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An Audit Report on

**The Expenditure of State Asset
Forfeiture Funds at the Dallas
County District Attorney's Office**

October 2015

Report No. 16-007



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Overall Conclusion

The Dallas County District Attorney's Office (District Attorney's Office) had significant weaknesses in its processes for the expenditure of state asset forfeiture funds. Based on expenditure data provided to auditors, the District Attorney's Office spent from its State Asset Forfeiture Fund a total of \$1,250,829 in fiscal years 2013 and 2014.

Auditors identified expenditures for which the District Attorney's Office used state asset forfeiture funds that, in auditors' opinion, did not comply with state requirements. Specifically, of the 306 expenditures¹ tested for fiscal years 2013 and 2014, 30 expenditures² (10 percent) totaling \$105,722 included transactions totaling \$80,048 that, in auditors' opinion, did not comply with Texas Code of Criminal Procedure, Chapter 59 (Chapter 59, see text box for information about allowed uses). Those unallowable expenditures included:

- A \$47,500 legal settlement in fiscal year 2014. The settlement was related to a claim against Dallas County and the former district attorney.
- Outside counsel fees totaling \$16,525 related to a contempt matter in which the former district attorney was a defendant. The District Attorney's Office was not allowed, in auditors' opinion, to use state asset forfeiture funds to pay those fees.

Allowable Uses of State Asset Forfeiture Funds

Texas Code of Criminal Procedure, Chapter 59 (Chapter 59), regulates the disposition of state asset forfeiture funds and gives broad discretion in the use of those funds. Allowable uses include expenditures considered to be solely for an official purpose of the District Attorney's Office.

Some prohibited uses include:

- Contributing to a political campaign.
- Making donations to any entity except as provided by statute.
- Paying expenses related to the training or education of any member of the judiciary.
- Paying any travel expenses related to attendance at training or education seminars if the expenses violate applicable restrictions established by the Dallas County Commissioners Court.
- Purchasing alcoholic beverages.
- Increasing a salary, expense, or allowance for an employee without approval by the Dallas County Commissioners Court.

Chapter 59 authorizes the State Auditor's Office to perform an audit or investigation related to the seizure, forfeiture, receipt, and specific expenditure of proceeds and property.

¹ An expenditure may include one or more underlying transactions.

² Those 30 expenditures included 5 expenditures that included transactions totaling \$12,250 that were unallowable and transactions totaling \$16,718 for which there was inadequate documentation to determine allowability

- Travel-related expenditures totaling \$11,647. Those expenditures included hotel rates and per diems in excess of allowable rates, and some were missing receipts.
- Donations and other expenditures totaling \$4,376 that did not meet the provisions set forth by Chapter 59 regarding donations and expenditures for the official purpose of the District Attorney's Office.

In addition, auditors identified 56 expenditures³ (18 percent of the 306 tested) totaling \$90,381 that included transactions totaling \$71,049 that did not have adequate documentation to allow a determination about allowability.

The District Attorney's Office did not ensure that expenditures of state asset forfeiture funds were adequately documented, approved, and monitored. Specifically, the District Attorney's Office:

- Did not adequately document and record expenditures made with state asset forfeiture funds or perform adequate competitive purchasing procedures.
- Did not have current, documented policies and procedures for requesting, reviewing, and approving expenditures made with state asset forfeiture funds.
- Did not adequately monitor its equipment purchases and maintenance to ensure that assets purchased using state asset forfeiture funds were safeguarded.
- Did not adequately document and follow up on anticipated reimbursements for expenditures of state asset forfeiture funds.

In addition, while the District Attorney's Office submitted a budget for fiscal years 2013 and 2014, it should improve its budgeting process by providing more detailed budget information that includes clearly defined budget categories.

Chapter 59 permits the expenditure of state asset forfeiture funds solely for the official purpose of the District Attorney's Office (see text box on previous page and Appendix 2 for more information about Chapter 59). There are a few types of purchases for which the use of state asset forfeiture funds is expressly prohibited. In addition, the Texas Local Government Code requires competitive procurement procedures for purchases. Auditors identified several provisions of Chapter 59 that could be strengthened to increase accountability and transparency for the use of state asset forfeiture funds.

The U.S. Department of Justice reviewed the District Attorney's Office's controls over and expenditures of federal asset forfeiture funds. In its report issued in May 2015, the U.S. Department of Justice identified internal control deficiencies and

³ Those 56 expenditures included 5 expenditures that included transactions totaling \$16,718 for which there was inadequate documentation to determine allowability and transactions totaling \$12,250 that were unallowable.

unallowable expenditures. Until those issues are addressed, the District Attorney's Office is under a "Do-Not-Spend requirement" for federal asset forfeiture funds.

Auditors communicated other, less significant issues related to state asset forfeiture budgets, monthly bank reconciliations, and revenue processes separately in writing to the District Attorney's Office.

It should be noted that, during the course of this audit, the State Auditor's Office received a complaint regarding potential fraud relating to revenue deposits at the District Attorney's Office. The State Auditor's Office has requested additional information from the Dallas County Treasurer's Office and the Dallas County Auditor's Office to review the complaint.

Summary of Management's Response

The District Attorney's Office agreed with the recommendations in this report; however, it questioned some of the State Auditor's Office's determinations of unallowability of state asset forfeiture fund expenditures. The District Attorney's Office provided the following summary of its management's responses:

The Dallas County District Attorney's Office ("DCDAO") agrees to every recommendation propounded by the State Auditor's Office. While this audit involved expenditures made by a past administration of this office, many of the recommendations made have already been implemented by the current administration. The DCDAO does not agree with many of the expenditure decisions made by the prior administration. However, where we have found plausible legal reasoning for the expenditures, we have offered these legal explanations. In every case, this administration's policies and procedures will follow more closely all legal requirements and document better the decisions made.

The District Attorney's Office's detailed management responses are presented immediately following each set of recommendations in the Detailed Results section of this report. The District Attorney's Office also submitted two attachments with its management responses, which are presented in Appendix 5.

Summary of Information Technology Review

Auditors reviewed access to the systems used to process state asset forfeiture funds and identified certain access weaknesses related to the District Attorney's Office's state asset forfeiture funds tracking database. The District Attorney's Office should restrict access to that database to only individuals who enter or review information in the database.

Summary of Objective, Scope, and Methodology

The objective of this audit was to determine whether selected expenditures of forfeited funds that the District Attorney's Office received under Chapter 59 complied with state law.

The scope of this audit covered the District Attorney's Office's expenditures of state asset forfeiture funds from September 1, 2012, through August 31, 2014.

The audit methodology included conducting interviews with the District Attorney's Office management and employees in the financial administration division; reviewing the District Attorney's Office internal policies and procedures for documenting, recording, budgeting, and monitoring expenditures made with state asset forfeiture funds; reviewing state statutes and Office of the Attorney General reporting requirements; conducting interviews with employees in the Dallas County Auditor's Office; reviewing Dallas County policies and procedures; analyzing and evaluating state asset forfeiture fund data; and performing selected tests and other procedures for a sample of expenditures of state asset forfeiture funds.

Auditors assessed the reliability of the data used for the purposes of this audit by (1) comparing data in the District Attorney's Office state asset forfeiture funds tracking database to information in the Dallas County accounting systems; (2) observing client procedures used to generate data; (3) and interviewing District Attorney's Office employees, Dallas County Auditor's Office employees, and information technology administrators knowledgeable about the data and systems.

Auditors reviewed access to the systems used to process state asset forfeiture funds. Auditors identified certain access weaknesses related to the District Attorney's Office's state asset forfeiture fund tracking database; however, auditors determined that the data in that system was sufficiently reliable for the purposes of this audit.

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Detailed Results

Chapter 1

Expenditures the District Attorney's Office Made with State Asset Forfeiture Funds Did Not Always Comply with State Law or Have Adequate Documentation to Allow a Determination of Allowability

Determination of Allowability

To determine the allowability of the state asset forfeiture fund expenditures tested, auditors reviewed the description and justification for the expenditures tested against:

- The overall definition of the "official purpose of an attorney's office" in Texas Code of Criminal Procedure, Section 59.06.
- The list of allowable uses for state asset forfeiture funds in Texas Code of Criminal Procedure, Section 59.06.
- The description of allowable donation recipients for state asset forfeiture funds in Texas Code of Criminal Procedure, Section 59.06.
- The list of prohibited uses for state asset forfeiture funds in Texas Code of Criminal Procedure, Section 59.06.
- Applicable Office of the Attorney General opinions, including Opinion GA-0755 (2010), which discusses whether state asset forfeiture funds can be used for legal defense fees.

Additionally, to determine the allowability of travel expenditures related to attendance at training or education seminars, auditors reviewed:

- The seminar/course information documented on the District Attorney's Office's Internal Continuing Education Seminar Request form to determine the purpose of the travel.
- Receipts, invoices, and reimbursement requests for expenditures compared with the Dallas County travel policy's maximum allowable rates and required documentation as listed in Dallas County Code, Chapter 86.

Auditors did not make a determination of allowability if the expenditure tested lacked sufficient documentation to make a determination about whether the expenditure was for an official purpose of the District Attorney's Office.

Auditors identified expenditures for which the Dallas County District Attorney's Office (District Attorney's Office) used state asset forfeiture funds that did not comply with state requirements. The Texas Code of Criminal Procedure, Chapter 59 (Chapter 59), establishes the state restrictions and allowable uses for the expenditure of state asset forfeiture funds.

Of the 306 expenditures⁴ tested totaling \$666,765 for fiscal years 2013 and 2014, auditors determined that:

- Thirty expenditures⁵ totaling \$105,722 included transactions totaling \$80,048 that were not allowable under Chapter 59, in auditors' opinion. Five of those 30 expenditures are also included in the next bullet.
- Fifty-six expenditures⁶ totaling \$90,381 included transactions totaling \$71,049 that did not have adequate supporting documentation. As a result, auditors could not determine whether the transactions were allowable under Chapter 59. Five of those 56 expenditures are also included in the bullet above.
- Fifty-six expenditures totaling \$89,957 were allowable under Chapter 59, in auditors' opinion. However, auditors identified significant weaknesses in documentation, approvals, and/or controls over the purchases. Those weaknesses are discussed in further detail in Chapters 2 and 3 of this report. Specifically, of the 56 expenditures:

- ♦ Twenty were non-travel expenditures (see Chapter 2).

⁴ An expenditure may include one or more underlying transactions.

⁵ Those 30 expenditures included 5 expenditures that included transactions totaling \$12,250 that were unallowable and transactions totaling \$16,718 for which there was inadequate documentation to determine allowability.

⁶ Those 56 expenditures included 5 expenditures that included transactions totaling \$16,718 for which there was inadequate documentation to determine allowability and transactions totaling \$12,250 that were unallowable.

- ♦ Twenty-six were travel and training expenditures with weaknesses in documentation (see Chapter 2).
- ♦ Five were for storage fees and vehicle maintenance (see Chapter 3).
- ♦ Five were expenditures for which the District Attorney's Office anticipated reimbursements (see Chapter 3).
- The remaining 169 expenditures totaling \$409,673 were allowable under Chapter 59, in auditors' opinion.

Unallowable Expenditures

Of the 30 expenditures that auditors determined were not allowable or included transactions that were not allowable:

- Eleven were non-travel expenditures totaling \$85,119 that included unallowable transactions in the amount of \$68,401. Specifically, the District Attorney's Office used state asset forfeiture funds to:
 - ♦ Make 1 payment for a \$47,500 legal settlement in fiscal year 2014. The settlement was related to a claim against Dallas County and the former district attorney. That claim was related to a February 2013 car accident that involved the former district attorney while he operated a county vehicle. While Chapter 59 lists legal fees, including court costs, as an allowable expenditure, the \$47,500 payment is unallowable, in auditors' opinion, because Chapter 59 requires state asset forfeiture funds to be used by the attorney representing the State solely for the official purpose of his or her office. The settlement agreement released the former district attorney "in his individual and official capacity" from all future claims and suits. By releasing the former district attorney in his individual capacity, the settlement agreement benefited the former district attorney personally; therefore, the associated settlement payment cannot be solely for the official purposes of the District Attorney's Office. In addition, the supporting documentation for the expenditure did not include any justification for using state asset forfeiture funds for the expenditure.
 - ♦ Make 6 payments totaling \$33,243 in fiscal years 2013 and 2014 for outside counsel fees related to a mortgage fraud case that the District Attorney's Office prosecuted. Those legal fees also included outside counsel fees totaling \$16,525 that auditors determined to be unallowable for the former district attorney's legal defense in a related contempt matter in which he was a defendant. The former district attorney was acquitted in that contempt matter in August 2013.

Office of the Attorney General Opinion GA-0755, issued in 2010, concluded that state asset forfeiture funds may not be used to pay for a district attorney's own legal defense. Based on that opinion, the

District Attorney's Office was not allowed, in auditors' opinion, to use state asset forfeiture funds to pay costs associated with the former district attorney's legal defense in the contempt matter. Some of the expenditures described above were made after the Legislature amended Chapter 59 in 2013. The amended statute lists several permissible uses of state asset forfeiture funds, including legal fees. However, Office of the Attorney General Opinion GA-1059, issued in 2014, states that the amended Chapter 59 clarified existing law, but it did not expand the scope of allowable expenditures. Therefore, in the auditors' opinion, expenditures for the former district attorney's legal defense in the contempt matter that were paid after Chapter 59 was amended were not allowable.

The 6 payments discussed above included 5 payments totaling \$28,968 that included both unallowable transactions in the amount of \$12,250 and transactions totaling \$16,718 for which the District Attorney's Office lacked documentation to support allowability under Chapter 59 (see discussion on the next page for more information about the transactions lacking documentation).

- ♦ Make 2 donations totaling \$3,300 to entities that did not meet the donation eligibility requirements established in Chapter 59, in auditors' opinion. One payment was a \$3,000 donation to Bishop Dunne Catholic School and the other payment was a \$300 donation to the Greater Dallas Veterans Foundation for sponsorship of a 2013 Dallas Veterans Day parade display. Chapter 59 allows only donations to entities that assist in (1) the detection, investigation, or prosecution of criminal offenses or instances of abuse; (2) the provision of mental, health, drug, or rehabilitation services; (3) the provision of services for victims or witnesses of criminal offenses or instances of abuse; or (4) the provision of training or education related to the duties or services above.
- ♦ Make 2 payments totaling \$1,076 for costs related to the district attorney's recreational football league, which does not meet the definition of the official purpose of the District Attorney's Office in Chapter 59 in auditors' opinion.
- Nineteen were travel-related expenditures totaling \$20,603 that included \$11,647 in unallowable transactions. Examples of unallowable transactions included:
 - ♦ Hotel rates in excess of maximum allowable rates authorized by the Dallas County travel policy.
 - ♦ Per diem rates in excess of maximum allowable rates authorized by the Dallas County travel policy.

- ♦ Transactions that were missing receipts or missing itemized receipts.
- ♦ Group meals with no identification of individual guests.

Expenditures Without Documentation to Support Allowability

Of the 56 expenditures for which auditors could not determine allowability due to a lack of supporting documentation:

- Twenty-four were non-travel expenditures totaling \$22,081. For example, 13 of those 24 expenditures included public service announcements or other promotional activities for which the District Attorney's Office lacked supporting documentation showing the content of the announcement or activities. Without such information, auditors could not determine whether the expenditures were for the official purpose of the District Attorney's Office.
- Five were non-travel expenditures totaling \$28,968 for outside counsel fees related to the mortgage fraud case prosecuted by the District Attorney's Office discussed on the previous page. Those 5 expenditures included transactions totaling \$16,718 for which auditors could not determine allowability due to a lack of supporting documentation showing whether those expenditures were for fees related to the contempt charge or to the underlying case.
- Twenty-seven were travel-related expenditures totaling \$39,332 that included \$32,250 in transactions for which the District Attorney's Office lacked documentation to support allowability (see Chapter 2-A for more information about travel-related expenditures).

Lack of Competitive Purchasing Process

Texas Local Government Code, Section 140.003, requires the District Attorney's Office to follow the County Purchasing Act. Office of the Attorney General Opinion 94-040 (1994) determined that requirement applies to expenditures made with state asset forfeiture funds. The County Purchasing Act requires the adoption of procedures that provide for competitive procurement for purchases.

The District Attorney's Office lacked an adequate competitive purchasing process. For fiscal years 2013 and 2014, 130 (96 percent) of the 136 expenditures tested that required competitive purchasing processes lacked documentation showing the District Attorney's Office used a competitive purchasing process.

Recommendations

The District Attorney's Office should:

- Ensure that expenditures made with state asset forfeiture funds comply with state law.
- Implement a competitive purchasing process that complies with the requirements in the County Purchasing Act.
- Document all purchases made with state asset forfeiture funds to allow a determination of allowability and document quotes supportive of the competitive purchasing process.

Management's Response

The Dallas County District Attorney's Office ("DCDAO") agrees with the recommendations in Chapter I. Further, corrections for past errors by the prior administration have already been made by this administration. First, state forfeiture funds have been deposited in a Dallas County managed escrow account since June 4, 2015 and all expenditures must now follow Dallas County processes for requisitions and purchases. This should provide significant controls to ensure transactions have required documentation and are appropriately reviewed prior to processing. Second, policies have already been put in place to ensure that there is proper oversight of state forfeiture expenditures by individuals that are knowledgeable of the program's requirements and that understand which expenditures are permissible. Expenditures from state forfeiture funds will be appropriately reviewed prior to processing, by the DCDAO Financial Services Section and by the Dallas County Auditor's Office. Third, the current administration has already adopted the County's purchasing procedures. All purchases which fall within the Purchasing Act will be processed through the Dallas County Purchasing Department. Finally, the DCDAO will adopt a detailed pre-approved checklist, for assessing whether state forfeiture expenses may be used for a purchase/expenditure. The DCDAO is updating a State Forfeiture Policies and Procedures Manual at this time. We will complete the update by December 15, 2015. We will provide a copy of the updated manual to the State Auditor's Office in response to this audit.

Although the DCDAO agrees with the recommendations of the auditors, it would question the determination of some of the expenditures as "unallowable" expenditures.

A. Unallowable Expenditures

- *\$47,500 settlement in fiscal year 2014: Based on the facts of the incident underlying this expenditure, this administration will not argue that the*

expenditure was “solely for the official purposes” of Mr. Watkins’ office. The DCDAO would only argue that this expenditure was unallowable for different reasons than those proffered by the auditor. The auditor concluded that this expense cannot be solely for official purposes of the District’s Attorney’s Office because the settlement release was “in his individual and official capacity.” In the legal profession, it is common to draft releases broadly to encompass as many claims as possible, including claims which may not exist. (See, e.g., attached release [presented in Appendix 5 of this report] between, among others, the Texas Attorney General and PacifiCare which releases the Attorney General in his “official and individual capacity”.) Based solely on the auditor’s reason for finding the expense unallowable, the DCDAO would question the auditor’s unallowable determination.

Nonetheless, this administration will ensure that all vehicle accidents are reported immediately in compliance with Dallas County Code Sections 90-137, 90-271, 90-272, 90-273, and 90-274 including the use of the Automotive Service Center (ASC) shop for determination of all repairs. Additionally, all settlements stemming from such accidents will be handled by authorization of the Commissioners Court per normal Dallas County operating procedures.

- *\$33,243 for mortgage fraud case including \$16,525 considered unallowable for counsel fees related to a contempt proceeding: The contempt proceeding arose out of a refusal of the prior District Attorney, Craig Watkins, to testify at a hearing in a case prosecuted by the District Attorney’s office: State of Texas v. Albert G. Hill, Cause No. F11-00180-3, 204th Judicial District Court, Dallas County, Texas. Mr. Watkins was subsequently acquitted of contempt. The gravamen of the hearing concerned prosecutorial decision making, which went to Mr. Watkins position as a prosecutor, not a layperson. More specifically, the contempt proceeding was brought based on Mr. Watkins’ assertion of a prosecutorial privilege in connection with his office’s prosecution of a criminal matter. Arguably, his actions were taken to protect against the piercing of the prosecutorial privilege. Thus, the contempt case could fall within permissible legal fees under TEX. CODE CRIM. PROC. § 59.06(d-4)(8).*

Additionally, Attorney General Opinion GA-0755, which the auditor relies upon, predates the revision to the statute to allow for legal fees. In 2010, the Texas Attorney General held that asset forfeiture funds could not be used to pay for a District Attorney’s civil legal defense. Tex. Att’y Gen. Op. No. GA-0755 (2010). However, a 2013 amendment to the Code of Criminal Procedures specifically added “legal fees” as a permissible expenditure of asset forfeiture funds. The 2010 Attorney General Opinion was issued under the previous statute and it could have been perceived as being overruled by the 2013 amendment. Even the auditor acknowledged

the uncertainty regarding the term “legal fees” in Chapter 4 of this audit. The DCDAO would question the auditor's “unallowable” determination for legal fees paid to defend against a contempt order arising from a criminal prosecution, regarding prosecutorial decision making.

B. Expenditures Without Documentary Support

- *\$32,250 for travel-related expenditures that lacked supporting documentation, refundable tickets: Section 86-711(1) (9) of the Dallas County Code is silent as to the purchase of refundable flight tickets. The policy provides that “[w]hether the county designated travel agent is used or not, only the actual cost of the lowest cost airfare will be reimbursed.” In the legal profession, the lowest cost airfare is often considered the lowest cost refundable ticket, by the nature of the profession. That is, hearings/trials are rescheduled, depositions are canceled, etc., and nonrefundable tickets may result in a loss of funds since tickets are often non-transferrable and airlines charge significant fees to rebook nonrefundable tickets (which often have various restrictions, including travel by the same individual within a year). The DCDAO understands that the auditor interprets 86-711(1)(9) to require documentation in support of a refundable ticket and will implement policies to comply with this requirement.*

Auditor Follow-up Comment

The auditors have reviewed management’s responses regarding the use of state asset forfeiture funds to pay for legal costs. The auditors’ opinion of unallowability has not changed given the dates the expenditures were incurred and the effective date of the statutory changes. However, the Office of the Attorney General is in the best position to make a legal determination regarding the application of the law to these facts.

The District Attorney's Office Had Significant Weaknesses in Its Expenditure Process for State Asset Forfeiture Funds

The District Attorney's Office's purchasing and expenditure processes did not ensure that expenditures made with state asset forfeiture funds were (1) documented, (2) made for the official purpose of the District Attorney's Office, and (3) approved by the appropriate personnel. Specifically, the District Attorney's Office:

- Lacked documented policies and procedures for using state asset forfeiture funds.
- Lacked an adequate process for ensuring that expenditures using state asset forfeiture funds consistently received supervisory review and had a documented reason for the purchase.
- Did not adequately document non-travel and training expenditures made with state asset forfeiture funds.
- Did not adequately document or review travel and training expenditures made with state asset forfeiture funds.
- Lacked controls over purchase card expenditures made with state asset forfeiture funds.

The District Attorney's Office submitted a budget for fiscal years 2013 and 2014. However, it should improve its budgeting process by providing more detailed budget information that includes clearly defined budget categories.

Chapter 2-A

The District Attorney's Office Did Not Adequately Document Expenditures Made with State Asset Forfeiture Funds

The District Attorney's Office lacked documented policies and procedures for using state asset forfeiture funds and did not ensure that expenditures using state asset forfeiture funds consistently received supervisory review and had a documented reason for the purchase.

The District Attorney's Office did not have current, documented policies and procedures for requesting, reviewing, and approving expenditures made with state asset forfeiture funds. The District Attorney's Office provided auditors with a copy of *Dallas County District Attorney's Office Financial Administration Section Forfeiture Fund 541 (State Forfeiture Fees) Administration Manual*. However, that manual was out of date, and current employees who processed expenditures were not aware of it.

As a result, the District Attorney's Office did not have an adequate process to ensure that expenditures using state asset forfeiture funds were sufficiently

reviewed and documented. While District Attorney's Office staff stated that supervisory review should be documented, there was not a formal process for supervisory review of expenditures using state asset forfeiture funds.

According to District Attorney's Office staff, employees who make a purchase with or requesting reimbursement from state asset forfeiture funds should submit a *Dallas County Criminal District Attorney Request for Payment or Reimbursement Form* (payment request form). That form requires signatures from the preparer, reviewer, and approver in the District Attorney's Office's administration department, a description and amount for the goods or services to be purchased, and the reason for the purchase. However, that form does not require the signature of the payment requestor's supervisor. Of the 306 expenditures tested for fiscal years 2013 and 2014, 215 (70 percent) lacked documented supervisor approval.

In addition, auditors observed that the District Attorney's Office did not ensure that employees consistently documented the reason for the purchase on payment request forms submitted. As a result, of the 306 expenditures tested for fiscal years 2013 and 2014, 199 (65 percent) lacked a documented reason for the purchase. In addition, auditors could not determine whether 51 (26 percent) of those 199 expenditures that lacked reasons for purchase were allowable under Chapter 59 because of a lack of documentation. Adequate supervisory review and documenting the reasons for purchase can help ensure that purchases are for the official purpose of the District Attorney's Office and, therefore, allowable under Chapter 59.

Auditors also noted a lack of segregation of duties for processing payments. In the financial administration area of the District Attorney's Office, one individual could initiate and review an expenditure, approve the printing of checks for payment, take custody of the checks, and mail the checks. Having one person perform all of those functions increases the risk of misappropriation of state asset forfeiture funds. The District Attorney's Office requires that a separate manager approve an expenditure before a check can be printed, which helps to mitigate the risk of unauthorized expenditures and payments.

The District Attorney's Office did not adequately document non-travel and training expenditures made with state asset forfeiture funds.

As discussed in Chapter 1, auditors identified 24 non-travel expenditures for which there was no documentation describing the purpose of the purchase to allow a determination of allowability. In addition, auditors identified 20 non-travel expenditures totaling \$24,465 that, while allowable in auditors' opinion, had weaknesses in documentation.⁷ For example, they included (1) software maintenance and support expenditures in the amount of \$7,149 for which the District Attorney's Office lacked documentation such as a supporting contract

⁷ Those 20 expenditures are included in the 56 allowable expenditures with significant weaknesses discussed in Chapter 1.

and evidence that services were received and (2) attorney fees for trial preparation in the amount of \$3,197 for which the District Attorney's Office lacked documentation such as a supporting contract and a final invoice.

The District Attorney's Office also lacked documentation showing that it verified that it received the goods and services purchased before it made the payment. Specifically:

- Twenty-eight (39 percent) of 72 equipment and supplies expenditures tested lacked documentation for the receipt of goods. For example, one expenditure tested included 5 computer hard drives totaling \$849 that could not be located.
- Thirty-five (45 percent) of 78 service expenditures tested lacked documentation showing the services were performed. One example of services lacking such documentation included some of the contract services for community affairs initiatives such as the Citizen Prosecutor Academy Program.

Auditors also observed that the payment request form discussed previously was generally not prepared and reviewed until after a purchase was made. In addition, the use of that form was not sufficient to ensure that the District Attorney's Office obtained sufficient documentation for purchases made with state asset forfeiture funds. The District Attorney's Office required receipts and/or invoices to be submitted with the payment request form. However, it did not include other types of documentation that would assist in determining the appropriateness of the expenditure, such as a purchase requisition form identifying the specifications of the goods or services to be purchased and documentation of required approvals; documentation showing the purchase complied with competitive purchasing procedures; the purchase order; and a contract for services if applicable.

In addition, the District Attorney's Office used a database to track and document expenditures made with state asset forfeiture funds. However, that database was limited in its functionality. For example, it did not include controls such as a vendor master list, purchase approval routing, verification of available budget, and verification of the receipt of goods or services before payment, all of which would help ensure that expenditures are appropriate. Auditors also noted inadequate user access controls, which increases the risk that the database could be incomplete, incorrect, or changed inappropriately.

Dallas County has purchasing policies and procedures and an automated purchasing system. However, the District Attorney's Office is not required to adhere to Dallas County's purchasing process when making expenditures out of state asset forfeiture funds, except for training-related travel expenditures (see section below for more information about travel expenditures). Adopting and following purchasing policies similar to those of Dallas County and using Dallas County's purchasing system would help the District Attorney's Office

provide a more effective control environment over the expenditure of state asset forfeiture funds.

The District Attorney's Office did not adequately document or review travel and training expenditures made with state asset forfeiture funds.

The District Attorney's Office's processes for initiating, approving, and paying for travel and training expenditures were insufficient to ensure that expenditures were (1) adequately documented and (2) authorized for the official purpose of the District Attorney's Office. Chapter 59 requires the District Attorney's Office to comply with Dallas County's travel policy for travel expenses related to attendance at training or education seminars.

As discussed in Chapter 1, auditors identified 27 travel expenditures for which there was no documentation describing the purpose of the trip to allow a determination of allowability. For example, that included airfare, meals, and lodging expenditures in the amount of \$4,104 related to a trip to Aspen, Colorado for two individuals; airfare expenditures to Philadelphia in the amount of \$3,496 for four individuals; and airfare expenditures to Orange County, California, in the amount of \$808 for two individuals.

Training Pre-approval Form. The District Attorney's Office implemented an internal Continuing Education Seminar Request Form to document employees' training expenditures and training-related travel expenditures. However, it did not ensure that employees completed that form or that it retained copies of the submitted forms. Examples of missing information included supervisory approval, estimated registration and travel costs, and information about the benefits of the training to the employee. Auditors identified 26 travel and training expenditures totaling \$46,711 that, while allowable in auditors' opinion, had weaknesses in documentation.⁸ For example, for an expenditure of \$4,200 related to registration fees for six individuals to attend the National Association of Drug Court Professionals' annual training conference in 2014, 5 (83 percent) of the 6 submitted *Continuing Education Seminar Request Forms* lacked supervisory approval and none of those forms included information about the benefits of that training to the employees who would attend it.

The District Attorney's Office did not have a form or any documented processes for travel expenditures that were not related to training. As a result, there were no documentation or pre-approval requirements for non-training-related travel using state asset forfeiture funds. All travel expenditures for which auditors were able to make a determination of allowability were related to training.

⁸ Those 26 expenditures are included in the 56 allowable expenditures with significant weaknesses discussed in Chapter 1.

The District Attorney's Office lacked support documentation for its deviation from Dallas County recommended travel practices. Auditors also noted that many of the travel-related expenditures tested (1) were for refundable flights, which usually have higher prices than non-refundable flights and/or (2) were for flights booked less than a week in advance, which greatly increases costs. While there may be legitimate business reasons for booking those flights, the supporting documentation for the travel expenditures tested did not include a comparison between the costs of different transportation options or justification for the types of airfare selected. The Dallas County travel policy states that "all travel arrangements should be made at least seven days and when possible, 21 days in advance and that only the actual cost of the lowest cost airfare will be reimbursed."

Although auditors could not determine whether all were related to training, of the 93 airfares tested:

- At least 23 airfares were for refundable flights. Auditors could not determine whether airfares were refundable for 56 (60 percent) of the 93 airfares tested.
- Thirty-five airfares were booked fewer than 7 days in advance.

For example, the District Attorney's Office purchased a \$2,408 round trip airfare to Detroit that was booked 5 days in advance for 1 individual to attend a national conference on restorative justice. Other examples include:

- Three round-trip airfares that were booked only 3 days in advance to Des Moines, Iowa, at \$694 per airfare for 3 individuals to attend an undercover techniques for survival of women training program.
- Refundable round trip airfares to Houston for 3 individuals at \$380 per trip to attend a Texas District and County Attorneys Association annual criminal and civil law update in Galveston.

Auditors also noted multiple instances in which District Attorney's Office management and staff attended out-of-state training. The Dallas County travel policy states that "out-of-state seminars and technical meetings shall be kept to a minimum." Based on total expenditure data provided, auditors determined that the District Attorney's Office spent \$104,725 (54 percent) of its \$193,997 total travel expenditures on out-of-state travel in fiscal years 2013 and 2014. Because of the lack of documentation, auditors could not determine whether \$26,025 (43 percent) of the \$60,578 out-of-state travel expenditures tested related to training (see Appendix 3 for a list of the out-of-state travel expenditures tested).

The District Attorney's Office lacked controls for expenditures made with purchase cards.

The District Attorney's Office also used purchase cards to expend state asset forfeiture funds. The District Attorney's Office did not have written policies and procedures for the use of purchase cards. Using purchase cards increases the risk of unauthorized and unallowable purchases. In fiscal years 2013 and 2014, the District Attorney's Office used purchase cards for \$55,284 in expenditures using state asset forfeiture funds, approximately 4 percent of its total expenditures paid with state asset forfeiture funds during that time period. Of that total, \$31,898 (58 percent) was for travel-related expenditures, including meals and other travel-related expenses. Examples of items purchased using the purchase cards include beads for a parade in which the District Attorney's Office participated, group meals, and some travel-related costs.

Recommendations

The District Attorney's Office should:

- Update its policies and procedures for requesting, reviewing, and approving expenditures made with state asset forfeiture funds and ensure that those policies and procedures are communicated to all employees who process expenditures.
- Require all purchases to be adequately reviewed and approved.
- Ensure proper segregation of duties between the different stages of expenditure processing in its financial administration area.
- Develop, implement, and document processes to ensure that expenditures using state asset forfeiture funds comply with state requirements, including sufficient documentation showing that expenditures are for the official purpose of the District Attorney's Office.
- Verify and document the receipt of goods and services before processing payments.
- Implement adequate controls and functionality for the database or selected method used to track and document expenditures made with state asset forfeiture funds, or consider using the Dallas County purchasing system.
- Restrict access to its state asset forfeiture fund database to only individuals who enter or review information in that database.
- Ensure that all training and travel expenditures, including non-training-related travel expenditures, are adequately documented to verify the purpose and justification of the travel and/or training, authorized

registration and travel costs (including exceptions to allowable rates), and supervisor approval.

- Ensure that it documents the reason for instances in which it deviates from Dallas County recommended travel practices and sufficiently plan travel and training expenditures to minimize costs.
- Develop and implement written policies and procedures for the use of purchase cards.

Management's Response

The DCDAO agrees with the recommendations in Chapter 2-A. As noted by the auditor, adopting Dallas County's purchasing policies and adhering to its purchasing systems will provide more effective controls over state asset forfeiture funds. The DCDAO has already adopted Dallas County's purchasing policies and practices and has been complying with same since June 4, 2015. Additionally, policies have already been put in place to ensure that there is proper oversight of state forfeiture expenditures by individuals that are knowledgeable of the program's requirements and that understand which expenditures are permissible. Finally, the DCDAO has ensured proper segregation of duties between different stages of the expenditure processing by placing all state asset forfeiture funds in an escrow account managed by Dallas County. The DCDAO will also implement the following by:

- *updating its state forfeiture policies and procedures, including the use of purchase cards, by December 15, 2015;*
- *creating a checklist, to be utilized prior to processing payment, which will verify: 1) that a purchase/payment is for the official purpose of the office, 2) the receipt of goods/services, and 3) proper documentation.*

Finally, this administration has only one purchase card, to which only the auditor for the Financial Services Section of the DCDAO has access.

In response to the following documentation issues:

A. Undocumented Travel

- *Refundable flights: See Response, Chapter 1, Section B.*
- *Thirty-five airfares that were booked less than seven days in advance: The DCDAO will follow Dallas County recommended travel policies when possible. The DCDAO will document the reason for instances where it deviates from the Dallas County travel policy. The DCDAO will make every effort to plan travel and training expenditures to minimize costs. Notwithstanding, the nature of the work conducted by the DCDAO often results in last minute schedule changes. (In example, witnesses' flights*

must be booked when a case not expected to be called to trial is called; legislative or scientific issues emerge that require an impromptu trip by a member of the DCDAO; or a trial cancellation allows an assistant district attorney to attend an important CLE at the last moment.) This may create a need to book travel less than seven days in advance.

Chapter 2-B

The District Attorney’s Office Submitted Budgets for Asset Forfeiture Funds; However, It Should Improve its Budgeting Process.

Chapter 59 requires the District Attorney’s Office to submit a budget for the expenditure of its state asset forfeiture funds to the Dallas County Commissioners Court before the funds may be expended. The District Attorney’s Office submitted a budget for both fiscal years audited.

Chapter 59 also required submitted budgets to be detailed and clearly list and define the categories of expenditures. The budgets that the District Attorney’s Office submitted for fiscal years 2013 and 2014 did not clearly describe the categories of expenditures used. All budget categories were allowable expenditure categories under Chapter 59 except for an “Other” category for which the budget did not contain any information about the type of expenditures to be included. Auditors identified several unallowable expenditures from fiscal years 2013 and 2014 that had been placed in the “Other” category. The \$47,500 legal settlement payment, the 2 unallowable donations of \$3,300, and the 2 payments totaling \$1,076 related to the football league were all reported in the “Other” category.

It should be noted that the District Attorney’s Office did not exceed its total budget for either fiscal year 2013 or fiscal year 2014.

Recommendation

The District Attorney’s Office should ensure that its submitted budgets adequately list and clearly define the categories of expenditures.

Management’s Response

The DCDAO agrees with the recommendations in Chapter 2-B. The DCDAO will ensure that the submitted budgets adequately list and clearly define the categories of expenditures. Attached is the submitted budget for Fiscal Year 2016 [presented in Appendix 5 of this report]. However, due to the nature of the office, the DCDAO believes that an “Other” category in the budget is necessary since it cannot anticipate all expenditures for the official purposes of the office which may be encountered in a budget year. The DCDAO, under

this administration, will not be incurring “Other” expenditures of the nature incurred by the prior administration-such as unallowable donations, football league, and legal settlement payments. “Other” expenditures will be for the official purposes of the office and “relate to the preservation, enforcement, or administration of” state laws. “Other” expenditures will be closely and continuously monitored and documented.

The District Attorney's Office Did Not Adequately Monitor Equipment and Maintenance Expenditures or Anticipated Reimbursements

The District Attorney's Office did not have an adequate process for tracking and monitoring equipment purchases made with state asset forfeiture funds. Auditors identified equipment that was not recorded, equipment that was not tagged, and equipment that could not be located. In addition, the District Attorney's Office did not have a documented policy or process for reviewing vehicle maintenance expenditures for which state asset forfeiture funds were used. Auditors identified five expenditures that did not follow county maintenance procedures. In addition, the District Attorney's Office allowed certain expenditures to be made with its state asset forfeiture funds for which some or all of the costs would be reimbursed. However, it did not accurately track all reimbursement payments.

Chapter 3-A

The District Attorney's Office Did Not Adequately Monitor Its Equipment Purchases and Maintenance

The District Attorney's Office did not have an adequate process to track equipment purchases, and it did not have written policies and procedures for tracking and monitoring equipment expenditures using state asset forfeiture funds. While the District Attorney's Office implemented tracking spreadsheets for its equipment and vehicles, it did not accurately and completely track all applicable transactions in those spreadsheets. Auditors observed multiple instances in which information was missing from the tracking spreadsheets, such as the date of purchase, description of equipment purchased, person responsible for the equipment, and location of the equipment. The District Attorney's Office also did not tag and appropriately safeguard all equipment purchased with state asset forfeiture funds. Specifically:

- Twenty-three (68 percent) of 34 equipment purchases tested for fiscal years 2013 and 2014 were not recorded in the equipment tracking spreadsheets. Some of the purchases were not tracked in the spreadsheets because the District Attorney's Office had incorrectly classified them as supplies. Examples of those purchases include a camera, printers, and a fax machine.
- For 24 (71 percent) of 34 equipment purchases tested for fiscal years 2013 and 2014, the equipment was not tagged. Twenty-three of those 24 equipment purchases were not recorded in the equipment tracking spreadsheets, as discussed above. Examples of equipment not tagged include a high definition camcorder, an Apple iMac® computer, and six televisions. The remaining purchase was recorded in the spreadsheet but was not tagged.

- Six (18 percent) of 34 equipment purchases tested for fiscal years 2013 and 2014 included equipment that the District Attorney's Office could not locate. Those six equipment purchases included several hard drives, a printer, and three two-way car radios.

In addition, the District Attorney's Office did not have a documented policy or process for reviewing vehicle maintenance expenditures using state asset forfeiture funds. According to District Attorney's Office staff, the District Attorney's Office uses the Dallas County Automotive Service Center for the maintenance of its vehicles. However, the District Attorney's Office did not follow that process for five expenditures⁹ tested. Specifically:

- Two expenditures totaling \$13,373 were for storage fees and repairs to a county-owned vehicle that was damaged in an accident in which the former district attorney was involved. Chapter 59, in auditors' opinion, does not require the District Attorney's Office to follow Dallas County vehicle accident and maintenance policies. Under Dallas County policies, the vehicle would have been required to be towed or taken to the Dallas County Automotive Service Center for evaluation and repairs. Instead, the District Attorney's Office used other vendors and incurred storage charges. Because the District Attorney's Office did not go through Dallas County's process, it may have incurred costs that Dallas County's insurance would have covered.
- Three expenditures totaling \$2,394 were for vehicle maintenance that was not performed through the Dallas County Automotive Service Center. While maintenance funded by state asset forfeiture funds is not required to go through the Dallas County Automotive Service Center, that center is designed to help ensure consistency in costs and quality of repairs.

Recommendations

The District Attorney's Office should:

- Develop and implement written policies and procedures for tracking and monitoring equipment.
- Consistently follow its process for tracking equipment purchases made with state asset forfeiture funds.
- Ensure that it accurately and completely tags and safeguards all equipment purchases.
- Develop and implement written policies and procedures for the review of vehicle maintenance expenditures using state asset forfeiture funds.

⁹ Those 5 expenditures are included in the 56 allowable expenditures with significant weaknesses discussed in Chapter 1.

- Consider following Dallas County policies for tracking equipment purchases and for maintaining its vehicles when using state asset forfeiture funds, including circumstances in which vehicles are involved in accidents.

Management’s Response

The DCDAO agrees with the recommendations in Chapter 3-A. The DCDAO will develop and implement written policies and procedures for tagging, tracking and monitoring of equipment. The policies and procedures will be included in the updated Policy and Procedure Manual and will be submitted to the State Auditor’s Office by December 15, 2015. Further, this administration is complying with Dallas County Code Section 90-273, which channels all repairs through the Dallas County Automotive Service Center. The DCDAO has adopted county policies for tracking equipment purchases and maintaining vehicles.

Chapter 3-B

The District Attorney’s Office Did Not Adequately Monitor Expenditure Reimbursements

The District Attorney’s Office allowed certain expenditures to be made with state asset forfeiture funds for which some or all of the costs would be reimbursed. However, it did not accurately track or adequately monitor all

reimbursement payments. Types of reimbursements include citation reimbursements (see text box); reimbursements from grant funds, the United States Secret Service for expenditures incurred on a joint task force on electronic crimes, or the District Attorney’s Office’s Community Prosecution Unit’s separate fund; and travel-related reimbursements from conference sponsors.

The District Attorney’s Office separately tracks reimbursement payments from other deposits in its state asset forfeiture fund database. However, auditors identified errors in the classification of reimbursements, incomplete information, and incorrect data entered. The types of errors identified in the database included reimbursements improperly categorized as awards, incorrect

citation cause numbers, and incorrect check numbers related to the original expenditures. Without accurately recording that information in its database, the District Attorney’s Office’s does not have the ability to ensure that it receives all reimbursements and cannot accurately report on all expenditure reimbursements.

In addition, the District Attorney’s Office did not consistently follow up to ensure that it received anticipated reimbursements of expenditures made with

Citation Reimbursements

Citation reimbursements generally originate from situations in which the District Attorney’s Office is required to pay another county or agency for costs related to the serving of citations. The entities serving the citation require a deposit per citation. When the citation has been served, the entity reimburses the District Attorney’s Office if the actual cost of serving the citation, which can vary depending on the circumstances, was less than the deposit.

state asset forfeiture funds. Auditors identified five fiscal year 2014 expenditures¹⁰ totaling \$3,014 that included \$2,884 for which the District Attorney's Office anticipated reimbursements by the United States Secret Service or by the Community Prosecution Unit's separate fund. However, the District Attorney's Office could not provide any documentation showing that it had received the reimbursements for four of those reimbursements. The District Attorney's Office received one reimbursement for \$1,445 from the United States Secret Service in September 2013 for a laptop computer, a printer, and related computer accessories. However, the District Attorney's Office did not record the reimbursement in its state asset forfeiture fund database, and it did not follow up to determine why the reimbursement still appeared to be outstanding.

The District Attorney's Office also did not ensure that staff listed all anticipated travel-related reimbursements on their training request forms for fiscal years 2013 and 2014. Auditors noted several conferences attended by District Attorney's Office staff in which the conference sponsor provided reimbursements to attendees for a portion of eligible expenses. However, the District Attorney's Office employees who attended those conferences did not consistently document those anticipated reimbursements on their training request forms. Without ensuring those forms are completed, including anticipated travel-related reimbursements, the District Attorney's Office's cannot fully reconcile all eligible reimbursements.

Recommendations

The District Attorney's Office should:

- Completely and accurately track all reimbursements.
- Follow up on anticipated reimbursements in a timely manner.
- Ensure that staff list all anticipated reimbursements on their training request forms.
- Develop written policies and procedures for the administration of anticipated reimbursements.

¹⁰ Those 5 expenditures are included in the 56 allowable expenditures with significant weaknesses discussed in Chapter 1.

Management's Response

The DCDAO agrees with the recommendations in Chapter 3-B. The DCDAO will develop written policies and procedures for the administration of anticipated reimbursements. The written policies and procedures will be finalized by December 15, 2015 and a copy provided to the State Auditor's Office in response to this audit.

State Requirements for the Expenditure of State Asset Forfeiture Funds Could Be Strengthened

Under Chapter 59, the District Attorney's Office can use state asset forfeiture funds for expenditures that are solely for the official purposes of the District Attorney's Office. While Chapter 59 lists some prohibited types of expenditures, the Legislature should consider adding provisions and clarifications to increase accountability and transparency for the use of state asset forfeiture funds. Specifically, auditors identified the following areas in which Chapter 59 could be strengthened:

- **Requiring entities expending state asset forfeiture funds to comply with the rules and regulations of the local jurisdiction.** Chapter 59 does not require a district attorney's office to follow any county policies and procedures except for the local county's travel policy (which applies only for travel expenses related to attendance at training). In contrast, for federal asset forfeiture funds, the U.S. Department of Justice required all entities spending those funds to comply with the rules and regulations of the local jurisdiction. If it had followed Dallas County's purchasing process and policies, the District Attorney's Office may have prevented the unallowable expenditures of state asset forfeiture funds discussed earlier in this report and ensured that all expenditures were appropriately documented, reviewed, and approved, including documentation of adequate competitive bidding, if required. In addition, following Dallas County's vehicle accident and maintenance policies may have helped the District Attorney's Office avoid the possibility of higher vehicle storage and maintenance expenditures discussed in Chapter 3.
- **Specifying the type of crime prevention and treatment program activities eligible to receive state asset forfeiture funds.** Chapter 59 allows expenditures for crime prevention and treatment programs; however, it does not provide any guidance about the eligibility criteria for such programs or the type of expenditures allowed to be funded by state asset forfeiture funds. The U.S. Department of Justice's *Guide to Equitable Sharing for State and Local Law Enforcement* (guide) contains examples of more specific guidance. The guide states that activities eligible to receive forfeiture funds must be primarily engaged in providing a program that is both community-based and has a direct, preventative, or developmental link to a law enforcement effort, policy, or initiative. The guide also provides examples of such activities.

Examples of expenditures the District Attorney's Office made using state asset forfeiture funds for some of its Community Prosecution Unit initiatives included promotional items such as shirts, pencils, and pins with the former district attorney's name or office logo; banners; booth rental

costs for displays at events; and registration fees and supplies, such as Mardi Gras beads, for parades.

- **Strengthening eligibility criteria for entities allowed to receive donations of state asset forfeiture funds.** Chapter 59 specifies the types of entities eligible to receive donations of state asset forfeiture funds, and auditors identified two donations that the District Attorney’s Office made that did not, in auditors’ opinion, comply with those requirements (see Chapter 1). However, Chapter 59 does not specify any additional eligibility requirements for those types of entities. Chapter 59 could be strengthened by requiring the recipient to certify that none of the entity’s principals has a criminal record and that it agrees to comply with Chapter 59 provisions related to the disposition of forfeited property for spending donated funds. Additionally, Chapter 59 could require the entity donating the funds to verify that the recipient entity is eligible to receive the funds. Those requirements would be similar to requirements in the U.S. Department of Justice’s *Guide to Equitable Sharing for State and Local Law Enforcement*.
- **Providing specific criteria for legal and professional fees that are allowable under Chapter 59.** Chapter 59 allows expenditures for legal fees, audit costs, and professional fees and related costs. However, it does not provide any guidance regarding the eligibility criteria for such fees. For example, Chapter 59 does not specify whether or under what circumstances the use of state asset forfeiture funds to settle a lawsuit is allowable. In contrast, the 2014 update to the U.S. Department of Justice’s *Guide to Equitable Sharing for State and Local Law Enforcement* clearly states that such use is unallowable. Chapter 59 also does not provide guidance on whether professional fees include advertising services and what type of advertising is allowable. Based on the total expenditure data provided by the District Attorney’s Office, auditors identified \$174,025 in expenditures that used state asset forfeiture funds for advertising or promotional services to promote the District Attorney’s Office and/or its initiatives.

Monitoring by Outside Entities

The U.S. Department of Justice reviewed the District Attorney’s Office’s controls over and expenditures of federal asset forfeiture funds. In its *Dallas County Criminal District Attorney Equitable Sharing Compliance Review*, issued in May 2015, the U.S. Department of Justice identified internal control deficiencies and unallowable expenditures. Until those issues are addressed, the District Attorney’s Office is under a “Do-Not-Spend requirement” for the federal asset forfeiture funds.

In addition, in its fiscal year 2014 audit of state asset forfeiture funds, the Dallas County Auditor identified weaknesses in the District Attorney’s Office’s internal controls over state asset forfeiture funds and identified questionable expenditures.

- **Specifying the internal controls an entity must have over the expenditure of state asset forfeiture funds.** Chapter 59 does not list the internal controls required to be in place over the administration and expenditure of state asset forfeiture funds. In contrast, the U.S. Department of Justice lists the internal controls the entity should have in place (see text box for information about outside entities’ reviews of the District Attorney’s Office’s internal controls). For example, the U.S. Department of Justice’s *Guide to Equitable Sharing for State and Local Law Enforcement* requires the entities receiving federal asset forfeiture funds to obtain proper approvals for expenditures, issue contracts or purchase orders for

goods or services, maintain a record of all expenditures, and issue periodic reports that detail the actual amounts and uses of the asset forfeiture funds. In addition, the Office of the Governor's *Texas Uniform Grant Management Standards* lists specific internal controls that should be in place for programs requiring cooperation among local, state, and federal agencies. For example, the standards require accounting records to be supported by source documentation and controls that ensure cash and property are adequately safeguarded and used solely for authorized purposes.

- **Adding language to prevent possible misuse of state asset forfeiture funds and conflicts of interest.** While Chapter 59 lists certain prohibited uses, it lacks language related to other possible unethical uses of state asset forfeiture funds. For example, Chapter 59 does not contain any language addressing conflicts of interest. The U.S. Department of Justice's *Guide to Equitable Sharing for State and Local Law Enforcement* states that agencies should use funds prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. In addition, Dallas County has a conflict of interest policy that, for example, prohibits county officers or employees from having a substantial interest or other involvement in any county supplier.

Recommendations

The Legislature should consider:

- Requiring entities expending state asset forfeiture funds to comply with the rules and regulations of the local jurisdiction.
- Strengthening criteria for the crime prevention and treatment programs category of allowable expenditures, and for the entities to which it allows donations of state asset forfeiture funds under Chapter 59.
- Providing specific criteria for legal and professional fees that are allowable under Chapter 59.
- Specifying the internal controls an entity must have over the expenditure of state asset forfeiture funds.
- Adding language to prevent possible misuse of state asset forfeiture funds and conflicts of interest.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether selected expenditures of forfeited funds that the Dallas County District Attorney's Office (District Attorney's Office) received under Chapter 59 of the Texas Code of Criminal Procedure (Chapter 59) complied with state law.

Scope

The scope of this audit covered the District Attorney's Office's expenditures of state asset forfeiture funds from September 1, 2012, through August 31, 2014.

Methodology

The audit methodology included conducting interviews with the District Attorney's Office management and employees in the financial administration division; reviewing the District Attorney's Office internal procedures for documenting, recording, budgeting, and monitoring expenditures made with state asset forfeiture funds; reviewing state statutes and Office of the Attorney General reporting requirements; conducting interviews with employees in the Dallas County Auditor's Office; reviewing Dallas County policies and procedures; analyzing and evaluating state asset forfeiture fund data; and performing selected tests and other procedures for a sample of expenditures of state asset forfeiture funds.

Data Reliability

Auditors assessed the reliability of the data used for the purposes of this audit by (1) comparing data in the District Attorney's Office state asset forfeiture fund tracking database to information in the Dallas County accounting systems; (2) observing client procedures used to generate data; (3) and interviewing District Attorney's Office employees, Dallas County Auditor's Office employees, and information technology administrators knowledgeable about the data and systems.

Auditors reviewed access to the systems used to process state asset forfeiture funds. Auditors identified certain access weaknesses related to the District Attorney's Office's state asset forfeiture fund tracking database; however, auditors determined that the data in that system was sufficiently reliable for the purposes of this audit.

Sampling Methodology

To test bank reconciliations and compliance with expenditure requirements in Chapter 59 for state asset forfeiture funds, auditors used professional judgement to select specific items for testing. Those samples were not representative of the population and, therefore, it would not be appropriate to extrapolate these results to the population.

Information collected and reviewed included the following:

- The District Attorney's Office internal policies and procedures, manuals, and applicable rules and regulations.
- The District Attorney's Office organizational charts for fiscal years 2013 and 2014.
- Dallas County policies and procedures, including travel and competitive purchasing procedures.
- District Attorney's Office state asset forfeiture reports filed with the Office of the Attorney General.
- U.S. Department of Justice's *Guide to Equitable Sharing for State and Local Law Enforcement*.
- Fiscal year 2014 single audit reports from Dallas County's external auditor.
- Dallas County Auditor internal audit reports and selected working papers related to the District Attorney's Office's expenditures of state asset forfeiture funds.
- U.S. Department of Justice's *Dallas County Criminal District Attorney Equitable Sharing Compliance Review* issued in May 2015.
- The District Attorney's Office state asset forfeiture funds budgets for fiscal years 2013 and 2014.
- The District Attorney's Office's financial activity (revenues and expenditures) related to state asset forfeiture funds in fiscal years 2013 and 2014.
- The District Attorney's Office's state asset forfeiture funds local agreements with selected law enforcement agencies.
- Supporting documentation for expenditures selected for testing, including continuing education request forms for travel and training expenditures.
- Dallas County Commissioners Court agendas.

- The District Attorney's Office's personal service agreements with vendors for the expenditures selected for testing.
- Monthly bank statements and the related bank reconciliations for the District Attorney's Office state asset forfeiture fund.
- Office of the Attorney General letter opinions related to state asset forfeiture funds.

Procedures and tests conducted included the following:

- Interviewed management and staff at the District Attorney's Office to gain an understanding of its revenue and expenditure state asset forfeiture fund processes.
- Reviewed the District Attorney's Office internal policies and procedures for documenting, recording, budgeting, and monitoring state asset forfeiture funds. Reviewed state asset forfeiture fund audits performed by the Dallas County Auditor's Office and selected working papers.
- Interviewed management and staff at the Dallas County Auditor's Office.
- Compared U.S. Department of Justice asset forfeiture expenditure requirements with Chapter 59 requirements for state asset forfeiture funds.
- Performed a reconciliation of the District Attorney's Office's state asset forfeiture fund awards and expenditure reimbursements to determine the completeness of the state asset forfeiture funds received and reported by the District Attorney's Office.
- Performed data analysis procedures on the state asset forfeiture funds expenditure population from the District Attorney's Office.
- Tested a sample of District Attorney's Office expenditures of state asset forfeiture funds to determine compliance with Chapter 59 and, when applicable, with the District Attorney's Office internal policies and procedures and with selected Dallas County policies. That included testing the selected expenditures for adequate competitive purchasing procedures as required by the County Purchasing Act.
- Reviewed the District Attorney's Office state asset forfeiture fund budgets to determine compliance with Chapter 59.
- Reviewed Dallas County Commissioners Court agendas for items related to state asset forfeiture funds.
- Tested a sample of District Attorney's Office monthly bank reconciliations of state asset forfeiture funds.

Criteria used included the following:

- Texas Code of Criminal Procedure, Chapter 59.
- Texas Local Government Code, Sections 140 and 262 (County Purchasing Act).
- Dallas County Code, Chapter 86 (Travel Policy).
- Office of the Attorney General, Opinion GA-0755 (2010) and Opinion 94-040 (1994).
- *Dallas County District Attorney's Office Policy Manual.*
- *Dallas County District Attorney's Office Financial Administration Section Forfeiture Fund 541 (State Forfeiture Fees) Administration Manual.*

Project Information

Audit fieldwork was conducted from February 2015 through August 2015. 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:

- Fabienne Robin, MBA (Project Manager)
- Philip Stringer, CPA, MAcc (Assistant Project Manager)
- Rob Bollinger, CFE, CPA
- Rachel Goldman, CPA
- Dana Musgrave, MBA (Quality Control Reviewer)
- Michael A. Simon, MBA, CGAP (Audit Manager)

Excerpt from Texas Code of Criminal Procedure, Chapter 59

The 71st Legislature established regulations for the disposition of state asset forfeiture funds. The legislation was amended in each subsequent biennium through the 2014-2015 biennium.

Below are excerpts from the Texas Code of Criminal Procedure, Chapter 59, as of September 1, 2013, that are relevant to the disposition of state asset forfeiture funds.

Art. 59.06. DISPOSITION OF FORFEITED PROPERTY. (a)

Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest;

(2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and

(3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency. A law enforcement agency to which property is

transferred under this subsection at any time may transfer or loan the property to any other municipal or county agency, a groundwater conservation district governed by Chapter 36, Water Code, or a school district for the use of that agency or district. A municipal or county agency, a groundwater conservation district, or a school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for the vehicle that is required by law.

(b-1) If a loan is made by a sheriff's office or by a municipal police department, the commissioners court of the county in which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction, as applicable, may revoke the loan at any time by notifying the receiving agency or district, by mail, that the receiving agency or district must return the loaned vehicle to the loaning agency before the seventh day after the date the receiving agency or district receives the notice.

(b-2) An agency that loans property under this article shall:

(1) keep a record of the loan, including the name of the agency or district to which the vehicle was loaned, the fair market value of the vehicle, and where the receiving agency or district will use the vehicle; and

(2) update the record when the information relating to the vehicle changes.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2.125 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes. Any expenditures of the proceeds are subject to the audit provisions established under this article.

(c-2) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(c-3) Notwithstanding Subsection (a), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by a peace officer employed by the Department of Public Safety, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state shall enter into a local agreement with the department that allows the attorney representing the state either to:

(1) transfer forfeited property to the department to maintain, repair, use, and operate for official purposes in the manner provided by Subsection (b); or

(2) allocate proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, in the following proportions:

(A) 40 percent to a special fund in the department to be used solely for law enforcement purposes;

(B) 30 percent to a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office; and

(C) 30 percent to the general revenue fund.

(c-4) Notwithstanding Subsections (a) and (c-3), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by the Department of Public Safety concurrently with any other law enforcement agency, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state may allocate property or

proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney representing the state.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement agency or an attorney representing the state may not use proceeds or property received under this chapter to:

- (1) contribute to a political campaign;
- (2) make a donation to any entity, except as provided by Subsection (d-2);
- (3) pay expenses related to the training or education of any member of the judiciary;
- (4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;
- (5) purchase alcoholic beverages;
- (6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:
 - (A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or
 - (B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;

(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;

(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

- (6) crime prevention and treatment programs;
- (7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;
- (8) witness-related costs, including travel and security; and
- (9) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for:

- (1) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;
- (2) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;
- (3) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;
- (4) conferences and training expenses, including fees and materials;
- (5) investigative costs, including payments to informants and lab expenses;
- (6) crime prevention and treatment programs;
- (7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;
- (8) legal fees, including court costs, witness fees, and related costs, including travel and security, audit costs, and professional fees; and
- (9) state bar and legal association dues.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

(f) A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g) (1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(h) As a specific exception to the requirement of Subdivisions (1)-(3) of Subsection (c) of this article that the funds described by those subdivisions be used only for the official purposes of the attorney representing the state or for law enforcement purposes, on agreement between the attorney representing the state or the head of a law enforcement agency and the governing body of a political subdivision, the attorney representing the state

or the head of the law enforcement agency shall comply with the request of the governing body to deposit not more than a total of 10 percent of the gross amount credited to the attorney's or agency's fund into the treasury of the political subdivision. The governing body of the political subdivision shall, by ordinance, order, or resolution, use funds received under this subsection for:

(1) nonprofit programs for the prevention of drug abuse;

(2) nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;

(3) nonprofit drug and alcohol rehabilitation or prevention programs administered or staffed by professionals designated as qualified and credentialed by the Texas Commission on Alcohol and Drug Abuse; or

(4) financial assistance as described by Subsection (o).

(i) The governing body of a political subdivision may not use funds received under this subchapter for programs or facilities listed under Subsections (h)(1)-(3) if an officer of or member of the Board of Directors of the entity providing the program or facility is related to a member of the governing body, the attorney representing the state, or the head of the law enforcement agency within the third degree by consanguinity or the second degree by affinity.

(j) As a specific exception to Subdivision (4) of Subsection (c) of this article, the director of a state law enforcement agency may use not more than 10 percent of the amount credited to the special fund of the agency under that subdivision for the prevention of drug abuse and the treatment of persons with drug-related problems.

(k) (1) The attorney for the state shall transfer all forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which a crime is reenacted to the attorney general.

(2) The attorney for the state shall transfer to the attorney general all income from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime, minus the deduction authorized by this subdivision. The attorney for the state shall determine the fair market value of property that is substantially similar to the property that was sold but that has not been increased in value by notoriety and deduct that amount from the proceeds of the sale. After transferring income to the attorney general, the attorney for the state shall transfer the remainder of the proceeds of the sale to

the owner of the property. The attorney for the state, the attorney general, or a person who may be entitled to claim money from the escrow account described by Subdivision (3) in satisfaction of a claim may at any time bring an action to enjoin the waste of income described by this subdivision.

(3) The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, "victim" has the meaning assigned by Article 56.32.

(l) A law enforcement agency that, or an attorney representing the state who, does not receive proceeds or property under this chapter during an annual period as described by Subsection (g) shall, not later than the 30th day after the date on which the annual period ends, report to the attorney general that the agency or attorney, as appropriate, did not receive proceeds or property under this chapter during the annual period.

(m) As a specific exception to Subdivisions (1)-(3) of Subsection (c), a law enforcement agency or attorney representing the state may use proceeds received under this chapter to contract with a person or entity to prepare an audit as required by Subsection (g).

(n) As a specific exception to Subsection (c)(2) or (3), a local law enforcement agency may transfer not more than a total of 10 percent of the gross amount credited to the agency's fund to a separate special fund in the treasury of the political subdivision. The agency shall administer the separate special fund, and expenditures from the fund are at the sole discretion of the agency and may be used only for financial assistance as described by Subsection (o).

(o) The governing body of a political subdivision or a local law enforcement agency may provide financial assistance under Subsection (h)(4) or (n) only to a person who is a Texas resident, who plans to enroll or is enrolled at an institution of higher education in an undergraduate degree or certificate program in a field related to law enforcement, and who plans to return to that locality to work for the political subdivision or the agency in a field related to law enforcement. To ensure the promotion of a law enforcement purpose of the political subdivision or the agency, the governing body of the political subdivision or the agency shall impose other reasonable criteria related to the provision of this financial assistance, including a requirement that a recipient of the financial assistance work for a certain period of time for the political subdivision or the agency in a field related to

law enforcement and including a requirement that the recipient sign an agreement to perform that work for that period of time. In this subsection, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the commission's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the commission may otherwise be entitled by law, the attorney representing the state shall transfer to the Health and Human Services Commission all forfeited property defined as contraband under Article 59.01(2)(B)(vi). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, if approved by the commission, sell the property and deliver to the commission the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

(q) (1) Notwithstanding any other provision of this article, a multicounty drug task force, or a county or municipality participating in the task force, that is not established in accordance with Section 362.004, Local Government Code, or that fails to comply with the policies and procedures established by the Department of Public Safety under that section, and that participates in the seizure of contraband shall forward to the comptroller all proceeds received by the task force from the forfeiture of the contraband. The comptroller shall deposit the proceeds in the state treasury to the credit of the general revenue fund.

(2) The attorney general shall ensure the enforcement of Subdivision (1) by filing any necessary legal proceedings in the county in which the contraband is forfeited or in Travis County.

Art. 59.061. AUDITS AND INVESTIGATIONS (a) The state auditor may at any time perform an audit or conduct an investigation, in accordance with this article and Chapter 321, Government Code, related to the seizure, forfeiture, receipt, and specific expenditure of proceeds and property received under this chapter.

(b) The state auditor is entitled at any time to access any book, account, voucher, confidential or nonconfidential report, or other record of information, including electronic data, maintained under Article 59.06, except that if the release of the applicable information is restricted under state or federal law, the state auditor may access the information only with the approval of a court or federal administrative agency, as appropriate.

(c) If the results of an audit or investigation under this article indicate that a law enforcement agency or attorney representing the state has

knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the state auditor shall promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

Out-of-state Travel Expenditures Tested

At the Dallas County District Attorney's Office (District Attorney's Office), auditors tested out-of-state, travel-related expenditures totaling \$60,578 that were funded with state asset forfeiture funds. Of that total, auditors could not determine the purpose of trips totaling \$26,025 (43 percent). Table 1 lists the out-of-state destinations, amounts, and purposes of the expenditures tested.

Table 1

Out-of-state Travel Expenditures Tested		
Destination	Amount	Purpose
Washington, D.C.	\$10,045	<ul style="list-style-type: none"> ▪ 2014 National Association of Government Communicators Communication School - \$5,806. ▪ North Texas Crime Commission 4th Annual Mission to Washington, D.C. - \$881. ▪ North Texas Crime Commission 3rd Annual Mission to Washington, D.C. - \$807. ▪ Auditors could not determine purpose - \$2,551.
Aspen, CO	5,702	<ul style="list-style-type: none"> ▪ National Association of Criminal Defense Attorneys 33rd Annual Advanced Criminal Law Seminar - \$1,598. ▪ Auditors could not determine purpose - \$4,104.
Anaheim, CA	5,681	<ul style="list-style-type: none"> ▪ National Association of Drug Court Professionals Conference.
Philadelphia, PA	5,090	<ul style="list-style-type: none"> ▪ Association of Prosecuting Attorneys Community Prosecutor Summit - \$1,594. ▪ Auditors could not determine purpose - \$3,496.
Orlando, FL	5,035	<ul style="list-style-type: none"> ▪ 2013 Florida Internet Crimes Against Children Task Force Regional Conference - \$3,562. ▪ International Association of Computer Investigative Specialists Basic Computer Forensic Examiner Course - \$1,473.
Atlanta, GA	4,001	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
San Diego, CA	2,814	<ul style="list-style-type: none"> ▪ 2012 Law Enforcement and Emergency Services Video Association Training Conference.
Tampa, FL	2,443	<ul style="list-style-type: none"> ▪ 2014 National Association of Extradition Officials Conference - \$2,064. ▪ Auditors could not determine purpose - \$379.
Toledo, OH	2,408	<ul style="list-style-type: none"> ▪ National Conference on Restorative Justice.
Des Moines, IA	2,081	<ul style="list-style-type: none"> ▪ Undercover Techniques and Survival of Women Training Program.
Indianapolis, IN	2,045	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
Los Angeles, CA	1,964	<ul style="list-style-type: none"> ▪ 2012 National Animal Prosecution Conference.
Manchester, NH	1,746	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
Waterloo, IA	1,668	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
Rochester, NY	1,486	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
Birmingham, AL	1,288	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
Long Beach, CA	1,070	<ul style="list-style-type: none"> ▪ National Association of Counties 2013 Smart Justice Symposium.
Denver, CO	912	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
Orange County, CA	808	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.
San Francisco, CA	750	<ul style="list-style-type: none"> ▪ National Elder Abuse Symposium.
Chicago, IL	644	<ul style="list-style-type: none"> ▪ Auditors could not determine purpose.

Out-of-state Travel Expenditures Tested		
Destination	Amount	Purpose
Cleveland, OH	487	▪ Auditors could not determine purpose.
Phoenix, AZ	410	▪ Auditors could not determine purpose
Total Expended	\$60,578	

Office of the Attorney General Opinions Related to State Asset Forfeiture Funds

Table 2 lists Office of the Attorney General opinions related to the disposition of state asset forfeiture funds under Texas Code of Criminal Procedure, Chapter 59.

Table 2

Office of the Attorney General Opinions Related to State Asset Forfeiture Funds		
Opinion Number	Date	Summary
DM-72	December 31, 1991	Except for funds transferred to a governing body to be spent on specified kinds of drug abuse prevention, treatment, or rehabilitation programs, it is the law enforcement agency to which state asset forfeiture funds are distributed under Texas Code of Criminal Procedure, Section 59.06, and not the governing body, that has the authority to determine the law enforcement purposes for which forfeiture funds are spent.
DM-162	September 8, 1992	Under the provisions of Texas Code of Criminal Procedure, Section 59.06(c), state asset forfeiture funds should be deposited with the county treasurer in the county depository in the manner in which county funds are generally handled.
DM-246	September 3, 1993	The County Purchasing Act (Texas Local Government Code, Chapter 262(c)) applies to purchases made with state asset forfeiture funds.
DM-247	September 3, 1993	This opinion reaffirms Opinion DM-162 that state asset forfeiture funds must be deposited with the county treasurer for placement in the county depository. It also states that disbursements of state asset forfeiture funds do not have to comply with Texas Local Government Code, Sections 113.041-113.043, which require the county treasurer to make disbursements and endorse payments and the county auditor to countersign checks and warrants. State asset forfeiture funds also are not required to comply with (1) Texas Local Government Code, Section 113.064, which requires the county auditor to approve all payments or (2) Texas Local Government Code, Section 140.003, which requires the county to disburse the funds on behalf of the specialized local entity. However, county law enforcement agencies and county, district, and criminal district attorneys may not keep exclusive records of their state asset forfeiture fund expenditures.
Letter Opinion No. 94-040	April 26, 1994	The County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to Texas Code of Criminal Procedure, Chapter 59. The attorney or law enforcement agency must deal with the suppliers selected by the commissioners court through the bidding process provided by the County Purchasing Act.
Letter Opinion No. 96-012	February 15, 1996	When there exists a local agreement between a prosecutor and a sheriff pursuant to the terms of Texas Code of Criminal Procedure, Chapter 59, the sheriff, so long as the procedural requirements of Chapter 59 have been followed, may take title to a building seized as contraband under Chapter 59. The sheriff may use the proceeds from the sale of property to purchase a building provided that (1) the sheriff first submits a detailed list of expenditures to the commissioners court and (2) subjects to the commissioners court requirement, if exercised, that the sheriff deposit not more than 10 percent of those proceeds in the county treasury for use on behalf of the chemical dependency programs described in Texas Code of Criminal Procedure, Section 59.06(h).
JC-0005	February 26, 1999	The Laredo City Council has no authority to require the Laredo Police Department to purchase vehicles with state asset forfeiture funds. The Laredo Police Department may, however, purchase vehicles from such funds should it wish to do so. The opinion also reaffirmed that the purposes for which state asset forfeiture funds are to be spent are generally to be determined by the law enforcement agency to which they are distributed, not by the governing body.

Office of the Attorney General Opinions Related to State Asset Forfeiture Funds		
Opinion Number	Date	Summary
JC-0075	July 6, 1999	As long as a district attorney administers property in accordance with accepted accounting practices and with the provisions of local agreements, a district attorney is not required to dispose of property forfeited to the state under Texas Code of Criminal Procedure, Section 59.06, in a sheriff's auction and has the discretion to decide how to dispose of property most advantageously.
GA-0122	November 18, 2003	An attorney representing the state must administer property forfeited under Texas Code of Criminal Procedure, Chapter 59, consistent with accepted accounting practices and with the terms of any local agreement with a law enforcement agency. Forfeited property subject to a local agreement must ultimately be disposed of by sale or transfer of the property to a law enforcement agency, but there is no statutory deadline for the disposition. An attorney representing the state may lease forfeited property only if the lease is consistent with local agreements and with the attorney's statutory duties to ultimately dispose of property by transfer or sale, and to distribute any proceeds under Texas Code of Criminal Procedure, Section 59.06. Forfeited property subject to administration under Texas Code of Criminal Procedure, Section 59.06, is state property. The attorney representing the state need not obtain approval from the commissioner's court or the state to execute a lease within the attorney's authority to administer forfeited property under Texas Code of Criminal Procedure, Section 59.06(a). Statutory bidding requirements do not apply to such an attorney's authority to administer forfeited property.
GA-0259	October 13, 2004	The office of an attorney representing the state is a law enforcement agency that may receive forfeited property transferred from the attorney representing the state.
GA-0613	April 7, 2008	Texas Code of Criminal Procedure, Section 59.06, controls and limits expenditures from a district attorney's state asset forfeiture fund to be used by the attorney solely for the official purpose of his office. A district attorney may not use state asset forfeiture funds to help purchase a juvenile detention facility for the county because providing a juvenile detention facility is not an official purpose of that office under Texas Code of Criminal Procedure, Section 59.06, and is therefore not an authorized use of those funds.
GA-0755	January 20, 2010	A district attorney is not authorized to utilize state asset forfeiture funds under Texas Code of Criminal Procedure, Section 59.06(c), to pay for the district attorney's legal defense as the payment of such costs is not an official purpose of that office within the meaning of Texas Code of Criminal Procedure, Section 59.06(c).
GA-1059	May 20, 2014	A court would be unlikely to conclude that a district attorney may use state asset forfeiture funds to purchase land and a building for subsequent sale or lease to another entity because such use of the property would likely not be considered an official purpose of the district attorney's office under Texas Code of Criminal Procedure, Section 59.06.

Attachments to District Attorney's Office's Management Responses

The Dallas County District Attorney's Office (District Attorney's Office) submitted two attachments with its management responses. Those attachments are presented below.

Attachment 1

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EXHIBIT 10.36

AGREEMENT

This settlement agreement is dated and entered into this twenty-third day of July, 2003, by and among the State of Texas ("Texas"), the Office of the Attorney General ("OAG"), the Texas Department of Insurance ("TDI"), including the Texas Commissioner of Insurance ("Commissioner") (collectively the "State"), and PacifiCare of Texas, Inc. ("PacifiCare"). The State and PacifiCare (collectively the "Parties") agree as follows:

I. DEFINITIONS

For purposes of this Agreement, the following terms have the meanings specified below:

"Agreement" means this settlement agreement.

"Court" means the District Court of Travis County, Texas, -250th Judicial District.

"HPN" means Heritage Physicians Network.

"HSW" means Heritage Southwest Medical Group, P.A.

"Intervenor" shall have the meaning given it in Section II, below.

"Lawsuit" shall have the meaning given it in Section II, below.

"MOU" means the Memorandum of Understanding, dated March 21, 2003, entered into by the Parties.

"MSM" means Medical Select Management.

"Other Investigations" means all currently pending investigations by the OAG related to PacifiCare as of the date of the MOU, including the Civil Investigative Demands and Visitation Letters listed in Section V, below, but excluding the two Visitation Letters listed in Section V, Item 2, below, to the extent either of these two Visitation Letters address claims, acts, events, occurrences or omissions that are not Released Claims, as defined below; and with the exception of Case #44891, all pending civil investigations relating to PacifiCare that have been referred to the Legal Division of TDI as of the date of the MOU, including the payment of delegated and non-delegated claims as described in Section IV, Item 4, below.

"Other Lawsuits" means the following actions:

1. No. GN 103374, PacifiCare of Texas, Inc. vs. The State of Texas And John Cornyn, Attorney General, Individually, and In His Official Capacity; in the district court of Travis County Texas, 200th Judicial District;

<http://www.sec.gov/Archives/edgar/data/1027974/000089256903001883/a92071exv10w3...> 9/28/2015

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2. No. GN 103351, PacifiCare of Texas, Inc. vs. The State of Texas And John Cornyn, Attorney General, Individually And In His Official Capacity; in the district court of Travis County, Texas, 200th Judicial District; and
3. No. 98-13971, The State of Texas vs. PacifiCare of Texas, Inc. in the district court of Travis County, Texas, 201st Judicial District.

"Provider Bankruptcies" means the MSM and HSW bankruptcies, as described in Section IV, Items 1 and 2, below.

"Released Claims" means and includes any and all civil, administrative, equitable and other claims, demands and causes of action of any nature whatsoever against the Released Parties, whether pending or threatened, suspected or unsuspected, contingent or non-contingent, known or unknown, for any and all damages, fines, penalties, assessments and other remedies or relief that in any way arise out of or in any way relate to acts, events, occurrences and/or omissions occurring before March 31, 2003 (i) that were alleged, or that could have been alleged, in the Lawsuit or Other Lawsuits, or (ii) that relate to the Other Investigations. Notwithstanding the foregoing, Released Claims does not mean and does not include any and all claims, demands or causes of action of any nature whatsoever, whether pending or threatened, suspected or unsuspected, contingent or non-contingent, known or unknown, for any and all damages, fines, penalties, assessments or other remedies or relief that in any way arise out of or in any way relate to (i) TDI Case #44891, or (ii) any and all matters under review at TDI relating to PacifiCare that have not been referred to the Legal Division of TDI as of the date of the MOU. In addition, with respect to the Visitation Letter dated May 22, 2002 directed to PacifiCare Life Assurance Company and the Visitation Letter dated March 28, 2002 directed to PacifiCare of Texas, Inc., Released Claims does not mean and does not include actions for injunctive relief directly related to PacifiCare's documentation and methodology of claims adjustments and documentation of claim payments and denials with respect to commercial claims for health care services not subject to capitation and rendered by direct contracted providers. As to such Visitation Letters, however, Released Claims means and includes any claim or action seeking to compel the payment of any kind for any reason.

"Released Parties" means and includes (i) with respect to releases given by the State: PacifiCare of Texas, Inc., as well as its past and present parent companies, subsidiaries and affiliates, and each of their past and present officers, employees, agents, directors, representatives, attorneys, predecessors, successors and assigns; and (ii) with respect to releases given by PacifiCare: the State of Texas, the OAG, the Attorney General of the State of Texas in his official and individual capacity, the TDI, the Commissioner in his official and individual capacity, and their respective officers, employees, agents, representatives and attorneys, predecessors and successors.

"Stay" shall mean the agreed-to stay of the Lawsuit, as described in Section III, below.

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II. RECITALS

WHEREAS, on or about November 27, 2001, PacifiCare filed suit against TDI and the State of Texas in Cause No. GN 103906, PacifiCare of Texas, Inc. vs. The Texas Department of Insurance and the State of Texas, in the district court of Travis County, Texas, 53rd Judicial District;

WHEREAS, on or about February 11, 2002, the State of Texas and the Commissioner filed suit against PacifiCare in Cause No. GV 200718, State of Texas and Jose Montemayor, Commissioner of Insurance of the State of Texas vs. PacifiCare of Texas, Inc., in the district court of Travis County, Texas, 250th Judicial District;

WHEREAS, by agreed order dated September 18, 2002, Cause No. GV 200718 was consolidated into Cause No. GN 103906, and styled PacifiCare of Texas, Inc. vs. The Texas Department of Insurance and the State of Texas, in the district court of Travis County, Texas, 53rd Judicial District (the "Lawsuit"), and pursuant to the Travis County Local Rules of Procedure and Decorum, the Lawsuit was assigned to the Honorable Judge John K. Dietz, presiding judge of the 250th Judicial District Court;

WHEREAS, the Texas Medical Association, Robert Newhouse, Trustee of the Heritage Southwest Bankruptcy Estate and in his capacity as representative of certain medical providers (which representative capacity PacifiCare reserves the right to contest), Memorial Hermann Hospital System, and other medical providers have intervened or may intervene in the Lawsuit (the "Intervenors");

WHEREAS, the undersigned recognize that bona fide disputes and controversies continue to exist between the Parties in the Lawsuit, both as to fact and extent of liability, if any;

WHEREAS, by reason of such disputes and controversies, the undersigned entered into the MOU on March 21, 2003 and agreed to enter into a definitive settlement agreement, within thirty (30) days following such date, which date has been extended by mutual agreement of the Parties;

WHEREAS, the Parties desire to implement a system to provide for the resolution of claims of providers in the Provider Bankruptcies and HPN and for the payment of outstanding delegated and non delegated claims, if any;

WHEREAS, PacifiCare denies each of the claims alleged by the State and the Intervenors, and further denies wrongdoing of any kind whatsoever, and does not admit liability; and

WHEREAS, after considering the benefits to be gained under this Agreement, the risks associated with continuing this complex and lengthy litigation, the likelihood of success on the

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merits of the litigation, the public interest, the welfare of Texas' consumers, and to avoid further expense and diversion of time and resources, the State and PacifiCare believe this Agreement is fair, adequate, and reasonable.

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NOW THEREFORE IT IS AGREED by the Parties as follows:

III. STAY OF LAWSUIT

Following execution of the MOU, the Parties filed a joint motion and agreed order, in the form attached hereto as Exhibit "A," requesting a stay of the Lawsuit until twelve (12) months following the date of this Agreement or for such additional period as the Parties may mutually agree (the "Stay"). The Parties agree, however, that if after eight months following execution of this Agreement, the requirements set forth in Section IV., Items 1 and 2, below, relating to the Provider Bankruptcies, have not been satisfied by PacifiCare, the Parties shall meet in good faith to determine whether the Stay should continue for the remaining four month period. In the event there is a disagreement between the Parties as to continuing the Stay for the remaining four-month period, then PacifiCare shall have the right to request permission from the Court to extend the Stay up to a maximum period of four months to allow PacifiCare to continue its efforts with respect to the Provider Bankruptcies. The order staying the Lawsuit shall provide that the trial date in the Lawsuit and any other deadlines in the Lawsuit that have not passed as of the date of the MOU shall be extended for a period of time equal to the period from the date the MOU was executed to the end of the Stay.

Promptly upon the execution of this Agreement, the Parties shall file agreed motions and orders in the forms attached hereto as Exhibits "B," "C," "D," respectively, to stay the following lawsuits for the duration of the Stay:

- (i) No. GN 103374, PacifiCare of Texas, Inc. vs. The State of Texas And John Cornyn, Attorney General, Individually And In His Official Capacity; in the district court of Travis County, Texas, 200th Judicial District
- (ii) No. GN 103351, PacifiCare of Texas, Inc. vs. The State of Texas And John Cornyn, Attorney General, Individually And In His Official Capacity; in the district court of Travis County, Texas, 200th Judicial District
- (iii) No. 98-13971, The State of Texas vs. PacifiCare of Texas, Inc., in the district court of Travis County, Texas, 201st Judicial District.

Following execution of the MOU and throughout the Stay, no orders will be sought, signed or entered in the Lawsuit that affect the substantive rights of the Parties, and if during this period, any order is signed or entered, nothing in this Agreement shall prevent any of the Parties from pursuing an appeal. Any documents and information provided by PacifiCare to

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the State or by the State to PacifiCare pursuant to this Agreement during the Stay will be subject to the Protective Order in the Lawsuit.

The purpose of the Stay is to allow the Parties and others to proceed with due diligence and in good faith with the activities required to settle the

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Provider Bankruptcies, as described in Section IV, Items 1 and 2 below, and engage in a good faith review of outstanding valid provider claims related to HPN, as described in Section IV, Item 3, below, and pay outstanding delegated and non-delegated claims, if any, as described in Section IV, Item 4, below, without the necessity of the Parties simultaneously prosecuting the Lawsuit.

IV. ACTIONS TO BE TAKEN DURING THE STAY

1. MSM Bankruptcy. This concerns the case styled: In re Medical Select Management, Debtor; Case No. 01-45298-BJH-11 (N. D. Tex. Bankr. - Fort Worth). During the Stay, PacifiCare will enter into an agreement or agreements with the MSM bankruptcy trustee or other creditor representatives that provide that funds will be paid to provider creditors of MSM under a confirmed plan or settlement agreement approved by the bankruptcy court and that provide releases satisfactory to PacifiCare.

a. PacifiCare will use its best reasonable efforts to meet the following milestones in connection with the MSM bankruptcy:

1. Execute a term sheet with the MSM bankruptcy trustee or other creditor representative(s) in the MSM bankruptcy within 30 days of the date of this Agreement;
2. The filing by the MSM bankruptcy trustee or other party (including the Parties to this Agreement) of a disclosure statement and plan in accordance with the term sheet with the bankruptcy court within 30 days of execution of the term sheet;
3. Completion by the MSM bankruptcy trustee and/or other party (including the Parties to this Agreement) of solicitation of providers to vote on the plan within 90 days following the bankruptcy court's approval of the disclosure statement;
4. Obtain confirmation of the plan by the bankruptcy court within 8 months of the date of this Agreement.

b. In the event that the total provider creditor claims allowed by the bankruptcy court ("Total Allowed Provider Claims") exceed the provider creditor claims sampling estimate, as determined by Medical Pathways Management Corporation (the "Claims Estimate"), PacifiCare agrees to increase its agreed upon contribution (the "PacifiCare Base Contribution") to fund payment of provider creditor claims as follows: PacifiCare shall contribute an additional amount equal to the difference between the Claims Estimate and the Total Allowed Provider Claims multiplied by the fraction, the numerator of which shall be the PacifiCare Base

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Contribution and the denominator of which shall be the Claims Estimate;

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provided, however, PacifiCare's additional contribution will be capped at the greater of (i) 20% of the PacifiCare Base Contribution, or (ii) \$500,000. For example, assuming the Claims Estimate is \$12 million, the Total Allowed Provider Claims is \$15 million, and the PacifiCare Base Contribution is \$1,500,000, PacifiCare's additional contribution would be \$375,000. This is determined as follows: Step 1: \$15 million (Total Allowed Provider Claims) minus \$12 million (Claims Estimate) equal \$3 million; Step 2: \$3 million is multiplied by .125 (.125 being the fraction resulting from \$1.5 million (PacifiCare Base Contribution) being divided by \$12 million (Claims Estimate)) = \$375,000. Step 3: The cap on PacifiCare's additional contribution is the greater of (i) 20% of the PacifiCare Base Contribution--in this example, \$300,000 (\$1,500,000 multiplied by 20% = \$300,000); or (ii) \$500,000. Because, in this example, the \$375,000 does not exceed the greater of the two caps, PacifiCare's additional contribution remains at \$375,000. The Parties shall not use or interpret this example as any type of approval, endorsement or prediction by the State of the Claims Estimate, PacifiCare Base Contribution, or Total Allowed Provider Claims in the MSM Bankruptcy. The reference to Medical Pathways Management Corporation herein is solely for the purpose of determining the addition to the PacifiCare Base Contribution, if any, contemplated by this paragraph. Nothing herein shall constitute an endorsement or approval of Medical Pathways Management Corporation or the scope of the services it has rendered.

c. PacifiCare asserts a claim in the MSM bankruptcy in excess of \$11 million as a result of alleged damages suffered from the breach of an agreement between PacifiCare and MSM (the "PacifiCare MSM Damage Claim"). PacifiCare also asserts an administrative claim in the MSM bankruptcy (the "PacifiCare MSM Administrative Claim"). PacifiCare will not receive any distribution from the MSM bankruptcy estate for the PacifiCare MSM Damage Claim or the PacifiCare MSM Administrative Claim until all allowed general unsecured creditor claims are paid, but this provision shall not affect PacifiCare's rights and priorities relative to other licensed payors, insiders or affiliates. Nothing herein shall in any way constitute an endorsement or approval by the State of the amount or viability of the PacifiCare MSM Damage Claim or the PacifiCare MSM Administrative Claim. In addition, to the extent that PacifiCare purchases or obtains any claims in the MSM Bankruptcy, PacifiCare agrees to forgo or give back any distribution on such claim(s) to the extent the distribution is greater than the dollar amount paid to the transferor for the claim(s).

d. Regardless of the thresholds that PacifiCare may require in the MSM bankruptcy, for purposes of this Agreement only, the Parties shall use best reasonable efforts toward achieving an opt-in level of 90% of the providers who vote on the plan. Providers paid or caused to be paid outside the bankruptcy will be counted as "opt-in" providers for purposes of this calculation, as will providers, if any, who are unimpaired and thus are deemed to vote on the plan pursuant to 11 USC Section 1126(f) or 11 USC Section 105. For so long as this agreement is in effect, PacifiCare shall not use 11

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USC Section 105 to obtain a determination that a provider is not

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impaired in any manner inconsistent with 11 USC Section 1124 except with respect to providers who elect to participate in a convenience class. For purposes of this Agreement, any holder of a provider claim who elects to participate in a convenience class shall be deemed unimpaired. PacifiCare will provide the results of the vote to the State within two business days of the votes being filed with the bankruptcy court. Notwithstanding anything herein to the contrary, if PacifiCare reaches an agreement with a provider for the transfer or compromise of its claim against PacifiCare, such provider's vote on a plan (to the extent the provider continues to have a lawful right to vote on the plan) shall not count for purposes of the threshold set forth above, but the resolution or transfer of the claim will be counted as an affirmative acceptance for purposes of the threshold set forth above. In the event the opt-in level is not achieved, the Parties shall meet in good faith to discuss possible modifications of the opt-in level or other alternatives, and if the Parties cannot agree, the OAG may terminate this Agreement. As used herein the phrase "Providers paid or caused to be paid outside the bankruptcy" shall mean those providers whose claims were paid or caused to be paid by PacifiCare and shall include: (i) providers whose claims were acquired or caused to be acquired by PacifiCare; and (ii) providers who agreed with PacifiCare to transfer or compromise their claims, provided that the claim(s) of any such providers are for services rendered to health plan members assigned to MSM, which services were rendered prior to the filing of the bankruptcy petition and which were not paid for at the time the bankruptcy petition was filed.

e. For so long as this Agreement is in effect: (i) PacifiCare shall not propose, support, or fund, any plan, nor support or propose any Bankruptcy Court order (including any order confirming a plan), which specifically addresses whether any claims of the State, the TDI or the OAG against PacifiCare are modified, impaired, or discharged; and (ii) except with respect to providers who are unimpaired or elect to participate in a convenience class, PacifiCare shall not propose, support or fund any plan which provides that with respect to providers (a) holding allowed claims at the conclusion of the time for voting on the plan in the MSM bankruptcy and (b) who did not affirmatively opt-in to a settlement with PacifiCare, that such providers' rights against PacifiCare are discharged solely by reason of confirmation of the plan.

f. Nothing in this Agreement shall prevent PacifiCare from making a payment pursuant to a plan or settlement even if the providers have not opted in to the plan or settlement at the level satisfying the requirements of this Agreement. Notwithstanding the foregoing, the act of payment by itself shall not satisfy the opt-in levels required hereunder.

g. The Parties shall meet periodically as mutually determined to review the status of the MSM bankruptcy proceedings.

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2. HSW Bankruptcy. This concerns the case styled: In re Heritage Southwest Medical Group, P.A., Alleged Debtor(s); Case No. 01-30212-HCA-7 (N.D. Tex. Bankr. - Dallas). During the Stay, PacifiCare will enter into an agreement

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or agreements with the HSW bankruptcy trustee or other creditor representative(s) that provide that funds will be paid to provider creditors of HSW under a court approved plan or settlement agreement(s) and that provide releases satisfactory to PacifiCare.

a. PacifiCare will use best reasonable efforts to (i) reach a settlement that will result in a motion being filed under Bankruptcy Rule 9019 in the HSW bankruptcy within 120 days of the execution of this Agreement, and, (ii) if such motion is filed and approved by the court, complete solicitation of providers to accept the settlement within 90 days following the order approving the settlement becoming final. Payment will be made within 30 days after the solicitation is complete at a threshold level acceptable to PacifiCare; provided, however, that in the event the State files an objection to the settlement prosecuted in accordance with Bankruptcy Rule 9019, PacifiCare reserves the right not to make the payments pursuant to the settlement or to delay the payments until the State's objection is resolved by final order.

b. The Parties will use best reasonable efforts to have the HSW bankruptcy trustee dismiss with prejudice any and all actions filed pursuant to 11 USC 542-553, inclusive, but only to the extent those actions seek to recover payments for services rendered to PacifiCare members.

c. In the event a Rule 9019 process is not agreed upon by all applicable parties, and the case is converted to Chapter 11, PacifiCare will use its best reasonable efforts to meet the following milestones in connection with the HSW bankruptcy:

1. Execute a term sheet with the HSW bankruptcy trustee, other creditor representative(s), or the debtor in the HSW bankruptcy within 120 days of the date of this Agreement;
2. The filing by the HSW bankruptcy trustee or other party (including the Parties to this Agreement) of a disclosure statement and plan in accordance with the term sheet with the bankruptcy court within 30 days of execution of the term sheet;
3. Completion by the HSW trustee and/or other party (including the Parties to this Agreement) of solicitation of providers to vote in favor of the plan within 90 days following the court's approval of the disclosure statement;
4. Plan confirmation by the bankruptcy court within eight months of the date of this Agreement.

d. In the event that the total provider creditor claims allowed by the bankruptcy court ("Total Allowed Provider Claims") exceed the provider creditor claims sampling estimate as determined by Medical Pathways Management

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Corporation, who has been jointly engaged by the HSW Trustee and PacifiCare (the "Claims Estimate"), PacifiCare agrees to increase what its agreed upon contribution may be (the "PacifiCare Base Contribution") to fund payment of provider creditor claims as follows: PacifiCare shall contribute an additional amount equal to the difference between the Total Allowed Provider Claims and the Claims Estimate multiplied by the fraction, the numerator of which shall be the PacifiCare Base Contribution and the denominator of which shall be the Claims Estimate; provided, however, PacifiCare's additional contribution will be capped at 20% of the PacifiCare Base Contribution or \$500,000, whichever is greater. The reference to Medical Pathways Management Corporation herein is solely for the purpose of determining the addition to the PacifiCare Base Contribution, if any, contemplated by this paragraph. Nothing herein shall constitute an endorsement or approval of Medical Pathways Management Corporation or the scope of the services it has rendered.

e. PacifiCare asserts a claim in the HSW bankruptcy in excess of \$18 million as a result of alleged damages suffered from the breach of an agreement between PacifiCare and Heritage Southwest Medical Group, Inc., which agreement was guaranteed by HSW (the "PacifiCare HSW Damage Claim"). PacifiCare also asserts an administrative claim in the HSW bankruptcy (the "PacifiCare HSW Administrative Claim"). PacifiCare will not receive any distribution from the HSW bankruptcy estate for the PacifiCare HSW Damage Claim or PacifiCare HSW Administrative Claim until all allowed general unsecured creditor claims are paid, but this provision shall not affect PacifiCare's rights and priorities relative to other licensed payors, insiders or affiliates. Nothing herein shall in any way constitute an endorsement or approval by the State of the amount or viability of the PacifiCare HSW Damage Claim or the PacifiCare HSW Administrative Claim. To the extent that PacifiCare purchases or obtains any claims in the Heritage Bankruptcy, PacifiCare agrees to forgo or give back any distribution on such claim(s) to the extent the distribution is greater than the dollar amount paid to the transferor for the claim(s).

f. Regardless of the thresholds that PacifiCare may require in the HSW bankruptcy, for purposes of this Agreement only, the Parties shall use best reasonable efforts toward achieving an opt-in level of 90% of the providers who vote on the plan or affirmatively accept or reject the settlement under Bankruptcy Rule 9019 after solicitation of acceptances or rejections, as applicable. In the event a settlement under Bankruptcy Rule 9019 is utilized, PacifiCare agrees that all providers will be given the opportunity to accept or reject the settlement except (i) providers whose claims are not allowed at the time for acceptance or rejection, as applicable, or (ii) providers who have reached a compromise with PacifiCare or have transferred their claims. "Providers paid or caused to be paid outside the bankruptcy will be counted as "opt- in" providers for purposes of this calculation, as will providers, if any, who are unimpaired and thus are deemed to vote on the plan or settlement pursuant to 11 USC Section 1126(f) or 11 USC Section 105. Notwithstanding anything to the contrary herein, for so long as this Agreement is in effect, PacifiCare shall not use 11 USC

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Section 105 to obtain a determination that a provider is unimpaired in any manner inconsistent with 11 USC 1124 except with respect to providers who elect to participate in a convenience class. For purposes of this Agreement, any holder of a provider claim who elects to participate in a convenience class shall be deemed unimpaired. PacifiCare will provide the results of the vote to the State within two business days of the votes being filed with the bankruptcy court. Notwithstanding anything herein to the contrary, if PacifiCare reaches an agreement with a provider for the transfer or compromise of its claim against PacifiCare, such provider's vote on a plan or settlement (to the extent the provider continues to have a lawful right to vote on the plan or settlement) shall not count for purposes of the threshold set forth above, but the resolution or transfer of the claim will be counted as an affirmative acceptance for purposes of the threshold set forth above. In the event the opt-in level is not achieved, the Parties shall meet in good faith to discuss possible modifications of the opt-in level or other alternatives, and if the Parties cannot agree, the OAG may terminate this Agreement. As used herein, the phrase "Providers paid or caused to be paid outside the bankruptcy" shall mean those providers whose claims were paid or caused to be paid by PacifiCare and shall include: (i) providers whose claims were acquired or caused to be acquired by PacifiCare; and (ii) providers who agreed with PacifiCare to transfer or compromise their claims, provided that the claim(s) of any such providers are for services rendered to health plan members assigned to Heritage Southwest Medical Group, Inc., which services were rendered prior to the entry of the order for relief in the HSW bankruptcy case and paid for after the filing of the involuntary bankruptcy petition in the HSW bankruptcy case.

g. For so long as this Agreement is in effect: (i) PacifiCare shall not propose, support or fund any plan or settlement, nor support or propose any Bankruptcy Court order (including any order confirming a plan or any settlement), which specifically addresses whether any claims of the State, the TDI or the OAG against PacifiCare are modified, impaired or discharged; and (ii) PacifiCare shall not propose, support or fund any Bankruptcy Rule 9019 Settlement or plan which provides that with respect to providers (a) holding allowed claims at the conclusion of time for voting on the plan or the conclusion of the solicitation process under a Bankruptcy Rule 9019 Settlement and (b) who did not affirmatively opt-in to the plan or accept the settlement with PacifiCare, that such providers' claims against PacifiCare shall be discharged solely by reason of confirmation of the plan or approval of the settlement. Notwithstanding the foregoing, subsection (ii) shall not apply to providers who are unimpaired or elect to participate in a convenience class under a plan or a Bankruptcy Rule 9019 Settlement.

h. Nothing in this Agreement shall prevent PacifiCare from making a payment pursuant to a court approved plan or settlement even if the providers have not opted in to the plan or settlement at the level satisfying the requirements of this Agreement. Notwithstanding the foregoing, the act of payment by itself shall not satisfy the opt-in levels required hereunder.

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i. All Parties shall meet periodically as mutually determined to review the status of the HSW bankruptcy proceedings.

3. HPN. During the Stay, PacifiCare agrees to engage in a process with HPN and the affected HPN providers to validate amounts for outstanding claims of such HPN providers for services provided to PacifiCare members. In exchange for releases of PacifiCare relating to such claims, PacifiCare shall pay valid claims at whatever amount that may be agreed upon by PacifiCare and HPN providers. Such process will take into account the claims review from HPN and any additional claims information furnished by such HPN providers. PacifiCare will use best reasonable efforts to reach agreement on payment of valid claims and to complete this process within 120 days of the date of this Agreement. All Parties shall meet periodically as mutually determined to review the status of this process.

4. Payment of Delegated and Non-Delegated Claims. During the Stay, PacifiCare agrees to the following with respect to payment of delegated and non-delegated claims:

a. For all contracted non-delegated valid commercial clean claims, if any, with dates of service from August 1, 2000 through March 31, 2003 which were not paid in accordance with the contract within 45 days of receipt of the claim and for which amounts are owing as provided in this paragraph, PacifiCare shall, within 90 days following the date of this Agreement, pay the provider the lesser of billed charges (as defined in 28 Texas Administrative Code Section 21.2802(2)) the amount payable under the applicable contract plus the applicable contracted penalty rate, or the amount the provider agreed or agrees to accept as payment for the claim.

b. For all contracted non-delegated valid commercial claims (which are not clean), if any, with dates of service from August 1, 2000 through March 31, 2003 for which amounts are owing as provided in this paragraph, PacifiCare shall, within 90 days following the date of this Agreement, pay the lesser of the contracted rate or the amount the provider agrees to accept as payment for the claim.

c. For all non-delegated valid commercial claims, if any, from non-contracted providers with dates of service from August 1, 2000 through March 31, 2003, for which amounts are owing as provided in this paragraph, PacifiCare shall, within 90 days following execution of this Agreement, pay the lesser of the usual and customary amount or the amount the provider agrees to accept as payment for the claim.

d. For all delegated valid commercial claims, if any, with dates of service from August 1, 2000 through March 31, 2003 for which amounts are owing as provided in this paragraph and which are the subject of a written provider complaint made to either TDI or PacifiCare, PacifiCare shall, within 120 days following the date of this Agreement, pay such claims, if any, at the applicable contract rate. This

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provision shall not apply to delegated provider claims related to the following delegates: MSM, HSW (including Heritage Southwest Medical Group, Inc.), HPN and Quantum Southwest Medical Associates, Inc. For purposes of this paragraph, for claims with dates of service on or before December 31, 2002, the written provider complaint must have been made prior to the execution of the MOU on March 21, 2003.

e. For purposes of this Section IV, Item 4, clean claim shall have the meaning set forth in Texas Insurance Code Article 20A.18B and 28 Texas Administrative Code Section 21.2801 et. seq. and for all claims with dates of service on or before December 31, 2002 and submitted prior to the execution of the MOU on March 21, 2003 shall have been clean on March 21, 2003.

f. PacifiCare shall within 150 days following the date of this Agreement, provide a report to TDI which lists the total number of providers, if any, who were paid and the total amount paid under the above, and the total number of physicians, if any, who were paid and the total amount paid under the above.

g. Within 90 days after PacifiCare provides the report to TDI, TDI shall identify any concerns regarding PacifiCare's compliance with the requirements of this Section IV, Item 4 and meet and confer in good faith with PacifiCare regarding such concerns and use best reasonable efforts to resolve any disagreements before the State may take any position that PacifiCare has failed to satisfy the requirements of this Section IV, Item 4. Nothing in this Agreement shall be construed to require PacifiCare to conduct an audit of any type with respect to claims with dates of service from August 1, 2000 through March 31, 2003, as described in paragraphs (a) through (d), above, in order to satisfy the requirements of this Section IV, Item 4. Except as provided in Section VII, Section VIII, and Section IX, below, nothing in this Agreement limits the authority of TDI to require information pursuant to Texas Insurance Code Section 38.001 or to conduct examinations pursuant to Texas Insurance Code Articles 1.15 or 20A.17 or to conduct any other investigation authorized by the Insurance Code to determine whether PacifiCare is in compliance with the requirements of this Section IV, Item 4. In addition, nothing in this Agreement limits the authority and ability of TDI to otherwise regulate PacifiCare regarding any matter that is not a Released Claim.

V. DISPOSITION OF OTHER INVESTIGATIONS

1. Representation of Prior Withdrawal of Civil Investigative Demands and Certain Visitation Letters. The OAG represents and warrants that prior to the date of the MOU the following Civil Investigative Demands and Visitation Letters were withdrawn by the OAG and will not be re-served during the Stay and that the withdrawals were not part of the bargained for consideration of the MOU or this Agreement:

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(i) Civil Investigative Demand, First Request, dated

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- September 24, 2001 directed to PacifiCare of Texas, Inc. and purportedly covering alleged improprieties in delegation practices by PacifiCare of Texas, Inc.
- (ii) Civil Investigative Demand, Second Request, dated September 24, 2001 directed to PacifiCare of Texas, Inc. and purportedly covering alleged improprieties in delegation practices by PacifiCare of Texas, Inc.
 - (iii) Civil Investigative Demand dated September 21, 2001 directed to PacifiCare of Texas, Inc. and purportedly covering allegations of unfair insurance practices and DTPA violations regarding managed care contracting, delegation and payment practices related to payment to health care providers for services rendered to managed care patients in Texas.
 - (iv) Visitation Letter dated December 10, 2001 directed to PacifiCare of Texas, Inc. and purportedly covering alleged violations of the DTPA, article 21.21 of the Texas Insurance Code and article 20A.18C of the Texas Health Maintenance Organization Act.
 - (v) Visitation Letter dated March 28, 2002 directed to PacifiCare of Texas, Inc. and purportedly covering Preferred Provider Organization Documents and alleged violations of the DTPA and article 21.21 of the Texas Insurance Code.

2. Stay of Other Matters; Resolution of Certain Visitation Letters. Except for TDI's investigation regarding case #44891, all pending civil investigations that have been referred to the Legal Division of TDI as of the execution of the MOU, including the payment of delegated and non-delegated claims as described in Section IV, Item 4, above, all currently pending investigations by the OAG related to PacifiCare as of the execution of the MOU, and the following Visitation Letters shall be stayed during the Stay:

- (i) Visitation Letter dated March 28, 2002 directed to PacifiCare of Texas, Inc. and purportedly covering Health Maintenance Organization Documents and alleged violations of the DTPA and article 21.21 of the Texas Insurance Code.
- (ii) Visitation Letter dated May 22, 2002 directed to PacifiCare Life Assurance Company and purportedly covering Preferred Provider Organization Documents and alleged violations of the DTPA and article 21.21 of the Texas Insurance Code.

During the Stay, PacifiCare and the OAG will work in good faith to resolve issues relating to the above two Visitation Letters. If PacifiCare and the OAG do not reach an agreed resolution of these issues during the Stay, following the Stay, the OAG may formally proceed with any

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actions or claims related to these two Visitation Letters that are not Released Claims. Any actions or claims related to these two Visitation Letters shall be exempted from the requirements of any dismissals or final judgments as required by this Agreement.

3. Tolling of Statute of Limitations. Any statute of limitations applicable to any administrative or court action against PacifiCare by the TDI or Commissioner to impose a sanction, penalty, fine or other relief for any statutory or regulatory violations alleged in the Lawsuit will be tolled from the date the MOU was executed and while the Stay is in effect. Any other matter stayed pursuant to this Agreement will be tolled for the period the Stay is in effect. The TDI and PacifiCare agree to enter into any further agreements as may be appropriate to provide and assure the tolling of those actions during those periods. During the period of the Stay, the TDI and Commissioner agree not to file any administrative or other proceeding seeking a sanction, penalty, fine or other relief for any statutory or regulatory violations alleged in the Lawsuit, Other Lawsuits or Other Investigations. However, nothing in this Agreement limits the authority and ability of the TDI to initiate an administrative hearing regarding any matter that is not a Released Claim.

VI. GOOD FAITH EFFORTS DURING STAY

All Parties shall use good faith efforts to facilitate the satisfaction of the above requirements. Without limiting the foregoing, the State agrees to support PacifiCare's efforts in meeting the requirements relating to the Provider Bankruptcies and the HPN providers, consistent with the terms and conditions of this Agreement. In the event the OAG reasonably determines that good faith efforts are not being used by PacifiCare as required by this Agreement, the OAG shall provide written notice to PacifiCare specifying any alleged deficiencies and afford PacifiCare fifteen (15) days from the receipt of such notice to address such alleged deficiencies. In the event the OAG and PacifiCare do not agree that the alleged deficiencies have been addressed satisfactorily, the OAG may move the Court to lift the Stay, provided that the OAG first provides an additional subsequent reasonable notice to PacifiCare before making such motion.

VII. EFFECTIVENESS OF SETTLEMENT

Upon the satisfaction by PacifiCare or waiver by the State of the requirements of Section IV, Items 1 through 4, above, the State shall promptly provide PacifiCare with written notice of such satisfaction or waiver. Upon receipt of such notice, PacifiCare shall cause to be completed all of the requirements described in Sections X and XI below relating to payment to the State of the attorneys fees and other additional payments. Once all the requirements of Section IV, Items 1 through 4, above, have been satisfied by PacifiCare or waived by the State, and all of the payments to the State have been made pursuant to Sections X and XI, below, the settlement shall become effective and the releases provided for in Section VIII, below, shall be deemed given and effective with no further action required by any of the Parties.

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If the Stay of the Lawsuit ends or is lifted and the settlement has not become effective or if this Agreement is terminated, then the parties shall promptly submit an order agreed to as to form, if possible, as directed by the Court on March 4, 2003 on the motions for summary judgment heard in the Lawsuit

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on that day (together with a motion to have the Stay lifted if the Stay has not already been lifted) and the Parties shall be free to resume the Lawsuit proceedings, as well as any proceedings relating to the Other Lawsuits, Other Investigations, or the Visitation Letters listed in Section V, Item 2, and the rights and obligations set forth in this Agreement shall have no force or effect except as provided in: (i) Section III, above, regarding the extension of the trial date and any other deadlines in the Lawsuit for a period of time equal to the period from the date the MOU was executed to the end of the Stay; (ii) Section V, Item 3, above, regarding the tolling of statutes of limitation during the period the Stay is in effect; (iii) Sections X and XI, below, regarding the return to PacifiCare of payments made pursuant to those Sections; and (iv) Section XV, below.

VIII. MUTUAL RELEASES

Upon the effectiveness of the settlement, as described in Section VII, above, the Parties RELEASE, ACQUIT, and FOREVER DISCHARGE the Released Parties from all Released Claims.

IX. AGREED JUDGMENTS AND AGREED DISMISSALS

Upon the effectiveness of the settlement, the Parties shall take all steps necessary to ensure that the following events occur:

1. Entry of Agreed Judgment in the Lawsuit. If upon the effectiveness of the settlement, the State and PacifiCare are the only parties in the Lawsuit, then they will submit an "Agreed Final Judgment and Permanent Injunction" in the Lawsuit in the form attached hereto as Exhibit "E." If at that time, the State and PacifiCare are not the only parties in the Lawsuit then PacifiCare and State will submit a joint motion and agreed order severing the other parties and submit an "Agreed Final Judgment and Permanent Injunction" in the form attached hereto as Exhibit "E."

2. Entry of Agreed Dismissal in Other Lawsuits. The parties will enter an "Agreed Dismissal" in each of the following lawsuits in the form attached hereto as Exhibits "F," "G," and "H," respectively:

- (i) No. GN 103374, PacifiCare of Texas, Inc. vs. The State of Texas And John Cornyn, Attorney General, Individually And In His Official Capacity; in the district court of Travis County, Texas, 200th Judicial District;
- (ii) No. GN 103351, PacifiCare of Texas, Inc. vs. The State of Texas And John Cornyn, Attorney General, Individually And In His Official

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Capacity; in the district court of Travis County, Texas, 200th Judicial District; and

- (iii) No. 98-13971, The State of Texas vs. PacifiCare of Texas, Inc., in the district court of Travis County, Texas, 201st Judicial District.

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X. ATTORNEY'S FEES

PacifiCare shall pay \$1.25 million in attorneys fees to the OAG as follows: First, PacifiCare shall pay \$750,000 (the "Escrowed Attorney's Fees") upon execution of this Agreement to be held in trust in an interest bearing account (the "Trust Account") at Wells Fargo Bank Texas, N.A. ("Wells Fargo") subject to the Escrow Agreement, attached hereto as Exhibit "I" (the "Escrow Agreement"). If the requirements set forth in the Escrow Agreement for release of the Escrowed Attorney's Fees to the State are satisfied, the Escrowed Attorney's Fees, together with any remaining interest thereon after payment of escrow fees, shall be released by Wells Fargo to the State. Second, PacifiCare shall, within 3 business days following the release of the Escrowed Attorney's Fees by Wells Fargo to the State as described above, pay \$500,000 to the State by wire transfer in accordance with the wiring instructions to be provided by OAG. If the Stay of the Lawsuit ends or is lifted and the settlement has not become effective or if this Agreement is terminated, then the Escrowed Attorney's Fees, together with any remaining interest thereon after payment of escrow fees, shall be promptly returned to PacifiCare.

XI. ADDITIONAL PAYMENTS TO BE MADE BY PACIFICARE

PacifiCare shall pay \$1.5 million in administrative services reimbursement and \$1.5 million in administrative penalties to TDI as follows. First, PacifiCare shall pay \$1.7 million (the "Escrowed Administrative Payments") upon execution of this Agreement to be held in the Trust Account at Wells Fargo and subject to the Escrow Agreement. If the requirements set forth in the Escrow Agreement for the release of the Escrowed Administrative Payments to the State are satisfied, the Escrowed Administrative Payments, together with any remaining interest thereon after payment of escrow fees, shall be released by Wells Fargo to the State. Second, PacifiCare shall, within 3 business days following the release of the Escrowed Administrative Payments by Wells Fargo to the State as described above, pay \$1.3 million to the State by wire transfer in accordance with the wiring instructions to be provided by OAG. If the Stay of the Lawsuit ends or is lifted and the settlement has not become effective or if this Agreement is terminated, then the Escrowed Administrative Payments, together with any remaining interest thereon after payment of escrow fees, shall be promptly returned to PacifiCare.

XII. SEVERANCE OF INTERVENORS

This Agreement contemplates the possibility that some or all Intervenor in the Lawsuit will agree to and participate in this Agreement. Each Intervenor who desires to participate in

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this Agreement shall execute the Agreement to Stay of the Lawsuit in the form attached hereto as Exhibit "J".

In the event any one or more of the Intervenor in the Lawsuit does not execute Exhibit "J" by August 15, 2003, then the State and PacifiCare agree to seek a severance of those non-settling Intervenor from the Lawsuit. This Motion for Severance shall be in the form attached hereto as Exhibit "K".

XIII. BARGAINED FOR CONSIDERATION

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The Parties recognize that certain damages cannot be determined with any precise degree of accuracy. The Parties also recognize that some damages or elements of damages may not have manifested themselves as of the date of this Agreement, and hence may be unknown to the Parties at this time. Recognizing that, the Parties hereby bargain to include all such known and unknown damages and elements of damages within the mutual releases provided for in Section VIII, above.

XIV. CLOSING; SIGNING AND FILING OF DOCUMENTS

If necessary, the Parties agree to conduct a "closing" as soon as reasonably possible following the execution of this Agreement and another "closing" as soon as reasonably possible following the effectiveness of the settlement. The purpose of the closings shall be to sign the various exhibits to this Agreement so they may be filed with the appropriate courts and delivered to the applicable parties. The closings shall occur at a time and place mutually agreed upon by the parties to this Agreement.

XV. NO ADMISSION OF LIABILITY

The Parties acknowledge and agree that the agreements and transfer of consideration contained in this Agreement are to compromise and settle disputed claims, avoid the expense, uncertainties and hazards of litigation, and to buy peace. It is further expressly understood and agreed that no payments made or releases or other consideration given shall be construed as an admission of liability or wrongdoing of any nature whatsoever, because all alleged liability and wrongdoing has been expressly denied. The Parties further acknowledge that Rule 408 of the Texas Rules of Evidence applies to this Agreement.

XVI MISCELLANEOUS

The Parties agree to cooperate fully and to execute any and all supplementary documents consistent with the terms and conditions of this Agreement, and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms, conditions and intent of this Agreement. The State further agrees that neither the State nor its agents shall take any actions to interfere with PacifiCare's efforts to reach compromises with the MSM Bankruptcy trustee and the HSW Bankruptcy trustee and the HPN

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providers, nor shall the State nor its agents solicit or encourage creditors or any other interested parties to object to or impede such compromises. Nothing herein shall preclude agreements to settle or acquire the beneficial interests and rights in claims of providers of services to health plan members assigned to HSW, MSM, or HPN.

Further, it is expressly understood and agreed that the terms of this document are contractual and not merely recitals. This Agreement contains the entire understanding of the Parties and is a fully integrated agreement with respect to the subject matter herein, except with respect to writings made prior to the execution of this Agreement which were expressly stated to survive the subsequent execution of this Agreement. This Agreement shall neither create any rights in any third parties who have not entered into this Agreement, nor shall this Agreement entitle any such third party to enforce any rights or obligations

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that may be possessed by such third party. The Parties intend that this Agreement will be binding upon each of them. This Agreement will be construed and enforced under the laws of the State of Texas. Each party to this Agreement has reviewed and revised, or had the opportunity to review and revise, this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

This Agreement may be amended or modified, and any of the terms, covenants, or conditions hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term or covenant contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a waiver of any other provision, term or covenant of this Agreement.

In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their attorneys. The Parties further represent that the terms of this Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by such party.

This Agreement may be executed in multiple originals.

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EXECUTED in multiple originals on the date first written above.

/s/ George Becker

GEORGE BECKER
President, PacifiCare of Texas, Inc.

/s/ Jose Montemayor

JOSE MONTEMAYOR
Commissioner, Department of Insurance

/s/ Barry R. McBee

BARRY R. McBEE
First Assistant Attorney General

/s/ Paul D. Carmona

PAUL D. CARMONA
Acting Deputy Attorney General for Litigation

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EXHIBITS

- A. Joint Motion and Agreed Order to Stay in Consolidated Lawsuit.
- B. Agreed Motion and Order to Stay - Cause No. GN -103374, PacifiCare of Texas, Inc. v. The State of Texas and John Cornyn, Attorney General, Individually and In His Official Capacity.
- C. Agreed Motion and Order to Stay - Cause No. GN-103351, PacifiCare of Texas, Inc. v. The State of Texas and John Cornyn, Attorney General, Individually and In His Official Capacity.
- D. Agreed Motion and Order to Stay - Cause No. 98-13971; The State of Texas v. PacifiCare of Texas, Inc.
- E. Agreed Final Judgment and Permanent Injunction in Consolidated Lawsuit.
- F. Agreed Motion and Order of Dismissal of Cause No. GN-103374, PacifiCare of Texas, Inc. v. The State of Texas and John Cornyn, Attorney General, Individually and In His Official Capacity.
- G. Agreed Motion and Order of Dismissal of Cause No. GN-103351, PacifiCare of Texas, Inc. v. The State of Texas and John Cornyn, Attorney General, Individually and In His Official Capacity.
- H. Agreed Motion and Order of Dismissal of Case No. 98-13971; The State of Texas v. PacifiCare of Texas, Inc.
- I. Escrow Agreement and Notice of Satisfaction of Waiver of Conditions to Settlement.
- J. Intervenor's Agreement to Stay - Consolidated Lawsuit.
- K. Motion for Severance - Consolidated Lawsuit.

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FY16 Fund 541 State Forfeiture Budget

Line Item	Budget	
Chapter 59 projected Fee Income	\$312,948.00	
Projected interest income	\$300.00	
Reimbursements	\$0.00	
Funds at beginning balance as of 09/01/2015	\$283,379.00	
Total Projected Assets	\$596,627.00	
1 EQUIPMENT/Vehicles/Maintenance	82,500.00	
County Auto Maintenance	2590	\$10,000.00
Special Equipment Maintenance	2650	\$20,000.00
Maintenance	2670	\$20,000.00
Furniture & Equipment	8410	\$10,000.00
Vehicles	8620	\$2,500.00
2 SUPPLIES/Office Supplies/Phone/Pagers	167,500.00	
Computer Hardware less than \$500	2093	\$7,500.00
Computer Software	2095	\$5,000.00
Office Supplies	2160	\$10,000.00
Postage	2170	\$3,000.00
Printing / Imaging Expense	2180	\$3,000.00
Publications	2190	\$5,000.00
Books & Supplements	2250	\$2,000.00
Cellular Phones	2213	\$117,000.00
Computer Hardware	8630	\$15,000.00
3 TRAVEL/InState/OutState	85,000.00	
Mileage Reimbursement	1080	\$40,000.00
Conference Travel	4210	\$50,000.00
Fuel	3095	\$5,000.00
4 TRAINING/Fees/Material	75,000.00	
Conference/Staff Development E	2050	\$12,500.00
License & Permit Fees	2150	\$10,000.00
Training Fees	2460	\$12,500.00
Registration Fees - Training	2462	\$35,000.00
Training Supplies	2960	\$5,000.00
5 INVESTIGATIONS/Contracts/Buy Money	20,000.00	
Weapons - Guns, Rifles	2098	\$5,000.00
Ammunition/Explosives	2510	\$8,000.00
Law Enforcement Badges	2530	\$2,000.00
Other Contractual Services	6620	\$5,000.00
6 MISCELLANEOUS FEES/Court/Filing/Audit	55,000.00	
Mediators	6135	\$5,000.00
Expert Testimony	6140	\$10,000.00
Trial Expense Other Court Cost	6170	\$20,000.00
Other Professional Fees	5590	\$10,000.00
7 OTHER	87,900.00	
Advertising	2010	\$2,000.00
Dues & Subscriptions	2080	\$70,000.00
Subscriptions	2082	\$5,000.00
Other Miscellaneous	5498	\$10,000.00
Total Expenses	562,000.00	
Total Projected Assets	596,627.00	
Total Projected Expenses	562,000.00	
Difference	34,627.00	

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
The Honorable John Otto, House Appropriations Committee
The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Dallas County District Attorney's Office

The Honorable Susan Hawk, Dallas County District Attorney

Dallas County Auditor's Office

Mr. Darryl D. Thomas, Dallas County Auditor



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