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SEN. PAUL T. DAVIS, SR.
SEN. BILL DIAMOND
SEN. STAN GERZOFKY
REP. MICHAEL D. MCCLELLAN

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
January 22, 2016
Accepted March 11, 2016

CALL TO ORDER

The Chair, Rep. Kruger, called the Government Oversight Committee to order at 9:09 a.m. in the Cross Office Building.

Senators: Sen. Burns, Sen. Davis, Sen. Diamond and Sen. Johnson,
Joining the Meeting in Progress: Sen. Gerzofsky and Sen. Katz

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

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Scott Farwell, Analyst, OPEGA
Jennifer Henderson, Sr. Analyst, OPEGA
Joel Lee, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Agency Officers and Staff Providing Information to the Committee: Mary Mayhew, Commissioner, Department of Health and Human Services
Jay Harper, Superintendent, Riverview Psychiatric Center

Others Providing Information to the Committee: Justice Daniel Wathen, Court Master, Riverview Psychiatric Center

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Chair Kruger asked if there was objection to taking agenda items out of order. Hearing none, the Committee moved to **Unfinished Business, Discussion of Riverview Psychiatric Center – Staffing Concerns.**

UNFINISHED BUSINESS

• Discussion of Riverview Psychiatric Center – Staffing Concerns

- Mary Mayhew, Commissioner, Department of Health and Human Services
- Jay Harper, Superintendent, Riverview Psychiatric Center
- Justice Daniel Wathen, Court Master

Director Ashcroft thought it was important to review with everyone how the GOC got involved in this discussion of the staffing concerns at Riverview Psychiatric Center (RPC) and the degree to which that situation is impacting risks associated with patient and staff safety. In August, Director Ashcroft raised safety issues at RPC with the GOC as something that was evolving as a concern as part of the ongoing review that OPEGA is currently conducting of RPC. As part of its work, OPEGA had been following the Court Master's efforts in monitoring at RPC for the Consent Decree. Throughout the review, OPEGA continued to hear concerns from current and former staff about the staffing situation. Director Ashcroft decided to not wait until OPEGA released a report on RPC to make the GOC aware that staffing, and related safety risks, was emerging as an area of great concern.

Director Ashcroft said OPEGA did speak with the Department about these concerns to get a sense of whether the upper level administration was aware and monitoring the situation of staff working many hours of overtime including mandated overtime. She said the large number of vacancies and staff who had work restrictions or were out on leave were impacting how many staff were actually available to work and, as a result of that, there may be situation were folks were working tired, or with not as many staff as might be desired, given the patient acuity level, and that was posing safety risks for both patients and staff.

Director Ashcroft said she had raised these issues because she had not been able to get a good sense of what upper level management was monitoring in terms of that risk. Since then, the GOC sent questions to Superintendent Harper to try to get a better handle on what the staffing situation was. She noted that Commissioner Mayhew responded to those questions. At the December 3, 2015 GOC meeting Justice Wathen gave his responses to the GOC's questions that had been sent to Superintendent Harper. At that meeting members of the Committee said they would like the opportunity to talk further with Commissioner Mayhew. Justice Wathen noted in December that he would be doing additional review related to some of the questions and at today's meeting he has provided the Committee with his current preliminary thoughts in regard to that.

At today's GOC meeting the Committee is attempting to understand the staffing situation at RPC and what the Administration is doing to monitor the level of safety risks associated with staff working excessive overtime, while they continue with their efforts to try to get the staffing up to the desired level.

Chair Kruger said at this meeting the GOC was focusing on the staffing issues. There are a lot issues they could talk about, but what they have been charged with working on are the specific issues around staffing at RPC.

Chair Kruger introduced Commissioner Mayhew and Superintendent Harper.

Commissioner Mayhew said Mr. Harper and she were happy to respond to any questions by the Committee. She noted her respect for the GOC and OPEGA and said OPEGA has conducted many reviews of DHHS and she appreciates their understanding and role with regard to RPC. Commissioner Mayhew said OPEGA began their review of RPC in the summer of 2014 and DHHS and RPC have been working to respond to OPEGA's request for information.

Commissioner Mayhew said RPC has been under a 29 year consent decree and receives oversight from a variety of entities. She noted that Justice Wathen was at the meeting in his role as Court Master, and RPC was

also governed and overseen by the Division of Licensing and Regulatory Services and the National Joint Commission, which is an accrediting body. As part of OPEGA's scope she knew they were looking at areas to determine whether there were any concerns that were falling outside that regulatory scope. Commissioner Mayhew said the OPEGA Team has spent considerable time looking at those documents and understanding where there is continual review, surveys and follow up investigations when complaints are raised. She said she wanted to talk about any of issues that have been raised.

Commissioner Mayhew said a hospital is absolutely dependent on direct care work, and they are dependent upon having sufficient staffing to meet the need of the patients at RPC. She said that is why in the last session DHHS requested 29 new positions at RPC in their budget. In addition, she said they recommended the establishment of additional positions for acuity specialists. Commissioner Mayhew said RPC is a very difficult place to work as the clients have severe and persistent mental illness and there are challenges that come with that. She said in some ways that is not unique to RPC as you speak to staff from other hospitals. The jobs are challenging and it is 24/7 to provide treatment and care.

Commissioner Mayhew said RPC was also competing with other hospitals for recruitment and retaining of staff. She said they share the GOC's concerns and have been working with DAFS's Human Resources Office to fill vacancies. Commissioner Mayhew said they have also been working with Union representatives on trying to expedite and change some of the policies so that RPC can more quickly post positions. She said they have also worked with the Union representatives to create and establish per diem pools which allow for RPC to offer overtime voluntarily to staff, but then to the extent that they still need to have staff on site they have a per diem pool from which they can draw. She said they had a nurse per diem pool and had proposed a per diem pool for mental health workers. They have just received the support of the Union to move forward with that. The Commissioner said RPC was very pleased with that opportunity because it will reduce mandated overtime.

Commissioner Mayhew said there are other areas she is anxious to speak to the GOC about because as she has identified there are some statutory issues that pertains to the types of staffing models. She said a lot of hospitals offer three 12 hour shifts and provide full time benefits. The Commissioner said they would like to be able to offer similar flexible shifts, but there are some statutory issues that they would like to explore with the Committee. She thinks that could help support their efforts to more aggressively fill those positions.

Commissioner Mayhew said RPC plays a very unique role different than Acadia or Spring Harbor Hospitals in terms of their obligations under the statute to meet the needs of forensic patients. This obligation plays a role in the significant challenges in the work environment because of the nature of some of those patients and the level of physical violence that has occurred. She said DHHS has brought forward proposals in the past, some of which have been acted on and some they would like to have considered again, that would allow for RPC to better fulfill its role as a hospital. The dual role with forensic clients who come under the custody of DHHS has created questions, both at the Legislature and with some of DHHS's federal regulators, about whether RPC is truly functioning as a hospital, or is playing a correctional role with regard to some of the patients in the hospital. The Commissioner said that all plays a part in the challenges in appropriately staffing and maintaining staff at the Hospital.

Mr. Harper said when he began as Superintendent at RPC the first charge he received from Commissioner Mayhew was to deal with the safety concerns at RPC which affected staff, patients and families. He said when you are operating at a hospital level you are working with numbers and aggregates and are trying to find the policies, personnel, the right credential and educational level to demonstrate that you are being safer. He uses four or five proxy measures as an indicator of safety. RPC is looking for reduction in the number of seclusion and restraints events which were the stories on the front pages a year or two ago when they had members of the Department of Corrections present at RPC to deal with the safety concerns. He said those numbers have all dropped dramatically. Mr. Harper said they have added acuity specialists, have remixed the staffing situation on the units. In the last quarter, they have never been above nine injuries per month compared to a year ago of not being below twenty staff injuries per month. He said RPC has made about a fifty percent reduction, but they still have a ways to go. Nobody should go to work expecting to be injured but everybody should go to

work at RPC realizing that, on any bad day for an individual patient, there is the possibility that you might be injured. Mr. Harper said it was RPC's goal to get to zero injuries.

Mr. Harper said from his perspective, overall, the system looks like it is significantly safer for everybody. He said safety is independent of whether or not he has the right number of staff at the right place at the right time because there are many other conditions that go into play, both the environment and therapeutic interventions that are used. Mr. Harper thought it was very important for the GOC to hear from staff about how they feel about working at RPC. He said he was proud of the staff and it was not an easy job to do.

Chair Kruger asked about RPC's capacity and what were the occupancy levels in the last year.

Commissioner Mayhew explained that RPC is part of the State's mental health system and is foundational as to how well the mental health system in Maine works. She said when RPC is not fulfilling its role for civil patients you often hear about individuals who are in emergency departments and staff in hospitals who are desperately calling around to find an inpatient psychiatric bed. The Commissioner said RPC plays a significant role for those individuals with severe and persistent mental illness who require longer lengths of stay. The average length of stay at Spring Harbor or Acadia is closer to fourteen days. She said for RPC and Dorothea Dix, it is thirty-five or forty-five days on average for civil patients. The forensic patients are taken out of the totals because they do not get discharged until they have received court permission to be in the community. She said RPC has ninety-two beds and, over the last several years, there have been significant challenges as the number of forensic clients has increased. When the Hospital was designed to replace AMHI there was a split between the number of beds with forty-eight beds for civil patients and forty-four beds for forensic. She said they saw a peak not that long ago where they had over sixty of the beds occupied by forensic clients. She said if you talk with a county sheriff they will also share their frustration when they have an inmate that needs to be evaluated, has mental health needs, or has been determined to be incompetent to stand trial. By statute, DHHS needs to be able to timely admit that individual. Commissioner Mayhew said there are pressures and frustrations throughout the system with a lot of emphasis on RPC. She said when RPC has individuals who have significant needs and may be violent it takes a lot of staff to deal with just that one individual so beds have to be shut down. If they cannot appropriately staff patients, then they cannot admit.

Commissioner Mayhew said Mr. Harper and RPC staff had been working over the last year to fill vacancies, to reduce the number of staff injuries and to allow them to effectively manage and treat the patients. She said they talk often about their desire to continue to move toward a center of excellence in the delivery of treatment at RPC and have been at near capacity in the last several weeks. She said not that many months ago RPC was down to in the seventies in their occupancy rate. One or two patients that require significant staffing can upset that balance and make it difficult for RPC to timely admit and that sends out a ripple effect throughout the mental health system. The Commissioner said they appreciate the role RPC needs to play in helping to support the system. That is why they have had proposals in front of the Legislature to look at other options that may help to further support how well that system can function, both from the Correctional perspective, the county jails, community hospitals, etc. She said you always want to have a few open beds for the individual who has been determined incompetent to stand trial and their responsibility is to determine if they can restore that individual to competency.

Rep. Mastraccio said the issue that she heard from the staff was really around the management, not that they had a problem with the patients. She referenced the use of per diem pools and heard DHHS's solutions regarding staffing such as per diem pools and said per diem pools are fine for a temporary measure, because one of the things you need in a hospital like RPC is continuity of care. Rep. Mastraccio was glad to hear the Commissioner talk about twelve hour shifts and that is the first time she has heard that as a potential solution to some of the staffing issues. She asked what DHHS/RPC was doing regarding management issues and what was their long term plan. She noted a report that came out in October, 2015 and now it is January and the staffing crisis is still there. She understands RPC is competing with other hospitals but Maine General, Togus and the other hospitals have not just opened. They have always been there and there has always been competing hospitals for staff so for her there is another issue. Rep. Mastraccio thought it was management and asked what they were planning to do in the immediate future to address the staffing crisis.

Commissioner Mayhew said she has been deeply involved in RPC and appreciates the crisis that exists there and how critical their efforts are on staffing. She thought they had identified a number of the steps they have taken and it is not just about looking at individual parts, and that is what Mr. Harper was trying to express. It is in the totality of the challenges and roles of the patients they serve, and all of that relates to their ability to recruit and retain. She said while Maine General did not just open it did just open a new hospital. There are challenges throughout the system in Maine for recruiting and retaining in terms of salaries, and bonus packages offered, that have created some limitations. She said they have been implementing changes and agreed with Rep. Mastraccio regarding the per diem pool. It is not considered to be long term and that is why DHHS requested the 29 positions and why they are looking at ways in which to implement the three twelve hour shifts. Commissioner Mayhew said they have a statutory change that they have to address and are prepared to look at legislation that will help to address that.

Commissioner Mayhew said the acuity specialists that were established more than two years ago have played a fundamental role because when you talk with staff, as in exit interviews, there are and were concerns about staff safety and the degree of challenge that staff face. She said the acuity specialists are trained to identify patient triggers and to work on ways to deescalate situations and that has directly contributed to the reduction of staff injuries.

Commissioner Mayhew referred to the training that Mr. Harper had brought on board at RPC. She said one of their other focus areas has been asking DAFS to increase their HR resources at RPC and to think about different ways in which they can attract applicants. She said they are looking at open houses that will allow applicants to come in to meet with staff and to apply for the positions, and for any possible way to more aggressively seek applicants for these position.

Rep. Mastraccio said the training is extremely important, but that is the problem. If you are not staffed fully how do you get off the floor to go to training. It is fine to say you have training, but how are you going to ensure that people get the training that they need. She said if the solution is not doing what you want it to do, at what point is it going to be decided that it is not working.

Mr. Harper thought the evidence showed that it is working. It has not gotten them where they want to be in the end, but it shows that they are clearly on the right road. For two years, they have not had a patient care violation from the people who do the Licensing for RPC. They have process issues and have had staff leaving because they were concerned about the violence, injuries, etc. at the RPC. Mr. Harper said addressing that problem allows them to retain staff and then they can interject the training for them and get to the continuity of care. He explained that as many management staff as possible move on to the floor to try to free up as many people as possible go to training. He said the training is in cycles so you get two or three opportunities every month for acuity specialists, and there is ongoing regular training for their behavioral management staff, non-violent communication, etc. He said it is not an easy solution. He gets concerned when someone says to him it is a crisis and the response is need for staff because it is a lot of things, with staff being one important component. Mr. Harper said RPC is so far behind in terms of educational standards that should be set for all the staff. There are two sets of staff at RPC. He has paraprofessionals operating on the floors on a day-to-day basis that the Consent Decree directly addresses and then they have psychologists, psychiatric social workers, and are trying to move toward psychiatric nursing to get the specialization needed at RPC. Mr. Harper said it is going to take time, but RPC is making progress.

Chair Kruger asked if an employment specialist position was funded for RPC.

Mr. Harper said the Legislature funded a recruitment and retention specialist for RPC in the last budget package. He said that position has been filled and they are waiting for that person to start work. Mr. Harper noted that the position was filled almost one year later than he had asked because of some problems with the budget. He thinks the timing is right and that RPC will be able to set up their programs before all the schools graduate their trained people.

Sen. Burns said he attended a meeting and listened to all of those involved with RPC and he hoped the GOC will listen because they need to get to the root of the problem. At that meeting, he heard overwhelmingly from RPC staff regarding staffing and mandatory overtime. He thinks those two concerns are creating a dangerous environment and, although DHHS is striving to address that issue right now, he hoped the Committee will hear about what it is they can do as a Legislature, and what the Commissioner can do as a Department, to address those issues so that there is adequate staffing.

Sen. Burns asked what RPC's current staffing level was for the facility and the different floors. What is the minimum and what is the optimum and how do you get closer to the optimum because the minimum is not working?

Mr. Harper thought Sen. Burns was on the target of what needs to be focused on for RPC moving forward. He said getting the safety issues under control is a baseline for everybody because no treatment occurs until everybody is feeling safe. If you feel unsafe, patients stay in their rooms, staff stays away from patients, etc. He now feels they have a good grip on that. Mr. Harper said RPC is going through a major culture change. He said they were now realizing that they no longer can hire people that walk in, or a qualified nurse that has only had one rotation into psychiatric care. He said RPC has to get staff certified as psychiatric nurses because that is what their business is. The question is how many staff, in which job titles and, at what level of training should they be supporting them to get there. Mr. Harper said they have a minimum level of staff because they have a Consent Decree that tells them the ratios needed and that is based on safety. The Consent Decree speaks very little about quality because that is always moving.

Mr. Harper said RPC has tripled the number of staff they have in psychology, and tripled the number of staff that were in occupational therapy because when a patient leaves RPC they are trying to help them recover their life and the patient needs to know how to live in society. He said RPC had one person for the 92 patients trying to do that. They now have four people, one on every floor, doing that job. Previously RPC had four psychologists for 92 patients and now have thirteen. Mr. Harper said RPC does not have enough of the right people and, if you do not have the right people, you will not get the continuity to fill in the gaps. He agreed with Sen. Burns and said RPC needs to get to the question about what they want for services, what is the state of the art, and how do they optimize the mix of the different skill sets to get them there. Mr. Harper said it did not make much difference whether the patients were in forensic or civil, because they were at RPC because they need psychiatric care and treatment.

Commissioner Mayhew noted that she was trying to stay within the scope that has been established by the GOC and that OPEGA has been focused on, but thought it was important to understand what the last two and a half years have been focused on at RPC. She said they did have to have correctional officers within RPC because they had staff assaulted and some were out of work for months. The Center for Medicare and Medicaid Services (CMS), who certifies RPC, did not believe a hospital should have correctional officers located in the hospital and decertified RPC. CMS raised a number of issues related to quality of treatment, patient safety, staff safety, and governance and that set in motion a comprehensive set of actions. She wanted to be clear that this has been a constant effort, both moving toward that center of excellence and addressing a host of issues, from the way in which they document an individual treatment plan to the engagement of a team around that treatment plan with the patient. Commissioner Mayhew said that has required significant changes. DHHS took the correctional officers out of RPC. The last time CMS surveyed RPC they had no quality issues of concern and no staff/patient safety issues, but unfortunately CMS still had issues with the way RPC was documenting individual treatment plans. It was an all or nothing equation to get recertified, but a lot of progress has been made. The Commissioner said no one was at the meeting to suggest that they have resolved the significant challenges related to staffing, and noted that they still have a number of individuals that they believe should be cared for and treated at the intensive mental health unit at the Maine State Prison. She said language changes were adopted in a bill that prevents those individuals from receiving that treatment at the Prison, so they are still dealing with admissions that are inappropriate for RPC. The Commissioner said they also have about twenty patients that no longer require a hospital level of care and meet clinical readiness to be discharged, but they are forensic patients and RPC has not received court authorization to release those patients into the community.

Mr. Harper said DHHS has a bill that was tabled last session regarding creating a partnership between RPC and UMA that provides a quarter of a million dollars of training opportunities for staff at the University for both tuition reimbursement and independent training. He said technology has helped them solve some of their training problems in that they have converted three different rooms into interactive tv download centers at RPC. Staff can dial up the University of Southern California or BU, which are the top two schools doing recovery based mental health care in the country, and staff can take their classes when they want to. Mr. Harper said they were slowly etching away at problems staff is incurring when trying to get proper training.

Sen. Diamond asked if the Commissioner, or her staff, had any discussions with the Governor and his staff that talked about bringing the forensic RPC patients to an expanded correctional center, or prison, in Windham as a long term solution.

Commissioner Mayhew said nothing happens without action taken by the Legislature so she is sure whatever proposal may be discussed will certainly be before a Committee. She said RPC is still not certified, even though they addressed all of the conditions. While CMS does not put a lot of things in writing about what they would like to see DHHS do, they expressed concern about the number of forensic clients who are at RPC who no longer need hospital level of care. The Governor is looking at various components of meeting the needs of forensic patients and is thinking about longer term solutions. She clarified that it would not be that all forensic clients would leave RPC. For those who still needed a hospital level of care, that would continue to be the role for RPC.

Rep. Duchesne said he appreciated the long term plan to get the situation turned around, but thinks they need to continue to focus on the staffing levels and on the patient care because until they get past those problems, they will not get anywhere else. He referred to the per diem pools and said it sounded like a stop gap where once again RPC was plugging in people to get the numbers up, but they do not necessarily have the training, or familiarity, with patients. Therefore, it was only another temporary solution to cover up the shortages of staff at RPC.

Commissioner Mayhew said RPC just hired 29 people in the last thirty days and there was no desire to have an unnecessary dependency on a per diem pool. She said she has met with patients who have expressed similar concerns about the turnover and the impact on their continuity of care, but you cannot lose sight of why individuals may leave RPC. She said RPC also has issues with family medical leave because of the associated stress, or physical injuries that may have been sustained, so that also continues to complicate staffing. She said it has been an all hands on deck effort to get the positions posted, the job descriptions written, interviews conducted and the positions filled as aggressively as possible.

Mr. Harper said RPC, in negotiations with the union, agreed to a per diem pool for a very limited period of time and they are to have regular check ins on how it is working. He said they set the standards for the individuals who can be in the per diem pools. For the new per diem pool for mental health workers, in almost all cases the people who go into the pool that meet RPC's qualifications are ex-employees who can take a few shifts, but cannot work forty hours a week. He said RPC needs to reduce the vacancy rate because it has tremendous effects on the overall hospital's flexibility. Mr. Harper noted that one of their biggest challenges is recruiting, hiring and maintaining staff and gave the example of psychiatrists. He said RPC moved their psychiatric service and benefit package to look the same as Maine Medical, but what happens is people who want to apply Google RPC and they get newspaper articles that make it sound like a place that is not necessarily their first choice to go to work.

Rep. Duchesne said it was his experience that whenever a company has challenges recruiting and retaining employees it is almost always because of the management. He asked how much opportunity would Mr. Harper have to walk around and observe management, notice whether there are particular staffing shortages and then be able to follow-up with the staff and other managers to see why that situation happened so it can be addressed from a management perspective.

Mr. Harper said he used to be on the floors at least twice every shift, but now is on the floors twice a day. Sometimes there are things he needs to correct on the spot, other things he takes to supervisors to be corrected and many times there is nothing to correct. He has been stressing for the top managers to get out and walk the floors and they have been doing that. From his perspective, in many cases, they over weighted the training programs in the past with either theoretical issues, or issues for people on the ground, and nothing for the management structure. He said the upper level has got to successfully hand off information. Mr. Harper said RPC has contracted with two consultants this year. One is Pat Deegan, expert in recovery services at Boston University who will be meeting with top level management and managers and will get on the floors to see what is going on with the patients and staff. He said the other contract is with Applied Management Services, which specializes in acuity staffing evaluations in hospital settings. That will give RPC both numbers and types of individuals they need. They can also talk about the management structure that needs to be there to supervise, train and mentor staff.

Sen. Gerzofsky said the Prison has a thirty-two bed facility that has gone through the legislative process and it is working. He asked what the authorized staffing level is for RPC and, if possible, the numbers for professional and nonprofessional positions.

Commissioner Mayhew said the only way someone who has been deemed not criminally responsible or incompetent to stand trial can be sent from RPC to the Intensive Mental Health Unit at the Prison is if they assaulted someone at RPC. She said there are 364 positions at RPC with 51 vacancies, but noted that DHHS recently asked for and was given 29 new positions.

Sen. Johnson said he appreciates that DHHS is looking to establish best practice and quality work and has hired psychologists at an appropriate level for that. He noted that it was said that RPC hired 29 people in the last 30 days, but from his understanding, there are still problems with 43 shifts of mandated overtime per week. He also understood that there were still the high levels of mandatory overtime and asked how many of the 29 people hired in the last 30 days are taking staff positions that alleviate either a shortage of coverage or a mandated overtime shift for someone.

Mr. Harper did not know the exact numbers, but said when going out to hire they are prioritizing the direct floor staff to be hired first and backing up with maintenance, cooks, housekeepers and the professional staff. He said he would get that information to the GOC. He said a year ago RPC had 3,070 hours of overtime and this past December the amount was 2,221 hours so they have reduced the amount about one third.

Sen. Johnson said RPC is dealing with the systemic issues of filling position and referenced the comment made earlier that many times when you have turnover it is a management problem. He said often it is because the employee is not feeling appreciated, supported, safe, etc. or if there are better career opportunities somewhere else. He said that, although Mr. Harper said he appreciates the crisis, it does not appear that anything has been done about either of those problems. He asked what had been done at RPC to improve morale, and to change how attractive the positions are so they are actually hiring capable staff at sufficient staffing levels and can attract people away from the competitive opportunities elsewhere.

Mr. Harper said RPC opted for the opportunity for interns to come in from universities with the credentials that they thought would make the difference for them to want to be at RPC, have a better skill set, be safer and have more therapeutic interactions. He said RPC entered that program a year ago with UMA and none of the interns brought into RPC from that program have left. Mr. Harper said that is an indication that it would be a good investment to bring in a higher skill set to start with and spend training money for anybody who does not have the skills.

Sen. Johnson appreciates RPC's efforts but noted they still had 51 vacancies, still had people on shifts with one worker for six dangerous patients and have two workers responsible for a unit of 12 to 14 patients. They have staff working a full shift and then work another shift, going home for 4 hours and then going back to work another shift. He said that was not a reasonable expectation and what is RPC doing now to address the fact that they still do not have the staff training and safety levels needed.

Commissioner Mayhew said no one disputes the need to address the staffing challenges and the overtime. It is difficult for them to sit there and provide the GOC with the last 3 or 4 years of work done that has addressed a multitude of issues and challenges, all of which directly impact RPC's ability to attract and retain quality staff to effectively meet the needs, and treatment needs, of the patients at RPC. She said the Legislature also has a role to play in whether or not RPC is attempting to straddle two worlds and those two worlds do not work together well. That is their role related to forensic. Commissioner Mayhew said she would encourage the Committee to take a look at proposals they have made that were not supported that directly affect the environment of care at RPC and detracts from their ability to recruit and retain staff. She said of the 51 vacancies 29 are new positions that they came in and asked for because they believed they needed to increase staffing to deal with the unit staffing issues and to reduce overtime. The staffing injuries have been a huge focus because they have to improve the safety of RPC's environment. She said she was at the meeting because she wanted to work with the Committee to identify ongoing recommendations that can continue to effectively support RPC, which is pivotal to the overall mental health system in Maine.

Chair Kruger said he was concerned about staff that he has heard from regarding the high number of hours of overtime. He said at some point that person is not safe and not providing safe care. He asked how management is monitoring that situation so that someone intervenes and pulls that staffer out and sends them home rather than say you have to stay and work.

Mr. Harper said a unit is run through the nursing structure. Every unit and shift has a charge nurse which means everyone is checking in with them, getting their assignments and doing whatever work they are going to do on the shift. He said one of the things the charge nurse must do is make a decision for every staff coming in as to whether they are impaired in some manner and charge nurses need the ability to tell them they need to step aside or step out. He said RPC does do that, but cannot do it as much as they want to until they fill up the numbers for staffing. When the charge nurse takes that action, it automatically triggers the need for someone else to fill in and that acts as a multiplier effect. If no one volunteers for that coverage, they are forced to go to mandates and RPC's temporary stop gap was to put in the per diem pool.

Commissioner Mayhew said the other option is to begin closing down beds. She said that is a balance RPC is constantly challenged with because on the forensic side there is no acknowledgement by the courts as to whether or not there is a bed available or appropriate staffing levels. She said the courts just put that person under RPC's custody and expects them to admit that individual. It is a pressure that does not exist with other like hospitals and it is something they are trying to reflect in all of the staffing decisions.

Sen. Johnson said it was his understanding that there are dangerous patients on both the forensic and civil side, and that the real safety issue is whether RPC has adequate coverage in staffing for patients who are dangerous. He said he was having trouble accepting the Commissioner's suggestion that because forensic is not within their control it is creating an uncontrollable safety situation.

Commissioner Mayhew repeated what was talked about regarding the forensic unit and said she realized that a lot of the discussions occurred in other legislative committees. She said the forensic population she is talking about is where there are intentional criminal acts that are separate and apart from the mental illness. She said that was important for her to underscore because when they established the acuity specialist positions it was to accept responsibility for their role of appropriately treating and managing behaviors that may be escalating, to identify triggers that could deescalate situations and for them to say this person is too violent to be treated at RPC. Commissioner Mayhew said they need to take responsibility for their role as a psychiatric hospital in assessing the environment that individual is in and working to make sure that they are doing everything possible in making sure their medications are appropriate, that the engagement with the patient is appropriate and also evaluated for the use of seclusion and restraint. When individuals in the forensic population intentionally commit a criminal act, charges need to be filed and that is not happening as they would like. She said there is another part of the forensic population that do not require a hospital level of care because they have been stabilized and have received the treatment. She noted there were currently 20 patients at RPC that no longer need that care.

Sen. Johnson said there is still a problem with the positions. He said he has heard DHHS's appreciation of the crisis, and that 29 of those positions were created in the last budget, which he noted was 7 months ago. He wanted to know if they truly believed it is a crisis, and were trying to deal with it, because they have made very little headway. Sen. Johnson said if he were in the private industry he would say either there is not a will to do anything about it or there is a level of incompetence that is preventing real solutions.

Rep. Sanderson asked for point of order. She said she has been listening to the Committee's discussion and has heard both Commissioner Mayhew and Mr. Harper answer the same question many times and it keeps being asked in different ways. She said that was fine if people needed more clarity, but when it gets to the point when a member of the Committee is calling names, such as incompetent, she did not think that was appropriate.

Chair Kruger said Rep. Sanderson was correct and asked that the GOC members be more pointed in their questions and not in any way insulting.

Sen. Johnson said in private industry he would have expected far more examination of what was being done that is not sufficient and, when things are not changing quickly enough, responding more proactively. He said he has not heard what the Commissioner or Mr. Harper is doing in realization that things are not changing at the speed at which they expect them to.

Commissioner Mayhew said typically they would be at the meeting to respond to a report and they look forward to doing that. She said OPEGA has been working on its review of RPC since the summer of 2014 so knows there has been a lot of information shared with OPEGA about all of the work that has occurred at RPC. She said there have been many changes, actions and steps taken over the last several years. She offered to prepare a summary from various documents and testimony that have been shared with the AFA and HHS Committees that might help to address some of the questions that have been raised by the GOC.

Chair Kruger said that would be helpful.

Rep. Mastraccio asked Mr. Harper if the total overtime he spoke of was mandated overtime or mandatory plus voluntary overtime. Mr. Harper said he was talking about the combination. Rep. Mastraccio asked if he had figures for the total over the last six months by month and the total costs. He said he would get that information to the GOC. Commissioner Mayhew said she thought OPEGA already had that information.

Rep. Mastraccio asked Mr. Harper if he and the managers were included in the mandated list and did he think that might be helpful for morale at RPC in terms of calling people in. Mr. Harper did not think any of them could do that because the thing about the mandate is that it requires people with specific skills. He did not know how many people were in the management structure that are carrying active licenses with them that would allow them to be available for mandates.

Rep. Mastraccio gave an example of a mental health specialist who has to have a CNA, or equivalent, and would assume that somebody that is a manager would have the ability to do that job. Mr. Harper said no because knowing what a person needs to do and managing that resource on the floor does not necessarily require that they have the skills to do the job they are managing.

Rep. Mastraccio asked if the Commissioner had any documentation from CMS that RPC would be recertified if it established the base unit she described. She noted that this was a short legislative session and asked at what point DHHS was going to flesh out its plan. Rep. Mastraccio said they have never seen, as legislators, a true plan of what the Commissioner would want to do.

Commissioner Mayhew said the federal government does not put things in writing like that. They will just show up and survey and determine. She did say that typically the federal government wants to make sure the patients that are in a hospital require a hospital level of care. She said she started discussions with them when

RPC was decertified about what it would take to get recertified. They were on national calls with CMS acknowledging that this was a dilemma occurring across the country with state psychiatric hospitals that are playing the dual role that is not accounted for in CMS regulations. Commissioner Mayhew said she has submitted a plan that identified what would be needed. The priority last year was to establish a 14 bed secure treatment facility. She said they provided the funds, the funds were taken, but the plan was rejected. She said a bill was submitted in 2013 to allow the Intensive Mental Health unit at Maine State Prison to play a larger role with individuals who have needs that are beyond the ability for RPC. Language was stripped out that would have allowed them to maximize that unit at the Maine State Prison. She said the totality of those actions has detracted from the plan that has been presented.

Rep. McClellan said last month the GOC discussed the staffing issue at RPC and had received reports from the Court Master and RPC's responses. He noted that the documents appeared to contain opposite views of the situations. He asked how RPC was working with the courts to educate them on what is being done and learn from them whatever they can offer to make the situation better.

Commissioner Mayhew said Rep. McClellan's question goes to the heart of any organization, and that is how do you get all of the issues on the table and how do you deal in a non-defensive way with conflict resolution and differences of opinion while maintaining the same mutual goals and principals about what they were seeking to accomplish. She said some of that is also what are the cultural differences that may exist. She said AMHI, and now RPC, have gone through significant changes in the role, and volume of patients that have been there, from more custodial care to active treatment. Commissioner Mayhew said Elizabeth Jones, the consultant the Court Master brought in, had been the receiver back in the early 2000s so to have her return was helpful given what her perspective was from that time to today. There were a lot of recommendations in her report and Commissioner Mayhew said they need to hear anything and everything. She said if you do not know about it, you cannot fix it and there was always a challenge in any organization of how you bring errors to the surface so that you can both address them, but also prevent it from occurring in the future. She said in any organization you want to have that robust dialogue around recommendations so there are constant meetings with the Court Master. Commissioner Mayhew noted that in one of Ms. Jones' reports she indicated that the level of physical violence, in terms of the individuals at RPC, had significantly increased. She said all of those recommendations and the work around them become part of an operational plan. Additionally, when the Joint Commission and the Division of Licensing and Regulatory Services arrives at RPC there has to be a level of detailed follow-up for anything they may identify regardless of if it is a conditional level deficiency. She said RPC has undertaken similar efforts over the last couple of years with CMS to restructure their individual treatment plans. The Commissioner said she has met with Ms. Jones to discuss her recommendations and with the Court Master, but there are more frequent meetings that occur with the Court Master and the staff at RPC to hear concerns. She said the Court Master had previously raised serious concerns about forensic clients who had been given permission to be discharged into the community, yet they were not being discharged timely and that is also of concern. Not only was housing an issue, but there needs to be a level of treatment available for them as well in order to maintain their stability once placed in the community. Commissioner Mayhew said the recommendations are taken seriously and become part of the plan.

Sen. Burns asked Mr. Harper if, other than the in charge nurse determining a staffer should not be at work, upper management, risk management or Human Resources are monitoring these work situations to make sure that everybody who comes to work is fit for duty.

Mr. Harper said Human Resources does not go to the floor and check everyone, or walk the floors to see how people are doing their job. Therefore, Human Resources is dependent upon the existing supervisory/management structure to monitor their staff and bring the issues up to them. He said it is pretty much based on the clinical managers watching their clinical programs, because that is where their staff is. In the nursing area, there is a redundancy of that. He said there are three levels of senior nurses that are watching, or have the ability to watch, staff. Sen. Burns asked if that was being documented. Mr. Harper said it only gets documented if they ask someone to leave because that person is being moved off the time clock.

Sen. Burns asked if Mr. Harper was satisfied that proper oversight is being displayed at RPC to make sure that nobody goes to work on a shift that is not fit for duty. Mr. Harper said he was not completely satisfied because it is relatively recent that RPC has been demanding that they have the ability to send somebody home. That had not been part of the culture previously.

Sen. Burns believed Commissioner Mayhew was working on a long term plan and thinks the Legislature will hear a lot more about those ideas as the session goes on. He said he wanted to get back to the staffing and mandated overtime and the fitness of people to be on shift. He want to know, if not now, at some point, what she sees the obstacles to be, what she thinks the solutions are and how the GOC can be a part of that solution. He thinks those are critical and pertinent to the Committee's scope of the review and is what they need to be dealing with in the short term so they do not lose any more staff and do not have anybody hurt.

Commissioner Mayhew said they have been bringing forward various proposals over the last several years. She said in terms of priority, the legislation to expand the scope and role of the intensive mental health unit is a priority. She said there is a statutory change that needs to occur to allow RPC the flexibility to offer three twelve hour shifts and pay full time benefits. She said the University of Maine at Augusta training legislation that Mr. Harper identified, and the 14 bed secure treatment facility would also go a long way toward improving things.

Sen. Burns asked if the Commissioner would provide those priorities to the Committee in a bulleted format.

Sen. Burns asked Chair Kruger if it would be possible to give an opportunity for one spokesperson to speak on behalf of the RPC staff. He said nobody may be interested, but would like the opportunity to be given.

Chair Kruger said he would consider it, but would have to think about the logistics of how to select the one person and would like to do that after the Committee hears from the Court Master. Sen. Burns suggested that RPC staff make the selection of their spokesperson and provide the name to the Committee.

Rep. Duchesne noted that earlier the Commissioner mentioned an issue between DHHS and DAFS on hiring and asked her to let the Committee know if there is a legislative hurdle regarding that. A red flag for him was in regard to the in charge nurse supervisor because he thinks, as Mr. Harper said, the expectation is that people will report up the problems. He said there is an opportunity, from a management point, to visit and see if it is really happening so Mr. Harper, or senior management, would know and then to check if nurse supervisors are making appropriate decisions. In Justice Wathen's previous statements to the Committee, he indicated that there are a lot acuity specialists filling mental health workers spots because of the staff shortages and they are expected to fill in and pinch hit. Rep. Duchesne asked if staff exit interviews show people are leaving because they do not get to do the job they were hired for.

Mr. Harper said there is an acute problem in those particular jobs that RPC needs to address. He thinks the Court Master can speak to it in a new recommendation he is making, and which RPC started moving on yesterday to make sure they can meet the standard that he wants. He said that will let them provide an excellent opportunity to pivot the patient/staff ratios and expertise that RPC wants for the future. When the exit interviews are done, the number one concern for staff who leave the job is the inability to get the time and attention they need from supervisors to partner with them to help them learn how to do what they are doing. He said that is something RPC has been working very hard to try to address, but it also represented to him, when he looked at the numbers, as a different way that they operate with staff now versus in the past. He said now most hospitals will tell you that when they are going to hire people they want nurses with BSMs and that is becoming the standard. It is not someone who went through a program to become a CNA, has a few years of experience and then became an RN. Mr. Harper said that is the way RPC used to be so you needed someone to mentor and work with you to get your new skill set. He said they still need that relationship but now the desired entry level is much higher. In terms of the competitive market place, they have to be careful that they are getting that first tier of employees just like all the other hospitals that have psychiatric units. He said that is RPC's responsibility, he does not need to sit down with DAFS or, as far as he knows, need any kind

of legislative authority to do that. RPC has a requirement that tells them what the minimum standards are, but they are the one who set the benchmark to say this is what we want for qualifications for incoming staff. Over the last couple of months they have begun to work their way through that and are breaking down every position by competencies.

The GOC members thanked Commissioner Mayhew and Mr. Harper for attending the meeting and answering their questions.

Commissioner Mayhew asked if there was a timeframe for the conclusion of the current scope of work and the development of a draft report. Chair Kruger said for today no, but it is certainly the wish of GOC to have an end date and they will certainly communicate that to her as they move on.

Chair Kruger welcomed Justice Wathen. (A copy of Justice Wathen's Potential Recommendations Regarding RPC and RPC Staffing Summary as of 1/19/16 is attached to the Meeting Summary.)

Justice Wathen said over the last month he accompanied a DLRS Licensing team on a three day survey at RPC. The team's visit was unannounced and they looked at complaints, many which were on the issues he was interested in. He said that gave him an opportunity, with knowledgeable people at his side, and said that had been helpful.

Justice Wathen anticipated he would be filing his report to the Court sometime in early February. Under the Consent Decree, DHHS has to either accept the recommendations as binding or challenge them within 30 days in Court. He referred the Committee members to the document he provided. Justice Wathen said the reason he calls them potential recommendations is because he has not finished them and because he always discusses his report with RPC, the Plaintiff's counsel and the Attorney General's Office, before he makes it final in order to give them an opportunity to correct him if he went down the wrong road. He distributed the information to the GOC at this meeting to give them an idea of what it is that he is looking at and thinking about.

Justice Wathen said many of the recommendations are on management issues with specific details and are all intimately related to staffing. He said, as he talked about at the December 3, 2015 GOC meeting, there is a lot going on at RPC, but staffing is the big issue. He prepared a RPC Staffing Summary as of January 19, 2016 which was prepared from information received from Ricker Hamilton, Deputy Commissioner of Programs, DHHS. He did not think that anybody was trying to mislead the GOC, but thought the numbers given earlier in the meeting needed clarity. He said there are 51 vacancies as of January 19th, with 47 of those vacancies being in direct care positions, which means nurses, mental health workers and acuity specialists. He said that is the real focus of concern because if you had 51 vacancies but 25 of them were in administration you would have a different concern, but you would not be concerned about patient and staff safety. Justice Wathen said the critical mass is there are 47 direct care vacancies and he did not believe the vacancies were created by the creation of 29 new positions, because most of those positions have been filled and they were not all direct care positions. He said these are hard core vacancies in direct care staff. If you look at it carefully, there are three vacancies for acuity specialists out of a total of 20 authorized, but there are 13 vacancies for mental health workers out of 124 authorized. That is ten percent, so RPC is ten percent down in mental health workers. More significant is there are 23 nursing vacancies out of a total of 87. He noted that was a third of RPC's nursing staff. Justice Wathen said if you were talking about any hospital and you said we are short by a third, even short by ten percent in the mental health worker field that is an item of concern. He said since December 12, 2015 there have been 25 direct care positions hired and they were scattered over nursing, mental health workers and acuity specialists, but nine of them were internal hires. He was not criticizing, he was just pointing out that it does not reduce the total deficiencies. He said RPC has gained 16 since December 12th so that is the nub of the problem, if you focus only on staffing, and it is not something that lends itself to a direct order. He could enter an order to recommend that RPC fill all their staff positions within 30 days and they would come back and say they were not able to. Even if Justice Wathen asked the Court to find RPC in contempt, the Court could not find them in contempt because they did their best. He said the question is for all of them, including RPC, is how to get a third of the nursing staff back.

Justice Wathen did not have the answer, but said if the GOC thinks it is a crisis and, he believes it is, it calls upon State government to react flexibly and quickly. The hiring process is complicated, but you have to reach out and be doing things like, particularly in the nursing area, three twelve hour shifts. He did not know if there was a lot of resistance to that with the current staff. He said in one sense it is a very simple problem, but in another sense the fix is very difficult. In his judgement, the general client and staff safety has improved over two years ago, but is not to where it should be. He said there is a new Nursing Director who seems to be knowledgeable and has background training and experience.

Justice Wathen thinks one of the things that caused a lot of problems unnecessarily is using the acuity specialists as a substitute, rather than as a supplement, to the mental health worker. He anticipates he will recommend that RPC not be permitted to count, for the purposes of establishing their staffing ratios, acuity specialists as mental health workers. He said RPC is doing that because they do not have the mental health workers and it goes back to same issues.

Sen. Diamond referred to the behind the scenes discussions about a long term solution to possibly combine forensic patients under the same roof as an expanded prison situation and asked what Justice Wathen's reaction to that approach.

Justice Wathen said he did not want to complicate things, but he thinks there is a deeper problem there. The situation is that someone commits a crime and is mentally ill at the time, but they also have an anti-social personality, and are found not guilty by reason of mental illness and are referred to RPC. Their psychosis is cured over a period of time, but they are still very dangerous because of their anti-social personality and that may be even more of their problem than the mental illness. The problem with placing them somewhere else is that they were committed to the custody of the DHHS Commissioner for mental health treatment and he thinks there is a strong argument that the person is entitled to a hospital level of care whether they are in Windham or at RPC. Justice Wathen said the freeing up of beds arose in DHHS's efforts to regain disproportionate share of funding and CMS certification. RPC is operating at close to capacity now, but they are not out of space at this point, so he believes RPC would like to take some of the forensic clients out of there to improve their posture with regard to their continued entitlement to disproportionate share funding which accounts for two-thirds of RPC's budget.

Rep. Mastraccio said earlier they talked about administrative barriers to hiring, and the staffing issues which seem to compound all the other issues at RPC. She said as far as she knew the Legislature has not been asked to help with the administrative barriers and she hoped that they will be because they want to help in any way they can. She asked him if, in his role, he will be looking at that and how long he will let the staffing crisis go before something else happens.

Justice Wathen said the tipping point, whether it is him, Licensing, or any other overseer, becomes when this situation results in patient abuse or neglect that is demonstrable and clear. At that point, he believes that all of the above would react. He said at this stage it is not entirely clear that the mandated overtime and shifts is actually resulting in serious threats to safety, etc. Justice Wathen said it very well may be, but he was saying it has not been clear. He said the reliance on overtime was not good practice, or sustainable, and that Licensing was looking at the same thing. But while it is not a good practice, if there is no demonstration of patient neglect, abuse, etc. tied to staffing then nothing happens. He said another mechanisms used in the past is that RPC is using contract people, etc. and even though RPC has the number of required psychiatric staff, it is not a satisfactory set up. It is unstable, there is a lot of change, and many are there as locum tenants just for a short period of time. He thinks the GOC should, if there is a way, to consider a way of getting flexibility in the hiring system. He said RPC has to comply with the law and the Court cannot find them in contempt as long as they are doing their best, but it is not getting the job done.

Justice Wathen said in his handout to the GOC he made some recommendations. He said he was also going to watch staff retention and recruitment and, if it deteriorates, he will report that to the Court and the GOC.

Sen. Johnson asked for some clarification about the reduction in vacancies from recent hiring's.

Justice Wathen said there are 51 vacancies left after the 29 new positions were hired and he was saying the net reduction in direct care vacancies was 16 and not something greater. Because nine of the recently completed hires were from internal transfers that left nine other positions vacant.

Sen. Johnson referred to one of Justice Wathen's recommendations – that an additional mental health worker be assigned if one-to-one staffing is mandated for a client – and asked if he had a sense under the current patient/staffing, how many additional staff would be necessary in order to do that and still cover all the shifts

Justice Wathen said that is yet for him to discuss with RPC, but the way RPC currently operates is that they have a 1 to 6 ratio, so if they have 24 patients in a unit then the ratio would require 4 mental health workers. If you have a 1 to 1 assignment, meaning 1 of the mental health workers has to stay with one of the patients the entire shift, they do not adjust the ratio for that. They eat the first 1 to 1, and if they have a second 1 to 1 they adjust, or if they have a 2 to 1 they adjust. Justice Wathen said if you have a 1 to 1, you are effectively at 3 mental health workers covering 23 patients. So he made the recommendation that you adjust with the first 1 to 1 because you have effectively taken somebody out of the count. He also recommended that they not count acuity specialists towards making the number. Acuity specialists have a different job assignment and are there to supplement not to substitute.

Justice Wathen said the GOC could monitor the vacancies at RPC and he did not think it would be a difficult thing for RPC to keep track of and send the information to the GOC. He thinks that information would give a good indication of whether progress is being made and if they are retaining the staff currently there.

Sen. Gerzofsky asked if there was a concrete plan of how to resolve the staffing problems, whether through incentives, training etc. He asked if, over the last month, Justice Wathen had come up with answers and has he seen any plan on how to resolve the problem.

Justice Wathen said you would ordinarily respond to the staffing problems by offering more money, changing shifts, if the nurses wanted three twelve hour shifts you would accommodate them. He thinks RPC is recruiting fairly aggressively, but what is lacking is the flexibility that you would ordinarily have to offer to people looking for work.

Rep. Duchesne said management and administrative skills are very different skill sets and every leadership team has to have both in order to be successful. He said it appeared RPC had to build their managerial muscle in order to manage the staffing crisis and perhaps that is where they are under performing. He asked if Justice Wathen had observed that as well.

Justice Wathen said there is nothing in the Consent Decree that says you will measure up to a certain level of management skill. It says you will operate in this manner and not jeopardize the clients. He would be hesitant to say if it was management, or something else, but thought that was a legitimate concern for the GOC.

Sen. Burns said the Committee has been trying to find solutions for the staffing situation at RPC and thinks at the meeting there have been some constructive solutions offered. He referred to Justice Wathen mentioning a tipping point, where patients are being hurt, or are in jeopardy, and asked if that would also include RPC's staff being injured or in jeopardy. Justice Wathen said it did.

Sen. Burns asked if there had to be a certain number of incidents that needed to occur before Justice Wathen made a determination that it was a crisis. Sen. Burns said he heard stats at the meeting about the reduction in staff being hurt over the last couple of years and asked him how he measured that.

Justice Wathen said Licensing and the Joint Commission have a measure for that and at this point it has not exceeded their licensing requirements or the Joint Commission's standards. He thinks there has been an improvement over the last couple of years. He said it is mostly trends. You cannot say if you hit a certain level that automatically means that you are no longer capable of operating a hospital.

Sen. Burns said he takes from Justice Wathen's responses that staffing at RPC for now is more of an issue for management and the Legislature to deal with than it is for him and the Court.

Justice Wathen said the Court could enter an order that RPC cannot operate if there was a demonstrated basis for saying it was an unsafe environment. Or the Court could enter an order and appoint a receiver, which they did in 2003 or 2004 and that is when Elizabeth Jones came on and managed the hospital under the Consent Decree for one year. He said that requires a trial and a demonstration of contempt that RPC has not done what it is supposed to do and it resulted in constitutional violations of clients. Justice Wathen said if he thought that was needed he would not hesitate to recommend the appointment of a receiver.

Rep. Campbell said he liked the suggestions of three twelve hour shifts, offering premiums, etc. and asked if there are statutory changes Justice Wathen might suggest that are necessary to allow the flexibility.

Justice Wathen thinks the Unions have been cooperative with DHHS regarding the posting times for internal hires and that has added a bit of flexibility. He thinks the next level of flexibility would have to come from DAFS. It would seem that State government would have the ability to respond to a crisis, if you believe it is a crisis and say to DAFS that RPC has to get staff coverage to run the hospital because they are one third down on the number of nurses. Justice Wathen said you need the Executive and the Legislature, but somebody has to apply the pressure. Justice Wathen did not know how you would get that flexibility, but he would encourage the GOC to discuss it because it should be there.

Rep. Sanderson said Justice Wathen mentioned earlier the need for more appropriately trained staff, like psychiatric staff. She said Mr. Harper said RPC worked hard on increasing the numbers of appropriately trained staff and specialized staff to address the population at RPC. She asked if he sees the number RPC has now as an increase over the years of what they were in years prior.

Justice Wathen said yes, but the additional training does not always reach the people because they cannot get off the floor. He said the staff wanted the training, but are not being able to get to the training offered and that goes back to staffing. He noted an RPC staff person that could not get to mandatory training because of his work schedule and the mandatory overtime he had to work.

Rep. Sanderson asked if Justice Wathen talked often with RPC staff and where he got all his information.

Justice Wathen said he sits in a couple of times a week and on higher level staff meetings on the forensic population and the social workers on the civil discharge. He said he talks to clients and staff, but said it was not a good thing for someone like him to interfere in the staffing situation. He should not be there as an ombudsman for the staff, or management, but he has developed relationships with people who trust him and he trusts them. If somebody says they would like to talk with him, he gives his contact information. He also attends client forums and said you learn a lot more at client forums than you do any place else. He said he monitors documents and reports and said RPC files extensive reports on a quarterly basis.

Rep. Sanderson said Justice Wathen has a portal into RPC to be able to see things from the perspective of the residents and the staff. She asked how often he met with the Commissioner or Mr. Harper. The Committee heard a lot at the meeting about the initiatives that are being done at RPC and she asked if he met with them to get their perspective of what is going on as well. In reviewing Justice Wathen's comments, which she said were all good, she did not see reflected all the good that seemed to be happening at RPC as well.

Justice Wathen said he meets with Mr. Harper monthly and, although the Commissioner does not attend all the meetings, she would if he asked. He said he meets with the Commissioner whenever he feels it is necessary and she is very accommodating.

Rep. Sanderson asked if Justice Wathen was satisfied with the initiatives RPC was trying to take even though they have not reached the goals yet. Did he have a level of satisfaction that the Administration and directorship at RPC was trying to move in the right direction?

Justice Wathen said their initiatives are good, but the staffing situation is killing their initiatives. Whether they would work, or not, he does not know, but they are not getting the chances to see because the staffing situation is undercutting it.

Rep. Sanderson referred to the October, 2015 report from Elizabeth Jones where she says “Temporary or part-time practitioners are filling vacant psychiatry positions because of difficulties in recruiting and retaining psychiatrists. The failure to ensure continuity of care jeopardizes treatment because trusting physician-patient relationships cannot be formed and sustained. Two psychiatrists cited the negative publicity about Riverview as a significant problem in recruitment.” Rep. Sanderson noted that Mr. Harper also alluded to that as being a challenge in recruiting and getting quality personnel to apply.

Justice Wathen said the psychiatric providers are probably the most critical. RPC is covering the numbers, but they change so quickly. He noted that he received information regarding that yesterday and gave an example that one of the doctors was leaving now, somebody else is filling in for two months and it may be a nurse practitioner rather than a psychiatrist, and then there is another person that may fill in. He said RPC has bodies with licenses there, and they are not doing it because they want to do it, they are doing it out of necessity. He said whether it is caused by publicity, pay or anything else, it is a major problem.

Rep. Sanderson was concerned that the negative publicity will detour anybody who would be interested in going to RPC.

Justice Wathen agreed with Mr. Harper that there are some great things that take place at RPC and there are some great staff people there, but there just are not enough of them. He thinks people should try to back off on being super critical about RPC, recognize what their problem is, and then when they get the staff you can then expect a level of management.

The Committee thanked Justice Wathen for his written comments and for attending the meeting and answering their questions.

Justice Wathen encouraged the Committee to talk with Ricker Hamilton at DHHS about whether there is any way they could assist in filling the vacancies at RPC.

Sen. Burns withdrew his request to have a RPC staff person address the Committee.

RECESS

Chair Kruger recessed the Government Oversight Committee at 12:37 p.m.

RECONVENED

Chair Katz reconvened the GOC meeting at 1:20 p.m.

Chair Katz asked if there was objection to taking an item out of order. Hearing none the Committee moved to **Unfinished Business, GOC Consideration and Approval of Evaluation Parameters for 2016 Tax Expenditure Reviews.**

- **GOC Consideration and Approval of Evaluation Parameters for 2016 Tax Expenditure Reviews**

- **Evaluation Parameters Input**

- OPEGA's Summary of Input on Evaluation Parameters
- Taxation Committee Letter
- Stakeholders' Letters

- **Evaluation Parameter Documents**

- Employment Tax Increment Financing
- Pine Tree Development Zones
- New Markets Capital Investment Credit

Chair Katz said the Committee will be approving a final procedure regarding the 2016 Tax Expenditure Reviews because they have an end of the month deadline and the GOC will not be meeting again in January.

Director Ashcroft introduced Joel Lee, new OPEGA Analyst who will be working on the Tax Expenditure Reviews. The Committee welcomed him.

Director Ashcroft reminded Committee members that at their last meeting they received input from both the Taxation and LCRED Committees as well as a number of stakeholders regarding the evaluation parameters for the three evaluations listed above. She referred members to the Summary of Comments for GOC Consideration Regarding Evaluation Parameters which is a summary of the input provided in writing by the stakeholders and Taxation Committee. Director Ashcroft said OPEGA appreciated everyone's comments and wanted to let everyone know that even if they do not see them reflected in the Summary they are marked for consideration as OPEGA evaluates the Program, but did not play into the parameters that OPEGA was looking to establishing with the GOC.

Director Ashcroft also noted that what OPEGA is setting out to do is to assess whether these programs have been effective or successful with regard to the legislative intent and purpose for which they seemed to be established. She said everyone knows that those intents and purposes are not clear in all cases, but OPEGA has tried to stay as true to the language in statute, or what was seen in the legislative history, as possible, intending to use that as the standard against which they are going to measure everything else. She said OPEGA expects to find that programs have been implemented in more detail than what is in statute and, that there are more nuances than what is in statute. She expects to come back to the GOC with recommendations for enhancing statute, if that is what is needed, to bring clarity to it. Director Ashcroft said OPEGA is reluctant to stray from the language they have pulled from statute, for example, in establishing the goal for the program, because they want to use the statute as the basis, rather than how it is already being implemented as a basis. (A copy of the Summary of Comments is attached to the Meeting Summary.)

Director Ashcroft and Ms. Henderson walked the Committee through the Summary of Comments.

The GOC's questions or comments included:

In regard to Performance Measures Sen. Gerzofsky asked if OPEGA had a specific way of measuring the impact that it would have on other businesses of similar type, especially in the general vicinity.

Director Ashcroft said OPEGA envisioned something like that would be captured in some of the broader metrics, for example the impact on State budget and, in particular, the impact on economic activities in the area where the programs are. She noted that they had not gotten very far into the work and have not had an opportunity to talk with a consultant they plan to bring on board shortly that would be able to help. She said OPEGA was hopeful that whatever models, or assumptions, can be used in those models would capture net effects between businesses or regions in the State.

Chair Katz said one of the considerations noted by the Maine Center for Economic Policy that was talked about at the last meeting was being able to assess the “but for” of whether or not activity is being incentivized by a particular program, or whether it would have occurred anyway. He understands the difficulty of trying to figure that out, but he asked if staff could continue to keep the “but for” in mind as they move forward because he thinks they are always going to be looking for ways to answer that question.

Director Ashcroft thought one way OPEGA was going to try to inform that discussion this time around, is to look at what the financial impact is to the businesses of the benefit that they are receiving. How big a deal is this to any particular business?

Sen. Burns asked for clarification regarding the Parameter of Intended Beneficiaries for the New Markets Program because he was not sure exactly what charge the stakeholder was requesting and did not understand OPEGA’s answer.

Director Ashcroft said that for the New Markets Capital Investment Program OPEGA had identified qualified businesses in economically distressed areas of the State as the primary intended beneficiary of that Program and economically distressed communities as the secondary intended beneficiaries. She said the point Mr. Eimicke was making in his comments was that the qualified business was only a vehicle for providing the benefit to the economically distressed communities. That the communities were really intended to be the primary beneficiaries so he was suggesting swapping those two as the primary and secondary. Director Ashcroft said OPEGA’s point is that whether they call them primary or secondary they will be looking at them both. OPEGA’s approach lining out who is considered primary for any of the programs of were the parties directly receiving some benefit and intended to be helped by the program. In this case, it is the qualifying business that is receiving the benefit from the investment that is made by the external investors. She said they actually get the tax credit so is actually getting money, but the beneficiary of that money is supposed to be the business so we have called that the primary and the community as the secondary.

Sen. Burns clarified that they were talking about when the programs are initiated what were the priorities as to who is going to benefit the most and Director Ashcroft was saying that it has been the businesses and then the community as opposed to the other way around. Director Ashcroft said that was right, the benefit is clearly focused on investment into qualifying businesses, which include community developments.

Sen. Johnson said he was confident this was one program where OPEGA will find broad variations. CEI’s practices and needs are entirely different from that of other entities filling the same role. He was hoping that would be the kind of thing OPEGA would be identifying when they look into the program, rather than the objectives of the programs in statute because clearly the statute does not say anything about those.

Director Ashcroft said yes and Sen. Johnson had reminded her that at the time OPEGA was preparing the Summary of Comments they did not have the written comments from CEI Capital Management. CEI’s comments were received late in the day on Thursday, the 21st, but copies of their comments are included in Committee members’ notebooks. Director Ashcroft thanked CEI for providing the information and she did not think there was anything in the comments that needed to be reflected in the evaluation parameters themselves.

Motion: That the Government Oversight Committee accepts OPEGA’s Proposed Evaluation Parameters for the three programs, incorporating the revisions OPEGA recommended in the Summary of Comments for GOC Consideration Regarding Evaluation Parameters. (Motion by Sen. Johnson, second by Rep. Sanderson, passed unanimous vote 11-0.)

Chair Katz said he had an opportunity to meet with a gentleman from the PEW Center who is active on a national basis regarding tax expenditure reviews and that gentleman thought OPEGA’s proposal was consistent with the best practices from around the country.

Chair Katz again asked if there was objection to taking items out of order. Hearing none the Committee moved to **GOC Consideration of Request for OPEGA Review of Board of Licensure for Professional Land Surveyors.**

- **GOC Consideration of Request for OPEGA Review of Board of Licensure for Professional Land Surveyors**

Director Ashcroft summarized the Information Requested by the GOC at the December 3, 2015 meeting regarding the request for OPEGA review of the Board of Licensure for Professional Land Surveyors. (A copy of that document is attached to the Meeting Summary.)

The GOC's questions and comments included:

Rep. Sanderson asked for clarification on whether the Complainant would be somebody who has hired the licensee to do a job and perceives it was not done correctly. Director Ashcroft said it could also be another party that was impacted by the survey and that would be the situation in Rep. Kiemega's constituent's case.

Rep. Sanderson noted that through the process a complainant went through the Board first and the Board determines whether there is validity to the complaint or not.

Director Ashcroft said the Board's jurisdiction is limited to actions that relate to the license the Board issues and the standards the licensee has to meet. It is not within the Board's jurisdiction to settle disputes about boundary lines or something like that. She said that would be a matter that would have to be appealed by the contractual parties to the court.

Rep. Sanderson referred to the bulleted item stating "The licensee can appeal the adjudicatory hearing Decision and Order to the Court. The complaint committee and the complainant cannot appeal." she said that does not prohibit the complainant from going to court with a civil case, but it does say they cannot appeal against the licensee and the Board for the decision. Director Ashcroft said that was correct but a party who is not a party to the contract may not have any standing for a civil case in court if they were not the party that hired the surveyor in the first place.

Chair Katz did not think the Board of Licensure for Professional Land Surveyors is unique at all in terms of how it handles these issues. He gave an example of, if neighbor A hired the surveyor and neighbor B had a dispute with neighbor A's surveyor's results, there is no cause of action for neighbor B because the surveyor only owes the duty to the person who retained them, which would be neighbor A. Sen. Katz said that is no different than with any of the professions.

Chair Katz said it is not uncommon for two surveyors to have a difference about where the boundary line is and a person can take the matter to Court. Rep. Sanderson clarified that the person does have recourse in Court. Director Ashcroft noted that the recourse would not necessarily be against the surveyor.

Rep. Mastraccio said this is the point of why the Board has to operate at its highest level of effectiveness and do their jobs because there can be unintended consequences due to incompetent surveyors. She said everything works okay as long as everybody on the Boards do their job.

Chair Katz agreed and said he does not think there is anything wrong with the system. If a particular board is not doing a good job, that is a different story.

Director Ashcroft's suggestion for what might be done with this request for review involved the Department of Professional and Financial Regulation. She said although she has not spoken with Commissioner Head, a possibility may be to ask that Department to do a review. She thinks the basic question is whether there is a valid basis for dismissal on the complaints the Board dismissed. Was it outside the Board's jurisdiction or

did they have enough information to be able to tell the complaint did not have any validity? On what basis did they make that dismissal decision in 22 of the 26 cases? Director Ashcroft thought they could also look at what the Board considered as part of their work once they were in the adjudicatory proceeding. Did everybody get the opportunity to put forward their cases in a good way and did the Board's decision seem to be aligned with the seriousness of whatever they found as a result?

Director Ashcroft said at the last GOC meeting the Committee was discussing referring the request to the LCRED Committee and perhaps LCRED could ask DFPR to answer these questions.

Char Katz recognized Rep. Kumiega. Rep. Kumiega thought the suggestion of having a further look at dismissals and the hearings that were held was appropriate. He said he did not know the answer to that and was not sure who the body is who would make that judgment, but that is the answer they were looking for. He agreed that the system was fine as long as everybody was doing their job and the question is whether the Board is doing its job.

Sen. Diamond asked if it would be acceptable to Rep. Kumiega if the GOC sent the request to the LCRED Committee with a suggestion that they could send it on to the Department. Rep. Kumiega said that would be okay.

Rep. Campbell said he had heard from surveyors who were disappointed in the Board and its multi-layers of regulations that do not make sense to them.

Motion: That the Government Oversight Committee send the request for OPEGA review of Board of Licensure for Professional Land Surveyors to the LCRED Committee and suggest that either they look at it or they may decide to send it to the Department of Professional and Financial Regulation for review. (Motion by Sen. Diamond, second by Rep. Campbell)

Discussion:

Sen. Johnson wanted to clarify whether the Board's information that would be reviewed are public documents and there would be no confidentiality need, or advantage, that would make the review more appropriate for OPEGA.

Chair Katz was not sure. He gave an example of a complaint filed against surveyor Jones and that complaint was administratively dismissed, he did not believe that was a public record and the complaint is not a public record.

Sen. Johnson said if the GOC forwarded the request to the LCRED Committee it may be the case that only the Department may have the access necessary to make a determination.

Director Ashcroft was not certain and said there may be documents that would not be able to be released to a legislative committee as part of that process. She said the other option would be to leave it with the GOC and have GOC/OPEGA ask the Department to do the review and bring the results back to the GOC.

Rep. Sanderson asked how much more information would be available, and how much extra work would it be for OPEGA, if the GOC authorized OPEGA to conduct a limited research and respond to the requestor. She asked if what needs to be done now would supersede a limited research. Director Ashcroft said it would.

Rep. Mastraccio said if the GOC sent the request to LCRED Committee they were adding another step in the process and she thought it would be better for the GOC to make the request to Commissioner Head.

Motion Withdrawn: Sen. Diamond withdrew his motion if the GOC wanted to go directly to Commissioner Head. Rep. Campbell withdrew his second.

Motion: That the Government Oversight Committee requests that the Department of Professional and Financial Regulation review records of the Board of Licensure for Professional Land Surveyors. (Motion by Sen. Johnson, second Rep. Campbell, passed unanimous vote 11-0.)

• **GOC Consideration and Approval of Revised Scope Statement for the State Lottery Review**

Director Ashcroft summarized the Information Requested by the GOC at the December 3, 2015 meeting and the Proposed Modification of Scope Questions. (A copy is attached to the Meeting Summary.)

Sen. Burns said he agreed with the first two bullets listed under the “Proposed Scope Modifications” but did not see the need for the third bullet. He hoped a review would include trying to determine the amount of money spent per capita in each county for advertising and the amount of winnings in each county per capita. He thinks those figures are available and would like to verify what has been stated from the press. He believes there is a document that he assumes Scientific Marketing is considering confidential and also thought the advertising techniques are in those documents.

Mr. Farwell thought the document referred to by Sen. Burns was the contract with Scientific Games. Scientific Games is the contracted party that supplies all the scratch tickets and deals with the retailers.

Director Ashcroft said it was unclear at this point exactly what role, if any, Scientific Games has in the marketing decisions. OPEGA does know that there is a separate advertising agency that is contracted by Maine State Lottery. She said the contract with Scientific Games does have a confidential nature to it for business trade type information. She assumed OPEGA would be able to get whatever contract speaks to marketing and advertising for the State Lottery, but to what degree it has detailed information associated with it for marketing strategy remains to be seen.

Sen. Burns said that would address his concerns if that type of information is within that contract. Director Ashcroft noted that OPEGA’s current understanding from Commissioner Rosen is that Scientific Games is not involved in the marketing and advertising of the Lottery, but that is something OPEGA would seek to confirm.

Sen. Burns said the issue then is if the State is contracting with Scientific Games and they are contracting with somebody else. The Committee should know whether or not that information lies within there. He said the feedback received from DAFS was that they had no data to show how much advertising money was spent in each county however they have data to show how much was spent by the people who purchased the tickets in each county. He found it hard to believe you would know one without the other. Sen. Burns thought the scope questions were easily answered if the information is forthcoming.

Rep. Duchesne thought it would be difficult to figure out the advertising spending per capita in various rural market places because the media markets are driving this. You could spend a lot of money in the Bangor media market and all the broadcasting goes out to all the rural areas, but you cannot measure how much of that was targeted at Piscataquis County. He said he could see how they would have the sales information from every convenience store in the State and have that accurate, but to have a per capita measure on how that is being spent in rural areas is going to be much more difficult to measure because that is not how the media market place works.

Sen. Johnson said there may, or may not, be some objectives for the marketing established by the contractual agreement and yet a different entity marketing it. He said OPEGA would need to look at that document and any contract with specific marketing agency potential as well to determine those things as a starting point.

Director Ashcroft said it will extend beyond that because there is the Lottery Commission, DAFS, etc. All the decisions get made within the Lottery and the Lottery Commission so it may not all be laid out in one document, it may be something that evolved over a series of discussions and decisions that the Board had.

Sen. Johnson agreed with Sen. Burns that the second bullet point was important. He thought the GOC also discussed another matter which was how the purchases of the lottery tickets themselves fall across the population by their financial means. He remembered a discussion that OPEGA would be able to look at the information the Maine Center of Public Interest Reporting based the conclusions from their investigative series on and examine the credibility of that information source. He was expecting OPEGA to be looking at that as well. Leveraging the work that they had, if possible, if it was found to be credible.

Director Ashcroft said OPEGA expects to look at the work the Maine Center had already done to the end of answering the Scope Questions. She said OPEGA did not see a need to line out a specific question that was targeted on whether or not the data was credible. She thinks OPEGA will be taking a look at it as part of answering the Modified Scope Questions.

Sen. Johnson said that was fine, but the question that he does not see included that relates to that is about who spends their money on lottery tickets and that is not asked. He thinks it is an important thing to know whether predominantly poor citizens are in fact the ones buying lottery tickets.

Director Ashcroft said that, even absent the specific analysis on the per capita basis in Maine that has been done, she thinks it is known nationwide that folks with lower income tend to buy lottery tickets. She said that may be a given. She was not sure how useful it would be to go to much length to say what is happening on a per capita basis in every county in Maine, but apparently there is plenty of research that has been done nationwide that speaks to that being known about lotteries OPEGA can confirm what literature is out there that has those kinds of conclusions in it.

Sen. Johnson said that was what he was looking for. Not for OPEGA to go out and do original research, but validate the credibility of information and reflect those conclusions in OPEGA's report.

Director Ashcroft said the question Sen. Johnson was after is to what extent are lottery tickets or games being purchased by low income folks.

Sen. Johnson noted that in his review of the MCPIR document that they actually had data on sales that they were basing their information on. He said he was not concerned about trying to tract that down to county if the information is not broken down that way already, but is interested in that information in whatever form was the basis of the conclusions of their investigative series. He said he is not trying to cast dispersions on MCPIR, but feels that due diligence is part of the GOC's responsibility before they base their decision-making on the data.

Chair Katz thought what MCPIR said was that a disproportionate number of sales were in markets in low income communities and, therefore, drew the conclusion that probably meant that low income people are buying lottery tickets as opposed to markets in high income communities where not many tickets were getting sold. He thought that was a reasonable conclusion to reach based on that information.

Sen. Burns referred to the documents prepared by the Bureau of Alcoholic Beverages and Lottery Operations and noted not all the information in it was accurate. He specifically noted that the Gamblers Anonymous line was not even being used. It may be in existence, but it is not being used and therefore he did not know if any of the information the Bureau had provided the GOC was accurate.

Motion: That the Government Oversight Committee move forward with the Proposed Modification of Scope Questions and specifically the three bullet points recommended in the Proposed Scope Modifications. (Motion by Rep. Sanderson, second by Sen. Burns).

Discussion:

Sen. Burns asked if that would include determining for themselves the amount of money per capita that is being spent on lottery tickets in each county.

Director Ashcroft said she thought that would get done within the proposed modified scope, but if the GOC wanted to get at it more directly, she would recommend adding a direct question to the Scope and that would also get to what Sen. Johnson was concerned about.

Sen. Burns thought the question was very pertinent and would like to see it as a separate bullet and along with that the amount of winnings that is going to each county might be valuable information later for other committees.

Rep. Sanderson agreed with Sen. Burns' friendly amendment.

Vote: Motion passed unanimous vote 10-0.

NEW BUSINESS**• Presentation of OPEGA's Annual Report on Activities and Performance for 2015**

Director Ashcroft summarized OPEGA's Annual Report on Activities and performance for 2015. The report is available on OPEGA's website

REPORT FROM DIRECTOR**• Status of Current Projects in Progress**

Director Ashcroft said OPEGA is hoping to get the Riverview Psychiatric Center review completed in March. She said OPEGA was just beginning to get started on the Tax Expenditure Reviews and expects to move forward on State Lottery.

• Staffing

Director Ashcroft said OPEGA is currently advertising for a Senior Researcher position. She noted that OPEGA was not giving up their Analyst position, but was looking to hire somebody at the next grade level down and work somebody up to the Analyst position.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for February 12, 2016 at 9:00 a.m.

ADJOURN

Chair Katz adjourned the GOC meeting at 3:00 p.m. on the motion of Sen. Johnson, seconded by Rep. Duchesne passed unanimously 10-0.

Potential Recommendations Regarding Riverview Psychiatric Center.

1. Recommend that Riverview implement unit based staffing on a pilot basis in one of the four units on or before March 15, 2016 with implementation on all other units to be completed on or before July 15, 2016.
2. Recommend that the newly created positions for Acuity Specialists not be counted for purposes of determining compliance with the staffing ratios for Mental Health Workers required by the Consent Decree . This change is designed to ensure that Acuity Specialists are assigned to their designated tasks and not used as substitutes for Mental Health Workers.
3. Recommend that the staffing ratio for Mental Health Workers be adjusted to require an additional Mental Health Worker be assigned if one to one staffing is mandated for a client on the unit.
4. Recommend that Riverview institute and formalize an annual review commencing on July 1, 2016, of the use of restrictive practices and the behavioral management system being used by a fully independent consultant, approved by the Court master.
5. Recommend that Mental Health Workers attend treatment team meetings for clients they work with and that Acuity Specialists attend whenever appropriate. Current and relevant portions of the treatment plans, such as interventions should be made available to Mental Health Workers.
6. Recommend that unit activity logs be maintained on each unit and that the logs be reviewed at least on a monthly basis to determine whether any limitation in a client's access to treatment, services or outdoor areas has occurred.

In addition to the foregoing recommendations, I plan to closely monitor and periodically report upon the following aspects of hospital operations:

1. Staff recruitment and retention with particular emphasis on psychiatric providers, nurses, mental health workers, and acuity specialists. (Weekly)
2. Reductions in the use of overtime and mandated shifts. (Weekly)
3. Efforts of the Director of Nursing to improve nursing structure and leadership within the hospital. (Monthly)
4. Efforts of the Superintendent , with input from clinical departments, Mental Health Workers, advocates, peer specialists and clients, to improve the treatment planning process and the resulting plans. (Monthly)
5. Development of an acuity based staffing model to complement unit based staffing. (Monthly)
6. Improvement in the hospital's ability to focus on vocational employment opportunities for clients. (Quarterly)
7. Timely response to grievances. (Quarterly)
8. Timely preparation of institutional reports for forensic clients seeking court-approved changes. (Quarterly)

RPC Staffing Summary as of 1/19/2016

RPC has 51 total staff vacancies of which 47 involve direct care. Within that number there are 3 vacancies for acuity specialists out of a total of 20 authorized, 13 vacancies for mental health workers out of 124 authorized and 23 nursing vacancies out of a total of 87 authorized. Since 12/12/15 RPC has hired 25 direct care positions. Acuity specialists account for 3, nurses account for 7 and mental health workers account for 15. One of the acuity specialists hires involved an internal candidate, 2 of the nurse hires involved an internal candidate and 6 of the mental health worker hires involved an internal candidate. Thus 9 of the hires did not reduce the overall vacancies.

Summary of Comments for GOC Consideration Regarding Evaluation Parameters

3 MRSA §999.1.B requires that “Before final approval pursuant to paragraph A, the committee shall seek and consider input from the policy committee and stakeholders and may seek input from experts.”

The following is a summary of the points made in written comments submitted to OPEGA that pertain specifically to the parameters for 2016 full evaluations (as defined by 3 MRSA §999.1.A). Comments regarding other portions of the parameter proposal documents, or regarding the evaluation effort in general, have been taken into account but are not summarized here as they do not pertain to the GOC’s statutory requirement under 3 MRSA §999.

Key to OPEGA’s Responses:

- **Substantive Change** – OPEGA recommends a change that substantially alters the original parameters
- **Clarifying Language Only** – OPEGA recommends a change that clarifies the original intent of the parameters but does not change them
- **No Change** – OPEGA does not recommend any change to the original parameters

Summary of Comment	Comment Contributor	OPEGA Response
FOR ALL EVALUATIONS		
<i>Concerning Parameter (1) Purpose, Intent or Goals</i>		
“Creation and retention of businesses” should be added as a purpose or goal	Maine Center for Economic Policy	No Change – While creation and retention of businesses may be a general goal of all business incentive programs, it does not appear to be a direct goal for any of the 2016 programs as expressed in statutory language and design for the program or in the legislative history.
<i>Concerning Parameter (2) Beneficiaries</i>		
Beneficiaries should include job seekers Beneficiaries should include taxpayers	Maine State Chamber of Commerce Maine Center for Economic Policy	No Change – Parameters are intended to be specific to individual programs in order to provide a valid basis for assessing their effectiveness as directly as possible. What is established for intended beneficiaries will directly affect the nature and amount of work OPEGA needs to do to answer Objective (d). Consequently we prefer to keep the list of intended beneficiaries as short and directly linked to the program as possible. We expect to capture indirect benefits and impacts in the performance measures for “net impact on State budget” and “indicators of economic impact”.
<i>Concerning Parameter (3) Evaluation Objectives</i>		
The evaluation should include information that is available in the general economic development literature regarding the	Taxation Committee	Substantive Change – Although this type of work is sometimes included in OPEGA evaluations as time allows, it has not currently been included in the parameter proposal as a commitment of OPEGA

<p>effectiveness of the specific type of tax expenditure being reviewed and the review results of other states that may have conducted reviews of similar types of tax expenditure provisions</p>		<p>resources. To include this in the proposal documents, OPEGA suggests inserting an extra sentence after the table of objectives as follows: “OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA’s assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.”</p>
<p>Investigation of Legislative intent should consider, to the extent possible, the original intent of each provision as well as subsequent statutory changes to the provision and evaluate the effect of subsequent changes on the performance of the provision</p>	<p>Taxation Committee</p>	<p>Clarifying Language Only – To the extent that there have been substantive changes to a program’s statute OPEGA intends to explore, to the degree possible, how those changes have affected the program with regard to the evaluation objectives. OPEGA suggests making this clear by amending the language in the 2nd introductory paragraph in the (3) Evaluation Objectives section to: “Each objective, will be explored to the degree possible based on the resources required and the availability of necessary data. Any substantial statutory changes since the program’s enactment will be considered in addressing objectives impacted by those changes.”</p>
<p>Interviews should be conducted to determine the extent to which the behavior would have occurred without the program being evaluated</p> <p>“Qualitative” should be added as a possibly applicable measure for all objectives except (a)</p>	<p>Maine State Chamber of Commerce</p> <p>Kris Eimicke – Pierce Atwood</p>	<p>Clarifying Language Only – OPEGA had intended that qualitative data (such as that from interviews) would be considered as appropriate for all evaluation objectives since this is central to how OPEGA evaluations are typically conducted. OPEGA recommends adding “Qualitative” as a possibly applicable measure for all objectives in section (3).</p>
<p><i>Concerning Parameter (4) Performance Measures</i></p>		
<p>Dynamic fiscal modeling should be used to achieve an accurate revenue picture</p> <p>Measure F should have the following language added at its end: “(taking into account tax revenues created as a result of the investment)” (New Markets specifically, but same OPEGA response)</p>	<p>Maine State Chamber of Commerce</p> <p>Kris Eimicke – Pierce Atwood</p>	<p>Clarifying Language Only – This is already intended with the measures: Net Impact on State Budget and Indicators of Economic Impact. We suggest adding clarifying language to specify those measures will include “economic modeling, as possible and appropriate, to include capture of indirect benefits and costs”.</p>

Measures concerning job creation should include whether the jobs are permanent or temporary	Maine Center for Economic Policy	Clarifying Language Only – Additional detailed breakouts of performance measures will be considered as appropriate during the review. OPEGA recommends adding “by job type (FT, PT, temporary, permanent)” to the bulleted list of potential additional calculations for each performance measure (following the table of measures) for the programs that have measures related to job creation.
Measures concerning job creation should be benchmarked against broader trends in the same industry or geographic region	Maine Center for Economic Policy	Clarifying Language Only – Comparison of measures against benchmarks will be considered as appropriate. OPEGA recommends adding “comparison to industry or geographic trends” to the bulleted list of potential additional calculations for each performance measure (following the table of measures).
Additional measures should be used to assess the extent to which the behavior would have occurred without the program; these include: years of operation in Maine; profitability, asset holdings and valuation; executive compensation and residency; whether owners are aware they are using the program	Maine Center for Economic Policy	No Change – Although these additional measures should perhaps be considered if OPEGA’s resources allow, they would represent a significant additional effort beyond what is already committed to in the proposal document. OPEGA cannot commit to performing additional work at this point.
Measures concerning job creation should be based on total payroll and employment figures prior to receipt of program benefits and at annual intervals thereafter	Maine Center for Economic Policy	Clarifying Language Only – Comparison of measures on a pre-program to post-program basis will be considered as appropriate and possible. OPEGA recommends adding “comparison to time period preceding program implementation or receipt of program benefits” to the bulleted list of potential additional calculations for each performance measure (following the table of measures).
Clear standards exist that should be considered as measures for assessing the State’s administration of the program	Maine Center for Economic Policy	No Change – No specific standard was recommended.
When assessing objective (d) – the extent to which those benefitting are the intended beneficiaries – OPEGA should consider who is eligible but not benefitting as another view of the Participation Rate	Maine Center for Economic Policy	No Change –This additional view of Participation Rate if of interest and could be explored if time and resources allowed. However, depending on the program, it could require capturing a unique set of data not necessarily needed for any of the current measures and not necessarily easily obtainable (the population of eligible non-participants could be many and resource-intensive to identify). OPEGA cannot commit to performing additional work at this point.

NEW MARKETS CAPITAL INVESTMENT PROGRAM		
<i>Concerning Parameter (1) Purpose, Intent or Goals</i>		
Purpose statement should be modified to read: “To promote economic development and community development by encouraging major private capital investment in qualified businesses and non-profits located in economically distressed areas of the State; to preserve and create jobs, to develop thriving communities, and make the State more competitive in attraction of investment capital.”	Kris Eimicke – Pierce Atwood	No Change –The purpose as currently stated in the proposed parameters is reflective of language existing in State statute.
Goal and beneficiaries sections should be amended to include “non-profits”	Kris Eimicke – Pierce Atwood	No Change – OPEGA finds no reference specifically to non-profits in the State statutory definitions, statement of legislative intent, or the program purpose. State statute does reference the federal code for the federal New Markets credit in defining “qualified low-income community business” and the federal code’s definition of the term does specify that non-profit corporations fall within the definition. Consequently, non-profits are already captured in OPEGA’s parameters as “qualified businesses”.
<i>Concerning Parameter (2) Beneficiaries</i>		
Primary and secondary beneficiaries should be swapped, with “residents of economically distressed communities” being primary and qualified businesses being secondary	Kris Eimicke – Pierce Atwood	No Change – Both primary and secondary intended beneficiaries will be considered in this evaluation. OPEGA consistently identified each program’s primary beneficiary as the parties most directly receiving some benefit and intended to be helped by the program. Secondary beneficiaries were identified as the parties still indicated in statute as intended to be helped but less directly receiving the program’s benefits.
<i>Concerning Parameter (3) Evaluation Objectives</i>		
Additional measures (detailed in the following section as N, O, P, Q and R) should be included as possibly applicable (in whole or part) to objectives (c), (d) and (e)	Kris Eimicke – Pierce Atwood	No Change – OPEGA does not suggest the additional measures be incorporated in the document (specific reasons per measure are detailed in the following section).
<i>Concerning Parameter (4) Performance Measures</i>		
In the bulleted list of possible additional breakouts for performance measures the following should be added: “by type of qualifying business”	Kris Eimicke – Pierce Atwood	Clarifying Language Only – OPEGA recommends the suggested language be added as a possible additional breakout.

<p>Job creation should be added as a measure</p> <p>Measure N should be added with the language “Jobs created as a result of investments made (direct, indirect and induced)”</p> <p>Measure Q should be added with the language “Quality of jobs created or retained as a result of the investments made”</p>	<p>Maine Center for Economic Policy</p> <p>Kris Eimicke – Pierce Atwood</p> <p>Kris Eimicke – Pierce Atwood</p>	<p>No Change –Performance measures and other parameters are intended to be specific to individual programs in order to provide a valid basis for assessing their effectiveness as directly as possible. “Job creation” and “quality jobs created or retained” are not called out in statute in a way that suggests they are the primary goal of the program – in contrast, for example, to the statutory language and requirements for PTDZ and ETIF. Consequently, we consider jobs created and retained as more of an indirect goal or benefit of this program. We expect to capture such indirect benefits and impacts in the performance measures for “net impact on State budget” and “indicators of economic impact”.</p>
<p>In all performance measures where the word “value” appears it should be replaced by the word “amount”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>No Change – “Value” seems an adequate word and is further specified by the \$ (dollar) in front of it.</p>
<p>Measure B should have the following language added at its end: “and the amount of such investment (on a county-by-county basis)”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>No Change – Additional detailed breakouts of performance measures will be considered as appropriate during the review. The measure recommended here is already included in the proposed parameters via measure G “Total qualified investment received by businesses” and the possible additional breakout “per geographic region” bulleted after the table of measures.</p>
<p>Measure C should have the following language added at its end: “(taking into account only investments certified by FAME as eligible for tax credits)”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>No Change – It is unclear to OPEGA how credits could appropriately be paid under this program if they were not based on investments certified by FAME as eligible for credits. As part of our standard procedure, OPEGA would make note of any credits paid under this program that did not appear to have been certified appropriately.</p>
<p>Measure M should have the following language added at its end: “(on a county-by-county basis)”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>No Change – Additional detailed breakouts of performance measures will be considered as appropriate during the review. The possible additional breakout “per geographic region” is already in the bulleted list following the table of measures in the proposed parameters.</p>
<p>Measure P should be added with the language “Additional capital attracted to the State as a result of investments made”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>No Change – This new measure would represent a significant additional effort beyond what is already committed to in OPEGA’s proposed parameters, could be difficult to quantify directly, and would likely require economic modeling.</p>

<p>Measure Q should be added with the language “Level of economic distress in communities receiving investment (on a municipality and county basis)”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>Clarifying Language Only – This is a possible additional breakout for some of the performance measures OPEGA has recommended. OPEGA recommends the following language be added as a possible additional breakout in the bulleted list following the table of measures in the proposed parameters – “by relevant indicator of community economic distress level, i.e. per capita income.” unemployment rate, etc.”</p>
<p>Measure R should be added with the language “Economic development programs and other incentives offered by competing states”</p>	<p>Kris Eimicke – Pierce Atwood</p>	<p>No Change – This is not really a measure of program activity or performance and the concept is already included in evaluation objective (e) “The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states”.</p>

Request for an OPEGA review of the Board of Licensure for Professional Land Surveyors Information Requested by the GOC at the December 3, 2015 GOC Meeting

At its meeting on December 3, 2015, the Government Oversight Committee reviewed a request to schedule an OPEGA review of the Board of Licensure for Professional Land Surveyors (Board). The issue raised in the request involves the Board's effectiveness in addressing complaints filed against licensed surveyors.

According to the Department of Professional and Financial Regulation (DPFR), the Board's purpose is to protect the public against dishonest or unethical practitioners, and practitioners who have fallen below minimum standards of competence in the practice of their profession. The Board's authority is limited to taking actions with respect to the licensee's license. The Board lacks jurisdiction to resolve civil disputes between the licensee and a complainant.

The Government Oversight Committee asked OPEGA to gather additional information regarding the Board of Licensure for Professional Land Surveyors before the GOC considered the request further. To that end, OPEGA reviewed the Board's complaint process, and reviewed all complaints processed by the Board from 1/1/2012 to 12/31/2015, based on the date the case was concluded.

COMPLAINT PROCESS

The general complaint process for all Boards under the Department of Professional and Financial Regulation's purview, including the Board of Licensure for Professional Land Surveyors, is available in more detail on the DPFR's website, and is as follows:

- Complaint filed
- Documents Exchanged (Licensee has opportunity to respond to complaint, Complainant has opportunity to respond to Licensee response)
- The Board's Complaint Committee investigates and makes a recommendation to the Board to be processed at a Board meeting. The recommendation may be to:
 - Dismiss the complaint
 - Proceed with a consent agreement
 - Schedule the matter for an adjudicatory hearing held before the Board
- The Board may impose any of the following sanctions through the adjudicatory hearing process:
 - Issue a warning, censure or reprimand to a licensee
 - Suspend a license for up to 90 days per violation or occurrence
 - Revoke a license
 - Impose a civil penalty of up to \$1,500 per violation or occurrence
 - Impose conditions of probation on a licensee
 - Assess the licensee for the cost of transcribing and reproducing the administrative record in the event of appeal
- The licensee can appeal the adjudicatory hearing Decision and Order to the court. The complaint committee and the complainant cannot appeal.
- The Department has a computerized licensing system which includes data regarding licensing matters as well as cases involving licensees.

- Any case information is retained with the licensee’s entry into the database/licensing system. Anyone can research a licensee online at the department’s website. Disciplinary action for a particular licensee is viewable through a link as well.

COMPLAINT CASE ANALYSIS

There were 26 complaint cases involving 20 different surveyors processed by the Board from January 1, 2012 through December 31, 2015, which OPEGA reviewed in detail. Three complaints were against one surveyor, and four other surveyors each had two complaints against them. There were no repeat complainants. Currently there are 542 licensed professional surveyors and 99 surveyors in training in Maine.

Nineteen of 26 cases (73%) were dismissed by the Board without an adjudicatory hearing. Each of these decisions contained the following language: "The Board concluded that there was no evidence that the Licensee violated Board law or rule."

Three of the cases (12%) were dismissed by the Board with a letter of guidance without an adjudicatory hearing, and included the following language: "this letter of guidance is not a formal proceeding and does not constitute an adverse disciplinary action of any form".

Adjudicatory Hearings were held for four of the cases (15%), resulting in one Letter of Guidance, three monetary fines, two warnings, three reprimands and one 90 day license suspension. Three of the adjudicatory hearings resulted in more than one action.

COMPLAINT CASES AGAINST LICENSED SURVEYORS PROCESSED										
BY THE BOARD-JANUARY 2012 THROUGH DECEMBER 2015*										
Year	Total Complaints	Dismissed by Board w/o Hearing	Dismissed by Board w/ltr of guidance, w/o hearing	Hearing: Warning	Hearing: Reprimand	Hearing: 90 day license suspension	Hearing: Monetary Fine	Hearing: Letter of Guidance	Actions	Hearings
2015	8	4	2	1	1	1	2		11	2
2014	4	2		1	2		1	1	7	2
2013	3	3							3	0
2012	11	10	1						11	0
Totals	26	19	3	2	3	1	3	1	32 Actions**	4 Hearings
	20 Different surveyors							**Actions--some of the cases resulted in more than one action		
	5 Surveyors with more than one complaint									
	No Repeat Complainants									
	*OPEGA analysis of complaint case data provided by the Department of Professional and Financial Regulation									

OPEGA also noted there were three consent agreements occurring in the time period that were not associated with a filed complaint. We reviewed all of these agreements which were between the Board, the Maine Attorney General’s office and licensed surveyors. Each of the consent agreements involved improper reporting of continuing education requirements, and each resulted in a monetary fine. None of the three consent agreements involved any of the 20 surveyors in the 26 complaint cases.

A search on DPFR’s Regulatory Licensing and Permitting website shows there were eight total adjudicatory hearings held by the Board since January 1, 2005. The website search also shows there were ten consent agreements entered into since January 1, 2005 – five of these were associated with complaints processed by the Board prior to the period covered by OPEGA’s complaint case analysis.



SEN. ROGER J. KATZ, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

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MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Maine State Lottery

At its January 22, 2016 meeting, the Government Oversight Committee directed OPEGA to modify the scope of the Maine State Lottery review and give it priority in response to a recent study reported by the Maine Center of Public Interest Reporting (MCPPIR). MCPPIR's stories focused on regions of the State with the highest lottery spending per capita and raised questions for legislators about the marketing of the Maine State Lottery.

The GOC approved the following revised questions for continuing the review of the Maine State Lottery.

- What entities have a role in governing and overseeing the Maine State Lottery? Is there sufficient governance and oversight of MSL key decisions impacting revenues, expenses and operations?
- What does the Maine State Lottery consider when making decisions about games to be offered and how they will be marketed? Are any particular demographic groups or regions of the State specifically targeted in the Lottery's advertising and marketing? Who has responsibility for making and overseeing those decisions?
- How are lottery winnings considered in determining eligibility for public benefits? Are lists of lottery winners compared to lists of benefits recipients to determine continued benefit eligibility?
- What is the breakdown of lottery ticket purchases and lottery winnings by municipality or county?

OPEGA expects it can complete this review with the approved modified scope by mid-2016.