

Audit Report

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**Office of the Public Defender**

February 2011

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**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**

February 10, 2011

**Karl S. Aro**  
Executive Director

**Bruce A. Myers, CPA**  
Legislative Auditor

Delegate Guy J. Guzzone, Co-Chair, Joint Audit Committee  
Senator James C. Rosapepe, Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Office of the Public Defender (OPD) for the period beginning May 1, 2007 and ending June 30, 2010. OPD is primarily responsible for providing legal services to eligible indigent individuals charged with violating State, county, and/or municipal laws involving possible incarceration.

Our audit disclosed that OPD's policies and procedures for determining client eligibility were not sufficiently comprehensive. Specifically, procedures did not include sufficient criteria for determining client eligibility, for verifying certain information submitted by the clients, and for approving the eligibility decisions. OPD also lacked adequate procedures over related client billings. For example, OPD did not establish accounts receivable records for approximately 40,000 cases with related fees totaling \$1.9 million and did not ensure clients were billed for court-ordered fees, as required. In addition, one employee had complete control over accounts receivable records.

Additional deficiencies were noted with respect to disbursements and payroll. For example, OPD paid contractually for network and database management services performed by two individuals over a four-year period instead of pursuing State positions to perform these services; based on our review, the use of State employees could result in cost savings.

An executive summary of our findings can be found on page 5. OPD's response to this audit is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during this audit by OPD.

Respectfully submitted,

**Bruce A. Myers, CPA**  
Legislative Auditor



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# Executive Summary

Office of the Public Defender (OPD)

February 2011

- **OPD policies and procedures for determining client financial eligibility were not sufficiently comprehensive. Specifically, OPD policies did not require applicants to provide supporting documentation for reported expenses used to determine the applicant's ability to pay for legal representation and did not define situations when an independent verification of an applicant's financial status would be warranted. We further noted that eligibility determinations were not always properly supported and were not subject to supervisory review.**

OPD should modify its policies and procedures to require supporting documentation for expenses and to define situations when an independent verification of an applicant's financial status should be performed. OPD should also ensure that eligibility determinations are properly supported and subject to documented supervisory review and approval.

- **OPD lacked adequate procedures to ensure administrative and court-ordered fees due from clients were recorded in the accounts receivable records and were pursued for collection. For example, according to our analysis, OPD failed to record and/or pursue collection of administrative fees for 40,000 cases opened during fiscal year 2010 totaling an estimated \$1.9 million. OPD also did not assess administrative fees on certain applicants and did not have procedures to ensure clients were billed for certain court-ordered fees. For example, we estimated that OPD did not assess administrative fees totaling \$78,400 to applicants who were denied services even though State regulations provide that the fee shall be assessed for these applicants.**

OPD should ensure that all administrative and court-ordered fees are recorded in the accounts receivable records and pursued for collection. OPD should also assess administrative fees on all applicants, as required by State regulations, and should consult with legal counsel to determine the feasibility of pursuing collection of the amounts not previously billed.

- **OPD did not properly segregate accounts receivable duties and did not require independent approval for critical transactions. As of June 30, 2010, accounts receivable related to administrative fees and court-ordered reimbursements totaled \$19.4 million and \$3.9 million, respectively.**

OPD should properly segregate duties over accounts receivable records and establish output reports to verify, on a test basis, that critical transactions were proper.

- **OPD spent approximately \$1.9 million during fiscal years 2007 through 2010 for two individuals contracted to perform network and database management. Although the aforementioned contract was procured with Department of Budget and Management (DBM) and Department of Information Technology approvals, OPD should have worked with DBM to authorize two full-time State positions to perform the aforementioned services as provided for in State law.**

OPD should work with DBM to pursue State positions for the aforementioned functions.

- **OPD did not remove two employees from the payroll in a timely manner and improperly calculated the unused annual leave balance paid to six employees on termination of employment resulting in overpayments totaling approximately \$66,000.**

OPD should remove terminated employees from the payroll records in a timely manner, calculate and independently review annual leave payouts in accordance with the State law, and pursue recovery of the aforementioned overpayments.

## **Background Information**

### **Agency Responsibilities**

The Office of the Public Defender (OPD) is primarily responsible for providing legal services to eligible indigent individuals charged with violating State, county, and/or municipal laws involving possible incarceration. Legal representation is provided in criminal and juvenile proceedings, post-conviction proceedings, probation and parole revocations, involuntary commitments to public or private institutions, and termination of parental rights proceedings. OPD provides these services through a central headquarters and 41 field offices (including 12 district offices). According to the State's records, during fiscal year 2010, OPD had 928 authorized positions and operating expenditures totaled approximately \$86 million, primarily for salaries, wages, and fringe benefits.

OPD has a 13-member Board of Trustees with 11 members appointed by the Governor with Senate advice and consent, one selected by the Senate President and one selected by the Speaker of the House. The Board reviews the administration of the OPD and advises the Public Defender on its operations, coordinates the activities of district advisory boards, and consults on certain matters such as fees.

### **Performance Audit Update**

In response to a request included in the 2008 *Joint Chairmen's Report*, on November 19, 2009 our Office issued a performance audit report on certain aspects of OPD operations. The objectives of the audit were as follows:

- To assess the effectiveness of OPD's budgetary practices and related procedures regarding funding decisions, including budgeting and financial operations
- To review procedures and controls over case management and assess the impact of changes implemented since our November 2001 performance audit
- To determine the status of OLA recommendations in the November 2001 performance audit report

Due to the short period of time since we issued our performance audit report, we did not include an assessment of the status of these findings in this report.

## **Recent Court Cases Could Impact OPD Operations**

Two recent court cases have and/or could have a significant impact on the OPD eligibility determination process and the scope of services for which OPD will need to provide legal representation.

On April 16, 2010, the Maryland Court of Appeals confirmed a lower court's determination that OPD had been erroneously rejecting potential clients because the eligibility criteria used were not consistent with State law.<sup>1</sup> Specifically, prior to May 2010, in determining applicant eligibility, OPD solely considered income and assets, without considering the applicant's expenses. State law provides that eligibility for OPD services shall be determined by the applicant's financial ability to compensate a competent private attorney and to provide all other necessary expenses of representation.

As a result of the aforementioned court case, OPD changed its eligibility determination procedures, effective May 2010, to include the consideration of the applicant's expenses consistent with the statute. According to OPD records, there has been a 10 percent increase in cases as a result of this change in eligibility criteria.

Another recent court case could also result in increasing the future OPD workload. The court determined that indigent criminal defendants had the right to counsel at their initial bail hearings.<sup>2</sup> This case is currently under appeal.

## **Status of Findings From Preceding Audit Report**

Our audit included a review to determine the status of the two findings contained in our preceding fiscal compliance audit report dated December 10, 2007. We determined that OPD had satisfactorily resolved one of these findings; the remaining finding is repeated in this report.

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<sup>1</sup> Office of the Public Defender, et al. v. State of Maryland

<sup>2</sup> Quinton Richmond, et al. v. District Court of Maryland

# Findings and Recommendations

## Client Eligibility

### Background

OPD district offices are responsible for determining the financial eligibility of individuals requesting legal services. Individuals requesting OPD services are required to meet with an intake worker and provide certain documentation to support their eligibility. According to its annual report for fiscal year 2010, OPD opened approximately 216,500 new cases during calendar year 2009.

### Finding 1

**OPD policies and procedures for determining client eligibility were not sufficiently comprehensive.**

### Analysis

OPD policies and procedures for determining client eligibility were not sufficiently comprehensive. Specifically, our review disclosed the following conditions:

- OPD policies and procedures did not require applicants to submit documentation to support reported expenses which were used to determine whether the client had the ability to pay for legal representation. Although, effective May 2010, OPD modified its eligibility procedures to include applicant expenses,<sup>3</sup> it did not require applicants to submit documentation to substantiate the reported expenses. In this regard, the OPD procedures did require applicants to submit documentation of income reported on the application.
- OPD policies and procedures for determining client eligibility did not define the circumstances under which income and expense information reported by applicants would be verified with available third party data and, according to OPD management, no such verifications have been conducted. State law provides that OPD may require an applicant to authorize access to confidential records of public or private sources that are needed to evaluate eligibility and, on request, may obtain information without charge from a public record office or other unit of the State, county, or municipal corporation. In addition, effective October 2010, OPD may submit requests to the Department of Labor, Licensing, and Regulation and the Comptroller of Maryland for information regarding the employment status and income of applicants.

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<sup>3</sup> See the comment on Recent Court Cases on page 8 of this report for additional information regarding the court case that resulted in this change to the eligibility procedures.

### **Recommendation 1**

**We recommend that OPD**

- a. modify its policies and procedures to require supporting documentation from an applicant for reported expenses, and**
- b. define situations in which verification of the financial status of an applicant is warranted and conduct such verifications according to this policy.**

### **Finding 2**

**Client eligibility determinations were not always properly supported and were not subject to independent supervisory review and approval.**

### **Analysis**

Client eligibility determinations were not always properly supported, as required by the OPD *Intake Manual*, and there was a lack of evidence that such determinations were subject to independent supervisory review and approval. Our test of 30 cases opened by two district offices during fiscal year 2010 disclosed that, for 2 of the cases, OPD could not locate the related applications. For 3 other cases tested, although the applicants indicated they had no income, OPD did not obtain the required Support Verification Form, which states that another person provides all financial support, and the Form received for another case tested did not include all the required information. Furthermore, for all 30 cases tested, there was no evidence that the eligibility determinations were subject to independent supervisory review. OPD management advised us that supervisors reviewed the eligibility determinations on a test basis but these reviews were not documented. In addition, these reviews were not required by OPD's *Intake Manual*. Consequently, there was a lack of assurance that certain clients were actually eligible to receive services.

An independent supervisory review of client eligibility determinations would help ensure that eligibility decisions made by intake workers considered all relevant information and were proper.

### **Recommendation 2**

**We recommend that OPD ensure that**

- a. eligibility determinations are properly supported in accordance with the *Intake Manual*;**
- b. eligibility determinations are reviewed and approved by independent supervisory personnel, at least on a test basis, and that such reviews are documented; and**
- c. the *Intake Manual* is revised to include procedures requiring a documented supervisory review.**

## Client Billings

### Background

State regulations require applicants seeking representation to enter into an agreement at the time of application committing them to pay an administrative fee (\$25 for juveniles and \$50 for adults). In addition, State law provides for the applicant to reimburse OPD for the cost of the legal services in the amount, time, and method of payment determined by the court. These fees are remitted directly to OPD's lockbox account, and are credited to the State's General Fund.

According to OPD records, as of June 30, 2010, accounts receivable related to these administrative fees and court-ordered reimbursements totaled \$19.4 million and \$3.9 million, respectively; related collections totaled \$1.7 million in fiscal year 2010.

### Finding 3

**OPD lacked adequate procedures to ensure administrative fees due from clients were recorded in the accounts receivables records and were pursued for collection. As a result, fees for 40,000 cases opened during fiscal year 2010, totaling approximately \$1.9 million, were not recorded and pursued for collection.**

### Analysis

OPD lacked adequate procedures to ensure that all administrative fees were properly recorded on the accounts receivable system and were pursued for collection. In this regard, our comparison of fiscal year 2010 new cases, according to OPD's case management system, with the related accounts receivable records disclosed 40,000 cases for which fees, totaling an estimated \$1.9 million, were not posted to the accounts receivable records.

Individuals applying for OPD legal services must sign an Administrative Fee Agreement (AFA), which establishes the client's responsibility for the applicable administrative fee and directs them to send the payment to an OPD lockbox account. OPD intake workers enter the applicable fees into the case management system and, on a monthly basis, the fees are to be electronically interfaced with OPD's accounts receivable system.

OPD management advised us that these 40,000 accounts did not interface because of errors in some of the applicant data in the case management system, such as missing addresses and incorrect or duplicate AFA numbers. Because these accounts were not recorded in the accounts receivable system, to the extent these accounts remained unpaid, they were not pursued for collection. In this regard, unpaid accounts are generally sent to the State's Central Collection Unit where collection is pursued via the State's Tax Refund Intercept Program (TRIP), which

could result in significant revenues. For example, according to OPD records, during fiscal year 2010, OPD collected administrative fees totaling approximately \$1.7 million of which \$1.1 million was collected via TRIP. The failure to record assessed fees in the accounts receivable records has been commented upon in our five preceding audit reports dating back to December 1995.

### **Recommendation 3**

**We recommend that OPD ensure that all administrative fee billings, including those for new cases opened during our audit period, are recorded in the accounts receivable records and pursued for collection (repeat).**

### **Finding 4**

**OPD did not assess administrative fees in certain instances and did not ensure clients were billed for court-ordered fees as required by State Regulations.**

### **Analysis**

OPD did not assess administrative fees in certain instances and did not ensure clients were billed for court-ordered fees as required by State regulations. Our review disclosed the following conditions:

- OPD did not assess administrative fees on certain applicants, as required. According to our estimates, during fiscal year 2010, administrative fees totaling approximately \$330,000 were not assessed. These fees included \$112,100 for patients in mental facilities, \$78,400 for applicants that were denied services, \$28,500 for juveniles charged as adults, and \$111,000 for other applicants.

State regulations require that “an applicant *seeking representation* by the office shall be required to enter into an agreement to pay an administrative fee *at the time of application.*” OPD management advised us that it did not assess fees on mental health applicants and juveniles because these applicants do not possess the legal capacity to sign the AFA. However, there is no exemption for these individuals in the aforementioned regulations. OPD also acknowledged that fees were not assessed on denied applicants but should have been.

- OPD had not established adequate procedures for ensuring clients were billed for court-ordered fees which are sometimes ordered to reimburse OPD for legal services provided. These fees are recorded on a fee form by the courtroom clerk and a copy of the form is provided to the OPD attorney who

submits the form to the OPD district office for recordation in the accounts receivable system. However, OPD attorneys were not required to report if a fee was or was not assessed for each case and there was no independent verification that amounts assessed were properly recorded in the accounts receivable system. As a result, if a fee form were misplaced, it would not likely be identified since the absence of a form would not be unusual. State law provides for the applicant to reimburse OPD for the cost of the legal services in the amount, time, and method of payment determined by the court.

#### **Recommendation 4**

##### **We recommend that OPD**

- a. assess administrative fees on all applicants, as required by State regulations;**
- b. consult with legal counsel to determine the feasibility of pursuing collection of the aforementioned \$330,000;**
- c. develop procedures for documenting the disposition of court fees for all cases; and**
- d. establish procedures to ensure the proper fees were posted to the accounts receivable records.**

#### **Finding 5**

**OPD did not properly segregate accounts receivable duties and did not require independent approval for critical transactions.**

#### **Analysis**

OPD did not properly segregate accounts receivable duties and did not require independent approval for critical transactions. Specifically, our review disclosed that one OPD employee had unilateral control over client accounts receivable records and related activity, including processing adjustments, deleting client accounts, and maintaining the related accounts receivable control account. We were advised by OPD management that there was no documented supervisory review and approval for accounts receivable transactions or for any adjustments made to the client accounts during the audit period. In addition, other than CCU abatements, non-cash credits did not require prior supervisory approval, and OPD could not readily generate a report of all adjustments or deletions to the client accounts.

As a result, there was a lack of assurance as to the propriety of the accounts receivable records. During fiscal year 2008, OPD received approval from CCU to abate (credit) 574,563 client accounts, totaling \$28 million and, during fiscal year 2010, 2,241 accounts, totaling \$103,000, were credited because they contained duplicate Administrative Fee Agreement numbers.

## **Recommendation 5**

**We recommend that OPD**

- a. establish an independent control account and periodically reconcile the control account balance with the aggregate balance of the detail client accounts;**
- b. require prior supervisory review and approval of client account adjustments; and**
- c. establish output reports to identify all adjustments to client accounts, and use the reports to verify, on a test basis, that only approved adjustments were posted.**

## **Information Technology Services**

### **Finding 6**

**OPD expended approximately \$1.9 million during fiscal years 2007 through 2010 for two individuals, under contract, to perform network and database management, instead of pursuing State positions to perform these services.**

### **Analysis**

OPD contracted for two individuals to perform the equivalent work of two full-time employees to function as network and database administrators instead of pursuing State positions to perform these services.

In April 2006, OPD contracted with a vendor, through the Department of Budget and Management (DBM), to implement certain computer systems at OPD's district offices and to integrate these systems with OPD's existing computer systems. The contract further provided that the vendor was to provide OPD with database and network administrators to support OPD's computer systems and related network. The average annual cost of the network and database administrators for the three years ending June 2009 was approximately \$464,000. Subsequent to the systems implementation, in July 2009, the Department of Information Technology (DoIT) approved an extension of the aforementioned contract for the 18 months ending December 2010 for an additional cost of \$726,516, and OPD management advised us that there would be a continuing need for such database and network expertise after December 31, 2010. Collectively, OPD paid approximately \$1.9 million for these database and network services during fiscal years 2007 through 2010.

Although the aforementioned contracts were properly procured with DBM and DoIT's approval, OPD should have worked with DBM to authorize two full-time State positions to perform the aforementioned services. Specifically, State law provides that agencies should use State employees to perform all State functions

in State-operated facilities in preference to contracting with the private sector to perform these functions. In addition, the use of State employees for these positions could result in significant cost savings. For example, based on our review, a database specialist supervisor, which earns a fiscal year 2010 salary of up to \$78,173 under the State's personnel system, has job responsibilities similar to one of these contractual positions.

#### **Recommendation 6**

**We recommend that OPD work with the Department of Budget and Management to pursue State positions for the aforementioned functions.**

### **Payroll**

#### **Finding 7**

**OPD did not remove two employees who left State service from the payroll records in a timely manner and did not properly calculate certain leave payouts.**

#### **Analysis**

OPD did not remove employees who left State service from the payroll records in a timely manner and did not properly calculate related leave payouts.

Specifically, our review disclosed the following conditions:

- OPD did not remove two employees from the payroll in a timely manner, resulting in overpayments totaling \$30,319. Although both of these instances were subsequently detected by OPD, only \$9,759 has been recovered. Specifically, one of these employees left State service on September 8, 2009 and remained on the payroll through February 23, 2010 (168 days after leaving) resulting in an overpayment of \$20,560. Attempts to collect the overpayment were not successful and, on July 6, 2010, the overpayment was referred to the Department of Budget and Management's Central Collection Unit for continued collection efforts. For the other employee, OPD identified the overpayment prior to processing the annual leave balance payment and was able to offset the overpayment against the amount due to the employee.
- OPD improperly calculated the unused annual leave balance paid to six employees on termination of employment, resulting in overpayments totaling approximately \$35,600. For example, for five of the employees, OPD reimbursed the employees for more than the maximum of 50 carryover annual leave days allowed by State law. These overpayments went undetected by OPD until we started our review of these transactions. We were informed by

OPD management that letters were issued after our fieldwork to request repayment.

OPD management advised us that, as a result of these transactions, OPD procedures have been modified to prevent future errors. During fiscal year 2010, OPD's regular salary payments totaled approximately \$53.7 million and accrued leave payments totaled approximately \$300,000.

**Recommendation 7**

**We recommend that OPD**

- a. remove terminated employees from the payroll records in a timely manner,**
- b. calculate and independently review annual leave payouts in accordance with the State law, and**
- c. pursue recovery of the aforementioned overpayments.**

## **Audit Scope, Objectives, and Methodology**

We have audited the Office of the Public Defender (OPD) for the period beginning May 1, 2007 and ending June 30, 2010. The audit was conducted 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.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OPD's financial transactions, records and internal controls, and to evaluate its compliance with applicable State laws, rules, and regulations. We also determined the status of the findings contained 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. The areas addressed by the audit included client eligibility, procurements and disbursements, contracts, cash receipts, accounts receivable, and payroll. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of OPD'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.

OPD'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 the 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 related to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect OPD'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 OPD that did not warrant inclusion in this report.

OPD's response 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 OPD regarding the results of our review of its response.



MARTIN O'MALLEY  
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**APPENDIX**

PAUL B. DeWOLFE  
PUBLIC DEFENDER

CHARLES H. DORSEY, III  
DEPUTY PUBLIC DEFENDER

KATHLEEN L. MATTIS  
CHIEF FISCAL OFFICER

February 8, 2011

Bruce A. Myers, CPA  
Legislative Auditor  
Maryland General Assembly  
Office of Legislative Audits  
301 W. Preston Street, Room 1202  
Baltimore MD 21201

Dear Mr. Myers:

The Office of the Public Defender (OPD) has reviewed the Draft Audit Report dated January 2011 covering the examination of operations, accounts and records for the period beginning May 1, 2007 and ending June 30, 2010. OPD appreciates the cooperation and professionalism of the Office of Legislative Audits staff in performing this audit and the preparation of their recommendations to address the audit findings.

Attached please find our response to the findings, analysis and recommendations. OPD is committed to addressing all of the findings, especially with respect to the repeat finding.

Thank you for your support and please accept my appreciation for your contribution to OPD.

Sincerely,

Paul B. DeWolfe  
Public Defender

## **OPD RESPONSES TO FINDINGS AND RECOMMENDATIONS**

### **Finding 1**

**OPD policies and procedures for determining client eligibility were not sufficiently comprehensive.**

### **Recommendation 1**

We recommend that OPD:

- a. Modify its policies and procedures to require supporting documentation from an applicant for reported expenses, and
- b. Define situations in which verification of the financial status of an applicant is warranted and conduct such verifications according to its policy.

### **OPD agrees.**

Since May 2010 and the Maryland Court of Appeals decision in OPD vs. State, before and during the audit, OPD management has worked continuously to ensure that Agency policies and procedures for determining client eligibility are effective, consistent with State law and meet federal standards for eligibility. This decision has had significant impact on the OPD intake process and our effort to evaluate and document progress is rigorous.

The Agency's *Intake Manual* will be revised to include policies and procedures that are feasible, timely and effective, including a requirement for supporting documentation for expenses in addition to the requirement for documentation of income. OPD continues to require and obtain signed Affidavits of Indigence for all applicants, consistent with federal standards for eligibility, that certify the detailed information regarding employment, income and expenses submitted by applicants.

OPD is working to define situations in which further verification of the financial status of an applicant is warranted, as well as determine the frequency and responsibility for such verifications. Since the October 2010 change in State law allowing for access to confidential records, OPD has established contact with other State agencies to determine the criteria and timing of availability for information related to the financial status of applicants and potential procedures for inquiry and verification of their financial status.

### **Finding 2**

**Client eligibility determinations were not always properly supported and were not subject to independent supervisory review and approval.**

### **Recommendation 2**

We recommend that OPD ensure that:

- a. Eligibility determinations were properly supported in accordance with the *Intake Manual*;
- b. Eligibility determinations are reviewed and approved by independent supervisory personnel, at least on a test basis, and that such reviews be documented; and
- c. The *Intake Manual* is revised to include procedures requiring documented supervisory review.

**OPD agrees** and continues to work for 100% compliance with Intake policies governing documentation and support for eligibility determinations. OPD will revise the Agency's *Intake Manual* to include procedures for independent supervisory review and assessment of eligibility determinations including documentation of the outcome.

### **Finding 3**

**OPD lacked adequate procedures to ensure administrative fees due from clients were recorded in the accounts receivable records and were pursued for collection. As a result, fees for 40,000 cases opened during fiscal year 2010, totaling approximately \$1.9 million, were not recorded and pursued for collection.**

### **Recommendation 3**

We recommend that OPD ensure that all administrative fee billings, including those for new cases opened during our audit period, are recorded in the accounts receivable records and pursued for collection (repeat).

### **OPD agrees.**

It is our understanding that the 40,000 instances were primarily informational entries to ProLaw, the OPD case-management system, for which fees were not assessable, and records that included errors and/or duplicate information that we subsequently corrected or that did not meet the data parameter standards required for transmittal to and collection by the State's Central Collection Unit (CCU).<sup>1</sup>

OPD strives to verify records in ProLaw and validate their inclusion in accounts receivable only when we are assured that the asset will not be overstated and is collectible. Furthermore, there are valid instances where case records in ProLaw do not generate fees.

OPD management met with CCU on November 9, 2010 to discuss current transmittal requirements and as a result, we have made changes to our procedures to include higher standards for recording and collecting accounts receivable. We are also in the process of evaluating the data cited. Any records that can be validated as accounts receivable will be posted and pursued for collection.

### **Finding 4**

**OPD did not assess administrative fees in certain instances and did not ensure clients were billed for court-ordered fees as required by State regulations.**

### **Recommendation 4**

We recommend that OPD:

- a. Assess administrative fees on all applicants as required by State regulations;
- b. Consult with legal counsel to determine the feasibility of pursuing collection of the aforementioned \$330,000;
- c. Develop procedures for documenting the disposition of court fees for all cases; and
- d. Establish procedures to ensure the proper fees were posted to the accounts receivable records.

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<sup>1</sup> **Auditor's Comment:** Our audit of the data disclosed that the cases appeared valid as they had been assigned case numbers and Administrative Fee Agreement (AFA) numbers, which are used for billing purposes. Nevertheless, OPD indicated that it is in the process of evaluating the data cited and has agreed to implement the audit recommendation.

**OPD agrees** and will assess administrative fees to its applicants as required by State regulations. Policies and procedures in the *Intake Manual* will be amended to more accurately reflect State regulations and OPD personnel will be trained in their proper application for the assessment of administrative fees. OPD is confident that the exemption for juvenile and mental health applicants from administrative fees is applied properly and is correct under the law, according to legal counsel. OPD will evaluate the remaining administrative fees cited to determine their status, then record accounts receivable and pursue collection, if at all feasible.

State law establishes responsibility for the amount, time and payment of court-ordered fees with the Judiciary. Therefore, OPD cannot be responsible for procedures regarding the disposition of court-ordered fees for all cases. However, OPD will work with the Judiciary to evaluate and develop enhancements to procedures governing the disposition of court-ordered fees and for their recording and collection, within State law.

### **Finding 5**

**OPD did not properly segregate accounts receivable duties and did not require independent approval for critical transactions.**

### **Recommendation 5**

We recommend that OPD:

- a. Establish an independent control account and periodically reconcile the control account balance with the aggregate balance of the detail client accounts;
- b. Require prior supervisory review and approval of client account adjustments; and
- c. Establish output reports to identify all adjustments to client accounts; and use the reports to verify, on a test basis, that only approved adjustments were posted.

### **OPD agrees.**

The Control Account is a spreadsheet that indicates balances and aggregated activity in accounts receivable for a fiscal period. Accounts receivable details are not maintained by client account but by transaction. CCU creates client accounts from aggregated transactions transmitted to them by OPD for collection. Reports are available that identify adjustments to detailed transactions and account balances.

The Chief Financial Officer of OPD (CFO) will review and approve the Control Account and the reconciliation of the account with the aggregate balance of the detail on a monthly basis, will review and approve adjustments to accounts receivable prior to processing and will verify that only approved adjustments are posted.

### **Finding 6**

**OPD expended approximately \$1.9 million during fiscal years 2007 through 2010 for two individuals, under contract, to perform network and database management, instead of pursuing State positions to perform these services.**

### **Recommendation 6**

We recommend that OPD work with the Department of Budget and Management to pursue State positions for the aforementioned functions.

**OPD agrees** and will continue to work closely with DBM regarding available resources for the aforementioned functions, including opportunities to pursue State positions.

**Finding 7 – OPD did not remove two employees who left State service from the payroll records in a timely manner and did not properly calculate certain leave payouts.**

**Recommendation 7**

We recommend that OPD:

- a. Remove terminated employees from payroll records in a timely manner;
- b. Calculate and independently review annual leave payouts in accordance with the State law; and
- c. Pursue recovery of the aforementioned overpayments.

**OPD agrees.** Effective June 29, 2010, procedures for payroll processing have been modified to prevent future errors, including:

- Independent review and approval of all annual leave payout calculations in accordance with State law by the Assistant Fiscal Director prior to processing and
- Review and approval of all payroll change data by the Chief Fiscal Officer, including terminations and other headcount-related activity and timekeeping adjustments to ensure accuracy and timeliness of reporting.

OPD started collection efforts of the overpayments on July 9, 2010.

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