surgery is only done for one eye. As he understands the reasoning it is that you only need one eye to function in a prison setting and that one eye is just as good as two. Mr. Robertson said that is not the case. Neuro-Optometric Rehabilitation Association (NORA) in a publication details the problems with acquired macular vision and it is not so simple to say one eye is just as good as two. Mr. Robertson said among other problems, cataracts not being treated in both eyes can create havoc with a person's balance. He said access to outside care could be years away for prisoners who are released and have had only one cataract

removed. There is also the risk of losing sight in the one good eye. Mr. Robertson said CCS was not an exception to that process and asked what the medical reason would be to not operate on both cataracts. Rep. Mastraccio said her husband was an optometrist for over 35 years and he in fact had cataract surgery in one eye in 2013 and is still waiting to have cataract surgery on his other eye. She said it is very common for people to have one eye done and the other done much later. She said if you talk with many optometrists they will tell you that one of the reasons they don't do both eyes at the same time is because if something goes wrong then at least you would have one good eye left. Mr. Robertson said he understood that and it is generally accepted practice to do one eye at a time, but in a prisoner's case they are not talking about waiting to do the other, but rather, that the other eye never being done.

Chair Katz asked if Mr. Robertson had any indication that eye surgery was a problem in the prison. Mr. Robertson said he believes it has been a problem in the past and had used cataracts as an example because it is an example of what does occur with the other cataract never being done. He could not say that there was a particular prisoner at the time, but believes there has been in the past.

Rep. Mastraccio asked if Mr. Robertson was saying that when they do the cataract surgery they do not correct the other eye with glasses. Mr. Robertson said no. He asked it as a question because he had read material indicating that is one accepted standard of care in the prison systems. It is not just Maine DOC doing one cataract and then never doing the other one and allowing monocular vision to ensue. It seems this also occurs in other prison systems. He was not saying that is always being done here, but believes it has occurred. Rep. Mastraccio said Medicare also has very stringent parameters for when they will even allow cataract surgery in either eye.

Rep. McClellan noted that the scope of work for OPEGA's review was limited and asked Mr. Robertson what the process was for prisoners who don't like the answers or treatment they received regarding medical care. Mr. Robertson said he thinks Dr. Clinton, Dr. Newby or Mr. Jackson could answer that question better than him. He said there is certainly a standard procedure that needs to be followed.

Sen. Johnson asked for Mr. Robertson's written testimony. He said his testimony contained a lot of other information that he did not want to raise so would like the opportunity to edit his testimony and will email it to OPEGA. (A copy of Mr. Robertson's testimony will be attached to the Meeting Summary when received).

The members of the Committee thanked Mr. Robertson for his testimony.

Mr. Jackson said there is a process for when a prisoner is not satisfied with the medical treatment received. DOC has several procedures for a prisoner to file a grievance. They can go to the Health Services Administrator to file a complaint and if the prisoner is not satisfied with the response of the Administrator, can go to the Warden of the facility and then on up to the Commissioner. Mr. Jackson said the grievance procedure is currently under review with DOC looking at some of the issues regarding the procedure that MPAC had.

Chair Katz closed the public comment period at 9:35 a.m.

#### **- Committee Work Session**

Director Ashcroft said there are several things that typically get covered in the Committee's work session on an OPEGA report. The Committee can ask any additional questions they may have of OPEGA staff regarding the review or for anything they have heard. The Committee may request additional information they want in deciding whether to take any particular action with regard to the report. The Statute allows that the Committee may vote to endorse, endorse in part, or not endorse a report that OPEGA has presented.

Rep. Sanderson said earlier it was stated that OPEGA did not utilize professional medical staff during the review and asked Director Ashcroft if she could give an oversight of how the patient records were reviewed to come to the determinations in the Brief. Director Ashcroft said OPEGA's task in the review was to try and determine the root causes for the complaints that were continuing to come to MPAC and other advocacy groups. It was not to second guess the medical treatment that had been provided to any particular prisoner. The way OPEGA approached the review was to have MPAC provide names and specific complaints for 25 prisoners they had the most concerns about. OPEGA then selected a sample of 13 prisoners who appeared to represent a cross section of the types of complaints that showed up in the 25 at large. OPEGA broke each of them out individually and there were 48 specific complaints that OPEGA reviewed the medical records for to confirm what the complaint was about and what could be seen occurring as a result of it. When OPEGA reviewed the medical records, they were looking for the cause of the complaint, did the complaint appear to be valid, and if so, did they see anything else that was an extenuating circumstance related to the reasons the situation was occurring. At no time was OPEGA ever seeking to try to assess the care. As OPEGA reported, and as heard from Mr. Jackson and others, there was a lot of concern around what constitutes a medically necessary procedure or prescription and there were a number of things that were called comfort items that DOC took the stance would be provided through the commissary rather than provided through the medical. What OPEGA can say from what was seen in the records, is that there was evidence of CCS regularly assessing things like a prisoner's ability to perform their own activities of daily living as a bench mark for ability to function in prison. She said the two OPEGA Analysts on this review became very educated through internet research, and other means, on the terminology in the medical records to try to assess whether the response to a complaint could be considered an appropriate response. Although OPEGA did not have an actual medical provider on this review, they did go to great lengths to ascertain if what they were seeing in the records seemed an appropriate course of action for the complaint as it had been determined.

Sen. Johnson said there was mention of the grievance procedure and asked if Director Ashcroft could say what the correlation is between the complaints OPEGA investigated and what sort of complaints might have been raised through the grievance procedure. He did not recall whether in the original Report there was an analysis of grievances that had been filed and whether there was any merit to the grievance about whether this was appropriate, or not appropriate, care for what they are experiencing. Director Ashcroft said because of the approach that OPEGA took for the review, they did not analyze grievances, but she believed that some of the cases and complaints that OPEGA did look at in their sample there had been a grievance filed so they did see a couple of cases where that process had occurred. She said there is also an informal process the prisoner can use to get his concern about his health care reviewed. OPEGA saw some cases that, through that process, there had been a change in what CCS thought ought to be the treatment. OPEGA did see some instances where CCS changed their minds about the ability to function and then provided the procedure, but she could not speak to grievances overall.

Sen. Burns said he has been listening for several years to complaints about the medical treatment in DOC and he thinks they have come a long ways in the culture, treatment and oversight they have of inmates. He said he was satisfied with what he has heard and was ready to make a motion.

- **Committee Vote**

**Motion:** That the Government Oversight Committee endorses OPEGA's Information Brief on Follow-up Review of Health Care in the State Correctional System. (Motion by Sen. Burns, second by Sen. Gerzofsky, passed unanimous vote 12-0)

## **NEW BUSINESS**

### **• Project Direction Statement on DHHS Workplace Culture and Environment**

Director Ashcroft said this Review is currently sitting in Suspended status on OPEGA's Work Plan. The past GOC suspended it last year in order for OPEGA to give priority to the current review of the Riverview Psychiatric Center. At the time the review was suspended, OPEGA was at the end of their preliminary research phase. The next step in the review would be to present the GOC with a recommendation for direction on the project of whether to continue the review or not, and if so, what would be the recommended questions that would be of value to answer.

Director Ashcroft said OPEGA was ready to bring that project direction recommendation to the GOC. She introduced Ms. Cherubini, the lead analyst on the review.

Ms. Cherubini summarized OPEGA's Recommendation for Project Direction of DHHS Workplace Culture and Environment. She said OPEGA is recommending not proceeding with a more detailed review of DHHS Workplace Culture and Environment and producing an Information Brief summarizing the results of their preliminary research and suggested opportunities for improvement. (A copy of the Recommendation for Project Direction is attached to the Meeting Summary.)

Rep. Campbell asked if Ms. Cherubini would share with the Committee an example of negative or adverse culture. Ms. Cherubini said it might be that some people felt like they were targeted professionally if they were raising concerns with management, or they were dissatisfied with the way they were treated by management.

Sen. Johnson referred to OPEGA's statement that while DHHS did have, among executive branch agencies, a higher than average rate of grievance and terminations indicating potential dissatisfaction, the Department was in a group of several agencies with relatively higher rates and did not stand out as an extreme case. He asked why that was not a reason for having concern with those other agencies as well, rather than saying it is the norm and is okay. What that indicates to him is that there is a more pervasive cultural problem in State Government. Ms. Cherubini said when OPEGA was looking at the grievance and termination data DHHS is one of a few agencies that has higher rates. It could be related to the nature of the work, or the organizational culture. She said another department with higher rates is Correctional facility staff. DHHS has 3,500 employees with many dealing with the frontline difficult work that is not necessarily similar to somebody in a more administrative type position. She agreed that could be a concern, or an indication of broader issues, but the other thing OPEGA looked at was DHHS' own employee climate survey data which indicates high levels of job satisfaction. When looking at grievances and terminations you are looking at a small group of issues and when you are looking at the survey of the entire department with a high response rate that, compared to other similar surveys the literature shows a high level of satisfaction, it is less of a concern. Ms. Cherubini said that it may still be concerning and there may be people with issues, but it seemed to be less of a concern.

Director Ashcroft said OPEGA was not intending to imply that high rates of dissatisfaction-related grievances and terminations in the other departments would not be seen as an issue. OPEGA was focused on the fact that DHHS was not standing out above and beyond all other agencies in State government. She also wanted to make sure the GOC understood that the grievance and termination data is something OPEGA analyzes at a very high level to get at trends. There are concerns about the reliability of some of that data so in this case OPEGA was using it more of a global indicator. As Ms. Cherubini indicated there are a lot of different factors that could be driving those rates that would have to be explored before OPEGA would be willing to say it is a problem. OPEGA was trying to get a sense of where DHHS fell with regard to others.

Sen. Johnson said there are always questions with the responses from employee climate surveys. Are those answering the survey wondering how it may come back to them, how is the survey conducted, and how the

questions were asked. He said all of that comes to mind as to whether the survey data is a trustworthy indication of satisfaction with the sorts of issues that people were raising. Ms. Cherubini said OPEGA looked at the reports DHHS generated that summarized the survey responses and also looked at the raw data. The surveys were anonymous, and had places for write in comments. They were de-identified by the Office of Continuous Quality Improvement. OPEGA looked at response rates by office and also compared some of the survey questions asked with other surveys in the literature to whether DHHS' were consistent with others around some of those issues. OPEGA did an analysis and has data that can be present to the GOC in an Information Brief.

Rep. Duchesne said any time you have a change of boss, management or ownership in private industry there are baseline levels of people who do not like the change because change is uncomfortable. He asked how OPEGA would develop a metric to indicate that something has gone past that. Is there a lot of punitive action against particular employees, is there an indication of suppression of the ability of employees to voice concerns and do they have any metrics of how they would measure that within the culture. Ms. Cherubini said OPEGA compared it to other employee climate surveys in the public sector, how the rate of dissatisfaction compared and DHHS' results compared favorably with some of the other surveys particularly some that showed some serious problems. OPEGA did try to look at that and did not see that the rates of dissatisfaction were off the charts with regard to DHHS as a whole. However, OPEGA did see higher rates in some DHHS offices and some of those offices were the offices from which they had heard complaints and knew there were issues. Ms. Cherubini noted that common recommendations for making improvements in an organization's culture, as seen in OPEGA's review of relevant literature would be around the areas of improving communication, supervisory training, personnel policies, improving avenues for employee input, general oversight of management, and holding management accountable in different ways. Those kinds of things are what get recommended and OPEGA has information about what DHHS is doing in those areas.

Sen. Burns asked what OPEGA would compare this with. Is there national data that could be used to compare it with to see what a norm is versus what is high, or comparing DHHS versus another agency within the State. Ms. Cherubini said OPEGA did not have national data, but did find other studies that were done in larger organizations, and gave the example of the Securities and Exchange Commission. The Government Accountability Office did a similar survey of the Securities and Exchange Commission which has offices around the country and about 2,700 employees. OPEGA also looked at the results of a study that was done in Oregon and at some research around surveys done at the University of Wisconsin and Madison. Sen. Burns asked if they were public employees. Ms. Cherubini said they were.

Sen. Burns asked if any of the State Agencies take it upon themselves to do a self-survey to see what the satisfaction level is. Ms. Cherubini said DHHS' employee client survey was done through Survey Monkey and it was at the initiative of the Commissioner. They administered the survey Department wide in 2013 and 2014 specifically because of some morale issues and other issues they were trying to get a better understanding of.

Sen. Diamond noted the complaints OPEGA had received came from three offices or units in DHHS, one was the Child Care Licensing Unit. He said that over the years, regardless of the Administration, the Child Protection segment of DHHS has always been a major concern, both within the Department and the public. He asked if OPEGA saw anything under any part of the Child Protection area that raised concerns. Ms. Cherubini said there were no indications of that in the data OPEGA looked at, although she knows that has been an area of high concern. That is a very large Office within the Department, and said that the two largest Offices have recently hired recruitment and retention specialists to deal with some of the employee issues.

Sen. Diamond said the complaints he has heard over the past ten or so years have not been so much from the employees of how they were treated, but the type of protection, for whatever reason, the children were receiving or not receiving. He said he was very concerned about that part of the Department. Ms. Cherubini said that would have been outside the scope of looking at the organizational culture. She said OPEGA has

heard complaints about that in the past and that would be something the GOC might want to consider for a future review by OPEGA.

Director Ashcroft said OPEGA has completed its preliminary research and is recommending not going further with more detailed work. OPEGA thinks the work done to date provides a perspective on where it looks like there are issues, or not, in DHHS. She also does not believe that doing additional work would substantially change the ultimate recommendations that one might make to improve the culture and OPEGA could see that DHHS was already taking some of those actions. OPEGA would like an opportunity to present all that information to the GOC in detail in an Information Brief that the Committee could review. If the GOC decided they had additional work they would like OPEGA to do after reviewing the Information Brief they could assign it at that juncture.

Rep. Sanderson thought an Information Brief was a good idea and then the GOC can decide from there. She asked if OPEGA could include in the Information Brief a synopsis, or breakdown, of the results of the DHHS survey. She thought it would be interesting to see what questions were asked and what the results were. Director Ashcroft said OPEGA would include that information in the brief.

Chair Kruger asked if some of the workplace culture issues would be looked at as part of OPEGA's other project on the Riverview and DHHS Licensing and Regulation of Child Care Providers. Ms. Cherubini said the DHHS Licensing review is in suspended status right now to give the Department a year to implement their strategic plan so OPEGA would be starting the Licensing review in the Summer of 2015. OPEGA is looking at reporting avenues in the Riverview project and it is possible that some of the employee climate issues would be encompassed in that as there is a lot of changes going on at Riverview with the administration and employees. Director Ashcroft noted that OPEGA may touch on some of the culture issues, but is not the primary focus of the review.

Rep. Sanderson asked if the brief would also include any information on what steps the Department is taking to correct the culture problem. Director Ashcroft said it would.

Rep. Campbell asked if there was a concern with the culture throughout State government or was DHHS the only one that was brought to the Committee's attention. Director Ashcroft said it was the only brought to their attention at this point. In the past they have had similar concerns at the Maine State Prison so OPEGA has done culture work before in various departments.

**Motion:** That the Government Oversight Committee accepts OPEGA's Recommendations for Project Direction on DHHS Workplace Culture and Environment for an Information Brief including the survey questions and the analyses thereof. (Motion by Rep. Sanderson, second by Sen. Diamond, passed unanimous vote, 12-0)

• **Update on Status of Actions at DHHS Division of Licensing and Regulatory Services Regarding Child Care Facilities**

Director Ashcroft said OPEGA had begun a review of DHHS' Division of Licensing and Regulatory Services Regarding Child Care Facilities, finished preliminary research and recommended delaying the review for a year because there had been significant action on the part of DHHS to take many different actions that would directly affect what OPEGA had intended to look at in more detail. As part of that decision the GOC asked that, rather than just hold off for a year, OPEGA ask the Division of Licensing and Investigation Services to provide periodic updates on the status of their action plan. She said the most recent update is in the Committee members' notebooks. (DLRS' Strategic Map SFY 2014-15 is attached to the Meeting Summary.)

Rep. Sanderson referred to the statement in the document that a Project Specialist send open & close letters to parents of children in child care under OOH investigation and asked if OPEGA could explain the

parameters around that. Director Ashcroft said OPEGA has not asked the Department any questions about their actions yet so she is not be in a position to answer that. She said that was a question they could send out to the Department for a response. Rep. Sanderson would like to have an answer as there may be pending legislation regarding notification in the event of an investigation and when notification is triggered. Director Ashcroft asked Rep. Sanderson for clarification on the information she wanted. Rep. Sanderson said she is interested in when are they doing the parental notification, and what criteria are used for notification.

Rep. Mastraccio said she had questions from constituents about the licensing and said she had noticed that you can access more information publicly now and the Department has done a lot of work trying to improve that. She asked how quickly are they able to put that information on the website, and at what point after a complaint is received. Is it only issues that are actually related to their licensing that are on line, or if someone were looking into a daycare center would they know a complaint had been filed even if there was no actual action against the facility yet. Rep. Mastraccio said she would prefer not to have to wait until summer to know that because of the number of people asking her questions about what is going on. She refers them to DHHS' website to show them the Department is doing a lot more in that regard, but she wondered what the lag time might be between when a complaint comes in and the action of notifying a parent of what happened. Director Ashcroft said that question will be included in OPEGA's inquiry to the Department.

Chair Kruger said that Senator Margaret Craven, a former member of the GOC was in the audience and he welcomed her.

• **Status and Discussion of Quasi-Independent Agencies' Annual Reports to Legislature**

Director Ashcroft explained that coming out of OPEGA's review of the Maine Turnpike Authority, and the subsequent investigation by the GOC, the Committee determined to initiate extensive legislation regarding Quasi-independent State Agencies that set out expectations for those entities to have in place financial policies and procedures, travel policy and procedures, procedures that establish competitive procurement as the primary means of obtaining goods and services, and a number of other things. The legislation passed and became statute.

Director Ashcroft directed the GOC's attention to a portion of that statute, Title 5 § 12023. Reports to the Legislature. She said this section requires that a number of specified quasi-independent agencies submit annual reports to the Legislature. (A copy of the Quasi-independent State Agencies and Report information is attached to the Meeting Summary.) The agencies are to provide a list of all the procurements exceeding \$10,000 they had in the preceding year which were not done through competitive procurement – i.e. competitive procurement in favor of a sole source contract under the policies they have adopted. Agencies also are to provide a list of all persons, including organizations, to which they have made contributions greater than \$1,000 in the preceding year and to provide any changes that have been approved by their governing boards to the policies that were required to be implemented by statute.

Director Ashcroft said the Quasi-independent agency reports are submitted to the Executive Director of the Legislative Council who is forwarding them on to the appropriate Joint Standing Committee of jurisdiction for the varies entities. She also asked to receive a copy of those reports so OPEGA could do a follow-up as to how the process was going. When initiating the legislation the GOC had intended to establish some means of accountability for the agencies to the Legislature, but did not want to set up a situation where it was just another report that nobody was doing anything with it.

Director Ashcroft said she did not believe there has been the kind of review of the submitted Annual Reports at the Joint Standing Committee level that the GOC intended. She said the reports are put on the House and Senate Calendars so there is an opportunity for all legislators to see them. She has been accumulating them, but it was never the intent that OPEGA was going to play any role in being the entity that reviewed the reports every year to see if there was anything of concern that ought to be followed-up on. She brought it to

the GOC's attention because she does think the reports are getting done, but, as far as she knows, there is nobody who is taking it on as a task to review them and make sure there is not anything in them that they would want to question the agencies about.

Director Ashcroft is bringing this to the GOC's attention in case there are adjustments to the process the GOC would like to initiate. One option is to leave the situation as it is. Another option is for OPEGA to try to do an educational process with the joint standing committees of jurisdiction, but she does not think it is a lack of interest by the committees that is the problem, but is a lack of time to focus on a report when they have so many bills before them. She said the GOC and/or OPEGA could be the entity that was going to periodically every couple of years, take a look through the reports to see if it raised any issues. Director Ashcroft said her hesitation about that is it is an effort to do that and would mean committing OPEGA resources on a regular basis.

Rep. Duchesne asked if there could be a requirement instituted that there be a sign off by the committee of jurisdiction. He thought that would not be overwhelming and would be part of the committee's overall process.

Rep. Mastraccio said she agreed and felt that the reports submitted to the LCRED Committee were just sitting there even though they are part of the whole process. She said random audits should be done, or have the committee of jurisdiction sign off on them.

Sen. Johnson agreed and said he wanted to make sure that there was attention paid to having that review happen. He would question what the right action would be on Maine Technology Institute noting from the list that the last report they submitted was in 2013. Director Ashcroft believes the Executive Director's Office was trying to follow-up with the Maine Technology Institute on that.

Sen. Gerzofsky asked how this would enhance any future reviews of the quasi-independent entities from OPEGA's point. Director Ashcroft said it does provide OPEGA with a starting point should a scope of questions that come up around the entities include the items reported on. In that case, OPEGA would look to see whether whatever had been reported was accurate and complete. The entities have to have policies that were approved by their boards, so OPEGA would be looking to see if they were complying with the policies and whether those policies are meeting the intent of the Legislature.

Sen. Burns said the GOC had anticipated that this may be the problem and he agreed with the other members about having the committee of jurisdiction review and sign off on the reports. The Quasi-independent agencies should not be put through the extra work of preparing reports if nobody is going to bother to read it.

Rep. Sanderson said she was not sure how the Legislature could affect change inside the different Quasi-independent agencies and would like more information on that. She knew they were developed by the Legislature and enabling statutes, but would like to know how they actually operate and the practices by which they do. Is the criteria set by the Legislature, or are the agencies and authorities able to do that themselves. Director Ashcroft said she thought Rep. Sanderson was describing actual operational processes and how you would affect change in a process. She did not have an answer, but the heart of the matter is they are entities that were created by the Legislature which is how they get their quasi-independent designation, to perform a particular purpose that the Legislature has put forth. Her recollection from looking through the statutes of some of the organizations is that some have very specific parameters laid out in the statute for their purpose, requirements and duties of the entity and others are more general. If OPEGA were going to try to answer a question like Rep. Sanderson posed, they would start with the statute and any rules that the agency might promulgate. The Legislature might be able to effect change in a process through legislation.

Rep. Sanderson mentioned concerns she had about the process being used for Maine Human Rights Commission hearings. The Maine Human Rights Commission is a quasi-independent agency. She said the

folks who the complaint has been levied against have 10 minutes to present their case, the person who levied the complaint has 10 minutes and then one investigator has the opportunity to share what they have done in investigating and what their assessment of the problem is. In almost every case she has heard of there was definitely an opinion formed by the investigator versus a presentation of facts, and unfortunately the people who are having the complaint levied against them, have no opportunity for rebuttal. She questions whether this is a fair process and would like to know who has set out the process under which the Commission hearings are conducted. Was it the Legislature or something the Commission themselves have set up. Director Ashcroft said OPEGA might do research on such a question in the context of a request for a review that the GOC then considers, but generally does not do impromptu research for informational purposes only. Rep. Sanderson said she was looking more for just information regarding process.

Chair Kruger said the policy committee that has oversight of the Maine Human Rights Commission is Judiciary so they might know the answer.

Sen. Burns thinks the generic question is how do the policies get put into place in the quasi-agencies, and if there are policies in place that are not being followed, or are not there, is it within OPEGA's purview to take a look at that systemically. Not just one entity, but any of the agencies. Director Ashcroft said yes, the question of process and implementation of the government purpose, statute and how the agency is running itself are all valid purviews for an OPEGA review. She did not know if Rep. Sanderson had questions beyond what she had expressed, but OPEGA staff would be happy to sit down with her to see if it is something she would want to present for consideration for an OPEGA review, or whether there is some other avenues to get her questions answered. Rep. Sanderson said she would like to meet with OPEGA staff to discuss the issue.

Sen. Diamond said Rep. Sanderson raised excellent points and noted that, with the exception of two agencies on the list, all quasi budgets are reviewed by the Appropriations Committee. The Annual Reports required provide an opportunity for the committee of jurisdiction to examine and then to be the impetus for questioning the agency's budgets. If no satisfaction comes out of that, then he thinks the GOC has a good opportunity. He said the two agencies that do not come under the Appropriations Committee are the Maine Turnpike Authority and Northern New England Passenger Rail Authority. He said the Transportation Committee reviews the Turnpike Authority's budget, but has no say, or approval of it, and that is even more reason why those two agencies' reports should be reviewed and there be evidence that the committee of jurisdiction had reviewed it.

Director Ashcroft said what she will do for the next GOC meeting is explore whether or what changes potentially should be made to Title 5 § 12023 to require a sign off by the joint standing committee. She will see if there is a model out there and will talk with Rep. Duchesne about what process he had mentioned having to do that with.

• **Review and Approval of OPEGA Proposed Budget for FY16 – 17**

Director Ashcroft said one of the GOC's duties is to approve OPEGA's budget. Ultimately the approval and appropriation of it is through the Legislative Council and AFA Committee. Whatever the GOC wants to convey about the budget, whether it is approval as is, or approval with certain changes, the Committee has typically conveyed via a letter to the Legislative Council, the Legislative Council's Budget Subcommittee.

Director Ashcroft said this was an opportunity for the GOC to review the budget and suggest changes if they so desired.

Rep. Campbell asked where the unencumbered funds were held. Director Ashcroft said those funds sit in an unencumbered balance account specific to OPEGA and in the past some of those funds have been swept back

into the General Fund. In the most recent years OPEGA has had some of the balance transferred forward to the current fiscal year to cover the consulting budget.

Rep. Campbell asked the balance of the account. Director Ashcroft apologized for not having that information with her, but will forward it to the Committee.

Sen. Johnson asked if there was enough money in the budget to make sure that OPEGA's data was properly secured, through encryption or security measures given the confidential data that OPEGA handles at various times. Has the Director asked the IT folks about this? Director Ashcroft said she has not specifically asked that question. Sen. Johnson said the IT question would be about where the data is stored and whether it is sufficiently secured with encryption or other measures to prevent unauthorized access. Director Ashcroft will check with the IT Office.

**Motion:** That the Government Oversight Committee approves OPEGA's Budget as proposed. (Motion by Rep. Campbell, second by Sen. Johnson, passed unanimous vote 12-0)

Director Ashcroft will draft a letter for the Chairs on behalf of the GOC to the Legislative Council regarding OPEGA's budget.

## UNFINISHED BUSINESS

### • **Consideration of Revisions to GOC Process for Receiving OPEGA Reports Regarding Vote of Endorsement**

Director Ashcroft summarized the draft revisions to GOC Process and Procedure for Receiving OPEGA Reports that attempted to clarify what the GOC was considering when voting to endorse a report and how the vote and related comments would be recorded. (A copy is attached to the Meeting Summary)

Chair Kruger said it was really for clarification of the procedure, it is not for a bold change. He said he has to remind himself that he is not endorsing the findings, he is endorsing the process that the GOC went through to define the review and whether OPEGA did a proper job of doing what the Committee tasked them to do. He thinks the draft is a good clarification.

Director Ashcroft said that in the revisions laid out, endorsement did include being support for the findings and recommendations, but there was opportunity to not endorse certain parts of the report.

**Motion:** That the Government Oversight Committee approves the revision to the Process and Procedure for Receiving OPEGA Reports and that it accurately reflects the Committee's earlier discussion and intent. (Motion by Sen. Johnson, second by Sen. Davis, passed unanimous vote 12-0)

### • **Review and Adopt Committee Rules**

Director Ashcroft said at the last meeting the GOC agreed to a change in Rule 7 "... 15 days after the final report is received by the Committee . . ." to 14 days. She said there was also discussion about the timing allowed for voting if a member was absent from the Committee and it was expected that the Joint Rules Committee was going to meet prior to today and would be discussing that matter. That Committee has not yet met. She said the GOC could approve their Rules as they are and if the Joint Rules Committee ends up changing absentee voting, the GOC can amend their Committee Rules.

**Motion:** That the Government Oversight Committee approves their Rules for the 127<sup>th</sup> Legislature. (Motion by Rep. Campbell, second by Rep. Mastraccio, passed unanimous vote 12-0)

• **GOC Consideration of Options for Clarifying/Enhancing Procurement Statutes, Rules and Policies (In response to OPEGA 2013 Report on Healthy Maine Partnerships)**

Director Ashcroft referred Committee members to the information in their notebooks on Healthy Maine Partnerships FY13 Contracts and Funding. (A copy is attached to the Meeting Summary.) The previous GOC wanted to take actions as a result of OPEGA's report and the subsequent public inquiry of Maine CDC officials that the Committee held. She said all of the issues have been acted on with the exception of the third one on page 1 which was to consider possible action to make sure that there were adequate statewide expectations and guidance for those situations where agencies were selecting vendors or awardees, and making funding decisions, among competing entities without an RFP, including what documentation should be generated in such situations.

Director Ashcroft said the HMP situation that CDC was facing was essentially that of a grant award. There was a competitive RFP done in 2012 and from that competition there were 28 different entities that were awarded an amount of money according to a particular formula that CDC had set forth at that time for distribution of those funds. In the next year when they went to do the renewals of the contracts under that competitive award is when they changed, not only the structure, but the funding for the entities. They claimed the impetus for the change was a reduction in funding and also that there was not enough time to go out to RFP for the changes. They also claimed there was no guidance on the process of how to deal with defunding in this type of scenario. They were actually renewing contracts that had been established with multiple awardees from a single original RFP.

The past GOC wanted to make sure there was statewide guidance for such situations that occurred at CDC so it did not continue to occur in the future. In discussions with the Division of Purchases, OPEGA has identified several actions that the Committee might consider taking toward that end. The Director outlined those as:

- A. Introduce legislation to revise 5 MRS §1825-A by adding a definition of the term "contract" with definition written to encompass both contracts and grants as defined in Rules Chapter 110. While, this would help clarify that the statutory provision that requires competitive bidding applies to grants as well as contracts, there is already general acknowledgement among agencies that the statute does apply to grants.
- B. Introduce legislation requiring DAFS Division of Purchases to revise Chapter 110 Rules (Rules for the Purchases of Services and Awards) to include the term "grant" wherever the term "contract" appears, as applicable. This would help clarify that all requirements in the Rules apply to grants as well as contracts. Purchases indicated they were in the process of proposing other revisions to Chapter 110 and would be willing to include these changes as well. Consequently, rather than introduce legislation the GOC could send a letter to Purchases requesting, or recommending, that they include these clarifications as part of their current effort.
- C. Send formal communication to DAFS Division of Purchases recommending that they revise the Purchases Policy on Contract Renewals and/or Amendments to clarify that the policy also applies to grants and to add guidance on situations where, through renewal or amendment, there are going to be decreases or shifts in funding among multiple original awardees. Such guidance would state that decreases or shifts that do not meet the following criteria/conditions would need to be accomplished via a new RFP:
  - a. decrease or shift directly related to elimination of, or decrease in, goods and services to be provided by awardees;
  - b. decrease or shift directly related to unacceptable performance of one or more awardees; or

- c. decrease or shift that is not distributed among awardees equally or on same basis as original distribution of funding.

Such guidance would also require documentation be maintained to show how the amount of decrease or shift was derived under the relevant condition(s) as well as written justification. GOC could request the DAFS Division of Purchase provide a formal response to the recommendation.

The Director said DAFS Purchases indicated such changes and so she suggests sending a letter with formal recommendation to make the changes and asking for a response. The GOC might also include a recommendation for action B above in the same letter.

Rep. Mastraccio asked what recourse a group would have against a department when there was disagreement. She gave the example of HMPs where a process was in place, but they did not follow it. How would that have played out? Director Ashcroft said the proposed changes would give the Division the Purchases something up front to be able to say this is the process that needs to be followed. That was part of what was heard from both Division of Purchases and CDC - that there really was not any guidance specifically about how to address the situation. Now guidance would be there, nobody could claim they did not know the policy and the Division of Purchases would play a role in terms of advising and strongly guiding the agencies so they would know about it. It does not mean that they can stop an agency from doing what it wants to do, but if such a situation arises again as it did with CDC, there is another vehicle to hold accountable those who chose not to follow policy. It would be clearer that there was a nonconformance, or a choice to violate the policy, which they did not have in the CDC review and therefore it was difficult to point to anybody to be held accountable.

Rep. Mastraccio referred to the Director's statement that changing the statute would not be necessary because the same thing might be accomplished through a formal letter. She asked whether a letter would have the force. Director Ashcroft said statute already requires competitive bidding except in particular situations. The problem in CDC arose because they did have a competitive bid, but were renewing and they took that opportunity to make changes beyond what should have been done on a renewal. Technically CDC should have gone back to RFP because there was an increase in the scope of services for some of the HMPs.

Sen. Johnson said that a change in statute would be relatively minor and would make it clear that the statute applies to grants and would make sure that people understand that process. That there is already general acknowledgement among agencies does not constitute an awareness for all people asking whether their process is okay. He thinks the guidance would be helpful, but thinks it should be backed by statute rather than a general understanding.

Sen. Johnson referred to the language for Action C and said he found it problematic because it has more than one occurrence of a double negative and rewriting in an affirmative matter is necessary to be clear about what renewal circumstances would require an RFP rather than just a renewal. Director Ashcroft said that was a point well taken and will revise the wording.

Sen. Johnson also said the last paragraph of C was not clear to him the way it was written whether it is applicable to the ones that do require the RFP, do not require the RFP and that should probably be clarified in that statement. Director Ashcroft will revise the paragraph.

Sen. Burns said Director Ashcroft stated that there should have been an RFP done by CDC on the HMP Contracts and asked what an agency does when they are brought under the gun and required to get something out right away, which is what the GOC saw with these particular grants. Director Ashcroft said CDC could have decided to go one more year with just reducing funding to all the agencies across the board and take the time to do the RFP that was required for the structural change the next year. There was more than one way to do what needed to be done with the decreased funding, but CDC did not want to wait to make the structural change for reasons they described to the GOC.

Sen. Burns referred to the statement of required documents to be maintained and asked if that was referring to working papers or just a narrative as to how the process was followed. Director Ashcroft said under the scenarios in Action C where there is no RFP needed the agency would be distributing the decreases in funding or shifts in funding according to particular formulas they had already had established, or evenly across the board. It is envisioned that the documentation would show their calculations of how they got to the funding amounts and the basis for the funding shifts and their justification.

Sen. Johnson said that is an area where the working group will be coming back with recommendations that guide the RFP process as well as this. Director Ashcroft said she was not sure that group was were working on documentation for the RFP process, but rather the question of what is a working document and when does it need to be retained, regardless of whether it is an RFP or a different process.

Chair Kruger said the GOC can recommend a communication be sent and/or could go the legislative route. Director Ashcroft said if the Committee wanted to do the communication they could do both a recommendation to change the policy and a recommendation to review Rule 110 to clarify that it applied to grants as well as contracts. By the GOC making the recommendations to DAFS, OPEGA would track actions taken so that if those actions are not sufficient, the GOC can decide on another route. If the Committee wants to change statute as described in Action A, she could bring back a draft for their review. It would involve drafting a definition for the term "contract" to include grants.

Sen. Johnson thought there were two questions should someone choose to make a motion that covers both. It is a question of shall the GOC propose a change to statute, and should they send a letter which the Director indicated could cover Actions B and C of the attached document.

**Motion:** That the Government Oversight Committee moves to draft proposed legislation to address Action A and send a letter with the recommendations for Actions B and C. (Motion by Sen. Johnson, second by Rep. Campbell)

**Discussion:** Rep. Duchesne said the legislation would change Title 5 so that would affect any grant for any department and knows everyone is thinking about HMPs, but did not know what other grants it would affect that would be similar. Director Ashcroft said she talked through that with the Division of Purchases. There are instances where there are grants that come from the federal government that are basically just passed through to other organizations based on a preset formula and those do not require a competitive bid process, so there are a subset of grants that this would not apply to and that would be their guidance. For all other grant awards the expectation is still that agencies would do a competitive bid process. Even if the amount of funding might be known, the agency would still look for how the bidders are going to use that funding in their budget, what is their plan for providing the services that the State is seeking. There are other considerations in terms of who they are going to make the awards to.

Sen. Diamond asked if the motion was to come back with proposed legislation or is the GOC jumping right to we are now going to have legislation. Chair Kruger said Director Ashcroft is going to present a draft to the GOC. The Committee will discuss the draft.

**Vote:** The above motion passed by unanimous vote 12-0.

• **Review of on Deck Topics and New Requests for OPEGA Reviews**

Director Ashcroft noted that she had not heard from any Committee members regarding the topics on the On Deck list. She said for this meeting she also did not have new requests to present. Topics can be discussed at a future meeting.

Sen. Diamond asked when would be the best time to submit a topic proposal. Director Ashcroft suggested it be submitted soon if it is something that one of them is interested in now.

Rep. Campbell asked if it would be appropriate to bring the topic of bonds before the GOC. Director Ashcroft said it would and he could stop in the Office and staff will help him with the request.

Rep. Campbell also asked about HMPs and if the future distribution of funds would be looked at. Director Ashcroft said it was her understanding, although she has not recently checked in on their status, that CDC was going back out to competitive bids for the grant awards. Assuming CDC is going to stay with the same structure they have established with lead agencies and sub-awardees, she thought the RFP will be for the lead agency spots and expects that all agencies would have an opportunity to compete to be the lead agency. If CDC decides they do not like the structure, and are going to change it the RFP will reflect that as well. Rep. Campbell said there is tension within the structure and debate on whether it is best. Director Ashcroft said the question of whether that is the best delivery structure for the services is also a review topic and OPEGA could look at it in terms of how it is being implemented and whether the organizational structure was an effective and efficient use of resources.

Sen. Burns asked when the Committee would take topics off the On Deck list. Director Ashcroft said she would be bringing that back to the Committee as soon as she has a view of what topics on the list they might be interested in. The GOC has a meeting or two where they go down the list and vote to take topics off.

## REPORT FROM DIRECTOR

### • Status of Projects In Progress

**Office of Information Technology** is in progress and the consultant hired to perform the final piece of the review has begun their work. They are doing an independent assessment of the degree of improvement achieved in the three target areas of the review over the last two years.

**Riverview Psychiatric Center** is in fieldwork and is receiving priority among OPEGA's projects.

**Tax Expenditure Programs** – Director Ashcroft said she spent time with the Taxation Committee and got new members of that Committee up to speed on the proposal being developed that will be presented to them by March 1<sup>st</sup>. That information will also be coming to the GOC. She plans to give the GOC a proposal at their next meeting.

**State Lottery** is not getting much attention at this time.

Rep. Mastraccio asked what will move “Planned” into “In Progress”. Director Ashcroft said when OPEGA has the resources freed up to begin another project. Rep. Mastraccio asked if the GOC/OPEGA would be getting into the DHHS audit functions this year. Director Ashcroft said yes.

Rep. Sanderson asked what the timeline was for the Riverview review. Director Ashcroft said OPEGA is currently looking at June for the timeframe. Rep. Sanderson asked if the review includes an assessment of what RPC is implementing with the new employees that they are attempting to get in there to change the model of care delivery. Director Ashcroft said that was not in the current scope of the review, however, one question OPEGA was tasked to answer in the review is whether there are other areas of concern at RPC that deserve a more detailed look. OPEGA is following actions on the findings from the Court Master's Report as the primary piece of answering that question. If OPEGA sees anything come up in the Court Master's Report that DHHS has not taken sufficient action on then that would be reported. The Director thinks staffing and staffing levels was one of those issues in the Report. Rep. Sanderson would like to look at the detailed

questions OPEGA was tasked to address. Director Ashcroft said if Rep. Sanderson would stop by OPEGA she would be happy to go over that information and explain how the Committee arrived at the questions for the review.

## **NEXT GOC MEETING DATE**

The next Government Oversight Committee meeting is scheduled for Friday, February 27, 2015 at 9:00 a.m.

## **ANNOUNCEMENTS**

Director Ashcroft said LD 237 is a bill that is going to be heard by the Energy, Utilities and Technology Committee on February 26, 2015 at 1:30 p.m. It is a bill to permanently establish a Consumer Advisor position in the Office of the Public Advocate and is in response to a recommendation made by OPEGA in its Public Utilities Commission Report. The GOC, in conjunction with the EUT Committee, introduced a bill last session to create the position on a temporary basis with existing funding. That bill was vetoed, but nonetheless the Office of the Public Advocate did establish the position with funding they had available. LD 237 is now seeking to make the position permanent.

## **ADJOURNMENT**

Chair Kruger adjourned the Government Oversight Committee meeting at 11:45 a.m.

## **OPEGA Recommendation for Project Direction**

### **DHHS Workplace Culture and Environment**

#### **Background**

The Government Oversight Committee (GOC) placed a review of the Department of Health and Human Services' (DHHS) Workplace Culture and Environment on OPEGA's work plan at its April 26, 2013 meeting. The general scope of the assigned review was whether DHHS' workplace culture and environment, including management behavior and treatment of employees in the workplace, is conducive to recruiting, retaining and engaging capable, knowledgeable and motivated employees.

The GOC assigned this review to OPEGA after legislators and OPEGA received complaints from current and former DHHS employees about DHHS' workplace culture and environment. At multiple GOC meetings, committee members discussed a number of issues concerning DHHS workplace culture and environment in general and specifically in connection to OPEGA's 2013 review of Maine Center for Disease Control (MCDC).

The Preliminary Research phase for this project is complete. During this phase OPEGA:

- Reviewed and summarized complaints from former and current DHHS employees;
- Interviewed management at DHHS and Department of Administration and Financial Services (DAFS) Bureau of Human Resources;
- Interviewed Maine State Employees Association (MSEA) personnel;
- Reviewed and analyzed 2013 and 2014 DHHS Employee Climate Survey Data;
- Analyzed MSEA Grievance and DAFS Termination Data for DHHS and other State departments;
- Researched public and private sector organizational culture issues and reviewed studies of organizational culture in the public sector; and
- Reviewed materials provided by DHHS on actions taken by individual offices since the 2014 Employee Climate survey.

#### **Summary of Preliminary Research and Analysis**

There is no universal agreed upon definition of organizational culture however, there are some terms and concepts common across various definitions. Together the definitions describe organizational culture as *the underlying, enduring core values, assumptions, and expectations, often tacit and unwritten, which are shared within an organization and expressed in the behavior of its members.*

Personnel data on termination rates and union data on employee grievances indicate similar trends for DHHS and other executive branch agencies as a group in recent years. DAFS Bureau of Human Resources reported personnel management changes made by the current administration that affect all Executive branch agencies and may be contributing to complaints received from DHHS employees. While the data indicate the rate of grievances and terminations for selected reasons OPEGA identified as associated with employee dissatisfaction at DHHS is higher than average among executive branch agencies, DHHS is in a group of several agencies with relatively higher rates and does not stand out as an extreme case.

Organizational issues do not appear to be widespread at DHHS. Complaints received by OPEGA were primarily from personnel in three units of DHHS: the Division of Licensing and Regulatory Services' (DLRS) child care licensing unit, MCDC, and Riverview Psychiatric Center (RPC). DHHS' employee climate surveys in 2013 and 2014 indicate a workforce that is, overall, satisfied with the climate and work environment although there are areas, such as communication, that need improvement. The surveys also show higher levels of dissatisfaction in some, although not all, of the same divisions from which OPEGA received complaints. DHHS' Office of Continuous Quality Improvement (OCQI) reported sharing the Employee Climate Survey results with individual offices and divisions within DHHS and suggesting offices address issues identified in the survey. OPEGA has gathered and reviewed information provided by the OCQI on subsequent follow-up activities at the office level.

OPEGA will be reviewing, or has recently reviewed, several DHHS offices that are highlighted in complaints and in the survey data: a review of MCDC was completed in 2013, a review of RPC is underway, and a review of the DLRS' child care licensing unit is on OPEGA's 2015 work plan.

Through our review of literature on organizational culture in public sector organizations, OPEGA identified common themes in the corrective actions recommended to improve organizational culture and increase employee engagement. In particular, recommendations often center on making improvements in the areas of communication, supervisory training, personnel policies, employee input and oversight of management.

### **OPEGA Recommendation**

OPEGA recommends discontinuing the review of DHHS Workplace Culture and Environment at this time and producing an Information Brief summarizing the results of our preliminary research and suggested opportunities for improvement. We can provide information to give perspective on the culture at DHHS and the actions the department is already taking toward improvement. We believe there would be minimal added benefit to expending additional resources on a more detailed review.

**DLRS – Strategic Map SFY 2014-15**

**Children’s Licensing and Investigation Services**

**Report on Status of Strategic Initiatives**

**January 15, 2015**

**Strategic Initiative #1: Resource Utilization: Ensure efficient use of resources to achieve Division objectives.**

- A. Monthly metric report receives ongoing review and continues to evolve. Work ongoing with Macwis Data Specialist to identify areas in which data can accurately be extracted from Macwis. OALLs tracking data not found in Macwis (licensing actions, SODs, POCs). Comprehensive dash board report stalled slightly with vacant Comprehensive Health Planner II (CHPII) position. Data used regularly for supervision and performance evaluations. Beginning to assess attainability of expectations based on overall staff performance.
- B. Plan to begin development of electronic survey tool for Child Care Licensing. Staff input received regarding software goals. Met with “off the shelf” vendor Technology and Consulting Company (TCC) to compare the cost, efficiency, and timeline of purchasing pre-developed software versus the development of new through Business Process Management (BPM). Are in early stages of identifying project scope and requirements with Project Manager, met 1/7/15 and 1/14/15.
- C. Compliance Advisory Panel (CAP) meets weekly. Standardized reporting tool implemented, weekly status updates tracked by OALL. Overall process has significantly mitigated risk to the Division. Have first draft of Policy and Standard Operating Procedure related to CAP.
- D. Risk assessment tool will be incorporated into Differential Monitoring process. First pass at weighting Rules is underway. Working with OCQI to ensure validity in weighting/scoring. Have identified staff to participate in weighting using OCQI tool/Delphi process. Next steps to develop the methodology for scoring. Assessing past SODs to identify trends/commonly identified deficiencies to inform process.
- E. Child Care standard correspondence and legal documents all updated. Currently under review at the AG’s office. Next phase of review/updates for Children’s Residential and Out of Home Investigation (OOH). Project Specialist sending open & close letters to parents of children in child care under OOH investigation.

**Strategic Initiative #2: Accountability: Develop formal infrastructure to (1) measure and mitigate risk; (2) measure and certify compliance (regulatory, financial, contractual); and (3) provide effective and efficient management decision support.**

- A. Necessary policies and standard operating procedures identified, many in draft form/early stages of development. This objective will be a significant focus for the Quality and Compliance Officer over the next two quarters.
- B. Office Associate II (OAll) tracking enforcement actions for child care. A similar process utilized for children's residential services. Reports shared with staff monthly. Outliers within team identified and being addressed in performance evaluations and supervision. One strategy is to develop a peer review process to assess inter-rater reliability and improve consistency amongst staff.
- C. Ongoing assessment of Maine's alignment with national standards. Planning strategies to ensure Maine meets new federal requirements resulting from 11/2014 Reauthorization Act of CCDBG.
- D. Quality and Compliance Officer Vacancy filled, leaving Supervisor vacancy for the North/East Child Care Licensing Team. Management meeting regularly to discuss progress on major initiatives. Refinement of job functions and responsibilities to be adjusted/finalized once management team is fully staffed.

**Strategic Initiative #3: Work Force Development: Develop a work force to ensure that DLRS maintains a qualified and sincerely engaged team that is mission focused.**

- A. 6 month performance evaluations for all new employees (starting May 2014) completed. Individual development plans identified and in progress. Supervisors meeting with CCWs at least monthly for individual supervision and group supervision/meetings twice monthly.
- B. Ongoing Statewide monthly unit meetings with entire Children's Services team as well as, unit specific monthly meetings. Training needs identified and prioritized for the next two quarters.
- C. Macwis training ongoing as needed. Most of the new CCWs are now proficient in the areas of Macwis that they are frequently using. Plan for Project Specialist to begin random Macwis audits to ensure staff are following documentation expectations for quality, thoroughness, accuracy, and timely reflection of field work.
- D. Initial documentation and writing skills training completed. All staff to receive additional training specific to Principals of Documentation.

**Strategic Initiative #4: Provider Relations: Improve communication and relationships with providers in an effort to enhance regulatory compliance and quality while decreasing the need for enforcement action.**

- A. 1/5/15 successfully launched public web portal, DLRS child care licensing details available on Child Care Choices web site. Ongoing task to review new documents, redact confidential/non-public information, scan to Fortis, and index for public view.

- B. Two phase campaign to address unlicensed child care providers outlined in draft form. Radio and television broadcast under exploration. Need to ensure unintended consequences are fully assessed prior to launch of campaign.
- C. Child Care to be the featured program in the first edition of the DLRS Community Programs Newsletter.
- D. Have identified next steps for inclusion of national disaster preparedness inclusion in survey process. Have discussed next steps with national partners.
- E. Child Care licensing forums will be held twice annually in multiple locations across the State. Fall 2014 forums held in 11 locations with 533 providers in attendance.
- F. Pamphlets for providers and parents in final stages of review.
- G. Using feedback from 2013 OIG audit to focus inspections while continuing to develop the Differential Monitoring inspection process and tools. Received technical assistance from the National Center on Child Care Quality Improvement and have consulted with states that are using Differential Monitoring in Child Care Licensing. A work group is currently piloting an abbreviated inspection tool that is inclusive of Dr. Richard Fiene's 13 key indicators. Also, working with OCQI in planning a method for increased validity around weighting Rules. Modifying plan to align with Child Care Rule revisions.

**Strategic Initiative #5: Regulations/Statutes: Develop and implement Regulatory and Legislative Agendas that support the Division's mission.**

- A. Internal work group established several months ago, currently meeting biweekly. Plan to create core standards, currently reviewing and consolidating definitions from the 3 sets of Child Care Rules. Group members using Share Point and working closely with legal team.
- B. Out of Home Investigation staff continues to research other states that have similar models. Draft legislation for the OOH team in process.

**DLRS - Strategic Map SFY 2014-15**

*Unit: Children's Licensing & Investigation Services*

STRATEGIC INITIATIVE	Objectives	Action Steps January - March 2014	Action Steps April - June 2014	Summary Status June 15, 2014	Action Steps July - September 2014	Action Steps October - December 2014	Summary Status January 15, 2015	Action Steps January - March 2015	Action Steps April - June 2015
<b>RESOURCE UTILIZATION</b> 1. Ensure efficient use of resources to achieve Division objectives.	Implement / amend performance metric reporting.	Determine performance metrics for all children's licensing programs	Enhance existing reports & create new to ensure all metrics are captured.	Metrics identified for each program. Ongoing analysis of Macwis and system users to identify areas in which there are variations in data entry that impact validity of data. Children's residential identified need to create a central office process for tracking data not stored in Macwis mirroring child care.	Collaborate with CHPII to identify trends/patterns in data	Develop comprehensive monthly report for senior management and unit staff. Data will be utilized as element of staff's annual job evaluation.	Macwis Data Specialist extracting data from Macwis for monthly report. Office Associate II (OAIL) tracking data not found in Macwis (Licensing Actions, Statement of Deficiencies, Plan of Correction). Comprehensive dash board report stalled slightly due to vacant Comprehensive Health Planner II position. Data used for supervision & evaluations. Assessing attainability of expectations based on overall staff performance.	Assess data to ensure all expectations are reasonable and attainable by staff	Modify expectations if needed
	Develop electronic survey process	Identify cost related to issuing licensing staff tablets	Meet with OIT to discuss timeframe & cost related to creation of electronic survey.	In discussion phase only. No progress with the development of an electronic survey tool. Will follow implementation of Differential Monitoring.	Create workgroup to review current survey and identify needed changes.	Draft new survey tool(s), incorporate feedback from all staff, share with senior management	Staff input received regarding software goals. Met w/ vendor Technology and Consulting Company (TCC) to compare cost, efficiency, timeline of purchasing pre-developed software versus development of new through (BPM). Early stages of identifying project scope & requirements with Project Manager.	Purchase tablets. Collaborate with OIT to put survey tool(s) in electronic format	Train staff with new technology and survey process
	Implement licensing action advisory panel	Identify necessary participants for advisory panel	Develop policy and procedural guidelines for advisory panel. Set day and time established for panel participants.	Compliance Advisory Panel (CAP) established, meeting weekly. Need policy and standard operating procedures related to CAP.	Create written feedback form for each review and begin regular meetings	Assess process of advisory panel, strengths and challenges and provide feedback to senior management	Compliance Advisory Panel (CAP) meets weekly. Standardized reporting tool implemented, weekly status updates tracked by OAIL. Overall process has significantly mitigated risk to children and to the Division. Need Policy and Standard Operating Procedures related to CAP.	Make changes to process if necessary and implement changes	Provide summary of first year to include all cases reviewed and outcome/decisions
	Develop risk assessment scale to augment survey process	Identify work group participants	Contact other States who use a risk assessment tool to help guide the development of Maine's tool.	Researching what other states are using for a risk assessment tool and will embed in the Differential monitoring survey tool.	Identify the greatest risk factors, and common deficiencies for Maine child care providers.	Rate child care licensing deficiencies and risk factors by severity to guide survey frequency and intervention	Tool will be incorporated into DM process. First pass at weighting Rules is underway. Working w/OCQI to ensure validity in weighting/scoring. Identified staff to participate in weighting using OCQI tool/Delphi process.	Create risk assessment tool and pilot with selected staff and random sample child care providers	Assess data from pilot, make adjustments if necessary, fully implement with all child care providers
	Develop a correspondence management process (signatures)	Identify documents/correspondence in need of supervisory review and signature	Review current form letters and correspondence, make changes as necessary	Continue process of editing existing and develop new standardized correspondence for the unit. SODs and Licensing Actions processed and tracked through central office management.	Development of policy for external correspondence for licensing and OOH	Monitor to ensure compliance	Child care standard correspondence and legal documents all updated. Under review at the AG's office. Next phase of review/updates for Children's Residential and Out of Home Investigation (OOH). Sending OOH open & close letters to parents of children in child care under OOH investigation.		
<b>ACCOUNTABILITY</b> 2. Develop formal infrastructure to (1) measure and mitigate risk; (2) measure and certify compliance (regulatory, financial, contractual); and (3) provide effective and efficient management decision support.	Develop Standard Operating Procedures and Work Flows	Identify work group participants for each team	Draft SOP and work flow in work groups for each team	Draft policy and standard operating procedures in early development.	Present drafts to larger unit for feedback/contributions	Implement SOP and work flow	Necessary Policies & SOPs identified, many in draft form/early stages of development. Objective will be a significant focus for the Quality and Compliance Officer over the next two quarters.	Assess through QA and supervision adherence to SOP/work flow procedures.	Assess SOP and work flow to ensure most effective and efficient for unit.
	Documented enforcement strategies, sanctions, fines	Create excel spread sheet to document all enforcement	Identify who will update document and who will be responsible for distribution	OAILs for Children's Licensing are tracking enforcement for child care. Need to develop system for children's residential.	Develop tool with Sonya WB to graph by worker enforcement actions.	Begin sharing data with staff on a quarterly basis. Identify the outliers (too much/little)	OAIL tracking enforcement & licensing actions for child care and children's residential. Reports shared w/staff monthly. Outliers within team identified, being addressed in performance evaluations and supervision. Strategy to develop a peer audit process to assess inter rater reliability and improve consistency amongst staff.	Supervisors and QA review outliers to identify if performance issue or due to compliant caseload	Increase frequency of supervision when performance issue. Identify barriers w/ staff, create work plan, closely monitor
	Review best practice standards from various sources to increase rankings	Identify the ranking sources and standards. Review and assess where Maine currently falls	Identify with senior management the standards that are most critical to meet in the first year with increased work force	Continue to identify national standards striving to achieve. Have decreased caseloads, increased frequency visits, 15 of 16 new CCW's w/ Bachelor level Ed. or higher. 1 employee currently completing BA.	Develop plans to meet standards, share with staff, begin implementation immediately	Assess progress and assess the need for changes to ensure success	Ongoing assessment of Maine's alignment with national standards. Planning strategies to ensure Maine meets new federal requirements resulting from 11/2014 Reauthorization Act of CCDBG.	Continued monitoring and begin annual report to provide feedback to senior management	Complete annual report for children's licensing to include all programs
	Job function analysis for manager/compliance QA training / supervisors	Review current job descriptions/responsibilities identified	Senior management determine division of responsibilities, write SSPSII (supervisor )job descriptions	Division of responsibilities identified for early stages of employment for 2 new SSPSII Supervisors. Critical position (Compliance Officer) currently vacant and covered by Program Manager.	Develop clear & measurable performance expectations for Manager, Supervisors, Compliance Officer	Establish weekly supervision scheduled with Supervisors and Compliance Officer	Quality & Compliance Officer Vacancy filled, leaving Supervisor vacancy for the North/East CC Licensing Team. Refinement of job functions and responsibilities to be adjusted/finalized once management team is fully staffed.	Assess if the division of responsibilities is most effective and efficient. Make changes as necessary.	

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<b>WORK FORCE DEVELOPMENT</b> 3. Develop a work force to ensure that DLRS maintains a qualified and sincerely engaged team that is mission focused.	Recruitment and onboard of new positions	Work in collaboration with HR to secure approval and post new positions	Complete interview process, hire top candidates, complete staff orientation training & field shadowing	Completed hiring and formal 2 week training/orientation of CCWs. In process of job shadowing and beginning field work as supervisors determine readiness.	Supervisors establish set supervision at least monthly w/ staff. Complete 3 month evals. JW meet regularly with HR regarding performance of new employees	Complete 6 month evals	6 month performance evaluations for all new employees (starting May 2014) completed. Individual development plans identified and in progress. Supervisors meeting with CCWs at least monthly for individual supervision and group supervision/meetings twice monthly.	Continue to monitor individual strength & challenges through supervision and QA	Annual performance evaluations due for all newly on boarded employees
	Unit meetings and training schedules	Continue monthly unit meeting w/ entire unit and monthly case review with OOH	Design and deliver a two week training orientation for child care licensing. All staff participate (est. start May 12)	Successful training/orientation completed with full participation from both new and experienced staff. Full unit meetings scheduled monthly beginning 7/31. Individual team meeting monthly w/ direct supervisor.	Identify individual training needs for continued professional development, schedule training.	Supervisors research training opportunities for entire children's team	Ongoing monthly unit meetings with entire team as well as, unit specific monthly meetings. Training needs identified and prioritized for the next two quarters.	Develop an annual training plan for staff development opportunities for the coming year	
	Training on consistent MACWIS documentation	JW review current documentation expectations to ensure all areas are covered.	Extensive Macwis training included in new staff orientation training.	New staff received 6 hours of Macwis training in a large group setting with OCFS Macwis training specialist. Providing one on one continued training with DLRS experienced Macwis user.	Supervisors review all workers by random sample from caseload to ensure timely and quality doc. In Macwis	Identify individual training needs to enhance Macwis skills and proficiency	Macwis training ongoing as needed. Plan for Project Specialist to begin random Macwis audits to ensure staff are following documentation expectations for quality, thoroughness, accuracy, and timely reflection of field work.		
	SETU training on documentation	Schedule meeting with Kate Carnes, Director of SETU to identify training needs and plan	Work collaboratively with Kate Carnes to develop new staff orientation and schedule trainers	Documentation training completed during training/orientation. Further training needed specific to Principals of Documentation.	Supervisors identify staff in need of additional writing skills training, schedule training	Supervisors continue to work closely with identified staff to improve overall quality	Initial documentation and writing skills training completed. All staff to receive additional training specific to Principals of Documentation.		
<b>PROVIDER RELATIONS</b> 4. Improve communication and relationships with providers in an effort to enhance regulatory compliance and quality while decreasing the need for enforcement action.	Develop publically facing web portal for licensing actions	Identify funding source	Meet with OIT to discuss timeframe & cost related to creation	In process of writing Business Plan. Identified Child Care Choices web site ( UMO contract) as location.	Establish work group with DLRS and OIT, begin meeting	Work group in plan and development stages of designing portal	1/5/15 successfully launched public web portal, DLRS child care licensing details available on Child Care Choices web site. Ongoing task to review new documents, redact confidential/non- public information, scan to Fortis, and index for public view.	Continued development, confirm funding source, OIT launch	Monitor and assess usability of web-portal
	PSA / Amnesty for unlicensed practice	Follow up with DHHS Director of Communications and schedule another meeting	Meet with Director of Communications to create plan to proceed with PSA	Had initial meeting with DHHS spokes person around Public Service Announcement. Need to schedule a follow up meeting to determine next steps.	Determine media source, TV/radio, seek message approval by Communications JM	Record/create PSA and seek approval from Director of Communications	Two phase campaign outlined in draft form. Radio and television broadcast under exploration. Need to ensure unintended consequences are fully assessed prior to launch of campaign.	Develop plan w/ supervisors to effectively respond to unlicensed providers who respond in a timely fashion. PSA live	Licensing and OAIL respond to unlicensed providers seeking licensure.
	Children's Licensing Newsletter	Design logo and format for Community Programs -	Present to all staff and elicit ideas for articles, etc..	Community Programs Newsletter in process. Changes within child care licensing to be focus of first.	Draft article introducing new staff, geographic coverage areas, and new initiatives	Continue to provide stories/articles/suggestions to Heather Joslyn for upcoming letters	Child Care newsletter to be incorporated as article featured in the first edition of Community Programs newsletter.		
	Develop disaster preparedness technical assistance	Review National standards for disaster preparedness in child care settings	Assistant Director member of Maine Disaster Mental Health Advisory Committee will raise issue of enhancing child care providers preparedness	Have identified next steps for inclusion of national disaster preparedness in survey process. Have discussed next steps with national partners.	Train selected licensing staff to specialize in providing technical assistance to providers	All staff implement survey tool, assist providers in ensuring plans are well thought out and safety standards are met	Have identified next steps for inclusion of national disaster preparedness inclusion in survey process. Have discussed next steps with national partners.	Refer providers to specialized staff when needed.	Work with Sonya WB to pull data to verify Maine providers are meeting National recommendations
	Children's Licensing Forum	Identify work group to develop plan/agenda for annual forums (southern and northern Maine)	Contact providers to seek input regarding their identified needs	Determined need for more than 2 locations for the Child Care forums, will plan evening events which will allow for greater participation. Seeking provider input.	Identify dates of forums and secure location to hold event	Create agenda and invite presenters	Child Care licensing forums will be held twice annually in multiple locations Statewide. Fall 2014 forums held in 11 locations with 533 providers in attendance.	Disseminate invitations to providers and other child care stakeholders	Forum, provide feedback/evaluation form for participants, identify areas to improve upon in future forums
	Pamphlets for parents and providers re licensing actions	Identify information in need of improved communication with parents and child care providers	Consult with child care licensing in other states to assist in development	Child Care Management team has identified the specific information to be provided. Draft of parent and provider handout currently being drafted.	Manager and supervisors draft pamphlets and seek input from staff	Manager and Supervisors modify as necessary and seek input from senior management	Pamphlets for providers and parents in final stages of review.	Final review and printing of pamphlets, begin dissemination	QA randomly sample providers and parents regarding usefulness of material, seek feedback
	Development of a differential monitoring program for licensing visits	Identify alternative methods to determine frequency of child care inspections	Research Differential monitoring used by child care licensing in other States	Looking specifically at two State models. Identified a system for ranking deficiencies in current rule. In process of ranking 1, 2, 3 in severity. In discussion phase of inspection sheet revision and creation of abbreviated survey tool.	deficiencies identified during the Federal OIG audit will focus inspections to improve overall health, safety, compliance in child care settings	Identify 3-4 areas for heightened attention during all surveys based on identified trends in deficiencies	Received technical assistance from the National Center on Child Care Quality Improvement, have consulted w/ states using DM in Child Care Licensing. A work group is currently piloting an abbreviated inspection tool that is inclusive of Dr. Richard Fiene's 13 key indicators. Working w/ OCQI planning a method for increased validity around weighting Rules. Modifying plan to align with Child Care Rule revisions.		
<b>REGULATIONS / STATUTES</b> 5. Develop and implement Regulatory and Legislative Agendas that support the Division's mission.	Children's Licensing Rules	Management and staff continue to place items in parking lot for Catherine Valcourt's review	Determine projected date for revisions to Child Care Licensing Rules	Date for Child Care Rules not yet identified, continuing to place suggestions in "parking lot".	Identify work group and when appropriate begin entering suggested rule revisions into Share Point		Internal work group established several months ago, currently meeting biweekly. Plan to create core standards, currently reviewing and consolidating definitions from 3 Licensing Rules. Group members using Share Point and working closely with DLRS legal team.		
	OOH Rules	Assess need for OOH rules	Advocate for the development of OOH rules separate from statute that are oriented to OCFS/Child Welfare	Have met with AG's office and Legal Council at Commissioner's Office regarding Out of Home Rules. Researching other States and will begin drafting ideas.			Investigation staff continue to research other states that have similar models. Draft legislation for Out of Home Investigation Team in process.		

**Quasi-independent State Agency Reports as per Title 5 §12022 (due Feb. 1st each year)**

**Summary of Reports Received as of 2-11-5**

Agency Name	Reports Submitted			JSC*
	2013	2014	2015	
Child Development Services	X	X	X	EDUC
ConnectME Authority	X	X	X	EUT
Efficiency Maine Trust	X	X	X	EUT
Finance Authority of Maine	X	X	X	LCRED
Loring Development Authority	X	X	X	LCRED
Maine Community College System	X	X	X	EDUC
Maine Education Loan Authority	X	X	X	EDUC
Maine Governmental Facilities Authorities	X	X	X	LCRED
Maine Health & Higher Educational Facilities	X	X	X	EDUC
Maine Municipal Bond Bank	X	X	X	I&FS
Maine Human Rights Commission	X	X	X	JUD
Maine Maritime Academy	X	X	X	EDUC
Maine Municipal & Rural Electrification Cooperative Agency	X	X	X	EUT
Maine Port Authority	X	X	X	LCRED
Maine Public Employees Retirement System	X	X	X	AFA
Maine State Housing Authority	X	X	X	EUT
Maine Technology Institute	X			LCRED
Maine Turnpike Authority	X	X	X	TRANS
Midcoast Regional Redevelopment Authority	X	X	X	LCRED
Northern New England Passenger Rail Authority	X	X	X	TRANS
Small Enterprise Growth Board	X	X	X	LCRED
University of Maine System	X	X	X	EDUC
Washington County Development Authority	X	X	X	LCRED
Worker's Compensation Board	X	X	X	LCRED

**\*Joint Standing Committee of jurisdiction that received the submitted reports via the Executive Director of the Legislative Council.**

**DRAFT**  
**Government Oversight Committee**  
**Process and Procedure for Receiving OPEGA Reports**  
(Draft Revision as of February 2015)

1. OPEGA Director notifies GOC Chairs that final report is ready and coordinates putting the report presentation on the agenda for an upcoming Committee meeting.
2. OPEGA Director and GOC Chairs determine whether potential public interest dictates holding the meeting/presentation in a location other than the normal Committee Room. If so, OPEGA Director coordinates securing an alternative meeting location.
3. OPEGA notifies all GOC members of the meeting/presentation date and location.
4. OPEGA arranges for appropriate notification to legislators and the public of the scheduled meeting.
5. OPEGA invites the responsible management of the area that has been reviewed to the meeting/presentation.
6. OPEGA notifies members of the appropriate JS Committees of the meeting/presentation, date and location.
7. OPEGA delivers the final report to the responsible management one day prior to the meeting with a confidential cover sheet. A copy may also be delivered to the Governor at this time.
8. At the meeting, OPEGA makes a formal oral presentation of the report to the GOC and provides members a full copy of the written report. An Executive Summary of the report is available for others attending the meeting. The purpose of this presentation is:
  - a. for OPEGA to present its work, conclusions and findings to the GOC; and
  - b. for GOC members to ask questions of OPEGA and responsible management about the work, conclusions, findings and corrective actions to be taken.
9. No later than one day following the release of the report to the GOC, OPEGA posts the full final report to its website and notifies legislators and the public of its availability. OPEGA issues a press release summarizing the key points and findings.
10. The GOC decides whether to hold a public hearing before taking its vote on endorsing the report. The purpose of the public hearing is for the Committee to take testimony from affected or interested parties. If the Committee decides to hold a public hearing, OPEGA makes the appropriate arrangements.
11. The GOC holds one or more work sessions to discuss the report, determine whether the GOC will take any action(s) based on the report, and take a vote on endorsement.
12. The Committee votes to endorse, endorse in part, or not endorse OPEGA's report. Endorsement indicates the Committee's public approval of, and support for, OPEGA's reported results and recommendations. Generally, the Committee will fully endorse the report if it finds that:

- a. the reported results are credible, objectively derived and sufficiently relevant and complete with regard to the assigned scope for the review; and
- b. the reported recommendations are reasonable and appropriate for addressing the issue(s) identified.

The record of the vote will be included in the GOC's report described in Step #13 below. If the Committee, or an individual Committee member, votes not to endorse or to only endorse in part, the parts of the report not endorsed, and the reasons for those votes, will also be recorded in the GOC's report.

13. Upon completion of GOC work sessions, OPEGA drafts a report summarizing the GOC's activities and actions specifically regarding the report. The report also reflects the Committee's vote on endorsement of the report and includes any formal comments from GOC members regarding their individual vote. The GOC reviews and approves its report. It is then posted to OPEGA's website as a companion to OPEGA's report and is attached to any hard copies of OPEGA's report that are distributed from that point forward.

## DIVISION OF PURCHASES

Chapter 110: RULES FOR THE PURCHASE OF SERVICES AND AWARDS

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**Summary:** This chapter outlines the procedures to be used in the purchase of services and the awarding of grants and contracts pursuant to 5 M.R.S.A. §1825-C.

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**Section 1. DEFINITIONS**

- A. **REQUEST FOR PROPOSAL:** Means a document listing the scope of work, requirements of the state and all evaluation criteria for a service needed by the state. This document is also known by the initials "RFP".
- B. **CONTRACT REVIEW COMMITTEE:** Means the committee established by Executive Order which reviews agency documents and actions related to contracts for special services.
- C. **CONTRACT:** Means the agreement between a vendor and the State of Maine, describing the service to be performed, the terms and conditions agreed to by the parties, the cost of the service and how payment will be made.
- D. **GRANT:** Means an agreement between a group organization or other recipient and the state which describes terms and conditions and scope of performance or action which is expected of the recipient.

**Section 2. REQUEST FOR PROPOSAL PROCEDURE**

- A. All contracts issued under the review of the Contract Review Committee which do not qualify as sole source or emergency procurements must be competitively bid using the Request for Proposal.
  - i. The request for proposal must contain at a minimum a clear definition (scope) of the project, the evaluation criteria and relative scoring weights to be applied, the proposal opening date and time, and agency contact person.
    - aa. Cost of the contract must be included in the evaluation criteria and must receive a minimum of 25% of the total weight of all criteria.
    - bb. All proposals shall be opened publicly at the Bureau of Purchases, main office. Proposals received at the Bureau of Purchases main office after the advertised opening time shall be rejected, unless the advertised opening date and time have been extended by the State Purchasing Agent due to circumstances requiring such an extension of time.

- ii. Request for proposals must be submitted to the Contract Review Committee for review prior to release. Review includes, but is not limited to appropriateness of scope and clearly defined evaluation criteria with cost at a minimum of 25%. Agencies will be notified of approval.
- iii. Request for proposals must be advertised for a minimum of three consecutive days in the Kennebec Journal of Augusta, allowing a minimum of fifteen (15) calendar days from the final day of advertising to the proposal opening date. This section does not limit advertising in any other publication, trade publication or other media.
  - aa. Advertisements must include at a minimum a brief description of the service requirements of the state, the name of the department and division issuing the RFP, the name of the contact person and address where copies of the RFP can be obtained, the opening date, the opening time and the opening location: Division of Purchases, Burton M. Cross Building, 4<sup>th</sup> Floor, 111 Sewall Street, 9 State House Station, Augusta, Maine 04333-0009.
- iv. Pre-Bidders conferences are allowed, but are not required. These conferences are used to be certain that all bidders have an equal understanding of the state requirements.
  - aa. Pre-Bidders conferences must be advertised within the RFP advertisement, including location, day and time. Conference must be scheduled a minimum of seven calendar days from the final day of advertising and a minimum of two weeks prior to proposal opening date. The State Purchasing Agent may authorize a pre-bidders conference an shorter notice that has not been advertised in the RFP. The contracting agency shall notify all prospective bidders who requested the RFP of the date and time of the conference under these circumstances.
  - bb. Conferences must be open to the public, questions raised must be documented in writing and responses must be written and forwarded to each prospective bidder who received an RFP, whether in attendance or not.
  - cc. No alterations or changes to any requirement or specification within the original RFP can be made without notifying all bidders in writing a minimum of seven (7) calendar days before opening date.
- v. Proposals shall be opened publicly at the Bureau of Purchases or a nearby appropriate facility at the discretion of the Bureau of Purchases. The opening of proposals shall be open to public attendance. The name of the respondent will be read aloud. No other information will be made available prior to evaluation and award notification. All proposals shall be sequestered from this time until notification of award by the contracting agency after which time they become public record.

Proposals received at the Bureau of Purchases later than the date and time specified will not be accepted and will be returned unopened or held at the Bureau to be picked up by the respondent. Late proposals not picked up within seven (7) calendar days will be destroyed.

- vi. All opened proposals shall be turned over to the contracting agency's representative after the opening. A written record of the vendor names, date and time received, cost/price and agency representative shall be kept at the Bureau of Purchases.

### Section 3. AWARD

- A. The contracting agency is responsible for reviewing all RFP's based on the criteria established within the original Request for Proposal document. The agency shall document the scoring, substantive information that supports the scoring, and make the award decision which shall be subject to the Contract Review Committee approval.
  - i. Interviews/Presentations: Interviews and/or presentations may be considered within the review for information and scoring, if that provision was included within the original RFP documentation.
  - ii. Pricing/Negotiations: Pricing changes, alterations or negotiations are not allowed prior to the award decision and must not be used in scoring. Minor negotiations after notice of award are allowed and if agreement cannot be reached, the proposal may be rejected and the award made to the next highest rated bidder who was in compliance with all terms, conditions and requirements.
  - iii. Documentation: Written records must be kept by each person reviewing or ranking proposals. These records must be made available upon request.
  - iv. Award: Award must be made to the highest rated proposal which conforms to the requirements of the state as contained in the RFP.
  - v. Proposed Award Decision Notification: Contracting agency must notify all bidders responding to an RFP of the award decision in writing, postmarked or delivered a minimum of fourteen (14) calendar days prior to contract effective date. This notice must include a statement that the award is conditional pending Contract Review Committee approval.

The award decision, a copy of the award notification to bidders, supporting justification of award, individual and summarized scoring and a minimum of four contracts with the state agency head and vendor authorized original signatures must be sent to the Contract Review Committee for final review and approval a minimum of fourteen (14) calendar days prior to contract effective date.
- B. Upon final approval by the Contract Review Committee, the Chairman shall affix an original signature to the contracts, keep one copy, and forward to Accounts and Control for final approval of encumbrance, terms, and account coding. The Controller will keep one copy and the remaining copies shall be returned to the contracting agency for distribution to vendor.
  - i. Contracts are not considered fully executed and valid before completing final approval of encumbrance. No contract will be approved based on an RFP which has an effective date less than fourteen (14) calendar days after award notification to bidders.

- ii. Attorney General approval is not required unless changes have been made to existing boilerplate or at the request of the Contract Review Committee. Nothing within this paragraph prevents agency requests for Attorney General review of any contract.
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STATUTORY AUTHORITY: 5 M.R.S.A. §1825-C

EFFECTIVE DATE:

February 11, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 1, 1996

NON-SUBSTANTIVE CORRECTION:

August 13, 1996 - paragraph alignment

April 22, 2010 – address in Section 2.A(iii)(aa)