SEN. DEBORAH L. SIMPSON, CHAIR
REP. DAWN HILL, CHAIR

MEMBERS:

SEN. RICHARD A. NASS
SEN. JOSEPH C. BRANNIGAN
SEN. BILL DIAMOND
SEN. EARLE L. MCCORMICK
SEN. DAVID TRAHAN
REP. EVERETT W. MCLEOD, SR.
REP. BRUCE A. BICKFORD
REP. DAVID C. BURNS
REP. PEGGY A. PENDLETON
REP. MARGARET R. ROTUNDO

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
July 30, 2009

CALL TO ORDER

The Chair, Senator Simpson, called the Government Oversight Committee to order at 9:42 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Simpson, Sen. Nass, and Sen. Brannigan Joining the meeting in progress: Sen. Trahan and Sen. Diamond Absent: Sen. McCormick
Representatives:	Rep. McLeod, Rep. Rotundo, Rep. Pendleton and Rep. Burns Absent: Rep. Hill and Rep. Bickford
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Matthew Kruk, Analyst, OPEGA Etta Begin, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Brenda Harvey, Commissioner, DHHS Herb Downs, Director, Audit-MaineCare and Social Services, DHHS Anthony Marple, Director, Office of MaineCare Services, DHHS Jennifer Cook, Management Analyst, Office of MaineCare Services, DHHS

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE JUNE 30, 2009 MEETING

Motion: That the Meeting Summary of June 30, 2009 be approved as printed. (Motion by Sen. Nass, second by Rep. McLeod, PASSED by unanimous vote, 7-0).

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PRESENTATION OF FINAL REPORT

- **MaineCare Durable Medical Equipment and Medical Supplies**

Director Ashcroft introduced Matthew Kruk, the OPEGA Analyst who had done much of the work on the review under the supervision of Principal Analyst, Jennifer Reichenbach. She thanked OPEGA staff and acknowledged and thanked the DHHS management and staff and others who provided data or helped OPEGA to research and understand the exceptions identified.

During the Report presentation, Government Oversight Committee (GOC) members expressed interest in several areas and Director Ashcroft (O) provided additional or clarifying information which is summarized below:

GOC: Sen. Nass asked whether only the durable medical equipment or supplies listed in Chapter II, Section 60 of the MaineCare Benefits Manual were covered by MaineCare.

O: Director Ashcroft said that is her understanding, but Commissioner Harvey may be able to speak to that.

GOC: Sen. Nass said he was aware of vehicles and helper dogs getting funded and asked if MaineCare paid for those items.

O: Director Ashcroft believes those types of items would not be considered DME, but that may also be a question for the Commissioner.

GOC: Sen. Nass referred to the vendor calculating the request for reimbursement and noted there is a 40% allowable mark up not to exceed $2,000 and asked if that was the standard.

O: Director Ashcroft said that is one of the cost-bases that is allowed. The vendor is supposed to request reimbursement at the lowest of several cost-bases so if their adjusted costs, plus mark up of 40%, is lower than the usual customary charge, then the vendor is allowed to bill at that amount.

GOC: Sen. Nass said 40% seems excessive and asked if that was industry or government standard.

O: Director Ashcroft said it is in the MaineCare Rules and DHHS may know how the percentage came about.

GOC: Sen. Brannigan said the reason the vendor bills for the adjusted cost plus mark-up is because he has an adjusted cost that makes this the lowest amount. Vendors would be in trouble if they went higher than the lowest of the cost-bases and got caught.

O: Director Ashcroft agreed. To keep vendors honest, the State can request their invoices and costs for billings. OPEGA did not look at how often that happens, but that is built into the process.

GOC: Chair Simpson asked if the State Auditor's Office focus included monitoring Medicaid DME.

O: Director Ashcroft said it may be. The State Auditor's Office focuses on ten or twelve areas in Medicaid each year, but she is not sure the DME category would be what they would consider an area.

GOC: Sen. Simpson said that if the State Auditor's Office is auditing federal compliance, she would assume there may be an overlap with an OPEGA review.

O: Director Ashcroft said the Auditor's Office has guidance from the Federal Government as to the criteria for the areas they need to select every year to review and there is much more in MaineCare than they can cover every year.

GOC: Sen. Simpson asked if it depended on what the Federal Government asked the Auditor's Office to review.

O: Director Ashcroft said that was correct to some degree. The OMB Circulars lay out how states have to go about selecting the areas they will review.

Director Ashcroft proceeded to describe the nine Report Recommendations. The Committee had questions or comments on the following:

Recommendation 2: Issues Identified by the Program Integrity Unit Need Communication and Action

GOC: Rep. Rotundo asked if the Director could elaborate on the communication issue and was it caused by not having procedures in place.

O: Director Ashcroft said OPEGA did have a discussion with DHHS about that and it was a surprise to them that there was a loop that was not getting closed. She believes it may be related to a siloing of functions or to past history of employees finding issues, reporting them and then they do not get acted on. Over time that can lead to employees feeling it is not their place to raise issues and so they do not continue to do so.

Director Ashcroft said there was also some amount of indirect communication about issues through recoupment letters that went to management. She referred, for example, to the good recoupment work on overpayments for incontinent supplies that the Program Integrity Unit did. The Director of the MaineCare Office received copies of the recoupment letters that went out to providers and was aware, in general, that overpayments in incontinent supplies were going on. However, the letters did not describe the root control issues that allowed those overpayments to occur. To some degree the Program Integrity Unit felt that because people were getting copied on the letters they were made aware, but from the Office of MaineCare's standpoint, they never felt they had been notified about what the root causes they should be addressing.

Recommendation 4: Establish Contracted Rates for Items Under Bulk Purchase Agreements in Rate Tables

GOC: Sen. Nass commented on bulk purchases and asked if DHHS' system was now set up to recognize bulk purchases.

O: Director Ashcroft said the current system will allow the vendor to bill any quantity. The issue is making sure that the unit of measure being billed is clear and can be translated to what the unit of measure for maximum rate is so that MECMS can flag when higher amounts are being paid regardless of the unit of measure.

Recommendation 8: Proactively Address Procedure Codes with Reimbursement Rates of Zero to Prevent Rejection of Vendor Claims

GOC: Sen. Nass asked why something would be on the list with a zero reimbursement code. That sets up a situation where a reject on that now requires a manual transaction.

O: Director Ashcroft said it was OPEGA's understanding that sometimes CMS will put a $0 on a procedure code they are no longer covering. She said DHHS can address that question and there is more detail in the management response.

Recommendation 9: Correct Programming Error to Ensure Transactions Without Required Prior Authorization Are Not Paid

GOC: Sen. Trahan said 1 in 15 is a high rate of error.

O: Director Ashcroft said the error was found in a sample of claims where the claims were judgmentally selected from all those that looked like they had not met the PA. Because of the way the sample was selected, the frequency of error in the sample cannot be extrapolated to the larger population. Based on the type of situation required for the error to occur, she believes it would be reasonable to think that it does not happen a lot.

Director Ashcroft clarified that there were more than 15 claims that appeared to require PA but did not have it. OPEGA only picked 15 of those to follow up on.

Director Ashcroft moved on to discuss the Agency Responses to the Report Recommendations noting that if the GOC had questions, DHHS staff was also present to answer them. Committee members had questions or comments on the following:

Agency Response 5

GOC: Sen. Simpson asked why DHHS could not just eliminate the null modifiers rather than run reports.

O: Director Ashcroft said the reports were the means of identifying problems in the Rate Tables that needed to be addressed. The data feed comes from CMS and the reports would identify all of the null codes in that transmission. She said DHHS is presently going through and cleaning up the null codes, but using reports to check for null codes, is part of the process that helps to ensure there are not any new situations in the future.

GOC: Sen. Trahan asked if there were incentives for providers to bring overpayments to the attention of DHHS and are they doing that.

O: Director Ashcroft said as an outside observer, she would guess that providers are more willing to speak up about underpayments than overpayments. It would seem likely that most providers would wait for DHHS to raise questions about any overpayments.

Agency Response 7

GOC: Rep. Burns asked if the $400,000 recoupment referred to was included in the 6,000 claims with potential additional overpayments for the period January 1, 2008 to June 30, 2008.

O: Director Ashcroft said it was not, the 6,000 claims were in addition to the $400,000 already recouped.

GOC: Rep. Rotundo said it would most likely had been picked up in the Department's next audit, they just had not gotten around to auditing that period of time yet.

O: Director Ashcroft said it was her understanding that DHHS would have had to make a decision that they were going to come back and audit that particular contract again. They did not have in place a routine systematic piece that would have flagged additional overpayments that should be researched on an on-going basis. The Program Integrity Unit opens a case by vendor or by category, a lot of those cases have been generated by a reported concern. This in fact, was one where a DHHS employee had a concern the Department was overpaying on the contract. Program Integrity opened an investigation and the result was finding $400,000 in overpayments.

Director Ashcroft said the root cause for allowing the overpayment had not been addressed and consequently the potential risk for overpayments on the contract persisted through the end of FY 09. OPEGA has now prompted a situation where DHHS will have to decide what to do to address that.

GOC: Sen. Brannigan asked if there were penalties for any provider that has been overpaid and asked if the employee got an award for their vigilance.

O: Director Ashcroft said DHHS will have to address both of those questions.

GOC: Sen. Trahan asked, absent the initiative from a DHHS worker to report an overpayment, is there a risk in other areas where this type of problem could exist.

O: Director Ashcroft said DHHS has been limited by not having a functional SURS System. That System monitors claims on a regular basis and flags situations to be investigated, but because DHHS has not had that system, they have been limited in their ability to identify situations that should be reviewed.

Chair Simpson recognized Commissioner Harvey.

Commissioner Harvey said DHHS had asked for the OPEGA review to focus on DME because when audits occur, like the CMS audit, generally they are looking at categories of populations so that it is all types of claims related to a group or individuals. DHHS has been looking at the durable medical equipment cost and had proposed an initiative in the Governor's budget for the Legislature to consider. The Department heard a lot from its vendors about what was proposed and how wrong DHHS was. At the same time DHHS was having conversations about the initiative, they had the opportunity to have OPEGA look at the things they already knew were wrong because MECMS is a major problem for DHHS in terms of the kinds of controls that one would want to see. DHHS knew that, but wanted to be sure they had not missed something in their planning for the new system (MIHMS). The test for MIHMS will be on Friday, July 31st.

Commissioner Harvey said that they have created a technical tool in the new system. This is a complicated tool that is required by CMS in order to have a certified system. The State gets a higher rate of reimbursement for services if the system is certified and DHHS was never able to put this tool in place in MECMS. DHHS is not planning on correcting MECMS because the investment to make MECMS compliant would cost more than what they would gain in finding the overpayments. DHHS is already working toward compliance by transitioning to a new system on February 28th or March 1, 2010. From that day forward, DHHS will have the technical tools that will flag for staff the kinds of things that surfaced out of this one review across all the service systems.

Commissioner Harvey said she was not at DHHS in 1995 so could not speak to what crashed then. She can speak to when she came to State government and DHHS in 2004 when the departments merged. The SURS unit was 2 ½ staff plus the Director due to budget cuts and personnel reductions. The Legislature authorized a growth in staff for the Program Integrity Unit that has been in place since the end of 2008. DHHS now has a functional Unit in terms of numbers of people to do the kind of audit work that is necessary to find the kind of overpayments that DHHS knows happens. To the question of providers calling DHHS and letting them know they were overpaid, the Commissioner said that probably does not occur in the way the question was suggesting. However, it is not because providers see DHHS giving them extra payment and deciding to hide it until DHHS finds the error. She believes what happens is there is a lack of clarity about what rate will be paid as described in OPEGA's diagram in the Report. You can bill 1 or 100 and you get the same product theoretically, so if you are not reading the MaineCare Manual and guessing on things that are not clear, the provider might be overpaid and will not know until DHHS tells them. The Commissioner believes it is in that context that they have conversations with providers about overpayment.

Commissioner Harvey said DHHS has done a preliminary review regarding the 6,000 claims and what the dollar amounts are. A number of the providers have gone out of business. When you take into account what

that investment would cost to review all those claims, it probably is not a net gain to the State so DHHS is working with OPEGA to figure out to what degree does it represent a benefit to Maine in terms of recouping money. If DHHS finds an overpayment and cannot collect it from the provider, they have to pay the federal portion out of the State's General Fund. That is a complication that they want to be cautious about while remaining compliant.

Commissioner Harvey said in terms of the dollars that are represented, she thinks that in fiscal year 09, the Department had to reduce $265 million of General Fund, most of which was in the Medicaid Program, and DHHS achieved all but $25 million. That is what she and other DHHS staff have been focused on. She said, what is in OPEGA's Report representing $70,000 or $80,000 of General Fund does not seem significant relative to the $265 million. She said it is not that the Department wants to ignore overpayments or fraudulent behavior, but it is a matter of balance and good management as they continue to fix the problems with MECMS. She said there are more problems than the GOC wants to know about. DHHS discovered them over the years and as they prepared for the new system.

Commissioner Harvey said she and her staff would be happy to answer any GOC questions. The Committee's questions and comments included:

GOC: Sen. Trahan said what he wanted to be assured of was that whatever allowed the overpayments is fixed and that the fix is then applied to other areas that might be vulnerable to the same problem. That would be the savings in the future.

D: Commissioner Harvey said they could not tell today where it is that this extrapolates specifically, but she does share the assumption that the lack of controls that are in MECMS regarding DME, probably also exist in regard to other services. She said CMS has done a complete review of DHHS' claims processing and did not find that the Department had an inaccurate payment system.

Commission Harvey referred to the PERM (Payment Error Results Measurement) mentioned by Director Ashcroft which is the program review that the federal government has required of all states. They pay half the cost and look at eligibility compliance. In addition, CMS is putting Part 2 in place, and DHHS has a conference call next week with them to discuss the hiring of contractors who will be going out and reviewing providers. The Commissioner does not know if DHHS is the contractor or CMS is hiring private contactors. When this effort was announced to DHHS 3 years ago, the federal partners in Boston said it was an opportunity to get money back for both the federal and state government. She worries about their providers and what they have had to endure, with MECMS in 2005 and 2006 and all the budget reductions since 2003. At some point, it is over kill to the providers in terms of providing services to people. The Commissioner said DHHS will be engaged with the Federal government over the next few months as that review process is put in place.

GOC: Rep. Burns asked if the SURS functionality that DHHS is going to implement with the new system would have worked with MECMS.

D: Commissioner Harvey said that the particular SURS system being designed would not work with MECMS. DHHS did talk to CMS when the decision was made to go to the new MIMHS system and a third party administrator for claims processing. CMS was in agreement with that because they were going to start funding DHHS again for development of MIHMS. At that time, CMS asked DHHS whether or not they could "bolt on" a SURS component that would work with the MECMS system. DHHS did that investigation and determined that with the amount of money and time it would take to develop that, it would have only been operational approximately 4 months prior to the new system and was not worth the investment.

GOC: Rep. Burns asked if that system was available over the 14 year period that DHHS was without any.

D: Commissioner Harvey said she only knows from 2005 forward and does not know what existed prior to that.

GOC: Rep. Burns asked the approximate costs of the new SURS component.

D: Commissioner Harvey said she could not answer on a single item as they look at it as a total package with the entire new system and the new system is many millions of dollars.

GOC: Rep. Burns said in looking at just this Unit alone, you are looking at an estimate of $350,000 plus a year and asked how it would have compared to the missing component.

D: Commissioner Harvey said it would have been multi-millions of dollars to develop a J-SURS for MECMS.

GOC: Rep. Burns asked whether, when DHHS goes back for recoupment on old claims that have been overpaid, do the vendors ever say they will not pay or that they do not owe the overpayment, and if so, how does DHHS handle those situations.

D: Commissioner Harvey said there is an appeal process that has 3 levels ending with a fair hearing. Ultimately the decision is made at her level.

GOC: Sen. Brannigan questioned whether, given the cuts that are made to DHHS, people retiring and the hiring freeze in place, the Department is going to be able to live with the situation as it is now or with what is coming.

D: Commissioner Harvey asked if the Senator was asking about DME or in claims management.

GOC: Sen. Brannigan said either.

D: Commissioner Harvey said in the Office of MaineCare they will be reducing the staff by 50 legislative headcount because they will have a vendor doing a lot of the work currently being done by the Department when they move to the new system. There has been discussion with the Legislature and there has been a lot of support, both in the AFA and HHS Committees to staff that office adequately to do the kind of work they need to do to oversee the vendor and providers. She has not seen a long list of staff retiring, there may be 6 that are taking the retirement incentive, but she has other offices in DHHS, one in particular, where the entire management team except the Director is taking the retirement incentive or choosing to retire. They have increasing requests for services, have wait lists, and have to say no almost everyday.

GOC: Sen. Brannigan said given all of the problems the Commissioner spoke of above, the loss OPEGA found out of $18 or $19 million is not bad.

D: Commissioner Harvey said a dollar overpaid is a dollar that should not have been spent, but that is the message she was trying to give the GOC about the balance. If the Department had to spend $80,000 of staff time to find $80,000 of General Fund money coming back to the State, is that where they want to put their energy or do they want to go to managing the $265 million reduction they have to achieve. Those are the management decisions she struggles with everyday.

GOC: Chair Simpson referred back to the incontinent supplies issue and asked if it was DHHS' Integrity Unit or OPEGA who discovered the problem and overpayments.

D: Commissioner Harvey said Herb Downs, Director, Audit-MaineCare and Social Services, could probably answer the specific finding of the audit, but the Program Integrity Unit audited that contract based on a DHHS staff person noting that something was not right as they saw claims being paid. The

additional potential overpayments OPEGA identified is a continuation of the work of DHHS staff into a future time period. In general, the Commissioner felt OPEGA's Report represented that they had a good understanding of the issues in MECMS, were probably smart in recognizing that there were issues in DME and that they were verified by the OPEGA Report and the work that DHHS was doing to find overpayments were in the right places.

GOC: Chair Simpson said there was a contract for what the State was suppose to be paying, and was curious how the finding happened. She noted that small amounts of money repeatedly add up.

D: Commissioner Harvey recognized Director Downs. He said the Program Integrity Unit was informed by an employee of OMS that they had concern about the incontinence billings. They ran claims for January, 2005 through December, 2007 and tried to look at what the billing errors were. Originally the Unit identified over $1 million they thought was in overpayments. However, after checking further it was discovered to be just billing errors and it went from a million dollar overpayment down to $400,000. The issues were that they were billing for one size when they should have been billing for a smaller size that was cheaper.

GOC: Rep. Rotundo asked Director Downs to share what kind of reductions he had seen in his audit staff in the 90's and over the past 15 years or so.

D: Director Downs said he currently oversees five different audit groups. He has only been involved with the Program Integrity Unit since last year, but prior to that they had been decimated down to 2 ½ staff plus the Director. The Unit is now back to 13 staff and, being fully staffed last year, they issued recoupment letters for over $21 million and actually collected $12.6 million. The fully staffed unit is doing a tremendous job.

GOC: Rep. Rotundo said the Director's example is a good one and as legislators they all need to remember there is a correlation between adequately staffed departments and their capacity to function effectively. She said that when she thinks of the number of auditors department wide that were cut in the last 15 years, there are bound to be problems. At the same time they are trying to maximize federal dollars coming into the State, they are also cutting the positions that are suppose to be auditing that funding and the State sets itself up for problems if Departments are not adequately staffed.

GOC: Sen. Trahan said he appreciates the discussion around staffing and how that affects the ability to go out and make the changes, but most of what he read in the Report and heard so far at today's meeting, is that the problems were computer errors, problems with billing. The value of the Report is not in the position count, it is correcting the problems that can persist year-after-year. He does not want the Committee to get confused with position count versus fixing computer errors that have caused the problems.

D: Commissioner Harvey said Sen. Trahan was absolutely right in that the Report speaks primarily of a trend or theme which is the MECMS theme. However, it is also important to recognize that when J-SURS is up and running and a flag comes up, they need people to follow up on that. The system will only flag the potential overpayments or fraudulent behavior but then people have to go out and do the audit and without people, that is not going to happen.

GOC: Sen. Trahan said having a better system will help the Department as a whole year-after-year. He said Sen. Brannigan's comment about not being much money may be true for one year, but that is true of any audit that is conducted. When a small sample is done and you find $100,000 in problems, that is a small error compared to the State budget, but when you extrapolate that over all the affected departments and areas, then it becomes a big number.

GOC: Sen. Nass agreed with the Commissioner in that if you are over paid you are not likely to squawk, but if you are underpaid you are. He said in his dealings with doctors' offices they had no idea of the billing and depended on DHHS to determine the proper amount to pay.

D: Commissioner Harvey said DHHS paid out $536 million in interim payments where it was a payment in lieu of provider's claims, so providers had to reconcile that in their own books just as DHHS had to reconcile its. Through that reconciliation effort the Department has collected all but $1 million of the interim payments. She said that thanks to DHHS staff and the providers, Maine is a poster child for the feds in terms of states that experience this.

GOC: Sen. Nass said he had a similar concern as Sen. Brannigan did earlier in reading the Report. The Report showed how difficult the AFA Committee's problem is going to be when OPEGA only identified a relatively small, but important amount, out of $18 million spent on DME. We should continue to chase the fraud, but at least on the surface, there doesn't appear to be much there. Therefore dealing with declining revenues will mean cutting programs and he thought it a fool's errand to think you are going to find significant results money wise to deal with the State's revenue shortfall other than going there.

GOC: Chair Simpson said the big issue is that DHHS and OPEGA are working together to make sure that when the new system comes on line, it is designed in a way to be most effective to weed out those areas. $400,000 may not be much, but if it is $400,000 across all areas, that adds up.

GOC: Sen. Brannigan said given how fouled up everything is, the results of the review were not to bad and people on the whole are pretty honest. He said it was not degrading how much money OPEGA found, the money found is not bad.

GOC: Rep. Rotundo said it was important to clarify Sen. Nass' questions regarding a vehicle for brain injured citizens and the 40% mark up for durable goods. She asked if the Commissioner could answer those questions.

D: Commissioner Harvey said MaineCare does not purchase vehicles or service animals and then introduced Tony Marple the MaineCare Director to answer the 40% mark up question.

Director Marple said they have been implementing cost savings measures for DME which is an area of cost growth. They had a cut in the 09 budget which has been implemented, and had a more controversial proposed cut having to do with the mark up in the 10 and 11 budget. They ended up with a compromise at the end of the session. There were 2 issues they had with the mark up – (1) it is cost based; and (2) the mark up was based on the gross cost of the item and did not net out any purchase discount that a vendor might get. We ended up requiring the purchase discount to be netted out of the cost but left the mark up at 40%. He said his goal is to get MaineCare off the mark up system onto a fee table. His Department has done a survey of all the New England States and what they are trying to do is go to a percentage of what Medicare pays. That would get them out of the internal control issue and the paperwork involved with the vendor submitting invoices and having to figure out purchase discounts. He believed the 40% markup was high but found out Maine was paying less already than many of the other states. The Office of MaineCare Services is doing that work and also looking at coverage issues. There may be some items where Maine's coverage may be a little broader than other states and he would rather pay for items at a fair price to the extent possible. He has had an actuary working on it and hopes to have some recommendations at the end of the month.

GOC: Rep. Rotundo said that, having been on the AFA Committee when the proposal Director Marple referred to came before them, it was the Legislature that pushed back on it and it was a bipartisan push back. It was a situation where the Department did come to the Committee with a proposal that would have saved money, but the Legislature said it was too much at that time.

D: Commissioner Harvey said one of the interesting things about DME, wheelchairs, walkers, etc. is unless you are living in a residential setting, part of the vendor's obligation is to modify it to the client and train them on how it works. There is a service component to the cost and she believes it is fair to say providers are not getting rich selling DME equipment. DHHS had a lot of problems with their DME payments in MECMS and it is one of the areas that collapsed earliest on.

GOC: Rep. Rotundo said, although it is off topic, it gives them an opportunity to explore the complexity of something that looks so simple on the surface. When talking to the providers it was about service and what they said is if the AFA Committee was going to rein them in to the point where they do not make any profit at all, they were going to stop providing the service and then who will take care of those people.

GOC: Sen. Nass said DHHS gets rate schedules from CMS for things like walkers and wheelchairs, but that Maine has an economy that is somewhat different than New Jersey, New York or California. He asked if there were any built in differences for cost of doing business in the various states in the rate tables.

D: Director Marple does not believe there is on the DME. He said that Medicare has regional differentiation on most hospital and physicians' services, but DHHS will end up paying less than Medicare.

GOC: Sen. Nass asked for clarification that even with the 40% mark up MaineCare is still paying less.

D: Director Marple said that was correct.

Commissioner Harvey said they were also looking at bulk purchasing across New England.

Director Marple said if they did get a bulk purchasing arrangement, Maine would pay the lower of the Medicare fee or the bulk purchase.

GOC: Sen. Brannigan said the question had been raised that someone was buying cars and dogs and asked who or what agency does that.

D: Commissioner Harvey said there is a loan program that operates through the independent living services at Alpha One where individuals with disabilities can get a loan to purchase a modified vehicle if they happen to be a wheelchair user but DHHS does not do that. DHHS sometimes works with the Department of Labor, Bureau of Rehabilitation on behalf of an individual and their family on the building of a ramp out of DHHS' General Funds, but they have financing, an 80/20 match from the federal government to do that kind of work. Usually dog service is paid through the Division of the Visually Impaired.

GOC: Sen. Nass said when taking a legislative tour they visited EyeDex and found they are marketing some fairly sophisticated equipment for checking blood contents. Those are available for home use and asked if that would be considered to be DME.

D: Commissioner Harvey did not know but would find out.

GOC: Sen. Nass asked what is on the DME list that would surprise the normal person.

D: Commissioner Harvey said probably nothing except that if a child needs a medically necessary service that a physician has ordered and DHHS does not have it on the usual and customary services list, DHHS would purchase that with a prior authorization.

GOC: Chair Simpson asked whether the State recovers medical equipment it has purchased, such as a wheelchair, when a member no longer needs it so it can be reused.

D: Director Marple said there are some states that have actually developed refurbishing systems. They have shops that have the specialized pieces of equipment and recalibrate them for other members. However it is a big investment.

Commissioner Harvey said it is almost like rebuilding it. That might be something DHHS should talk to surplus about, but much of what they purchase is individually tailored.

Jennifer Cook, Office of MaineCare Services, said they do have providers that are willing to refurbish wheelchairs, but charge a service fee. It typically is more costly than just providing a new one. The Office did do research a few years ago on having facilities to refurbish old wheelchairs for reuse and it was more costly to do that as well. If the Committee would like, she could provide that research to them.

GOC: Sen. Nass asked if MaineCare dealt with the motorized wheelchairs.

D: Ms. Cook said DHHS does provide the motorized wheelchairs and it is hard and usually more costly to refurbish them because most of the battery powered wheelchairs have to be sized to the person's body.

GOC: Rep. Rotundo said it was her understanding that there might be liability issues as well so in the long run it is probably cheaper for the State to protect themselves by having new equipment, particularly if the cost of refurbishing is almost as much as purchasing a new one.

D: Ms. Cook said that was correct and was part of DHHS' finding.

O: Director Ashcroft commented on the discussion that suggested since OPEGA did not find much money then things aren't too bad as regards to the amount of potential fraud, abuse or other unnecessary expenditure going on within MaineCare. She pointed out that the portion of the review that was designed to determine whether we have any actual fraud or significant abuse going on, has not been followed through to a conclusion yet. That is the research work that DHHS still have in process. The only dollars OPEGA included in the Report were the overpayment type situations that OPEGA identified as resulting from a couple of weak controls there were identified. She said she hoped that is the extent of what they find, but she did want to make the GOC aware that the vendors that were referred to the Department to look at had millions of dollars a year in claims. If the research that is continuing does find that there are some aberrant practices on the part of vendors, then we will be adding to the dollar amount already reported.

Director Ashcroft said, speaking from an auditor's perspective, a risk-based perspective – that there are a number of significant risk factors in place around the MaineCare claims billing. For one, MECMS has been a big problem since 2005, it does not have the controls in it that it should have, which Commissioner Harvey alluded to, and there has been an environment where there has been a lot of confusion for the Department and providers. In addition, OPEGA has seen through this review and others that there are human resource issues that have also affected what the strength of the controls. From the Director's perspective, DHHS is not at low risk for fraud, abuse and unnecessary payments in the MaineCare claims area. While she agrees that the number of overpayments that OPEGA found in this particular area are relatively low compared to the total amount, the jury is still out on whether there is more money to be found. She thinks there are significant risk factors, some of which have nothing to do with the Department and are just inherent in what has been happening, such that the State is <u>not</u> at the low end of the scale in terms of opportunity for folks to take advantage of the State. She felt she would be remiss to allow folks to conclude otherwise based only on the dollars reported here as potential overpayments.

GOC: Chair Simpson said given the agency's response, the new computer system will help.

O: Director Ashcroft said that will help.

D: Commissioner Harvey said that the CMS audit did not indicate the risk of overpayment and that is what they look for.

O: Director Ashcroft said there is a difference between looking for overpayments in the system and looking for abusive billing practices where somebody is intentionally trying to defraud the State. She believes that with everything that has been going on, there is potential for abuse. Other states have found it and that is one of the reasons DME was selected for review. The fact that the Program Integrity Unit identified $21 million in General Fund this year tells you something is going on in MaineCare claims if they can come up with that amount of money with 13 people working on just tips that are being generated.

D: Commissioner Harvey said those are overpayments and are part of the process, only two or three things went to the Fraud Unit.

GOC: Sen. Nass noted that his previous comments were not really related to the effectiveness of this review or the Report. He was more reflecting on the fact that the Legislature should not expect to be able to respond to the on-going revenue shortfalls and budget problems by merely cleaning up fraud and abuse. If there is fraud and abuse, it is not going to be easy to find and the dollar amounts are not likely to cover the size of the budget gap. It is not going to deal with the State's revenue problem in the near term.

GOC: Sen. Trahan commented that people want an assurance that their tax dollars are being spent properly. The value in OPEGA's Report is that if you do identify a problem and fix it legislators can go back to citizens and say we have done the best we can to insure that these programs are running efficiently. That is the value and we do not want to lose sight of that value.

GOC: Sen. Brannigan asked whether there were any penalties on overpayments and if there was an opportunity for an amnesty program to let providers do their own examinations and return whatever they determine they have over billed or been overpaid. He thought that a voluntary remission was a possibility.

D: Commissioner Harvey said there are no penalties for having received overpayments. If you are found to be fraudulent, you go through a criminal process. Often providers may look back at their billing and if they believe that they may have been overpaid they take steps to take care of that with the Department in advance of DHHS doing an audit of the contract. She said DHHS gets providers sending checks at the end of the contract period as they close out their contract before the audit begins because it helps them close their books also. The Commissioner thinks Sen. Brannigan's suggestion of amnesty is a possibility.

GOC: Sen. Brannigan asked whether the Department asked the people who have had the State's money for years to pay interest.

D: Commissioner Harvey said no. She said the Legislature appropriated a million dollars of General Fund for interest payments to providers that could verify and justify to DHHS their expenditures and they had very few that could justify it. There was a lot of talk about the increased cost of doing business, but when it came down to show the bank loan they had to take, there was very little evidence of that.

GOC: Rep. Rotundo said it is important, if the State is serious about the fraud piece, to look at what puts the State at risk – it is inadequate MECMS system, and also inadequate staffing. She thinks that is important for the public to understand that if we want people's taxes to be used effectively, we have to make sure that the people running the programs can run them efficiently and effectively and that requires adequate staffing.

GOC: Sen. Nass said if possible he would like to get information on the electronic blood monitoring, equipment he had asked about earlier, i.e. the electronics, whether it is inhalation or blood monitoring, the range and price.

D: Ms. Cook said she would get that information for the Committee.

The GOC thanked Commissioner Harvey and her staff for the information provided.

NEW BUSINESS

No new business.

UNFINISHED BUSINESS

- **Information From DHHS That was Requested at Last GOC Meeting**

At the June 30th GOC meeting Deputy Commissioner Green was asked what the change in the MaineCare caseload was and how that related to the trends and expenditures. Director Ashcroft referred GOC members to information in their notebooks that Deputy Commissioner Green had provided noting that the beneficiaries have actually increased while the total cost has decreased.

Director Ashcroft said the GOC also asked for the amount DHHS paid to the Muskie School to perform the cost impact analysis. Deputy Commissioner Green noted the cost as $47,000 annually.

- **Discussion Re: Special Project on DHHS Administrative Services Contracts**

Director Ashcroft said at the June 30th GOC meeting there was discussion regarding DHHS administrative services contracts and as a result of that discussion, the GOC added the Special Project of DHHS administrative contracts to OPEGA's Work Plan. OPEGA began its work on the project and learned the AFA Committee has been asking DHHS for similar information. Director Ashcroft was unclear whether the GOC intended for OPEGA's work to primarily benefit the AFA Committee in the initiative they are trying to undertake or whether it is primarily for the GOC to allow the Committee to determine whether there are other contracts they might want reviewed in addition to, or instead of, the APS contract. It makes a difference in the approach OPEGA takes and it makes a difference on who the Director would want to be seeking clarification and direction from on what information would be most helpful. She said OPEGA can gather information either way and would be happy to work with DHHS to do that, but she wants to make sure that both OPEGA and DHHS resources are being spent as efficiently as possible.

Director Ashcroft said OPEGA did ask DHHS to provide a list of administrative contracts, which they did. We had questions regarding other service contracts that would fall into the category of administrative services and had drafted a list of questions to send out to agreement administrators for the contracts that have high General Fund dollars. The Commissioner wants to make sure DHHS is not spending a lot of time answering those questions if that is not going to be the line of information that will be most helpful.

GOC: Sen. Diamond said the GOC had discussion at its last meeting and his concern at that meeting, and still is, is that the GOC look for any efficiency in a way to assist the AFA Committee with their task of trying to find $30 million for FY 11. The Criminal Justice Committee found significant savings in contracts that had not been monitored or used, and realized the Corrections Department was not unique in the kind of contracts it has - DHHS has contracts totaling in the millions of dollars. The logical question is - have DHHS contracts been monitored, are we comfortable with the efficiency that is resulting from those contracts. It was not his intent to have OPEGA staff on a task that would be impossible to do time wise, nor was it to tie up DHHS staff. It was to look for the obvious and work in conjunction with the Department and try to find obvious glaring inefficiencies and lacking of monitoring of contracts. He believes there will be savings so it would be helpful if OPEGA could assist the AFA Committee.

O: Director Ashcroft agreed and said OPEGA could ask pointed questions that would be most helpful to the AFA Committee. We had started to ask questions of DHHS including:
- when was the last time the contract was subject to RFP;
- when was the last time it was renewed; and
- what kind of a thought process went on related to renewing it.

She thinks Commissioner Harvey's recent email to the GOC Chairs and Sen. Diamond is indicating DHHS has done all of the above. However, OPEGA has come across, not just in DHHS, but other areas in State government, contracts that have gone on for many years, maybe originally RFP'd, maybe not, but have been renewed on a reoccurring basis. Sen. Diamond's questions of when was the last time the contract was RFP'd; when was the last time it was renewed; and is it something the State feels it still needs to be doing; or are there opportunities to reduce costs related to it if it is something they still want to do, are valid questions and it was the path OPEGA was going down.

GOC: Sen. Diamond said part of his concern at the last meeting was that Deputy Commissioner Green was unable to answer some of the more basic questions about contracts and that was concerning to him. He said if that was not Deputy Commissioner Green's area of work, he wanted to ask somebody who would have those answers. If all the contracts have been RFP'd and DHHS does not have any that have been out there for awhile unmonitored, that is fine.

GOC: Director Ashcroft said it was OPEGA's intent to start with that first piece. The other piece Sen. Diamond had indicated interest in was if the contract was for something the State is doing on an ongoing basis, then what is in place for reviewing the billing that comes in and do we feel comfortable with the process in place to make sure the billings are accurate? Those are more detailed questions about process that are valid questions, but it is part of the area where she thinks Commissioner Harvey may be having a little push back because it does mean that OPEGA has to get into the Departments and talk with the staff who manage and administer those contracts. OPEGA can do the work, it is as simple as asking the question and finding the right person to answer it at DHHS. We were looking to get a basic comfort level with what the processes are. That is the direction OPEGA was headed but wanted verification for both DHHS and OPEGA that this is what the GOC and AFA Committees wanted.

GOC: Rep. Rotundo said her sense is that DHHS is doing absolutely everything they can to come up with savings that they need to find in order to meet that $30 million, as well as going forward. If this were an area they felt they could find those savings, they would be looking here already. She referred to the report from Commissioner Harvey where she talks about the reduction in General Fund of $450,000 in this area and the work they needed to do to save that money among contracts that existed. Rep. Rotundo said it appears DHHS has already looked at these contracts and found savings there and if there were more savings in the contract area that information would come as part of the Commissioner's recommendation for the work the AFA Committee has asked her to do.

GOC: Sen. Diamond said that is a point well taken, except at the last meeting what initiated the discussion was there was no indication of that effort in the DHHS responses to the questions he had raised. When that is coupled with the fact that we have already found some real contract savings in some State agencies it raises the question of whether we might find more savings through contract reviews. He said that he agrees that the Commissioner and the Department is going to look for everything they can for savings, but this appeared to be a void area at the time it was approached by the GOC at its last meeting.

O: Director Ashcroft said when she was before the AFA Committee last week and highlighted areas coming out of other OPEGA Reports that could be explored further she was asked to come back with prioritized areas that she thought would be more fruitful or where gains may be able to be identified quicker. She said she had been giving thought to that prioritization and felt that contracts for services was one area where the State might possibly get large chunks of money within the timeframe for FY 11. Looking at that area would involve asking if the services being procured are a must have or a nice to have and determining what the

consequences would be if the contract was ended. Economic development programs also seemed to be an area she would prioritize because of the large amounts of General Fund dollars attached to them. Director Ashcroft said she did not want to dismiss the validity of Sen. Diamond's inquiry, but she thinks the contract area is beyond just DHHS. If the GOC's intent is for OPEGA to help OFPR staff in going down some of those paths then she would like to be clear about how that would work with the GOC because she does not want to get DHHS caught in the middle of trying to respond to both the AFA Committee and GOC.

GOC: Sen. Brannigan said from what Director Ashcroft is explaining, he thinks that is the job of the policy committees. It is not OPEGA's job to recommend ending programs unless that is the direction leadership and the AFA Committee decides to go.

O: Director Ashcroft said that is the discussion she was hoping to have – how OPEGA will be assisting, or not assisting, OFPR and the AFA Committee. OPEGA can be of assistance in helping to hone in on what it might be most fruitful to ask questions about. OPEGA can also help with analysis and by offering perspective that might be useful in narrowing down the line of inquiry, but that is not the typical OPEGA review. We are willing to use our resources in whatever way the GOC thinks is appropriate, but she did not think that the type of assistance that OPEGA had tried to provide AFA the last time around turned out to be very productive or helpful in achieving AFA's goal. If the GOC does want OPEGA assisting the AFA Committee, it might be better to allocate a specific chunk of OPEGA time for that effort and have OPEGA take direction from OFPR and the AFA Committee about what work OPEGA could assist with. We could treat it as a special project we are going to do without having to keep returning to the GOC to get approval for what OPEGA is being asked to look at.

GOC: Sen. Diamond agreed with what Sen. Brannigan said regarding policy committees. They have proven their value this past session and the committee of expertise has to be involved to make recommendations. He also thinks it is a good idea that OPEGA work with the AFA Committee staff.

GOC: Rep. Rotundo agreed that it is not up to OPEGA to decide which contract or services should be eliminated, that is departments working with legislators to make those decisions. She said it would be enormously helpful, from the AFA Committee's perspective, for this Committee to give permission to OPEGA to work along side the AFA Committee and OFPR over the next few months to provide additional resources as research is needed in various areas.

GOC: Sen. Trahan said he supported that given the extraordinary circumstances that the State is under, if OPEGA can help the AFA Committee more effectively. But we should not lose sight of the intent of the OPEGA statute for the long term.

GOC: Sen. Nass said he has reservations about the proposed arrangement because this was part of the debate in the last session when there was an attempt to downsize OPEGA and make it part of OFPR. He thinks the OFPR staff is very capable of doing this kind of work and the GOC or OPEGA do not need to be involved. One thing about administrative contracts is that they are identifiable as far as cost go, you either are projecting the cost for a contract or you know what the prior cost was, there is not much guessing about what the savings are going to be. If you end the contract you should be able to book x amount of dollars. Sen. Nass said his favorite example is Muskie School contracts, that is, or has been, $10 or $12 million a year, and ought to be at the top of somebody's list to review.

GOC: Chair Simpson recognized Commissioner Harvey.

D: Commissioner Harvey said she knows that DHHS is the sole agreement partner with the Muskie School and the University. DHHS' cooperative agreements amount to $3.4 million of General Fund. They did a complete review of those agreements last year with the Controller's Office and the University's Vice-Chancellor and agreed that if DHHS did not have an agreement in place by July 1st for those that took effect then, they would not be allowed to start the work. DHHS has all of its agreements in place. The Department could not eliminate its cooperative agreements today because they have been moving toward not having

them do work that should be done by the State. Commissioner Harvey understands the concept of shadow government and has been working very hard to make sure that is not a practice that DHHS is engaged in. However, without new resources, or without our MIHMS system in place, there are certain functions that DHHS cannot do without right now. For example, they do nursing home assessment and acuity of care determinations on our behalf through an agreement with DHHS that is a large part of our $3 million investment. When we get MIHMS, DHHS plans to eliminate that function. Commissioner Harvey said she feels like DHHS has done that review, and with all due respect to Director Ashcroft and her staff, who are very collegial, it is a distraction for DHHS to give them information about that when they have already done that review. She wants to respond, but when the email comes across, she says it represents one more thing to do on an already 15 hour day that does not get her anything because she is already focused on that work.

Commissioner Harvey said in terms of the RFP process, DHHS has been working with the Division of Purchases to update their RFP process for all of their contracts, whether they are administrative or service and if DHHS were to issue all of those today, they would be overwhelmed with the amount of response to RFPs. DHHS has outlined, with the Division of Purchases, an entire process for every one of its contracts to be renewed under an RFP. Commissioner Harvey said she feels they have done that work and what prompted her email to the GOC was OPEGA staff asking her staff when was this contract last RFP'd and what is the plan for that. This is just reiterating for DHHS to another group the same information we have been working toward with the Division of Purchases to clean up the RFPs and making sure we are buying what the State really needs.

The information DHHS has given the AFA Committee on contracts is twofold. One was a package last year on the administrative account in MaineCare which represents several million dollars. DHHS reviewed every contract with the members of that Committee and there was a reduction proposed, that she did not agree with but accepted, for $450,000. This is an account that until 3 years ago was always in deficit by several million. DHHS has managed it well to bring its costs down and now it has to be managed a little tighter. All of the contracts in the MaineCare administrative account have a lot to do with our system going forward. Other than those contracts or cooperative agreements in the MaineCare Accounts, DHHS put together a list of administrative contracts per the OPEGA request for the AFA and GOC Committees. The total of those DHHS administrative contracts, including running 2 State hospitals, result in $16 million of General Fund. Even if all of those were eliminated, they still do not get to AFA's target of $30 million and Commissioner Harvey said she believes they have reviewed all of those over the last year. She said DHHS also renews their contracts annually and it is not just a perfunctory renewal process. The Commissioner said she cannot speak to other State agencies, but for DHHS, contracts has been a place they look at every time the Governor issues a curtailment because Medicaid cannot be curtailed. Commissioner Harvey thinks having OPEGA asking DHHS' mid-level staff more questions about individual contracts is just going to overwhelm DHHS staff and she has a hard time supporting that kind of collaborative effort.

GOC: Sen. Trahan referred to Sen. Nass' point about OPEGA and its resources being drawn away and said he did not want OPEGA's resources drawn away for minutia, but if there are specific questions to be answered that would help make a better decision on prioritizing cuts, he thinks that is where OPEGA's value is.

GOC: Chair Simpson noted that it seemed from the discussion that GOC members were more interested in having the Director figure out a way to work with the AFA Committee staff, perhaps on contracts across of State Government, rather then proceeding with a specific focus on DHHS contracts.

GOC: Rep. Rotundo said she is hearing different things from different Committee members and is not clear where the GOC is in terms of giving OPEGA permission to work with the AFA Committee over the coming months for a limited period of time.

GOC: Sen. Trahan said that contracts is one area where people are going to go to try to save money and there may be more items for potential cost-savings areas that will come up where OPEGA could be helpful. He thinks it is important to have the GOC involved in facilitating that.

O: Director Ashcroft summarized the Committee's discussion to this point saying it appeared that the GOC is not necessarily interested in getting and going through the list of DHHS administrative contracts in order to determine if there are others OPEGA should review. It seems there is interest in whether OPEGA can be helpful with AFA's cost savings efforts and that is broader than DHHS. Consequently, OPEGA will not plan to ask any further questions of DHHS regarding their administrative services contracts until it is figured out whether and how OPEGA can be helpful to the AFA Committee. Director Ashcroft will have a proposal after the lunch break of how OPEGA might be of assistance to the AFA Committee while still taking its direction from and reporting to the GOC.

GOC: Rep. McLeod said that he would like to see DHHS' list of administrative contracts resulting from the work OPEGA has already done. Director Ashcroft will get the GOC copies of the list.

RECESS

The Government Oversight Committee recessed at 12:40 p.m. on the motion of Chair Simpson.

RECONVENED

Chair Simpson reconvened the meeting at 1:35 p.m.

Chair Simpson reminded the GOC that Director Ashcroft was to come back with a proposal of what they could do in terms of having OPEGA work with the AFA Committee.

Director Ashcroft said Rep. McLeod had asked for a list of DHHS' administrative contracts and provided that information to the Committee.

Director Ashcroft said her proposal to the GOC regarding OPEGA working with the AFA Committee is that the GOC would authorize OPEGA to spend up to 1,000 or 1,200 hours as a special project to assist OFPR and the AFA Committee with the expectation that assistance requested of OPEGA would be in keeping with OPEGA's mission. Niches where she thinks OPEGA has some unique capabilities that could be helpful would be:

- Bringing any perspective that we have about State government in general that we have learned through our reviews and how to hone in on areas that might be considered for cost savings.

- OPEGA could help with researching a program, contract, etc that is being considered for elimination, in terms of what the impact and consequences are if it were eliminated and gather information from stake holder groups about those impacts.

- Researching best practices.

She would be looking for OFPR to take the AFA Committee's questions and decide which they think are most appropriate for OPEGA. OPEGA could also help with analysis OFPR might typically do if they get in a crunch situation and need help. OPEGA will track how much time they spend on the project and would not spend more time than authorized without talking further with the GOC.

The implication for the rest of OPEGA's Work Plan is that we may not get all the projects done that are currently on it. OPEGA currently has PSAP in progress and is shooting to have final results at the same time the PUC study is done, which would be February, 2010. We have also started preliminary research on the Medical Services in the Prison System and should be able to get that fairly well along, but might not get it completed. Director Ashcroft does not know if OPEGA would get very far on the Maine Turnpike Authority review. We also still have the Leased Office Space project. She believes the AFA Committee has also started asking questions about leases, so maybe that project might dove tail somewhat with additional work we could do for them. Director Ashcroft believes OPEGA's value would be providing perspective, helping think through consequences

of certain decisions, impacts, or the populations those decisions will affect. OPEGA would be looking to OFPR to triage where they thought we could be most helpful. OPEGA would have leeway within the 1,000 hours or so to be flexible in responding to whatever assistance was needed.

GOC: Sen. Nass asked where the 1,000 hours came from.

O: Director Ashcroft said 1,000 hours is one staff person for half a year. It is the size of a small to medium project for OPEGA.

GOC: Sen. Nass thought it was more than the GOC should commit to, but is not going to object.

O: Director Ashcroft said they may not need it all. Until they decide what they are going after and what the questions are, OPEGA will not know if we can be of help.

GOC: Sen. Brannigan said it is a change that the GOC is turning over its role to the AFA Committee and staff and asked if that was a good idea noting OPEGA may be asked to go into an area the GOC has not talked about yet.

GOC: Chair Simpson said another approach would be for the Director to talk with the AFA Committee staff in advance of GOC meetings.

O: Director Ashcroft said that could work, but might be administratively problematic with how often the GOC meets if the AFA Committee needs the information quickly. Establishing email authorization could potentially work. She expects to bring back to the GOC progress reports on what has been done on special project and how much time has been spent, just like all the other projects.

GOC: Rep. Burns asked why that was different from the process they have now. The AFA Committee identifies a situation they want to know more about that is beyond their or their staff's capabilities and would come to the GOC with a request.

O: Director Ashcroft said it was two issues – the timeframe and the depth of issues they need OPEGA to do.

GOC: Rep. Pendleton asked if the GOC could treat this as a special project, put it on deck as an emergency, and then the GOC would still have complete oversight and allow only a certain amount of hours. This would be a special project listed on OPEGA's Work Plan except that the GOC will give the flexibility to go in and out of the investigation up to a certain number of hours. If more hours are needed, the Director could return to the GOC.

O: Director Ashcroft said that would be her proposal.

Motion: To place on OPEGA's Work Plan a Special Project for working with the AFA Committee and OFPR staff on the current effort to streamline or restructure State Government with OPEGA authorized to spend up to 1,000 hours of staff time. OPEGA to report to the GOC on activities being undertaken as part of this Special Project. (Motion by Sen. Nass, second by Rep. Rotundo, PASSED 9-0).

GOC: Rep. Pendleton asked if the AFA Committee also had to approve the GOC's plan of action on this matter.

O: Director Ashcroft said the last time she was before the AFA Committee they asked if they might get assistance from OPEGA and had talked about sending a letter to the GOC making that request. She will let the AFA Committee know that the GOC has authorized OPEGA resources for them.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

Director Ashcroft referred members to the information in their notebooks. She noted that in the Public Safety Answering Point and Dispatch Centers review, OPEGA is putting together a request for quotation for consulting services and is working to identify firms it will be sent to.

- **Update on Briefing to Appropriations and Financial Affairs Committee**

Director Ashcroft referred members to the information in their notebooks that was distributed at the AFA Committee meeting. She has been asked to go back to the Committee with her thoughts on which of the areas should receive priority. Director Ashcroft will plan to do that for the AFA Committee meeting in August.

- **Update on Criminal Justice and Public Safety Committee's Review of Department of Corrections Action Plan on Maine State Prison**

Director Ashcroft gave an update on how the Criminal Justice and Public Safety (CJPS) Committee is continuing to monitor the Commissioner's action plan with regard to the Maine State Prison. The CJPS Committee met July 29th and the Commissioner provided an updated action plan. A copy of the plan is included in the GOC notebooks. Director Ashcroft said she also covered with Deputy Commissioner Lord the progress notes on each item and where they were in terms of having completed any of them. She does have those notes and can share them verbally with the GOC. Deputy Commissioner Lord will include progress notes the next time she prepares an update. The Department of Corrections has begun working on some of the items.

She mentioned that the CJPS Committee had also had a presentation by the Maine State Prison Board of Visitors (a copy of their presentation is included in the GOC notebooks). Director Ashcroft thought the information would be of interest to the GOC because the Board was laying out for the CJPS Committee the issues they have seen from their work with inmates and staff over the years, and many of the issues mirror what had been raised in OPEGA's Report. She thinks this is verification and validation that there are items to be worked on and the Administration agrees. The Director said the Board may be an avenue for inmates and staff to be raising concerns. The Board may be able to help the GOC and OPEGA assess whether actions taken by Corrections have actually created change at the Prison.

- **Follow-up on Action Items From Last Meeting**

- Dirigo Health Program

Director Ashcroft reminded the Committee that they were still in the process of determining whether there was any portion of a review on Dirigo Health that would be of any help to the Insurance and Financial Services Committee such that it should be added to OPEGA's Work Plan before the next session. She has not spoken with Rep. Treat directly, but Rep. Treat did send an email saying that given the Dirigo Board was supposed to come back with a revamped program the first part of next session, she thought the review that they had originally requested of OPEGA could be much more limited because it would get affected by whatever the Dirigo Board brings back. Director Ashcroft said she will continue to try to catch up with Rep. Treat, but she did not get the sense from the last Committee meeting that GOC was ready to bump any of the other reviews from the Work Plan to put Dirigo on it.

GOC: Sen. Nass said that was a different response than that of Sen. Bowman.

O: Director Ashcroft said that Sen. Bowman had indicated that if OPEGA could give some context around the original intent of the Program in general and how the activities are matching that intent, that might be helpful as they consider the revamped program that the Dirigo Board is going to present. However, he did

not feel there was any information they were looking for OPEGA to provide that would keep them from doing the decision-making and work the Committee needed to do if OPEGA was not able to get to it.

- State Allocations From the Federal Sport Fish Restoration Program (Wallop-Breaux Amendment)

Director Ashcroft said this is a review that the GOC voted off the "On Deck" list and we were going to find out from OPLA whether, in the course of considering the bills on the salt water fishing licensing, any information had been put together as to what the federal program funds were being spent on and whether or not they were in compliance with the program criteria. Director Ashcroft said there was no information that had been presented to either the IF&W or Marine Resources Committees that spoke specifically to that. She did hear from Andrea Erskine at the Department of IF&W who said they do an annual report for the federal government on how the monies from that program have been spent and said the legislator is certainly welcome to go to the Department of IF&W to look at that report. Director Ashcroft said what remains to be decided is how the GOC would like to close this matter out.

GOC: Chair Simpson asked if the Director could send a letter to the legislator explaining what the GOC and she has done, asking if the legislator wants anything else and, if so, can come back to the GOC. The GOC agreed.

GOC: Rep. Pendleton asked if any of the information applies to the salt water fish licensing issues the Legislature is dealing with.

O: Director Ashcroft said, this is her own opinion - she thinks the possibility that there was going to be more money coming to the State if salt water fishing licenses were established and uncertainties about how that money was going to get split up between the Departments of IF&W and Marine Resources could have been part of the impetus for the legislator's question around how are we already spending that money and is the State in compliance with the program. She thinks the two are connected but does not know now that those bills have been carried over. Sen. Trahan alluded to the fact that somehow the distribution battle going on between the two departments had been solved, but Director Ashcroft does not know if that makes the legislator's questions go away or not.

GOC: Rep. Pendleton said she believes there are still questions because there are two bills that have been carried over for the issue. She is on Marine Resources and there was considerable discussion on this topic and there will be questions coming up again this session.

O: Director Ashcroft will send a letter to the legislator and leave open the opportunity that if she still feels strongly about wanting something looked at she can bring it back to the GOC.

- Leased Office Space Review

Director Ashcroft said she was supposed to come back to the GOC with a proposed revised scope for the review. The GOC had also requested a list of leases which the AFA Committee also asked the Director of BGS for. OPEGA has tried to track down whether that list has been made available yet to AFA and, if so, was going to share it with the GOC as it would be the most up-to-date information. The list has not yet been given to the OFPR staff person. Director Ashcroft asked if the GOC could hold off until its next meeting for discussion of the review because by then she should know whether the AFA Committee was still going to be asking questions about it or not.

GOC: Rep. Rotundo said the AFA Committee has been thoroughly discussing leased space with Chip Gavin, Director, Bureau of General Services, and is paying close attention to it.

- **Access to Closed Files of Maine State Police Investigations**

  The Director noted that Sen. Trahan requested information as to how he or anyone else might access the investigation file related to the inmate death that had been previously discussed. OPEGA learned that contacting Christopher Parr, who is with the Maine State Police, would be the avenue to potentially get access to the file. There are some requirements that the file would need to be reviewed and the information that could not be released under statute would have to be retracted, but it sounded like they would be prepared to do that. Director Ashcroft will pass that information on to Sen. Trahan.

- **Auditee Notification of Confidentiality Provisions**

  This item was tabled until the next meeting.

NEXT COMMITTEE MEETING

- **Discussion of Committee's Meeting Schedule**

  Director Ashcroft said the GOC received OPEGA's MaineCare Durable Medical Equipment and Medical Supplies Report today. The Committee typically has a work session and a public comment period on a report. That will be at the next meeting so the Committee has to decide how far out it wants that to be. Director Ashcroft said because she has had to pull OPEGA staff off the Fund for Healthy Maine Review to do other priority work projects that have come up, she does not believe that Report will be ready for release until the middle of October.

  The Committee discussed having a meeting in September and possibly two in October. It was decided that the next meeting be scheduled for September 3, 2009 and an October meeting will be decided at that time.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 2:10 p.m. (Motion by Rep. McLeod, second Sen. Brannigan, unanimous).