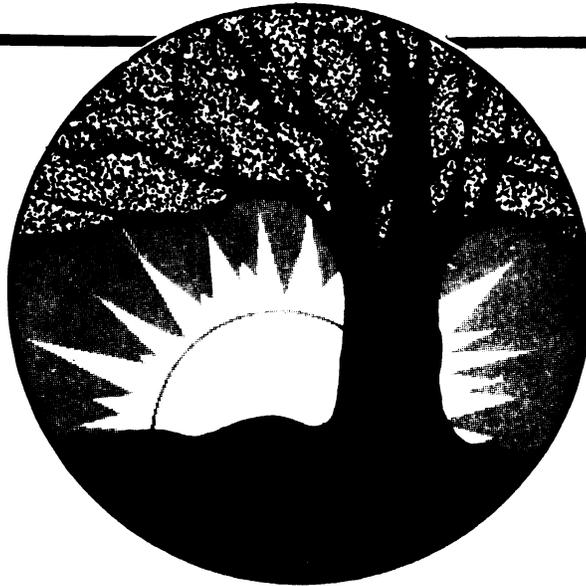


PERFORMANCE AUDIT

Department of Commerce and Insurance
And Related Entities
April 2009



Justin P. Wilson
Comptroller of the Treasury



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April 28, 2009

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Kent Williams
Speaker of the House of Representatives
The Honorable Jack Johnson, Chair
Senate Committee on Government Operations
The Honorable Susan M. Lynn, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Department of Commerce and Insurance and Related Entities. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the department and the related entities should be continued, restructured, or terminated.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director, Division of State Audit

AAH/dlj
08-033

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
**Department of Commerce and Insurance
and Related Entities**
April 2009

AUDIT OBJECTIVES

The objectives of the audit were to assess the department's administration and supervision of insurance companies; to assess securities registration; to assess the department's supervision of companies placed in receivership; to examine the authority and policies and procedures of the Emergency Communications Board; to review the processes and procedures of the Division of Consumer Affairs; to assess the TennCare Oversight Division's regulation of managed care organizations; to review the Electrical Inspection Section; to review the Manufactured Housing Section's compliance with statutes; to assess the Division of Fire Prevention's processes and procedures; to review the Commission on Firefighting Personnel Standards and Education; to review the department's actions to comply with Title VI requirements; and to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the department and related entities.

FINDINGS

There Are Weaknesses in Emergency Communication Services in Tennessee, Which Could Put Residents in Some Areas at Risk

Based on interviews, observations, auditor analysis, and documentation obtained during fieldwork, the Emergency Communications Board lacks statutory authority and jurisdictional oversight over Public Service Answering Points not affiliated with Emergency Communications Districts. This weakens the board's ability to ensure that Phase II technology exists for all Public Service Answering Points throughout the state. In addition, we identified problems with enforcement of minimum dispatcher training requirements and lack of knowledge regarding Emergency Communications District contingency plans (page 6).

The Manufactured Housing Section Has Not Met All Statutory Requirements in the Tennessee Manufactured Home Installation Act

The Tennessee Manufactured Home Installation Act requires the Department of Commerce and Insurance to ensure that (1) installers are licensed; (2) installation permits are obtained before electricity is turned on in a manufactured home; (3) at least 5% of manufactured homes installed each year in the state are inspected, including at least one inspection performed each year on each installer; and (4) inspections are performed within 20 business days after the receipt of the installer's report. Our review of the database information found that the section is meeting the requirement to inspect 5% of the installations each year. However, the number of late inspections increased annually from 63 in 2004, to 136 in 2006, and then

decreased to 118 in 2007. In addition, a review of a sample of 95 installers found that the license dates for 18 of the 95 installers made it difficult to determine the beginning and end of a license year for matching to installations and inspections. For the 18 installers with these unusual license dates, we determined (using the original license dates) that 11 had one license year with installations and no inspection and 5 had two years of installations without an inspection. Our review of the remaining 77 installers determined that 56 of those installers had one, two, or three license years with installations but no inspection. Furthermore, 6 of the 95 installers had performed installations prior to their license origination date or after the license expired (page 9).

The Department Did Not Prepare Reports and Complete Activities Referred to in Its Title VI Implementation Plan

Based on our review of documentation and interviews with department management, the department has not maintained Title VI data or developed a system to collect, analyze, or report data as described in its Title VI Implementation Plan. In prior years, department management's perspective was that the department was a subrecipient; therefore, it relied upon the grantor to maintain and collect Title VI information. Because the department receives grant funds now, according to department management, the department will review its implementation plan during fiscal year 2009 and make appropriate changes and updates "at the next filing opportunity once the review is completed." The department will also examine its data collection and analysis as part of the review (page 14).

The Division of Consumer Affairs Lacks a Mechanism for Accurately Assessing Consumer Satisfaction Levels Following the Mediation Process, Does Not Measure Public Awareness Related to the Buyer Beware List or Mediation Services, and Lacks Adequate Controls to Prevent Miscoded Data Entry in Its Complaint Management System

The Division of Consumer Affairs works to enforce the state Consumer Protection Act and assist consumers who are victims of unfair business practices. Based on file reviews, interviews with staff, and auditor analysis and

observation, we identified three areas in which the division should make improvements to better serve consumers and better monitor its own effectiveness: (1) the division currently does not specifically define "successful mediation," nor does it employ the means to measure it; (2) the division engages in public education efforts through seminars, press releases, exhibitions, and other miscellaneous events but has no process to gauge the extent of consumers' awareness of the services it provides; and (3) the Complaint Management System (which the division uses to track and monitor consumer complaints and outcomes) contains illogical entries, raising concerns that the Buyer Beware List could include some businesses that don't belong there or fail to include some businesses that should be on the list (page 16).

The Insurance Division Has Not Conducted Timely Premium Tax Audits

Insurance companies, with specified exceptions, are required to file premium tax returns. Division staff do not audit the quarterly returns (although they do check these returns to make sure that the payment amount equals what is on the form), but the annual return is audited. In 2008, there were 1,947 insurance companies operating in Tennessee. Of those companies, 1,742 pay premium taxes, and audits are to be performed on all premium tax returns. Audits uncover underpayments and overpayments of premium taxes. According to the division staff and management, the division is up to two years behind on auditing premium tax returns. As of May 1, 2008, all 2005 audits had just been completed, according to Insurance Division staff. Without the audits, the state cannot be sure correct amounts of taxes are being paid or levy fines for underpayment. Management and staff stated that they were working to complete the audits. As of August 29, 2008, Insurance Division management stated that they only had 280 premium tax audits for 2006 left to complete and that 100 audits for 2007 had already been completed (page 20).

There Is No Systematic Supervisory Review of the Securities Registration Process

The Securities Division's Securities Registration Section reviews applications for securities offerings that include the prospectus, description of the security, financial statements, and other

pertinent information. If an offering is found to be in compliance with statutory provisions, the security is registered. Section management does not conduct routine supervisory reviews of the work of those securities examiners who review the applications for securities to be sold in the state. Although the department's ethics and conflict-of-interest policy appears detailed and

comprehensive, and we found no evidence of bribery or other improper influence during our review, formal mechanisms such as regular supervisory reviews of decisions are critical in further addressing the risk that promoters of securities could improperly influence examiners (page 23).

OBSERVATIONS AND COMMENTS

The audit also discusses the following issues: the Electrical Inspection Section's completion of only 9 of 20 audits of exempted entities; underutilization of the Tennessee Fire Service and Codes Enforcement Academy; improvement in local departments' participation in the Tennessee Fire Incident Reporting System; the Codes Enforcement Section's adoption of rules and completion of over 70% of required audits of exempted entities; the need for the Division of Fire Prevention to improve documentation of its Fire Prevention Education Program; the failure of the Securities Registration Section to meet its performance standard to review applications in 20 days; the Manufactured Housing Section's licensing files; and results of other audit work (page 24).

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider the extent of the threat to public safety resulting from Public Service Answering Points (PSAPs) not affiliated with Emergency Communications Districts (ECDs) and lacking Phase II technology, and consider what, if any, statutory changes need to be made to reach the optimal, operational safety of E-911 service throughout the state. Specifically, the General Assembly may wish to consider options such as increasing the Emergency Communications Board's oversight of unaffiliated PSAPs or specifically requiring these PSAPs to obtain Phase II technology or to consolidate with an ECD that already has such technology. The General Assembly may also wish to consider clarifying which entity has oversight of and authority to monitor and enforce requirements concerning minimum dispatcher training standards.

**Performance Audit
Department of Commerce and Insurance
and Related Entities**

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Performance Audit Department of Commerce and Insurance and Related Entities

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Department of Commerce and Insurance and related entities was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-230, the following entities are scheduled to terminate June 30, 2009: the Department of Commerce and Insurance, the Emergency Communications Board, and the Commission on Firefighting Personnel Standards and Education. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review of the department and related entities and to report to the Joint Government Operations Committee of the General Assembly. The performance audit is intended to aid the committee in determining whether the department and related entities should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to assess the department's administration and supervision of insurance companies by reviewing the process and procedures for insurance company examinations and financial analysis;
2. to assess securities registration monitoring by reviewing the process and procedures for security registration and review and securities licensing;
3. to assess the department's supervision of companies placed in receivership;
4. to examine the authority and policies and procedures of the Emergency Communications Board for establishing a communications system for ensuring public safety;
5. to review the processes and procedures of the Division of Consumer Affairs for educating and protecting consumers;
6. to assess the TennCare Oversight Division's regulation of the managed care organizations in the TennCare program;

7. to review the Electrical Inspection Section's audits of exempt entities, complaint resolution process, and monitoring of inspections and inspectors;
8. to review the Manufactured Housing Section's compliance with statutes for licensing retailers, installers, and manufacturers;
9. to assess the Division of Fire Prevention's processes and procedures for (a) implementing a statewide fire prevention education program, (b) improving fire department reporting to the Tennessee Fire Incident Reporting System, (c) certifying Bomb and Arson investigators, (d) auditing the local governments granted exemption from state building and fire codes, (e) ensuring codes inspectors have annual evaluations and their personnel files contain required information, and (f) promoting participation in training at the Fire Service and Codes Academy;
10. to review the Commission on Firefighting Personnel Standards and Education and determine policies and procedures for adequately preparing students for the exam and implementing a system for maintaining student exam scores;
11. to review the department's actions to comply with Title VI requirements; and
12. to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the department and related entities.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities and procedures of the department were reviewed with a focus on procedures in effect at the time of fieldwork (December 2007 to June 2008). We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Methods used included

1. reviews of applicable legislation and department rules, policies, and procedures;
2. reviews of prior audit reports and documentation;
3. reviews of department files, documents, reports, and information summaries;
4. interviews with department staff; and
5. reviews of selected department information systems used in licensing and complaint functions.

This audit does not include a review of the Division of Regulatory Boards, the Peace Officer Standards and Training Commission, or the Tennessee Law Enforcement Training Academy, which are audited separately.

Tennessee statutes, in addition to audit responsibilities, entrust certain other responsibilities to the Comptroller of the Treasury. Those responsibilities include serving as a member of the Emergency Communications Board. *Government Auditing Standards* specifically permit both the performance of audits and the performance of these other duties when required by state statute. The Comptroller of the Treasury's membership on the Emergency Communications Board did not affect our audit conclusions.

ORGANIZATION AND RESPONSIBILITIES

The department's primary responsibilities are to enforce the insurance laws of the state; to supervise life, fire, casualty, and other insurance companies authorized to transact business in Tennessee; to initiate statewide fire prevention programs; to investigate the origin and circumstances of fires; to enforce the Consumer Protection Act; to receive, investigate, and resolve consumer complaints; to enforce state laws pertaining to securities dealers and salesmen; and to supervise occupational regulatory boards, commissions, and advisory committees.

The department's expenditures for the year ended June 30, 2008, totaled \$116 million—\$72 million from state appropriations, \$334,900 from the federal government, and \$43.8 million from other revenue sources. Estimated expenditures for the year ended June 30, 2009, are \$138.5 million—\$88.2 million from state appropriations, \$235,000 from the federal government, and \$50.1 million from other revenue sources. See page 52 for a breakdown of department staff by job title, gender, and ethnicity.

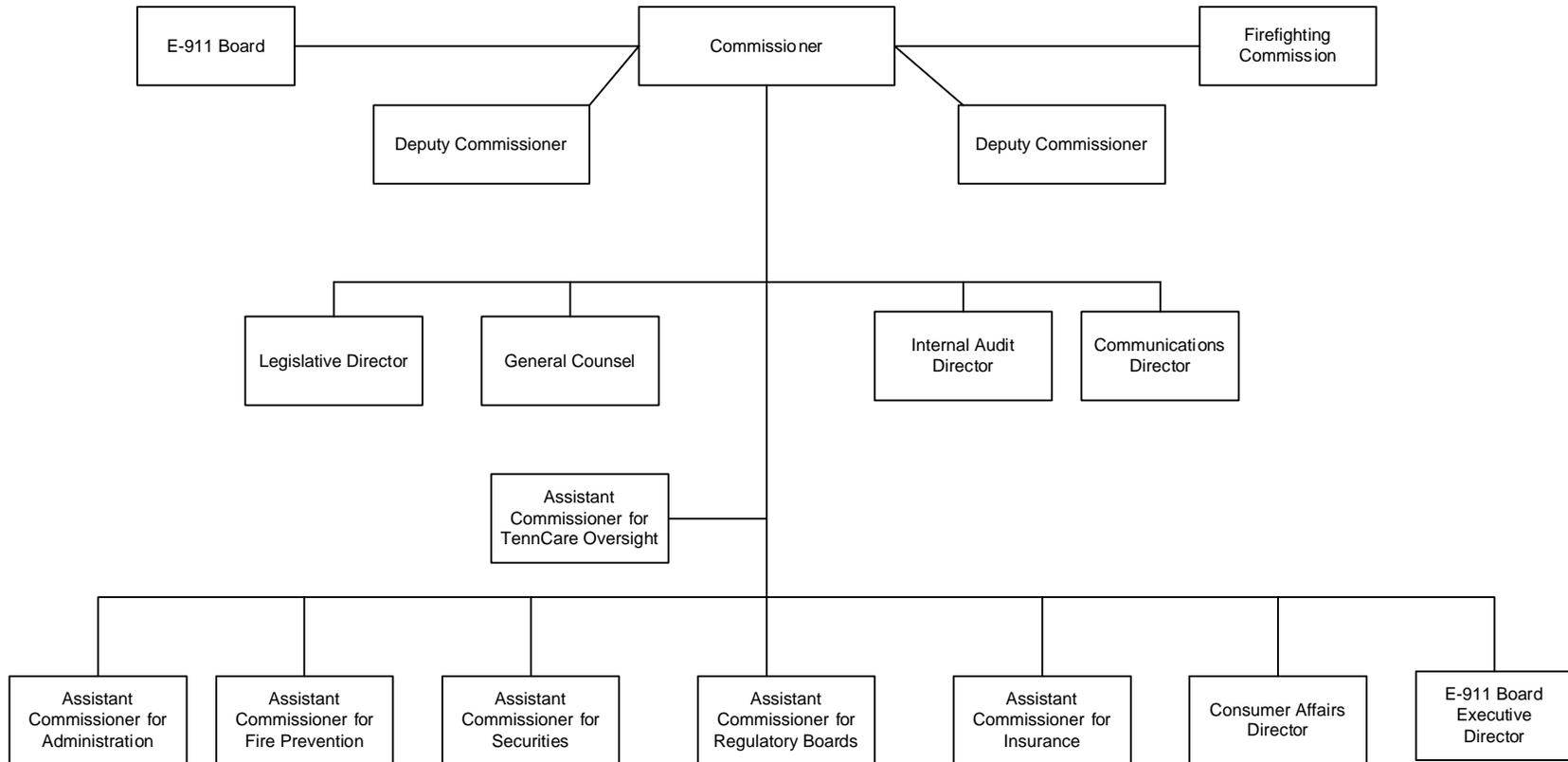
The Office of the Commissioner includes two Deputy Commissioners, the Office of General Counsel, the Internal Audit Division, the Communications Director, and the Legislative Director. (See page 4 for an organization chart of the department.)

The Administration Division includes Fiscal Services, Management Information Services, and Personnel.

The Division of Insurance is responsible for enforcing the state's insurance laws and supervising insurance companies authorized to do business in Tennessee.

The Division of Securities is responsible for enforcing all state laws pertaining to securities dealers and sellers and protecting Tennessee's investors by maintaining the integrity of the securities market.

**Department of Commerce and Insurance
Organizational Chart
July 2008**



The Division of Consumer Affairs is responsible for enforcing the Tennessee Consumer Protection Act, which protects consumers and legitimate business enterprises from those who engage in unfair or deceptive trade practices. The division also promotes fair consumer practices and consumer education, and regulates health clubs.

The TennCare Oversight Division provides financial and operational oversight of the eight managed care organizations (MCOs) and two behavioral health organizations (BHOs) participating in the TennCare Program. By overseeing, examining, and monitoring the MCOs and BHOs under contract with the state, the division determines compliance with statutory and contractual requirements relating to MCO/BHO financial responsibility, stability, and integrity. The division also determines MCO/BHO compliance with requirements for accurate and timely processing of claims.

The Division of Regulatory Boards provides licensing, regulation, and disciplinary action of professions and businesses. (The Division of Regulatory Boards is not included in this audit. As of April 2009, a performance audit of 11 professional regulatory boards is in process.)

The Emergency Communications Board promotes statewide wireless enhanced 911 service. The board is authorized to provide advisory technical assistance to emergency communications districts; establish technical operating standards for emergency communications districts; review and revise wireless 911 standards; and review and approve reimbursements for expenditures related to implementation, operations, maintenance, or improvements to statewide wireless enhanced 911 service.

The Division of Fire Prevention provides services to promote fire safety education and fire prevention. These efforts include inspection of institutional facilities and electrical installations; arson investigation; construction plans review; the Tennessee Fire Incident Reporting System; registration of electricians; fireworks and explosives user permitting; licensing and regulating sprinkler contractors, liquid petroleum gas distributors, and fire extinguisher dealers; administration of the Tennessee Fire Service and Codes Enforcement Academy; and regulation of the mobile home industry. The division is also responsible for enforcing building and safety codes for most new construction, schools, and other existing structures.

The Commission on Firefighting Personnel Standards and Education is responsible for the certification of volunteer and paid firefighters in the State of Tennessee. The commission also administers the Educational Incentive Pay Program for paid firefighters in Tennessee.

The Tennessee Law Enforcement Training Academy provides training for state, county and city law enforcement officers. (The academy is not included in this audit. See the September 2008 performance audit of the Peace Officer Standards and Training Commission and Law Enforcement Training Academy.)

FINDINGS AND RECOMMENDATIONS

1. There are weaknesses in emergency communication services in Tennessee, which could put residents in some areas at risk

Finding

Based on interviews, observations, auditor analysis, and documentation obtained during fieldwork, the Emergency Communications Board lacks statutory authority and jurisdictional oversight over Public Service Answering Points not affiliated with Emergency Communications Districts. This weakens the board's ability to ensure that Phase II technology exists for all Public Service Answering Points throughout the state. In addition, we identified problems with enforcement of minimum dispatcher training requirements and lack of knowledge regarding Emergency Communications District contingency plans.

The Emergency Communications Board's oversight responsibilities include "assisting emergency communications district boards of directors in the area of management, operations, and accountability, and establishing emergency communications for all citizens of the state." Pursuant to Section 7-86-307, *Tennessee Code Annotated*, the board has developed and implemented basic 911 and wireless enhanced 911 service throughout the state of Tennessee. As outlined in Federal Communications Commission Order 94-102, the board has fully implemented Phase I and Phase II of enhanced 911 service:

- Phase One requires the ability to relay to the 911 centers the telephone number and the location of the cell site or tower receiving the wireless 911 call.
- Phase Two requires the capacity to identify the latitude and the longitude of a wireless 911 call, within a radius of 125 meters (401 feet), in 67% of all cases.

Section 7-86-107, *Tennessee Code Annotated*, states that local emergency communications districts' boards of directors must create an emergency communication service capable of using at least one of three methods (direct dispatch method, relay method, or transfer method) in response to emergency calls. There are 100 Emergency Communications Districts (ECDs) and 178 Public Service Answering Points (PSAPs) throughout the state. PSAPs provide two primary public safety services—taking 911 calls and dispatching for public safety agencies. Each public safety emergency services provider retains the right to dispatch its own services, unless a voluntary agreement is made between the provider and the board of directors of the ECD.

All 911 calls travel on special trunks that connect a caller dialing 911 with a PSAP. All PSAPs affiliated with an ECD receive operational funding, 911 equipment reimbursements, and technical assistance; have training standards for dispatchers; and have Phase II technology capabilities. Only 157 PSAPs are affiliated with an ECD, however. Consequently, there are 21

non-affiliated PSAPs that did not receive funding or equipment through the Emergency Communications Board. (The extent to which any of these non-affiliated PSAPs may have obtained the needed equipment on their own is unknown.) The 911 trunks in Tennessee are only routed to Emergency Communications District-affiliated PSAPs. In some situations, however, a 911 call must be directed to one of the 21 non-affiliated PSAPs that has elected to dispatch its own calls. In some of these cases, according to the Emergency Communications Board's Executive Director, the initial call receiver will stay on the line while the call is transferred to the PSAP, allowing PSAPs that are without phase II location technology to know where the call is coming from (via the Emergency Communications District-affiliated PSAP that is still on the line).

An especially problematic situation arises when an unaffiliated, unequipped PSAP takes the phone call directly from the public (i.e., the PSAP does not have phase II technology, and an affiliated dispatcher who does have the location technology is not on the line to help). The actual extent of this problem is, however, unknown. These areas without Phase II coverage would also not be integrated into the ongoing Next Generation 911 project that, according to a report on the Feasibility of a Next Generation 911 Solution, "will route wireline, wireless, and VoIP calls in a standardized manner directly through a common open architecture network. A network of this type will allow E-911 callers to be directly connected to the PSAP and provides for faster delivery of critical call data to the PSAP."

In addition, enforcement of minimum training requirements commensurate with Chapter 0780-6-2, E-911 rules is not adequate. Dispatcher training regulations include minimum training, minimum course of study, and minimum supervised on-the-job training requirements. Because unaffiliated PSAPs are not within the board's jurisdiction, dispatcher training compliance cannot be verified at these sites. While the board has funding and equipment incentives for unaffiliated PSAPs to consolidate into a 911 ECD, the board has no relationship with, or control over, unaffiliated PSAPs that want to retain their own dispatching services. In addition, the board's technical services director is unable to visit all PSAPs in the state each year to ensure that training requirements are met by all affiliated PSAPs. The inability to effectively enforce dispatcher training prohibits the board from ascertaining that dispatching personnel meet minimum qualifications — essential for safely operating E-911 service throughout the state.

The Emergency Communications Board's Policy No. 36 requires PSAPs to create 911 contingency plans in case of power outages, network disruptions, or evacuations. The policy does not, however, require the Emergency Communications District to submit the plans, and the board does not have all of the contingency plans on file—as of May 2008 the board only had contingency plans on file for 24 of the 178 PSAPs. In addition, the unaffiliated PSAPs are not required to develop contingency plans. Not having all contingency plans on file limits the board's knowledge of the PSAPs' plans and assurance of the sustained operability of E-911 in case of an emergency situation.

Recommendation

The General Assembly may wish to consider the extent of the threat to public safety resulting from Public Service Answering Points (PSAPs) not affiliated with Emergency Communications Districts (ECDs) and lacking Phase II technology, and consider what, if any, statutory changes need to be made to reach the optimal, operational safety of E-911 service throughout the state. Specifically, the General Assembly may wish to consider options such as increasing the Emergency Communications Board's oversight of unaffiliated PSAPs or specifically requiring these PSAPs to obtain Phase II technology or to consolidate with an ECD that already has such technology. The General Assembly may also wish to consider clarifying which entity has oversight and authority to monitor and enforce requirements concerning minimum dispatcher training standards.

The Emergency Communications Board should revise and clarify Policy 36 to ensure that Emergency Communications Districts and PSAPs have 911 contingency plans and submit those plans to the board. The board should take enforcement action against ECDs that fail to comply.

Management's Comment

We concur in part.

Management agrees that emergency communications controlled by local responders, cities, and counties in some areas of the state may not conform to the Board's technical, operational, and training standards. Current legislation [*Tenn. Code Ann.* § 7-86-107(b)] permits local responders to opt out of the state 911 system and retain their right to dispatch their own services. Their activities are not within the purview of the Board's enabling legislation.

As to the statement that “. . . the board's technical services director is unable to visit all PSAPs in the state each year to ensure that training requirements are met by all affiliated PSAPs,” please note that the technical services director is not an auditor. His job is to provide immediate technical assistance to ECDs across the state to assure continuous 911 service. Additional staff would be required should legislation be enacted to require the Board to fully monitor and audit compliance with the dispatcher training regulations. The Board approached the Office of the Comptroller, Division of County Audit about addressing this issue, inasmuch as they already review ECD annual audit reports and administer the ECD audit program. They indicated they were unable to do so.

It should also be noted that during its November 2008 meeting, the TECB unanimously adopted a pilot program to provide financial support for dispatcher training to ECDs and ECD-affiliated dispatchers. This program is intended to impact compliance with the training regulations.

As to the contingency plan issue, Policy No. 36 currently states:

All public safety answering points (PSAPs) operated by Emergency Communications Districts shall develop and adopt a written plan that defines how 911 calls will be rerouted in the event network facilities are disrupted, equipment fails, the PSAP must be evacuated, or for any other reason that 911 calls cannot be answered at the intended PSAP.

During its May 7, 2009, meeting, the TECB will be asked to approve an amendment to Policy No. 36 requiring ECDs to submit their written contingency plans to the Board by a certain date.

2. The Manufactured Housing Section has not met all statutory requirements in the Tennessee Manufactured Home Installation Act

The Tennessee Manufactured Home Installation Act (codified in Sections 68-126-401 through 412, *Tennessee Code Annotated*, and reflected in the *Tennessee Secretary of State Rules*, Chapter 0780-2-5) became effective January 1, 2004. It requires the Department of Commerce and Insurance to ensure that (1) installers are licensed; (2) installation permits are obtained before electricity is turned on in a manufactured home; (3) at least 5% of manufactured homes installed each year in the state are inspected, including at least one inspection performed each year on each installer; and (4) inspections are performed within 20 business days after the receipt of the installer's report. The Manufactured Housing Section of the Division of Fire Prevention is responsible for administering the act. A database used by the section tracks decal sales, installations performed, and inspections.

Section 68-126-402(5), *Tennessee Code Annotated*, defines installations as site preparation; support structures; anchoring systems; ground moisture barriers; HVAC duct connections; plumbing and electrical crossover connections; completion of exterior siding; installation of heating application ventilation systems or fireplace chimney systems; and completion of hinged-roof sections.

The Manufactured Housing Section is responsible for licensing installers. Applicants are required to submit an application form with proof of a \$10,000 bond, complete a 15-hour course, and pass an examination on manufactured home installation. Licenses expire one year after issue unless renewed. Licensed installers purchase installation permit decals from any of the county clerks in the state. The decals are placed on each new and used manufactured home installed. Installers submit weekly reports of installations completed including the name of the homeowner and the address of the home installed. Monthly, county clerks remit fees collected and reports of the permit numbers sold and the corresponding license numbers of the installers.

The section has seven installation inspectors who report to one installation manager. The inspectors are assigned specific counties—each has 13 to 15 counties. After an inspection is complete, the inspector completes a Set-Up Inspection form. If deficiencies are found during the

inspection, installers are notified in writing. If the violation does not create an imminent safety hazard, the installer must correct or outline the steps taken to correct the violation within 30 days of the date of the letter. If the violation does create an imminent safety hazard, the installer must reply within 24 hours and provide a plan of corrective action to correct the violation.

Prior to the enactment of the Manufactured Home Installation Act, the department decided to use an Access database to track installations and permits rather than modify any existing computer system. All county clerks are issued decals, and those numbers are entered into the database by county—approximately 50,000 decals are recorded in the database by number and county. Subsequent information (homeowner name and address, date of installation, date installation report received) on each decal is entered from both (1) weekly installation reports from licensed installers and (2) monthly decal sales reports from county clerks. An administrative staff person is responsible for entering all information into the database—monthly decal reports from county court clerks, weekly installation reports from the installers, and inspection results. This person also assigns installation inspections to the inspectors to ensure that each installer has one inspection annually and that 5% of installations are inspected annually.

Inspections of 5% of Manufactured Homes Installed in State

Section 68-126-406(e), *Tennessee Code Annotated*, requires that 5% of all manufactured homes installed in the state be inspected. Based on our review of the database information, the section is meeting the requirement to inspect 5% of the installations each year.

**Manufactured Housing
Installers, Installations, and Inspections
Years 2004-2008**

Year	Number of Installers with Installations During the Year	Number of Installations	Number of Inspections	Percentage of Installations Inspected
2004	384	8,308	486	6%
2005	397	9,302	671	7%
2006	338	8,100	1,318	16%
2007	296	7,625	1,280	17%
2008*	208	1,426	279	20%

*As of April 22, 2008.

Inspections Within 20 Business Days and Rejected Inspections

Section 68-126-406(e), *Tennessee Code Annotated*, requires that inspections be performed within 20 business days after the receipt of the installer’s report. Based on our review of the database, the number of late inspections increased annually from 63 in 2004, to 136 in 2006, and then decreased to 118 in 2007. Management stated that the section believes it has a responsibility to ensure that licensees who consistently perform poorly get more than one required inspection. Therefore, some of the late inspections could be attributed to a practice by the inspectors—during a random inspection, the inspector may determine that the section should look at all previous installations by that installer. However, the database does not reflect whether

an inspection is a result of this policy or a random inspection. Therefore, we could not determine, nor could the section, which of the inspections were late and which were the result of this practice.

**Manufactured Housing
Late Inspections
Years 2004-2008**

Year	Number of Inspections	Number of Late Inspections
2004	486	63
2005	671	71
2006	1,318	136
2007	1,280	118
2008*	279	10

*As of April 22, 2008.

We determined that in 2004, 82% of inspected installations were rejected by the inspector during the original inspection. In 2007, 36% were rejected initially. Section management said that installers are now more aware of the law and rules.

**Manufactured Housing
Installations Initially Rejected
Years 2004-2008**

Year	Number of Inspections	Number of Installations Initially Rejected	Percentage of Installations Initially Rejected
2004	486	397	82%
2005	671	520	77%
2006	1,318	718	54%
2007	1,280	605	47%
2008*	279	101	36%

*As of April 22, 2008.

One Inspection Annually Per Installer

Section 68-126-406(e), *Tennessee Code Annotated*, requires that there be at least one inspection of a home installed by each installer each year. Each year is not defined in code as calendar or fiscal, and according to section management, they use license year to determine the required inspection. For example, an installer whose license origination date is May 1, 2008, would be required to have one inspection of installations made prior to that license's expiration date of April 30, 2009.

We used a sample of 95 installers (59 of the 338 installers in 2006 and 45 of the 296 installers from 2007 minus 9 that were duplications). We obtained licensing dates for the 95 installers from the RBS information system (used by the section to record licensing information of the installers). Then, we extracted installation and inspection dates for the years 2004 to 2008 from the Access database of 50,000 records stored by decal number with corresponding inspection data for the 95 installers.

The license dates for 18 of the 95 installers made it difficult to determine the beginning and end of a license year for matching to installations and inspections. For instance, one installer had an original license date of January 8, 2004, and the latest expiration date of July 26, 2009. Since rules adopted by the section state that an installer’s license expires annually, the latest expiration date should be January 7, 2009. Another installer had an original license date of May 24, 2005, and an expiration date of September 26, 2008. One explanation could be that when installers are late in renewing, the renewed license is dated when the fee is received months later, therefore replacing the original date. Management could not explain this nor determine whether an installer could continue to purchase decals and perform installations, as in the examples above, for the four- to six-month period where the license was delinquent. For the 18 installers with these unusual license dates, we determined (using the original license dates) that 11 had one license year with installations and no inspection and 5 had two years of installations without an inspection.

We examined the installation and inspection dates for the remaining 77 installers whose license dates were not unusual. Our review determined that 56 of those 77 installers had one, two, or three license years with installations but no inspection. Furthermore, 6 of the 95 installers had performed installations prior to their license origination date or after the license expired.

**Manufactured Housing
Installers Without Inspections During a License Period**

Number of License Years Without an Inspection	Number of Installers Without an Inspection
1	36
2	18
3	2
Total	56

In the October 2004 performance audit of the Department of Commerce and Insurance, we identified deficiencies in the system designed by the department to track installation permits and inspections. We determined that the deficiencies would make it difficult to ensure that all requirements of the Manufactured Housing Act are fulfilled. In response to that audit, the section added new fields to the database—dates when each installation permit decal is sold, dates when the installer’s report is received, and dates of installations. However, the database still has limitations, which are compounded by having the license dates in a different information system, making it difficult to track the necessary information for determining compliance with the Act.

Rather than having one person tracking installations, inspections, and reporting, the section should work with the department’s Information Systems staff to find a user-friendly, inexpensive, business-level database application that would serve as a tool for staff to manage their work, by allowing inspectors to look at installations and installers in order to select their own samples of installations for inspections.

Recommendation

Department management and the Manufactured Housing Section should implement procedures to ensure that the section meets the requirements set forth in the Tennessee Manufactured Home Installation Act. The section should determine the reasons for license expiration date anomalies and their impact on inspection requirements. The section should determine whether installers are extending the period they are subject to inspection by later renewal of a license, and should ensure that installers cannot work prior to licensing or after license termination. The department should determine whether a user-friendly, inexpensive, business-level database application would enable inspectors to better monitor installations and installers.

Management's Comment

Inspections Within 20 Business Days and Rejected Inspections

We concur with this finding. It is the practice of the Section to inspect previous installations of installers whose random inspection revealed imminent safety hazards or numerous deficiencies.

To more effectively track installations that may be over 20 days old, the inspection report completed by the inspector will have an additional category added for headquarter ordered to catch the above types of inspections. Additionally, columns will be added to the database to reflect if the inspection was random, homeowner requested, or headquarter ordered.

These items will be added to the inspection report and the database within the next 30 days, and the information will be recorded on all inspections performed after May 1, 2009.

One Inspection Annually Per Installer

We concur with this finding. Effective July 1, 2009, the Section will begin tracking inspections by calendar year to eliminate any confusion in licensing years. Although license expiration date anomalies may occur for numerous reasons, as listed in the audit, by tracking inspections by calendar year, these anomalies should not affect the inspection tracking process. However, a method must be devised to track this information, as the RBS licensing system and the database used are not compatible. The Section will work with Information Systems to find a user-friendly, inexpensive application to enable the Section to better monitor installations and installers.

Additionally, the Section makes every effort to ensure that installers who are not properly licensed are not performing installations. County Clerks are responsible for checking the license and expiration date prior to selling decals to an installer to ensure that the license is valid. Licensees who have expired licenses are contacted and asked to return any outstanding decals until the license issues are resolved. If homes are found that were installed while a license may be inactive, the retailer is assessed a civil penalty of \$1,000 for each home set without the proper

license. Audits are periodically performed for each installer who has purchased decals, and installers are required to account for each decal that has not been reported as having been used.

The Section will work to correct this finding by July 1, 2009, although a user-friendly, inexpensive software application for this program may take additional time to acquire and put into place.

3. The department did not prepare reports and complete activities referred to in its Title VI Implementation Plan

Finding

Federal law prohibits all programs or activities from discriminating against participants or clients based on race, color, or national origin. Section 4-21-901, *Tennessee Code Annotated*, requires each state governmental entity subject to the requirements of Title VI of the Civil Rights Act of 1964 to develop and submit a Title VI implementation plan to the Comptroller of the Treasury.

We reviewed the Title VI Implementation Plan submitted by the department. Management, in conjunction with the Title VI Coordinator, should ensure that the department is complying with the policies, procedures, and reporting activities outlined in the plan. The plan states that the department's policy is to ensure equal opportunity in all aspects of its programs and services and lists the means used by the department to inform eligible participants about services and their rights under Title VI. Responsibilities of the divisions of the department are

- conducting compliance reviews to ensure that all benefits and services are provided on an equal opportunity basis;
- assuring that records are maintained that depict on a racial/ethnic basis those eligible to participate, those participating, those denied participation, the number of fair hearing requests and results, and employment staffing data;
- submitting data and reports that the responsible federal agency determines necessary to ascertain whether the recipient has complied or is complying with Title VI; and
- requiring secondary recipients to maintain records and submit reports necessary to ascertain whether such secondary recipients have complied or are complying with Title VI.

In addition to the above, the plan states that the department will use newspaper articles, radio and television announcements, and display of posters to inform eligible participants of their rights and that each division is responsible for developing and maintaining a system to collect, analyze, and report the eligible population and participation data by race for each program on an annual basis including a Civil Rights Evaluation Report. In its guidance regarding Title VI plans, the Title VI Compliance Commission in the Tennessee Department of Human Resources states that "data collection and analysis is an essential, critical component of a Title VI

implementation strategy.” The commission guidance also states that Title VI and its regulations apply to a recipient in whole even if federal money is only extended to a part of the recipient (i.e., if one part of a department receives federal financial assistance, the whole department is considered to receive federal assistance).

Based on our review of documentation and interviews with department management, the department has not maintained Title VI data or developed a system to collect, analyze, or report data as described in its Title VI Implementation Plan. In prior years, department management’s perspective was that the department was a subrecipient; therefore, it relied upon the grantor to maintain and collect Title VI information. Because the department receives grant funds now, according to department management, the department will review its implementation plan during fiscal year 2009 and make appropriate changes and updates “at the next filing opportunity once the review is completed.” The department will also examine its data collection and analysis as part of the review.

Recommendation

Management, in conjunction with the Title VI Coordinator, should ensure that the department complies with the policies, procedures, and reporting activities outlined in the plan and as required by Title VI. When the plan states that a report will be produced based on documents reviewed by the Title VI Coordinator, the reports should be available, and the documents should support the fact that a review of information supplied has been completed.

Management’s Comment

We concur. The department acknowledges that the Title VI Compliance Commission in the Tennessee Department of Human Resources has stated that “data collection and analysis is an essential, critical component of a Title VI implementation strategy.” The department will revise its implementation plan prior to the next filing date. Any information gathered under the new plan will be reviewed by the Title VI Coordinator. The reports will be available for audit review and will indicate that a review has been completed by the Title VI Coordinator.

4. The Division of Consumer Affairs lacks a mechanism for accurately assessing consumer satisfaction levels following the mediation process, does not measure public awareness related to the Buyer Beware List or mediation services, and lacks adequate controls to prevent miscoded data entry in its Complaint Management System

Finding

The Division of Consumer Affairs works to enforce the state Consumer Protection Act and assist consumers who are victims of unfair business practices. From January 2007 through June 2008, the division received 7,752 consumer complaints—7,044 of which were resolved or closed. Based on file reviews, interviews with staff, and auditor analysis and observation, we identified three areas (detailed below) in which the division should make improvements to better serve consumers and better monitor its own effectiveness.

The Division Does Not Adequately Measure Consumer Satisfaction With the Complaint Mediation Process

Effectively measuring consumer satisfaction is an important barometer for assessing the division’s performance and should be a critical component for defining and reaching successful mediations. However, the division currently does not specifically define “successful mediation,” nor does it employ the means to measure it.

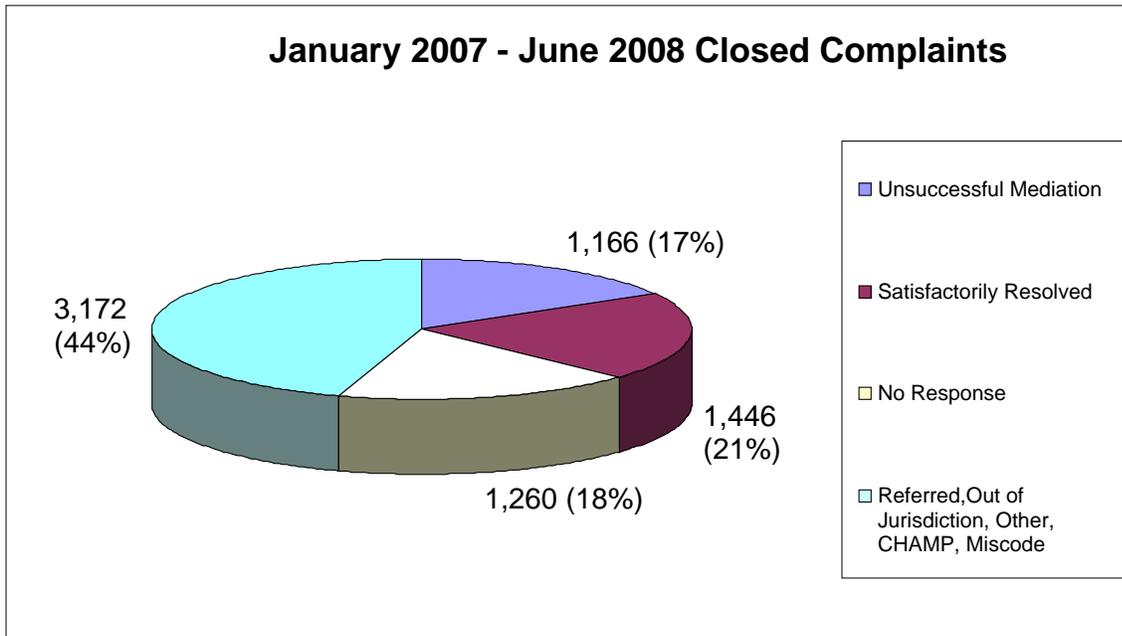
Consumer Affairs receives complaint forms via fax, mail, or the Internet. It takes the division approximately two weeks to create a file after a complaint is received. Once a consumer protection specialist is assigned to a case, the specialist sends a notifying letter out to the business named in the complaint. The business is then given 15 days to contact the division and address the complaint. If the business fails to respond to the first notifying letter, a consumer specialist makes a second attempt to contact the business before placing it on the Buyer Beware List. The mediation process relies on the cooperation of both businesses and consumers in order to reach a resolution.

The division’s Complaint Management System (CMS) contains various “closure codes” that reflect the nature of the resolution and are assigned to finished complaint files. For cases resulting in outcomes described in closure codes 1-6 as shown below, the division considers these resolution categories “satisfactorily resolved.”

CLCODE	Explanation
	No Close Code
0	Need More Information
1	Money Recovered
2	Merchandise Delivered
3	Merchandise Repaired
4	Merchandise Replaced
5	Satisfactorily Resolved
6	Compromise Reached
7	No Response By Complainant
8	Inquiry

- 9 Unable to Locate Consumer
- 10 Referred to Another Government Agency
- 15 Referred to Arbitration Board
- 18 Out of our Jurisdiction-No Action Appropriate
- 19 No Basis-Invalid Complaint
- 20 Consumer Withdrew Complaint
- 25 No Response By Company
- 25G No Response By Company-No Green card
- 25M No Response By Company-File Missing
- 26 Unable to Locate Company
- 27 Company In Bankruptcy
- 32 No Complaint Filed/Provided Information
- 33 Unsuccessful Mediation
- 34 Duplicate File
- 35 Company Out of Business
- 36 Referred to Another State Agency
- 65 CHAMP-No response by Contractor
- 66 CHAMP-Litigation

While categories 1-6 are considered a “satisfactory resolution,” they do not reveal whether or not the consumer was satisfied with the outcome. Thus, the potential disconnect between mediation outcomes and consumer satisfaction is not addressed under the current system—which assumes consumer satisfaction naturally follows from the division’s measure of success. Instances of “partial mediations,” where a consumer only gets a portion of the disputed amount returned, highlight the difficulty in measuring success for both the division and the consumer.

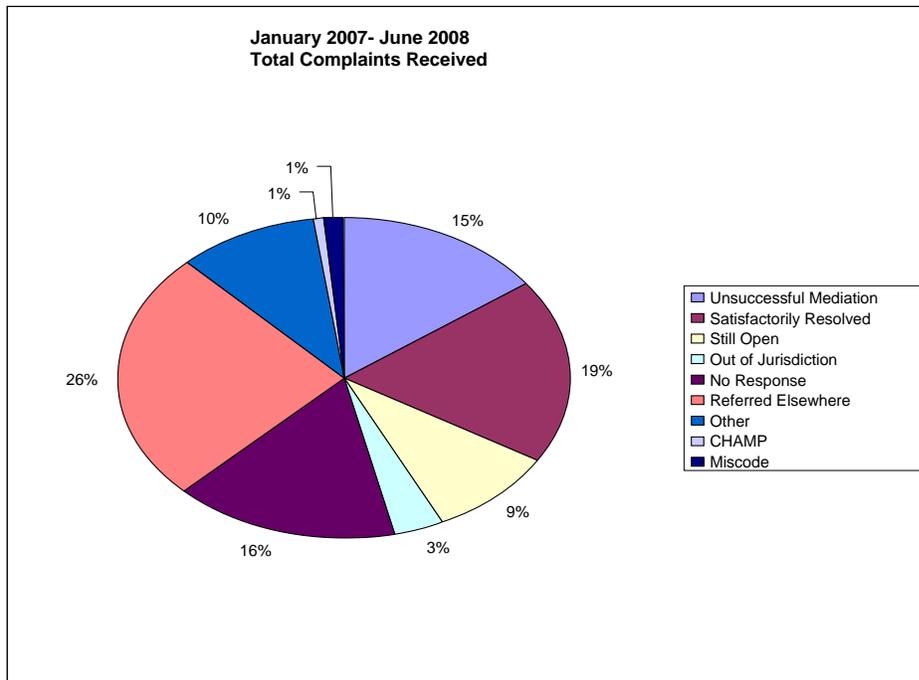


The Division Has Never Measured the Public’s Awareness of Available Consumer Protection Services

To inform the public of consumer protection services, the division engages in public education efforts through seminars, press releases, exhibitions, and other miscellaneous events. While such activities are likely to increase the public’s awareness of available services, the division lacks information pertaining to the effectiveness of its efforts. In particular, the Buyer Beware List—a list of companies that fail to respond to the division’s mediation efforts—is an important consumer protection tool that relies on the public’s awareness in order to maximize its effectiveness. However, the division has no process to gauge the extent of consumers’ awareness of the services it provides.

Complaint Management System Lacks Adequate Controls to Prevent Miscoded Data Entry

The Complaint Management System (which the division uses to track and monitor consumer complaints and outcomes) contains illogical entries that did not match a resolution category (see pages 16-17) set forth by the division. A review of complaint files from January 2007 through June 2008 revealed that 1% of the cases (105 out of 7,752) were assigned an incorrect closure code. Following the mediation process, complaint specialists can choose from a drop-down menu to select an appropriate closure code for a completed file, or they can choose to enter the closure code manually—both of which can lead to data entry errors.



When close code 25 is used, CMS automatically places the company on the Consumer Affairs Buyer Beware List, which is periodically converted to PDF format and posted on the Consumer Affairs website (generally bi-monthly). Failure to detect and correct data-entry errors

poses several risks to the integrity and functionality of CMS. Either through illogical closure codes or miscoded resolutions, undetected errors create inaccurate recordkeeping that misrepresents mediation results—potentially misplacing businesses on or off of the Buyer Beware List.

Recommendation

The Division of Consumer Affairs needs to develop an effective method for assessing consumer satisfaction related to complaint mediation outcomes. The division should establish criteria for measuring and defining successful mediations and refine the current closure codes to reflect consumer satisfaction levels. This change will benefit consumer interests and provide the division with better tools to monitor, benchmark, and improve upon its performance and consumer satisfaction in general.

The Division of Consumer Affairs should measure its public awareness efforts and develop the necessary resources for assessing the public’s knowledge of the availability of consumer services. The division should continue public education activities to promote greater awareness and improve mediation outcomes for consumers. Strategies could include tracking consumer visits to the division’s website (especially the Buyer Beware List), conducting public surveys, and creating a mechanism for consumer feedback.

Consumer Affairs should implement controls for the Complaint Management System that can identify and correct—on a timely basis—inaccurate, complaint-related information and other keying errors. The division should work with department IT staff to determine and implement an appropriate solution.

Management’s Comment

The Division does not adequately measure consumer satisfaction with the complaint mediation process.

We concur in part that the Division needs a better means to measure consumer satisfaction with the mediation process. The Division will work with the Information Systems section to add a “consumer satisfaction comment” section to our website since half of all consumer complaints are filed online. We will also attach the “consumer satisfaction comment” card to the closure letter asking consumers to please share their comments with the Division. The employee who is assigned for overall processes for the Division will also make random telephone calls to consumers regarding their experience with the Division during their mediation process. We will also clearly define “successful mediation” by collecting the appropriate data that will determine the timeliness of the process, etc., since there has been some confusion as to the process vs. satisfaction with what the consumer received or did not receive as a result of mediation. The Division has attempted in the past to monitor consumer satisfaction by mailing the consumer a postcard seeking their comments. Unfortunately, less than one percent

responded to the Division. We have set a goal of six weeks to put in place this plan due to the need to print documents.

The Division has never measured the public's awareness of available consumer protection services.

We concur with the finding and, therefore, will put some mechanisms in place to monitor feedback from consumers. The Division will begin within the next six weeks collecting information on its consumer complaint form as to how the individual heard about the services offered by Consumer Affairs. We also will have consumers that attend workshops or other educational opportunities to respond through a questionnaire that can be collected at the end of the event. The Buyer Beware List that is posted on the Division's website is now recording the number of hits by consumers. This action was taken immediately after notification by State Audit. In January, 2008, the Division created a Consumer Education Coordinator position whose responsibilities include consumer awareness of services offered through the Division. The Division will continue to seek other means to monitor consumer awareness over the next few weeks.

Complaint Management System lacks adequate controls to prevent miscoded data entry.

We concur in part with the finding. Management will combine the number of closure codes, thus reducing the number of data entries that Consumer Protection Specialists are now using, which should ultimately reduce errors. The Division has reduced the total number of codes in half over the last five years. Future improvements in technology will help reduce the remaining one percent of miscoded data entries. We will now put a measure in place when a file is closed Buyer Beware, whereby the process employee will review the file. This will ensure that the Specialist's closure code is in fact correct prior to placing a company on the Buyer Beware List. Management will also do periodic checks through the process employee to monitor the accuracy of other closure codes chosen when complaints are closed.

5. The Insurance Division has not conducted timely premium tax audits

Finding

Insurance companies, with specified exceptions, are required to file premium tax returns. The general requirements are established in Section 56-4-201 et seq., *Tennessee Code Annotated*. More specifically, Section 56-4-205 addresses the tax on gross premiums, and Section 56-4-216 addresses the repercussions for delinquency. Audits of premium taxes are not required by statute. Companies must file three estimated quarterly returns each year, with deadlines of June 1, August 20, and December 1. An annual return with actual numbers must be filed by March 1 of the next year. Division staff do not audit the quarterly returns (although they do check these returns to make sure that the payment amount equals what is on the form), but the annual return is audited. In 2008, there were 1,947 insurance companies operating in Tennessee. Of those companies, 1,742 pay premium taxes, and audits are to be performed on all premium tax returns.

The remaining companies pay regulatory fees, which Commerce and Insurance verifies are paid. Whether a company pays premium taxes or regulatory fees is determined by which type of insurance lines the company sells.

Audits uncover underpayments and overpayments of premium taxes. According to the division staff and management, the division is up to two years behind on auditing premium tax returns. As of May 1, 2008, all 2005 audits had just been completed, according to Insurance Division staff. There are no established deadlines for completing audits of premium tax returns. Audits of premium tax returns are desk audits. The numbers reported on the returns are compared to other numbers reported to the department and the math is checked.

There are fines and penalties for failing to correctly and promptly remit premium taxes. The fines are established in Section 56-4-216, *Tennessee Code Annotated*. According to the statute:

Any foreign or domestic company failing and neglecting to make such returns and payments promptly and correctly as provided by § 56-4-205 shall forfeit and pay to the state, in addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part thereof of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one half of one percent (.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any company not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by the due date and no such penalty or interest may be waived.

A 2003 memo included in the Division of Insurance's policies and procedures specifically further advises staff that there will be no waiving of fines. According to management, there is no time limitation that prevents the department from collecting past taxes, and the department has not had a situation arise where it was unable to collect taxes due because of any statute of limitations. Without the audits, the state cannot be sure correct amounts of taxes are being paid or levy fines for underpayment.

We conducted a file review of eight companies required to pay premium taxes in 2006; however, only four of the returns had been audited. The audit process consists of comparing the numbers from the quarterly and annual statements the company files with the department to the numbers on the premium tax return, ensuring that the form was filled out correctly, and verifying the math. According to staff, the reason some 2006 returns had already been audited, even though the 2005 returns had just been completed, is that if an error is found on a return that would likely be repeated on future returns, the more recent return for that company is also audited at that time.

Management and staff stated that they were working to complete the audits. As of August 29, 2008, Insurance Division management stated that they only had 280 premium tax audits for 2006 left to complete, and that 100 audits for 2007 had already been completed.

Recommendation

Insurance Division management should evaluate the process for auditing premium tax returns, identify and address factors contributing to delays in completion of the audits, and establish deadlines to ensure that premium tax returns are audited before the next year's returns are filed. Management should develop strategies to meet the deadlines established without sacrificing the effectiveness of the audit process. Such requirements would help ensure that insurance companies pay the state all premium taxes due and are notified of filing errors before the next return is due, and that insurance companies receive any refunds owed, in a timely manner.

Management's Comment

We concur with your finding that, as of May 1, 2008, the Division was up to two years behind on auditing premium tax returns, and that there were no established deadlines for completing audits of premium tax returns.

The report recommends that Insurance Division management evaluate the process for auditing premium tax returns and identify and address factors contributing to delays in completion of the audits. One contributing factor to the delay was the Division's recently expanded procedures to test returns for errors related to premium tax credits companies take for guaranty fund payments, and identifying foreign retaliatory taxes due. These types of tests are performed in the course of the audits in addition to the recalculation tests noted in the report. The extra emphasis of these procedures was applied during a period our workforce was reduced, and due to an annual volume of approximately 1,750 returns, we were not able to process audits as timely. In order to reduce the delay, the Division assigned additional analysts and examiners beginning around August of 2008 to assist with the audit of the tax returns. As a result, all audits on all available tax returns were completed as of February 29, 2009, before the March 1 filing due date of the next batch of annual tax returns to be audited.

The report further recommends that strategies should be developed to meet the deadlines established without sacrificing the effectiveness of the audit process. As noted above, the Division is now completely current with its audit of premium tax returns. The Division has also since established deadlines to ensure that premium tax returns are audited before the next year's returns are filed. The Division has created a monthly calendar of activities that are required to be accomplished, and we have implemented written procedures with staff assignments necessary to accomplish each activity.

We remain confident that the temporary delay has never caused underpayment of a company's taxes to go undetected. We are also confident that the procedures that have been enacted will reduce the time it will take to detect filing errors, and that premium tax refunds owed to companies will be processed more quickly, as recommended in the report.

6. There is no systematic supervisory review of the securities registration process

Finding

The Securities Division's Securities Registration Section regulates the sale of all public and private securities offerings under the Tennessee Securities Act of 1980. The section reviews applications for securities offerings that include the prospectus, description of the security, financial statements, and other pertinent information. If an offering is found to be in compliance with statutory provisions, the security is registered. Section management does not conduct routine supervisory reviews of the work of those securities examiners who review the applications for securities to be sold in the state. An application may be reviewed if the examiner requests assistance, but there is no systematic, formal supervisory review of decisions.

Securities examiners are required to comply with the department's formal, written ethics and conflict-of-interest policy and to sign the department's standard conflict-of-interest disclosure statement. Although the department's policy appears detailed and comprehensive, and we found no evidence of bribery or other improper influence during our review, formal mechanisms such as regular supervisory reviews of decisions are critical in further addressing the risk that promoters of securities could improperly influence examiners.

Recommendation

Securities Division management should implement a formal, documented supervisory review process to supplement the current formal controls (i.e., the signing of a conflict-of-interest disclosure statement) and help protect against the possibility that securities promoters might improperly influence securities examiners.

Management's Comment

We concur in part.

We concur that the review process should conclude with a final review by the supervisor. This would apply to securities applications for registrations that are subject to merit review under the Tennessee Securities Act of 1980 and Rules promulgated thereunder.

For clarity, we first point out that the finding appears to cover the review process as it relates to securities applications that are not notice filings but are subject to review in accordance with the statutory and rule provisions that test the fairness and reasonableness of the offering. Those filings subject to a comprehensive review of statutory standards are such offerings as debt, equity, partnerships, certain non-profit exemptions, and the like.

We do not concur with the finding in the sense that it implies that the securities examiner acts alone in the review and final determination whether a particular application will be registered. In fact, the Securities Registration Section atmosphere is collegial and functions in a

way where other examiners and the supervisor discuss and weigh the merits of every reviewable application from the filing date through registration. Stated differently, there is constant input from fellow examiners and the supervisor regarding the merits and ultimate decision of registration.

We concur that the review of securities applications filed in coordination with the Securities Exchange Commission (SEC) and those filed by qualification with Tennessee concludes with the approval of the securities examiner. To correct this, the Division has developed the following additional procedures:

- the Securities Examiner schedules a meeting with the Section Supervisor to discuss the offering and his conclusions regarding the application;
- the Supervisor authorizes registration or non-registration of the application;
- the Securities Examiner and Supervisor will document the results of the meeting on a standard form developed for this purpose; and
- the Securities Examiner carries out Supervisory directive.

The Division will follow immediately the Auditor's suggestion that it implement this formal, documented supervisory review process to supplement the current formal controls (i.e., the signing of a conflict-of-interest disclosure statement). With this additional step, we will protect against the possibility that securities promoters might improperly influence securities examiners.

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of the Department of Commerce and Insurance and on the citizens of Tennessee.

THE ELECTRICAL INSPECTION SECTION HAS COMPLETED ONLY 9 OF 20 AUDITS OF EXEMPTED ENTITIES

According to Section 68-102-143, *Tennessee Code Annotated*, the State Fire Marshal may authorize municipalities that have their own electrical inspection program to be granted an exemption from state electrical inspection. As of December 2008, there are 23 cities/counties authorized by the State Fire Marshal to conduct their own electrical inspection programs; 21 were exempted prior to January 1, 2005 (one of the original exempted entities has not implemented an inspection program and uses Deputy Electrical Inspectors who contract with the state). Rule 0780-2-1-.20, adopted in 2004, requires the State Fire Marshal to conduct a review as soon as practicable of entities exempted prior to January 1, 2005, to determine whether the local government is adequately enforcing electrical codes and properly performing inspections.

The rule does not contain any provision for further periodic reviews. The Electrical Inspection Section of the Division of Fire Prevention has identified 20 entities required to be reviewed under this rule (the 21 exemptions less the one exempted entity using DEIs). See the table below.

**Electrical Inspection Section
Exempt Cities/Counties
December 2008**

	Name	Date Reviewed or Scheduled
1	Athens	Scheduled for 2009
2	Bartlett	Scheduled for 2009
3	Chattanooga/Hamilton County	Scheduled for 2009
4	Collierville	Scheduled for 2009
5	Cookeville*	December 2007
6	Elizabethton	May 2005
7	Franklin	Scheduled for 2009
8	Humboldt	Scheduled for 2009
9	Jackson	June 2008
10	Johnson City	November 2007
11	Kingsport	November 2005
12	Knoxville	April 2008
13	LaFollette	Scheduled for 2009
14	Lookout Mountain	Scheduled for 2009
15	Maryville	Scheduled for 2009
16	Memphis/Shelby County	December 2008
17	Metro Nashville	September 2008
18	Millington	Scheduled for 2009
19	Morristown	April 2008
20	Murfreesboro**	October 2008
21	Oak Ridge	April 2008
22	Sparta	Scheduled for 2009
23	Watauga***	N/A***

*Cookeville was exempted in 2007 and a review was conducted prior to granting exemption.

**Murfreesboro was exempted in 2008 and a review was conducted prior to granting exemption.

***Watauga is exempt but does not have an electrical inspection program in place; therefore, state DEIs are used and no review is required.

The 2004 rules included criteria for conducting the reviews. The Electrical Inspection Director reviews the self-reporting questionnaire from the entity under review. The next step is an on-site evaluation conducted by the director and one of the three field supervisors (the section has one director, three field supervisors, and one administrative staff). Both the questionnaire and on-site evaluation are used to determine whether the program is meeting the department's standards. Those standards include adopting an electrical code that is as stringent as that used by the state. During the on-site review, Electrical Inspection staff accompany the exempt entities inspectors to observe inspections and review files of the exempt entity to obtain support for the information submitted.

If an entity has findings, it is required to submit to Electrical Inspection for approval a Plan of Corrective Action (POCA) within 30 days. Seven of the nine completed had findings but the POCA was submitted and received. Based on our interviews with staff and review of documentation, all of the entities reviewed to date have implemented their Plan of Corrective Action.

Rule 0780-2-1-.20 does not state a specific date for the reviews to be completed, only that they should be conducted “as soon as practicable.” According to section management, the Electrical Inspection Section was given responsibility for the reviews in 2005, and a director was hired at that time. An Internal Revenue Service determination (received in January 2005) on the employment status of electrical inspectors resulted in changes to the process of electrical inspections in 2005. The state entered into contracts with professional corporations of over 90 Deputy Electrical Inspectors. The Electrical Inspection Section, a staff of four, oversees those contracts and the resulting 200,000 plus annual inspections. The change delayed the start of the reviews. We discussed the timeliness of the reviews with management, who in April 2008 stated that one review a month was scheduled until all were completed. Between April 2008 and December 2008, seven reviews were completed but one of those was the review of a request for a new exemption (three reviews were completed in April 2008). As of December 2008, 9 of the 20 required exempt-entity reviews had been completed. According to management of the department and this section, the remaining 11 reviews are scheduled to be completed one per month during 2009. This schedule appears to be feasible since three reviews were completed in one month in 2008. However, management of the Department of Commerce and Insurance should ensure that the reviews are completed to ensure that the exempted entities are complying with state standards.

THE TENNESSEE FIRE SERVICE AND CODES ENFORCEMENT ACADEMY IS UNDERUTILIZED

The Tennessee Fire Service and Codes Enforcement Academy is being underutilized and, therefore, is not maximizing its potential to train fire fighters in the state.

The mission of the academy, which opened in 2001, is to train fire fighters, codes officials, and emergency responders as economically as possible. The classes offered at the academy are developed to meet the standards established by the Commission on Firefighting Personnel Standards and Education. (The commission certifies officers based on professional standards established by the National Fire Protection Association.) The academy’s role is to train fire fighters so they are prepared to take both the practical and written exams administered by the commission. Candidates for certification are not required to attend the academy; instead they may attend classes offered by local fire departments or complete a self-study course prior to taking the exam.

The academy’s facilities, located on a 328-acre site in Bell Buckle, Tennessee, include classrooms, a full-scale fire department that can house 24 fire fighters, working fire engines, a bomb range, and multiple buildings and facilities that focus on situational training replicating actual scenarios that fire fighters may face in the performance of their duties. Approximately 8,500 students are trained annually by the facility.

The academy offers approximately 500 courses per year, 55-60% of which are offered off-campus, primarily at local fire departments. Classes are offered at three levels: entry, intermediate, and advanced level. Fire fighters in their first 15 years of duty take entry-level classes. Intermediate classes are offered to mid-level management, while advanced courses are offered to upper-level management. There are two primary types of classes: basic recruit training classes and classes developed to meet continuing education requirements. As of June 2008, the basic recruit class is a 400-hour, 10-week course developed to meet national fire fighting standards. According to the academy's executive director, the primary users of the academy are mid-size fire departments in Tennessee, including Murfreesboro, Columbia, Morristown, Franklin, Gallatin, and Johnson City. Although these departments employ their own training officers, they generally lack the resources necessary to provide upper-level fire fighting classes, according to academy management.

Twenty-seven of the academy's 500 courses are accredited through the American Council on Education. Students taking classes at the academy can apply the hours to fire education programs offered at public and private colleges in Tennessee, including Middle Tennessee State University (MTSU) and the University of Memphis, and two-year programs at Motlow State and Volunteer State Community Colleges. According to the academy's executive director, the academy recently assisted in developing the program at MTSU.

The Department of Finance and Administration requires the academy to recoup 30% of its costs. This is not a statutory requirement but rather is included in the funding formula for the academy. For fiscal year 2008, the academy's budget was \$5.2 million, with \$3.77 million of that total from state appropriations. The remaining portion of the budget is funded from student fees charged by the academy. According to the academy's executive director, the primary academy expenditures go towards salaries and benefits, state overhead costs, and the dining hall contract.

Academy Utilization

Academy management does not believe the academy is being utilized to its maximum potential. The academy could house and train up to 200 students a day. The average, however, is about 65 per day. During some weeks, up to six classes may be held while other weeks there are none. On the day of an auditor visit to the academy in May 2008, 21 of 104 dormitory rooms were occupied and only two classes were being taught.

Management attributes the problem primarily to the voluntary nature of fire fighting in Tennessee. Over 75% of fire fighters in Tennessee are volunteers, and academy management questions whether these individuals who are not paid for their services should be mandated to attend training. The majority of volunteers have full-time jobs and would lose time at work if they were required to attend academy classes. Another question raised by management is the means to pay for the training if volunteers were mandated to attend.

Another issue affecting the academy's failure to maximize revenue generation is its inability to fill its off-site training classes. To help address class occupancy issues, the academy

has hired a full-time marketing coordinator who visits local fire departments and colleges promoting the academy.

As a means of generating revenues, for the past several years the academy has provided its facilities to federal, state and local non-profit agencies. State agencies using the site include the Department of Agriculture, TBI, and the Tennessee Emergency Management Agency (TEMA). Federal agencies have included the FBI, the U.S. Forest Service, and the Department of Defense. Additional organizations using the academy have included the Tennessee Fire Chiefs Association, the Tennessee Fire Chaplains Association, the Tennessee Manufactured Housing Association, the Tennessee Gas Association, and the Tennessee Association of Rescue Squads.

Based on data provided by academy management, the academy generated the following revenues from providing its facilities to outside agencies:

- Fiscal Year 2006—\$146,700
- Fiscal Year 2007—\$150,200
- Fiscal Year 2008—\$189,300
- Fiscal Year 2009 (through October 20, 2008)—\$157,700

Legislative Proposals Mandating Training/Certification

Legislation proposing mandatory training for all firefighters was introduced as recently as 2008. Staff of the Tennessee Municipal League (TML), which supported the bill, cited a 2006 survey that found that 26,900 of the 34,000 firefighters (over 75%) in the state are in a part-time or volunteer status. TML staff believes there is a correlation between the high fire death rate in Tennessee (approximately twice the national rate, as shown on page 31) and the high rate of untrained or under-trained firefighters. TML staff expressed concerns that many volunteers lack the basic skills necessary to perform under everyday conditions, much less the skills required during a major disaster.

Three separate bills regarding firefighter training were introduced during the 105th Legislative Session of the Tennessee General Assembly. House Bill 1559, as proposed, would have created a state educational incentive in an amount up to \$1,000 for any firefighter (including volunteer firefighters) who achieves certification. House Bill 1560 would have required all full-time, part-time, or volunteer firefighters hired or accepted on or after July 1, 2007, by a fire department to have first completed or completed after joining the department a minimum of 16 hours of initial training in firefighting procedures and techniques. Also, firefighters would have been required to complete, within 36 months after completing initial training, the 84-hour basic training course offered at the Tennessee Fire Service and Codes Enforcement Academy, or an equivalent course. According to TML management, this bill in effect would not have changed the current requirements for professional firefighters in Tennessee. Rather, it would have put volunteers on an equal footing with professionals by requiring all to complete the same training requirements.

House Bill 3108 would have directed the Commission on Firefighting Personnel Standards and Education to create grants to enable volunteer firefighters to attend the academy tuition free, with payments to be made from the fire prevention fund. This fund is generated from surcharges on individual home owners' insurance policies in Tennessee. Generally, excess dollars from this fund have reverted back to the state's general fund. The bill, however, would have required that any surplus in the fund be carried forward to be used for training.

These bills were discussed by legislators during the 2007 and 2008 legislative sessions, but were not passed. According to TML management, the bills were not passed because of the significant costs attached and the current economic situation. The TML plans to revisit the issue of mandatory training in 2009.

Currently, there are no minimum training requirements for part-time and volunteer firefighters in Tennessee. These individuals are ineligible for the supplemental pay given to professionals, and they must also take time off from their full-time jobs to attend the academy. For these reasons, TML staff estimated that only 4,000 of the 26,900 part-time and volunteer firefighters in the state have received any form of training.

Another objective of the proposed legislation was to address the high attrition rate for volunteer firefighters. TML cited data provided by the National Volunteer Fire Council (NVFC) that shows a net loss of 15% of volunteers in Tennessee in the past 10 years, as recruitment is not keeping up with the loss of firefighters. The NVFC estimates that only 2,500 of the 4,000 part-time and volunteer firefighters who have received any formal training are currently serving with a fire department in Tennessee.

PARTICIPATION IN THE TENNESSEE FIRE INCIDENT REPORTING SYSTEM HAS IMPROVED, BUT SOME DEPARTMENTS STILL DO NOT REPORT

The number of fire departments reporting fire incident data to the Tennessee Fire Incident Reporting System (TFIRS) has increased, but some fire departments still do not report as required by state statute. Section 68-102-111, *Tennessee Code Annotated*, requires that every fire be reported to the Commissioner of the Department of Commerce and Insurance. The Division of Fire Prevention uses the Tennessee Fire Incident Reporting System (TFIRS) to analyze fire incident data. TFIRS is a subset of a national database, the National Fire Incident Reporting System (NFIRS), used by the U. S. Fire Administration to collect data as part of a local, state, and federal coordinated effort. The Division of Fire Prevention has a TFIRS coordinator who is responsible for encouraging fire departments to participate in reporting data to NFIRS. NFIRS uses a consistent format to code fire incidents, and allows comparisons between states. The NFIRS data classifies data using fire characteristics such as the cause and area of origin of the fire. Local fire departments in Tennessee can submit data by

- completing Incident and Casualty Report forms on the U.S. Fire Administration's website which enters data directly into the national database;
- completing Incident and Casualty Reports offline and uploading data to the national database; or

- submitting paperwork to the TFIRS coordinator who will review the information and consolidate it for submission to the national database.

The database is used to answer questions about the nature and causes of injuries, deaths, and property loss resulting from fires. By analyzing the data for Tennessee, the Division of Fire Prevention and the TFIRS coordinator can gain insights into fire problems, identify training needs, and assist local fire departments.

TFIRS Coordinator

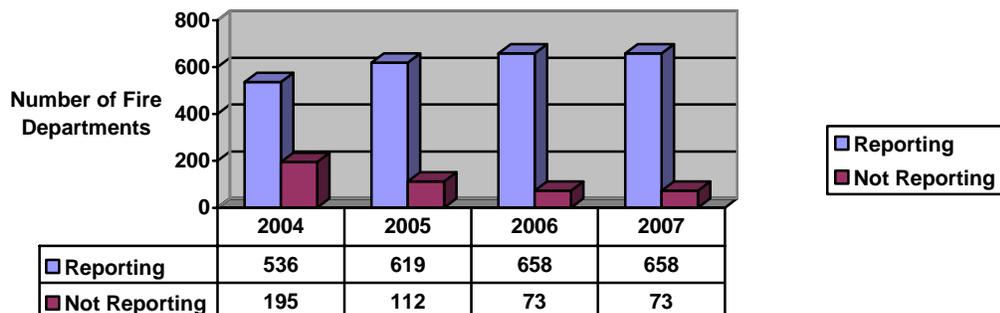
The TFIRS coordinator reviews data submitted to NFIRS and conducts training classes for those departments submitting data. In order to increase participation in reporting, the coordinator has

- corresponded with fire chiefs across the state about the law that mandates reporting fire incidents;
- corresponded with mayors and city managers across the state about the importance of TFIRS and its role in analyzing fire data;
- corresponded with fire departments needing assistance in reporting and fire departments that do not report;
- attended training from the National Fire Information Council Conference that assists those who provide TFIRS training; and
- taught classes on incident reporting at the Tennessee Fire Service and Codes Academy (TFACA).

Reporting Percentage Has Improved

As a result of the efforts of the division, the percentage of fire departments reporting has increased from 41% for 2003 (as reported in our 2004 audit) to 90% in 2007.

**Tennessee Fire Departments
Reporting Data to NFIRS
2004-2007**



However, Tennessee continues to have a fire death per capita rate that is approximately twice the national rate.

**2003-2005 U.S. Fire Death Rate Per Capita*
Reported by U.S. Fire Administration**

Year	Tennessee	National
2003	28.2	13.0
2004	23.6	12.4
2005	27.7	12.3
2006	21.9**	10.9

*Deaths per 1,000,000 population

** Estimate by department. 2005 fire death statistics are the most current published by USFA.

In the 2004 performance audit, we reported that Memphis did not transmit 2003 fire incident data. Based on a review of documentation and interviews with the TFIRS coordinator, Memphis did report data in 2006 and 2007. However, in reviewing incidents reported by Jackson (population in 2007 approximately 96,000), the coordinator found that only two fire calls were reported for November 2006; zero calls for April through August 2007; and only one to two calls per month from September through November 2007. According to the TFIRS coordinator, it is unlikely that a city the size of Jackson had no fires or just one or two fires during those periods. So even though more departments are reporting, the data may be inconsistent or not reliable. As an example, the TFIRS coordinator provided us with a list of non-reporting departments for 2006 and 2007. Those lists show 64 and 60 departments, respectively, not reporting. However, the 2006 and 2007 TFIRS reports show 73 departments not reporting. The TFIRS coordinator attributed differences to the fact that some of the departments may have reported activities for only a few months of the year (i.e., even if departments only reported one or more months out of the year, they were categorized as reporting).

Limited Enforcement Options for Reporting

As reported in the 2004 audit, the Department of Commerce and Insurance has the authority, through Section 68, Chapter 102, Parts 1 and 3, *Tennessee Code Annotated*, to require fire departments to report fire data. However, department staff voiced concerns, because their enforcement options are limited to either “de-recognizing” a fire department or referring the case to the local District Attorney for prosecution (violation of the statute is a Class C misdemeanor). Because fire departments not officially recognized by the Department of Commerce and Insurance cannot receive or solicit funds from any source, de-recognizing a fire department could put that fire department out of business and potentially harm citizens. Division of Fire Prevention management stated that the department has not yet used either of the enforcement options against a non-reporting fire department.

According to the TFIRS coordinator, grants from the U.S. Department of Homeland Security to fire departments for training and other assistance include a clause requiring that the department report to NFIRS once they develop the capacity to report. However, the coordinator did not provide any instances where grants had been withheld due to non-reporting.

The TFIRS coordinator provided NFIRS data indicating that, as of May 2008, Tennessee had reported more fire incidents in 2008 than any other state. Fire incident data reporting is significant in that Tennessee has a high per capita fire death rate as noted in the table above.

The department and division have made progress encouraging Tennessee fire departments to report fire incident data. The division should analyze data reported to identify inconsistencies or other reporting problems, and should continue to work with and train fire department staff, to increase TFIRS reporting participation and data accuracy.

THE CODES ENFORCEMENT SECTION HAS ADOPTED RULES AND COMPLETED OVER 70% OF REQUIRED AUDITS OF EXEMPTED ENTITIES

The State Fire Marshal establishes and enforces statewide building construction safety standards. By law, local governments can request, and receive, an exemption from these standards if they certify in writing that they have adopted certain building codes and are adequately enforcing those codes (i.e., through inspections), including performing required reviews of construction plans and specifications. Pursuant to Section 68-120-101(b)(3)(A), *Tennessee Code Annotated*, the State Fire Marshal (through the Codes Enforcement Section) is responsible for auditing, every three years, the records and transactions of those local governments that have received an exemption, to determine if they are continuing to adequately perform enforcement functions. Thirty-four cities/counties have received this exemption. See the table on page 33.

The March 2003 performance audit of the Department of Commerce and Insurance found that the Codes Enforcement Section was not performing the required audits. The October 2004 follow-up report found that rules had been proposed and that audits were scheduled to begin. The department adopted rules in 2005 for review of the entities. As of December 2008, 24 of the 34 required audits (70.6%) had been completed.

The audit process includes submission of a self-reporting questionnaire by the entity and an on-site review by a team of three persons—a team leader, a plans examiner, and an inspector. During the on-site review, the team examines the plans review process of the exempt entity, conducts an inspection of a project to compare to approved plans, and determines if the content of the self-reporting questionnaire is correct. Based on the adequacy of the program, the audit team can assess three performance ratings:

- adequate – the exempt jurisdiction demonstrated that it is adequately performing its building code enforcement programs;
- marginal – the exempt jurisdiction demonstrated that, although it is not adequately performing its building code enforcement programs, public safety is not jeopardized; and
- inadequate – the exempt jurisdiction demonstrated that it is not adequately performing its building code enforcement programs and that such failure may result in imminent danger to the public.

**Codes Enforcement Section
Exempt Cities/Counties**

Name	Year Reviewed or Date Audit Scheduled
Alcoa	2008
Athens	2007
Bartlett	2006
Brentwood	2005
Bristol	2006
Chattanooga	2008
Clarksville	2006
Collierville	Date not scheduled
Columbia	Date not scheduled
Cookeville	2005
Dyersburg	Date not scheduled
Farragut *	Date not scheduled
Franklin	2007
Gatlinburg	2007
Goodlettsville	2006
Hendersonville	2006
Jackson	2007
Johnson City	2005
Kingsport	2006
Knox County	2008
Knoxville	2008
Lebanon	2006
Madison County	Date not scheduled
Maryville	Date not scheduled
Memphis/Shelby County	Date not scheduled
Millington	Date not scheduled
Montgomery County	2006
Murfreesboro	Date not scheduled
Nashville/Davidson County	Date not scheduled
Oak Ridge	2008
Paris	2006
Pigeon Forge	2007
Sevierville	2007
White House	2006

*Farragut was exempted in 2006. Audit is not due until 2009.

Of the 24 audits completed, 23 entities received an adequate assessment. One jurisdiction received a marginal rating, but when a follow-up audit was conducted, the rating was upgraded to adequate. Based on our interviews with staff and review of documentation, it appears that the Codes Enforcement Section has adopted an audit process for the exempt entities, but needs to make more progress towards completing all audits. Management of the department and this section need to ensure the required audits are completed timely.

THE DIVISION OF FIRE PREVENTION NEEDS TO IMPROVE DOCUMENTATION OF ITS FIRE PREVENTION EDUCATION PROGRAM

Section 68-102-101, *Tennessee Code Annotated*, places the responsibility for fire prevention with the Department of Commerce and Insurance. Educating the citizens of Tennessee about fire prevention is a significant responsibility. In the 2005 (the most recent year for which information is published) United States Fire Administration report on fire death rates by state, Tennessee ranked fifth in fire fatalities. The national fire death rate in 2005 was 12.3 deaths per million population while Tennessee's was 27.7 deaths per million.

As noted in our October 2004 Performance Audit follow-up report, the department had filled the position of Public Fire Information Officer (now the Fire Prevention Education Officer) and formed the Fire Mortality Prevention Task Force. However, our report concluded that there was not a formal, comprehensive, and widely applied fire safety program. The department concurred, stated that it was implementing fire education and suppression programs targeted at the populations prone to fire deaths (i.e., the elderly, children under five, and minorities), and provided a list of 12 strategies it would use to improve fire education. The following is a list of those strategies with a description of efforts made by the department since 2004 to implement them.

	2004 Strategy	Description of Efforts to Implement Strategy
1	Work with local companies on detector, battery, and educational programs	Fire Prevention Education Officer assisted local organizations during 2007 in the distribution of over 13,000 smoke alarms and other fire education materials.
2	Request a resolution from the Governor for Fire Safety month	October is designated as Fire Prevention month in Tennessee.
3	Create a resource webpage on the State Fire Marshal Office website for fire departments and other organizations to obtain educational tools, the names of organizations and businesses that might assist educational efforts, and written instructions for implementing education programs and community involvement	The department maintains the Fire Department Resource Center online with access to fire education materials, news alerts, resources for fire departments, and grant information.
4	Attend association meetings of the Fire Chiefs Association, Tennessee Fire and Life Safety Association, etc.	Fire Prevention Education Officer attended the Tennessee Fire Chiefs Association and the Tennessee Public Fire and Life Safety Educators Association conferences in 2006 and 2007 and training in 2007 and 2008 sponsored by the National Fire Academy and the Desert Southwest Fire & Life Safety Educators Conference.
5	Propose including fire safety education training in all of the Firefighter 1 classes taught at the Tennessee Fire Services and Codes Enforcement Academy	Fire safety education has been included in classes at the Tennessee Fire and Codes Academy since 2004.
6	Propose that the Commission on Firefighting Personnel Standards and Education provide bonuses for fire safety education	Authority granted to the commission does not permit bonuses for fire safety education.
7	Encourage additional fire departments to participate in the annual statewide poster contest	State Fire Marshall notifies fire chiefs and public educators across the state about the annual poster contest and encourages their participation.

8	Establish partnerships with other state agencies, local governments and community groups to provide fire safety education	Fire Prevention Education Officer works with schools, PTAs, community groups to promote fire safety education.
9	Provide fire safety education through the media (PSAs at Titans and UT games, free media events, website updates, etc.)	The department issues press releases related to fire safety, and the Public Fire Information Officer performs television and radio interviews and attends sporting events to pass out information about fire safety topics.
10	Complete a demographic study of the fire deaths reported in 2003 to ascertain who, when, where, why, etc., these fires occurred and how to best address the problem	The Fire Fatality Profile 2003 is available online as part of the Fire Department Resource Center with demographics of 2003 Tennessee fire deaths by age, race, sex, day of week, month of year. Fire death information is used by Fire Prevention Education Officer to target training by using a map of the state with fire deaths charted.
11	Develop a plan to document, track, and review our training efforts and the results of these efforts	Fire Prevention Education Officer and the Division of Fire Prevention provided the documentation for each strategy described in this column but the information was not part of a formal report on education efforts.
12	Apply for a Department of Homeland Security Fire Prevention and Safety Grant	The state received a grant in 2005 and developed the Safe at Home Program. Over 100 training sessions and 760 copies of the program have been distributed to fire departments, schools and other organizations. The materials are targeted to groups with high fire death rates – senior citizens, young adults, and pre-kindergarten and kindergarten through 5 th grade school children. Materials are also available in Spanish.

As noted above, the state sponsors an annual fire prevention education poster contest. Judges for the poster contest are chosen by the department’s Fire Prevention Education Officer. As part of the poster contest, a Fire Prevention Education Officer of the year is chosen and all Fire Department chiefs vote for their choice. The current Fire Prevention Education Officer was named fire educator of the year in 2005.

During the 2008 legislative session, the efforts of the Fire Prevention Education Officer and the department resulted in Public Chapter 798, which prohibits manufacturers or retailers giving away novelty lighters as a promotion. The Fire Marshal’s Office has information online educating the public on the importance of keeping novelty lighters away from children.

Based on staff and management interviews and information obtained, the department has improved its fire prevention program and implemented most of the strategies it proposed in 2004. To further improve, the department should improve its documentation of education efforts and track the results of those efforts.

THE SECURITIES REGISTRATION SECTION APPEARS TO BE THOROUGH IN ITS REVIEWS BUT IS NOT MEETING ITS PERFORMANCE STANDARD TO REVIEW APPLICATIONS IN 20 DAYS

A Department of Commerce and Insurance performance standard states “Examine securities registration applications, notice filings and exemptions within 20 days of receipt.” Companies wanting to register securities in Tennessee must comply with Sections 48-2-104

through 107, *Tennessee Code Annotated*. There are two types of registrations: registration by coordination and registration by qualification. Registration by coordination means the security is also being registered with the Securities and Exchange Commission. These are usually public offerings (i.e., the initial first sale of a company's stock to the public.) Securities registered by qualification are usually being offered in just a few states, usually just Tennessee and as many as two others. Securities registered by qualification are usually not public offerings. Some securities are exempt from registration and others must only make a notice filing.

For the securities that must be registered with the state, the security is not reviewed simply for disclosure; instead a merit review is done (i.e., the security is reviewed for reasonableness and fairness). Few securities registrations are denied, but approximately one in five are withdrawn by the issuing company. At the end of the 20-day review period, the security registration should be made active or a deficiency letter sent. There were no cases reviewed by auditors where a security registration was made active without a deficiency letter being sent first.

There are two securities examiners who review applications and the Chief of Securities Registration also reviews applications. The examiners work directly from the requirements in the statutes and rules. There were 24,120 filings with the Registrations Unit in 2007; 22,364 in 2006; and 20,875 in 2005. Not all of these require significant work, as many are notice filings and renewals rather than new registrations.

We conducted a file review to determine whether the Securities Division was meeting its performance standard. For 8 of the 18 securities registration files (44%) we reviewed, the 20-day performance standard was not met. For one of the registrations, a comment letter was not sent out for 72 days. The Securities Division is apparently very thorough in its processing of registrations, as evidenced by correspondence between the division and lawyers working to register securities in Tennessee. Even in cases where the Securities Division looked at the security registration well within 20 days, the registration would not actually be approved for sale in Tennessee until much later because of the continued communications with lawyers that resulted from deficiencies in the filings.

Thoroughness in reviewing and processing securities registrations is important in protecting consumers, and is to be commended. The Securities Registration Section should review its processes and workload allocation to identify ways to better meet the performance standard for initial examination of security registration applications, without sacrificing the thoroughness of the review.

THE MANUFACTURED HOUSING SECTION AND LICENSING FILES

The Tennessee Manufactured Home Installation Act (codified as Sections 68-126-401 through 412, *Tennessee Code Annotated* and reflected in the Tennessee Secretary of State Rules Chapter 0780-2-5) became effective January 1, 2004. It requires the Department of Commerce and Insurance to ensure that manufacturers, retailers, and installers of manufactured homes are licensed. The Manufactured Housing Section of the Division of Fire Prevention is responsible for administering the act.

The guidelines for licensing are contained in *Tennessee Code Annotated* as noted above and in the rules of the department. The Manufactured Housing Section has a website that allows the public and licensees to access information on the process. Consumers can verify whether an installer is licensed and locate disciplinary actions on the Department of Commerce and Insurance's website.

The section uses the Regulatory Boards System (RBS) information system for maintaining licensing information (bond information, training classes, exam scores). Installers and retailers are required to attend training classes about proper installation and set-up of manufactured homes.

Manufacturers, retailers, and installers are licensed annually. Manufacturers are required to submit a completed application form with a fee and a \$50,000 surety bond. Retailers are required to submit a completed application form with a fee and a \$25,000 surety bond. At least one employee of a licensed retailer directly involved in the installation of a manufactured home is required to complete a 15-hour course and pass an examination in manufactured home installation prior to initial licensing and five hours of continuing education during the 12-month period immediately preceding renewal.

Installers are required to submit a completed application form with fees and proof of completion of a 15-hour course on the installation of manufactured homes, and pass an examination on manufactured housing installation. An installer must also submit a surety bond in the amount of \$10,000. Before renewing a license, the installer must submit proof of five hours of continuing education in manufactured home installation during the 12-month period immediately preceding the renewal.

As part of a licensing process, the Manufactured Housing Section should take reasonable steps to ensure the applicant meets all requirements. This includes reviewing or verifying information submitted, verifying test scores and surety bond amounts. The controls set in the RBS system by the Division of Information Systems permit only the director, an inspection manager, and the supervisor to approve licenses. Based on our review of procedures, one person enters the information, and another verifies the information and approves the license. We reviewed a sample of licensee files from manufacturers, retailers, and installers to determine if the licensee's files contained evidence that they met these requirements. See the table on page 38 for the results of our file review. Because we could only find 29 of 58 files in our sample, we asked for other information from the staff. Staff did provide us with documentation (outside of the licensing files) that contains the results of the examinations. Staff and management of the section indicated that files might be out at a staff person's desk for updating as part of a renewal. They also indicated that prior management had labeled files by address rather than name which made locating files difficult. We discussed the lack of paper files with section management and with the department's Internal Audit Division. The section does have internal controls over information entered into the RBS system used for licensing and staff rely on that information when referring to licensing status. Regardless, the section should take steps necessary to find, retain, and have readily available the paper file for each licensee.

Manufactured Housing Licensee File Review

Type of Licensee	Manufacturers		Retailers		Installers		Total	
License Status*	Number in Category	Files Found						
Unknown	0	0	1	1	0	0	1	1
Terminate/Inactive	0	0	4	2	0	0	4	2
Expired	2	1	6	3	7	1	15	5
Delinquent	0	0	1	1	4	2	5	3
Licensed	9	5	9	6	13	7	31	18
Application In Process	0	0	1	0	1	0	2	0
	11	6	22	13	25	10	58	29

*Status obtained from RBS on May 8, 2008.

RESULTS OF OTHER AUDIT WORK

DIVISION OF INSURANCE

Management Controls Over Receiverships

The Department of Commerce and Insurance has implemented procedures and controls for receiverships. Pursuant to Title 56 Chapter 9, *Tennessee Code Annotated*, the Commissioner of the Department of Commerce and Insurance is the appointed receiver for all insurance company receiverships. In turn, the commissioner appoints deputy receivers and independent legal counsel for each individual receivership based on their qualifications and availability. The Financial Affairs section of the Division of Insurance identifies high risk companies. If a company is at risk it is placed in administrative supervision and financial problems are identified. If the financial problems cannot be remedied, or if the company is illegally operating in Tennessee, the department will contact the Attorney General's Office to ask the courts for the company to be put into receivership. As of March 2009, there were 12 active insurance company receiverships. The goal of the department for the receiverships is to recover as much money as possible to pay all policyholder claims.

In 2006, the commissioner created the position of Receiverships Director (who reports directly to the commissioner) and adopted procedures and controls for receiverships after irregularities were noted involving a former deputy receiver. As noted below, an investigation into those activities is ongoing.

The current process for the department in handling receiverships remains to contract the services out through the appointment of a deputy receiver. Usually either an attorney or an accountant is selected to be deputy receiver based on the needs of the particular company. When a receivership begins, a meeting is held to make policy decisions for the receivership. The job of

the Receiverships Director is to ensure that the policy decisions are carried out by the deputy receivers. Even after the initial policy meeting the department has frequent meetings with the deputy receiver and attorneys involved in a receivership. The duties of the Receiverships Director are currently performed by the Financial Affairs Director of the Division of Insurance.

Every month each deputy receiver is required to submit a certification package which describes all of the fees charged to the receivership, including the professional fees and expenses of the deputy receiver. The fees cannot be paid until the certification package is approved by five different people: the Commissioner, the Receiverships Director, the General Counsel, the Director of Internal Audit, and either the Deputy Commissioner or (if the receivership involves a TennCare company) the Assistant Commissioner for TennCare Oversight. The fees are also reviewed by the Chancery Court once a quarter.

We conducted a file review to determine whether the department maintained proper documentation on each receivership and the certification packages were processed according to the department's adopted procedures and policies as described above. Each receivership is required to have an engagement letter for the deputy receiver and other services needed. Each deputy receiver is required to be bonded. Most of the receiverships have Local Government Investment Pool (LGIP) Accounts. Some of the older receiverships do not because at the time they were set up the LGIP accounts were not as attractive (i.e., the interest rates were not competitive). While it appears that the department is following its procedures as described and is now appropriately monitoring its receiverships, more detailed review will be conducted as the investigation is completed. Any additional control issues will be presented in that report.

Investigation into Activities of a Former Receiver for Certain Insurance Companies. In 2006, the Attorney General's Office informed the Division of State Audit about possible misconduct by a receiver who had been appointed in actions brought by the Attorney General and in other receiverships that originated with the Commissioner of Commerce and Insurance. Based on that information, there were concerns that this particular receiver had commingled receivership funds and converted at least some of the funds to his own use. Based on evidence that was obtained by the agencies that investigated the matter, including the Division of State Audit, the matter was referred to the appropriate authorities for possible criminal prosecution. Additional details will be released after the possible criminal matter has been resolved either by prosecution being declined or by disposition of any criminal charges that might arise from the matter.

Insurance Company Examinations and Follow-up

The Division of Insurance conducts financial examinations of insurers domiciled in the state every five years as required by Section 56-1-408, *Tennessee Code Annotated*, and the National Association of Insurance Commissioners (NAIC). The division has 15 examiners who use guidance developed by the department and the NAIC such as the NAIC *Financial Condition Examiners Handbook* and the NAIC *Accounting Practices and Procedures Manual*. Examinations include assessing management internal controls and risk, information systems internal controls and risk, statutory deposits compliance, and prompt pay compliance for health and workers compensation insurance companies. NAIC guidelines specify exams must be completed within 18 months (the division has set a performance measure based on this guideline)

and have supervisory review. Results of the examinations are available on the department's website. The examination may result in a list of deficiencies and directives for the company to comply with known as a Commissioner's Order.

We selected a sample of ten of the most recently completed examinations and reviewed examination working papers to determine whether division staff had completed those examinations timely, all applicable examination steps were completed, and supervisory reviews were documented. We also interviewed examination staff about the process. We found that one examination was not completed until 25 months after the as-of date, seven months after the deadline. According to division management, the exam start was delayed in order to direct resources to another examination deemed higher priority. (No directives resulted from the delayed examination.)

Eight of the ten examinations we reviewed resulted in commissioner's orders. According to management, the division's goal is to complete follow-up reviews of examinations with commissioner's orders within a year. The division had completed follow-up reviews on five of the examinations and the remaining three follow-up reviews were in progress at the time of our field work. All but one company with completed follow-up reviews had complied with the directives of the commissioner's order. The follow-up review found that the company was not in compliance with one of three directives in the commissioner's order. The issue is currently being addressed by the department's General Counsel and division management did not know whether the company would be sanctioned or any fines levied.

Based on interviews with the Chief Examiner, interviews with examiners, and a file review of insurance company examination work papers, the Insurance Division adheres to procedures for the examination process and follow-up review.

Insurance Company Financial Analysis

The Division of Insurance conducts quarterly and annual financial analyses of insurers domiciled in the state using policies and procedures established by the division and the National Association of Insurance Commissioners (NAIC). Insurers are required to submit annual financial reports within 90 days of the end of their fiscal year while quarterly financial statements are required to be filed by 45 days after the end of each quarter. (Life insurance companies and county mutual insurance companies, which write insurance for farmers' crop loss, hail, and lightning, etc., are not required to file quarterly statements.)

We conducted a file review of the financial analyses of a sample of insurers to determine if the division was complying with its policies and procedures for conducting the annual and quarterly financial analyses. The analyses require a review of the insurer's actuarial opinion, capital and surplus requirements, NAIC profile, investment compliance and noncompliance, etc. Based on interviews with staff and a review of files, the Insurance Division adheres to procedures for the financial analysis of insurance companies.

COMMISSION ON FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

The Commission on Firefighting Personnel Standards and Education's mission is "to raise the standards of firefighting personnel who engage in its certification and training programs by enabling Tennessee firefighters to be better prepared through training courses facilitating the skills and knowledge necessary to save lives and property, and to vigorously promote firefighter safety, efficiency, decorum, and ethical considerations throughout the certification process."

The commission is responsible for the certification of volunteer and paid firefighters in Tennessee. The commission also certifies educational and training programs and courses in fire safety, as well as fire training instructors, and administers the Educational Incentive Pay Program for paid firefighters. (Pursuant to Section 4-24-202, *Tennessee Code Annotated*, any unit of government with firefighters who successfully complete 40 hours of appropriate training in a year is eligible to receive a pay supplement of \$600 from the commission, to be paid to each firefighter who completed the training, in addition to the firefighter's regular salary.) According to the commission's website, there are over 300 fire departments enrolled in the commission's programs, serving in excess of 15,000 fire service personnel in Tennessee.

The commission is comprised of nine members appointed by the Governor, all of whom serve a six-year term. Commission members are to be persons qualified by experience or education in the area of fire protection and related fields. Two members are selected from a list of nominees submitted by the Tennessee Professional Firefighters Association; at least two members are either associated with an all volunteer firefighting unit or are not engaged as a professional or volunteer firefighter. In addition, one member is to be at least 60 years of age and one member is to be a member of a racial minority. Each of the state's three grand divisions must be represented on the commission. As of August 2008, commission membership met these requirements.

By rule, the commission must meet at least once per quarter. Based on auditor review of commission meeting minutes, the commission has met this requirement for calendar years 2005 through September 2008 (the end of our audit field work). It is the commission's policy that members abstain from voting on any issue brought before the commission by an entity that the member has received any form of compensation from within the previous 12 months. Also, members are prohibited from involvement, as a commission member, in any audit, inquiry, or investigation of a fire department or other fire service organization by which they are currently employed or have been employed within the past 12 months. Based on an auditor review of the commission meetings, nothing indicated that any commission member was in any position where they would need to recuse themselves. Commission policy requires that all members complete conflict of interest statements at the time they take their positions on the commission, and update those statements whenever a change in their status would warrant such action. The commission is in compliance with this policy as of August 2008, as all current members have completed statements.

The commission operates on funds appropriated by the General Assembly. Total expenditures for the past two fiscal years were \$2,721,779 for fiscal year 2007 and \$3,689,531 for fiscal year 2008. The vast majority of those expenditures (\$2.45 million in 2007, and \$3.38 million in 2008) were for salary supplements to firefighters.

Student Examinations

The Commission on Firefighting Personnel Standards and Education is responsible for processing and approving all applications for fire fighter certification. In fulfilling this role, the commission is responsible for administering and grading written examinations, and maintaining all examination analysis. Auditors reviewed two issues regarding student exams: (1) whether the commission has set, and met, goals for acceptable pass rates and (2) whether the commission had updated its data system for maintaining examination scores.

Pass Rates. The commission has, for the most part, achieved its goals for acceptable pass rates for fire fighting examinations. Commission Rule 0360-4-1.04, requires that potential fire fighters achieve a minimum score of 70% on the written examinations to pass and become certified. The commission does not have a written standard with regard to student pass rates (i.e., the percent of persons taking the examination who pass the examination). According to commission management, however, the commission's objective is to have 70% of students taking the examinations pass those examinations.

We reviewed documentation provided by the commission of pass rates by job title for fiscal years 2005, 2006, 2007 and 2008 (through December 2007). Based on analysis conducted by the commission, overall it met its 70% objective in fiscal year 2005 (74% for all job titles), fiscal year 2006 (74%), and the first half of fiscal year 2008 (81%). The commission did not, however, meet its objective in fiscal year 2007, when the examination pass rate was 66%.

Data System. Prior to 2008, the commission's director maintained test score data on his personal computer and was backing up the data on a zip drive. According to the director, the commission's data system at that time did not adequately back up the files. In the early months of 2008, the department's Information Systems staff began a process to address the lack of adequate file backup. The data is now backed up to the network drive, and is automatically backed up in the data center. If there is a problem with the data in the computer, staff can call the data center and they can recreate the files from the backup file. This update process was completed in June 2008. Based on auditor's observation, the conversion to the new software has adequately addressed concerns regarding backup of test score data.

TENNCARE OVERSIGHT DIVISION

The Department of Commerce and Insurance's TennCare Oversight Division is one of several state agencies responsible for monitoring the TennCare program. Through oversight, examination, and other monitoring activities, the division determines if the managed care organizations (MCOs) and behavioral health organizations (BHOs) participating in TennCare are in compliance with statutory and contractual requirements relating to their financial responsibility, stability, and integrity. The division is divided into two major sections—Compliance and Examinations. The Compliance Section determines compliance with statutory requirements, processes complaints, and conducts the independent review process. The Examinations Section monitors financial stability, conducts examinations, and determines

compliance with Prompt Pay Act requirements. See Appendix 2 for additional details regarding the division's activities.

Division staff and management stated that several statutory requirements have assisted their efforts to monitor MCOs and BHOs, such as the Prompt Pay Act and the minimum net worth and restricted deposits requirements. We reviewed policies and procedures as well as documentation of the monitoring performed for minimum net worth and restricted deposits; prompt pay compliance; claims payment accuracy; independent review process and complaint-handling processes and examinations. Based on that review, we found that the division is meeting its statutory requirement for TennCare oversight.

DIVISION OF SECURITIES

Securities Registration

The Broker-Dealer Registration unit of the Division of Securities in the Department of Commerce and Insurance is responsible for the licensing of businesses and individuals who sell securities pursuant to the Tennessee Securities Act of 1980. There are four types of registrations: Broker-Dealers, Broker-Dealer Agents, Investment Advisors, and Investment Advisor Representatives. There is a higher degree of regulation for Broker-Dealers and Broker-Dealer Agents because they actually sell the securities. Not all investment advisors have to register with the state. Investment advisors who manage assets of \$25 million or greater are registered with the U.S. Securities and Exchange Commission.

Broker-Dealers and Broker-Dealer Agents. Registrations are on an annual cycle. Broker-Dealers and Broker-Dealer Agents register through a system called the Central Registration Depository, or CRD. The system is operated by the Financial Industry Regulatory Authority, also known as FINRA. The system and fee structure is the same for all states. The entire registration fee goes to the states. States do not pay a fee for using CRD; it is all paid for by the industry. The registration for Broker-Dealers is not automated. Each application must be carefully reviewed. However, the registration process for Broker-Dealer Agents is mostly automated. If the registrant has taken all necessary exams and there are no red flags such as customer complaints or an administrative action, the system completes the registration. If there is a problem on an applicant's record, there is significant work involved in ensuring the applicant is fit to be licensed in Tennessee.

Investment Advisors and Investment Advisor Representatives. Also on an annual cycle, Investment Advisors and Investment Advisor Representatives register through the Investment Advisor Registration Depository (IARD) which is also operated by FINRA. The system and fee structure is the same for all states. States receive the entire registration fee, and do not pay for the use of IARD. The registration for Investment Advisors is not automated. Each application must be carefully reviewed. The registration process for Investment Advisor Representatives is the same as the process for Broker-Dealer Agents. Once the registrant has taken all necessary exams and it is determined that there are no red flags such as customer complaints or an administrative action the system completes the registration. If there is a problem on an

applicant's record, there is significant work involved in ensuring the applicant is fit to be licensed in Tennessee.

Registrants have a responsibility to disclose required information such as criminal convictions, personal bankruptcies, administrative actions, and civil judgments. Required disclosures extend beyond securities violations, and include information related to other investment-related industries such as banking and insurance. If a state takes an administrative action against a registrant the state can elect to add the information to the CRD or IARD system. In that case a registrant's failure to disclose required information would be caught. The Securities Division does not check other professions' databases (e.g., insurance databases) to identify additional information that was not disclosed in the CRD or IARD system.

There are approximately 1,600 registered Broker-Dealers, 90,000 Broker-Dealer Agents, 170 Investment Advisors, and 4,000 Investment Advisor Representatives in Tennessee. Additionally, there are 1,000 notice-filed Investment Advisors, who are exempt from state registration because they are registered by the SEC, but who must let the state know they are conducting business in Tennessee. Most of the 4,000 registered Investment Advisor Representatives are also registered Broker-Dealer Agents.

We selected a sample of ten registrants from each of the four categories for a file review. The file review determined that the division reviewed registrations and all necessary documentation was complete. All Broker-Dealer and Investment Advisor registrations appeared to be carefully reviewed. Broker-Dealer Agent and Investment Advisor Representative applications appeared to be reviewed and an investigation into the applicants' fitness for licensure conducted where appropriate. The Division of Securities Registration and the Division of Insurance should work together to share information on registrants to better ensure the integrity of licensees.

DIVISION OF FIRE PREVENTION

Bomb and Arson Section Training

The Department of Commerce and Insurance's Bomb and Arson Section is responsible for the investigation of bombings, explosions, the criminal misuse of explosives, major fires, and arsons. In the October 2004 Follow-up Report on the Department of Commerce and Insurance, we recommended (among other things) that the Bomb and Arson Section continue to develop the Certified Fire Investigator Program and ensure that special agents achieve and maintain the certification.

We reviewed training policies, interviewed staff and management, reviewed agent manuals and policy manuals, and reviewed training files for special agents to determine the status of this recommendation.

The Bomb and Arson Section has 28 special agents including the director, assistant director and three special agents in charge. Agents are assigned areas of responsibility by county

and report to one of three field offices located in Jackson, Nashville, and Knoxville under the direct supervision of a special agent in charge. According to the director, the section investigates approximately 350 cases annually. Two programs have been developed within the section for training agents—the Certified Fire Investigator program and the Certified Explosives Handler program. The section has a training file for each agent. We reviewed those files and the accompanying documentation and found that all agents had completed training as required (one agent was approved by the director to be certified based on the agent’s prior experience).

The Certified Fire Investigator program, which started training classes in March 2004, is a two-year training program in fire investigation and fire science. The Commissioner of the Department of Commerce and Insurance certifies special agents of the Bomb and Arson Section as Fire Investigators upon completion of the program and recommendation from the Director, Bomb and Arson Section. Agents in the Certified Fire Investigator program are assigned mentors. Monthly meetings are held with the director to discuss training progress—both the agents in-training and mentors are included. Agents must be recertified every two years.

The Certified Explosives Handler program trains agents in the safe handling and disposition of explosives and explosives-related forensic science. A prerequisite is certification as a Certified Fire Investigator and completion of post blast investigation training provided by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or the Federal Bureau of Investigation (FBI) hazardous materials (hazmat) training. Upon successful completion of the explosives handler program, the agent is certified as an explosives handler. The agent must be recertified every two years. The Certified Explosive Handler Program is a voluntary training program and was implemented in June 2007. As of September 2008, 15 agents had been certified as Certified Explosive Handlers.

In addition to the above programs, agents are trained in post-blast investigation, hazardous materials handling, and methamphetamine investigation, and are able to provide expert testimony relative to fires and explosions, their origin and cause. The Bomb and Arson Section provides support to significant special events and Homeland Security operations. Bomb and Arson is also prepared to provide communications support to the Tennessee Emergency Management Agency (TEMA) as necessary. All Bomb and Arson Special Agents have completed the on-line lower-level classes in the National Incident Management System (NIMS). The section is waiting for upper-level class materials from TEMA so that agents can begin to complete those classes. The Bomb and Arson Section has requested that two agents be certified as NIMS instructors so that the section can provide their own classes for agents. (NIMS was developed so that responders from different jurisdictions could work together to better respond to natural disasters and emergencies, including acts of terrorism.)

Based on management and staff interviews, file reviews and documentation, the section has implemented recommendations from the prior audit regarding the certification of agents as Certified Fire Investigators and the development of other training programs.

Complaint Handling in the Electrical Inspection Section

The Electrical Inspection Section has implemented policies for reporting and resolving problems with electrical contractors. Field Supervisors, consumers or Deputy Electrical Inspectors (DEIs) can register a verbal or written complaint about an electrical contractor. Verbal complaints are recorded as safety reports and written complaints are recorded in a log book and a file is created for each complaint. The section also has policies for resolving disagreements between a DEI and a field supervisor and for resolving complaints about possible electrical hazards, DEIs or a permit issuing agent.

Auditors' file review of 15 verbal and 7 written complaints received by the section from March 2007 to March 2008, found that the section is following its policies and procedures for resolving complaints between the inspectors and the contractors whose work they inspect.

Deputy Electrical Inspectors Contract Monitoring

The department contracts with the professional corporations of 94 deputy electrical inspectors (DEIs) to perform electrical inspections across the state. In fiscal year 2007, the DEIs conducted approximated 248,000 inspections. There are three supervisors who periodically accompany inspectors and mediate problems with the inspectors, homeowners, or contractors. Consumers purchase pre-numbered electrical permits from issuing agents who contract with the Electrical Inspection Section. As part of each inspection, a checklist is completed by the DEI. This ensures that there is consistency in the inspections and that all applicable codes are looked at while performing the inspection. *Tennessee Code Annotated* requires inspections be performed within three working days of the request to the inspector.

Using an information system—the Electrical Permit System—the Administrative Services Section of the Fire Prevention Division processes and tracks sold permits and the associated inspections. Weekly reports of (1) permits sold are submitted by issuing agents and (2) inspections completed are submitted by DEIs. The system has controls to ensure that data from the permit and the inspection match before payment is approved. Data from the inspections is accumulated and the DEIs are paid bi-monthly for completed inspections.

We conducted file reviews, interviewed staff, and observed data input into the EPS system as part of our audit work. We found that the Deputy Electrical Inspectors meet state requirements for education, experience, and certifications, and that the Electrical Inspection Section's management controls over the inspection process to ensure inspections are conducted timely and appropriately are in place and working.

Codes Enforcement Personnel

We reviewed personnel files of Codes Enforcement staff to determine if the files contained documentation that staff met minimum qualifications for their positions and whether evaluations were performed annually. Our review of files for 40 Codes Enforcement staff found the following:

- 39 of 40 had state applications on file;
- 40 of 40 contained evidence that qualifications for the position were met;
- 19 of 21 employees who should have had a 2005 evaluation had one;
- all 21 employees who should have had a 2006 evaluation had one, and
- 28 of 29 employees who should have had a 2007 evaluation had one and 2 of the 29 had late evaluations.

Our review found that the Codes Enforcement personnel files contain information to determine whether staff are qualified.

RECOMMENDATIONS

LEGISLATIVE

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the operations of the Department of Commerce and Insurance and related entities.

1. The General Assembly may wish to consider the extent of the threat to public safety resulting from Public Service Answering Points (PSAPs) not affiliated with Emergency Communications Districts (ECDs) and lacking Phase II technology, and consider what, if any, statutory changes need to be made to reach the optimal, operational safety of E-911 service throughout the state. Specifically, the General Assembly may wish to consider options such as increasing the Emergency Communications Board's oversight of unaffiliated PSAPs or specifically requiring these PSAPs to obtain Phase II technology or to consolidate with an ECD that already has such technology. The General Assembly may also wish to consider clarifying which entity has oversight and authority to monitor and enforce requirements concerning minimum dispatcher training standards.

ADMINISTRATIVE

The Department of Commerce and Insurance and related entities should address the following areas to improve the efficiency and effectiveness of their operations.

1. The Emergency Communications Board should revise and clarify Policy 36 to ensure that Emergency Communications Districts and PSAPs have 911 contingency plans and submit those plans to the board. The board should take enforcement action against ECDs that fail to comply.
2. Department management and the Manufactured Housing Section should implement procedures to ensure that the section meets the requirements set forth in the Tennessee Manufactured Home Installation Act. The section should determine the reasons for license expiration date anomalies and their impact on inspection requirements. The section should determine whether installers are extending the period they are subject to inspection by later renewal of a license, and should ensure that installers cannot work prior to licensing or after license termination. The department should determine whether a user-friendly, inexpensive, business-level database application would enable inspectors to better monitor installations and installers.
3. Management, in conjunction with the Title VI Coordinator, should ensure that the department complies with the policies, procedures, and reporting activities outlined in

the plan and as required by Title VI. When the plan states that a report will be produced based on documents reviewed by the Title VI Coordinator, the reports should be available and the documents should support the fact that a review of information supplied has been completed.

4. The Division of Consumer Affairs needs to develop an effective method for assessing consumer satisfaction related to complaint mediation outcomes. The division should establish criteria for measuring and defining successful mediations and refine the current closure codes to reflect consumer satisfaction levels. This change will benefit consumer interests and provide the division with better tools to monitor, benchmark, and improve upon its performance and consumer satisfaction in general.
5. The Division of Consumer Affairs should measure its public awareness efforts and develop the necessary resources for assessing the public's knowledge of the availability of consumer services. The division should continue public education activities to promote greater awareness and improve mediation outcomes for consumers. Strategies could include tracking consumer visits to the division's website (especially the Buyer Beware List), conducting public surveys, and creating a mechanism for consumer feedback.
6. Consumer Affairs should implement controls for the Complaint Management System that can identify and correct—on a timely basis—inaccurate, complaint-related information and other keying errors. The division should work with department IT staff to determine and implement an appropriate solution.
7. Insurance Division management should evaluate the process for auditing premium tax returns, identify and address factors contributing to delays in completion of the audits, and establish deadlines to ensure that premium tax returns are audited before the next year's returns are filed. Management should develop strategies to meet the deadlines established without sacrificing the effectiveness of the audit process. Such requirements would help ensure that insurance companies pay the state all premium taxes due and are notified of filing errors before the next return is due, and that insurance companies receive any refunds owed, in a timely manner.
8. Securities Division management should implement a formal, documented supervisory review process to supplement the current formal controls (i.e., the signing of a conflict-of-interest disclosure statement) and help protect against the possibility that securities promoters might improperly influence securities examiners.

Appendix 1 Title VI Information

In fiscal years 2005-2008, the department received federal funds from the Federal Emergency Management Agency and the U.S. Department of Health and Human Services. See Table 1 for details. In addition, the department received indirect federal assistance through the U.S. Department of Justice's Edward Byrne Memorial Grant. The funds, which passed through the Tennessee Department of Finance and Administration's Office of Criminal Justice, were used for law enforcement training including assistance with methamphetamine investigations. The department also received indirect federal assistance from the Tennessee Emergency Management Agency in dealing with issues related to Homeland Security and National Fire Service Training.

The department contracts with the U.S. Department of Housing and Urban Development (HUD) as part of a cooperative agreement under which Commerce and Insurance staff perform monitoring reviews at factories producing manufactured housing, investigate consumer complaints, and take enforcement actions as needed. The department receives an hourly fee and travel as reimbursement for work. The department submits to HUD periodic reports on manufactured home inspections and complaints. The department received the following amounts under that agreement:

2005	2006	2007	2008 (as of July)
\$258,607	\$274,344	\$234,109	\$231,564

The Chief Counsel for Consumer Affairs and Administration is the Title VI Coordinator for the department. The plan does not include a description of the duties of the Title VI Coordinator. The plan gives each division of the department responsibility for accepting, investigating and resolving Title VI complaints along with data collection and compliance reviews. The department submitted its annual Title VI compliance report and implementation plan update to the Office of the Comptroller of the Treasury on June 26, 2007, as required by statute. The letter submitted by the department stated that the Title VI policies, procedures, complaint procedures, terminology, and monitoring methodology are contained in the department's Title VI compliance plan filed with the Comptroller's Office on June 25, 1998. According to the letter, there have been no changes to the plan since that time. The plan, which we reviewed, describes the department's Title VI policy, the responsibilities of the various levels of government, the department's proposed Title VI activities related to public notification of eligible participants, data collection and reporting of participation data, complaint handling, and compliance reviews. On June 24, 2008, the department submitted a letter as its Title VI compliance plan. That letter states that no changes have been made to the 1998 plan.

According to management, the department has received no Title VI complaints in the last four years, and has performed no compliance reviews. Management said that the department plans to review the plan during fiscal year 2009 and make appropriate changes/updates at the next appropriate filing opportunity when the review is completed. The department will look at clarifying the data collection and analyzing provisions in the current plan and will undertake all appropriate reporting requirements in fiscal year 2009 prior to any change in plan. (Also, see finding 3.)

**Table 1
Department of Commerce and Insurance
Grant Funds Received
Fiscal Year 2005 Through February 2008**

Division	Grant	Grantor	Description	Grant Funds Received Fiscal Year 2005	Grant Funds Received Fiscal Year 2006	Grant Funds Received Fiscal Year 2007	Grant Funds Received Through February 2008
Administration	State Planning Grants	U.S. Department of Health and Human Services	Identify uninsured Tennesseans and determine methods to make health insurance available to them	\$330,752	\$603,990	\$253,575	\$45,688
Fire Prevention	Edward Byrne Memorial Grant Program	Tennessee Department of Finance and Administration's Office of Criminal Justice	Methamphetamine Investigations Training	167,386	126,829	141,672	11,382
Fire Prevention	First Responder and Domestic Preparedness	Tennessee Emergency Management Agency	Communications Equipment and Supplies, Training	553,849	88,220	137,515	N/A
Fire Prevention	Assistance to Firefighters Grant Program	Federal Emergency Management Agency	Equipment and training	N/A	97,579	N/A	N/A
Fire Prevention	Local Law Enforcement Block Grant	Tennessee Department of Finance and Administration's Office of Criminal Justice	Equipment	N/A	N/A	54,979	N/A
Fire Prevention	Criminal Justice Professional Enhancement Training	Tennessee Department of Finance and Administration's Office of Criminal Justice	Equipment and Training	N/A	N/A	N/A	23,453
Fire Prevention	Special Operations Response Team Training	Tennessee Department of Finance and Administration's Office of Criminal Justice	Equipment and Supplies	N/A	N/A	N/A	28,153
Fire Academy	National Fire Service Training	Federal Emergency Management Agency	Training Programs	20,633	26,274	12,768	23,545
Fire Academy	Homeland Security Domestic Preparedness	Tennessee Emergency Management Agency	Equipment and Training	267,533	226,427	N/A	N/A
Law Enforcement Training Academy	Homeland Security Domestic Preparedness	Tennessee Emergency Management Agency	Equipment for Training	N/A	N/A	23,526	N/A
Law Enforcement Training Academy	Edward Byrne Memorial Grant Program	Tennessee Department of Finance and Administration's Office of Criminal Justice	Training for Tennessee Association of Chiefs of Police	N/A	N/A	102,714	52,237
Total				\$1,340,156	\$1,169,322	\$726,753	\$184,461

The TennCare Oversight Division of the department does have steps to review the managed care organizations' (MCOs') compliance with Title VI as part of its financial and contract examinations of those MCOs. Based on our review, the MCO examinations did include a review of Title VI compliance. The department has several divisions that take complaints. One division—Consumer Affairs—has developed information on filing complaints and complaints forms in languages other than English to accommodate persons with limited English proficiency. Based on a review of the website, the Division of Insurance's Consumer Insurance Services section takes complaints from the public related to insurance but does not have an action plan for taking complaints from non-English speaking consumers.

See the tables below for information detailing department staff by job title, gender, and ethnicity, as well as the members of the Emergency Communications Board and the Commission on Firefighting Personnel Standards and Education by gender and ethnicity.

**Department of Commerce and Insurance
Staff by Title, Gender, and Ethnicity
August 2008**

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Account Clerk	2	2	1	1	0	0	1	1
Accounting Manager	2	0	0	0	0	0	2	0
Accounting Technician	2	10	0	2	0	0	10	0
Assistant Commissioner	2	2	0	1	0	0	3	0
Actuarial Officer	3	1	0	0	0	0	4	0
Actuary	3	4	0	1	0	0	6	0
Administrative Director Regulatory Boards	1	0	0	0	0	0	1	0
Administrative Assistant Regulatory Boards	0	1	0	0	0	0	1	0
Administrative Assistant	0	6	0	1	0	0	5	0
Administrative Services Assistant	4	31	0	3	0	0	32	0
Administrative Services Manager	1	0	0	0	0	0	1	0
Administrative Secretary	0	18	0	6	1	0	11	0
Attorney	14	8	0	4	0	0	18	0
Audit Director	1	0	0	0	0	0	1	0
Auditor	2	0	0	0	0	0	1	1
Bomb and Arson Assistant Director	1	0	0	0	0	0	1	0
Bomb and Arson Director	1	0	0	0	0	0	1	0
Bomb and Arson Special Agent	20	1	0	1	1	0	19	0
Bomb and Arson Special Agent-in-Charge	3	1	0	0	0	0	4	0
Building Maintenance Worker	2	0	0	0	0	0	2	0
Budget Analyst	1	0	0	0	0	0	1	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Clerk	1	6	0	1	0	0	6	0
Codes Enforcement Instructor	7	1	0	0	0	0	8	0
Codes Enforcement Program Director	0	1	0	0	0	0	1	0
Codes Enforcement Instructor Supervisor	2	0	0	0	0	0	2	0
Computer Operations Manager	0	1	0	0	0	0	1	0
Commissioner	0	1	0	0	0	0	1	0
Consumer Insurance Investigator	6	1	0	2	0	0	5	0
Consumer Insurance Services Manager	1	0	0	1	0	0	0	0
Consumer Protection Assistant Director	1	0	0	0	0	0	1	0
Consumer Protection Director	0	1	0	0	0	0	1	0
Consumer Protection Specialist	4	1	0	0	0	0	5	0
Database Administrator	1	0	0	0	0	0	1	0
Deputy Commissioner	1	1	1	0	0	0	1	0
Director – Agent Licensing/Continuing Education	0	1	0	0	0	0	1	0
Distributed Computer Operator	1	0	0	1	0	0	0	0
ECB E-911 Director	1	0	0	0	0	0	1	0
Electronics Technician	1	0	0	0	0	0	1	0
Electrical Inspection Director	1	0	0	0	0	0	1	0
Electrical Inspector Supervisor	3	0	0	0	0	0	3	0
Executive Director	1	1	0	0	0	0	2	0
Executive Administrative Assistant	0	6	0	2	0	0	4	0
Executive Secretary	1	2	0	0	0	0	3	0
Facility Administrator	1	0	0	0	0	0	1	0
Facilities Construction Assistant Director	1	0	0	0	0	0	1	0
Facilities Construction Specialist	18	0	0	1	0	0	17	0
Facilities Supervisor	1	0	0	0	0	0	1	0
Food Service Manager	0	1	0	0	0	0	1	0
Fire Service Instructor	83	5	1	5	0	0	82	0
Fire Safety Manager	1	0	0	0	0	0	1	0
Fire Safety Specialist	30	5	1	1	0	0	33	0
Fraud Investigation Director	0	1	0	0	0	0	1	0
Fire Safety Supervisor	4	0	0	0	0	0	4	0
Fire Service Instructor Supervisor	2	0	0	0	0	0	2	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Fire Service Program Director	1	0	0	0	0	0	1	0
General Counsel	0	1	0	0	0	0	1	0
Human Resources Analyst	1	2	0	1	1	1	0	0
Human Resources Director	0	1	0	0	0	0	1	0
Human Resources Manager	1	1	0	0	0	0	2	0
Human Resources Technician	0	1	0	0	0	0	1	0
Information Resource Support Specialist	5	0	0	3	0	0	2	0
Information Representative	1	0	0	0	0	0	1	0
Information Systems Analyst	0	1	0	0	0	0	1	0
Information Systems Consultant	1	0	0	0	0	0	1	0
Information Systems Director	1	0	0	0	0	0	1	0
Information Systems Manager	1	1	0	0	0	0	2	0
Insurance Analysis Director	2	0	0	0	0	0	2	0
Insurance Examiner-in-Charge – CFE	7	1	1	1	0	0	6	0
Insurance Examiner	7	6	2	5	0	0	6	0
Insurance Examination Assistant Director	1	0	0	0	0	0	1	0
Insurance Examiner – AFE	4	1	0	0	0	0	5	0
Insurance Examiner – CFE	4	3	1	1	0	0	5	0
Insurance Examination Director	2	0	0	0	0	0	2	0
Insurance Fraud Investigator	4	0	0	0	0	0	4	0
Insurance Fraud Investigation Manager	1	0	0	0	0	0	1	0
Insurance Investigation Director	0	1	0	1	0	0	0	0
Legal Services Director	1	1	0	0	0	0	2	0
Licensing Technician	0	15	0	2	0	0	13	0
Mail Clerk	1	0	0	0	0	0	1	0
Mail Technician	1	0	0	0	0	0	1	0
Manufactured Home Inspector	19	0	0	1	0	0	18	0
Manufactured Home Manager	3	0	0	0	0	0	3	0
Manufactured Home Supervisor	2	0	0	0	0	0	2	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Manufactured Home Director	0	1	0	0	0	0	1	0
Programmer Analyst	1	0	0	1	0	0	0	0
Procurement Officer	0	1	0	0	0	0	1	0
Room Clerk	0	1	0	0	0	0	1	0
Secretary	3	15	1	1	0	0	15	1
Securities Examiner	6	4	0	4	0	0	6	0
Securities Examiner Supervisor	2	1	0	1	0	0	2	0
Statistical Analyst	1	0	0	0	0	0	1	0
Statistical Clerk	1	0	0	1	0	0	0	0
TennCare Examiner	3	4	0	3	0	0	4	0
TennCare Examination Director	1	0	0	0	0	0	1	0
TennCare Examination Manager	2	1	0	1	0	0	2	0
Website Developer	1	0	0	0	0	0	1	0
Total	331	185	9	61	3	1	439	3
Percent	64%	36%	2%	12%	.5%	0%	85%	.5%

**Emergency Communications Board
Board Members by Gender and Ethnicity
As of August 2008**

	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Commission Member	7	2	0	1	0	0	8	0
Percent	78%	22%	0%	11%	0%	0%	89%	0%

**Commission on Firefighting Personnel Standards and Education
Commission Members by Gender and Ethnicity
As of August 2008**

	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Commission Member	9	0	0	3	0	0	6	0
Percent	100%	0%	0%	33%	0%	0%	67%	0%

Appendix 2 TennCare Oversight Information

TennCare Enrollment

The TennCare program provides enrollees services through either managed care organizations (MCOs) or behavioral health organizations (BHOs). The plans must be licensed as either a health maintenance organization (HMO) or as a prepaid limited health service organization (PLHSO). HMOs can offer both medical and behavioral services while PLHSOs are limited to services such as mental health, dental, vision, or pharmaceutical. See Table 2 for enrollment by MCO/BHO.

**Table 2
TennCare Enrollment by MCO/BHO
As of December 1, 2007**

MCO/BHO	Licensure	Geographic Operations	TennCare Risk Arrangement (8)	Enrollment
AmeriGroup Tennessee (1)	HMO(5)	Middle	Risk	348,644
Doral Dental of Tennessee	TPA(6)	Statewide	No Risk	1,199,174
First Health (Pharmacy Benefits Manager)	TPA	Statewide	No Risk	1,199,174
Memphis Managed Care Company (d/b/a TLC Family Care) (2)	HMO	West	No Risk	0
Preferred Health Partnership of Tennessee	HMO	East	No Risk	102,517
Premier Behavioral Systems of Tennessee	PLHSO(7)	Statewide	Risk-sharing	247,879
Tennessee Behavioral Health	PLHSO	Statewide	Risk-sharing	594,937
UAHC Health Plan of Tennessee	HMO	West	No Risk	106,022
Unison Health Plan of Tennessee	HMO	West	No Risk	68,972
United Healthcare Plan of the River Valley (d/b/a AmeriChoice) (3)	HMO	East	No Risk	82,680
		Middle	Risk	180,112
Volunteer State Health Plan BlueCare	HMO	East	No Risk	207,878
Volunteer State Health Plan TennCare Select	HMO	Statewide	No Risk	102,349
Windsor Health Plan of Tennessee (4)	HMO	Davidson County	No Risk	0

- (1) Effective 4/1/07.
- (2) Effective 11/1/2007, AmeriGroup purchased assets/operations and was assigned enrollees.
- (3) Effective 4/1/2007 (former John Deere Health Plan).
- (4) Terminated 3/31/2007.
- (5) Health Maintenance Organization.
- (6) Third Party Administrator.
- (7) Prepaid Limited Health Service Organization.
- (8) The TennCare Risk Arrangement is the contract executed between each TennCare MCO and the Bureau of TennCare. It also refers to the contract executed between each TennCare BHO and the Department of Mental Health and Developmental Disabilities.

Examinations and Results

The TennCare Oversight Division conducts on-site examinations and desk reviews of MCOs and BHOs to determine financial and contractual compliance. A Market Conduct examination verifies compliance with claim processing requirements; a Limited Scope Financial and Compliance examination verifies balance sheet and income statement accuracy and compliance with statutory and contractual requirements. Table 3 lists dates of the most recent exams.

**Table 3
Most Recent Examination Reports Released**

MCO	Exam Period	Date Issued	Type of Exam
Memphis Managed Care Company	01/01/2006 – 12/31/2006	11/8/2007	Market Conduct Examination and Limited Scope Financial and Compliance Examination
Preferred Health Partnership of Tennessee	01/01/2003 – 12/31/2005	12/28/2006	Market Conduct Examination and Limited Scope Financial and Compliance Examination
Premier Behavioral Systems of Tennessee	01/01/2006 – 06/30/2006	5/30/2007	Market Conduct Examination and Limited Scope Financial and Compliance Examination
Tennessee Behavioral Health	01/01/2006 – 6/30/2006	5/30/2007	Market Conduct Examination and Limited Scope Financial and Compliance Examination
UAHC Health Plan of Tennessee, Inc.	01/01/2007- 06/30/2007	2/12/2008	Market Conduct Examination and Limited Scope Financial and Compliance Examination
United Healthcare Plan of the River Valley, Inc.	01/01/2007- 06/30/2007	5/8/2008	Market Conduct Examination and Limited Scope Financial and Compliance Examination
Volunteer State Health Plan	01/01/2006 – 6/30/2006	7/17/2007	Market Conduct Examination and Limited Scope Financial and Compliance Examination
Windsor Health Plan of Tennessee, Inc.	01/01/2004 – 06/30/2004	5/15/2006	Market Conduct Examination and Limited Scope Financial and Compliance Examination

Minimum Net Worth

Minimum net worth requirements—as defined in Section 56-32-212, *Tennessee Code Annotated*—state that HMOs and PLHSOs must maintain a minimum net worth of \$1,500,000 or an amount totaling 4% of the first \$150,000,000 of annual premium revenue as reported on the most recent annual statement filed with the commissioner and 1.5% of the annual premium revenue in excess of \$150,000,000.

Each HMO/PLHSO is required to submit quarterly and annual financial statements as prescribed by the National Association of Insurance Commissioners (NAIC). The reports are reviewed to determine if the HMO/PLHSO is in compliance with its net worth requirement and statutory deposit requirements. Any discrepancies in net worth and statutory deposits are

immediately communicated to the entity as well as the Bureau of TennCare, and corrective action is required.

Pursuant to statutory requirements outlined in Section 56-32-212, *Tennessee Code Annotated*, all TennCare MCOs met the requirements relating to minimum net worth as of December 31, 2007. Each MCO reported an excess net worth beyond what was required by statute. See Table 4.

Table 4
Reported Net Worth as of December 31, 2007

Plan	Reported Net Worth December 31, 2007	Required Net Worth December 31, 2007	Excess Net Worth December 31, 2007
Amerigroup Tennessee	\$24,061,114	\$15,656,844	\$8,404,270
Memphis Managed Care Company	\$8,932,450	\$1,500,000	\$7,432,450
Preferred Health Partnership of Tennessee	\$39,149,233	\$6,839,491	\$ 32,309,742
Premier Behavioral Systems of Tennessee	\$14,461,144	\$4,978,291	\$9,482,853
Tennessee Behavioral Health	\$14,822,842	\$6,638,818	\$8,184,024
UAHC Health Plan of Tennessee	\$14,616,274	\$7,226,227	\$7,390,047
Unison Health Plan	\$6,828,499	\$4,950,860	\$1,877,639
United Healthcare Plan of the River Valley	\$168,499,155	\$24,300,637	\$144,198,518
Volunteer State Health Plan	\$31,363,217	\$21,024,621	\$10,338,596
Windsor Health Plan of Tennessee	\$8,284,598	\$6,111,473	\$2,173,125

Claims Processing Timeliness

Section 56-32-226, *Tennessee Code Annotated*, (the Prompt Pay Act) requires that Health Maintenance Organizations (HMOs) and Prepaid Limited Health Service Organizations (PLHSOs) ensure that (1) 90% of “clean” (requiring no further written information or substantiation) claims for payment for services for a TennCare enrollee are paid within 30 days of receipt and (2) 99.5% of all claims be processed within 60 days of receipt.

The MCOs and BHOs generate claims data files and submit those to the division, which analyzes it. We obtained and reviewed the data. The prompt pay results shown in Table 5, detail MCO/BHO compliance from January 2007 through January 2008. Amerigroup, Doral Dental, Premier Behavioral Systems, Tennessee Behavioral Health, and United Healthcare Plans were the only MCO/BHOs in compliance throughout the measured time period. Windsor Health Plan, Inc. had the most instances of non-compliance—accounting for 34.8% of all prompt pay compliance failure.

Table 5
Prompt Pay Compliance
January 2007 through January 2008

MCO/BHO Name	Months Not Compliant With Prompt Pay Requirements	Number of Months Not Compliant	Percentage of Total Non-Compliance
Amerigroup Tennessee	none	0	0%
Doral Dental of Tennessee	none	0	0%
Memphis Managed Care Company	June 2007 August 2007	2	8.7%
Premier Behavioral Systems of Tennessee	none	0	0%
Preferred Health Partnership of Tennessee	January 2007 February 2007 March 2007 April 2007	4	17.4%
Tennessee Behavioral Health	none	0	0%
UAHC Health Plan of Tennessee	January 2007 March 2007	2	8.7%
Unison Health Plan of Tennessee	June 2007 July 2007 August 2007 September 2007 October 2007	5	21.7%
United Healthcare Plan of the River Valley	none	0	0%
Volunteer State Health Plan	February 2007 June 2007	2	8.7%
Windsor Health Plan of Tennessee	January 2007 May 2007 June 2007 July 2007 September 2007 October 2007 November 2007 December 2007	8	34.8%

Complaints and Independent Reviews

The Compliance Section of the Division of TennCare Oversight handles provider complaints that involve disputed payment amounts, payment timeliness, and contract clarification—this does not include denied claims.

Upon receipt of a complaint (which may come via telephone, e-mail, fax, or letter), the division sends a letter to the MCO, which has 14 days to respond. (Extensions can be granted, however.) Upon receipt of the MCO’s response to the complaint, the result is documented. Failure to respond may result in additional correspondence that may involve notice of assessment of a civil penalty by the Department of Commerce and Insurance. Generally, notices of intent to impose a civil penalty are issued and signed by the Assistant Commissioner. Table 6 illustrates the complaint volume from January 2007 to December 2007. Out of 157 total complaints, 141 complaints (89.8%) resulted in a response from the MCO within 14 days.

Potential repercussions include additional monitoring, stricter reporting requirements, and finally, liquidated damages (recommended by the TennCare Oversight Division and assessed by the Bureau of TennCare).

**Table 6
2007 Provider Complaints**

MCO	Decision			Total	Period	
	Denied	Reversed	Other		14 days or <	>14 days
Amerigroup Tennessee	4	2	1	7	5	2
John Deere Health Plan	0	1	0	1	1	0
Memphis Managed Care Company	4	4	1	9	9	0
Preferred Health Partnership of Tennessee	14	9	2	25	20	5
Premier Behavioral Systems of Tennessee	1	0	1	2	1	1
Tennessee Behavioral Health	4	0	0	4	2	2
UAHC Health Plan of Tennessee	1	0	0	1	1	0
Unison Health Plan of Tennessee	27	43	6	76	71	5
United Health Care Plan of the River Valley	0	6	2	8	8	0
Volunteer State Health Plan	12	8	4	24	23	1
Total	67	73	17	157	141	16
Percentage	43%	46%	11%		90%	10%

As outlined in Section 56-32-226, *Tennessee Code Annotated*, the independent review process is reserved for denied claims only. HMOs and PLHSOs are required to adjudicate claims promptly and to provide dispute resolution for denied or partially denied claims through an independent review process. Table 7 shows that the majority of independent reviews were filed against Preferred Health Partnership (16 of 70 or 22.85%) and United Healthcare Plan (43 of 70 or 61.4%).

**Table 7
2007 MCO Independent Reviews**

Decision	Number of Cases	Amerigroup Tennessee	John Deere Health Plan	Memphis Managed Care Company	Premier Behavior Systems of Tennessee	Preferred Health Partnership of Tennessee	Tennessee Behavioral Health	United Healthcare Plan of the River Valley	Volunteer State Health Plan
MCO	14	1	2	1		2	1	6	1
MCO in Part/ Provider in Part	6					4		2	
Settled For MCO	1							1	
Provider	8				1	1		6	
Ineligible	41*		1	1		9	1	28	
Total	70*	1	3	2	1	16	2	43	1

* Ineligible total includes one independent review that involved multiple MCOs. The independent review was not pursued because the provider did not provide sufficient information.

Claims Accuracy

As part of the Contractual Risk Agreement, each MCO must achieve a 97% claims payment accuracy threshold. Claims accuracy data is compiled by internal auditors at each MCO and is submitted on a quarterly basis. If MCOs are non-compliant with the accuracy levels, they are subject to monthly submissions as well as administrative penalties. As shown in Table 8, Amerigroup (AGP) and Memphis Managed Care (MMCC) were the MCOs with the most failed, claims accuracy tests. TennCare Oversight attributed AGP’s problems to start-up complications, and required that AGP submit weekly post-implementation plans. MMCC was required to submit corrective action plans for the first-, third-, and fourth-quarter reports. TennCare Oversight management stated that none of the three plans incurred administrative penalties related to claims accuracy. See Table 9 for administrative penalties assessed in 2007.

**Table 8
2007 MCO/BHO Claims Accuracy Results***

MCO/BHO	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Amerigroup Tennessee	94.00%	90.86%	92.00%	94.00%
Memphis Managed Care Company	96.00%	97.00%	89.00%	95.00%
Unison Health Plan of Tennessee	99.09%	98.84%	98.63%	99.59%
Preferred Health Partnership of Tennessee	96.50%	98.00%	99.00%	98.90%
United Healthcare Plan of the River Valley	98.63%	98.05%	97.85%	98.57%
UAHC Health Plan of Tennessee	97.67%	97.00%	98.37%	98.00%
Volunteer State Health Plan (Blue Care)	99.73%	99.32%	99.30%	99.50%
Volunteer State Health Plan (TennCare Select)	99.22%	99.09%	98.90%	99.00%
Windsor Health Plan of Tennessee	99.96%	98.74%	99.98%	N/A
Tennessee Behavioral Health	99.97%	99.97%	99.96%	99.89%
Premier Behavioral Systems of Tennessee	100.00%	100.00%	99.90%	99.89%

* The highlighted quarters are those for which the MCO/BHO did not meet the required 97% threshold for claims accuracy.

**Table 9
2007 Administrative Penalties* Assessed Against MCOs and BHOs**

MCO/BHO	Date Levied	Amount
UAHC Health Plan of Tennessee	July 30, 2007	\$10,000
Memphis Managed Care Company	December 11, 2007	\$10,000
Unison Health Plan of Tennessee	December 27, 2007	\$30,000

*Pursuant to Section 56-32-220, *Tennessee Code Annotated*, the commissioner may, in lieu of suspension or revocation of a certificate of authority, levy an administrative penalty in an amount not less than \$1,000 nor more than \$10,000, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The commissioner may augment this penalty by an amount equal to the sum that the commissioner calculates to be the damages suffered by enrollees or other members of the public.

MCO Changes in 2008

On April 22, 2008, the TennCare Bureau announced that BlueCross BlueShield of Tennessee (BCBST) and United Health Plan of River Valley, Inc. (United) are the prevailing bidders in both the East and West grand regions of the state for TennCare's managed care organization (MCO) contracts. TennCare placed the managed care contracts up for competitive bid in January 2008. The Middle region's competitive bid process was completed last year.

This bid process allowed managed care companies to compete in either the East or West regions or in both regions. The state awarded the regional contracts by independently selecting two companies in each region with the highest combination of technical evaluation, in-person plan interview, and cost proposal scores.

The MCO contractors will accept full financial risk to participate in Tennessee's Medicaid program and will be paid set monthly rates, or capitated payments, to manage and deliver care to approximately 173,500 TennCare members each in the West region and approximately 199,500 TennCare members each in the East region. The new contracts also establish an integrated medical and behavioral health care system for members in those regions, following the same integration strategy established in the Middle region last year.

TennCare will stagger each region's member transition and start-up dates. The plans will begin serving West region members on November 1, 2008, and will begin serving members in the East region on January 1, 2009, under the new integrated, full-risk contracts that are for three-year terms with two optional one-year extensions. TennCare members will receive specific information about any transition activities from TennCare well before the plans begin to deliver services.

Current TennCare MCOs by region

East—BlueCare, PHP TennCare, AmeriChoice, TennCare Select*

Middle—AmeriChoice, AmeriGroup Community Care, TennCare Select*

West—Unison Health Plan, TLC Family Care, UAHC, TennCare Select*

TennCare MCO network as new plans are operationalized

East (after January 1, 2009)— BlueCare, AmeriChoice, TennCare Select*

Middle—AmeriChoice, AmeriGroup Community Care, TennCare Select*

West (after November 1, 2008)—BlueCare, AmeriChoice, TennCare Select*

*TennCare Select only serves special enrollee populations as assigned by TennCare. Members cannot choose TennCare Select as their MCO.