



SEN. ROGER J. KATZ, CHAIR
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. LAWRENCE BLISS
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. DAVID TRAHAN
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
April 8, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:46 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Craven and Sen. McCormick Joining the meeting in progress: Sen. Bliss and Sen. Sullivan, Absent: Sen. Trahan
Representatives:	Rep. Burns, Rep. Pilon, Rep. Fitzpatrick and Rep. Lovejoy Joining the meeting in progress: Rep. Fossel and Rep. Boland
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Etta Begin, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Ruth Lawson-Stoppes, Director, Health Care Services, Department of Corrections (DOC)

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **Presentation of Information Brief on Opportunities to Contain Costs and Achieve Efficiencies in Correctional Health Care Services**

NEW BUSINESS

- **Presentation of Information Brief on Opportunities to Contain Costs and Achieve Efficiencies in Correctional Health Care Services**

Director Ashcroft said OPEGA has in progress a review of Health Care Services in the Correctional System with the primary focus being questions about contractors' performance and the Department's monitoring of contractor performance in providing health care services. OPEGA hired a consultant with national expertise to conduct the review and during the course of the review there were several areas that were identified as possible opportunities to contain future costs in health care in Corrections or achieve efficiencies. Those areas are outside the scope of the original review, but the consultant did offer suggestions to DOC and the Director wanted to make the Legislature aware of them so they could be having discussions with DOC, as appropriate. The ideas will require planning and an effort that needs to begin immediately if the Legislature would hope to reap the benefits and that is why the Director did not wait for the full Report to be completed.

DOC contracts for the provision of health care in the correctional system and OPEGA's review focused on 2 particular contractors. CMS provides most of the medical, dental and mental health services and Correct RX provides the pharmaceutical services. In FY 2010 the State paid \$12 million from the General Fund to CMS and Correct RX received \$2.7 million.

The consultant had suggestions for ways DOC could restructure its contract with the vendors. CMS and Correct RX have had longstanding contracts with DOC, but those services will go out for bid in the near future, so this offers a timely opportunity to incorporate suggestions.

Director Ashcroft presented the Information Brief.

Rep. Fitzpatrick, Chair Katz and Sen. Craven discussed the cost plus situation and asked if a prisoner goes to the hospital, is the vendor responsible for payment and that gets passed through to the State. How much of the services are provided by vendor employees and how much by community physicians or hospitals. Is there opportunity for the State to have contracts that paid a flat amount of money to a vendor and they manage the care of prisoners for that fee. Director Ashcroft said the members' interpretation of cost plus was correct, but she did not know how many would be community physicians or hospitals. That will be part of the remainder of the review.

The consultant suggested that a portion of the contract be a flat fee to cover offsite care so that the vendor would be incentivized to keep care onsite as much as possible. There are transportation and security issues when a patient goes offsite for care and it can also impact patient care if all the necessary resources cannot come together at an opportune time. If prisoners go outside the facilities to a medical supervised community program, then whatever they have for insurance under MaineCare or private insurance comes into play. If they are incarcerated, DOC pays.

The consultant had noted that because of the way the State's current contracts are structured DOC is not being allowed to achieve all the benefits for privatization.

Committee discussion involved prisoners' long term care, moving elderly prisoners into the community allowing the State to get Federal and State funds to support them and location of a facility so travel would not be a problem for visitors. Chair Burns thought the Criminal Justice and Public Safety (CJPS) Committee needs to be involved in these discussions because of their work with DOC. He suggested that Director Ashcroft set up a meeting with, or invite, the Chairs and Leads of the CJPS and Health and Human Services (HHS) Committees to join the GOC for the Report presentation.

Director Ashcroft received the consultant's final Report, but wants more information regarding some issues identified, what the implications are and what additional work OPEGA could or should do. The Report will be out before the end of session.

In response to Committee questions regarding the CMS contract, Director Ashcroft said the current contract expires at the end of June, 2011. CMS has had the contract since 2003 and DOC continued to extend it every time it came up for renewal. DOC is in the process of issuing the RFP, but she does not know if they have had discussions regarding extending their contract with CMS. This contract has a lot of General Fund dollars, has continued a long time, and does not appear to have been competitively bid.

Director Ashcroft informed the GOC that Director Lawson-Stopps was at the meeting to help answer the Committee's questions.

Committee members had questions regarding payment and facilities available to prisoners who are veterans. Director Lawson-Stopps said if a prisoner is in need of long term care the Veterans' facilities is a place DOC does look into. She understands that Togus and the Veterans Administration have not been willing to cover medical costs specifically, but if they were able to have a Veterans' Nursing Home available, they would be covered under those circumstances.

It is difficult for a number of reasons to place a prisoner in a nursing home and Director Lawson-Stopps has seen the extraordinary resources that have gone into trying to place prisoners with zero results, but they need to find other facilities for prisoners who are no longer a threat.

Many other states have facilities for prisoners who are older and need long term care. There could be benefits from that kind of a facility, but Director Lawson-Stopps understands MaineCare would not pay. If a prisoner goes to a hospital or nursing home outside the facilities, MaineCare or other insurances will pay, but within DOC facilities, it is the Department's responsibility. Maine has a prison population nearing the elderly age that needs assistance in many different ways.

Director Lawson-Stopps' comments in response to Committee members' questions regarding DOC's contract with CMS included:

- DOC is constantly involved with the CMS contract and will be working collaboratively with them at looking at costs savings in a number of different areas.
- In the past MaineCare said they did not want DOC applying for MaineCare for every prisoner that came into the system, but CMS is in fact applying under those circumstances.
- DOC has been working diligently on the RFP for the medical services contract but there have been unforeseen issues and she thinks the current contract will need to be extended.
- Currently the contract pays the vendor a flat amount per prisoner and increases when there is offsite care. Although CMS does not receive a benefit from that, the question naturally arises of whether they manage offsite care to the greatest extent possible.
- At the Correction facilities, DOC pays a flat per prisoner rate based on the contracted hours, but with their aggregate cap, which includes offsite services, fluctuation in costs is significant and becomes a more controversial part.
- The standard diet at the prison is very healthy.
- CMS solely decides the prisoner's needs for medical treatments and makes the determination whether a prisoner needs outside medical care. Director Lawson-Stopps consults on a regular basis with CMS' Regional Medical Director.
- CMS still has the same staff hours within the facilities, still has the per prisoner reimbursement so whether they send someone outside for a specialty consult or emergency room visit, etc., does not alter the overall reimbursement they receive;
- DOC hired CMS for their medical expertise and that includes solely making decisions on referrals.
- Hospital and specialist costs, up to a certain amount, are included in CMS' \$17 million contract with the State, but when it exceeds that amount DOC pays CMS the extra. She will get the dollars amounts for the GOC.

- She needs to examine how DOC can best leverage resources from the Veterans Administration because other than placing prisoners who are veterans in the long term care facilities, DOC has not been able to leverage veterans' benefits for the prisoners, including both inpatient hospitalization and outpatient services.

The GOC requested a report back regarding veterans services because they may be governed by federal laws and regulations and the offices in Maine do not want to deal with it.

The members of the Committee thanked Director Lawson-Stopps for attending the meeting and answering their questions.

Director Ashcroft noted that it was her understanding that DOC contracts with CMS for a certain number of hours, for various positions and pays up front each month for those hours. If a position is vacant for a particular period of time DOC receives a credit, but it does not affect the billing of hours. If DOC's contract with CMS had a cap on offsite care, that might encourage them to manage and do as much onsite care as possible.

Chair Katz asked Director Ashcroft for suggestions of how to proceed with this review.

Director Ashcroft said the purpose of getting the Information Brief out was so the Legislature, particularly the Criminal Justice and Public Safety (CJ&PS) Committee, could decide what actions they would like to see DOC take or the Legislature would like to take. The Information Brief will go to the CJ&PS, HHS and AFA Committees and will be incorporated in OPEGA's final report for the GOC to take action on.

- **Follow-up on OPEGA Fund for a Healthy Maine Programs Report**

- **Review of Legislation Requested by GOC of 124th Legislature**

OPEGA released a report in October, 2009 on the Fund for Healthy Maine Programs. The Report Recommendations included that the Legislature consider establishing a special commission or study to review the allocations of the FFHM to make sure they aligned with the State's priorities in the terms of health and the different health issues the State was now facing. It had been 10 years since the FFHM was established and the allocations to different programs set at that time had not changed a lot. It was suggested, and DHHS agreed, that the preventive health care arena should be looked at to determine which programs or efforts should be getting more or less support from the Fund.

The other recommendations regarded additional transparency of exactly what the FFHM was paying for and structuring the budgetary programs differently to make it clearer for legislators to determine the key activities and health efforts the funds were going to. Currently a number of them are very general with not a lot of information for the Legislature to draw on in terms of what programs are supported and the amount of funds received.

At the time the Report was released the GOC referred it to the HHS Committee for consideration. No action was taken so the previous GOC discussed submitting its own legislation. Two pieces of legislation were drafted. A joint study order to address the recommendation for a study commission to review the allocations of the fund and legislation to change the statute to accomplish more transparency and accountability in the budget.

Prior to being able to conclude discussions, the Administration changed. Director Ashcroft provided the information to the newly appointed Commissioner and State Controller, but has not yet heard back from either. It is before the GOC to decide whether this Committee wants to go forward with implementing the legislation.

Committee discussion included the following:

- The Fund should be reviewed because it would be destructive to take all the current investments away.

- Investments should not be made in new programs without having the time to review them.
- Introducing the legislation and knowing a commission was going to be created may help the HHS and AFA Committees in deciding whether to cut across the board or set priorities.
- MaineCare is a big hole that money keeps being poured into and the hole keeps getting larger.
- The State has the option to realign according to Maine's current health priorities.
- That there be transparency and accountability and that DHHS' budget be better organized regarding the funds so legislators would be able to see where the money is going.
- **Submission of OPEGA's Proposed FY 12 and FY 13 Budget for GOC Approval**

OPEGA's budget process is in its statute and OPEGA's budget is a specific line item under the Legislature's budget. Director Ashcroft works with the Executive Director's Office because it is a piece of the Legislature's whole budget that ultimately goes before the Legislative Council for approval. In the past she has worked with the GOC on the budget followed by the Committee sending a letter to the Council's Budget Subcommittee with their recommendations. The Budget Subcommittee was scheduled to meet on April 12th.

Following a brief discussion the following motion was made.

Motion: That the Government Oversight Committee approves OPEGA's Proposed FY 12 and FY 13 Budget. (Motion by Chair Burns, second by Rep. Fossel, Passed, unanimous 7-0).

UNFINISHED BUSINESS

- **Discussion on Current Results of Preliminary Research on Projects in Progress**

- BETR, BETE and TIF (Economic Development Programs)

At the last GOC meeting Director Ashcroft informed the Committee that OPEGA's preliminary research on this topic's questions would take well beyond the end of session because of where the needed data resides and the amount of work involved to answer the questions. The GOC tabled the discussion until Sen. Trahan and Rep. Lovejoy could be at the meeting.

OPEGA could be in a position to issue an information brief of what has been learned about these programs and where the data is located, but she will wait for specific direction from the GOC.

The Committee agreed that OPEGA continue on its current course and bring it back for a Committee decision at a later meeting.

- Cost Per Prisoner in the Department of Corrections

One of the key questions the Committee wanted looked at is why Maine is 7th highest in the country for cost per prisoner. The approach for answering that would be to gather information on how the statistic got generated, what are the components being used and can it be seen where Maine is differing from other States.

OPEGA determined the statistic, and where it came from, was at a very aggravate level. There is no detail from the entity issuing that statistic that would allow OPEGA to look at where Maine is lined up with other states. To pursue and understand that statistic by itself, would require OPEGA to conduct a survey of other States to get data that was apples-to-apples. That would be a more involved process than taking something someone has already got and doing additional analysis on it.

Director Ashcroft has talked with Scott Ferguson, Director, DOC Service Center, and he thinks DOC would have an interest in doing something like that. It is probably an effort the Department could take on if the Legislature directed them to do so.

The Director was looking to the GOC to know if they wanted to understand how Maine compares to other States versus OPEGA looking at what the cost is per prisoner in Maine, what the drivers of those particular cost elements are, and is there any way that cost can be reduced.

Chair Burns said Commissioner Ponte appeared before the CJPS Committee and was asked to come up with the figures Director Ashcroft referred to, specifically the Maine prison costs, because that Committee needed the information in order to act on some of the issues before it.

Director Ashcroft summarized the Committee's discussion. The GOC thought it would be of value to the Legislature to know how Maine compares to some other States and DOC has been asked to do that by the CJPS Committee. OPEGA will contact DOC regarding what their plan is to get that information and, if the GOC is comfortable with DOC's plan, OPEGA can move forward with a review and incorporate DOC's work. She asked if the GOC still wanted OPEGA to review the key cost components and what is driving them or would the Committee prefer to wait and see what could be gleaned from a DOC survey or comparison.

Chair Katz advocated for OPEGA moving forward with the review of cost drivers and because it is DOC's costs that are so high, they do the other work on this topic. GOC members agreed.

OPEGA will tweak the original questions and bring the revised questions to the next meeting.

- Child Development Services

From what OPEGA has learned about the Program so far, Director Ashcroft thinks it would be prudent to continue with an OPEGA review even though they will not be able to assist in solving the short term budget concerns with this Program right now. There are some real risk areas and potential issues that deserve a closer examination. OPEGA cannot tackle any of the questions in a meaningful way before the end of session, but would look to bring something back before next session. The Director would propose continuing this review.

The Committee agreed to have OPEGA continue.

- **Discussion on Selecting Additional Projects for OPEGA Work Plan** (On Deck List and New Topics for Consideration)

Rep. Fossel noted that the HHS Committee will be discussing the Certificate of Need so the Director might check on what happens at that work session.

Director Ashcroft will contact the OPLA Analysis for the HHS Committee and ask if information OPEGA has already would be helpful to the Committee.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

Earlier discussions in the meeting involved this item.

SCHEDULE NEXT COMMITTEE MEETING

The next GOC meeting was scheduled for April 15, 2011, 9:30 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 12:06 p.m. (Motion by Rep. Pilon, second by Chair Katz, unanimous).