Audit Report

Department of Budget and Management
Office of Personnel Services and Benefits

February 2009

OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

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February 19, 2009

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee
Senator Verna L. Jones, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Department of Budget and Management (DBM) – Office of Personnel Services and Benefits (OPSB) for the period beginning November 17, 2004 and ending November 15, 2007. OPSB directs the development of State personnel policies, administers the health care benefit programs for State employees and retirees, and is responsible for other programs, including salary administration and classification, recruitment and examination, and employee relations.

Our audit disclosed a number of deficiencies in the administration of the contract with the pharmacy benefit manager (PBM) for the State's prescription drug benefit program. Specifically, OPSB did not adequately ensure that the State obtained the required contract discounts from the former PBM for certain generic drugs obtained by enrollees. This resulted in potential overpayments totaling as much as $10.1 million during plan years 2005 and 2006. Our audit also disclosed that the former PBM did not provide OPSB approximately $700,000 in required drug manufacturer rebates for plan year 2006. OPSB also did not always timely review and refer to appropriate legal authorities cases of prescription narcotic drug abuse involving plan participants.

In addition, although a multi-state review conducted by various states' Attorneys General (which excluded Maryland's state employee health plans) found that OPSB's former PBM had engaged in improper "drug switching" with respect to the management of other insurance plans, our audit disclosed that OPSB had not taken any actions to determine whether such activities occurred while the former PBM was managing Maryland's employee prescription drug plan. From the resultant settlement and consent decree, the former PBM apportioned payments totaling $38.5 million among certain jurisdictions, of which Maryland received $2.4 million. If similar actions occurred while administering the State's plan, the State, and employees participating in the plan, may have unnecessarily incurred significantly higher costs.

We also noted several deficiencies pertaining to OPSB's monitoring of health benefits and related contracts. After we brought this issue to its attention, OPSB recovered approximately $534,000 from its third-party administrator for improper payments related to apparent fraudulent medical claims that were submitted by certain State employees. Furthermore, OPSB did not adequately follow up and resolve certain health care claims paid by its various plan administrators that OPSB subsequently identified as potentially ineligible. Also, OPSB did not timely obtain complete audit reports of its various health benefit plan administrators.

Finally, our audit disclosed several internal control and information system security weaknesses. For example, OPSB had not established adequate monitoring procedures for certain statewide employee leave programs.

DBM's response, on behalf of OPSB, to this audit is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during our audit by OPSB.

Respectfully submitted,

Bruce A. Myers, CPA
Legislative Auditor

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* **Denotes item repeated in full or part from preceding audit report**

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Executive Summary

Legislative Audit Report on Department of Budget and Management (DBM)
Office of Personnel Services and Benefits (OPSB)
February 2009

- **OPSB did not adequately administer the contract with its former pharmacy benefit manager (PBM) for the State's prescription drug benefit program. Specifically, OPSB did not ensure, on a timely basis, that the required contract discounts were obtained for certain drugs. This resulted in potential overpayments for plan years 2005 and 2006 totaling as much as $10.1 million. Furthermore, OPSB did not receive from the former PBM required drug manufacturer rebates totaling approximately $700,000 for plan year 2006.**

  OPSB should ensure, on a timely basis, that contractually-required discounts and rebates are obtained for all drugs obtained under the PBM contract and should recover any overpayments and rebates due to the State.

- **OPSB had not taken any actions to determine whether its former PBM engaged in "drug switching" activities within the State's prescription drug plan and, if so, whether the State incurred significantly higher and unnecessary costs.**

  As a result of a legal settlement related to deceptive trade activities (that is, "drug switching") engaged in by OPSB's former PBM pertaining to other insurance plans, OPSB should consult with the Attorney General to procure an audit of the former PBM to determine if such activities occurred within the State's prescription drug plan. OPSB should also determine through the audit process whether the State incurred additional related costs and, if so, determine whether such costs can be pursued for reimbursement.

- **OPSB did not timely review, and refer to State legal authorities as required by Executive Order, cases of possible abuse of prescription narcotic drugs by program participants.**

  OPSB should report all instances of possible prescription narcotic drug abuse to the Attorney General and the Governor's Chief Counsel and, where appropriate, take actions (for example, terminate employee eligibility to participate in the prescription program) to help stop such abuse.

- **Until we brought this issue to its attention, OPSB did not pursue recovery from a third-party plan administrator of health care benefit claim payments totaling approximately $534,000 related to possible fraudulent medical claims submitted by certain State employees. Although these cases were referred to the Office of the Attorney General – Criminal and Insurance Fraud Divisions, they were not referred to the Governor's Chief Counsel as required by Executive Order.**

  OPSB should refer these cases to the Governor's Chief Counsel as required.

- **OPSB did not adequately follow-up and resolve certain health care claim payments subsequently identified by OPSB as potentially ineligible. For example, OPSB did not investigate and conclude on certain claims totaling approximately $3.7 million that it previously identified as potentially ineligible.**

  OPSB should establish appropriate procedures to ensure that claim payments are being made only for eligible individuals and take appropriate action to recover all overpayments.

- **OPSB did not timely receive final reports from a private firm hired to audit the State's health plan benefit administrators.**

  OPSB should take appropriate action to ensure that such audits are completed and the related final reports received in a timely manner.

- **Certain deficiencies were noted in the procurement of four of five contracts tested. These deficiencies primarily related to the handling of the vendor proposals and documenting the processes used to evaluate and rank proposals received for the State's current prescription drug and mental health services contracts.**

  DBM, on behalf of OPSB, should improve its documentation procedures related to the receipt and evaluation of vendor procurement proposals.

- **Deficiencies in internal controls were noted with regard to information system security, cash receipts, and employee leave programs.**

  OPSB should improve its internal controls as recommended.

Background Information

Agency Responsibilities

The Department of Budget and Management – Office of Personnel Services and Benefits (OPSB) directs the development of State personnel policies. It administers the health care benefit programs as well as the flexible benefits programs for State employees and retirees. OPSB is also responsible for a variety of other programs, including salary administration and classification, recruitment and examination, and employee relations.

Health Benefits Administration

The State obtains health care coverage for its employees and retirees (including spouses and dependents) through two major health providers, which administer both preferred provider organization (PPO) and point-of-service (POS) plans, and through a third provider that administers a POS plan. The State also provides coverage through three health maintenance organizations (HMOs). The current contracts for the health plans cover the period from January 1, 2005 to June 30, 2009.

The State also provides prescription drug and mental health benefits through two other administrators. The current contracts for these services became effective on July 1, 2007 and 2006 respectively and, including renewals, continue through June 30, 2011. Employees and retirees enrolled in the PPO and POS plans are automatically enrolled in the separately administered mental health plan; the HMO plans include mental health services.

The State directly pays claims for the PPO, prescription drug, and mental health plans as well as for certain POS services (such as hospital care). It self-funds these plans and accepts the risk for all medical costs. For the remaining POS services and all HMO services, the State is fully insured and pays a premium (such as a capitation fee) for medical costs. Total health benefit payments have increased from approximately $890 million for fiscal year 2005 to approximately $993 million for fiscal year 2008, representing an increase of 11.5 percent. Health care enrollment and costs paid in fiscal year 2008 for plan participants, which include State employees, retirees, dependents, direct pay participants, and satellite participants (such as covered employees of local governments) were as summarized in the table on the next page.

Plan Type	Enrollment (as of 6/30/08)	Claims Paid	Premiums and Administrative Expenses	Total Payments
PPO	57,553	$321,515,365	$ 19,759,570	$341,274,935
POS	34,219	184,365,747	23,213,506	207,579,253
HMO	18,607	N/A	123,325,047	123,325,047
Prescription Drug	104,714	303,107,965	4,321,779	307,429,744
Mental Health	91,772	10,488,710	2,607,185	13,095,895
Totals		$819,477,787	$173,227,087	$992,704,874

Source: OPSB records (unaudited)

This table summarizes the number of plan participants in the State of Maryland's health benefits program and the related costs for fiscal year 2008.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the 14 findings contained in our preceding audit report dated October 27, 2005. We determined that OPSB satisfactorily addressed 9 of these findings. The remaining 5 findings are repeated in this report.

Findings and Recommendations

Prescription Drug Program

Finding 1
The Office of Personnel Services and Benefits (OPSB) did not ensure, on a timely basis, that it received all required contractual drug discounts from its former pharmacy benefit manager (PBM) for certain drugs used by the State's plan members. Moreover, the former PBM did not provide to OPSB all required discounts and, as a result, the State may have paid as much as $10.1 million more than required for plan years 2005 and 2006.

Analysis

OPSB did not ensure, on a timely basis, that it received all required contractual drug discounts from its former PBM, which administered the State's prescription drug program from January 2001 to June 2007. Moreover, the former PBM did not provide to OPSB all required discounts for certain drugs used by State plan members. Specifically, the State's prescription drug contract for the abbreviated 2005 plan year[1] (January 2005 to June 2005) provided for three levels of discounts depending on whether the drug was generic, brand, or multi-source brand. A contract modification executed for the 2006 plan year changed the basis for the discounts depending on delivery method (retail, mail, or specialty pharmacy) and type of drug (brand name or generic).

In March 2008, the firm contracted by OPSB to audit the former PBM, issued a draft audit report stating that, during the period from January 2005 to June 2006, the PBM did not meet the contractual discount requirements. For example, the report stated that, for the 2005 and 2006 plan years, the State received a 46.7 and 48.7 percent discount, respectively, from the average wholesale prices on generic drugs, while the contract required that the State receive a 56 and 50 percent discount during the respective plan years. As a result, the State overpaid for these prescription drugs. Although the firm did not calculate and disclose in its report the amount of such potential overpayments, after we brought this matter to OPSB's attention, the firm advised OPSB that it believed the State made related overpayments totaling $10.1 million. (This issue is further discussed in Finding 9 of this report.) As of September 16, 2008, OPSB had not billed and recovered from the PBM any related overpayments. We were advised by OPSB management that efforts to recover the overpayments would not be initiated until it accepts the firm's audit report as final. In view of the lag time between the plan years and the availability of the audit results, OPSB should establish a more

[1] Prior to January 1, 2005, a plan year was a calendar year (that is, plan year 2004 corresponded to calendar year 2004). After that date, the plan year coincided with the State's fiscal year, which ends June 30th.

timely process to ensure all required discounts are received (such as using internal auditors, or obtaining and reviewing detailed reports from the PBM).

A similar finding (related to other periods) was commented upon in our preceding audit report dated October 27, 2005. Subsequent to the issuance of that report, OPSB, in conjunction with its audit firm, determined that the PBM had not provided the agreed-upon contractual discounts for plan years 2001 through 2004. On April 14, 2006, OPSB filed a claim against the firm to recover related overpayments totaling $14.7 million. OPSB and the PBM subsequently entered into a related settlement agreement and, in December 2007, the PBM paid OPSB $4.5 million to settle the matter. The settlement agreement allows OPSB to take future legal action against the PBM if, for example, the PBM were to engage in criminal activities affecting State of Maryland health care plans.

Recommendation 1
We recommend that OPSB

a. **ensure, on a timely basis, that required contractual discounts are obtained for prescription drugs provided to plan members (repeat);**
b. **take immediate action to recover payments made in excess of the amount required in the contract for prescription drugs provided to plan members for plan years 2005 and 2006; and**
c. **obtain prescription drug discount information from the former contract auditor applicable to plan year 2007 and determine if any related overpayments were made.**

Finding 2
OPSB's former pharmacy benefit manager (PBM) did not provide the State approximately $700,000 in required drug manufacturer rebates for the 2006 plan year.

Analysis
OPSB's former PBM did not provide the State approximately $700,000 in required manufacturer rebates related to drugs purchased by plan members for plan year 2006. Specifically, the State's prescription drug contract, as amended for the 2006 plan year, stipulated that the State was to receive rebates for each mail prescription and retail prescription, and a guaranteed minimum rebate for each prescription filled. Our review disclosed that OPSB received $6.6 million in rebates from the PBM for plan year 2006 based only on the individual mail and retail prescriptions, and not based on the guaranteed minimum rebate for each prescription filled. We determined that, under the required aggregated rebate formula, the State should have received from the PBM drug manufacturer rebates totaling $7.3 million, or an additional $700,000.

In January 2008, OPSB's contract auditor incorrectly reported that the former PBM had accurately calculated and provided to the State all required drug rebates for plan years 2005 and 2006. We were advised that OPSB did not monitor this aspect of the auditor's work. However, in March 2008, we advised OPSB's management that its contract auditor had failed to take into consideration the aforementioned modification to OPSB's contract for the 2006 plan year and, as a result, the contract auditor incorrectly concluded as to the accuracy of the drug rebates provided to the State by the former PBM. OPSB's management and the contract auditor agreed with our conclusions and, on June 19, 2008, revised the audit report to disclose the $700,000 rebate underpayments. OPSB subsequently issued a billing to the PBM on September 15, 2008 to recover the amount due; however, as of December 1, 2008, OPSB had not received payment.

The State prescription drug benefit contract with the former PBM was revised beginning with plan year 2007 to require that all drug manufacturer rebates be passed through to the State. The contract with the new PBM is similarly structured for plan years 2008 and thereafter.

Recommendation 2
We recommend that OPSB take appropriate follow-up action to recover the aforementioned $700,000 and ensure, in the future, that it receives all required manufacturer drug rebates.

Finding 3
OPSB had not taken any action to address concerns related to improper drug switching by OPSB's former pharmacy benefit manager (PBM).

Analysis
OPSB had not taken any action to determine whether its former PBM, which was found to have engaged in improper drug switching activities in connection with private insurance plans it administered, may have also engaged in these activities with respect to Maryland's employee prescription drug plan. This activity could lead to higher costs.

The Attorneys General of 28 states and the District of Columbia performed a review (which was led by the states of Maryland and Illinois) of a drug interchange program (referred to as "drug switching") administered by OPSB's former PBM. As a result of this review, on February 14, 2008, the Circuit Court of Baltimore City issued a Consent Decree to the PBM and the aforementioned jurisdictions that required, in part, that the PBM pay $38.5 million to be apportioned among the participating jurisdictions to be used for specific purposes, such as to benefit low-income, disabled, or elderly consumers of prescription medications and to reimburse the Attorneys General for related costs. In

exchange, each participant released the PBM from any civil claims, damages or penalties, applicable to the period from January 1, 1997 through February 14, 2008, which could have been asserted under the consumer protection statutes. These settlements excluded claims arising from Medicaid fraud or abuse and claims from the participating jurisdictions' employee health care plans (including Maryland's prescription drug program). We were advised by the Maryland Office of the Attorney General (OAG) that it received $2.4 million as Maryland's share of the settlement with regard to these insurance plans.

Based on the results of the initial multi-jurisdictional review, the OAG filed a complaint under the Consumer Protection Act alleging that the PBM had engaged in deceptive trade practices related to other insurance plans located in Maryland. The complaint specifically alleged that the PBM had encouraged physicians to change brand name prescriptions originally prescribed to their patients to different brand names under the pretense that such changes would enable the patients and their respective health plans to realize cost savings. The complaint further alleged, however, that such changes enabled the PBM to collect additional manufacturer drug rebate revenues while increasing patient co-pays and prescription claim costs to the patients' health benefit plans.

In our opinion, the aforementioned legal settlement raises concerns that improper drug switching may have occurred with prescriptions issued to participants in Maryland's employee prescription drug plan while managed by OPSB's former PBM, potentially resulting in higher costs to the State. However, our review disclosed that OPSB had not taken any action to determine if improper drug switching occurred within this plan. We were advised by OPSB management and its legal counsel that audits conducted of the former PBM for plan years 2007 and earlier have not disclosed any instances of inappropriate drug switching; however, we were advised by the firm hired by OPSB to audit its former PBM that it had not performed any procedures to determine whether the former PBM had engaged in improper drug switching. In addition, OPSB is currently under contract with a firm to provide consulting and actuarial services for the state's benefit programs, and that contract requires the establishment of a Pharmacy Directorship to assist the State in controlling costs that would include a review for improper drug switching. As of June 30, 2008, such a function had not been established and, once established, this review would not include the period when the former PBM was under contract to OPSB (that is, January 2001 to June 2007).

Recommendation 3

We recommend that OPSB

a. in consultation with the OAG, procure an audit of the drug interchange programs of OPSB's former PBM to determine if any improper drug interchanges occurred during plan years 2005 and thereafter (that is, subsequent to the settlement agreement referred to in finding 1); and

b. take appropriate action to obtain reimbursement of any such additional costs identified.

Finding 4
OPSB did not timely review and refer cases of possible prescription narcotic drug abuse by participants to appropriate State legal authorities.

Analysis
OPSB did not adequately review and refer to the Office of the Attorney General – Criminal Division (OAG-CD) and the Governor's Chief Counsel, as required by Executive Order, all cases of possible prescription narcotic[2] drug abuse involving program participants. The Executive Order requires such a referral for any instance of possible criminal or unethical conduct by a State employee.

Specifically, as of October 28, 2008, OPSB had not reviewed the report, which was provided by the PBM, of potential prescription narcotic drug abuse cases applicable to the period from April 1, 2008 through June 30, 2008. This report, which was received by OPSB in July 2008, included 91 cases involving prescriptions for narcotic drugs totaling $204,053. For example, one case involved a plan participant for whom the PBM had paid 58 claims totaling $15,184 during the aforementioned period and for which the related prescriptions were written by 6 physicians and filled by 4 different pharmacies. Furthermore, OPSB lacked documentation to substantiate its assertions that it had received and reviewed such reports provided by the former PBM for plan year 2007; we noted that OPSB did not make any related case referrals to the OAG-CD and Governor's Chief Counsel for that plan year. We also noted that an additional nine employees identified on the reports for the October 1, 2007 to March 31, 2008 period, with claims for prescription narcotic drugs totaling $23,475, were not referred as required, as OPSB management advised that it did not think fraud was committed. Rather, we were advised that OPSB chose to mail letters to the employees stating that they would be restricted to using one prescribing physician and pharmacy. We believe that OPSB should consider taking additional actions such as terminating employee eligibility to participate in the prescription program. Furthermore, the Executive Order requires that all instances of possible criminal or unethical conduct be reported.

Furthermore, from December 2006 to March 2007, OPSB referred 91 cases of possible prescription drug abuse totaling $437,468 to OAG-CD related to claims processed by the former PBM during plan years 2001 through 2006. However, as of October 22, 2008, OPSB had still not referred these 91 cases to the Governor's

[2] "Narcotic" in this context includes opium and its derivatives, morphine, and similar synthetic compounds.

Chief Counsel as required. We were advised by OAG-CD that, as of July 24, 2008, these 91 cases were still pending.

Effective July 1, 2007, the current PBM provides OPSB with quarterly summary reports of suspicious prescription claims received and processed, which includes claims for prescribed narcotic drug use not consistent with the participant's medical condition, or the use of multiple physicians and/or pharmacies to obtain and fill similar prescriptions. OPSB subsequently reviews each case with clinical staff to determine whether the case represents a legitimate use of prescription narcotic medications by the plan participant. Cases that OPSB determines to represent potential narcotic drug abuse are to be referred to OAG-CD and the Governor's Chief Counsel by OPSB's Assistant Attorney General in accordance with an Executive order that requires such referral for any instance of possible criminal or unethical conduct by a State employee.

An Executive Order dated February 14, 2007 requires that all departments and agencies of the State immediately report any instance of possible criminal or unethical conduct by an employee or contractor of the State to the Governor's Chief Counsel and to the OAG. A similar Executive Order was previously issued on April 28, 2003. Additionally, such abuse might also be subject to the law enforcement reporting requirements of an Executive Order dated April 1, 1991, entitled "State of Maryland Substance Abuse Policy" which applies to employees suspected of substance abuse at the workplace.

Recommendation 4
We recommend that OPSB

a. immediately review and refer to the OAG-CD and/or the Governor's Chief Counsel all cases of potential prescription drug abuse dating back to plan year 2001 as applicable;
b. timely review all future reports of such cases, document these reviews, and refer all suspected cases to the OAG-CD and the Governor's Chief Counsel, and to law enforcement authority, if deemed appropriate; and
c. consider taking additional action against employees such as terminating employee eligibility to participate in the prescription program.

Finding 5
The Maryland Rx Program has not been established as required by State law.

Analysis
State law, effective July 1, 2005, required that DBM establish a Maryland Rx Program to achieve savings on the cost of prescription drugs for the State employee and retiree health benefits program, and for any local government or

other entity that satisfies the condition of participation established by DBM. While proposed regulations were recently submitted, the Program had not been established as of November 24, 2008.

The law defined the Program as a purchasing pool, and stipulated that the Program seek savings—for all participants, including the State—through a preferred list of covered prescription drugs, rebates from drug manufacturers, negotiated discounts, and other cost-saving measures. The law further provided that DBM may charge administrative fees to participating entities to offset administrative costs and should adopt regulations to implement the Program.

Although DBM expected to enter into a new pharmacy benefits manager (PBM) contract beginning July 1, 2006, a bid protest from the incumbent PBM caused DBM to extend the existing contract for an additional year. Since the law provided that the Program would not apply to any contracts for the purchase of prescription drugs entered into before January 2006, the bid protest and aforementioned contract extension delayed the implementation of the Maryland Rx Program. As a result, the State has yet to realize any of the anticipated cost savings. In that regard, the Department of Legislative Services stated in the fiscal note to the originating legislation that, while the savings to the State could not be readily estimated, there was a potential for "significant prescription drug expenditure reductions" and that a similar program established by the state of Wisconsin realized a savings of $25 million in its first year.

As of November 3, 2008, the Joint Committee on Administrative, Executive and Legislative Review (AELR) advised the Secretary of DBM that a legal opinion rendered by the Office of the Attorney General stated that DBM did not have statutory authority to include in the Program private employers as qualified participants as had been proposed by DBM in the regulations originally submitted. We were subsequently advised by DBM that, on November 24, 2008, it submitted revised regulations to the AELR. These revised regulations were subsequently published in the Maryland Register on December 19, 2008.

Recommendation 5
We recommend that DBM continue its efforts to establish and implement the Maryland Rx Program as required by State law.

Payment of Apparent Fraudulent Health Care Claims

Finding 6
OPSB did not adequately pursue recovery for claims paid totaling approximately $534,000 related to apparent fraudulent medical claims submitted by certain State employees.

Analysis
Until this matter was brought to OPSB's attention, it did not pursue recovery from its third-party administrator (TPA) for improper payments totaling approximately $534,000. These payments related to apparent fraudulent medical claims that were submitted by certain State employees.

We were advised by OPSB management that, in August 2007, the TPA who made the aforementioned payments acknowledged to OPSB that its claims processing system failed to flag the claims as being for health care services rendered by out-of-network providers. As a result, the TPA made the related claim payments to the plan participants without first investigating the claims as required by the TPA's internal operating policies for payments to out-of-network providers. Despite the TPA's errors, as of September 16, 2008, OPSB had not requested reimbursement of the related $534,000 from the TPA. However, OPSB did attempt to collect from the employees for the erroneous claim payments.

The aforementioned payments related to 21 out-of-network claims submitted to the TPA for reimbursement by four State employees. The employees claimed that the related charges were incurred when the employees (and other family members) received various health care services from out-of-network providers (while traveling outside the United States) during the period from January 2000 through December 2005.

The TPA subsequently hired an investigation firm to conduct on-site visits at the facilities where the employees claimed to have received the related services. In its report to the TPA, the firm concluded that the claims in question apparently were fraudulent noting, for example, that the facilities could not provide to the firm verifiable medical records to support that any of the claimed services had been rendered.

As a result of conclusions stated in the firm's report, OPSB terminated, effective August 31, 2007, the health care benefits to three of the aforementioned State employees (the other employee had previously been terminated from State employment in July 2006), and sent collection notices in an attempt to recover the related claim payments directly from the employees. As of July 1, 2008, three of the four employees were still employed by the State. We were advised by OPSB's legal counsel that American Health Insurance Portability and

Accountability (HIPAA) regulations do not permit the State to use "protected health information" (such as the erroneous health care claims) as a basis for "employment-related actions."

On September 14, 2007, three of the cases were referred to the OAG's Criminal and Insurance Fraud Divisions. The remaining case was referred to the OAG on December 10, 2007. As of October 20, 2008, OPSB had not, however, referred these matters to the Governor's Chief Counsel as required by an Executive Order dated February 14, 2007. Moreover, although the TPA had advised OPSB that it had put into place certain procedural and system modifications to prevent future payments of suspected fraudulent claims, OPSB had also not verified that the TPA had actually implemented the required modifications.

OPSB advised that full reimbursement was obtained from the TPA on January 21, 2009.

Recommendation 6
We recommend that OPSB

a. refer these cases to the Governor's Chief Counsel as required, and
b. verify that the TPA has implemented the appropriate procedural and system modifications.

Eligibility of Claimants

Finding 7
OPSB did not adequately follow up and resolve certain claim payments identified as potentially ineligible.

Analysis
OPSB did not adequately follow up and resolve certain claim payments that it identified as potentially ineligible. During the claim payment process, plan administrators are responsible for initially verifying participant eligibility by comparing submitted claims to related participant eligibility data provided by OPSB. After reimbursing the plan administrators for the amount of the claims paid, OPSB reviews the related claims, using an automated process, to ensure that payments were only made for eligible individuals. Payments could be made by the plan administrators for ineligible claims for a number of reasons. For example, OPSB generally only provided plan administrators with updated participant eligibility data on a weekly, rather than daily, basis; as such, the eligibility data available when plan administrators processed claim payments was not always the most current. Our review disclosed the following conditions:

- OPSB did not conclude on participant eligibility for all claims identified as potentially ineligible. That is, based on its review of available documentation including participant eligibility data, OPSB initially identified the paid claims as valid or as potentially ineligible. OPSB then reviewed certain of the potentially ineligible claims in an attempt to resolve these claims. During plan years 2005 through 2008, OPSB reimbursed plan administrators approximately $2.7 billion for health care claims, of which $146 million (5.4 percent) was preliminarily identified by OPSB as potentially ineligible. OPSB subsequently reviewed potentially ineligible claim payments totaling approximately $46.3 million, but ultimately did not conclude on the eligibility of claims totaling $3.7 million (or 8 percent of those claims initially reviewed). Furthermore, OPSB did not perform any follow-up review to ensure the eligibility of the remaining $100 million in claims identified as potentially ineligible. OPSB advised us that additional staff resources and greater cooperation from other State agencies would be required in order for it to expand its reviews of claim payments identified as potentially ineligible.

- Of the $3.7 million where OPSB had not reached a conclusion on eligibility, we reviewed 1,057 such claims totaling $883,112 and determined that the applicable plan participants for 47 of these claims totaling $131,505 were ineligible to receive plan benefits. For example, 37 claims applicable to one plan participant were not eligible for program benefit payments because the participant had not paid the State for certain health care premiums related to the claim period. We discussed our review results with OPSB who concurred with our conclusion.

- Potentially ineligible claims reviewed by OPSB were not selected on the basis of materiality. For example, for one plan administrator OPSB reviewed 35,000 potentially ineligible claims processed in plan year 2007 totaling $5 million, or 34 percent of the 102,893 potentially ineligible claims paid by the plan administrator. However, had OPSB included in its review potentially ineligible claims of only $100 or greater, OPSB could have reduced the number of claims reviewed to 19,500 claims, yet increased the dollar value of claims reviewed to $13 million (83 percent).

- As of December 8, 2008, OPSB had not implemented certain recommendations to improve its claims eligibility verification procedures that were made by an audit firm contracted by OPSB in April 2007. In this regard, to reduce the volume of valid claims that were incorrectly rejected for payment, the firm recommended that OPSB determine the cause of improper claim rejections. The firm also recommended that OPSB enhance its automated benefits system by including employee insurance premium payments related to COBRA and retroactive changes in employee health plan

coverage on the system. Additional recommendations included establishing formal claim verification procedures and a claims sampling methodology that considers the amount of individual claim payments.

Similar conditions were commented upon in our four preceding audit reports dating back to August 1997.

Recommendation 7
We recommend that OPSB

a. investigate and attempt to resolve the factors that result in the plan administrators paying claims for ineligible plan participants (repeat);
b. review all claims identified as potentially ineligible, or at a minimum, review such claims based on a specified materiality level (repeat);
c. adequately resolve all claim payments reviewed that it identifies as potentially ineligible;
d. seek recovery of claim payments made for ineligible health care plan participants, including the aforementioned claims totaling $131,505 (repeat); and
e. address other operational deficiencies identified by the audit firm contracted by OPSB.

Audits of Health Plan Administrators

Background
In March 2007, OPSB entered into a $3.4 million contract with a private firm to conduct annual audits of the administrators of the State's health insurance (including HMOs), prescription drug, dental benefit, and mental health benefit plans and the flexible spending accounts administrator for plan years 2005 to 2010. The auditor was required to audit the administrative procedures (such as claims processing and customer services requirements) and performance guarantees for all plans. In addition, the auditor was required to perform audits of claims processing for all plans, except for HMOs for which the State pays a premium (such as a capitation fee) for enrollees' medical costs.

OPSB relied upon this audit process to ensure that claims payments, which according to OPSB records totaled approximately $761.7 million during fiscal year 2007 and approximately $819.5 million during fiscal year 2008, were processed in accordance with the health insurance contract provisions (such as timely and accurately). Based on the final annual audit reports, OPSB is to assess agreed-upon remedies (assessments against the plan administrators' administrative fee) for failure to comply with the performance guarantees contained in the contracts, including claims processing accuracy.

Finding 8
OPSB did not receive timely and complete audit reports related to the State's health benefit plan administrators, as required.

Analysis

OPSB did not receive timely and complete audit reports related to the State's health benefit plan administrators, as required. Specifically, as of June 30, 2008, OPSB had not received final audit reports for any of the State's 13 health benefit plans applicable to the years ended June 30, 2005 and 2006 as required by its related audit contract. Such reports were to have been received by OPSB no later than January 31, 2008 and can result in recoveries for improper payments or assessments against the plan administrators for not complying with performance guarantees. For the 2004 plan year, OPSB recovered $349,248 based on the audits performed.

Furthermore, although OPSB had received draft copies of the audit reports and was working with the audit firm to help resolve the deficiencies identified, these reports contained various errors and omissions. For example, one of the draft reports addressed a significant issue related to overpayments made by OPSB's pharmacy benefits manager (PBM). However, the auditor had not calculated, and the report did not disclose, the amount of such overpayments. We subsequently brought this matter to OPSB's attention, and the firm later advised OPSB that it believed the State is potentially due as much as $10.1 million from the PBM (see Finding 1). A similar condition regarding the untimely receipt of audit reports for the State's health benefit plan administrators was commented upon in our three preceding audit reports dating back to April 25, 2000.

As provided for by the contract, OPSB made payments based on audit hours worked and related hourly rates as billed by the firm, less a 10 percent retainage. To ensure that OPSB receives quality audit services, we believe it would be advantageous to OPSB if payments on future audit contracts were based on the completion of specific deliverables (that is, clearly-defined audit progress) by the vendor rather than based on hours worked and related hourly rates.

In addition, OPSB did not timely prepare and issue its request for proposal (RFP) in order to procure such audits. Although OPSB's previous audit services contract expired in December 2005, OPSB did not issue an RFP for a new contract until July 2006 and did not obtain approval from the Board of Public Works to award the current contract until April 2007. As a result, the due date for the audit reports for plan years 2005 and 2006 were January 31, 2008.

Recommendation 8

We recommend that OPSB

a. take appropriate action to ensure that the contracted audits of the State's health care benefit plan administrators are completed and final audit reports are received within the time frames established in the related contract (repeat),

b. pursue the recovery of any amounts identified by the audits as being due to the State, and

c. prepare and issue the RFP for future audit services in a timely manner and require that vendor payments for audit services be based on the satisfactory completion of specific deliverables rather than such payments being based on hours worked and related hourly rates.

Finding 9

OPSB did not adequately monitor the qualifications of certain substituted personnel assigned to contracted audits of State health benefit plan administrators and did not authorize related personnel changes as required.

Analysis

OPSB did not adequately monitor the qualifications of certain substituted personnel assigned to contracted audits of the State's health benefit plan administrators. Specifically, our audit disclosed that, on several occasions the audit contractor replaced certain employees originally assigned to such audits with lesser-qualified personnel. Moreover, these substitutions of audit personnel were made by the contractor without OPSB's written consent, as required by the contract. For example, the contractor replaced the Audit Manager (who was a CPA) originally assigned to the audit of the Pharmacy Benefits Plan Administrator with a non-CPA. OPSB's audit services contract stipulated that the contractor could not substitute key audit staff unless the resumes of the replacement employees were submitted to and approved in writing by OPSB.

Recommendation 9

We recommend that OPSB

a. in the future, monitor and enforce contract provisions regarding substitution of contractor audit personnel; and

b. review all changes in contractor audit personnel assigned to audits of State health benefit plan administrators and authorize only those changes deemed by OPSB to be appropriate.

Information Systems Security and Control

Background

The OPSB used various automated systems to provide personnel services to the Maryland State Government. In this regard, the Benefit Administration System (BAS) and the State's personnel transaction system are used to support the administration of employee health care benefits and personnel transactions (such as new hires, terminations, and promotions), respectively.

BAS and its underlying database support the provision of health care benefits for more than 110,000 active, retired, direct pay, and satellite participants, and for their dependents. The BAS database contains sensitive personnel information (that is, names, addresses, social security numbers and dates of birth) for employees, retirees, and dependents.

The personnel transaction system is a web-based application used by numerous State agencies to enter personnel transactions, such as appointments, promotions, and salary adjustments. We were advised that, based upon the personnel transaction database, approximately 40,000 personnel transactions involving certain sensitive personal information (that is, employee name and social security number) were processed by the personnel transaction system during calendar year 2007.

Finding 10
Monitoring and configuration of the Benefits Administration System (BAS) were not adequate.

Analysis

Monitoring and configuration of BAS were not adequate. Specifically, we noted the following conditions:

- Failed login attempts to the BAS server's operating system and database software were not included on security reports for review purposes. These conditions should be monitored to identify attempts to gain unauthorized access to critical data.

- Critical database security-related events (such as access changes), audit events (such as add or stop), and certain key host server events (such as shutdown or start) were not logged although the capability to perform such logging existed.

- Th**e** BAS database software had a critical service option enabled which allowed users to execute host server programs outside of the controls defined within the database's access permissions. This capability could be used by

malicious users to attempt to compromise the BAS database server. The database vendor recommends that this service option be disabled.

As a result of these conditions, security reporting and review, and device control did not comply with the State of Maryland Department of Information Technology's *Access Control Standard* which requires that institutions maintain appropriate audit trails of significant security events related to critical applications, that these logged events be reviewed, that the reviews be documented, and that all non-needed services be disabled.

Recommendation 10
We recommend that the Office comply with the requirements of the Department of Information Technology's *Access Control Standard,* for its BAS database server and other critical systems, with respect to logging significant security events, reviewing such logs, documenting these reviews and disabling non-needed services.

Finding 11
The personnel transaction system's data transmission, database access, and account and password controls were not adequate.

Analysis
The personnel transaction system's data transmission, database access and account and password controls were not adequate**.** Specifically, we noted the following conditions:

- The web-enabled personnel transaction application transmitted authentication information and personnel data in an unencrypted format. Unencrypted communications are subject to being intercepted and read by unauthorized individuals.

- A default administrative database account unnecessarily had full access to the personnel transaction database. Since this account includes local server administrators by default, all local administrators on the database server had full administrative access to this database. Also, anyone able to achieve local administrator privileges would automatically have full administrative access to this database and could perform unauthorized retrieval of or modifications to critical data.

- Operating system password and account controls for the server hosting the personnel transaction database did not comply with minimum requirements of the State of Maryland Department of Information Technology's *Access*

Control Standard. For example, password complexity and account lockout were not enforced.

Recommendation 11
We recommend that

a. communications between remote users and sensitive web-enabled systems be encrypted,
b. OPSB limit access to all critical databases to personnel whose job duties require such access, and
c. OPSB adhere to the aforementioned *Access Control Standard*'s password authentication and account authorization requirements.

Procurement

Finding 12 (Policy Issue)
Certain procedures related to the procurement and awarding of State health care and related service contracts need improvement.

Analysis
DBM's Office of the Secretary (DBM), acting on behalf of OPSB, lacked adequate procedures related to the receipt and evaluation of bid proposals for various State health plan and related technical services contracts.

Specifically, our test of five OPSB contract procurements totaling $1.2 billion and entailing 26 bid proposals disclosed that DBM did not document the dates and times on which 15 such proposals (applicable to four contracts) were received. For example, DBM did not document the dates and times on which it received any of the 9 bid proposals applicable to its prescription drug contract. As a result, OPSB could not readily substantiate that the proposals were submitted by the established due dates and times, as required. State procurement regulations require that any proposal received after the established due date generally may not be considered.

Our test also disclosed that DBM lacked adequate documentation to substantiate the propriety of the evaluation process used to award the prescription drug and mental health services contracts that totaled $1.1 billion and $65 million, respectively. For both of these contracts, the vendor proposal rankings that were prepared lacked the signatures of the applicable raters making up the evaluation committee. State procurement regulations require that proposals be ranked by pre-established factors and that the recommendation for award may be made by a committee. To help maintain the integrity of the procurement process, the receipt and evaluation of bid proposals should be documented.

Recommendation 12
We recommend that DBM

a. improve its procedures for documenting the procurement and awarding of State health care and related technical service contracts,

b. document the date and time on which contract bid proposals are received, and

c. ensure that its evaluations of vendor contract proposals are adequately documented and include signatures of the individuals who performed such evaluations.

Cash Receipts

Finding 13
Cash receipts collected by OPSB were not adequately controlled.

Analysis
Collections received by OPSB, which totaled approximately $50.8 million in fiscal year 2008, were not adequately controlled. These collections primarily related to drug rebates and premium payments for State health insurance benefits paid by direct pay and satellite (such as covered employees of local governments) participants. Specifically, we noted the following conditions:

- Several employees responsible for recording certain payments into OSPB's automated benefit system also received and/or handled the related checks. This condition was commented upon in our preceding audit report.

- Verifications to ensure that all recorded collections were deposited were performed by employees who had access to collections prior to deposit. This condition was commented upon in our two preceding audit reports. Furthermore, such verifications were not timely performed. Specifically, as of February 20, 2008, OPSB had not verified that collections received during November and December 2006 totaling $290,320 had been deposited. We subsequently verified, on a test basis, that collections included in the aforementioned amount were, in fact, deposited by OPSB.

- Access to an automated file used to record incoming cash receipts was not adequately controlled as the file password and related collections recorded on the file were both maintained in a safe accessible to four OPSB employees to whom the safe combination was assigned. Consequently, collections could be misappropriated and the automated files altered to avoid detection.

Recommendation 13
We recommend that

a. employees who have access to collections not be able to record payments to the automated benefits system (repeat),
b. an employee independent of the cash receipts function verify that all recorded collections were deposited (repeat),
c. deposit verifications be performed timely, and
d. the password to the automated check log be adequately controlled.

We advised OPSB on accomplishing the necessary separation of duties using existing personnel.

Employee Leave Programs

Finding 14
OPSB had not established adequate monitoring procedures for certain employee leave programs

Analysis
OPSB had not established adequate procedures to ensure that it received required annual activity reports from all State agencies that participated in the Employee-to-Employee Leave Donation Program (ELDP), thus limiting OPSB's ability to monitor the program. Our review disclosed that, as of August 4, 2008, 34 of the 86 agencies that were eligible to participate in the ELDP during fiscal year 2007 failed to submit the required annual reports of program activity that were due to OPSB on October 15, 2007. Furthermore, OPSB did not mail reminder notices as required by its procedures to agencies regarding submission of the required reports. For example, OPSB had not sent reminder notices to 25 of the aforementioned 34 agencies. In addition, OPSB lacked adequate procedures to ensure that each State employee did not receive more combined leave from both the ELDP and the State Employee's Leave Bank (SELB) than is authorized by State law (a combined maximum of 2,080 hours from the ELDP and/or SELB during the employee's employment with the State). A report generated by OPSB at our request, that we did not verify, disclosed that, during fiscal year 2007, six State employees had exceeded the authorized leave usage limit by amounts ranging from 15 to 260 hours.

The ELDP and SELB were established to assist employees who have exhausted all available leave (for example, due to serious and prolonged medical conditions) by allowing these employees to use leave donated by other State employees. According to OPSB's records, during fiscal year 2007 a total of 1,150 State employees used approximately 151,000 hours of donated leave under the ELDP.

Additionally, approximately 28,500 State employees participated in the SELB, which, according to OPSB's records, had a balance of 2.3 million hours as of July 29, 2008.

A similar condition related to the ELDP was commented upon in our three preceding audit reports dating back to April 25, 2000.

Recommendation 14
We recommend that OPSB

a. ensure that an annual report of ELDP activity is received from each participating agency (repeat),

b. ensure that State employees do not receive more combined leave hours from the SELB and ELDP than permitted by State law, and

c. confer with the Office of the Attorney General to determine whether it can pursue recovery from State employees, including the aforementioned six employees, when excessive amounts of leave are improperly granted.

Audit Scope, Objectives, and Methodology

We have audited the Department of Budget and Management (DBM) – Office of Personnel Services and Benefits (OPSB) for the period beginning November 17, 2004 and ending November 15, 2007. The audit was conducted in accordance with generally accepted government auditing standards.

As prescribed by State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OPSB's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. We also determined the status of the findings included in our preceding audit report.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of OPSB's operations. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Data provided in this report for background or informational purposes were deemed reasonable, but were not independently verified.

Our audit did not include certain support services provided to OPSB by the DBM – Office of the Secretary. These support services (such as payroll) are included within the scope of our audit of the Office of the Secretary. However, our audit did include procurement services provided to OPSB by the DBM – Office of the Secretary, related to the State employee health care contracts.

Our scope was limited with respect to OPSB's cash transactions because the Office of the State Treasurer was unable to reconcile the State's main bank accounts during a portion of the audit period. Due to this condition, we were unable to determine, with reasonable assurance, that all OPSB cash transactions prior to July 1, 2005 were accounted for and properly recorded on the related State accounting records as well as the banks' records.

OPSB's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect OPSB's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to OPSB that did not warrant inclusion in this report.

DBM's response, on behalf of OPSB, to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise OPSB regarding the results of our review of its response.

APPENDIX

MARYLAND

DEPARTMENT OF BUDGET & MANAGEMENT

MARTIN O'MALLEY
Governor

ANTHONY BROWN
Lieutenant Governor

T. ELOISE FOSTER
Secretary

DAVID C. ROMANS
Deputy Secretary

February 13, 2009

Mr. Bruce A. Myers, CPA
Legislative Auditor
State of Maryland
Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, Maryland 21201

Dear Mr. Myers:

The Department of Budget and Management has reviewed your draft audit report on the Department of Budget and Management – Office of Personnel Services and Benefits (OPSB) for the period beginning November 17, 2004 and ending November 15, 2007. As requested, our responses to the findings in the report are attached.

If you have any questions or need additional information, you may contact me at 410-260-7041 or Dick Ihrie, the Department's compliance auditor, at 410-260-6058.

Sincerely,

T. Eloise Foster

T. Eloise Foster
Secretary

cc: Cynthia A. Kollner, Executive Director, OPSB
Joan M. Peacock, Manager, Audit Compliance Unit, DBM
Charles R. (Dick) Ihrie, Compliance Auditor, DBM

Department of Budget and Management
Office of Personnel Services and Benefits
Response to Legislative Audits Findings and Recommendations
Audit Period: November 17, 2004 to November 15, 2007

Prescription Drug Program

Finding 1
The Office of Personnel Services and Benefits (OPSB) did not ensure, on a timely basis, that it received all required contractual drug discounts from its former pharmacy benefit manager (PBM) for certain drugs used by the State's plan members. Moreover, the former PBM did not provide to OPSB all required discounts and, as a result, the State may have paid as much as $10.1 million more than required for plan years 2005 and 2006.

Recommendation 1
We recommend that OPSB

a. ensure, on a timely basis, that required contractual discounts are obtained for prescription drugs provided to plan members (repeat);
b. take immediate action to recover payments made in excess of the amount required in the contract for prescription drugs provided to plan members for plan years 2005 and 2006; and
c. obtain prescription drug discount information from the former Contract Auditor applicable to plan year 2007 and determine if any related overpayments were made.

DBM-OPSB Response 1

The Department agrees with the Legislative Auditors that the PBM, based on information provided by the State's Contract Auditor, did not provide the required contractual discounts. OPSB has been actively managing the audit process and has worked closely with its Contract Auditor to obtain a final confirmation of the amount due to the State. The Department has obtained information related to the plan years 2005, 2006 and 2007 and has requested a meeting with the PBM to discuss the findings of the audits. The Department will pursue recoveries identified in conjunction with its AAG and the contract's procurement officer.

To be more proactive, the Department had established a quarterly review process to ensure the annual contract pricing guarantees are met. The Department established a Pharmacy Directorship through the State's Actuary / Consultant contract. The Consultant, acting as a Pharmacy Director, provides quarterly compliance reports that review prescription drug pricing guarantees, including proper discounts for ingredient pricing. This proactive approach became effective with the plan year FY 2008 for the new PBM. The Department will follow procedures outlined in the PBM contract in pursuit of any and all identified overpayments.

Finding 2
OPSB's former pharmacy benefit manager (PBM) did not provide the State approximately $700,000 in required drug manufacturer rebates for the 2006 plan year.

Recommendation 2
We recommend that OPSB take appropriate follow-up action to recover the aforementioned $700,000 and ensure, in the future, that it receives all required manufacturer drug rebates.

DBM-OPSB Response 2

The Department agrees with the finding and is actively pursuing recovery of the $706,763 owed. All future audits of the PBM contract will be used to ensure that all required manufacturer drug rebates are received. Effective with the plan year FY 2008 the manufacturer drug rebates are monitored quarterly as part of the Pharmacy Directorship program.

Finding 3
OPSB had not taken any action to address concerns related to improper drug switching by OPSB's former pharmacy benefit manager (PBM).

Recommendation 3
We recommend that OPSB
a. in consultation with the OAG, procure an audit of the drug interchange programs of OPSB's former PBM to determine if any improper drug interchanges occurred during plan years 2005 and thereafter (that is, subsequent to the settlement agreement referred to in finding 1); and
b. take appropriate action to obtain reimbursement of any such additional costs identified.

DBM-OPSB Response 3

The Department is developing a task order with its Contract Auditor to conduct an analysis to determine if there is evidence of improper drug switching during the FY 2007 plan year that warrants a more focused audit for that period or prior periods. If the Department determines that conducting a more focused audit will be cost beneficial, it will proceed with the audit and take appropriate action on any findings including seeking reimbursement of any additional costs identified.

Finding 4
OPSB did not timely review and refer cases of possible prescription narcotic drug abuse by participants to appropriate State legal authorities.

Recommendation 4
We recommend that OPSB
a. immediately review and refer to the OAG-CD and/or the Governor's Chief Counsel all cases of potential prescription drug abuse dating back to plan year 2001 as applicable;

b. timely review all future reports of such cases, document these reviews, and refer all suspected cases to the OAG-CD and the Governor's Chief Counsel, and to law enforcement authority, if deemed appropriate; and
c. consider taking additional action against employees such as terminating employee eligibility to participate in the prescription program.

DBM-OPSB Response 4

The Department agrees that it failed to submit the cases of potential abuse to the Governor's Chief Counsel and has added that step into the process to ensure it is not missed in the future. All suspected cases which had been previously submitted to OAG-CD have been forwarded to the Governor's Chief Counsel as of February 13, 2009.

OPSB has a process in place by which it carefully reviews available claims data and information from providers in each case of potential prescription abuse or fraud to ensure that only those cases which are determined to be fraud or abuse are submitted to OAG-CD and the Governor's Chief Counsel. Caution must be used because of the sensitive nature of the cases. In two prior cases that were referred to OAG-CD, OPSB's subsequent review of claims data revealed that the members suffered from medical conditions that necessitated high doses of pain medications. OPSB will continue to use prescriber and pharmacy lock procedures where it appears appropriate and will investigate additional options, such as terminating employee eligibility to participate in the prescription program.

Finding 5
The Maryland Rx Program has not been established as required by State law.

Recommendation 5
We recommend that DBM continue its efforts to establish and implement the Maryland Rx Program as required by State law.

DBM-OPSB Response 5

As noted by OLA, the Department has worked diligently to implement this program as quickly as possible, but circumstances beyond the Department's control contributed to the delay of the implementation of this purchasing pool program. Final regulations governing the program become effective February 23, 2009. The PBM has been notified of the effective date and is prepared to immediately begin marketing and administering this program in accordance with the regulations and as outlined by the contract.

Payment of Apparent Fraudulent Health Care Claims

Finding 6
OPSB did not adequately pursue recovery for claims paid totaling approximately $534,000 related to apparent fraudulent medical claims submitted by certain State employees.

Recommendation 6
We recommend that OPSB
a. refer these cases to the Governor's Chief Counsel as required, and
b. verify that the TPA has implemented the appropriate procedural and system modifications.

DBM-OPSB Response 6

The Department agrees with the recommendations as follows:

- The Department referred these cases to the Governor's Chief Counsel on October 22, 2008. This was an oversight and has since been corrected.

- The third-party administrator (TPA) contractor provided written confirmation on October 13, 2008 that the edit error has been corrected. In addition, OPSB will request the Contract Auditor to verify, as part of the scope of their next audit, that the TPA has implemented the appropriate procedural and system modifications.

As stated in the auditor's analysis, OPSB received full reimbursement for the fraudulent claims from the TPA contractor on January 21, 2009. This particular error was the result of the TPA contractor's system error; it could not be prevented or detected by OPSB staff. All of the claims were incurred out of network and outside of the United States. Out of network claims are paid to the member who then is responsible for paying the provider. The contractor did subsequently catch the error, thoroughly investigated the claims using a consultant that visited the out of country facilities, and brought the situation immediately to the attention of OPSB. As both the vendor and the State initiated collection proceedings against the claimants, OPSB did not immediately request reimbursement from the contractor. All four cases had initially been referred to the State Central Collections Unit (CCU).

Eligibility of Claimants

Finding 7
OPSB did not adequately follow up and resolve certain claim payments identified as potentially ineligible.

Recommendation 7
We recommend that OPSB
a. investigate and attempt to resolve the factors that result in the plan administrators paying claims for ineligible plan participants (repeat);
b. review all claims identified as potentially ineligible, or at a minimum, review such claims based on a specified materiality level (repeat);
c. adequately resolve all claim payments reviewed that it identifies as potentially ineligible;

d. seek recovery of claim payments made for ineligible health care plan participants, including the aforementioned claims totaling $131,505 (repeat); and
e. address other operational deficiencies identified by the audit firm contracted by OPSB.

DBM-OPSB Response 7

The Department agrees that it is important to maintain appropriate procedures to ensure claims paid are for eligible individuals and to pursue reimbursement for ineligible claims paid. In this regard, enhancements have been made within the benefit administration system that have dramatically improved the internal auditing process. These enhancements, most of which were put in place before the contracted audit concluded, addressed the majority of the operational deficiencies identified by the audit firm contracted by OPSB. The number of claims verified using the automated process has increased significantly from 92.8% in Plan Year 2004 to 98.2% in Plan Year 2008. During this period, greater than 99.6% of the reviewed claims were verified as being paid for eligible members and dependents.

On September 25, 2008, OPSB received a check from the TPA in the amount of $149,556, which included the 37 claims OLA noted as applicable to one plan participant who was not eligible for program benefit payments.

As evidence of OPSB's ongoing effort to continuously improve the detection and recovery of ineligible claims, OPSB will:

- Establish a materiality threshold, that is manageable and cost effective, for reviewing and pursuing potentially ineligible claims;

- Continue to address operational deficiencies and other factors that result in the plan administrators paying claims for ineligible plan participants to eliminate the number of potential ineligible claims; and

- Continue to pursue a more collaborative relationship with both the Central Payroll Bureau and the State Retirement Agency, particularly with regard to improving payroll deduction capabilities.

OPSB will dedicate additional resources to pilot an internal pursuit and collection process and provide a cost/benefit analysis of the results after one full plan year.

Audits of Health Plan Administrators

Finding 8
OPSB did not receive timely and complete audit reports related to the State's health benefit plan administrators, as required.

Recommendation 8
We recommend that OPSB
a. take appropriate action to ensure that the contracted audits of the State's health care benefit plan administrators are completed and final audit reports are received within the time frames established in the related contract (repeat),

b. pursue the recovery of any amounts identified by the audits as being due to the State, and
c. prepare and issue the RFP for future audit services in a timely manner and require that vendor payments for audit services be based on the satisfactory completion of specific deliverables rather than such payments being based on hours worked and related hourly rates.

DBM-OPSB Response 8

The Department agrees with the overall finding as follows:

- The contractor had submitted final audit reports by the due dates, however, they were deemed not to be complete based on OPSB's review. Some performance issues occurred during the first year of the contract, but OPSB has worked diligently with the contractor to cure the deliverables in accordance with the contract obligations. For each audit year, a schedule reflecting due dates of deliverables is monitored by OPSB and monthly progress and status reports are submitted by the contractor to ensure contract requirements are being met. OPSB will continue to monitor that acceptable audit reports are received by the due dates specified in the contract and to ensure that such reports are complete.

- After receipt of the final audit reports, OPSB meets with the Contract Auditor and each health plan TPA/Contractor to discuss the findings of the audit reports and pursue any recoveries identified by the audit.

- The 14 month period during which the division head position was vacant negatively impacted the timely development and release of the RFP. This is not expected to be an issue going forward. OPSB agrees issuance of the RFP was delayed and will take steps to ensure that RFPs are issued timely for future contracts. OPSB will also examine whether vendor payments for audit services should be based on the satisfactory completion of specific deliverables rather than such payments being based on hours worked and related hourly rates before issuing the next RFP.

Finding 9
OPSB did not adequately monitor the qualifications of certain substituted personnel assigned to contracted audits of State health benefit plan administrators and did not authorize related personnel changes as required.

Recommendation 9
We recommend that OPSB
a. in the future, monitor and enforce contract provisions regarding substitution of contractor audit personnel; and
b. review all changes in contractor audit personnel assigned to audits of State health benefit plan administrators and authorize only those changes deemed by OPSB to be appropriate.

DBM-OPSB Response 9

The Department agrees with the finding that initially the Contract Auditor had replaced personnel without seeking proper approval from OPSB. OPSB addressed this matter and the vendor subsequently corrected its process and provided the appropriate documentation relative to the qualifications of the personnel assigned to the contract. Those qualifications have been vetted against the contract obligations and have been found to satisfy the contract requirements. OPSB continues to monitor and enforce contract provisions regarding substitution of contractor audit personnel.

Information Systems Security and Control

Finding 10
Monitoring and configuration of the Benefits Administration System (BAS) were not adequate.

Recommendation 10
We recommend that the Office comply with the requirements of the Department of Information Technology's *Access Control Standard*, for its BAS database server and other critical systems, with respect to logging significant security events, reviewing such logs, documenting these reviews and disabling non-needed services.

DBM-OPSB Response 10
Pursuant to an inter-departmental Memorandum of Understanding, the Department of Information Technology (DoIT) maintains the Benefits Administration System for DBM.

The Department agrees with the overall finding.

DoIT, on behalf of the Department:

- Has revised security monitoring procedures to log and regularly review failed login attempts at both the Windows Operating System and SQL Server levels. This review is documented and maintained for future audit verification.

- Is researching automated tools to identify critical database security-related events without impacting remote access to the server. It is anticipated that this discrepancy will be resolved in April, 2009.

Mitigating the risk associated with the enabled BAS database software critical service will require a major programming effort. An assessment of the effort, estimated cost, funding sources and timeframe to fully implement this recommendation will be completed by April 2009.

Finding 11
The personnel transaction system's data transmission, database access, and account and password controls were not adequate.

Recommendation 11
We recommend that
a. communications between remote users and sensitive web-enabled systems be encrypted,
b. OPSB limit access to all critical databases to personnel whose job duties require such access, and
c. OPSB adhere to the aforementioned *Access Control Standard*'s password authentication and account authorization requirements.

DBM-OPSB Response 11
Pursuant to an inter-departmental Memorandum of Understanding, DoIT maintains the personnel transaction system for DBM.

The Department agrees with the overall finding and is implementing the auditor recommendations as follows:

- DoIT, on behalf of the Department, is in the process of implementing encryption for user authentication and communication to / from the web-enabled personnel transaction application. Implementation should be completed by April 2009.

- The impact of removing administrative groups in order to limit system access is currently being tested. If this is not deemed feasible, an alternative solution to control or monitor access will be researched. Testing is expected to be completed by April 2009.

- The recommended changes to become compliant with password authorization and account authorization requirements for the personnel transaction system were implemented as of June, 2008.

Procurement

Finding 12 (Policy Issue)
Certain procedures related to the procurement and awarding of State health care and related service contracts need improvement.

Recommendation 12
We recommend that DBM
a. improve its procedures for documenting the procurement and awarding of State health care and related technical service contracts,
b. document the date and time on which contract bid proposals are received, and
c. ensure that its evaluations of vendor contract proposals are adequately documented and include signatures of the individuals who performed such evaluations.

DBM-OPSB Response 12

The Department disagrees with the overall finding. The Department believes its procedures for documenting the procurement and awarding of State health care and related technical service contracts are adequate and in compliance with regulations. Specifically:

- The Department disagrees that there is a need to document the specific date and time on which bids and proposals are received. This is not required by regulation and only creates additional work in an already cumbersome process. Documenting the receipt date and time provides no more credence to the process than certification by the Procurement Officer that proposals were received by the due date and time. The Department does agree that the Procurement Officer must document or certify that bids or proposals were received by the due date and time.

  For the specific procurement mentioned, the Department has a Register of Proposals, signed by the Procurement Officer certifying that all 9 named proposals were received by the due date and time. The Department believes this is sufficient to document timeliness of receipt and to meet all COMAR Title 21 requirements.

  The Department does issue receipts (noting date and time of receipt) for those proposals that were hand delivered and when a receipt is requested. A receipt is not issued for proposals that arrive through the mail or by UPS or FedEx. The Department relies on the Register of Proposals prepared by the Procurement Officer. Furthermore, it is the responsibility of the Procurement Officer, not OPSB, to document timely receipt of proposals.[1]

- The Department disagrees that it lacked adequate documentation to substantiate the propriety of the evaluation process used to award the two contracts noted. The Department's practice is fully consistent with COMAR regulations. The recommendation of the Procurement Officer to the Secretary is the final evaluation per COMAR 21.05.03.03 A.(6) and the recommendation as well as the justification for the recommendation is well documented. Furthermore, the Department documents the evaluation of proposals in a format consistent with the evaluation criteria.

  The use of an evaluation committee is optional and any recommendation by an evaluation committee is purely advisory to the Procurement Officer. A recommendation of the evaluation committee is prepared and maintained in the procurement file. It is often difficult to obtain signatures from multiple evaluators who are located in different offices. However, we will obtain either a signature or an electronic acknowledgement from evaluators of their recommendation to the Procurement Officer.[2]

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[1] **Auditor's Comment**: Our finding does not dispute that the Department's procedure to require the procurement officer to document timely receipt of contract bid proposals is in compliance with State procurement regulations. Rather, we concluded, and continue to believe, that recording the actual date and time of receipt would enhance the integrity of the procurement process.

[2] **Auditor's Comment**: The Department disagrees that it lacked adequate documentation to substantiate the propriety of the evaluation process used to award the two contracts noted in the audit report because its practice complies with State procurement regulations and because the recommendation of the evaluation committee to the procurement officer is purely advisory. We acknowledge that the Department's practice does not violate State procurement regulations; however, the action specified in the Department's response, whereby it will obtain either a signature or an electronic acknowledgement from evaluators of their recommendation to the procurement officer, will provide the enhanced control over the procurement process.

Cash Receipts

Finding 13
Cash receipts collected by OPSB were not adequately controlled.

Recommendation 13
We recommend that
a. employees who have access to collections not be able to record payments to the automated benefits system (repeat),
b. an employee independent of the cash receipts function verify that all recorded collections were deposited (repeat),
c. deposit verifications be performed timely, and
d. the password to the automated check log be adequately controlled.

We advised OPSB on accomplishing the necessary separation of duties using existing personnel.

DBM-OPSB Response 13

The Department agrees that due to staff resource issues (two staff members retired within a short period of time), adequate separation of duties over cash receipts was not fully maintained during the audit period. In order to fully address this finding, OPSB will implement a policy that prohibits the receipt of cash or checks directly by the Employee Benefits Division. OPSB will move forward to implement this policy with the cooperation of OPSB's Lockbox Operation and anticipates a start date of no later than July 1, 2009.

With regard to the specific recommendations:

- OPSB through its Systems personnel has modified the security for the automated benefits systems so that OPSB - Fiscal staff will only have the capability of viewing and printing reports and not be allowed to record or make changes to payment records within the system. This modification was implemented in early February 2009.

- OPSB has assigned an Accountant independent of the cash receipts process to verify that checks recorded in the Check Log have been properly processed or deposited. Effective January 2009, receipts received each month will be verified or resolved by the end of the next month. The Accounting Supervisor will sign off that all checks were properly accounted for.

- OPSB now maintains the password to the automated check log in a secure area controlled by an employee who does not have access to the safe.

Employee Leave Programs

Finding 14
OPSB had not established adequate monitoring procedures for certain employee leave programs

Recommendation 14
We recommend that OPSB
a. ensure that an annual report of ELDP activity is received from each participating agency (repeat),
b. ensure that State employees do not receive more combined leave hours from the SELB and ELDP than permitted by State law, and
c. confer with the Office of the Attorney General to determine whether it can pursue recovery from State employees, including the aforementioned six employees, when excessive amounts of leave are improperly granted.

DBM-OPSB Response 14

The Department agrees with the audit recommendation as follows:

- For the Fiscal Year 2008 report, notices were sent to all SPMS agencies and all independent agencies identified by OLA. Additionally, the independent agencies were asked to confirm whether their employees are allowed to participate in the Leave Bank and Employee-to-Employee Leave Donation Programs (Programs). Independent Agencies that failed to respond were advised that they are considered as electing not to participate in the Programs.

  For FY2009 going forward, notices will be sent to all agencies with follow-up to ensure 100% compliance with the reporting requirement.

- To ensure that State employees do not receive more combined leave hours from the SELB and ELDP than permitted by State law, the Leave Bank database was modified to clearly identify employees with a combined total of 1,800 hours from the Programs. This change enables OPSB to send quarterly warning notices to employees (with copies to their agencies) who are close to exceeding the 2,080 hour limit reminding them of the obligation to reimburse the State for leave that exceeds the 2,080-hour limit.

  On December 5, 2008, OPSB sent:

  - Letters to 6 employees who were close to exceeding the 2,080-hour limit, with copies to their agencies, and

  - A memo to all agencies that participate in the Programs, reminding them of the statutory requirement on leave usage and the obligation of employees who exceed the limit to reimburse the State for any overpayments.

- The six employees identified as receiving more than 2,080 hours of leave from the Programs since OPSB started maintaining records in FY 02 are no longer employed by the State. Because these individuals no longer work for the State, it is not possible for the State to recover paid leave as it is earned. OPSB's Assistant Attorney General advised that these compensation overpayments should

be considered debts owed to the State and subject to collection under COMAR 17.01.01. On February 5, 2009, OPSB sent letters to the agencies that employed these individuals advising them to follow the procedure specified in COMAR 17.01.01.04 in an attempt to collect the overpayments.

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