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An Audit Report on

The Office of Violent Sex Offender Management

January 2015

Report No. 15-018

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Overall Conclusion

The Office of Violent Sex Offender Management (Office) had evidence that (1) its case managers supervised the 136 sexually violent predators¹ that the Office oversees and (2) those sexually violent predators received treatment. However, the Office did not have controls over the management of certain contracting and financial processes. Specifically, the Office should address deficiencies in the following areas:

- Contract management.
- Budgeting.
- Expenditure review.
- Processing the fees that sexually violent predators pay.
- Securing access to the Office's case management system.

Contract management. The Office's expenditures on contracts and memorandums of understanding for treatment, transportation, and other services for sexually violent predators totaled \$7.5 million (67 percent) of the Office's \$11.2 million in expenditures from September 1, 2011, through May 31, 2014. However, the Office did not have controls for the following:

- **Planning.** The Office did not conduct formal planning, including a needs assessment and a cost estimate, for any of the 54 contracts that auditors tested. The Office did not plan for treatment services by determining (1) how many treatment providers would be needed in each area of the state or (2) how much treatment services would cost each year.

Background Information

The Office of Violent Sex Offender Management (Office) is responsible for providing appropriate and necessary treatment and supervision to sexually violent predators. Texas Health and Safety Code, Section 841.003, defines a sexually violent predator as a person who is a repeat sexually violent offender and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. Effective in fiscal year 2012, the Legislature created the Office as a separate agency (its services had previously been the responsibility of the Council on Sex Offender Treatment, which was administratively attached to the Department of State Health Services). However, Texas Government Code, Chapter 420A, specifies that the Department of State Health Services shall provide administrative support services as necessary.

As an independent agency that is administratively attached to the Department of State Health Services, the Office receives appropriations through the Department of State Health Services. Specifically, through the Department of State Health Services' strategy G.1.1:

- The Legislature appropriated \$4,037,687 for the Office for fiscal year 2012 and \$4,766,511 for the Office for fiscal year 2013.
- The Legislature appropriated \$6,029,249 for the Office for fiscal year 2014 and \$6,902,262 for the Office for fiscal year 2015.

As of May 31, 2014, the Office employed 23 staff, 15 of whom were case managers.

¹ As of September 2014, the Office was responsible for overseeing 171 sexually violent predators, 32 of whom were in county jails. The sexually violent predators in county jails receive minimal supervision from the Office. The Office also supervised three individuals who lived in state-supported living facilities, such as a state school.

- **Procurement.** With one exception, all of the Office's contracts were open-enrollment contracts for which the Office is not required to solicit formal bids. However, the Office did not have a formal process to identify, evaluate, and enroll contractors.
- **Contract formation and rate/price establishment.** For 53 of the contracts tested, the contracts did not contain detailed descriptions of the services the contractors would provide, how much those services would cost, sanctions for nonperformance, or evidence of a legal review of the contract terms. The Office was not able to provide a copy of one additional contract selected for testing (the Office had canceled that contract).
- **Contract oversight.** The Office monitored the seven part-time case managers with whom it contracted. However, it did not monitor contractor performance for 46 other contracts for services such as treatment and transportation. (As discussed above, the Office canceled one contract.)

In addition to contracts, the Office also uses memorandums of understanding to obtain housing services; auditors identified issues with those memorandums of understanding that were the same as the contracting issues discussed above.

Budgeting. The Office has not implemented a budgeting process to identify or plan for the services it provides, and it did not ensure that funds would be available to meet its needs. Although the Office had a process to track monthly expenditures, it did not track the amount of funds it had available for future expenditures.

Expenditure Review. Auditors tested 115 Office expenditures totaling \$1,110,140. For 45 (39 percent) of those 115 expenditures, the Office did not have adequate supporting documentation for the associated services and/or the services provided were not specified in the contract. The portion of the expenditures tested for which the Office did not have adequate supporting documentation and/or were for services not specified in the contract totaled a net \$54,018 (4.9 percent of the \$1,110,140 in total expenditures tested).

Processing the fees that sexually violent predators pay. The Office has not implemented segregation of duties in its collection of fees that sexually violent predators pay for a global positioning system (GPS). Office case managers determine how much a sexually violent predator will pay, collect the fee, send the fee for deposit, and input the amount paid in the Office's case management system. Auditors could not find evidence that the Office used the revenue from the fees it had collected to offset the cost of the GPS system, as statute requires. The Office reported that, from September 2011 to May 2014, it had collected \$140,072 in fees.

Access to the Office's case management system. The Office did not have adequate controls over access to the system that it uses to manage case managers'

case loads. The information in that system also is the basis for invoices from treatment providers and transportation drivers.

The Department of State Health Services processes the Office's financial transactions and performs other administrative duties for the Office; however, the Office is responsible for establishing controls over its own business processes.

As of October 2014, the Office had filled vacant positions in its Austin office; those positions were responsible for many of the Office's administrative functions, including budgeting, financial functions, and legal counsel.

Auditors communicated other, less significant issues regarding invoices, payments to contractors, and policies and procedures to Office management separately in writing.

Selected Recommendation

The Legislature should consider requiring the Office to use contracts instead of memorandums of understanding to obtain housing services.

Summary of Management's Response

The Office agreed with the recommendations in this report.

Summary of Information Technology Review

Auditors reviewed automated controls over access to the Office's case management system; as discussed above, the Office did not have adequate controls over access to that system.

Summary of Objectives, Scope, and Methodology

The objectives of this audit were to determine whether the Office:

- Procured and managed selected contracts in accordance with applicable statutes, rules, and Office policies and procedures.
- Used state funds and other assets in accordance with applicable statutes, rules, and Office policies and procedures.

The scope of this audit covered financial and contracting activities for Office client service contracts and memorandums of understanding that were effective between September 1, 2011, and May 31, 2014. The scope also covered administrative services that the Department of State Health Services (Department) provided to

the Office. The audit focused on all phases (planning, procurement, contract formation, and contract oversight) of the contracting process.

The audit methodology included gaining an understanding of the Office's financial and contracting processes; collecting and reviewing financial information related to expenditures and revenues; reviewing policies and procedures; conducting interviews with Office staff and Department staff; reviewing statutes, rules, and Office of the Comptroller of Public Accounts requirements; and performing selected tests and other procedures.

Auditors compared Office expenditure data in the Health and Human Services Administrative System (HHSAS) and Uniform Statewide Accounting System and concluded that data was sufficiently reliable for the purposes of this audit. Auditors also compared the Office's contract list to vendor payment information in HHSAS and to contract files and concluded that the contract list was sufficiently reliable for the purposes of this audit. Data in the Office's case management system was of undetermined reliability because former staff still had access to the system (see Chapter 2 for additional details).

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Detailed Results

Chapter 1

The Office Did Not Have Controls Over Certain Contracting Processes

Contract Management Process

Phases in developing and managing contracts should include:

- **Plan** - Identify contracting objectives and contracting strategy.
- **Procurement** - Fairly and objectively select the most qualified contractors
- **Contract Formation/Rate/Price Establishment** - Ensure the contract contains provisions that hold the contractor accountable for producing desired results, including all relevant terms and conditions, as well as establish processes that are cost effective and aligned with the cost of providing the goods and services.
- **Contract Oversight** - Monitor and enforce the terms of the contract.

Source: *The State of Texas Contract Management Guide*, Version 1.9.

The Office of Violent Sex Offender Management (Office) carries out its statutory responsibility for providing treatment to and supervising 136 sexually violent predators through 53² contracts for services such as treatment and transportation, 12 memorandums of understanding for housing, and 9 contracts for other items. (See the text box on the following page for more information on sexually violent predators.) However, the Office did not have controls over the management of certain contracting processes. Auditors tested all of the Office's service contracts for all contract management phases in the *State of Texas Contract Management Guide* and determined that the Office did not implement certain contracting controls (see text box for the phases of the contracting process). Table 1 summarizes the Office's expenditures on contracts and memorandums of understanding from September 1, 2011, through May 31, 2014.

Table 1

Office Contracts and Memorandums of Understanding					
Service Type	Expenditures on Contracts and Memorandums of Understanding				Number of Contracts and Memorandums of Understanding (September 1, 2011, through May 31, 2014)
	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014 (first 9 months)	Totals	
Housing Memorandums of Understanding	\$ 1,065,179	\$ 1,464,412	\$ 1,260,944	\$ 3,790,535	12
Treatment Contracts	592,578	841,373	653,687	2,087,638	18
Transportation Contracts	172,095	242,457	207,592	622,144	20
Biennial Examination Contracts ^a	60,833	87,098	79,157	227,088	8
Case Manager Contracts	6,800	26,606	4,454	37,860	7
Other Contracts (Information Technology, Consultants, Drug Testing) ^b	<u>231,676</u>	<u>294,358</u>	<u>265,257</u>	<u>791,291</u>	9
Totals	\$2,129,161	\$2,956,304	\$2,471,091	\$ 7,556,556	
Other Expenditures	\$1,141,678	\$1,366,595	\$1,145,463	\$ 3,653,736	
Total Expenditures	\$3,270,839	\$4,322,899	\$3,616,554	\$11,210,292	

^a Those examinations determine whether sexually violent predators are no longer likely to engage in a predatory act of sexual violence.

^b Not included in audit testing.

Source: The Uniform Statewide Accounting System and information the Office provided.

² In addition to the 53 service contracts, the Office canceled 1 other service contract.

Contract Planning

According to the *State of Texas Contract Management Guide*, planning should include tasks such as performing a needs assessment and developing a cost estimate. However, the Office did not conduct formal planning, including a needs assessment and a cost estimate, for any of the 54 contracts that auditors

Number of Sexually Violent Predators Who Were Civilly Committed

As of September 29, 2014, 346 sexually violent predators had been civilly committed for outpatient treatment and supervision. Specifically:

- Office case managers directly supervised 136 individuals who lived in halfway houses (see Appendix 3 for case manager responsibilities).
- The Office supervised three individuals who lived in state-supported living facilities, such as a state school.
- Office case managers provided limited supervision to 32 individuals who were in county jails.
- The Office did not supervise 175 individuals. Of those 175, 173 were in prison and 2 were incarcerated in states other than Texas.

Source: The Office's case management system.

tested. (A needs assessment is important because it helps to develop a statement of work for a contract. A cost estimate establishes how much services will cost, as well as the range of services to be included in a contract.) For example:

- **Treatment contracts.** As of May 31, 2014, Tarrant County had only 1 treatment provider for 35 sexually violent predators, and the Office had no contingency plan if that provider was no longer able to provide services.
- **Transportation contracts.** By not planning for the transportation services, the Office did not develop the contracts properly (see detailed information below) and was not maximizing its use of state funds. For example, one driver lived approximately 60 miles from a sexually violent predator's halfway house, and the Office paid that driver a minimum \$106 per trip to travel to and from the halfway house. In addition, drivers made multiple trips to and from their homes during a single day.

Failure to perform either a needs assessment or cost estimate can result in the Office not providing the services needed or knowing how much funding it needs. Chapter 2 presents additional information on the Office's budgeting.

Procurement

The Office did not have a formal process to identify, evaluate, and enroll contractors in its open enrollment contracts. Fifty-three of the 54 contracts that auditors tested were open-enrollment contracts for which the Office was not required to solicit formal bids. A former Office employee asserted that the Office located contractors by word of mouth.

The Office did not use an evaluation form to review the applications it received to help ensure that vendors met the required minimum qualifications for any of the 53 open-enrollment contracts that auditors tested. For example:

- **Treatment contracts.** The Office did not use an evaluation form to review treatment provider applications for contracts; however, all of the 18 tested met minimum qualifications.
- **Transportation contracts.** Not all of the applications for transportation and case managers were complete. The Office signed 10 new contracts for

transportation services during the scope of this audit. Five of the applications that transportation vendors submitted for those contracts did not contain at least one of the following: the required reference letter/prior employment check, a notarized affidavit stating that the vendor met all of the requirements, or proof of liability insurance. In addition, none of the 10 applications for transportation contracts contained the required child support form showing that the vendors were not delinquent on their child support payments.

- **Biennial examination contracts.** The Office did not have applications or any documentation showing how it evaluated the vendors associated with the eight biennial examination contracts tested. The Office's files for those contracts contained only a copy of the contract. Biennial examinations determine whether sexually violent predators are no longer likely to engage in a predatory act of sexual violence.

The Office also awarded one contract for housing services through competitive bidding, but it did not have completed evaluations for the two bids it received for that contract. The Office canceled that contract, as is discussed in more detail below.

In addition, the Office did not have policies and procedures addressing conflicts of interest. Auditors identified two instances in which conflicts of interest involving contracts existed. In both of those instances, a transportation driver with whom the Office contracted was the spouse of an Office employee case manager. The information that the case managers enter into the Office's case management system could be used to support transportation drivers' invoices.

Contract Formation and Rate/Price Establishment

The 53 open enrollment contracts tested did not always contain:

- Provisions that the *State of Texas Contract Management Guide* requires.
- Detailed descriptions of the services the contractors would provide.
- Information specifying how much the Office would pay for the services.
- Sanctions for contractor nonperformance.

In addition, the Office did not always have documentation showing that it conducted a legal review of contract terms. As discussed in more detail below, the Office was not able to provide a copy of one additional contract selected for testing.

The Office used 2 different contract templates for the 53 open enrollment contracts tested:

- **Contract template for fiscal year 2012.** The Council on Sexual Offender Treatment (which was administratively attached to the Department of State Health Services) developed that template when it was responsible for providing treatment to and supervising sexually violent predators. That template included some form of all but one provision that the *State of Texas Contract Management Guide* required. It did not include an abandonment/default provision to specify that the Office could cancel the contract without notice if the contractor did not provide services.
- **Contract template for fiscal year 2013 and thereafter.** The Office developed that template, and that template did not contain all provisions that the *State of Texas Contract Management Guide* required. Specifically, it did not include an indemnification/damage claim provision and a contract abandonment/default provision. That template also did not include a remedies and sanction schedule for contractor nonperformance that Texas Government Code, Section 2261.101, requires (see text box for additional details). The Office also did not have documentation showing that it conducted a legal review of that template.

**Texas Government Code,
Section 2261.101**

That statute requires state agencies shall create and incorporate a remedies schedule, a graduated sanctions schedule, or both, for breach of contract or substandard performance under contracts.

The 15 contracts for biennial examination providers and case managers that auditors tested contained detailed descriptions of the services the contractors would provide. However, the 38 contracts for treatment and transportation that auditors tested did not contain detailed descriptions of the services the contractors would provide. (The Office's expenditures on those 38 contracts represented 24 percent of its total expenditures from fiscal year 2012 through May 31, 2014.) Specifically:

- **Treatment contracts.** The treatment contracts and the documents those contracts referenced did not specify (1) the information that contractors were required to enter into the Office's case management system, (2) the treatment methods the contractor would be required to use, and (3) the criteria for how sexually violent predators would advance through the program.
- **Transportation contracts.** The transportation contracts did not describe what drivers were required to do in certain situations, such as when they were not on time or when they were involved in an accident. Those contracts also did not include provisions designed to help to ensure the safety of the driver, the sexually violent predator, and the public, such as provisions regarding following traffic laws and wearing seat belts. In addition, they did not specify how charges for the hours worked would be calculated, how to report the mileage driven, and what costs were allowable or unallowable.

Contract Oversight

The Office monitored the seven part-time case manager contracts that auditors tested. However, it did not monitor the performance of the contractors associated with the other 46 open enrollment contracts tested. Specifically:

- **Treatment contracts.** Treatment contractors are required to provide each sexually violent predator with group treatment sessions and individual treatment sessions. Those contractors are also required to enter the results of those sessions into the Office's case management system within 48 hours of the sessions. Auditors identified multiple instances in which contractors entered that information more than 40 days after the sessions. The Office also did not monitor to help ensure that the group therapy sessions were limited to 10 individuals per group, as the Office's policy required.
- **Transportation contracts.** The Office did not provide transportation contractors with a standard mileage log; therefore, some mileage logs did not include important information, such as the time that the driver started driving. Because drivers are paid an hourly rate plus mileage, having a standard mileage log would help to ensure that the Office has the information it needs to calculate payments. In addition, the Office was not certain which of its employees was responsible for reviewing mileage logs for accuracy.
- **Biennial examination contracts.** The Office could not provide evidence that it verified (1) whether it received required reports from contractors that performed biennial examinations within 90 days, as required by the contract and (2) whether those reports contained all of the elements that the contract required.

Memorandums of Understanding for Housing Services

The Office also used memorandums of understanding to obtain housing services, as required by the Texas Health and Safety Code, Section 841.083(d) (see text box for additional details). From fiscal year 2012 through May 31, 2014, expenditures for housing services were the Office's largest expenditure category, representing \$3,790,535 (34 percent) of the Office's \$11,210,292 in total expenditures.

**Texas Health and Safety
Code, Section
841.083(d)**

"The Office shall enter into appropriate memoranda of understanding for any necessary supervised housing. The Office shall reimburse the applicable provider for housing costs under this section."

A memorandum of understanding is less formal than a contract. When a state agency uses a memorandum of understanding, it is not required to follow the *State of Texas Contract Management Guide* or other contracting laws and rules; however, it should comply with state procurement laws and rules and follow the *State of Texas*

Procurement Manual. Auditors reviewed the Office's 12 memorandums of understanding for housing services and identified the following issues:

- **Planning.** The *State of Texas Procurement Manual* specifies that the first step in procurement is to identify needs, which includes providing detailed specifications of the commodity or service and obtaining a reasonable cost estimate. However, the Office did not perform any planning for the housing services it obtained through memorandums of understanding. Planning is important because it would enable the Office to determine the number of beds it would need and how much the housing services will cost each year. In addition, the Office did not have any contingency plans if a provider was no longer able to provide housing services. For example, in August 2013, one housing vendor canceled its memorandum of understanding. (The memorandum of understanding required only a 30-day notice to cancel.) That vendor was the only vendor for housing services in its area. That vendor signed a memorandum of understanding to extend services until the end of March 2014 to provide the Office time to find new housing services. The Office signed a memorandum of understanding with a new vendor on February 17, 2014. The Office asserted that was an emergency procurement for housing services, although it was not categorized as an emergency procurement in the Office's files.

- **Formation.** As discussed above, the Office was not required to include in its memorandums of understanding the elements and provisions that the *State of Texas Contract Management Guide* requires agencies to include in contracts. Therefore, the memorandums of understanding did not include the following important provisions:
 - A funding out provision that stated that the memorandum of understanding was contingent upon continued availability of funding.
 - A provision describing the dispute resolution process.
 - A right to audit provision to allow the State Auditor access to documentation.
 - Detailed descriptions of the services to be provided, including requirements for items such as sanitation, clothing and necessities, and food service.

The memorandums of understanding also did not include the following items not specifically required by the *State of Texas Contract Management Guide*:

- Provisions for remedies and sanctions that Texas Government Code, Section 2261.101, requires for contracts.
- Criteria defining when vendors could bill for a day of service.

- **Oversight.** The Office had no evidence of its monitoring of the vendors that house sexually violent predators through memorandums of understanding. It also did not request monitoring reports from other entities, such as the Department of Criminal Justice, that may monitor those same vendors.

The Office canceled the housing contract that it awarded through a competitive bid process.

In March 2014, the Office awarded a housing contract in Liberty County, Texas to GMW and Associates. The Office had solicited bids for that contract through a competitive bid process. The contract award specified that the daily rate was to be \$86.57 per person receiving housing for up to 79 beds and \$76.83 per person receiving housing for 80 or more beds.

The associated request for proposals contained all required contract terms and conditions; it also contained a more developed statement of work than the memorandums of understanding the Office had used to procure other housing services. However, current Office management was uncertain about whether a signed contract existed. In addition, the Office did not have documentation showing its planning for that contract, including the development of a cost estimate. The Office also had not completed an evaluation showing that the vendor it had selected met all minimum requirements and was a limited liability corporation in Texas.

After the contract award, the contractor purchased a tract of land that differed from the tract of land specified in its proposal. The Office asserts that there are no state statutes that require it to provide notification when a residential facility is being constructed to house sexually violent predators. Texas Local Government Code, Chapter 244, contains notification requirements for residential facilities that will be within 1,000 feet of a residential area (see text box). However, that statute does not apply to the Office because the definition of “mandatory supervision” in Texas Government Code, Chapter 508, does not apply to individuals who are civilly committed.

In May 2014, the Office had to cancel that contract when it became aware that the vendor had incorrectly represented itself as a limited liability corporation in Texas.

**Texas Local Government Code,
Chapter 244**

Texas Local Government Code, Chapter 244, requires an entity that proposes to construct a residential facility that houses people as a condition of probation, parole, or mandatory supervision and that is within 1,000 feet of a residential area, a school, public parks or recreation areas, a church, synagogue, or other place of worship to provide written notice to:

- The commissioners court of any county with an unincorporated area that includes all or part of the land within 1,000 feet of the proposed correctional or rehabilitation facility.
- The governing body of any municipality that includes within its boundaries all or part of the land within 1,000 feet of the proposed correctional or rehabilitation facility.

Recommendations

The Legislature should consider requiring the Office to use contracts instead of memorandums of understanding to obtain housing services.

The Office should:

- Comply with the *State of Texas Contract Management Guide* and develop and implement a process to manage its contracts.

- Conduct and document contract planning activities, including a needs assessment and a cost estimate, for all services for which it contracts. The Office also should include in its planning process a consideration of the different options for each service to help ensure that it maximizes the use of state funds.
- Develop and implement a process to solicit applications for open-enrollment contracts.
- Develop and use standard evaluation criteria for reviewing vendors' proposals for contracts, including a process to verify that the proposals meet minimum qualifications.
- Include all information that the *State of Texas Contract Management Guide* requires in its contracts, including a detailed statement of work. The Office also should consider requiring its general counsel to review contracts during their formation.
- Monitor contractors to help ensure compliance with contract provisions.

Management's Response

The Office agrees with the auditor's recommendation. In the late summer of 2014, new Office staff began identifying significant contract management and procurement issues such as no procurement processes used to obtain existing program services; vendors providing program services with no procurement or contract in place; vendors providing the same services but billing at significantly different rates; contracts that were poorly written and did not include necessary provisions. The disregard for State Procurement and Contract Management standards led the Office's current Executive Director to formally request that the State Auditor's Office expand the scope of their audit and provide more coverage of the procurement process and program service contracts.

- *All new contracts will comply with the State of Texas Contract Management Guide. The Office is currently evaluating the previous administration's disregard of the contract procurement process as the means to obtain necessary program services. Office staff has also been working with the Health & Human Services Commission (HHSC) Procurement office to procure critical residential housing services.*
- *The Office will conduct and document formal planning on all future contracts. These include a needs assessment, determining the best procurement method and completing a cost estimate to help ensure the best service option is selected.*

- *The Office is currently evaluating and developing an open enrollment contracts process to solicit applications for necessary program services.*
- *In June 2014, in conjunction with the HHSC, the Office developed and used standardized evaluation criteria for the Request-For-Proposal (RFP) procurement to obtain residential housing services. The Office is also evaluating and developing standardized evaluation criteria for an open enrollment contracts process currently under development.*
- *All Contract Management Guide required elements will be included in future Office contracts. The Office's General Counsel is involved in the planning, formation and review of all Office contracts.*
- *The Office has hired an Operations Monitor for the specific purpose of monitoring contractor performance to ensure compliance with contract provisions.*

The Office Did Not Have Certain Controls for Budgeting, Expenditure Review, Fee Processing, and System Access

The Office had not implemented certain processes for budgeting, review of expenditures, fee processing, and access to its case management system. Those issues hindered the Office's ability to maximize the use of state funds. For example, not reviewing expenditures increases the risk that the Office will not have adequate supporting documentation for expenditures or will calculate payment amounts incorrectly. Weaknesses in access to the case management system could result in unauthorized payments to vendors.

Budgeting

The Office did not develop an internal budget to determine separate funding amounts for each of its services. Although it anticipated growth in the population of individuals it served, the Office did not budget specific amounts for housing, treatment, and transportation services. As discussed in Chapter 1, the Office also did not develop a cost estimate to determine the amounts of funding necessary for each of those services.

When the Office awarded a contract for housing in March 2014, it had not analyzed whether it had the funds necessary to meet the contract terms. That contract contained payment rates that were almost twice the rates that the Office had been paying for housing through memorandums of understanding, which would have had a significant effect on the Office's budget. As discussed in Chapter 1, the Office later canceled that contract.

**Texas Health and Safety Code,
Section 841.083(a)**

"The office shall approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider...The treatment provider may receive annual compensation in an amount not to exceed \$10,000 for providing the required treatment."

Texas Health and Safety Code, Section 841.083(a), limits the annual amount that the Office can pay for treatment to \$10,000 per sexually violent predator (see text box). However, because the Office did not track the amount it spent on treatment for each sexually violent predator, it could not ensure that it complied with that statute. From fiscal year 2012 through May 31, 2014, treatment service expenditures exceeded \$2 million and were the Office's second largest expenditure category after housing. (See Chapter 1 for additional information on the Office's total expenditures.)

Expenditure Review

Auditors tested 115 Office expenditures totaling \$1,110,140.³ For 45 (39 percent) of those 115 expenditures, the Office did not have adequate supporting documentation for the associated services and/or the services provided were not specified in the contract (see Table 2). The portion of the expenditures tested for which the Office did not have adequate supporting documentation and/or were for services not specified in the contract totaled a net \$54,018 (4.9 percent of the \$1,110,140 in total expenditures tested).

Table 2

Summary of Errors in Expenditures Tested ^a		
Issue Identified	Description	Amount in Error
Inadequate supporting documentation	For 4 expenditures tested, the Office did not have supporting documentation that was sufficient to determine key information about the goods or services the vendors provided.	\$ 23,717
	For 26 expenditures tested, the Office did not have supporting documentation that was sufficient to support the expenses or mileage.	11,358
	For 3 expenditures tested, the amounts on the Office's supporting documentation differed from the amounts on the invoices.	514
(1) Payments for services not included in the contract or memorandum of understanding or (2) payment calculated using an incorrect payment rate	For 6 expenditures tested, the invoices included charges for services that were not included in the Office's contracts with the vendors.	16,440
	For 12 expenditures tested, the invoices contained requests for mileage reimbursements; however, reimbursement for mileage was not discussed in the Office's memorandums of understanding with the vendors.	2,099
	For 2 expenditures tested, the vendors requested payment for therapy sessions that did not occur. That situation was not addressed in the Office's contracts with the vendors.	160
	For 1 expenditure tested, the Office calculated the payment using an incorrect payment rate.	-270
Total		\$54,018
^a The number of expenditures in this table does not sum to 45 because some expenditures had multiple errors and, therefore, are discussed in both categories above.		

Source: Auditor testing of Office expenditures.

The Office also did not have policies and procedures for its review of expenditures, and it could not specify which staff were responsible for reviewing invoices from transportation contractors.

Of the 115 expenditures tested, 93 were subject to the requirements of the Prompt Payment Act (Texas Government Code, Section 2251.021), which specifies that a payment is overdue on the 31st day after an invoice is received. The Office paid all but 1 of those 93 expenditures in accordance with the Prompt Payment Act.

³ Thirty expenditures were for housing services, 20 were for treatment services, 23 were for transportation, 20 were for other contracted services, and 22 were for non-contract expenditures.

Processing the Fees that Sexually Violent Predators Pay

The Office did not segregate duties when it collected fees that sexually violent predators pay for a global positioning system tracking device (GPS). Texas Government Code, Section 841.084, requires sexually violent predators who are not indigent to pay the Office monthly fees to cover a portion of the cost of the GPS that the Office uses to track those individuals. Office case managers determine how much a sexually violent predator will pay, collect the fee, send the fee for deposit, and enter the amount paid in the Office's case management system. The Office reported that, from fiscal year 2012 to May 31, 2014, it collected \$140,072 in GPS fees from the sexually violent predators and paid \$557,275 for GPS services.

Auditors could not find evidence that the Office used the revenue from the fees it had collected to offset the cost of the GPS system, as statute requires. The Office indicated that the revenue from the fees it had collected in fiscal year 2012 had lapsed and that it had not yet spent the revenue from the fees it had collected in fiscal years 2013 or 2014. The Office did not have a process to help ensure that it used that revenue to pay for the GPS system, as required by the statute.

Access to the Office's Case Management System

The Office did not have adequate controls over access to its case management system, which the Office uses to manage case managers' caseloads. That system is also used to generate invoices for treatment and transportation vendors.

Auditors identified 14 former employees and contractors who still had access to the case management system, and 2 of those individuals had administrator access. When auditors brought that issue to its attention, the Office terminated the access of those 14 individuals. Weaknesses in access controls could result in unauthorized payments; however, auditors did not identify any instances of unauthorized payments.

In addition, the Office did not have a process to periodically review case management system users and their access levels to ensure that only appropriate individuals could access the system and that those individuals' access rights were appropriately restricted.

Recommendations

The Office should:

- Develop and implement a budgeting process to analyze its revenues and expenditures to help ensure that it has funds available to provide services.

- Develop and implement a process to review expenditures that includes, but is not limited to, ensuring that services are specified in contract provisions, the correct payment rate is applied, and the expenditure amount is adequately supported.
- Work with the Department of State Health Services and the Legislative Budget Board to help ensure (1) compliance with the intent of statute regarding GPS fees that sexually violent predators pay and (2) that the Office uses the revenue from those fees to offset its GPS expenditures.
- Revise the process and corresponding policies and procedures for calculating and collecting the GPS fees that sexually violent predators pay so that case managers are not solely responsible for processing those fees, or implement compensating controls to address the weaknesses in segregation of duties in fee calculation and collection.
- Develop and implement a process to provide user access to its case management system based on users' job duties and responsibilities and to disable that access promptly when it is no longer necessary.
- Develop and implement a process to periodically review access to its case management system.

Management's Response

The Office agrees with the auditor's recommendation. In August 2014, the Executive Director, recognizing that the lack of financial expertise severely hindered the Office's ability to manage its finances, re-purposed an agency position to hire an experienced Budget Manager for the Office. By September the Office's Legislative Appropriations Request was revised, the 2015 Operating Budget was established, and monthly reports and data files used to manage the Office's budget, expenditures, revenues and purchases were in place. The Office is now able to provide fiscal guidance, direction and support to its programs and operations instead of relying totally on financial support from the Department of State Health Services (DSHS). The Office has also posted an Accountant III position that will be dedicated to day-to-day fiscal business processes such as reviewing vendor invoices and billing for accuracy and compliance with contract rates and requirements, coordinating the processing of agency invoices with field staff to ensure both a programmatic review and fiscal review are performed and maintaining adequate supporting documentation for all payments made and revenues received.

- *As indicated above Office staff has defined and developed standard monthly detailed budget, expenditure, revenue and purchasing reports and data files that are used to manage Office finances and support agency programs. The Executive Director has also established a fiscal reporting process for the Office's Governing Board.*

- *In September 2014, the Office implemented new invoice and billing requirements for services providers. In October, the Office defined the roles and responsibility for Treatment Providers, Case Managers and Financial staff related to the submission of invoices and payment for services. This included establishing supporting documentation requirements such as mileage logs, receipts for expenses, and Bing mileage/route printouts, defining review responsibilities and establishing invoice submission and processing timelines. The new processes and procedures were implemented to help ensure compliance with contract requirements, terms and conditions.*
- *In September 2014, Office staff met with Legislative Budget Board (LBB) staff to propose that GPS Fees be used to finance the Office's operations. This change required the modification of the 2016-2017 Legislative Appropriations Request which LBB staff supported. GPS fees are now included as a method-of-finance for the Office which reduces the need for General Revenue and demonstrates compliance with the intent of the statute regarding GPS Fees. Office staff also worked with DSHS staff to define and develop a monthly GPS Fee report and budget process to increase the Office's spending authority as fee revenue is collected so it can be utilized within the timeline established by the General Appropriations Act.*
- *In September 2014, the Office began a monthly reconciliation of the GPS revenue collected by field staff and processed/credited to Office accounts by DSHS financial staff. This reconciliation includes a review of the Office's case management system which is used to calculate and record payment plans for GPS Fees. The Office is evaluating the GPS Fee business processes and procedures to help identify additional controls that could be implemented to strengthen the segregation of duties.*
- *The Office has reviewed user access in the case management system and has terminated any former employees or contractors. The Office has begun to implement a process to standardize user access based on job duties. Additionally, there is now 1 staff member, as opposed to 3, that is responsible for the enrollment and termination of an employee or contractor. This staff member will disable access to the case management system for an employee or contractor on the date of termination from employment or service termination date.*
- *The Office has already begun to review the case management system on a monthly basis. This process will involve a review of all active users in the system. The Office has appointed 1 staff member for this responsibility, to maintain the consistency of information in the system.*

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to determine whether the Office of Violent Sex Offender Management (Office):

- Procured and managed selected contracts in accordance with applicable statutes, rules, and Office policies and procedures.
- Used state funds and other assets in accordance with applicable statutes, rules, and Office policies and procedures.

Scope

The scope of this audit covered financial and contracting activities for Office client service contracts and memorandums of understanding that were effective between September 1, 2011, and May 31, 2014. The scope also covered administrative services that the Department of State Health Services (Department) provided to the Office.

The audit focused on all phases (planning, procurement, contract formation, and contract oversight) of the contracting process.

Methodology

The audit methodology included gaining an understanding of the Office's financial and contracting processes; collecting and reviewing financial information related to expenditures and revenues; reviewing policies and procedures; conducting interviews with Office staff and Department staff; reviewing statutes, rules, and Office of the Comptroller of Public Accounts requirements; and performing selected tests and other procedures.

Data Reliability and Completeness

Auditors verified the completeness of expenditure data by comparing information in the Department's internal accounting system (the Health and Human Services Administrative System or HHSAS) to the expenditures in the Uniform Statewide Accounting System (USAS). Expenditure data was sufficiently reliable for the purposes of this audit.

Auditors verified completeness of the contract population by comparing the Office's contract list (a spreadsheet) to vendor payment information in HHSAS. Auditors also reviewed all contract files to verify the existence of

the contracts and to determine the purpose of the contracts. The contract list was sufficiently reliable for the purposes of this audit.

Data in the Office's case management system (for example, information regarding sexually violent predators, case manager notes, treatment provider notes, and transportation driver notes) was of undetermined reliability. Auditors determined that former staff still had access to that system (see Chapter 2 for additional details). Auditors also determined that certain reports that system generated were not always correct.

Sampling Methodology

Auditors used professional judgment to select a risk-based sample of expenditures for testing. The sampled items were generally not representative of the population and, therefore, it would not be appropriate to project those test results to the population.

Auditors used professional judgment to select a risk-based sample of contracts for testing. The sample included all contracts for housing services, treatment services, transportation services, biennial examinations, and case managers that were active at any point from September 1, 2011, through May 31, 2014.

Information collected and reviewed included the following:

- Office contract files, including planning documentation, solicitation documentation, and contracts.
- Office files for memorandums of understanding, including planning documentation, solicitation documentation, and the memorandums of understanding.
- Office policies and procedures.
- Current and former Office employee time sheets.
- Global positioning system fees that sexually violent predators paid in fiscal years 2012 through 2014.
- Expenditure data in USAS.
- Expenditure data in HHSAS.
- Invoices and supporting documentation for expenditures from the Department.
- Emails and other documentation that supported the information that Office employees provided during interviews.
- Data on sexually violent predators in the Office's case management system.

- Training information for case managers.

Procedures and tests conducted included the following:

- Interviewed employees at the Office and the Department.
- Interviewed former employees of the Office.
- Interviewed staff in the Health and Human Services Commission's time, labor and leave, and payroll sections.
- Reviewed training documentation for case managers.
- Analyzed time reports for leave taken.
- Tested to determine whether the Office planned for selected contracts, including performing a needs assessment and a cost analysis as required by the *State of Texas Contract Management Guide*.
- Tested whether the Office used standard evaluations to review applications for selected contracts or proposals.
- Reviewed selected contracts and memorandums of understanding to determine whether the Office included essential terms listed in the *State of Texas Contract Management Guide*.
- Tested a sample of payments on invoices for appropriate documentation, required approvals, and timely payment.
- Tested whether the Office performed oversight for the selected contracts.
- Obtained background checks from the Department of Public Safety for Office employees and contractors.

Criteria used included the following:

- *State of Texas Contract Management Guide*, Version 1.9.
- *State of Texas Procurement Manual*, 2012.
- Office policies and procedures.
- Texas Health and Safety Code, Chapter 841.
- Texas Government Code, Chapter 420A.
- *State of Texas Vendor Guide*.
- Texas Code of Criminal Procedures, Chapter 62.
- Texas Local Government Code, Chapter 244.

Project Information

Audit fieldwork was conducted from May 2014 through December 2014. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Becky Beachy, CIA, CGAP (Project Manager)
- Kathy Aven, CIA, CFE (Assistant Project Manager)
- Scott Boston, MPAff
- Salem Chuah
- Bianca F. Pineda
- Nakeesa Shahparasti
- Yue Zhang, MPA
- Dennis Ray Bushnell, CPA (Quality Control Reviewer)
- Verma Elliott, MBA, CPA, CIA, CGAP (Audit Manager)

Summary of the Civil Commitment Process

The Department of Criminal Justice is responsible for identifying individuals who meet the guidelines for commitment to the Outpatient Sexually Violent Predator Treatment Program. It refers those individuals to a multi-disciplinary team to determine their eligibility for civil commitment. The multi-disciplinary team comprises representatives from:

- The Office of Violent Sex Offender Management.
- The Council on Sex Offender Treatment.
- The Department of Criminal Justice.
- The Department of Criminal Justice - Victim Services Division.
- The Department of State Health Services.
- The Department of Public Safety.

The following are the individual steps in the civil commitment process:

Step 1. The Department of Criminal Justice identifies an individual who is within 16 months of scheduled release from prison with more than one sexually violent offense and refers the individual to the multi-disciplinary team.

Step 2. The multi-disciplinary team reviews and assesses the case. If it finds that the individual is likely to commit a sexually violent offense after release or discharge, it refers the individual for an assessment by an expert; if it does not make such a finding, the process ends.

Step 3. An expert who contracts with the Department of Criminal Justice conducts an assessment to determine whether the individual has a behavioral abnormality.

Step 4. If the expert identifies a behavioral abnormality, the case is referred to the Special Prosecution Unit. If a behavioral abnormality is not identified, the process ends.

Step 5. The Special Prosecution Unit decides whether to file a petition for a trial to seek a commitment; it is also responsible for initiating and pursuing a civil commitment. If the Special Prosecution Unit does not petition a trial to seek commitment, the process ends.

Step 6. The Special Prosecution Unit files a petition alleging a predator status and, if the individual is indigent, the State Counsel for Offenders provides representation for the individual in the civil commitment proceeding.

Step 7. A commitment trial is held in the 435th District Court of Montgomery County, Texas before a judge or a 12-person jury that must unanimously answer “yes” beyond a reasonable doubt to the following questions:

- Is the individual a repeat sexually violent offender?
- Does the individual suffer from a behavioral abnormality that makes him or her likely to engage in a predatory act of sexual violence?

If the answer to either question is “no,” the process ends.

Step 8. If the judge or jury unanimously responds “yes” to both questions listed above, the individual is ordered into the Outpatient Sexually Violent Predator Treatment Program upon release from prison.

Step 9. After the trial, but before the individual enters the Outpatient Sexually Violent Predator Treatment Program, the Office of Violent Sex Offender Management coordinates transportation and residential placement for the individual.

Step 10. Upon release from prison, the individual is transported to the residential facility.

Step 11. The assigned case manager meets face-to-face with the individual at the residential facility, activates a global positioning system tracking device, and makes additional referrals based on the individual’s needs. (See Appendix 3 for details on case manager responsibilities.)

Office History and Case Manager Responsibilities

History of the Office of Violent Sex Offender Management

Fiscal Year 1999 - The Legislature created the first outpatient civil commitment program for sexually violent predators. The Interagency Council on Sex Offender Treatment, also known as the Council on Sex Offender Treatment, was responsible for administering Texas Health and Safety Code, Chapter 841, and was part of the former Department of Health.

Fiscal Year 2004 - The Interagency Council on Sex Offender Treatment became an independent board administratively attached to the Department of State Health Services.

Fiscal Year 2012 - The Legislature created the Office of Violent Sex Offender Management (Office) to perform functions related to the Outpatient Sexually Violent Predator Treatment Program.

Texas Government Code, Chapter 420A, specified that the Department of State Health Services would provide support services to the Office as necessary.

Table 3 lists the Office's employees who were hired prior to May 2014 and the location where they worked.

Table 3

Office Employees Hired Before May 2014		
Title	Status	Work Location
Executive Director	Resigned in May 2014	Employee home in Austin
Deputy Director	Resigned in August 2014	Employee home in Conroe
General Counsel	Resigned in May 2014	Employee home in Conroe
Program Specialists (three positions)	Resigned as of July 2014	Employee homes: <ul style="list-style-type: none"> ▪ Two in Conroe ▪ One in Huntsville
Program Specialist	Transferred to another state agency in July 2014	Main Office location in Austin
Receptionist	Transferred to another state agency in August 2014	Main Office location in Austin
Case Managers (fifteen positions)	Were still Office employees as of October 2014	Employee homes: <ul style="list-style-type: none"> ▪ Five in Conroe area ▪ Two in Dallas area ▪ Five in Fort Worth area ▪ Two in El Paso area ▪ One in Austin

Source: Information the Office provided.

May 2014 - The Office's executive director resigned and a new executive director was appointed.

Table 4 lists the Office's employees as of October 31, 2014, and the location where they worked.

Table 4

Office Employees as of October 2014		
Title	Month Hired	Work Location
Executive Director	May 2014	Main Office location in Austin
Deputy Director	June 2014	Main Office location in Austin
Budget Manager	August 2014	Main Office location in Austin
General Counsel	June 2014	Main Office location in Austin
Management Support Specialists (two positions)	August 2014	Main Office location in Austin
Operations Monitor	September 2014	Main Office location in Austin
Court Services Coordinator	July 2014	Main Office location in Austin
Region Manager	Jan 2014	Employee home in Houston
Case Managers (fifteen positions)	Hired before a May 2014 reorganization of the Office	Employee homes: <ul style="list-style-type: none"> ▪ Five in Conroe area ▪ Two in Dallas area ▪ Five in Fort Worth area ▪ Two in El Paso area ▪ One in Austin

Source: Information the Office provided.

Case Manager Responsibilities

Each sexually violent predator who is civilly committed to the Outpatient Sex Offender Treatment Program is assigned to an Office case manager. Case managers provide supervision and ongoing case management services, and their responsibilities related to their clients are listed in Table 5.

Table 5

Office Case Manager Responsibilities	
Area of Responsibility	Description
Pre-release responsibilities	<ul style="list-style-type: none"> ▪ Enter information for each newly assigned client into the global positioning system (GPS) tracking software a minimum of 48 hours before the client's release from the Department of Criminal Justice. ▪ Review the client's file prior to the client's arrival at the residential facility.
Duties upon a client's admission to the Outpatient Sex Offender Treatment Program	<ul style="list-style-type: none"> ▪ Meet the client at his or her residential facility to install and activate the GPS tracking device. ▪ Obtain a photograph of the client. ▪ Prepare the client's daily activity schedule for the week and provide the client with a copy. ▪ Notify the client of the requirement for a Texas identification card or driver's license, and coordinate with the client to obtain that card or license. ▪ Within seven days of the client's release: <ul style="list-style-type: none"> • Schedule an assessment appointment with a treatment provider. • Schedule the client's registration as a sex offender with law enforcement.
Ongoing responsibilities	<ul style="list-style-type: none"> ▪ Prepare the client's daily activity schedule for the week and provide the client with a copy. ▪ Conduct surveillance of the client's activities at least once per week at locations on the client's daily activity schedule. ▪ Conduct surveillance once a week at the client's place of employment (if the client is employed). ▪ Coordinate transportation services for the client, and authorize all travel from the client's residential facility. ▪ Refer the client for alcohol and substance abuse testing every three months. ▪ Be available to accept notifications of GPS alerts at various times throughout the year. ▪ Verify on a monthly basis that the client has registered as a sex offender with the appropriate law enforcement agencies. The case manager verifies the information on the Department of Public Safety Web site within 30 days of the client's release from custody. ▪ Have face-to-face contact with the client at least once a week during the treatment phase and the transitional phase; have face-to-face contact with the client at least twice a month during the aftercare phase. ▪ Prepare monthly progress reports for the client by the fifth of each month, and email a notification of the completed report to each member of the case management team. Each report must include a treatment summary, a summary of the client's activities and referrals, and a list of any violations.

Office Case Manager Responsibilities	
Area of Responsibility	Description
GPS tracking duties	<ul style="list-style-type: none"> ▪ Enter all client schedules into the GPS tracking software 24 hours prior to the commencement of the client's scheduled weekly activities. ▪ Review the client's GPS location points for each day. ▪ Receive and review a daily GPS violation report. ▪ Review the charging history of the client's GPS device at least monthly. ▪ Re-evaluate the financial status of the client every six months. ▪ Calculate the amount of the fee the client must pay for GPS tracking. ▪ Collect the GPS fee from the client and submit the funds to an Office of the Comptroller of Public Accounts' lock box.
Responsibilities related to high-risk plans and collateral contacts	<ul style="list-style-type: none"> ▪ Ensure that the client has a high-risk plan to assist the client in developing and recognizing high-risk situations and using internal and external controls to reduce high-risk behaviors while in the community. ▪ Meet face-to-face with any individuals with whom the client anticipates developing a relationship. After consultation with treatment providers, the case manager determines the type of contact that is approved between the client and an individual. Case managers also identify and assist in training individuals who are potential chaperones for the client.
Responsibilities related to client violations and interventions	<ul style="list-style-type: none"> ▪ Investigate all reported client violations of program rules, orders, or commitments. Make interventions that include verbal interventions, written reprimands, written assignments, or a warrant request. ▪ If a client has absconded, the case manager immediately notifies the appropriate law enforcement agency and immediately completes a warrant request. ▪ Monitor a client who has been arrested and the status of pending charges until final disposition of those charges.

Source: Information the Office provided.

Statutory Notification Requirements

Texas Code of Criminal Procedures, Chapter 62, specifies notification requirements for the Department of Public Safety. An excerpt is presented below.

Texas Code of Criminal Procedures, Chapter 62, Sex Offender Registration Program.

Art. 62.201. ADDITIONAL PUBLIC NOTICE FOR INDIVIDUALS SUBJECT TO CIVIL COMMITMENT. (a) On receipt of notice under this chapter that a person subject to registration who is civilly committed as a sexually violent predator is due to be released from a penal institution or intends to move to a new residence in this state, the department shall, not later than the seventh day after the date on which the person is released or the seventh day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post office box, within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside.

(b) The department shall provide the notice in English and Spanish and shall include in the notice any information that is public information under this chapter. The department may not include any information that is not public information under this chapter.

(c) The department shall establish procedures for a person with respect to whom notice is provided under this article to pay to the department all costs incurred by the department in providing the notice. The person shall pay those costs in accordance with the procedures established under this subsection.

(d) The department's duty to provide notice under this article in regard to a particular person ends on the date on which a court releases the person from all requirements of the civil commitment process.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair
The Honorable Joe Straus III, Speaker of the House, Joint Chair
The Honorable Jane Nelson, Senate Finance Committee
The Honorable Robert Nichols, Member, Texas Senate

Office of the Governor

The Honorable Greg Abbott, Governor

Office of Violent Sex Offender Management

Members of the Office of Violent Sex Offender Management Board

Ms. Christy Jack, Chairperson

Mr. Robert Dominguez

Ms. Kathryn E. McClure

Ms. Marsha McLane, Executive Director



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