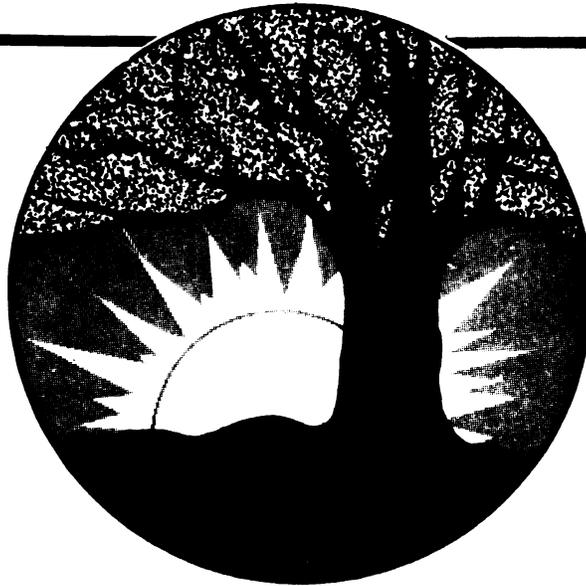


PERFORMANCE AUDIT

Department of Intellectual and
Developmental Disabilities

October 2013



Justin P. Wilson
Comptroller of the Treasury



State of Tennessee
Comptroller of the Treasury
Department of Audit
Division of State Audit

DEBORAH V. LOVELESS, CPA, CGFM
Director

KANDI B. THOMAS, CPA, CFE, CGFM
Assistant Director

SHIRLEY A. HENRY, CPA, CGFM
TERESA L. KENNEDY, CPA
Audit Managers

Laura Isbell, CPA, CFE, CGFM
Lindsey Stadterman, CFE
In-Charge Auditors

Laura Carroll
Jerry Crittendon, CPA
Kevin Fearn, CFE
Aaron Kistler
LaShanda Mott, CFE
Chas Taplin, CPA, CFE
Rebecca Troyani, CPA, CFE
Staff Auditors

Amy Brack
Editor

Amanda Adams
Assistant Editor

Comptroller of the Treasury, Division of State Audit
1500 James K. Polk Building
Nashville, TN 37243-1402
(615) 401-7897

Reports are available at
www.comptroller.tn.gov/sa/AuditReportCategories.asp.

Mission Statement
The mission of the Comptroller's Office is to improve the quality of life for all
Tennesseans by making government work better.

Comptroller Website
www.comptroller.tn.gov



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF STATE AUDIT
SUITE 1500
JAMES K. POLK STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37243-1402
PHONE (615) 401-7897
FAX (615) 532-2765

October 8, 2013

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Judd Matheny, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Debra Payne, Commissioner
Department of Intellectual and Developmental Disabilities
Frost Building, 1st Floor
161 Rosa L. Parks Boulevard
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Department of Intellectual and Developmental Disabilities for the period January 15, 2011, through May 31, 2013. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

Our audit disclosed certain findings which are detailed in the Objectives, Methodologies, and Conclusions section of this report. Management of the Department of Intellectual and Developmental Disabilities has responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

October 8, 2013
Page 2

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Department of Intellectual and Developmental Disabilities should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink that reads "Deborah V. Loveless". The signature is written in a cursive style with a large initial 'D'.

Deborah V. Loveless, CPA
Director

DVL/KBT/tlk
13/043

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Department of Intellectual and Developmental Disabilities
October 2013

AUDIT SCOPE AND METHODOLOGY

We have audited the Department of Intellectual and Developmental Disabilities for the period January 15, 2011, through May 31, 2013. Our audit scope included a review of internal control and compliance with laws, regulations, and provisions of contracts or grant agreements in the areas of developmental disabilities; departmental employee and volunteer background checks; Quality Assurance monitoring; provider enrollment and licensure; Individual Support Plan development; regional office operations; Community Services Tracking system replacement; closure of Clover Bottom Developmental Center; collaboration among state agencies; hot-line call procedures; the Family Support Program; waiting list and case management services; the status of federal lawsuits; fraud, waste, and abuse; performance measures; and Title VI. Management of the Department of Intellectual and Developmental Disabilities is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted our 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.

CONCLUSIONS

FINDINGS

The Department Has Not Established Sufficient Services for Individuals With Developmental Disabilities or Adequately Engaged in Planning Efforts to Do So, Thereby Failing to Fulfill Its Statutory Responsibilities and Address the Developmental Disabilities Part of Its Mission

Despite gaining oversight for developmental disability services upon its creation as a stand-alone department on January 15, 2011, the Department of Intellectual and Developmental Disabilities has not implemented services specifically for individuals with developmental disabilities other than intellectual disabilities. Additionally, we found that the department's planning efforts to offer such services have been minimal. The department had pursued neither federal funding nor state funding in order to provide developmental disability services (page 14).

The Department Did Not Establish a Uniform, Statewide Employee Background Check Policy Until We Brought It to Management's Attention and Did Not Incorporate Best Practices Into Its Existing Policies, Which Resulted in Employees Beginning Work Before the Department Obtained Background Check Results, Increasing the Risk of Harm to Residents of Community Homes and Developmental Centers

When testing compliance with employee criminal background check requirements defined in state law, we observed that the Department of Intellectual and Developmental Disabilities lacked a uniform statewide policy, causing each of the community homes and developmental centers to perform background checks in a different manner. As a result, new employees, including one during our audit period, started work before the department obtained completed background check results (page 24).

By Not Performing Background Checks on Clover Bottom Developmental Center and West Tennessee Community Homes Volunteers and by Implementing an Inadequate Volunteer Tracking System at Greene Valley Developmental Center, the Department Violated State Statutory Provisions, Failed to Fulfill Its Fiduciary Responsibility to Vulnerable Citizens, and Accessed Sensitive Information About Volunteers Without Permission

State law requires the Department of Intellectual and Developmental Disabilities to obtain a criminal background check on any applicant for volunteer services whose function would include direct contact with or direct responsibility for service recipients. Based on our audit, we found that the department did not ensure that its Clover Bottom Developmental Center and West Tennessee Community Homes performed background checks on volunteers and did not ensure that Greene Valley Developmental Center adequately tracked volunteers, obtained the appropriate background checks, and secured volunteers' confidential information (page 31).

The Department of Intellectual and Developmental Disabilities’ Quality Assurance Monitors Failed to Identify That Provider Employees Had Disqualifying Records on Their Criminal Background Checks, Presenting a Potential Danger to Service Recipients, and Also Incorrectly Recorded the Dates of Background Checks, Abuse Registry Checks, and Sex Offender Registry Checks, Resulting in the Monitors’ Improper Assessment of the Timeliness of Required Checks

The department’s Quality Assurance section conducts surveys of contracted community-based providers to determine levels of performance related to criminal background check, abuse registry check, and sex offender registry check requirements. When we reperformed the Quality Assurance section’s testwork, we found that the monitors sometimes reached inaccurate conclusions, failing to properly assess conditions identified in background check results that would have precluded provider employees from working directly with service recipients. We also discovered that the monitors did not always accurately record the dates of the background and registry checks performed by the provider, resulting in monitors incorrectly concluding that the providers’ safety and security checks were performed timely, when in fact, they were not (page 40).

The Department of Intellectual and Developmental Disabilities Did Not Properly Develop Many of the Individual Support Plans for Persons Receiving Services Through the Home and Community-Based Services Waiver, Which Heightens the Risk That Service Recipients Will Not Receive the Services They Need and Also Increases the Likelihood of Errors, Fraud, Waste, and Abuse

Federal guidelines stipulate that all individuals receiving waiver services must have a “plan of care.” The Department of Intellectual and Developmental Disabilities fulfills this requirement via the Individual Support Plan (ISP). Our testwork revealed, however, that the department had not ensured that all ISPs were properly developed. Specifically, we identified problems with the involvement of the Circle of Support in ISP development; the propriety of the goals and outcomes included in the ISP; and the accuracy of the service types and service rates in the cost plan and remittance advice compared to the ISP (page 52).

The Department of Intellectual and Developmental Disabilities Failed to Comply With Federal and State Guidelines for Disposing of the Resident Trust Fund Account Balances for Deceased or Discharged/Transferred Residents

To evaluate the department’s compliance with its own policies, state law, and Social Security Administration guidelines, we performed testwork and determined that the department did not properly dispose of the Resident Trust Fund accounts for five individuals tested. Due to the problems we identified, we performed additional testwork and found that the department did not properly account for the Resident Trust Fund accounts of two additional individuals tested (page 65).

For the Past 19 Years, the Department of Intellectual and Developmental Disabilities Has Attempted to Replace Its Outdated Community Services Tracking System, an Unreasonable Replacement Time Frame That Has Allowed a System With Inadequate Security and Internal Controls to Remain in Place and Resulted in the Expenditure of at Least \$4,274,113.80 Without Producing the Desired Results

Since 1994, the department has engaged in a series of failed attempts to replace its aging Community Services Tracking system (CS Tracking). The Department of Intellectual and

Developmental Disabilities uses the system for housing service recipient demographic data, service planning and case management information, service authorizations, and billing rates. In audits dating back to 2007, we have taken findings on the department due to CS Tracking's security and internal control deficiencies. When failing to complete prior project replacement efforts, the department expended monumental personnel resources, as well as financial resources totaling \$4,274,113.80 from just the first and second major implementation efforts, with relatively little return on investment (page 78).

The Department of Intellectual and Developmental Disabilities Did Not Verify Data Submitted by the Family Support Program Contract Agencies, Which Resulted in the Department Using Unverified Data to Identify Services Needed for Individuals With a Developmental Disability

We selected ten quarterly reports submitted by ten of the eighteen different contract agencies and tested the accuracy of those quarterly reports for the numbers of individuals served for the quarter ended December 31, 2012. We determined that for eight of those reports the number of individuals served was not accurately reported by the contract agencies (page 97).

Until Such Time as Top State Officials Can Find a Sufficient Funding Solution Which Allows the Department of Intellectual and Developmental Disabilities to Provide Much Needed Services to Individuals With Intellectual Disabilities, the High Number of Individuals on the Waiting List for Medicaid Services Will Continue to Plague the Department, Taking a Heavy Financial and Emotional Toll on the Individuals Needing Services and Their Caregivers; Furthermore, Management Must Maintain the Current "Needs" Status of All Individuals Currently Served So That DIDD Management Can Communicate the Increasing Demands for Services to Top State Officials

We determined that waiting list additions exceeded removals for five of nine months during the July 2012 through March 2013 time period (56%). Our analysis also showed an increase in waiting list numbers of 10% from December 2010 to December 2012 and 130% from December 2003 to December 2012. Additionally, we discovered that although the department properly filled waiver slots with individuals from the waiting list based on its established procedures, staff did not always update the records of those individuals who were transferred to a waiver (page 102).

In Overturning Two Protection from Harm Cases Involving the Deaths of Service Recipients, the Former Office of Policy and Innovation Deputy Commissioner Circumvented the Department of Intellectual and Developmental Disabilities' Established Policies and Procedures, an Action That Could Lead to Increased Litigation Against the Department, Compromise the Safety of Service Recipients, and Impede the Department's Ability to Hold Service Providers Accountable for Wrongdoing

The department's Protection from Harm Division completes all investigations into allegations and reports of abuse, neglect, or exploitation that are received by the department. The Department of Intellectual and Developmental Disabilities (DIDD) has implemented policies and procedures to govern the Protection from Harm investigations. We found, though, that the former Office of Policy and Innovation Deputy Commissioner overturned two Protection from Harm cases involving the deaths of service recipients without the authority to do so per the department's established guidelines. We also identified a less significant issue involving DIDD's documentation of an Investigation Review Committee meeting (page 119).

OBSERVATIONS

The following topics did not warrant a finding but are included in this report because of their effect on the operations of the Department of Intellectual and Developmental Disabilities and on the citizens of Tennessee: outdated enrollment and licensure policies, procedures, and rules (page 48); Conflict of Interest Forms not on file and an outdated Conflict of Interest Policy and related form (page 70); noncompliance with state payment card regulations (page 73); inability to meet the upcoming deadline for closing the Clover Bottom Developmental Center and opening the Middle Tennessee Community Homes (page 85); and continued focus on integrated and competitive employment opportunities (page 89). Our audit also discusses service gaps for individuals with a dual diagnosis (page 92); further progress in the dismissal of two federal lawsuits (page 113); exploration of the possibility of transitioning to a new safety model (page 123); the process for procuring implementation services for the new computer system (page 125); and failure to return two computer tablets after the end of a trial period and to assign state asset inventory tags to the tablets (page 131).

ISSUES FOR LEGISLATIVE CONSIDERATION

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Department of Intellectual and Developmental Disabilities' operations. Specifically, the General Assembly may wish to modify Section 33-2-101, *Tennessee Code Annotated*, regarding developmental disabilities (page 23) and Sections 33-2-1201 and 33-2-1202, *Tennessee Code Annotated*, regarding background checks (page 30).

Performance Audit Department of Intellectual and Developmental Disabilities

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Purpose and Authority for the Audit	1
Organization and Statutory Responsibilities	1
AUDIT SCOPE AND METHODOLOGY	9
PRIOR AUDIT FINDINGS	9
Prior Sunset Performance Audit Findings	9
Prior Findings From Other Reports	10
OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS	10
Developmental Disabilities	10
Finding 1	14
Issue for Legislative Consideration 1	23
Departmental Employee and Volunteer Background Checks	24
Finding 2	24
Issue for Legislative Consideration 2	30
Finding 3	31
Quality Assurance Monitoring	36
Finding 4	40
Provider Enrollment and Licensure	45
Observation 1	48
Individual Support Plan Development	49
Finding 5	52
Regional Office Operations	63
Finding 6	65
Observation 2	70
Observation 3	73
Community Services Tracking System Replacement	76

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
Finding 7	78
Closure of Clover Bottom Developmental Center	83
Observation 4	85
Collaboration Among State Agencies	86
Observation 5	89
Observation 6	92
Hot-Line Call Procedures	93
Family Support Program	94
Finding 8	97
Waiting List and Case Management Services	101
Finding 9	102
Status of Federal Lawsuits	112
Observation 7	113
Fraud, Waste, and Abuse	117
Finding 10	119
Observation 8	123
Observation 9	125
Observation 10	131
Performance Measures	133
Title VI	134
APPENDICES	136
Appendix 1 – Business Unit Codes	136
Appendix 2 – Performance Measures Information	137
Appendix 3 – Title VI and Other Information	146

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
Appendix 4 – Revenues and Expenditures Information	151
Appendix 5 – Summary of April 2013 Risk-based Performance Audit Findings and Update on Prior Community Services Tracking System and Medicaid Cost Report Findings	153

Performance Audit

Department of Intellectual and Developmental Disabilities

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Department of Intellectual and Developmental Disabilities was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-235, the Department of Intellectual and Developmental Disabilities is scheduled to terminate June 30, 2014. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether the Department of Intellectual and Developmental Disabilities should be continued, restructured, or terminated.

ORGANIZATION AND STATUTORY RESPONSIBILITIES

The Department of Intellectual and Developmental Disabilities (DIDD) is responsible for administering services and support to Tennesseans with intellectual and developmental disabilities. DIDD's mission is as follows:

Through person centered practices, persons with intellectual and developmental disabilities experience optimal health as a cornerstone for quality of life.

DIDD provides leadership and direction in a service delivery system that offers a continuum of services and supports [support structure] so that persons with intellectual and developmental disabilities will be gainfully employed to their maximum ability, live in quality homes, develop meaningful relationships, and are part of the community in which they live.

DIDD is purposefully and systematically structured so that people are supported, quality services are designed and managed, and evidence-based practice is used to continue to improve services provided to people with intellectual and developmental disabilities and their families.

General History

Effective January 15, 2011, the Tennessee General Assembly, through Section 4-3-2701(a), *Tennessee Code Annotated* (TCA), established DIDD as a stand-alone department. The department was previously known as the Division of Intellectual Disabilities Services and was part of the Department of Finance and Administration. Additionally, the General Assembly

moved responsibilities for the developmental disabilities service area from the Department of Mental Health and Developmental Disabilities (now the Department of Mental Health and Substance Abuse Services) to the newly formed DIDD. DIDD's transition to an independent department is described in TCA 4-3-2705, which states,

Notwithstanding any law to the contrary, January 15, 2011, all duties of the department of mental health and developmental disabilities and the department of finance and administration, whose duties fall within those duties required to be performed by the department of intellectual and developmental disabilities pursuant to Acts 2010, ch. 1100, shall be transferred to the Department of Intellectual and Developmental Disabilities. Also, all employees of the department of mental health and developmental disabilities and the department of finance and administration, whose duties fall within those duties transferred to the department of intellectual and developmental disabilities pursuant to Acts 2010, ch. 1100, shall be transferred to the department of intellectual and developmental disabilities.

Definitions of Intellectual Disabilities and Developmental Disabilities

DIDD defines intellectual disability as below-average cognitive ability that manifests before age 18 and is characterized by an intelligence quotient (IQ) of 70 or below, along with significant limitations in the ability to adapt and carry on everyday life activities. Developmental disabilities are physical and/or mental impairments that begin before age 22 and alter or substantially inhibit an individual's capacity to perform activities of daily living, such as self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. Medical diagnoses classified as developmental disabilities include, but are not limited to, the following: intellectual disabilities; autism; cerebral palsy; spina bifida; muscular dystrophy; various genetic, neurological, and chromosomal disorders; and head and spinal cord injuries. For a graphic depiction of developmental disability diagnoses, see the chart on page 11.

Services and Supports for Individuals With Intellectual Disabilities

Developmental Centers and Community Homes

Developmental Centers

DIDD provides services directly or through contracts with community providers in a variety of settings, ranging from institutional care to individual supported living in the community. The department provides long-term residential care at two developmental centers, Clover Bottom Developmental Center in Nashville and Greene Valley Developmental Center in Greeneville, which are licensed Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID). The developmental centers offer habilitative care and training programs to individuals to promote their functional status and independence. The Clover Bottom campus also includes the Harold Jordan Center, which houses people with intellectual disabilities who

have been charged with a crime. A third developmental center in Arlington was closed on October 27, 2010.

Community Homes

Pursuant to court orders arising from charges of unfavorable conditions at state-run facilities, DIDD operates ICF/IID homes in integrated residential centers for former residents of the department's developmental centers. The 12 four-person ICF/IID homes in Arlington, known as the West Tennessee Community Homes, provide community-based living for medically fragile and physically challenged class members of the *Arlington Remedial Order*. To comply with the terms of the *Clover Bottom/Greene Valley Developmental Center Settlement Agreement*, the department also manages the 16 four-person East Tennessee Community Homes for current and former residents of Greene Valley Developmental Center. In anticipation of the impending closure of Clover Bottom Developmental Center, DIDD plans to construct 11 four-bed Middle Tennessee Community Homes beginning in 2013. The state will manage 9 of the community homes, and the remaining 2 will be privately operated. DIDD's community homes meet all applicable federal and state code requirements for ICF/IID homes and are wheelchair accessible.

Funding for Developmental Centers and Community Homes

Through provider agreements with the Bureau of TennCare in the Department of Finance and Administration, DIDD's developmental centers and community homes receive funding under Title XIX of the Social Security Act (Medicaid) for those individuals who are Medicaid-eligible. Each developmental center and community home must submit annual cost reports that are used in conjunction with budgeted information and other data to determine the facility's reimbursement per diem rates. The cost reports contain a list of expenditures related to patient care and administration that are eligible for Medicaid reimbursement. DIDD invoices TennCare for those costs that are reimbursable from TennCare; TennCare then requests reimbursement for allowable amounts from the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS). CMS is responsible for administering the Medicaid program.

Medicaid Home and Community-Based Services Waivers

Waiver Definition and Background Information

In Tennessee, Medicaid provides funding for home and community-based services (HCBS) waivers, along with ICFs/IID. The HCBS waivers set aside certain requirements of the Social Security Act so that individuals can receive long-term care in their homes and the community as an alternative to institutionalized settings, such as ICFs/IID. The state must apply to CMS for permission to have HCBS waivers. As of August 2013, Tennessee offers three HCBS waiver programs for citizens with intellectual disabilities: the statewide waiver, the Arlington waiver, and the self-determination waiver. TennCare contracts with DIDD to operate these waiver programs. With regard to the funding breakdown for the programs, state dollars allotted to Medicaid are matched approximately 2:1 by federal Medicaid dollars.

Statewide Waiver

The statewide waiver offers a broad range of services to persons who, absent the provision of waiver services, would be placed in an ICF/IID. Statewide waiver enrollees have access to residential options which are designed to provide individualized services and supports in community-based or family model settings. Residential arrangements typically include staff to assist individuals with activities of daily living, personal funds management, medication administration, and other support as necessary. In addition, waiver recipients may participate in day services, which facilitate the acquisition, retention, and improvement of skills necessary to reside in a community-based setting. Based on assessed need, individuals may also use the statewide waiver to procure other preapproved health, therapeutic, and support services such as personal assistance, dentistry, behavioral analysis, transportation, and assistive devices.

Arlington Waiver

The Arlington waiver is a Medicaid HCBS program restricted to class members certified in the *Arlington Remedial Order*. Arlington waiver participants have access to the same types of services available to statewide waiver recipients, plus vision services and enhanced dental services.

Self-Determination Waiver

The self-determination waiver serves persons who have an established non-institutional place of residence where they live with their family, a non-related caregiver, or in their own home and whose needs can be met effectively by the combination of waiver services and other supports available to them. The self-determination waiver affords participants the opportunity to lead the person-centered planning process and directly manage selected services, including the recruitment and management of service providers. Self-determination waiver enrollees are limited to a personal annual budget of \$30,000, of which a maximum of \$23,000 may be used for community living services and \$7,000 for professional and technical support services. DIDD may increase an individual's overall budget to \$36,000 as an extra measure of protection when the person experiences a crisis or emergency situation that threatens his or her health and well-being. Service recipients may elect to manage their own annual budget or outsource this function to a support broker.

Family Support Program and Case Management Services

DIDD assists with several different types of programs for persons with intellectual disabilities not enrolled in an HCBS waiver, such as family support and case management services. The Family Support Program is a community-based, state-funded program that provides assistance to families with a family member who has a severe disability.

Because of limited state resources, services available through DIDD may not be available immediately even though an individual is eligible, in which case the individual is placed on a waiting list for services and assigned a case manager. The purpose of case management services is to provide individuals on the waiting list with information about DIDD programs and services

and to direct individuals to other community resources, advocacy organizations, and support programs.

Services and Supports for Individuals With Developmental Disabilities

TCA 33-2-101 stipulates, “The department shall plan, coordinate, administer, monitor, and evaluate state and federally funded services and supports as a community-based system within the total system of services and supports for persons with mental illness, serious emotional disturbance, developmental disabilities, or at risk for those conditions and for their families.” Despite its statutory responsibilities, DIDD has not developed any programs specifically for individuals with developmental disabilities, although two of its existing programs coincidentally include that population. Individuals remain eligible to receive some services through the Family Support Program. Furthermore, children up to the age of five are eligible to enroll in the three Medicaid waivers under the classification of Developmental Delay; however, before age six, intellectual disability would have to be confirmed or the child dis-enrolled. We discuss this issue in greater detail in finding 1 on page 14.

Organizational Structure

Central Office Operations

The department operates with a central office based in Nashville that is responsible for administering the DIDD service delivery system. Within the central office, the Office of Program Operations provides Medicaid waiver management through the development of community provider applications, policies, and procedures and the provision of technical assistance to the provider staff to ensure compliance with the waiver requirements. This office is responsible for provider recruitment, enrollment, and orientation and also oversees the department’s two developmental centers and state-owned and -operated community homes located throughout Tennessee. The Office of Policy and Innovation reviews, develops, and maintains the *Provider Manual*, consumer informational materials, and waiver applications and amendments, while the Compliance Unit within the Office of Quality Management assures that all required contract deliverables related to the three waiver programs are submitted to the Bureau of TennCare timely and correctly.

Additionally, DIDD’s central office administers programs to protect the health, safety, and welfare of persons served by the department in both institutional and community-based settings. During our audit period of January 15, 2011, through May 31, 2013, the Office of Policy and Innovation housed the Protection from Harm Division, which manages incidents which cause or could cause harm to a service recipient and investigates allegations of abuse, neglect, or exploitation. Effective July 5, 2013, DIDD transferred the division to the Office of General Counsel. The Office of Quality Management’s Quality Assurance program provides direction and oversight for qualitative surveys of contracted service providers to determine levels of performance. Furthermore, the Office of Risk Management and Licensure responds to and evaluates allegations of criminal wrongdoing and fiscal mismanagement involving departmental staff and the community provider network. This unit further exercises the department’s authority to license and adopt rules for licensing of services and facilities operated for the provision of

intellectual disability and personal support services, including facility compliance with life safety standards.

The central office also includes several functions to improve the quality of state and community services offered to individuals with intellectual disabilities. The Office of Health Services consists of clinicians from various disciplines who educate staff, community providers, families, and other stakeholders on health issues pertinent to individuals with intellectual and developmental disabilities. Health Services staff review incident and investigation reports and death reports submitted by the regional offices and determine clinical issues to be addressed statewide from a prevention perspective. Within the Customer Focused Services Division, the department's Advocacy Services is a resource to persons supported and their families to improve their quality of care and quality of life and to improve the department's delivery system. Also, Customer Focused staff serve as the designated ombudsmen for individuals receiving facility- and community-based long-term care services within DIDD. Ombudsmen responsibilities include receiving, investigating, and resolving complaints affecting individuals receiving DIDD services and supports. The complaint resolution system addresses issues and concerns expressed by service recipients, their families, legal representatives, paid advocates, and concerned citizens.

Regional Offices and Resource Centers

In addition to the central office, DIDD has primary regional offices in Nashville, Knoxville, and Arlington and satellite regional offices in Jackson, Greeneville, Johnson City, and Chattanooga. The regional offices perform activities necessary for the day-to-day operation of the three HCBS waiver programs. The functions of the regional offices include administrative services, case management, transition, clinical services, and compliance. Each DIDD region also operates a resource center, which provides persons with intellectual disabilities, who typically have unique and complex healthcare needs, with access to a variety of medical and health-related services that are sometimes difficult to obtain in the community due to the lack of available and willing providers. The medical and health-related services provided at the resource centers enable Medicaid waiver enrollees to successfully reside in community-based settings of their choice.

Related Councils

Two councils are administratively attached to DIDD, the Tennessee Council on Developmental Disabilities and the Statewide Planning and Policy Council. The Tennessee Council on Developmental Disabilities has an administrative agreement with the department for fiscal and administrative transaction services. This council promotes public policies to increase and support the inclusion of individuals with developmental disabilities in their communities. It also works with public and private groups across the state to find necessary supports for individuals with disabilities and their families so that they may have equal access to public education, employment, housing, healthcare, and all other aspects of community life.

The Statewide Planning and Policy Council for DIDD was established by the Tennessee General Assembly in 2011 and assists in planning a comprehensive array of high quality prevention, early intervention, treatment, and habilitation services; advising the department on

policy and budget requests; and developing and evaluating services and supports. Furthermore, DIDD established a state Developmental Disabilities Planning and Policy Council, a West Regional Planning and Policy Council, a Middle Regional Planning and Policy Council, and an East Regional Planning and Policy Council. These four subcouncils advise the Statewide Planning and Policy Council on a desirable array of prevention, early intervention, treatment, and habilitation services and supports for persons supported and their families, and provide information and advice to the department on policy, formulation of budget requests, and development and evaluation of services and supports.

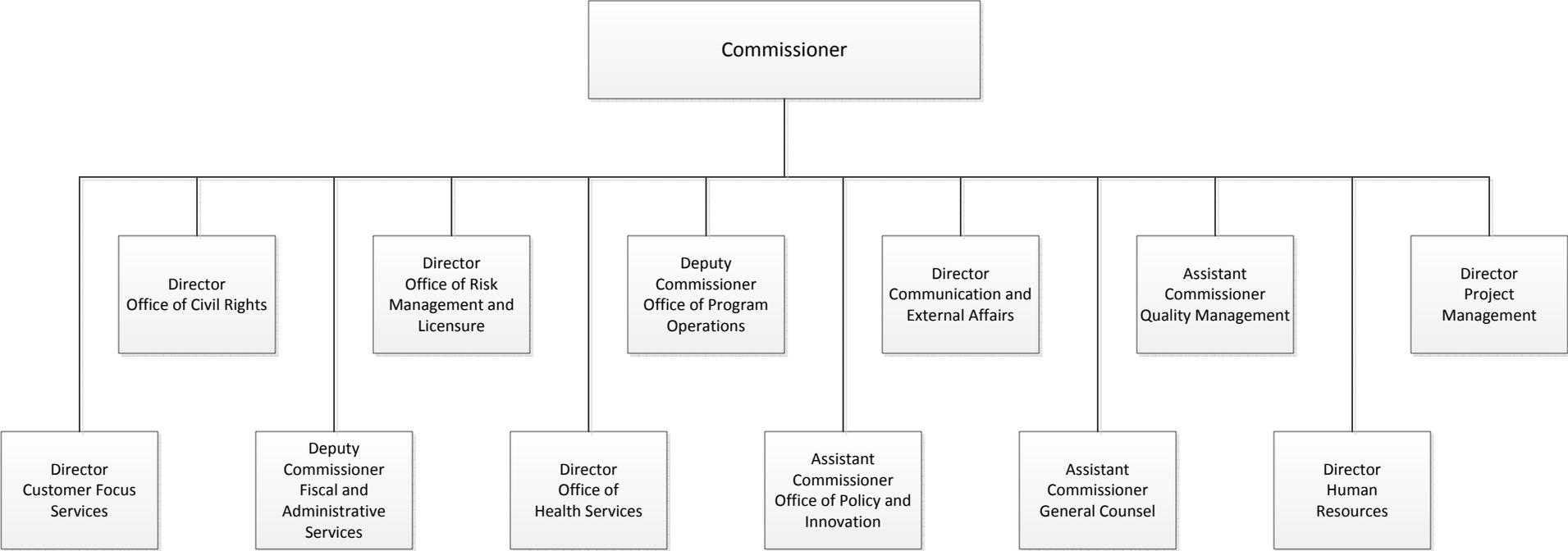
Demographic Information

As of May 31, 2013, DIDD was serving 8,096 individuals—178 in the developmental centers, 98 in the community homes, and 7,820 in the community. Of the total number in the community, 7,695 are served through the Medicaid HCBS waiver programs—6,268 through the statewide waiver, 309 through the Arlington waiver, and 1,118 through the self-determination waiver—and 125 individuals are served by the state.

An organization chart of the Department of Intellectual and Developmental Disabilities is on the following page.

Department of Intellectual and Developmental Disabilities

Organizational Chart
August 2013



AUDIT SCOPE AND METHODOLOGY

We have audited the Department of Intellectual and Developmental Disabilities for the period January 15, 2011, through May 31, 2013. Our audit scope included a review of internal control and compliance with laws, regulations, and provisions of contracts or grant agreements in the areas of developmental disabilities; departmental employee and volunteer background checks; Quality Assurance monitoring; provider enrollment and licensure; Individual Support Plan development; regional office operations; Community Services Tracking system replacement; closure of Clover Bottom Developmental Center; collaboration among state agencies; hot-line call procedures; the Family Support Program; waiting list and case management services; the status of federal lawsuits; fraud, waste, and abuse; performance measures; and Title VI. Management of the Department of Intellectual and Developmental Disabilities is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted our 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.

PRIOR AUDIT FINDINGS

PRIOR SUNSET PERFORMANCE AUDIT FINDINGS

Before becoming a stand-alone entity, the Department of Intellectual and Developmental Disabilities (DIDD) was formerly the Division of Mental Retardation Services and later the Division of Intellectual Disabilities Services under the Department of Finance and Administration (F&A). There were no audit findings applicable to DIDD in the prior F&A sunset audit report dated April 2011.

PRIOR FINDINGS FROM OTHER REPORTS

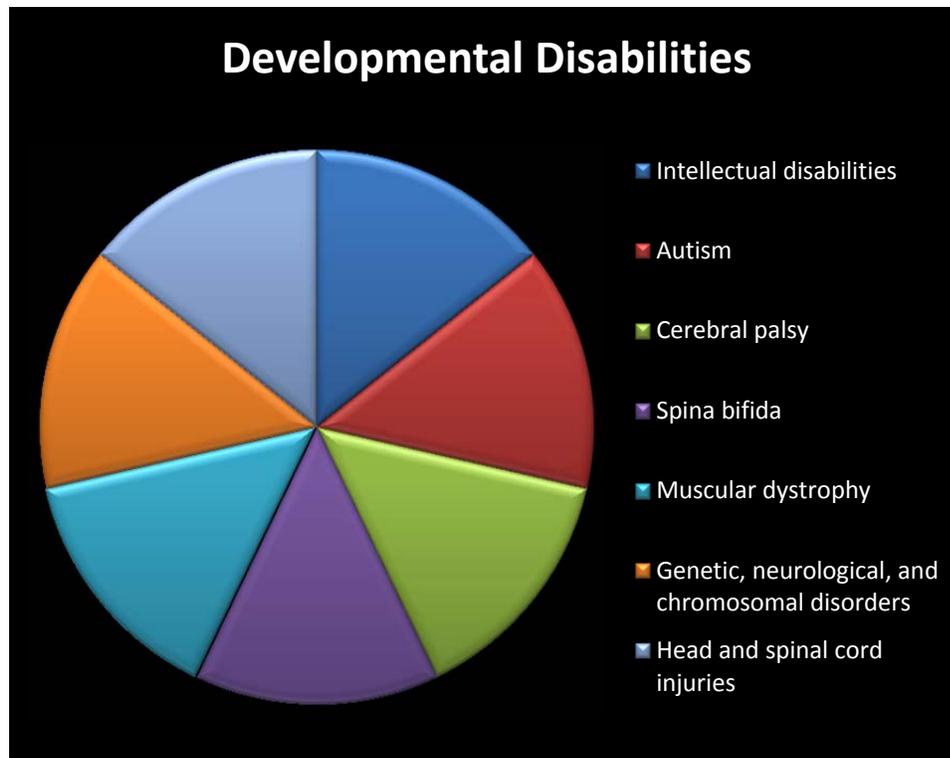
The risk-based performance audit report of the Department of Intellectual and Developmental Disabilities (DIDD), which was released in April 2013 and covered the period January 15, 2011, through July 17, 2012, contained seven findings. Departmental management concurred with all seven findings in their comments submitted on March 13, 2013. Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. Management's six-month finding follow-up agreement was due October 1, 2013, following the conclusion of our fieldwork. Since we finished our fieldwork prior to the due date for management's follow-up agreement submission and because departmental management had only a limited time period to implement necessary corrective actions, we did not perform testwork to assess the status of the risk-based performance findings as part of our current audit, with the exception of finding 2 involving the Community Services Tracking system (CS Tracking) and finding 6 involving Medicaid cost reports. We performed limited procedures to follow up on those two findings. A brief summary of each finding, along with our CS Tracking and Medicaid cost report testwork results, is included in Appendix 5 on page 153.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

DEVELOPMENTAL DISABILITIES

The term "developmental disabilities" encompasses a broad spectrum of medical diagnoses, including intellectual disabilities. Other diagnoses falling under the umbrella of developmental disabilities include, but are not limited to

- autism;
- cerebral palsy;
- spina bifida;
- muscular dystrophy;
- various genetic, neurological, and chromosomal disorders; and
- head and spinal cord injuries sustained early in life.



Source: Interviews with departmental staff and review of the state Developmental Disabilities Task Force’s 2007 “Fulfilling the Promise” report.

For the purposes of our testwork and report, by using the phrase “developmental disability,” we are referring to developmental disabilities that are not intellectual disabilities.

Developmental disabilities take many forms, ranging from mild to extreme. While some affected individuals may only need information and referral services, others require assistance with all activities of daily living, including eating, dressing, bathing, and other self-care related necessities.

The objectives of our review of developmental disabilities were to determine whether

- the state definition of “developmental disability” aligned with the federal definition to ensure consistency in service eligibility requirements;
- the department had established sufficient services for individuals with developmental disabilities in order to fulfill its statutory requirements;
- the department had obtained data on the number of Tennesseans with developmental disabilities in order to expand its service options, and if so, whether the department’s data collection methodology was appropriate;
- the department had collected data on the proportion of Family Support Program participants who are individuals with a developmental disability in order to plan future services, and if so, whether the department’s data collection methodology was appropriate;

- the department had coordinated with other state agencies to offer services for individuals with developmental disabilities; and
- the department had adequately pursued funding to provide services for individuals with developmental disabilities.

To develop an understanding of developmental disabilities, we inquired with applicable Department of Intellectual and Developmental Disabilities (DIDD) staff and advocacy group representatives. To determine whether the state definition of “developmental disability” aligned with the federal definition, we compared and contrasted the state definition codified in Section 33-1-101(11), *Tennessee Code Annotated*, with the federal definition codified in section 102(8) of “The Developmental Disabilities Assistance and Bill of Rights Act of 2000.” We reviewed information about the definitions available from the following sources:

- ✓ the state’s website;
- ✓ the Maryland Developmental Disabilities Council’s website (for research on the federal definition);
- ✓ the U.S. Department of Health and Human Services Administration on Intellectual and Developmental Disabilities’ 2011 report entitled “Realizing the Intent of the DD [Developmental Disabilities] Act”; and
- ✓ the state Developmental Disabilities Task Force’s 2007 “Fulfilling the Promise” report.

We also contacted the appropriate departmental personnel to obtain their viewpoints on the similarities and differences between the two definitions.

To assess whether the department had established sufficient services for individuals with developmental disabilities, we analyzed applicable state statutes, interviewed various departmental and advocacy group personnel, inspected the department’s three Medicaid waivers (federal funding agreements), and read the DIDD 2011 Annual Report and reports published by the state’s Developmental Disabilities Task Force and the Disability Policy Alliance of Tennessee.

We held discussions with key DIDD employees to evaluate whether the department obtained data on the number of Tennesseans with developmental disabilities. We also gathered information from the Disability Policy Alliance of Tennessee and the Tennessee Council on Developmental Disabilities on the number of Tennesseans with developmental disabilities as of 2007 and 2011, respectively. To determine whether the department had collected data on the proportion of Family Support Program participants, we contacted departmental management. We reviewed breakdowns of Family Support Program participants for fiscal year 2012 and the first two quarters of fiscal year 2013 (July 1, 2012, through December 31, 2012) and individuals on the Family Support Program waiting list for that same time period. Additionally, we asked DIDD staff about the department’s data collection methodology and about the steps the department takes to ensure the accuracy of the data collected. Within the Family Support Program section of this report, which begins on page 94, we describe the procedures we performed to test data accuracy.

We inquired with departmental staff to determine whether DIDD had coordinated with other state agencies. To assess whether the department had adequately pursued funding to provide services for individuals with developmental disabilities, we reviewed the state's budgets for fiscal years 2011 – 2013 and proposed budget for fiscal year 2014 to identify any funds earmarked for the provision of developmental disability services. We conducted interviews with applicable departmental personnel to gain an understanding of the department's current and future plans to fund developmental disability services, including whether funds established in the Department of Mental Health and Developmental Disabilities' (now the Department of Mental Health and Substance Abuse Services) budget, if any, were subsequently transferred to DIDD, whether DIDD had begun discussions of reducing funding in other areas such as administration or intellectual disability services to fulfill the developmental disabilities side of its mission, and the status of a proposed developmental disabilities Medicaid waiver. We also researched the federal funding available to provide services for individuals with developmental disabilities, including inspecting the state Developmental Disability Task Force's "Fulfilling the Promise" report and obtaining a list of federal laws affecting developmental disability services funding and a list of federal disability funding available for federal fiscal year (FFY) 2012 and proposed funding for FFY 2013 from The Arc's (an intellectual and developmental disabilities advocacy group) website.

Based on the procedures performed, we determined that

- the state definition of "developmental disability" was closely aligned with the federal definition;
- the department had not established sufficient services for individuals with developmental disabilities (see finding 1);
- the department had not obtained data on the number of Tennesseans with developmental disabilities (see finding 1);
- while the department had collected data each quarter from contract agencies on the proportion of Family Support Program participants who are individuals with a developmental disability, the department had not taken any steps to verify the accuracy of this data (see finding 1);
- DIDD had not coordinated with other state agencies to offer services for individuals with developmental disabilities (see finding 1); and
- the department had not pursued funding to provide services for individuals with developmental disabilities (see finding 1).

Finding 1 – The department has not established sufficient services for individuals with developmental disabilities or adequately engaged in planning efforts to do so, thereby failing to fulfill its statutory responsibilities and address the developmental disabilities part of its mission

Despite gaining oversight of developmental disability services more than two years ago, the Department of Intellectual and Developmental Disabilities (DIDD) has made little progress toward expanding service options for individuals with developmental disabilities. Upon its establishment as a stand-alone department, DIDD assumed responsibility for developmental disability services, which previously fell under the purview of the Department of Mental Health and Developmental Disabilities (now the Department of Mental Health and Substance Abuse Services). As a result of this realignment of responsibilities, the department became accountable for compliance with applicable state developmental disability statutes and subsequently incorporated developmental disabilities into its mission statement. DIDD, however, neither implemented services specifically for individuals with developmental disabilities nor sufficiently engaged in planning efforts to do so.

Background on Developmental Disabilities

Developmental Disabilities Definition

State law codifies the definition of developmental disabilities. According to Section 33-1-101(11), *Tennessee Code Annotated* (TCA),

- (A) “Developmental disability” in a person over five (5) years of age means a condition that:
- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (ii) Manifested before twenty-two (22) years of age;
 - (iii) Likely to continue indefinitely;
 - (iv) Results in substantial functional limitations in three (3) or more of the following major life activities:
 - (a) Self-care;
 - (b) Receptive and expressive language;
 - (c) Learning;
 - (d) Mobility;
 - (e) Self-direction;
 - (f) Capacity for independent living; or
 - (g) Economic self-sufficiency; and

- (v) Reflects the person’s need for a combination and sequence of special interdisciplinary or generic services, supports, or other assistance that is likely to continue indefinitely and need to be individually planned and coordinated;
- (B) “Developmental disability” in a person up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five (5) years of age if services and supports are not provided.

General History

In 2000, the General Assembly revised Title 33 of state statute to expand eligibility for home and community-based services to include individuals with all forms of developmental disabilities. TCA 33-2-101 specifies, “The department shall plan, coordinate, administer, monitor, and evaluate state and federally funded services and supports as a community-based system within the total system of services and supports for persons with mental illness, serious emotional disturbance, developmental disabilities, or at risk for those conditions and for their families.” At the time of the TCA revisions, the Department of Mental Health and Developmental Disabilities managed the provision of developmental disabilities services, but at the encouragement of developmental disability advocates, the General Assembly reassigned this area to the newly created Department of Intellectual and Developmental Disabilities effective January 15, 2011. As a result of the restructuring, DIDD revised its mission statement to also include those with a developmental disability:

Through person centered practices, persons with intellectual and *developmental disabilities* experience optimal health as a cornerstone for quality of life. DIDD provides leadership and direction in a service delivery system that offers a continuum of services and supports so that persons with intellectual and *developmental disabilities* will be gainfully employed to their maximum ability, live in quality homes, develop meaningful relationships, and are part of the community in which they live. DIDD is purposefully and systematically structured so that people are supported, quality services are designed and managed, and evidence-based practice is used to continue to improve services provided to people with intellectual and *developmental disabilities* and their families [emphasis added].

Services Lacking for Individuals With Developmental Disabilities

Based on discussion with various DIDD and advocacy group personnel and review of applicable departmental and advocacy group reports, DIDD lacks sufficient services for individuals with developmental disabilities, a deficiency inconsistent with both its statutory mandates and its mission statement provisions. The former Office of Policy and Innovation Deputy Commissioner (now the Child Safety Deputy Commissioner at the Department of Children’s Services) explained that when the General Assembly shifted the developmental

disability services area to DIDD, the department did not inherit from Mental Health any existing developmental disability programs or staff; in fact, no services for individuals with developmental disabilities had been previously created. In our June 2006 performance report, we reported a finding on the Department of Mental Health and Developmental Disabilities because the department had been unable to adequately fulfill its statutory developmental disability requirements. Management of the Department of Mental Health and Developmental Disabilities concurred with that finding.

DIDD's 2011 Annual Report describes the status of developmental disabilities services shortly following the interdepartmental transfer. According to the report, "the inclusion of people with developmental disabilities in existing and future service systems is in the beginning planning stages." When we inquired about the current status of developmental disability services with the Office of Program Operations Deputy Commissioner (now the Commissioner), the former Office of Policy and Innovation Deputy Commissioner, the former Deputy Director of Policy and Innovation (now the State Director of Training and Development at the Department of Children's Services), and the Director of Policy, we determined that as of March 2013, DIDD still had not implemented any programs geared toward individuals with developmental disabilities, even though some of its existing programs coincidentally included that population.

These DIDD personnel elaborated that individuals with developmental disabilities who had participated in the department's programs remained eligible to receive some services through the Family Support Program; however, the Family Support Program not only did not focus particularly on developmental disability services, but also was at full enrollment capacity. In fact, at December 31, 2012, the Family Support Program served 3,841 individuals, but the program's waiting list consisted of 3,819 individuals, 1,394 of which have a developmental disability. Furthermore, the Director of Special Services asserted that within each of the three Medicaid waivers, the potential to enroll children up to the age of five under the classification of Developmental Delay existed; however, before age six, intellectual disability would have to be confirmed or the child would be disenrolled. In addition to DIDD's activities, we also examined the operations of the Tennessee Council on Developmental Disabilities (TCDD), which is administratively attached to the department, in order to determine the extent of developmental disability services offered by that entity. We found that the council concentrated its efforts on advocacy assistance rather than providing a comprehensive array of programs for individuals with developmental disabilities.

In our interviews with the former Office of Policy and Innovation Deputy Commissioner, the former Deputy Director of Policy and Innovation, and the Director of Policy, each cited lack of available funding as the primary obstacle to developing and implementing additional services for individuals with developmental disabilities.

Planning Efforts to Advance Availability of Developmental Disability Services Negligible

After identifying DIDD's developmental disabilities service gaps, we performed additional testwork to evaluate the breadth and depth of the department's preparations to expand its service options. Based on inquiry and inspection, we found that the department's planning

efforts—especially those involving documentation development, financial resource allocation, and data collection—have been minimal. We describe these conditions in detail below.

Plans to Expand Service Options Not Formalized

Basic steps for exploring the establishment of new services typically include drafting proposals describing the services to be offered and assessing potential partnerships with other entities. Our testwork results disclosed, however, that DIDD had not yet taken these basic steps. The former Deputy Director of Policy and Innovation stated during our interviews that as of February 2013, the department did not have any documentation available to outline plans for expanding services for individuals with developmental disabilities in order to adhere to statutory requirements. Moreover, the department had not yet designed a time frame for implementation of expanded service options. Although the Office of Program Operations Deputy Commissioner said the department planned to collaborate with the Bureau of TennCare in the development and program design of services for individuals with developmental disabilities, DIDD had not undertaken such collaboration at the time of our inquiries.

DIDD Had Not Pursued Funding to Provide Developmental Disability Services

Although the Office of Program Operations Deputy Commissioner, the former Office of Policy and Innovation Deputy Commissioner, the former Deputy Director of Policy and Innovation, and the Director of Policy claimed that inadequate funding prevented the department from launching developmental disability services, we discovered that DIDD had not taken any steps to secure financial resources in order to offer such services. In explanation, the former Office of Policy and Innovation Deputy Commissioner emphasized that prior to the transfer of developmental disabilities oversight to DIDD, the Department of Mental Health and Developmental Disabilities' management had not dedicated funds in the budget to provide direct services to individuals with developmental disabilities. Furthermore, we determined through our review of the state's budgets for fiscal year (FY) 2011 – FY 2013 and proposed budget for FY 2014 that following the transition, the General Assembly had not earmarked additional funds for the provision of developmental disability services by DIDD.

When we asked the former Office of Policy and Innovation Deputy Commissioner and the former Deputy Director of Policy and Innovation whether DIDD had petitioned the General Assembly for funds to provide services for individuals with developmental disabilities, they responded that the department had not and had no future plans to do so as of February 2013. Additionally, they reported that DIDD had not yet held discussions about reallocating funds currently allotted to other programs to expand service options for individuals with developmental disabilities. The Director of Risk Management and Licensure noted that DIDD's funding decisions regarding developmental disabilities services had been greatly affected by the budget crisis facing the state as a whole and the department in particular. In fact, the Department of Finance and Administration's budget instructions for fiscal years 2012, 2013, and 2014 required DIDD and other state agencies to offset any requests for additional funding with cuts in other areas.

Another potential avenue to obtain monetary resources to provide developmental disability services involves Medicaid waivers. Tennessee's Medicaid waivers are designed so that for every \$1 expended by the state, Tennessee receives approximately \$2 from the federal government to administer waiver services. Based on our inquiries with the former Office of Policy and Innovation Deputy Commissioner and the former Deputy Director of Policy and Innovation, discussions for a new developmental disabilities waiver had occurred both internally among DIDD staff and externally among service providers and advocates; however, DIDD has made no effort to write and implement a new waiver because of management's apparent perception of lack of available state funding for such a waiver. Neither the former Office of Policy and Innovation Deputy Commissioner nor the former Deputy Director of Policy and Innovation mentioned any efforts to modify existing waivers for the inclusion of individuals with developmental disabilities.

Along with pursuing arrangements to maximize federal funding to supplement state funding for developmental disability services, the department has not attempted to procure other direct federal funding sources. Based on inspection of advocacy group reports, interviews conducted with DIDD staff, and review of federal disability funding for federal fiscal year (FFY) 2012, we found that while substantial funding existed to provide services to individuals with developmental disabilities, the department only accesses this federal funding for individuals with intellectual disabilities and has not taken advantage of available federal funding for individuals with other types of developmental disabilities. Federal funding provided through the Developmental Disabilities Act programs alone totaled \$163 million for FFY 2012.

Data Not Collected on Population of Tennesseans With Developmental Disabilities

Our interviews with the former Office of Policy and Innovation Deputy Commissioner, the former Deputy Director of Policy and Innovation, and the Office of Program Operations Deputy Commissioner revealed that in the two years since the developmental disability services transfer, DIDD still had not collected data on the population of Tennesseans with developmental disabilities or the type of services desired by that population. Moreover, DIDD had not yet developed a methodology for obtaining this data.

The former Office of Policy and Innovation Deputy Commissioner commented that the department currently relies on external agencies such as The Arc, the Developmental Disabilities Coalition, and the TCDD for data collection efforts, but he was not aware of when the latest information had been gathered. We contacted the TCDD for the most recent estimate of the number of Tennesseans with developmental disabilities. According to the TCDD staff, 2011 data indicated that between 12,592 and 44,073 Tennesseans had developmental disabilities. Both TCDD personnel and the former Office of Policy and Innovation Deputy Commissioner admitted that DIDD did not participate in compiling this data or reviewing the data collection methodology used by the council. Therefore, the department could not attest to the reliability of the developmental disabilities data obtained by the council.

Following our inquiries with departmental staff, we performed our own research into DIDD's data collection endeavors. We found that although DIDD (then a division under the Department of Finance and Administration) spearheaded a Developmental Disabilities Task

Force that conducted a statewide needs assessment in 2007 for individuals with developmental disabilities, the department had not participated in similar research efforts since that time.

The Office of Program Operations Deputy Commissioner noted that in the future, one element of the department's planning process would include identifying Tennesseans with a developmental disability and the types of services desired. When DIDD is ready to begin the data collection process, staff would consult stakeholders in the design, collection, and compilation of information needed.

Departmental Staff Have Not Verified Data on the Proportion of Family Support Program Participants With Developmental Disabilities

As discussed above, the Family Support Program is the primary mechanism by which individuals with a developmental disability receive services from DIDD. Therefore, we performed testwork to determine whether the department collected data on the proportion of program participants with a developmental disability. According to the former Office of Policy and Innovation Deputy Commissioner and the former Deputy Director of Policy and Innovation, the 18 agencies with which DIDD contracts to administer the Family Support Program submit a quarterly report that includes a breakdown of participants by medical diagnosis, but further inquiries revealed that the department did not perform any procedures to verify the accuracy of the data submitted by the contract agencies. We discuss this issue in more detail in finding 8 on page 97.

Conclusion

The former Office of Policy and Innovation Deputy Commissioner ultimately described the provision of developmental disability services as a “chicken-or-the-egg” situation—whether to create a service delivery system first or initially identify the population to be served and specific services needed. Based on our testwork results, as described above, DIDD had not been adequately pursuing either route.

By failing to provide services specifically targeted toward individuals with developmental disabilities, the department's statutory responsibilities remain unmet. More importantly, DIDD is unable to ensure that those individuals with developmental disabilities are able to access resources needed to promote their independence and help increase their opportunities to participate in community life. The Developmental Disabilities Task Force's 2007 “Fulfilling the Promise” report to which the department contributed states:

Living with developmental disabilities creates a significant impact on Tennesseans and their families. Parenting a child with a disability presents a number of challenges. Many children with developmental disabilities require constant supervision, either for health or safety reasons. Many times parents are forced to quit working in order to care for their children. Families often have to deal with disruptive behavior or bulky equipment that make going out into the community difficult, which isolates the family and the child. Parents must spend a great deal of time and energy trying to secure the proper care and appropriate

educational services for their child, sometimes leaving their other children feeling neglected. Another effect on the family is the high cost of health care, therapy, specialized equipment and care-giving. As a result, these families face a higher risk of poverty, and parents have a higher risk of healthcare problems than do parents of typically developing children. Providing appropriate home and community based services will assist these families in ensuring the stability of their home.

Adult Tennesseans with developmental disabilities often are faced with the choice to either continue to live at home with their aging parents who provide their care or enter a nursing home. For persons with developmental disabilities, getting a job or attending college is often extremely difficult. With services, training, and today's technology, most people with developmental disabilities could join the Tennessee work force, buy a home, pay taxes, and assume vital roles in our communities.

Without securing the necessary funding, DIDD may continue to be unable to meet its statutory developmental disabilities requirements. Additionally, the lack of current, accurate, and complete data hinders the department's planning efforts, including assessing the personnel and monetary resources necessary for designing and implementing expanded service options for individuals with developmental disabilities.

Recommendation

In order to fulfill its statutory requirements, the Department of Intellectual and Developmental Disabilities, in coordination with other state entities, should work to expand its existing programs to include individuals with developmental disabilities and/or develop comparable programs to serve that population. The Commissioner and programmatic staff should also work to align the department's operations with its mission. The Commissioner should collaborate with Budget staff to produce a comprehensive plan to fund developmental disability services that focuses on exploring both state and federal accessible resources, including as one component the potential reassignment of existing funds for other DIDD programs.

The department should strive to make data-driven decisions. Therefore, the Commissioner or her designees should begin earnest discussions with various stakeholders on developing an appropriate data collection methodology and should then proceed to gather data on the number of Tennesseans with developmental disabilities and the types of services desired by that population.

Management's Comment

We do not concur.

State law makes clear that in transferring responsibility for services for individuals with developmental disabilities from the [then] Department of Mental Health and Developmental

Disabilities to the newly created Department of Intellectual and Developmental Disabilities, an entitlement to services for persons with developmental disabilities was not created.

33-1-204. Unnecessary entitlements not created -- Programs subject to funding by general assembly.

(a) The provisions of this title shall not create entitlement to services and supports from the state except to the extent that services and supports are necessarily attached to deprivation of liberty by placement in facilities operated by the department. Implementation of any service or support at state expense under this title is subject to the availability of funds appropriated for that purpose in the general appropriations act.

(b) While the department of intellectual and developmental disabilities is charged with the planning and development of services for persons with developmental disabilities, such services shall be subject to the availability of funding, and to approval of any waiver amendments which would be required to effectuate such new programs at such time that they are developed. The reassignment of responsibility for developmental disabilities services to the department of intellectual and developmental disabilities does not create an entitlement to services for persons with developmental disabilities. Nor does it expand or affect in any way the population of persons who are currently eligible for programs and services currently available to persons with mental retardation.

As stated in the audit report, no developmental disability programs or staff were included in the transfer when the General Assembly shifted the responsibility for developmental disabilities services from the [then] Department of Mental Health and Developmental Disabilities (DMHDD) to the Department of Intellectual and Developmental Disabilities (DIDD).

As noted in the audit report, we do provide services to more than 3,800 people through the Family Support program. This is a substantial improvement over the number of people being served in earlier years. In reviewing state budgets for fiscal years 2011-2013, the auditors in fact looked at two years for which the budget was submitted *before* the Department of Intellectual and Developmental Disabilities was established, and the developmental disabilities population was not yet within the scope of DIDD's authority.

Since becoming a Department with responsibility for planning for services for people with developmental disabilities (subject to the availability of appropriations), DIDD has prepared and submitted two budgets: FY 2013 and FY 2014. In developing its annual budget, the State of Tennessee is bound by the State's Constitution which requires that the State operate within a balanced budget. In each of those years, due to lower than anticipated State revenues resulting from the recession, the budget instructions received by the Department included base reductions of 5%.

The instructions further specified that any requests for *additional* funding would have to be offset by *additional* budget cuts in excess of the required base reduction for that year.

While the Department is committed to serving individuals with developmental disabilities, including intellectual disabilities, we nonetheless have a fiduciary responsibility to act in accordance with the instruction given by the Administrative branch of State government, and to manage the State's limited resources through challenging economic times.

Further, the audit does not accurately describe the process of drawing down federal funds that could be used to provide services to individuals with developmental disabilities. While it is correct that once approved, home and community based services (HCBS) waivers are able to draw down federal financial participation amounting to roughly 2/3 of the cost of HCBS provided, the State is only able to draw down such funding if it has the roughly 1/3 state match that must be available before a waiver can be submitted and approved.

Finally, the \$163 million in federal funding for the Developmental Disabilities Act programs is not available for the provision of services by the Department to individuals with developmental disabilities. Rather, federal funds provided through the DD Act support the development and operation of Councils on Developmental Disabilities, Protection and Advocacy Systems, University Centers for Excellence in Developmental Disabilities (formerly known as university affiliated programs), and Projects of National Significance.

With respect to the collection of data, there are multiple sources of data available regarding the prevalence of developmental disabilities among the population. Accurately assessing the population of those individuals who might qualify for particular programs and services can only be achieved once the eligibility criteria for those programs is determined. It would be disingenuous at best to undertake an extensive effort toward documenting the number of persons who need services and the specific services they need until there is a realistic possibility of being able to actually begin delivering those services.

Since 2006 the Department has reduced its workforce by 1878 positions. Despite this reduction, DIDD remains committed to providing services to as many individuals as possible. One of our strategic Customer Focused Government goals is to identify the opportunities to serve persons with developmental disabilities other than intellectual disabilities as funds are available. One of the action steps associated with this goal is to propose a new service delivery model directed towards persons with developmental disabilities. This will require us to re-evaluate current program expenditures to ensure that existing services are being delivered in the most cost-effective manner possible in order to stretch limited funds to serve more people.

In the meantime, we will continue to provide services to individuals with developmental disabilities through the Family Support program and at the same time, seek to improve our understanding of those we serve through that program.

Auditor Comment

We do not agree with the basis of management's non-concurrence. We make no contentions that the statute creates an entitlement program. The law clearly specifies that services are subject to the availability of funding; however, as we persistently noted throughout our finding, the department has not pursued *any* funding from *any* source – federal or state.

We reviewed the budgets for FY 2011 – FY 2013 and the proposed budget for FY 2014 for the purpose of determining if additional funding had been earmarked by the General Assembly in order for the department to offer developmental disability services, but we found that no funds were earmarked. We have noted this as an issue for legislative consideration in this report.

Although management states that the department serves over 3,800 people through the Family Support Program, less than half of those served are individuals with developmental disabilities. It is also important to note that over 3,800 people are on the waiting list for this program.

Management's extraneous comments about the draw-down process do not address the problems noted in this finding.

We strongly disagree with management's contention that it would not be prudent to document the number of individuals who need services until there is a "realistic possibility" of being able to deliver services. On the contrary, we believe it is more prudent to determine the number of individuals who have developmental disabilities in order to decide which services the department may provide to meet the needs of this population. As reported in our finding, Tennessee Council on Developmental Disabilities staff indicated that between 12,592 and 44,073 Tennesseans had developmental disabilities in 2011. Because this estimate encompasses a very broad range, the department should pursue a concrete population number in order to properly plan services and provide the General Assembly with the necessary information to enable them to best decide how to allocate resources.

Issue for Legislative Consideration 1

Section 33-2-101, *Tennessee Code Annotated*, requires the Department of Intellectual and Developmental Disabilities to "plan, coordinate, administer, monitor, and evaluate" services for individuals with developmental disabilities, a responsibility formerly delegated to the Department of Mental Health; however, neither department received additional funding or staff to fulfill its new duties. The members of the General Assembly may wish to consider revising the statute until funding is available to enable state agencies to execute the requirements contained therein.

DEPARTMENTAL EMPLOYEE AND VOLUNTEER BACKGROUND CHECKS

The Human Resources (HR) Division of the Department of Intellectual and Developmental Disabilities (DIDD) obtains background checks to determine the suitability of individuals for employment or volunteer service at the department in roles requiring direct contact with or direct responsibility for service recipients. As required by state law, the department collects fingerprint samples from employee and volunteer applicants so that the Tennessee Bureau of Investigation can conduct background checks. HR personnel review the results and, if necessary, acquire disposition records of any relevant arrests or charges before deciding whether an employee or volunteer is qualified to serve individuals with intellectual and developmental disabilities.

The objective of our review was to determine whether DIDD complied with the sections of state law that require these criminal background checks. To accomplish this objective, we analyzed background check policies and procedures and interviewed applicable departmental personnel. We acquired lists of DIDD's employees as of February 22, 2013, and volunteers during the period January 15, 2011, through April 26, 2013, who had direct contact with or direct responsibility for persons with mental illness, serious emotional disturbance, or developmental disabilities. We tested a nonstatistical, random sample of 60 of the 1,095 employees for compliance with background check requirements.

For departmental volunteer background check compliance, we tested 10 of the 56 Greene Valley Developmental Center (GVDC) volunteers. We had initially planned to test 30 volunteers, 10 each from GVDC, the Clover Bottom Developmental Center (CBDC), and the West Tennessee Community Homes (WTCH). Despite evidence that CBDC and WTCH had volunteers, we were unable to obtain a listing; therefore, we drafted a finding (see finding 3). We were able to test the number of volunteers planned for GVDC. Since we found problems with 100% of the 10 GVDC volunteers tested and had decided to draft a finding based on the results of testwork performed, we determined that testing additional GVDC volunteers would not impact our conclusions and, thus, was unnecessary.

Based on the procedures performed, we determined that DIDD did not fully establish the internal control structure necessary to perform employee background checks in a uniform manner and in accordance with best practices, and we found that the department did not comply with statutory provisions concerning background checks of volunteers (see findings 2 and 3).

Finding 2 – The department did not establish a uniform, statewide employee background check policy until we brought it to management's attention and did not incorporate best practices into its existing policies, which resulted in employees beginning work before the department obtained background check results, increasing the risk of harm to residents of community homes and developmental centers

To maximize the safety of individuals with intellectual and developmental disabilities, the Department of Intellectual and Developmental Disabilities (DIDD) is legally required to obtain a criminal background check on any employee whose function would include direct

contact with or direct responsibility for service recipients. Direct-contact employees were primarily located at the department's East Tennessee and West Tennessee Community Homes and Greene Valley and Clover Bottom Developmental Centers, where they provided care and therapeutic services to facility residents. As of February 22, 2013, 1,095 employees worked for the department in direct-contact positions, with approximately 1,036 (95%) of those employees working at the above-mentioned community homes and developmental centers.

When testing the department's compliance with employee background check requirements, we found that DIDD lacked a uniform statewide policy, causing each of the community homes and developmental centers to perform background checks in a different manner. We also observed that inconsistent statutory provisions in *Tennessee Code Annotated* allowed DIDD to complete the majority of its direct-contact employee background checks under more relaxed standards and time frames, resulting in new employees starting work before the department obtained completed criminal history results. By not following sound business practices of having consistent processes for conducting employee background checks, the department increased its risk of hiring inappropriate individuals for positions involving direct contact with facility residents.

Inconsistent Statutory Authority for Employee Background Checks

Sections 33-2-1201 and 33-2-1202, *Tennessee Code Annotated* (TCA) contain inconsistent provisions for department employee background checks. Section 33-2-1201 sets background check requirements for any person who applies with the department for a position that has direct contact with, or direct responsibility over, persons receiving developmental disability services. Section 33-2-1202 requires organizations that provide developmental disability services to have a background check provided on all of their employees who have direct contact with, or responsibility over, service recipients. Section 33-2-1202 organizations include the department's developmental centers and community homes, as defined under Section 33-2-402(2), *Tennessee Code Annotated*.

Section 33-2-1201 imposes more stringent background check requirements for employees than Section 33-2-1202. Under 33-2-1201, a fingerprint-based background check performed by the Tennessee Bureau of Investigation (TBI) is necessary, yet under 33-2-1202, DIDD may elect to screen workers using either a TBI check or a less rigorous criminal background investigation performed by a state-licensed private investigation company. Additionally, Section 33-2-1202 allows employees up to ten days after employment to supply required information to the organization's management so that background checks can be initiated, while no such provision exists in TCA 33-2-1201. Section 33-2-1202 also prohibits organizations contracting with the department to provide residential services, day services, or supported employment services from employing a person until a criminal background check has been completed. This is further reflected in the department's quality control standards for employees of community providers, who must complete criminal background checks "prior to, but no more than 30 days in advance of, employment" but does not extend to the department's own direct-contact employees.

The overlapping applicability of TCA 33-2-1201 and TCA 33-2-1202, provides the department different options for obtaining background checks on its developmental centers' and

community homes' direct-contact employees. The exception provided to the developmental centers and community homes under Section 32-2-1202, however, renders the more stringent requirements of Section 33-2-1201 practically moot. Although both sections require departmental criminal background checks, neither section establishes a specific deadline for the criminal background check to be completed.

No Uniform Background Check Policy

In order to determine whether DIDD had designed an internal control system sufficient to provide reasonable assurance of compliance with TCA provisions involving employee background checks, we examined the department's background check policies and procedures. We discovered that during our audit period of January 15, 2011, through May 31, 2013, DIDD lacked a statewide policy governing its employee background check process. Although its Human Resources (HR) function was centralized in 2012, the department did not establish a unified policy to standardize background check procedures among the developmental centers and community homes. Instead, the department continued to operate under a system of fragmented guidance, a practice predating the establishment of DIDD as a stand-alone department.

Based on our inspection, separate criminal background check policies existed for Greene Valley Developmental Center (GVDC) and East Tennessee Community Homes (ETCH), while Clover Bottom Developmental Center (CBDC) and West Tennessee Community Homes (WTCH) followed standards outlined in a procedural document developed by the department's HR Division. We analyzed these policies and procedures and found that they contained both factual errors and inconsistent provisions. For example, when inspecting the GVDC and ETCH policies and the Background Check Procedure, we found that none of the documents contained all the requirements of TCA 33-2-1201 or TCA 33-2-1202. We found the following:

- Neither the ETCH policy nor the Background Check Procedure referenced the requirement found in TCA 33-2-1201(a)(1) or TCA 33-2-1202(b)(3) to obtain an applicant's release of all investigative records for the purposes of a background check.
- Both the GVDC and ETCH policies incorrectly cited TCA 33-1-209 as the authority governing facility background check requirements; however, TCA 33-1-209 no longer exists, having been deleted and replaced in 2001 by TCA 33-2-1201 and TCA 33-2-1202.
- The GVDC and ETCH policies required HR personnel to conduct a preliminary screening to identify applicants with disqualifying criminal histories (e.g., abuse of a child), while the Background Check Procedure document did not specify that this step should be performed prior to obtaining employee background checks.
- The GVDC and ETCH policies called for an applicant found to have provided false information concerning a felony to be terminated, whereas no such provision existed in the Background Check Procedure document.

- The ETCH policy alone mandated direct supervision of new employees until the completion of the background checks. Based on our discussion with GVDC and HR management, the other facilities also followed this practice, but no official policy existed to support this unwritten rule.

Employees Commenced Work Before Background Checks Were Completed

Due to the problems we noted with the department's employee background check policies, we performed testwork on a nonstatistical, random sample of 60 DIDD employees from a population of 1,095 direct-contact employees whose start date was on or after August 1, 1989, when background checks were first required. We calculated the number of days between the start date and background check date for each employee in our sample and found that 40 of the 60 employees (67%) began work before the department received the background check results. Further examination showed that these results were skewed because DIDD obtained the majority of background checks in our sample before technology upgrades to state law enforcement databases increased the speed with which background checks could be submitted, performed, and returned. These significant improvements to Tennessee's criminal history system have enhanced background check timeliness in recent years.

We refined our testwork to identify the employees in our sample who began employment on or after January 15, 2011, which was the start of our audit period. We found only 10 of the original 60 employees sampled fell into this category. Of those 10 employees, the department allowed one (10%) to commence work before background check results became available. The employee, a Licensed Practical Nurse, worked for CBDC for seven days before the department gained access to her background check results. Although the provisions of TCA 33-2-1202 allowed CBDC ten days to collect required background information from its employees before initiating the criminal background checks, sound business practices dictate that the department would best protect the vulnerable population it serves by adopting a risk management approach and completing background checks before new employees commence work at a DIDD facility. In this case, we determined that the CBDC nurse had already passed a comprehensive background check to obtain her nursing license prior to starting at DIDD. Professional licenses are not required for every direct-contact position, however, so the department cannot rely on such coincidental safeguards for every new employee.

Although DIDD management said the department required direct supervision of the nurse and other employees whose start date preceded their background check date, the department had not formalized this requirement in any guidance; only ETCH's policies included this requirement. We also noted that requiring the supervisors to constantly be with the new hire while awaiting the background check results is impractical and burdensome.

Less Significant Items Noted

Clover Bottom Developmental Center Background Check Policy Purged

When we inquired about CBDC's background check policy, the center's Chief Officer disclosed that the policy document had been destroyed when DIDD transferred CBDC's HR

function to the central office in the spring of 2012. We sought to review the prior stand-alone policy, but the center's Chief Officer, Director of HR, HR Manager, and Director of Risk Management and Licensure all stated that the department retained no copies. As a result, we could neither confirm the existence of the CBDC background check policy nor verify that its contents properly reflected the requirements of TCA 33-2-1201 and/or TCA 33-2-1202.

Outdated Background Check Policy Reinstated

After we highlighted our concerns regarding the background check policies, the Director of HR stated that the central office HR did not know that CBDC no longer had its own policy like GVDC and ETCH until we notified the HR Division during the audit. She stated that while the HR Division was now aware of the need for a uniform statewide background check policy, staff had not taken any concrete steps to develop one as of May 16, 2013. The Director of Risk Management and Licensure subsequently provided us with a copy of a background check policy and procedure published in 1996 by the Department of Mental Health and Mental Retardation (DMHMR), one of DIDD's predecessors. According to the Director of Risk Management and Licensure, because of the problems we identified, the department restored the old policy to supersede the purged CBDC policies and the policies in effect at the other DIDD facilities and also to serve as the interim statewide background check policy.

When we inspected the old DMHMR policy, we noted that it solved the department's problem of operating under multiple inconsistent background check policies, but it failed to address other issues and presented new problems of its own:

- The document described obsolete background check procedures (e.g., collection of fingerprint samples on a preprinted card instead of via the current inkless technology).
- Additionally, the reinstated policy did not incorporate aspects of background check best practice (e.g., preliminary screening of applicants and requiring employees to pass the background check before starting work).
- The policy also needed to be updated to reflect the department's current name and not that of DMHMR.

Conclusion

DIDD's obligation to ensure that only suitable applicants are hired to provide care to developmental center and community homes residents is defined in state law, yet the department did not have a statewide policy to carry out this responsibility, as demonstrated by its inconsistent practices. As a result, the department allowed new employees to start work before background checks had been completed and increased the risk of hiring inappropriate individuals for direct care positions, potentially jeopardizing the safety of service recipients.

Recommendation

Departmental management may wish to seek clarification from the General Assembly on Sections 33-2-1201 and 33-2-1202, *Tennessee Code Annotated*, regarding the applicability of the background check requirements to developmental center and community home employees. Departmental management may also wish to seek legislation clarifying a specific time in which all departmental criminal background checks must be completed.

The Director of Human Resources should meet with the East, Middle, and West Regional Directors to discuss and draft a new statewide background check policy. The policy should correct the errors we discovered as well as incorporate best practices encapsulated within the stand-alone Greene Valley Developmental Center and East Tennessee Community Homes policies. The Director of Human Resources should also examine recent background check completion trends and consider developing and implementing a recruitment timetable that would allow sufficient time for background checks to be returned and reviewed before new employees begin work, rather than simply requiring direct supervision of unchecked employees. Furthermore, the Human Resources Division should conduct a comprehensive review to ensure that all existing direct-contact departmental employees have completed background check results on file.

Management's Comment

We do not concur.

At no time did the Department operate out of compliance with state law. The statement where the Auditors observe “that inconsistent statutory provisions in The *Tennessee Code Annotated* allowed DIDD to complete the majority of its direct-contact employee background checks under more relaxed standards and timeframes” is incorrect. Although the statute allows DIDD to have background checks performed by a state licensed private investigation company (see specifically 33-2-1202(b)(4)(B), this has not occurred. The safety of persons supported was never at risk, nor was the Department out of compliance with state law in allowing workers covered by 33-2-1202(b) to begin duties while under supervision prior to the background check being completed. Where the Auditors note, “neither section establish[es] a specific deadline for the criminal background [check] to be completed” is incorrect. Section 33-2-1202(b) establishes a 10 day window during which the background check must be performed. The only exception cited by the Auditors from the sampled records of persons employed during the audit period (a licensed professional) was in compliance with statute.

Training on a uniform policy originally developed in 1996 has now been conducted to supersede the Regional specific policies. The uniform policy will be updated to ensure that it fully comports with statutory requirements and that it is consistently applied. Meetings with DIDD Regional Directors have been conducted to ensure the policy and procedures are utilized until the new DIDD policy is developed and implemented.

Notwithstanding the Auditor's perceived inconsistencies in TCA 33-2-1201 and 33-2-1202 and the Department's compliance with the requirements set forth therein, we agree that background check reviews should be completed prior to the person being permitted to have independent direct contact with or direct responsibility for individuals receiving services and supports. As the Auditors note, "timeliness of background checks has improved significantly as improvements have been made to Tennessee's criminal history system." We also agree with the recommendation for an improved recruitment timetable which is contingent upon an analysis of the factors impacting final receipt of background check results. Until such an improved timetable can be implemented, DIDD will continue to provide direct supervision of any new applicable employee whose background check results are pending, until an acceptable report is received.

The DIDD Policy Committee will ensure that the new policy comports with the statutory provisions. Also as recommended, Human Resource staff will review the files of existing direct contact departmental employees for compliant background check results. The Office of Risk Management and Licensure's annual internal audit of the Human Resource unit will monitor the progress made in correcting this deficiency.

Auditor Comment

Despite management's non-concurrence, their comment expresses agreement with the issues we identified in our finding except for our interpretation of the relevant sections of *Tennessee Code Annotated*. We did not report that DIDD used a private investigation firm to perform criminal background checks on its employees. Instead, we noted that the department is authorized to elect this option under Section 33-2-1202.

Our finding also correctly conveyed that neither Section 33-2-1201 nor Section 33-2-1202 sets a specific deadline for completion of employee criminal background checks. Management erroneously states that Section 33-2-1202 provides a 10-day window for background checks to be performed; yet under the statute, the 10-day window only establishes a timeline for employees to release information and supply fingerprint samples — not a deadline by which the department must complete the criminal history records check.

Issue for Legislative Consideration 2

Sections 33-2-1201 and 33-2-1202, *Tennessee Code Annotated* (TCA), provide inconsistent background check requirements for Department of Intellectual and Developmental Disabilities employees who work at state-owned and -operated care facilities. Additionally, neither statute stipulates that the department must obtain completed background checks before new employees commence work. The General Assembly may wish to consider resolving the inconsistencies by establishing unique applicability of one of these statutory provisions and specifying a deadline by which criminal background checks for departmental employees, including those based at state-owned and -operated care facilities, must be completed.

Finding 3 – By not performing background checks on Clover Bottom Developmental Center and West Tennessee Community Homes volunteers and by implementing an inadequate volunteer tracking system at Greene Valley Developmental Center, the department violated state statutory provisions, failed to fulfill its fiduciary responsibility to vulnerable citizens, and accessed sensitive information about volunteers without permission

The Department of Intellectual and Developmental Disabilities (DIDD) is responsible for providing services to some of the state’s most vulnerable citizens. The department uses both employees and volunteers to enhance services through direct contact with or direct responsibility for persons with mental illness, serious emotional disturbance, or developmental disabilities. DIDD has a fiduciary responsibility for and owes protection from harm to the population it serves. If DIDD fails to fulfill these responsibilities, then the health and welfare of its service recipients are threatened. Thus, to guide the department, Section 33-2-1201, *Tennessee Code Annotated* (TCA), states

- (a) To help the department determine the suitability of a person for volunteer services or employment and verify the accuracy of information submitted in support of an application to work for the department, any person who applies to work for the department as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons with mental illness, serious emotional disturbance, or developmental disabilities shall:
 - (1) Agree to the release of all investigative records about the person from any source, including federal, state and local governments; and
 - (2) Supply a fingerprint sample for the conduct of a criminal background investigation by the Tennessee bureau of investigation. If no disqualifying record is identified, the bureau shall send the fingerprints to the federal bureau of investigation for a national criminal history record check.

Based on our audit, we found that DIDD did not ensure that its Clover Bottom Developmental Center (CBDC) and West Tennessee Community Homes (WTCH) performed background checks on volunteers and did not ensure that Greene Valley Developmental Center (GVDC) adequately tracked volunteers, obtained the appropriate background checks, and secured volunteers’ confidential information.

Background

Description of Volunteer Opportunities and Types

During our audit period of January 15, 2011, to May 31, 2013, DIDD offered various volunteer opportunities at its developmental centers and community homes. The department worked with three distinct types of volunteers—general volunteers, minor volunteers, and student volunteers. General volunteers enhanced the lives of facility residents by providing companionship and entertainment and contributing to the upkeep of the grounds. Minor volunteers, ranging in age from 9 to 17, participated in structured activities with the residents.

DIDD also allowed student volunteers from nursing and allied health programs to benefit from observational learning and to gain hands-on experience caring for individuals with intellectual and developmental disabilities.

Department's Procedures for Fulfilling Background Check Requirements for Volunteers

The methodology the department uses to meet its background check responsibilities differs based on volunteer type. Based on our discussion with the Director of Human Resources and review of policy documents, DIDD obtains general volunteers' consent by requiring volunteers to sign the department's Statement for Release of Information form. The department then collects a volunteer's fingerprints either directly or through a third-party service, depending on the volunteer's location, and submits the fingerprints to the Tennessee Bureau of Investigation (TBI) for the background check. After TBI returns the background check, Human Resources staff scrutinize the results and, if satisfactory, approve the volunteer for service.

DIDD varies its standard background check procedure for minor and student volunteers. Minor volunteers cannot be subject to routine background checks because the state has confidentiality laws that restrict the disclosure of juvenile court and law enforcement records. To overcome this limitation, the department obtains character references for its minor volunteers; this alternative process appears proper. When nursing students volunteer through a practicum program sponsored by a higher education institution, the department relies on the institution's nursing program personnel to complete background checks for their students. The nursing program personnel are required to forward the background check results to the department for review before the nursing students' arrival. Additionally, the department allows allied health program candidates to complete their clinical observation hours at GVDC. These students never come into direct contact with facility residents and are therefore not subject to background checks.

Management Did Not Adequately Track Volunteers or, in Some Cases, Did Not Track Volunteers at All

Background Checks Not Obtained for Clover Bottom Developmental Center and West Tennessee Community Homes Volunteers

Our audit inquiries revealed that because CBDC and WTCH lacked a system for tracking volunteers, departmental staff did not ensure background checks were conducted for volunteers at those facilities. When we initially discussed the volunteer process with DIDD staff, the Director of Human Resources told us that CBDC had not used volunteers, and the Human Resources Manager reported that WTCH had not used volunteers. Based on our Internet research and further discussions with the department's Human Resources management, however, we found evidence of volunteer programs at both CBDC and WTCH.

We found an undisclosed youth group event at CBDC involving more than 200 volunteers, who performed facility maintenance and visited with residents. Because DIDD and CBDC management failed to maintain any documentation for volunteers involved with CBDC's service recipients, neither we nor management could determine how many of the event

participants were minors and how many were adults subject to the statutory background check requirements. Since background checks were not obtained, DIDD management allowed an unidentified number of individuals with unknown, potentially unsuitable, and possibly criminal backgrounds to make direct contact with service recipients.

Based on further discussions, the Director of Risk Management and Licensure stated that the department formerly employed full-time volunteer coordinators at each facility to organize volunteer programs and to manage the associated records. Prior to the beginning of our audit period, though, reductions in force eliminated these positions at CBDC and WTCH. Consequently, CBDC and WTCH Program Directors continued to use volunteers but lacked the knowledge and experience possessed by the volunteer coordinators to maintain proper recordkeeping and meet background check requirements.

Inaccurate and Incomplete Greene Valley Developmental Center Volunteer Records

Unlike CBDC and WTCH, GVDC did maintain records for volunteers during our audit period; however, we discovered that these records were inaccurate and incomplete. When requested, the Community Relations Director supplied us with a list of 77 GVDC volunteers from January 15, 2011, to April 26, 2013, and certified to us that the listing was accurate and complete. Yet when we inquired about an individual who was identified on the list as both a direct-contact and non-direct-contact volunteer, the Community Relations Director admitted that the initial list was inaccurate and incomplete due to accidental errors and omissions. She subsequently submitted a revised list with 86 names. Based on our comparison, we found that the revised list deviated from the original list in the following ways:

- 12 names had been omitted entirely from the original listing;
- three names on the original listing had been duplicated;
- two names on the original listing had been incorrectly classified as direct-contact versus non-direct-contact volunteers;
- one name on the original listing had been improperly identified as a volunteer; and
- one name on the original listing had been misspelled.

Upon additional inspection, we determined that the revised listing contained inaccuracies, with one of the names appearing twice. Therefore, in total, the revised listing consisted of 85 separate volunteers. Absent an accurate methodology for capturing its entire volunteer population, GVDC was unable to readily demonstrate compliance with the background check provisions of TCA 33-2-1201.

We discussed the inconsistencies we found with the GVDC Community Relations Director, who stated that the conflicting requirements of the various volunteer programs contributed to the facility's recordkeeping issues. General volunteer applications were routed to the Human Resources office to undergo the same background check procedures used for employees. Records belonging to minors and students, however, remained with the Community Relations Director because GVDC does not follow the standard background check process for

those volunteers, as noted earlier. Because GVDC staff did not maintain a master list of all volunteers participating in the different programs at the facility, staff were unable to ensure all volunteers were properly evaluated for suitability for direct contact with the center's service recipients.

Problems With Background Checks Performed on Greene Valley Developmental Center Volunteers

To assess GVDC's compliance with the background check requirements, we tested a nonstatistical, random sample of ten direct-contact volunteers at that facility. Based on our testwork, we found problems with either the background check type used or the required investigative release authorization forms for all ten volunteers in our sample.

Incorrect Type of Background Check Conducted

For 8 of the 10 volunteers sampled (80%), the department used an incorrect type of background check. We reviewed the background check documentation and found that these eight volunteers were practicum students from a local nursing program. As part of this program, the practicum students were screened with name-based background checks conducted by private companies; DIDD relied on these checks to fulfill its statutory responsibilities even though the nursing program did not procure the more comprehensive fingerprint-based TBI background checks which were required under TCA 33-2-1201. We determined that the background checks for the practicum students were less reliable than TBI's background checks in three basic ways:

1. The private company background checks limited criminal history searches to the counties where the students resided, while TBI conducted unrestricted statewide searches.
2. Additionally, TBI obtained a Federal Bureau of Investigation criminal history summary as part of the background check, whereas the private companies did not have access to this information.
3. Finally, the private company's name-based background checks were less reliable than TBI's fingerprint-based checks.

We requested an explanation from the Director of Risk Management and Licensure and the Community Relations Director for the department's decision to rely on the background checks from other organizations instead of using TBI as required in state law, but as of June 5, 2013, we had not received a justification to deviate from state law.

Investigative Record Release Authorizations Not Obtained

Based on our examination of background check documentation, we determined that two of the ten individuals sampled (20%) were general volunteers. For these two volunteers, the department failed to obtain the investigative records release authorizations required by TCA 33-2-1201 before initiating the background checks. Investigative record release authorizations inform volunteer applicants about the extent of background check inquiries to be conducted. By not securing this important document from its general volunteers, DIDD denied those individuals

their right to know what confidential personal information would be made available to departmental staff.

We requested an explanation for the missing authorizations from the Director of Risk Management and Licensure, but as of June 5, 2013, we had not received an explanation.

Conclusion

While the Department of Intellectual and Developmental Disabilities' primary responsibility is to protect the safety of the population it serves, the department did not comply with state law designed to ensure that prospective volunteers are properly checked for suitability to work with vulnerable citizens. The absence of recordkeeping at CBDC and WTCH resulted in departmental staff's failure to conduct background checks on volunteers at those facilities. Inaccurate and incomplete volunteer records at GVDC impeded the department's ability to demonstrate compliance with TCA 33-2-1201. The department's reliance on a nursing program's background checks for GVDC practicum students rather than the more comprehensive TBI background checks might result in greater risk of harm to individuals with intellectual and developmental disabilities. Additionally, by obtaining background checks without first seeking permission, the department gained access to sensitive data without the requisite approval, resulting in a breach of the volunteers' right to privacy.

Recommendation

The Department of Intellectual and Developmental Disabilities is statutorily required to conduct background checks on volunteers in direct-contact positions under Section 33-2-1201, *Tennessee Code Annotated*. The Director of Human Resources should designate responsibility for recordkeeping on volunteers to specific staff members at the department's Clover Bottom Developmental Center and West Tennessee Community Homes. Human Resources personnel at CBDC and WTCH should then perform background checks using the methodology prescribed by state law on all future direct-contact volunteers.

Due to the diverse nature of its community outreach programs, a reliable system for maintaining volunteer records would assist Greene Valley Developmental Center staff in complying with the provisions of TCA 33-2-1201. The Community Relations Director should consolidate volunteer records in a single location for ease of maintenance and should also generate a master list of volunteers and check it regularly against volunteer records for accuracy and completeness.

The GVDC Community Relations Director should direct prospective practicum students to the Human Resources Division for screening and should use fingerprint-based Tennessee Bureau of Investigation background checks prior to the students visiting GVDC for clinical rotations.

Human Resources personnel at each DIDD facility should ensure that signed investigative record authorizations are on file before initiating background checks on volunteers.

Management's Comment

We concur.

As noted in our response to Finding 2, the Department has a uniform statewide background check policy in place. This policy encompasses volunteer services.

The meetings with the Regional Directors to ensure consistent application of the current policy emphasized that the current policy and procedures also applied to volunteers until a new DIDD policy can be implemented.

We do not agree that interns are a type of volunteer as they receive a benefit from the experience (class credit); however, Departmental policy 10.4.1 relating to internships does require that any applicant for internship shall pass a national background check and not appear on the TN Sexual Offender Registry, Department of Health Abuse Registry, TN Felony Offender Registry, or the Office of Inspector General List of Excluded Individuals/Entities.

The current statute requires all volunteers to receive the same degree and type of background check. For some "one time" volunteers such as those who participate in a church sponsored weekend activity, a less comprehensive check may be appropriate. DIDD will explore the feasibility of such an approach in an effort to provide our supported individuals with as much community inclusion as possible through the use of volunteers within the Developmental Centers and Community Homes.

We also concur with the recommendation for improving the volunteer tracking system. The Office of Risk Management and Licensure's annual internal audit of the Developmental Centers and Community Homes will evaluate compliance with DIDD policy requirements pertaining to volunteer services and tracking.

QUALITY ASSURANCE MONITORING

The Department of Intellectual and Developmental Disabilities (DIDD) contracts with 480 agencies responsible for providing community-based services such as day services, residential services, Independent Support Coordination, and clinical services to individuals with intellectual disabilities. DIDD conducts Quality Assurance (QA) monitoring to evaluate providers' compliance with performance standards in ten distinct areas, called domains:

1. Access and Eligibility
2. Individual Planning and Implementation
3. Safety and Security
4. Rights, Respect, and Dignity
5. Health
6. Choice and Decision Making

7. Relationships and Community Membership
8. Opportunities for Work
9. Provider Capabilities and Qualifications
10. Administrative Authority and Financial Accountability

Surveyors from DIDD's east, middle, and west regional offices conduct QA monitoring based on conditions set forth in the department's *Provider Manual* and provider agreements using survey instruments developed in collaboration with the Bureau of TennCare and other stakeholders. The survey instruments consist of a set of outcomes and related provider performance indicators in each of the ten domains. For performance indicators related to staff qualifications, the QA survey instruments guide the department to monitor provider employees in addition to provider volunteers and subcontractor employees. This QA survey instrument design helps to ensure the protection and safety of persons supported by DIDD's community-based providers.

All providers generally undergo annual monitoring, except independent clinical services providers who do not employ additional staff. The department surveys these service providers every three years. Furthermore, DIDD monitors less frequently the providers that demonstrate ongoing high levels of performance; those providers also receive Three Star and Four Star awards from the department. In some cases, quality concerns may cause DIDD to survey some agencies more often than prescribed by the *Provider Manual*, however. Cases of serious noncompliance result in the department imposing disciplinary actions on providers, up to and including sanctions and contract termination.

The objectives of our review of Quality Assurance monitoring were to determine whether

- the department's quality management system included reviews of Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) programs;
- the department conducted a QA survey for providers within the required time frame;
- agencies classified as Three Star or Four Star providers met DIDD's requirements for that designation;
- DIDD monitoring staff ensured that providers had documentation of a criminal background check, sex offender registry check, and abuse registry check performed on each employee whose responsibilities include direct contact with or direct responsibility for service recipients within the designated time frame, in accordance with Section 33-2-1202, *Tennessee Code Annotated* (TCA), and departmental policies and procedures;
- the department established a sufficient process for identifying volunteers at provider agencies and whether DIDD monitoring staff performed testwork to ensure that those volunteers had the required criminal background checks, sex offender registry checks, and abuse registry checks;

- DIDD staff approved contracting providers' use of subcontractors and whether QA surveyors adequately tested provider compliance with background check requirements for subcontractors set forth in TCA 33-2-1202; and
- disciplinary actions imposed by DIDD for QA violations were appropriate.

To assess whether the department's quality management system included reviews of ICF/IID programs, we read the relevant provisions of the Arlington Developmental Center Exit Plan and the 2012 Community Services Quality Review Panel Report's finding regarding the absence of monitoring for ICF/IID programs that do not receive Medicaid waiver funding. We also interviewed the appropriate DIDD personnel to obtain an understanding of the ICF/IID programs, the department's responsibility for monitoring these facilities, and the department's position on the Community Services Quality Review Panel finding.

To determine whether the department conducted a QA survey for providers within the required time frame, we obtained departmental guidelines for determining survey frequency. We took DIDD's Provider Agency Directory as of April 23, 2013, and used the survey frequency rules to extract a list of 376 providers subject to QA monitoring. We selected a nonstatistical, random sample of 25 providers from our extract and verified their inclusion on the department's 2013 QA survey schedules. We acquired a list of all QA surveys planned for 2011 through 2013 and interviewed departmental management about surveys that were planned but not performed. We also consolidated DIDD's provider report card listings for 2010 through 2012, and 2013 through March 31, and the 2013 QA survey schedules for the east, middle, and west regions into a single listing. For each of the 265 providers in our master listing, we scheduled the time period between the 2010 and 2011 surveys, the 2011 and 2012 surveys, and the 2012 and 2013 surveys (through March 31, 2013) to assess whether the providers had been surveyed with the appropriate frequency. From this schedule, we drew a nonstatistical, random sample of 25 providers and inspected the applicable provider report cards to verify the accuracy of QA survey dates. Based on the testwork performed, we determined that the QA survey dates were reliable for our purposes.

We obtained and analyzed documentation showing the department's criteria for Star providers. We acquired a list of current Three Star and Four Star providers as of April 2, 2013, and reviewed the 2012 QA provider report card listings to evaluate whether each provider had the required QA domain compliance levels for the Three and Four Star designations. We also selected a nonstatistical, random sample of 60 of 74 current Three Star and Four Star providers and reviewed investigation reports, death reports, Court Monitor Quality Tier listings, and pre-2012 QA survey results to analyze the providers' adherence to the remaining Star criteria.

To achieve our objectives related to provider employees, provider volunteers, and subcontractors, we interviewed DIDD management and reviewed the department's provider agreement, *Provider Manual*, and QA survey instruments to develop an understanding of the applicable requirements. From the 2012 monitoring cycle, we selected a nonstatistical, random sample of 5 of 189 providers and reperformed the QA monitors' work to ascertain if our findings agreed with the monitors' findings. For each survey selected, we tested each provider employee chosen by the QA monitors. We assessed 67 provider employees in total for compliance with TCA and departmental criminal background check, sex offender registry check, and abuse

registry check requirements. Also, for the providers sampled, we held discussions with provider agency personnel to see if they used volunteers during the designated time frame and inspected QA monitoring working papers to ascertain whether they tested any of those provider volunteers. For our subcontractor objective, we contacted the sampled providers to determine whether they subcontracted with any agencies during the specified time period and reviewed QA monitoring working papers to determine if the department tested the employees of any subcontractors identified.

We reviewed DIDD's provider agreement, *Provider Manual*, internal memoranda, media reports, departmental policies, and State Procurement Commission procedures to assess the propriety of disciplinary actions. For providers identified to have been disciplined for QA violations, we examined QA survey reports, interviewed key DIDD personnel, and read communications between DIDD and the provider agencies.

Based on the procedures we performed, we determined that

- the department's quality management system did not include reviews of ICF/IID programs, but instead, with the knowledge of DIDD management and as an appropriate alternative, the Department of Health performed this monitoring;
- the department conducted a QA survey for providers within the required time frame;
- agencies classified as Three Star or Four Star providers met DIDD requirements for that designation;
- DIDD monitoring staff had not ensured that providers had documentation of the required checks and had not ensured that checks were performed within the designated time frame (see finding 4);
- the department had established a sufficient process for identifying volunteers at provider agencies; however, since none of the providers we sampled disclosed that they had used volunteers during the designated date range, we could not determine whether DIDD monitoring staff had performed testwork to ensure that provider volunteers had the required checks;
- DIDD staff approved contracting providers' use of subcontractors and that QA surveyors adequately tested provider compliance with background check requirements for subcontractors; and
- disciplinary actions imposed by the department for QA violations were appropriate.

Finding 4 – The Department of Intellectual and Developmental Disabilities’ Quality Assurance monitors failed to identify that provider employees had disqualifying records on their criminal background checks, presenting a potential danger to service recipients, and also incorrectly recorded the dates of background checks, abuse registry checks, and sex offender registry checks, resulting in the monitors’ improper assessment of the timeliness of required checks

The department’s Quality Assurance (QA) section conducts surveys of contracted community-based providers to determine levels of performance related to ten distinct areas, called domains. For one domain, Safety and Security, the QA monitors analyze the results of criminal background checks, abuse registry checks, and sex offender registry checks to determine whether the providers complied with various requirements. When we reperformed the QA section’s testwork, we found that the monitors sometimes reached inaccurate conclusions, failing to properly assess conditions identified in background check results that would have precluded provider employees from working directly with service recipients. We also discovered that the QA monitors did not always accurately record the dates of the background and registry checks performed by the provider, resulting in monitors incorrectly concluding that the providers’ safety and security checks were performed timely, when in fact, they were not.

Background Information

The Department of Intellectual and Developmental Disabilities (DIDD) segregates its QA operations among the east, middle, and west regions of the state. As part of the QA surveys, the department’s monitors perform tests to determine provider compliance with requirements contained in *Tennessee Code Annotated* (TCA), DIDD’s *Provider Manual*, the department’s contracts with the providers, and DIDD’s QA survey instrument, as described below.

Requirements for Performance of Criminal Background, Abuse Registry, and Sex Offender Registry Checks

TCA governs the requirements for criminal background and abuse registry checks tested by the QA monitors, while DIDD’s *Provider Manual* describes sex offender registry check requirements. TCA 33-2-1202(b) states, “Each [provider] organization shall have a criminal background check performed on each employee whose responsibilities include direct contact with or direct responsibility for [DIDD] service recipients.” TCA 33-2-1202(c)(3) similarly mandates, “The [provider] organization shall check the [abuse] registry maintained by the department of health pursuant to § 68-11-1001 prior to employment of applicants or their use as a volunteer in the organization. No individual who is listed on the registry may be hired or otherwise permitted to provide services in the organization.” Additionally, section 6.3.b(5) of the *Provider Manual* specifies, “Staff who have direct contact with or direct responsibility for service recipients must not be listed on the Tennessee Abuse Registry [or] the Tennessee Sexual Offender Registry. . . .”

Requirements Specifying Hiring and Employment Restrictions

DIDD enters into a contract, known as the provider agreement, with each of its provider agencies. In the provider agreement, the department prohibits the provider from hiring or retaining employees whose background check results identify certain convictions if those employees would have direct contact with or direct responsibility for service recipients. The QA monitors review a sample of employees' background check results to ensure that providers have not employed individuals with disqualifying convictions. The department's 2010 – 2014 provider agreement lists the following provisions pertaining to prohibited staff:

The Provider shall not employ, retain, hire or contract with any individuals, as staff or volunteers, who would have direct contact with or direct responsibility for service recipients; and who have been convicted of:

- (i) any felony; or
- (ii) a misdemeanor involving physical harm to a person including but not limited to neglect or abuse or a misdemeanor involving financial harm/exploitation to a person including but not limited to theft, misappropriation of funds, fraud or breach of fiduciary duty; or
- (iii)a misdemeanor involving illicit drugs, drug/alcohol misuse or sexual misbehavior (e.g. indecent exposure, voyeurism). Misdemeanor convictions covered in this subparagraph, (f) (i) (3), shall not have occurred during a period of less than ten years prior to employment with the Provider.

Requirements Involving the Timeliness of Checks

In addition to stipulating hiring limitations, DIDD requires the provider agencies to conduct background checks, abuse registry checks, and sex offender registry checks within a designated time period prior to employment or a change in duties which results in direct contact with or direct responsibility for service recipients. The department's QA survey instrument contains this timeliness criteria, specifying that checks should be "completed prior to, but no more than 30 days in advance of, employment or a change in assignment to direct support."

Our Testwork Methodology

To determine whether our conclusions matched those of the QA monitors, we randomly selected five provider surveys to test from a population of 189 surveys performed during the 2012 monitoring cycle. For each QA survey selected, we examined documentation for the background check, abuse registry check, and sex offender registry check for each provider employee that the department's monitors had tested. In total, we reviewed the records of 67 provider employees.

Problems Found

Failure to Identify Disqualifying Convictions

While reviewing criminal background check results, we found that 2 of 67 provider employees tested (3%) had convictions that, per section A.11.(f)(iii) of the provider agreement, would preclude them from employment involving direct contact with or direct responsibility for service recipients. The middle region QA monitors, however, failed to identify these conditions. The details of the two issues we found are included below.

- Based on our inspection of background check results, we determined that one employee had five convictions for “controlled substance, possession or casual exchange” within the ten years prior to beginning his employment with the provider agency. According to the Deputy Director of Quality Assurance, the middle region QA monitors “misread” the background check results. The provider agency stated that the employee in question no longer worked at the agency.
- Our review of the other employee’s background check results revealed a conviction for “possession or casual exchange – misdemeanor” within the ten years prior to beginning her employment with the provider agency. According to the Middle Regional Director of Quality Assurance, the middle region QA monitors “missed the misdemeanor conviction.”

Following our discovery of these conditions, the Director of Risk Management and Licensure noted that the department was working with its legal counsel to determine the corrective actions to be imposed on these two providers.

Inaccurate Recording of Background, Sex Offender Registry, and Abuse Registry Check Dates

As a result of our comparison of the check dates per the QA monitoring working papers with the check dates per the provider documentation for the 67 employees tested, we identified 14 differences, related to five background checks (7%), five abuse registry checks (7%), and four sex offender registry checks (6%). Because the monitors incorrectly recorded the check dates, they also misapplied criteria included in their QA survey instrument, erroneously concluding in 9 of the 14 instances that providers had timely performed the checks when in fact they had not. In the remaining five instances, the conclusion regarding timeliness of the check was still correct despite the errors in the dates recorded by the monitors. We list additional information in the chart below.

Comparison of Dates per Quality Assurance Working Papers and Provider Documentation

No.	Region	Check Type	Earliest Date Check Should Be Performed (30 Days Before Hire Date)	Latest Date Checks Should Be Performed (Employee Hire Date)	Date per QA	Date per Provider	Impact on Timeliness Assessment	Days Late or Early Using Correct Check Date	
1	Middle	Background	1/28/2012	2/27/2012	1/26/2012	1/6/2012	Correct assessment	-	
2	East	Background	8/29/2011	9/28/2011	9/27/2011	9/19/2011	Correct assessment	-	
3	Middle	Background	9/18/2011	10/18/2011	10/18/2011	9/9/2011	Incorrect assessment	9 days early	
4	Middle	Background	4/5/2011	5/5/2011	5/4/2011	5/10/2011	Incorrect assessment	5 days late	
5	Middle	Background	9/18/2011	10/18/2011	10/18/2011	9/9/2011	Incorrect assessment	9 days early	
6	East	Abuse registry	8/13/2011	9/12/2011	9/8/2011	8/16/2011	Correct assessment	-	
7	East	Abuse registry	8/29/2011	9/28/2011	9/19/2011	9/15/2011	Correct assessment	-	
8	Middle	Abuse registry	9/18/2011	10/18/2011	10/18/2011	9/9/2011	Incorrect assessment	9 days early	
9	Middle	Abuse registry	4/5/2011	5/5/2011	5/4/2011	5/10/2011	Incorrect assessment	5 days late	
10	Middle	Abuse registry	9/18/2011	10/18/2011	10/18/2011	9/9/2011	Incorrect assessment	9 days early	
11	East	Sex offender registry	8/29/2011	9/28/2011	9/19/2011	9/15/2011	Correct assessment	-	
12	Middle	Sex offender registry	9/18/2011	10/18/2011	10/18/2011	9/9/2011	Incorrect assessment	9 days early	
13	Middle	Sex offender registry	4/5/2011	5/5/2011	5/4/2011	5/10/2011	Incorrect assessment	5 days late	
14	Middle	Sex offender registry	9/18/2011	10/18/2011	10/18/2011	9/9/2011	Incorrect assessment	9 days early	
14	<i>Total dates recorded incorrectly</i>							9	<i>Total that changed from timely to untimely due to incorrect dates</i>

Source: Quality Assurance Monitoring Working Papers and Provider Documentation.

We discussed the problems we found with the applicable Regional Quality Assurance Director. The East Regional Quality Assurance Director agreed that his monitors had recorded the wrong check dates. For one employee, he stated that the monitor may have inadvertently transposed the abuse registry check date to match the provider's background check and sex offender registry checks. For another, he divulged that the QA monitor had obtained the dates from the provider during a telephone conversation rather than actually requesting and reviewing physical documentation from the provider, in violation of standard operating procedure.

The Quality Management Assistant Commissioner also emphasized that calling the provider rather than reviewing physical documentation was incorrect and contrary to standard protocol. She claimed that the monitor just called the provider in the case of one provider employee because the monitor allegedly left the provider's premises, realized that he did not

gather the necessary data for the employee, and then called the provider to request the missing information. To remedy this situation, the Quality Management Assistant Commissioner required the east region monitors to return to the provider and reperform their testwork. She asserted that the department was in the process of deciding the disciplinary actions to be taken against the monitor at fault.

The Middle Regional Quality Assurance Director declared that her monitors had simply made data entry errors; however, simple errors could result in safety issues. She agreed that in nine cases, these errors resulted in the monitor improperly concluding that the provider performed the checks in compliance with timeliness requirements.

Risks Resulting From Problems Noted

The QA surveys serve as one of the primary mechanisms by which the department ensures the continued health and welfare of service recipients residing in community settings. By overlooking problematic background check results, DIDD may unintentionally place its very vulnerable service recipients in harm's way. In particular, allowing provider employees with drug convictions during the past ten years to directly care for service recipients heightens the likelihood that those employees would be incapacitated while overseeing service recipients who require close supervision and would also render service recipients' medication more susceptible to theft or misuse.

Furthermore, although recording incorrect background check dates and abuse and sex offender registry check dates appears to be only a minor issue on the surface, it can lead to major repercussions. For example, the department may not hold providers accountable for allowing workers to commence employment before reviewing their background check results, a situation which could allow unsuitable employees to interact with service recipients before the provider becomes aware of the underlying dangers involved. Also, by failing to recognize that providers conducted abuse and sex offender registry searches too early, the department exposes its service recipients to the risk that the provider employees committed offenses that will remain undetected.

Recommendation

The Quality Management Assistant Commissioner and the Deputy Director of Quality Assurance should design a training program to emphasize to the QA monitors the importance of thoroughly analyzing background check results and correctly recording the dates of background, abuse registry, and sex offender registry checks. In addition, after identifying the QA monitors who made the errors we noted, the Quality Management Assistant Commissioner, the Deputy Director of QA, and the applicable Regional Quality Assurance Director should offer more intensive training to those employees, perform a review of their prior work in an attempt to identify similar mistakes made during other QA surveys, and take any necessary disciplinary actions.

Management's Comment

We concur.

DIDD has a quality improvement strategy for the operation of its home and community based services waivers that has been recognized by the Centers for Medicare and Medicaid Services (CMS) as “a model of best practices for other States.” And while we strive to ensure that we are always 100% compliant with every requirement, the sheer volume of data reviewed and the reality that people will occasionally make mistakes remains.

The Quality Assurance survey of a provider agency involves the review and recording of a great deal of information. For the period of this audit (January 1, 2011 through May 31, 2013), DIDD surveyors and monitors reviewed approximately 11,000 provider employee background checks statewide. We agree that in the sample reviewed, there were a small number of instances where an employee record was not properly reviewed or documented.

The employees involved in the errors leading to this finding have been counseled with and have been retrained regarding their review and documentation of criminal background checks. All components of the DIDD Quality Assurance survey process will continue in their endeavor to exhibit the highest standards of data evaluation, recording, and reporting.

PROVIDER ENROLLMENT AND LICENSURE

Provider Enrollment Division

Provider Enrollment requires provider applicants seeking to offer services under the Department of Intellectual and Developmental Disabilities' (DIDD) jurisdiction to go through a process that includes a quantitative and qualitative review. For the quantitative review, the Provider Enrollment Coordinator reviews each potential provider applicant's owners' and executive directors' supporting information for the following criteria:

- appropriate qualifications to provide the services;
- clean criminal background checks;
- verification of valid business license and professional license(s);
- free of patient abuse complaints in Abuse Registry and Sexual Offender Registry;
- not terminated, suspended, or debarred from the Medicare/ Medicaid program;
- not reported on DIDD's Substantiated Abuse and Neglect List; and
- three personal references.

If all criteria are not met, then the Provider Enrollment Coordinator sends a recommendation to the Provider Development Committee and the DIDD Commissioner for denial of the potential applicant. If all criteria are met, then the Provider Enrollment Coordinator forwards the

application to the Provider Development Committee to complete the qualitative review. This committee comprises personnel from the DIDD central office and regional offices. To accomplish its objectives, the committee reviews the organizational chart, financial statements, and budget plans and scores each provider applicant based on a predetermined scoring rubric. The Provider Development Committee then sends its recommendation for approval or denial of the potential applicant to the DIDD Commissioner. The potential applicant is notified in writing of approval to provide services pending execution of a provider agreement.

Licensure Division

On May 15, 2012, Governor Bill Haslam signed House Bill 2363, which moved the jurisdiction and control over the licensing of intellectual and developmental disabilities facilities of the state, from the Department of Mental Health and Substance Abuse Services (DMHSAS) to DIDD. The two departments entered into a Memorandum of Understanding on September 25, 2012, stating that as of January 1, 2013, DIDD would assume licensing responsibilities. When a provider is first approved through the enrollment process to provide services, the provider must obtain a license through the Licensure Division. The Licensure Coordinator is responsible for reviewing the provider's file to make sure that it contains all requirements for licensure. The Licensure Coordinator also ensures the provider has a successful fire safety inspection and a building safety inspection which meet safety requirements. If deficiencies are noted during the fire safety inspection and/or the initial building inspection, the provider must submit corrective actions to the Licensure Division before the license is issued. When no deficiencies are noted during the fire safety inspection or the initial building inspection, the provider pays the required license fees and the license is issued. Licensed providers are required to renew their license annually when they receive the renewal application and an invoice for license fees from DIDD. The renewal process is similar to the initial licensure process. The Licensure Division performs unannounced inspections of licensed providers, which include a facilities inspection and a records inspection. If deficiencies are noted during the fire safety inspection and/or the unannounced inspections, the provider must submit corrective actions to the Licensure Division before the renewal license is issued. When no deficiencies are noted, the provider pays the required license fees and the renewal license is issued.

The objectives of our review of provider enrollment and licensure were to determine

- the provider applicant process;
- if the department's Provider Agency Directory met the service recipients' needs to identify service providers in their region;
- the purpose of the Provider Development Committee;
- the initial and renewal licensure process for DIDD providers;
- the Licensure Division's process to report deficiencies to licensees and ensure corrective actions;
- management's process to assess and collect application fees, licensure fees, and civil penalties fees from providers;

- if there was duplication of background checks between the Provider Enrollment Division and the Licensure Division with providers seeking licensure;
- if the *Provider Application Review Policy* and the Provider Licensure Rules were current;
- if the Web Licensure Application system had edit checks in place;
- if the department used the reports available through the Web Licensure Application system to identify licensees that owed fees, needed inspections, or needed approval for a license; and
- if there was duplication of licensure paperwork between the Department of Mental Health and Substance Abuse Services and the Department of Intellectual and Developmental Disabilities.

To achieve all of our objectives, we conducted interviews with applicable department personnel. To determine the provider applicant process, we obtained a listing of applicants who were approved or denied for the period January 1, 2011, through February 28, 2013. From this list, we selected a nonstatistical, random sample of 25 of 235 applicants and verified that requirements were met before management approved the applicant as a provider or maintained documentation for denied applications.

We reviewed the Provider Agency Directory to ensure that it met the needs of the department and service recipients. To gain an understanding of the Provider Development Committee, we obtained a listing of committee members; attended the March 19, 2013, committee meeting; and reviewed the *Provider Application Review Committee 2010 Guidelines*.

We obtained a listing of licensees for the period January 1, 2013, through February 28, 2013. From this list, we tested the whole population of 51 licensees to determine the following:

- if licensees met requirements before the initial or renewal license was issued;
- if the Licensure Division ensured licensees corrected deficiencies;
- if the Licensure Division verified that application fees, licensure fees, and civil penalties fees were calculated correctly and invoiced amounts matched the amount of fees paid; and
- the Provider Enrollment Division and the Licensure Division communicated adequately regarding background checks to ensure that duplication did not occur.

We reviewed the *Provider Application Review Policy* and the Provider Licensure Rules to determine if the policy and rules were current. For the Web Licensure Application system, we reviewed the Web Licensure Application Procedure Manual to ensure the system had edit checks in place, and we reviewed the following reports for the Middle Tennessee Region: *License Due By Month and Surveyor*, *Invoice General*, *Fire Inspections Memos*, and *Invoice Letters*.

To determine whether there was duplication between the Department of Mental Health and Substance Abuse Services and the Department of Intellectual and Developmental Disabilities, we reviewed the Comptroller of the Treasury October 2010 Performance Report *Study of the Feasibility of Dividing Licensure Functions Between the Department of Mental Health and the Department of Intellectual and Developmental Disabilities*.

Based on the procedures we performed, we determined

- the provider applicant process, the licensure process, and the fee collection process were working as described by management;
- that the department used the Provider Agency Directory to track providers, which met the needs of the department and the service recipients;
- that the Provider Development Committee, responsible for qualitative reviews of provider applications, performed as described by management;
- the Licensure Division reported deficiencies to licensees and ensured corrective actions;
- that there was no duplication of background checks between the Provider Enrollment Division and the Licensure Division with providers seeking licensure;
- that the *Provider Application Review Policy* and the Provider Licensure Rules were not updated (see observation 1);
- that the procedures followed for entering initial and renewal licensure applications, in the Web Licensure Application system, contained edit checks;
- that the department used reports available through the Web Licensure Application system, which identified licensees' fees, inspections, and issued licenses; and
- that there was no duplication of licensure paperwork between the Department of Mental Health and Substance Abuse Services and the Department of Intellectual and Developmental Disabilities because the two departments' licensees do not offer the same services to recipients.

Observation 1 – The Department of Intellectual and Developmental Disabilities' Provider Enrollment Division and Division of Licensure have not updated policies, procedures, and rules

Provider Enrollment

Based on our review of the Department of Intellectual and Developmental Disabilities' (DIDD) Provider Enrollment Division's policies and procedures, we determined that DIDD is currently using the former Department of Finance and Administration's Division of Mental Retardation Services' draft *Provider Application Review Policy* from February 2009. This draft policy does not reflect the administration's decision to establish DIDD as a stand-alone department or the role of the Provider Development Committee in the provider enrollment process. According to the Director of Staff and Provider Development, the Provider Enrollment

Division is currently working to update its policies and procedures; however, this process was postponed due to changes management wanted to make. The Director of Staff and Provider Development was not able to give a time table for the final provider enrollment policies and procedures.

Provider Licensure

Based on our review of DIDD's Provider Licensure Rules, we determined that the Division of Licensure is currently using the former Department of Mental Health and Substance Abuse Services (DMHSAS) rules. According to the Director of the Office of Risk Management and Provider Licensure, the Division of Licensure is currently working to update the provider licensure rules to reflect the licensing responsibilities change from DMHSAS to DIDD. The Director of the Office of Risk Management and Provider Licensure added that there currently is no time table for completion of the provider licensure rules but estimates the rule update is approximately two-thirds complete.

INDIVIDUAL SUPPORT PLAN DEVELOPMENT

All Medicaid waiver participants must have a "plan of care." The Department of Intellectual and Developmental Disabilities (DIDD) meets this federal requirement via the Individual Support Plan (ISP), which identifies the treatments, activities, and resources that would help a service recipient achieve desired outcomes. The ISP is management's tool to document the person's strengths, capacities, and preferences, allowing DIDD regional office staff to authorize the provision of a personalized mix of services that best meet the individual's unique needs and enhance his or her quality of life.

Although all providers who deliver services have a responsibility to participate in the planning of services and supports, the primary responsibility for individual support planning for people enrolled in Medicaid waivers rests with the support coordinator. For individuals who are on the waiting list for services and those enrolled in the self-determination waiver, a DIDD case manager has primary responsibility for the ISP.

Several different assessment processes contribute to the development of the ISP, including the following:

- Conversation(s) with the service recipient, family, and/ or legal representative to obtain ideas and suggestions about the service recipient's abilities, as well as the service recipient's likes, dislikes, and interests. The service recipient may be assisted in planning supports and services by a "Circle of Support" (COS). The COS is a group of individuals who meet or otherwise share information on a regular basis to help a service recipient accomplish personal life goals and become an active member in the community. The primary purpose of the COS is to advise the service recipient and legal representative regarding the planning of services and supports.
- A uniform, individual assessment that provides basic information about a service recipient's capabilities and service needs.

- Professional/clinical assessments and evaluations performed to identify clinical service and treatment needs.
- A risk assessment that identifies the potential risks associated with life in the community, including health risks, risks associated with making choices, etc.
- Medical (including physician's orders), dental, and mental health records as applicable, which provide a summary of the service recipient's health-related needs.

When a service recipient is enrolled in services, the initial ISP must be developed within 60 calendar days from the date of enrollment. The initial ISP must include, at a minimum, those services necessary to ensure the service recipient's health, safety, and welfare. As more information is learned about the service recipient, this information must be reviewed and considered for incorporation into the ISP as necessary. The initial ISP can be used for a period of one calendar year from the effective date listed on the form. The ISP is considered expired after the one-year period and must be updated.

The objectives of our review of Individual Support Plan development were to determine whether

- the individual's Circle of Support was sufficiently involved in ISP development;
- the goals and outcomes listed on the ISP were person-centered, correlated with the planned services and supports, were appropriate and measurable, and could lead to the acquisition of new skills or enhancement of existing skills;
- services listed on the ISP matched the services listed on the cost plan and the provider's remittance advice for the same time period; and
- the initial ISP was developed within the required time frame, the ISP was renewed timely, and the required approvals were obtained.

To achieve our COS, goals and outcomes, service matching, and ISP renewal and approval objectives, we obtained a list of waiver enrollees the department served between January 15, 2011, and March 12, 2013, and from the overall population of 7,466, selected a nonstatistical, random sample of 60 individuals.

- For the COS objective, we inspected the ISP Section E Planning Meeting Signature Sheet for each service recipient in the sample to ascertain which COS members were in attendance at the individual's ISP planning meeting and evaluated each person's planning meeting date to establish whether the meeting preceded the ISP's effective date. We also reviewed each service recipient's ISP narrative.
- For the goals and outcomes objective, we evaluated each selected individual's ISP Section A Personal Focus to verify the use of a person-centered approach. We also analyzed the Action Plan in Section B of each ISP to ascertain whether services and supports were appropriate and measurable and could lead to new skills or improvement of existing skills.

- For the service matching objective, we compared services listed on the most recent ISP to the provider's remittance advice and cost plan for the same time period.
- For the ISP renewal and approval objective, we calculated the time period between the individual's most recent ISP renewal and the prior ISP renewal and scheduled the approvals obtained for each renewal or amendment to verify that proper authorization was obtained. We also scheduled the number of days between the date the listing of waiver participants was generated and the date the individual's most recent ISP was developed. We reviewed authorizing signatures and dates of approval on Section C Services and Supports of the ISP.

To assess the COS's involvement, we examined guidance on the definition and role of the COS in the department's Community Transition Policy, *Family Guide to Medicaid Waiver Services*, and relevant sections of the *Provider Manual*. We interviewed key DIDD personnel and inspected policies and procedures to gain an understanding of the department's processes for developing goals and outcomes using a person-centered approach. We reviewed the ISP development problems identified in the department's 2012 Quality Review Panel reports and questioned appropriate DIDD personnel to elicit the department's response to the panel's findings.

To accomplish our objective involving the initial ISP, renewals, and approvals, we interviewed appropriate departmental personnel and inspected DIDD policies and procedures. After acquiring a listing of individuals initially enrolled for services in the home and community-based services waiver between January 15, 2011, and March 4, 2013, we selected a nonstatistical, random sample of 60 people from the population of 585 for testwork. For each individual selected, we inspected Form 2362 – Notice of Disposition or Change to verify the service enrollment date and calculated the number of days between this date and the effective date of the initial ISP to assess whether the ISP was developed timely. We also located an authorizing signature and date of approval on each sampled individual's initial ISP.

Based on the procedures performed, we determined that

- the individual's Circle of Support was not always sufficiently involved in ISP development (see finding 5);
- the goals and outcomes listed on the ISP were person-centered and correlated with the planned services and supports, but were not always appropriate and measurable and could not always potentially lead to the acquisition of new skills or enhancement of existing skills (see finding 5);
- services listed on the ISP did not always match the services listed on the cost plan or the provider's remittance advice for the same time period (see finding 5); and
- the initial ISP was developed within the required time frame, the ISP was renewed timely, and the required approvals were obtained.

Finding 5 – The Department of Intellectual and Developmental Disabilities did not properly develop many of the Individual Support Plans for persons receiving services through the home and community-based services waiver, which heightens the risk that service recipients will not receive the services they need and also increases the likelihood of errors, fraud, waste, and abuse

The Department of Intellectual and Developmental Disabilities (DIDD) has an agreement with the federal government called the home and community-based services (HCBS) waiver to provide services to eligible persons in the community rather than in an institution. Federal guidelines stipulate that DIDD must develop an Individual Support Plan (ISP) for all persons receiving waiver services. During our testwork, however, we found that the department had not ensured that all ISPs were properly developed. Specifically, we uncovered problems related to

- the involvement of the Circle of Support (COS) in ISP development;
- the propriety of the goals and outcomes included in the ISP; and
- the accuracy of the service types and service rates in the cost plan and remittance advice compared to the ISP.

Background Information

Circle of Support

Section 3.2 of the department’s *Provider Manual* defines the Circle of Support as a “group of individuals who meet or otherwise share information on a regular basis to help a service recipient accomplish personal life goals and become an active member in the community.” The *Provider Manual* later describes the membership of the COS, stating, “In addition to the service recipient, the COS includes the legal representative and the support coordinator/case manager, family members, friends, neighbors, or other community members who are chosen by the service recipient.” With regard to the responsibilities of the COS in the ISP development process, the *Provider Manual*, section 3.3.a, adds, “COS members are to assist the service recipient in planning services.”

Goals and Outcomes

In Section B, the ISP specifies one or more goals or outcomes for each service provided to the individual. The ISP then lists one or more actions that the individual, working with provider agency staff, should take in order to achieve his or her goals and outcomes. The goals and outcomes listed should reflect the individual’s vision of a desired life.

Cost Plans and Remittance Advices

Departmental staff are responsible for recording the services authorized in the ISP, including the service period, maximum units, and service rates, into the individual’s cost plan in the Community Services Tracking system (CS Tracking). Provider agencies receive notice of payment via remittance advices produced by the Bureau of TennCare. Similar to the cost plan

and the ISP, the remittance advice shows the service period and the payment rate, along with the units of services actually provided to the service recipient. Since CS Tracking works in conjunction with other applications to produce an electronic bill that the department submits to TennCare in order for providers to be reimbursed, the remittance advice should agree with the cost plan and the ISP.

Testwork Methodology

We tested a nonstatistical, random sample of 60 individuals from the total population of 7,466 HCBS waiver participants during the period January 15, 2011, through March 12, 2013. We used the same sample to test for issues involving the COS, goals and outcomes, and cost plans and remittance advices. For each individual tested, we reviewed the most current ISP, along with any related amendments, cost plans, and remittance advices.

Problems Noted

Circle of Support

Section 3.12.f. of the *Provider Manual* prescribes that “[a]ll documentation used and/or generated during the planning process should be maintained by the support coordinator/case manager as a part of the support coordination/case management record.” For each individual tested, we requested all available documentation of the COS meetings and then analyzed the ISP to evaluate the involvement of the COS in the ISP development process. We could not accurately determine if the COS was sufficiently involved in ISP development, however, because many of the meeting attendees were only identified on the COS sign-in sheets by name; their affiliation with the person receiving services was not disclosed. We also found that staff seldom documented any information in the ISP as originating from the COS, and when data was documented, we could not ascertain whether the COS input resulted in a change of current services or would be considered when making future service changes.

Goals and Outcomes

Section 3.11.b. of the *Provider Manual* states, “The support coordinator/case manager must complete or facilitate an annual ISP review with the Planning Team, which may include members of the service recipients Circle of Support[,] to address the following: . . . 8) Considering the appropriateness and effectiveness of services and supports in completing/achieving action steps and outcomes.” During our testwork, we assessed whether the HCBS waiver participant’s goals and outcomes were appropriate and measurable and whether they could lead to the acquisition of new skills or the enhancement of existing skills. For 17 of 60 individuals tested (28%), we discovered that the goals and outcomes listed on the ISP were inadequate and/or inappropriate for one or more of the services provided. Specifically, our testwork results disclosed problems with the goals and outcomes for the following services: community-based day services, supported living, facility-based day services, personal assistance, and residential habilitation. We present additional details below.

Community-Based Day Services

For community-based day services, section 10.4.b. of the *Provider Manual* states, “Supports provided may facilitate job exploration activities, volunteer work, educational activities and other meaningful, measurable community activities that promote developing relationships and maintaining ongoing relationships with friends and family members.” For three persons who received community-based day services, their outcomes were to

- build endurance so he can walk further (the only outcome identified for service, even though the ISP lists many community-based activities that are important to the service recipient, such as going to the library, shopping for craft supplies, playing putt-putt golf, and bowling);
- make new friends in order to broaden her social roles in the community (the only outcome identified for service, but the ISP lists multiple community-based activities that are important to the service recipient, including going to the gym and throwing balls, going to the parks to feed the geese, going out to eat on Fridays, and attending live theater and/or shows); and
- keep his room and belongings clean, with the actions needed that he wash his clothes and fold his clean clothes (an outcome not achieved from a community-based activity).

Supported Living

For supported living services, section 9.5.a. of the *Provider Manual* states,

Supported Living shall mean a type of residential service having individualized services and supports that enable an enrollee to acquire, retain, or improve skills necessary to reside in a home that is under the control and responsibility of the [HCBS waiver] enrollee. The service includes direct assistance as needed with activities of daily living (e.g., bathing, dressing, personal hygiene, eating, meal preparation excluding the cost of food), household chores essential to the health and safety of the enrollee, budget management, attending appointments and interpersonal and social skills building to enable the enrollee to live in a home in the community.

The outcomes for 11 individuals receiving supported living services were to

- keep himself neat and clean (the only outcome identified for service, although the ISP states that the service recipient needed to acquire or enhance skills in other areas, such as eating, meal preparation, and household chores);
- be healthy and manage her weight (the only outcome identified for service, even though her ISP discusses her need for improvement in the areas of personal cleanliness, household chores, and meal preparation);

- set up her lunch by herself, so that she becomes more independent (the only outcome identified; however, her ISP describes the need to enhance existing skills or acquire new skills regarding waking for the day, picking out clothes and dressing, and personal cleanliness);
- use good hygiene skills in order to stay healthier (the only outcome identified for service, even though her ISP mentions the need for improvement with completing household tasks, preparing meals, and making sure her shoes are on the correct feet);
- increase his knowledge with healthy meal preparation (the only outcome for service, although ISP states that he needs assistance with cleaning his house and brushing his teeth);
- make purchases independently when shopping (the only outcome identified for service, but her ISP also delineates the need for assistance and reminders to perform self-care tasks, complete household chores, and select appropriate clothing each day);
- spend time with others and to earn money, with one action involving attendance at community activities (only outcome identified for all of her services, although her ISP mentions that she needs to enhance skills related to her personal hygiene and oxygen equipment; furthermore, focusing on community activities is not appropriate for a residential service such as supported living);
- eat a well-balanced meal in order to maintain a healthy weight (only outcome for service, but her ISP also describes the need to improve with making appropriate clothing choices, tending to various aspects of personal hygiene; and independently completing household tasks);
- volunteer in her community (not appropriate for a residential service);
- maintain relationships, with the three actions needed as choosing restaurants to eat, visiting or taking his girlfriend on a date, and attending Sunday school (outcome not appropriate for a residential service); and
- for one individual, his ISP listed many actions that are not appropriate for supported living, such as going to various fishing locations, attending sporting events, going on a river cruise, and attending music concerts.

Facility-Based Day Services

The *Provider Manual*, section 10.4.c, states, “Facility-based day services are provided in a licensed day habilitation facility. Activities are generally geared toward providing training in personal care, providing supports to enhance the development of needed skills and/or providing vocational activities that are within the interests and abilities of the service recipient.” The outcomes for five individuals receiving facility-based services were to

- speak to others politely so that he can have more friends in the program (the only outcome identified for service);
- choose what she wants for lunch (only outcome identified);

- improve her health by reducing her risks of new problems in order to remain healthy and active (outcome was not properly developed to meet service definition);
- eat a well-balanced meal in order to maintain a healthy weight (the only outcome identified for service); and
- for one person, no outcomes were documented for this service.

Personal Assistance Services

Section 16.3.a. of the *Provider Manual* states,

Personal Assistance shall mean the provision of direct assistance with activities of daily living (e.g., bathing, dressing, personal hygiene, eating, meal preparation excluding cost of food), household chores essential to the health and safety of the enrollee, budget management, attending appointments and interpersonal and social skills building to enable the enrollee to live in a home in the community.

The outcomes for two individuals receiving personal assistance services were to

- engage in activities that promote the use of her hands (the only outcome identified for service); and
- participate in different self-stimulatory activities of his choice (not appropriate for service provided).

Residential Habilitation

Section 9.2.a. of the *Provider Manual* states,

Residential Habilitation shall mean a type of residential service having individualized services and supports that enable an enrollee to acquire, retain or improve skills necessary to reside in a community-based setting including direct assistance with activities of daily living (e.g., bathing, dressing, personal hygiene, eating, meal preparation, household chores) essential to the health and safety of the enrollee, budget management, attending appointments and interpersonal and social skills building to enable the enrollee to live in a home in the community.

The outcomes for one individual who received residential services were to wipe his mouth while eating and as needed during the day, an activity shared with facility-based and community-based day services, and to set the table at his home at least five times weekly. These outcomes are not adequate for the services provided.

Cost Plans and Remittance Advices

We conducted testwork to evaluate whether the services approved in the ISP, including service periods, payment rates, and service types, were also listed in the cost plan and paid in the remittance advice. We found one or more discrepancies in the documentation of 38 of 60 individuals tested (63%). The breakdown of the problems we discovered is as follows:

- For all 38 individuals, the service dates approved in the ISP did not agree with the service dates in the cost plans for one or more services. For all of these individuals, their ISP showed approved Independent Support Coordination (ISC) services from the effective date of the ISP through the remainder of that month. Their cost plan, however, did not show ISC services for this partial month. In addition, we noted that for one individual, his cost plans did not reflect authorized services after June 30, 2013, the end of the state’s fiscal year. We also determined that DIDD personnel had approved one individual for dental services for August 14, 2012, through August 13, 2013, but had failed to record those services in his cost plan.
- For two individuals, the rates approved in the ISP did not match the rates included in the cost plan and paid in the remittance advice for one service. Details of these two instances are included in the chart below.

Differences Among Rates in ISP, Cost Plan, and Remittance Advice

Individual #	Service	Period Affected	Correct Rate	ISP Rate Per Unit	Cost Plan Rate Per Unit	Remittance Advice Rate Per Unit	Difference Per Unit
1	Supported living	9/7/2012 - 9/6/2013	Cost plan and remittance advice	\$232.60	\$239.95	\$239.95	(\$7.35)
2	Facility-based day	9/19/2012 - 9/18/2013	Cost plan and remittance advice	\$38.45	\$51.80	\$51.80	(\$13.35)

Source: Individual Support Plans, cost plans, and remittance advices.

For individual #1, DIDD personnel corrected the rate listed in the ISP on June 25, 2013, after we notified them of the discrepancy.

Although the rate differences per unit are relatively minor, the monetary disparities compound with each unit of services the state reimburses the provider. Section 10.2 of the *Provider Manual* states that for day services, a provider may request reimbursement for a maximum of 5 days (units) per week and up to 243 days per service recipient per calendar year. The *Provider Manual*, section 9.5.a, adds that supported living providers are “responsible for providing an appropriate level of services and supports 24 hours per day during the hours the enrollee is not receiving Day Services or is not at school or work.” Also, since the proper controls were not in place, more significant rate differences could exist.

Causes of Errors Identified

We discussed the problems we identified with the Director of Accreditation (now the Assistant Commissioner of Policy and Innovation) and the Director of Risk Management and Licensure. Both the Director of Accreditation and the Director of Risk Management and Licensure agreed that the outcomes listed in the ISPs needed improvement. The Director of Risk Management and Licensure asserted that DIDD had recognized this problem before our audit began; he had even shared his concerns about the ISP outcomes with both the current and former Commissioner. (Effective June 1, 2013, the former DIDD Commissioner became the Department of Children's Services Commissioner.) The Director of Accreditation and the Director of Risk Management and Licensure explained that the department initiated a person-centered process for ISPs two years ago and that this system change/culture shift has been difficult to implement. When DIDD management first rolled out person-centered practices, they also established a related provider training program. Once departmental management realized that the training was not effective, they started revising the training program. DIDD staff were still making revisions to the ISP training as of July 2013.

The Director of Accreditation noted that it takes a long time to see the results of these improvement efforts because the additional training does not affect the ISP until the plan is due again. The Director of Risk Management and Licensure added that the department's goal with the ISP development was to become a best practice leader and set the standard for other states. According to the Director of Risk Management and Licensure, the department had brought in consultants and surveyed providers about the barriers they face in implementing person-centered ISPs in an attempt to reach their goal.

Based on our discussion with the Director of Accreditation, another factor contributing to the errors is that ISP development is currently a "very paper-heavy process." The Director of Accreditation explained that with the implementation of the department's new computer system, Project Titan, the ISP development process would be much easier since electronic, real-time ISP records would be available. We discuss DIDD's new computer system further beginning on page 76.

With regard to the remittance advice errors, the Director of Accreditation and the Director of Risk Management and Licensure disagreed with the errors involving the service period for ISC services in the cost plan not aligning with the ISP. They claimed that CS Tracking could not accommodate split monthly billing for ISC services; the computer system did not allow for prorating of ISC services. The Director of Risk Management and Licensure said that his and the Director of Accreditation's "short answer" would be that the same number of units that the department had authorized had been provided in each case. The Director of Accreditation further stated that even if the ISC had only provided one day of services to the service recipient, he or she would still be entitled to receive the full monthly payment. Following our discussion with the Director of Accreditation and the Director of Risk Management and Licensure, we reviewed the ISC's responsibilities as delineated in the department's *Provider Manual*. We found that section 4.1 states that the ISC's responsibilities "shall also include at least one face-to-face contact with the service recipient per calendar month," which could be fulfilled in a single calendar day. That *Provider Manual* section goes on

to state, however, “Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the individual’s plan of care.” Based on the latter statement, the ISC should not be paid the full monthly rate when he or she did not provide “ongoing monitoring” for the entire month.

Effects of Problems Noted

Allowing the provision of services without the documentation of the COS’s involvement in ISP planning could lead to the provision of inappropriate services. Additionally, when the goals and outcomes listed in the ISP are insufficient for the services provided, the risk increases that the service recipient will be unable to experience his or her vision of a good quality of life in the community. Plus, without a strong internal control structure that requires data on the individual support plan, cost plan, and remittance advice to match, unauthorized payments could be made.

Recommendation

The Commissioner should ensure that both departmental and provider staff engage in sufficient training on person-centered Individual Support Plans, particularly documenting the involvement of the Circle of Support and developing appropriate goals and outcomes. The Commissioner should also ensure that the department implements adequate controls so that service types, units, and rates in the ISP match those in the cost plan and remittance advice.

Management’s Comment

We do not concur.

While there are continued opportunities for improvement with respect to the development of outcomes and action steps, we disagree that the Individual Support Plans (ISP) were not properly developed. All ISPs were developed in accordance with the terms of the approved waiver and the requirements of DIDD and TennCare as set forth in the DIDD Provider Manual.

We disagree with the methodology that was used in determining the involvement of the Circle of Support (COS) in the ISP process. Each person’s Circle of Support is unique—comprised of the people chosen by the service recipient (or legal representative) to participate in his/her planning process. While the Provider Manual lists people that can be included in the COS, there are no requirements for who constitutes an appropriate COS, other than the person and his/her Independent Support Coordinator (ISC) or, in the case of the Self-Determination Waiver, the person and his/her case manager. Further, there are no requirements regarding how the participation of the COS in the development of the ISP is documented. A signature sheet and a line or statement on the signature sheet describing the person’s affiliation with the COS affiliation, while beneficial, is not a requirement. Further, one would not reasonably expect a family member or friend to specify a “title” on a sign-in sheet, since such “titles” are typically associated with professional or vocational affiliation. That said, the signature sheet does in fact

document the participation of individuals in the COS; all of the requested signature sheets were provided to the auditors.

With respect to information in the ISP, there is no requirement or even expectation that the ISP attributes any specific information in the ISP as coming from any member of the COS or from the COS as a whole, since the *ISP in its entirety* should reflect the input provided by the COS. The COS should function as a team focused on the needs of the individual; thus everyone should represent the interests and needs of the person supported, and not their own individual ideas or recommendations

In the State's approved Quality Improvement Strategy approved by the Centers for Medicare and Medicaid Services (CMS) and recognized by CMS as "a model of best practices for other States," the State gathers and analyzes data on specific performance measures that are intended to monitor compliance with federal waiver assurances and sub-assurances, including those pertaining to Service Planning. One of those measures, SP a.i.b.6., is specifically intended to monitor the ISP development process to ensure that the ISP accurately reflects the needs and interests of the person supported:

and % of waiver participants whose Individual Support Plans accurately describe the participants desired outcomes, assessed needs, and preferred lifestyles as identified in pre-planning activities. Percentage = number of participants with ISPs that accurately describe desired outcomes, assessed needs and preferred lifestyles/ total number of waiver participants in the sample.

A random sampling approach with a $\pm 5\%$ confidence interval is used.

In Evidentiary Packages recently submitted to CMS for purposes of demonstrating the State's compliance with federal waiver assurances and sub-assurances, compliance for this measure in the Arlington Waiver was 100% for 2010, 99% for 2011, and 100% for the first nine (9) months of 2012 (inclusive of all data available at the time of submission). Compliance for this measure in the Statewide Waiver was 99% for 2010, 98% for 2011, and 99% for the first nine (9) months of 2012 (inclusive of all data available at the time of submission). Thus, the State can effectively demonstrate that the ISP development process (including the COS's involvement) is working well to ensure that the ISP accurately reflects the person's needs and interests.

We also disagree with the conclusions drawn regarding the propriety of goals and outcomes [i.e., outcomes and action steps] included in the ISP. Outcomes and action steps are required as part of service delivery, but they do not constitute the entirety of the services and supports the person will receive as part of that waiver benefit.

One of the primary purposes of an ISP is to describe what is important for and to the individual through the use of person centered outcomes and action steps. In addition to specific outcomes and action steps, the body of the ISP includes information about the kinds of supports that should be provided to that individual person within the scope of their waiver services.

Each waiver service is clearly defined within the applicable Home and Community Based Waiver document. These definitions describe all of the elements and activities that are included as a part of the approved waiver service. For example:

“Day Services shall mean individualized services and supports that enable a person to acquire, retain, or improve skills in the area of self-care, sensory/motor development, socialization, daily living skills, communication, community living, employment, and social skills.”

“Community-based Day Services are designed to enable the person to become more independent, integrated, and productive in the community as well as assist the person to build relationships and natural supports.”

Regardless of setting, “Day Service therapeutic objectives [i.e., outcomes] and action steps are outlined in the Individual Support Plan (ISP)/plan of care during the person-centered planning process.” This helps to ensure that as services are provided, efforts are being made to help each person accomplish specific outcomes that are important to him or her. It does not mean that the accomplishment of those outcomes constitutes the entirety of the waiver service.

We agree that some of the outcomes and action steps in the sample ISPs are in need of strengthening; DIDD continues to address strengthening outcomes and actions steps that are part of the ISP by offering ongoing training regarding Person Centered ISP Development, Person Centered Thinking Training and the development of assessment tools to use in developing outcomes and action steps.

We believe this training has significantly improved the quality of outcomes and action steps in ISPs. Performance measure SP a.i.a.2. focuses on outcomes and action steps in ISPs:

Number and Percentage of waiver participants who have Individual Support Plans with measureable action steps applicable to each of the outcomes specified.
Percentage = number of waiver participants who have ISPs with measureable action steps for each outcome/ total number of waiver participants in the sample.

As with the previous measure, a random sampling approach with a $\pm 5\%$ confidence interval is used.

In Evidentiary Packages recently submitted to CMS for purposes of demonstrating the State’s compliance with federal waiver assurances and sub-assurances, compliance for this measure in the Arlington Waiver was 97% for 2010, 99% for 2011, and 100% for the first nine (9) months of 2012 (inclusive of all data available at the time of submission). Compliance for this measure in the Statewide Waiver was 99% for 2010, 2011, and the first nine (9) months of 2012 (inclusive of all data available at the time of submission). Thus, the State can effectively demonstrate that ISPs do in fact include appropriate outcomes and action steps, although continuous efforts toward quality improvement in this area are ongoing.

Further, the auditors’ own test work supports the progress that has been made with respect to developing outcomes and action steps in ISPs. From the samples cited in the audit

report, none of the issues with outcomes and action steps were associated with the auditors' review of the 60 initial ISPs for *newly enrolled individuals*. All of the cited issues stemmed from their review of the 60 annual/renewed ISPs for persons originally enrolled in the Waivers earlier, and which may not reflect improvements that have been achieved in this area.

Finally, we disagree that the internal controls for billings and payments are inadequate. With respect to cost plans for ISC services, because the ISP was developed during the month (and not at the beginning of the month), the cost for ISC services was appropriately reflected in the cost plan for the previous plan year. To specify it again would duplicate the costs for ISC services for that month. Further, reimbursement for this service is not pro-rated based on a partial month of enrollment. This is because ISC services are not delivered every day of the month, but rather in response to the person's needs. The enrollment process is quite intensive, with lots of up-front work to complete needs assessment and develop plans of care, and would not be minimized in any way by a partial month of enrollment into the waiver.

With respect to inconsistencies between amounts in the ISP, cost plan, and RA, only two (2) inconsistent rates were cited from the nonstatistical sample of sixty (60) ISPs reviewed, which equates to a 96.7% accuracy rate. This percentage does not take into consideration that each ISP approves multiple services/rates. If each ISP in the sample contained at least three services then the accuracy rate would be 98.9%, not 96.7%. Also, we would also stress that the billing and payment process shared between DIDD and TennCare includes in both the DIDD billing system and in the TennCare Management Information System a maximum rate per service. Payment cannot occur in excess of the established rate for a particular service. Even if an ISP contains an incorrect rate for a service, the rate actually paid is set within the system, not by the ISP.

Auditor Comment

Despite management's non-concurrence, they admitted during our fieldwork and in their comments that the ISP outcomes should be strengthened, a deficiency that constitutes a large part of our finding.

As we reported, our audit objective was to test whether the service recipient's Circle of Support (COS) was sufficiently involved in the ISP process, as required by the *Rtqxkf gt "OcpwcrD*. Also as stated, our conclusion is that management did not produce sufficient evidence to verify that the ISP was in fact crafted around the COS's recommendations and that the providers' ideas did not override the goals desired by the service recipient. Moreover, management's comments erroneously imply that we have questioned the propriety of the composition of the Circle of Support.

We also take exception to management's claim that their Quality Improvement Strategy performance measures and compliance rates demonstrate that the ISP development process is "working well" when in actuality, these items are self-reported and unaudited.

In addition, management grossly misrepresents the results of our testwork by stating that “the auditors’ own test work supports the progress that has been made with respect to developing outcomes and actions steps in ISPs.” As documented in this section’s methodologies, we only tested a sample of *pgy r "gpt qmgf 'kpf kxf wcu* for timeliness of ISP development and for required ISP approvals; we did not test the ISP outcomes and action steps in this sample. Based on the results of our other testwork, we conclude and management agreed that ISP improvements are still needed for outcomes and action steps.

Furthermore, management incorrectly implies that we tested the controls over billings and payments. Our objective was to ensure that services listed on the ISP, including payment rates, service periods, and service types, matched the services listed on the cost plan and remittance advice. We identified inconsistencies in some of the rates, as described in our finding, and management does not dispute this point in their response.

It is also important to note that management developed their own interpretation of our sample error rates based on speculation and assumptions and without evidence to support their conclusions.

REGIONAL OFFICE OPERATIONS

The regional offices of the Department of Intellectual and Developmental Disabilities (DIDD) are the local point of entry to the department’s community service system. It is the mission of these offices to develop and support opportunities for persons with intellectual disabilities to live as contributing members of their chosen home community. To further fulfill this mission, each regional office also operates resources centers, which provide clinical and assistive technology services that are not readily available in the community. Regional offices exist to ensure that the department has local presence and can respond quickly to local needs for intellectual disability services on an individual basis.

The regional offices implement policies and procedures developed by DIDD’s central office, which are designed to ensure that there is consistent application of services and supports across the state. To have further consistency, the centralization of accounting, human resource, and procurement functions ensures uniformity in the way the department does business across the state and results in efficiencies gained by using the same policies, procedures, forms, and contracts.

The employees at the regional offices have various responsibilities, for example, signing a Conflict of Interest Form, maintaining records for fixed assets, and purchasing items for the day-to-day operations. All employees are required to sign Conflict of Interest Forms to ensure the public trust and best interest of the department are not compromised. DIDD follows the Department of General Services’ *Asset Ordering Overview* policy to account for fixed assets that are used throughout the three regions and follows the *State of Tennessee Payment Card Cardholder/Approval Manual* to account for purchases made throughout the three regions.

DIDD regional office staff are also responsible for Resident Trust Funds, which are funds established for the individuals that are served in the three regions through the Intermediate Care Facilities for Persons with Intellectual Disabilities (ICFs/ID). The money individuals receive from various sources, such as the Social Security Administration, relatives, and jobs, is deposited into their Resident Trust Fund, and individuals with sufficient account balances may purchase items or have items purchased on their behalf for their personal use. When an individual is transferred to another facility or dies, DIDD Policy #209, effective September 30, 2011, state law (Section 33-4-109, *Tennessee Code Annotated*), and/or the Social Security Administration's *2011 Guide for Organizational Representative Payees* are followed to close the individual's Resident Trust Fund.

The objectives of our review of regional office operations were to determine

- the operations of the regional offices and resource centers;
- if the management had assessed and reorganized accounting and fiscal operations to provide centralization of accounting, human resource, and procurement functions;
- if the regional offices had internal controls over fixed assets;
- if employees had completed conflict of interest forms;
- if an individual's Resident Trust Fund account was transferred and closed when an individual died or moved to another facility; and
- if the regional offices had complied with state payment card regulations.

To achieve all of our objectives, we interviewed key personnel. We reviewed the information on the department's website, reviewed the *Tennessee Department of Intellectual and Developmental Disabilities Provider Manual*, reviewed the Internal Audit Reports for the west, middle, and east regions, and reviewed the 2011 *Department of Intellectual and Developmental Disabilities The State of Tennessee Annual Report* to determine the operations of the regional offices and resource centers. To ensure if management had assessed and reorganized accounting and fiscal operations, we reviewed the department's centralization plan reviews and *TNFORWARD Top to Bottom Review*.

We reviewed the Department of General Services Asset Ordering Overview document, obtained the Edison Asset Module list, obtained the Fiscal Year 2012 Statewide Inventory, and obtained a list of fixed assets to determine DIDD's internal controls over fixed assets. From this list, we selected a nonstatistical, random sample of 40 of 3,959 fixed assets to verify that the asset traced from the Edison Asset Module list to the Fiscal Year 2012 Statewide Inventory sheets.

To determine if employees had completed conflict of interest forms, we reviewed the department's *Conflict of Interest Policy #101* and obtained a list of employees as of February 22, 2013. From this list, we selected a nonstatistical, random sample of 60 of 2,083 employees and verified that the department had a conflict of interest form on file for the employee.

We reviewed the department's *Personal Fund and Special Fund Accounts Policy #209*, the *Social Security Administration 2011 Guide for Organizational Representative Payees*, and *Tennessee Code Annotated*, Section 33-4-109, and we obtained a list of deceased and discharged/transferred residents for the period January 15, 2011, to May 14, 2013. From this list, we selected a nonstatistical, random sample of 25 of 137 residents and verified that each resident's trust fund account was disposed of properly in accordance with the department's policy, the Social Security Administration Guide, and *Tennessee Code Annotated*. We expanded testwork and obtained a list of all residents, including new admissions for the period January 15, 2011, to May 20, 2013. From this list, we selected a nonstatistical, random sample of 25 of 408 residents and verified that resident trust fund accounts were properly maintained or disposed.

To determine if the regional offices had complied with state payment card regulations, we reviewed the *State of Tennessee State Payment Card Cardholder/Approver Manual*, obtained a list of cardholders, and obtained a list of payment card transactions for the period January 15, 2011, to March 27, 2013. From the list, we selected a nonstatistical, random sample of 28 of 66 cardholders and verified that the department followed the *State of Tennessee State Payment Card Cardholder/Approver Manual*. From the list of payment card transactions, we selected a nonstatistical, random sample of 60 of 6,740 payment card transactions and to verify that the purchase was made and recorded in accordance with the *State of Tennessee State Payment Card Cardholder/Approver Manual*.

Based on the procedures performed, we determined that

- the regional offices and resource centers fulfilled their operational purpose to ensure that the department has a local presence, provided clinical and assistive technology services, and responded quickly to local needs of individuals for community services;
- the department had assessed and reorganized accounting and fiscal operations to centralize the accounting, human resource, and procurement functions;
- the department had internal controls over fixed assets;
- not all employees had completed conflict of interest forms (see observation 2);
- an individual's Resident Trust Fund account was not transferred and closed when an individual died or moved to another facility (see finding 6); and
- the department did not comply with certain state payment card regulations (see observation 3).

Finding 6 – The Department of Intellectual and Developmental Disabilities failed to comply with federal and state guidelines for disposing of the Resident Trust Fund account balances for deceased or discharged/transferred residents

The Department of Intellectual and Developmental Disabilities (DIDD) establishes a Resident Trust Fund on the behalf of each individual residing at its developmental centers and community homes. The department has a fiduciary responsibility to ensure proper protection of and reasonable access to the trust funds. During our testwork, however, we discovered that

DIDD failed to comply with federal and state guidelines for disposing of the Resident Trust Fund account balances for deceased or discharged/transferred residents.

Background Information

Purpose of Resident Trust Funds

DIDD operates its East Tennessee Community Homes (ETCH), Greene Valley Developmental Center (GVDC), Clover Bottom Developmental Center (CBDC), and West Tennessee Community Homes (WTCH) as licensed Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID, also called ICFs/ID). The department accounts for the income and expenditures of each facility resident in a separate Resident Trust Fund account. In essence, with regard to the Resident Trust Funds, DIDD acts as the representative or substitute payee, while the facility resident serves as the beneficiary.

Disposition of Resident Trust Funds

Departmental policies, state law, and federal regulations govern the disposition of the Resident Trust Funds whenever an individual passes away, is discharged, or transfers to another facility. Section V. of DIDD Policy #209, Personal Fund and Special Fund Accounts, stipulates that trust fund accounts must be

managed in accordance with acceptable accounting practices as defined by the rules and policies of the Department of Finance and Administration (F&A) and Social Security Representative Payee guidelines, and shall ensure accountability for the appropriate management of those accounts as designated for the benefit of persons served in DIDD ICFs/ID.

DIDD Policy #209 also lists specific trust fund procedures for facility residents who are discharged and those who are discharged due to death. Policy #209, section VI.A.13, adds,

When a person served is discharged from the DIDD ICF/ID, the DIDD Fiscal Office shall reconcile records pertaining to personal funds management and, if requested, provide a written statement to the appropriate party in a timely manner. If applicable, the DIDD Fiscal Office must make arrangements to transfer benefit payments according to rules and regulations of the Social Security Administration.

Section VI.A.14 further states,

If a person served is discharged from the DIDD ICF/ID due to death, a full and final accounting of funds shall be done by the applicable Fiscal Office. Funeral expenses may be paid with the person's funds if the bill is more than the amount of any burial trusts. Property left by the deceased person shall be handled according to DIDD policy and state law.

Based on the references contained in DIDD Policy #209, we reviewed state statutory requirements and Social Security Administration (SSA) instructions for handling the trust fund balances of deceased residents. Section 33-4-109(e), *Tennessee Code Annotated* (TCA), mandates,

The chief officer shall keep the deceased or discharged person's personal property for six (6) months if it is not claimed. The chief officer shall then sell the property, with the approval of the commissioner, and deposit the proceeds in a fund, maintained under the supervision of the chief officer, for benefit of needy service recipients.

The **Conserved Funds After the Beneficiary Dies** section of SSA's *2011 Guide for Organizational Representative Payees* similarly dictates:

Upon the death of the beneficiary, any conserved or other funds you have belonging to the beneficiary become the property of his or her estate. You must immediately turn over conserved funds to the legal representative of the beneficiary's estate for disposition under State law. If there is no legal representative, you must contact the State probate court for instructions on what to do with remaining funds. If you need information about State law, contact the probate court or an attorney.

Important: Do not return conserved funds to SSA after the death of the beneficiary.

Purpose of Benevolent Fund

In addition to the Resident Trust Fund accounts, each of the department's three regions has its own Benevolent Fund. This fund is supported by donations intended to benefit the residents of the developmental centers and the community homes. These fund donations are used to pay for residents' activities as well as memorials for past residents. As of May 20, 2013, the balance of the middle region Benevolent Fund was \$348,422.43. As of June 6, 2013, the balance of the east region and west region Benevolent Funds were \$97,386.00 and \$2,020.37, respectively.

Testwork Results

Original Testwork

To evaluate the department's compliance with its own policies, state law, and SSA guidelines, we tested a nonstatistical, random sample of 25 Resident Trust Fund accounts for deceased or discharged/transferred individuals. Based on our review, the department did not properly dispose of the Resident Trust Fund accounts for five individuals tested (20%), as detailed below.

	Location	Status	Status Change Date	Account Change Date	No. of Days Before Account Change	Account Balance	Disposition	Problem
1	GVDC	Deceased	3/21/2012	1/28/2013	313	\$ 383.87	Transferred to Benevolent Fund	No evidence that next of kin or legal representative notified, in violation of SSA guidelines
2	GVDC	Deceased	5/23/2011	1/28/2013	616	\$ 696.52	Transferred to Benevolent Fund	No evidence that next of kin or legal representative notified, in violation of SSA guidelines
3	CBDC	Transferred	2/1/2011	4/14/2011	72	\$ 0.19	Remains as account balance	Funds should be transferred with resident, in accordance with Policy #209, section VI.A.13
4	CBDC	Transferred	1/20/2011	6/30/2011	161	\$ 0.71	Remains as account balance	Funds should be transferred with resident, in accordance with Policy #209, section VI.A.13
5	WTCH	Deceased	6/30/2011	7/15/2011	15	\$ 1,073.63	Returned to SSA	Conserved funds should not be returned to SSA, according to guidelines
Total:						\$ 2,154.92		

Source: Resident Trust Fund documentation provided by departmental staff.

Expanded Testwork

Due to the problems we identified in our original sample, we performed additional testwork to evaluate the breadth of the department's noncompliance. From a population of 408, we tested 25 Resident Trust Funds for individuals residing at the department's facilities. Our inspection revealed that DIDD did not properly account for the trust funds of two additional residents tested (8%). We present further information in the table below.

	Location	Status	Status Change Date	Account Change Date	No. of Days Before Account Change	Account Balance	Disposition	Problem
1	GVDC	Deceased	12/14/2011	1/28/2013	411	\$ 697.92	Transferred to Benevolent Fund	No evidence that next of kin or legal representative notified, in violation of SSA guidelines
2	GVDC	Deceased	11/29/2012	12/18/2012	19	\$ 0.70	Remains as account balance	No evidence that next of kin or legal representative notified, in violation of SSA guidelines
Total:						\$ 698.62		

Source: Resident Trust Fund documentation provided by departmental staff.

Management's Explanation for Noncompliance

Based on our interviews with departmental staff and review of applicable documentation, each regional office handled the disposition of Resident Trust Funds for deceased or discharged/transferred individuals differently. For example, the Account Clerk with GVDC told us that the facility transferred the Resident Trust Fund balances to the Benevolent Fund until management decided the actions to take in response to a finding issued by DIDD's Office of Risk Management and Licensure. The finding stated that GVDC erroneously maintained Resident Trust Fund accounts for deceased or discharged/transferred individuals. Management has decided to contact the next of kin or rightful heirs to settle these accounts.

Our analysis of the CBDC Resident Trust Fund documentation uncovered that any remaining trust fund account balances stemmed from interest earned for the last quarter in which the individual resided at the facility. Therefore, the CBDC errors are attributable to Fiscal staff's lack of understanding of the proper procedures for disposing of interest income received after individuals transfer to another facility.

Furthermore, the Fiscal Director 1 noted that unlike DIDD's other facilities, WTCH returns deceased individuals' remaining account balances to SSA. According to the Accountant 2 with WTCH, an SSA trainer informed her that the remaining account balances should be handled in this manner; however, SSA guidelines clearly state otherwise, as discussed above.

Effects of Problems Noted

By improperly disposing of Resident Trust Fund account balances for deceased and discharged/transferred residents, DIDD violated its own policies, state law, and federal guidelines. Additionally, the department's noncompliance deprives the estates of deceased individuals and the discharged/transferred individuals themselves of the funds to which they are entitled.

Recommendation

The Chief Financial Officer, Fiscal Director 1, and Fiscal staff at the regional offices should review applicable departmental policies, state law, and federal regulations regarding the disposal of Resident Trust Fund accounts. The Chief Financial Officer and Fiscal Director 1 should ensure that the Fiscal staff at the regional offices is properly disposing of Resident Trust Fund accounts upon death or discharge/transfer of an individual in accordance with departmental policies, state law, and federal regulations. In addition, the Chief Financial Officer should contact SSA to determine the status of trust funds sent to SSA in error.

Management's Comment

We concur.

Prior to calendar year 2012, the Department had a decentralized fiscal services operation headed by a Fiscal Director 1 or similar staff in West Tennessee, Middle Tennessee, East Tennessee and Central Office. Each of the regional fiscal offices handled closing trust fund accounts when a person served passed away or was transferred or discharged in different ways. Likewise, guidelines and procedures varied from region to region. As the auditors have stated, these guidelines and procedures did not always agree with more authoritative state and federal rules and regulations and were not always followed consistently by staff.

To correct this finding, a revision to the current DIDD Trust Fund policy is being drafted to address how closing accounts for persons served will be handled. As with the employee and volunteer background check policy referenced in Finding 2, the DIDD Chief Financial Officer has the new policy well underway and we anticipate that it will be presented to DIDD Policy Committee for review and approval in October 2013. DIDD concurs with the auditors' recommendations and will implement them all through the revised policy and with retraining and education for all trust fund staff. The Office of Risk Management and Licensure's annual internal audit of the Fiscal Services unit will evaluate the progress made in this deficiency.

Observation 2 – The department neither required all employees to sign Conflict of Interest Forms nor updated its Conflict of Interest Policy and related form to reflect recent organizational changes

Employees of the Department of Intellectual and Developmental Disabilities (DIDD) are required to disclose potential conflict of interests as an essential method to maintain public trust in government and ensure the proper performance of government. We found that DIDD employees did not consistently sign Conflict of Interest Forms. In addition, we found that management failed to update the Conflict of Interest Policy and form to reflect DIDD's transition to a stand-alone department.

Conflict of Interest Disclosure Requirements

Conflict of interest disclosure requirements are codified in both state law and the department's own policies.

State Law

Section 33-2-1301, *Tennessee Code Annotated*, states the following about conflicts of interest:

IF

- (1) (A) a person is an officer or employee of the department, OR
- (B) a person is an officer or employee of a licensee of the department,

AND

- (2) (A) the person or the person's spouse, parent, grandparent, brother, sister, or child has an ownership interest in a residential facility that is not publicly held or an ownership interest in a business that is not publicly held that owns or manages a residential facility that provides mental health or developmental disabilities services or supports, OR
- (B) the person or combination of persons named in subdivision (2)(A) has an ownership interest of at least thirty-five percent (35%) in a residential facility that is publicly held that provides mental health or developmental disabilities services, OR
- (C) the person or combination of persons named in subdivision (2)(A), has an ownership interest of at least thirty-five percent (35%) in a business that is publicly held that owns or manages a residential facility that provides mental health or developmental disabilities services,

THEN

- (3) the person shall disclose the interest to the department or licensee, AND
- (4) the person may not serve in a capacity of decision making or influence or responsibility for the direct referral or placement of persons to any residential facility that provides mental health or developmental disabilities services or supports.

Department's Conflict of Interest Policy

The department has also developed its own Conflict of Interest Policy, Policy #101. The purpose of the policy, which supplements *Tennessee Code Annotated* requirements, is "[t]o establish standards for employees of the Division of Intellectual Disabilities Services (DIDS) [now DIDD] for avoiding conflicts of interest to assure the public trust and best interest of DIDS

are not compromised.” According to the Definitions section of the policy, conflicts of interest arise whenever “an employee is in a position of trust and gives, or is in a position to give, preferential treatment to someone and/or attempts to influence public decisions in exchange for personal gain and in a manner which actually or potentially compromises the public interest.” The Conflict of Interest Policy also specifies in section E.7 that

DIDS employees must sign the Acknowledgement and Disclosure Statement Form [Conflict of Interest Form] to confirm they have read and agree to comply with the DIDS Conflict of Interest Policy. The signed form will be maintained in the DIDS Human Resources Office.

The department’s policy became effective October 13, 2010, and according to the former Human Resources Director, when DIDD implemented the policy, the Human Resources Division required existing employees, along with newly hired employees, to complete a Conflict of Interest Form, which should have resulted in all DIDD employees signing the Conflict of Interest Form for their personnel file.

Testwork Results

Conflict of Interest Forms Not on File for Some Employees

To determine whether DIDD complied with conflict of interest provisions contained in state law and the department’s own policies, we performed testwork on a nonstatistical, random sample of 60 employees from the department’s entire population of 2,083 employees as of February 22, 2013. We discovered that the Human Resources Division did not obtain a Conflict of Interest Form for 9 of the 60 employees (15%) until after we requested the forms on March 18, 2013. We noted that the nine employees began working for the department as early as 1979 and as recently as 2011. The current Human Resources Director, who assumed her position effective February 25, 2013, categorized the absence of forms for some employees as an oversight. She added that the Human Resources Division was in the process of conducting reviews to ensure Conflict of Interest Forms were signed by all employees.

Conflict of Interest Policy and Form Not Updated

In addition, we observed that the department’s Office of Policy and Innovation has not taken the time to update the Conflict of Interest Policy and the accompanying form to show that DIDD became an independent department on January 15, 2011. As demonstrated in the policy citations above, the Conflict of Interest Policy and form repeatedly refer to the department as a division under the Department of Finance and Administration.

Conclusion

If the department does not have Conflict of Interest Forms on file for all employees, then management may not be aware of potential conflicts of interest. Furthermore, using an outdated Conflict of Interest Policy and form leads to lack of consistency among the department’s official

forms, which may not provide management the accountability and transparency needed to ensure public trust.

The Human Resources Director should ensure that all employees, retroactively or on their hire date, sign the Conflict of Interest Form. Furthermore, the Director of Policy should update the Conflict of Interest Form to incorporate the department's transition from a division under the Department of Finance and Administration to a stand-alone entity.

Observation 3 – The Department of Intellectual and Developmental Disabilities did not comply with certain state payment card regulations, and thus unnecessarily assigned payment cards to employees, accepted documentation without the proper approvals for an employee, and failed to collect required forms from other employees

The Department of Intellectual and Developmental Disabilities (DIDD) uses state payment cards as an alternative payment method for small purchases. Based on our review, the department did not always comply with the state's established payment card procedures. Specifically, we found that

- some DIDD employees assigned payment cards did not actually need them;
- not all employees' payment card documentation had the proper approvals; and
- required payment card forms were missing for some employees.

Background

The state established the payment card program in March 2002 and assigned statewide administrative responsibility to the Department of Finance and Administration. In December 2011, statewide administrative responsibility transferred to the Department of General Services' newly created Central Procurement Office. The state administrative agencies promulgated guidance for the payment card program in the *State of Tennessee Payment Card Cardholder/Approval Manual*, which DIDD personnel and staff from other state agencies are required to follow.

Based on our analysis, as of March 27, 2013, DIDD had 66 employees who were state payment card cardholders. The department's payment card purchases from January 15, 2011, to March 27, 2013, totaled \$759,254.17.

Testwork Results

We conducted testwork to determine whether DIDD adhered to the provisions of the cardholder manual. Our testwork results are as follows:

Two Departmental Employees Did Not Need Payment Cards

- Section 1.0 of the cardholder manual states, “The State Payment Card is not a right of employment. Only employees who need to make purchases on the state’s behalf will be issued a card.” Based on the analytical procedures we performed on the payment card transactions for 28 DIDD cardholders, two cardholders tested (7%) did not make any purchases during the period January 15, 2011, through March 27, 2013, which consisted of 802 days. Therefore, those two departmental employees did not truly need a payment card to execute their job responsibilities. We included further information about the two cardholders in the chart below.

	Title	Location	Monthly Limit	Daily Limit	Date of Payment Card Application	Purchase Total for 1/15/2011 - 3/27/2013
1	Facilities Supervisor	West Tennessee Community Homes	\$ 2,500.00	\$ 500.00	3/5/2008	\$ -
2	Equipment Mechanic 2	West Tennessee Community Homes	\$ 2,500.00	\$ 500.00	3/6/2008	\$ -

Source: Review of payment card files for the applicable employees.

The two cardholders’ supervisor, the West Tennessee Community Homes Maintenance Director, agreed that those employees did not need a payment card. The central office Fiscal Director 1, who serves as DIDD’s Payment Card Coordinator, explained that the regional or facility supervisor may have requested that payment cards be issued to the two employees as a back-up for another employee.

Payment Card Documentation Not Properly Approved

- According to section 2.1 of the cardholder manual, “To start the application process, a *State Payment Card New Account Application and Maintenance Form* . . . must be completed. **It must be signed by the employee, the employee’s supervisor and the Cardholder’s division authority (as determined by each agency).**” Our examination of the department’s payment card documentation revealed that the *State Payment Card New Account Application and Maintenance Form* for one of 26 cardholders tested (4%) was missing the signatures of the cardholder’s division director and agency coordinator. Based on our inspection, the cardholder signed the form on December 14, 2012, but had not yet made any payment card purchases. The Fiscal Director 1 noted that the employee still needed her payment card; however, she was on extended leave and had not had time to get her form signed by the required personnel or even pick up her card, which remained locked in the Fiscal Office safe.

Two Cardholders Failed to Submit Required Documentation

- The cardholder manual, section 2.2, stipulates,

Prior to a Cardholder receiving a State Payment Card,

The cardholder must:

- Take and pass the web-based Cardholder/Approver Training class or take a in-person class conducted by your Agency Coordinator
- Read this Cardholder/Approver Manual in its entirety
- Agree to and sign the *State Payment Card Cardholder Agreement*. . . .

During our inspection, we found that for 2 of 28 cardholders tested (7%), mandatory documentation was absent from their payment card files, as described below.

	Title	Location	Monthly Limit	Daily Limit	Purchase Total January 15, 2011-March 27, 2013	Last Transaction Date	Forms Missing
1	Procurement Officer 1	Central office	\$ 25,000.00	\$ 5,000.00	\$ 10,227.68	2/18/2013	1. <i>State Payment Card New Account Application and Maintenance Form</i> , 2. documentation of successful completion of training, and 3. <i>State Payment Card Cardholder Agreement</i> .
2	Administrative Services Assistant 4	Central office	\$ 25,000.00	\$ 5,000.00	\$ 485.69	8/29/2012	1. <i>State Payment Card New Account Application and Maintenance Form</i> , 2. documentation of successful completion of training, and 3. <i>State Payment Card Cardholder Agreement</i> .

Source: Review of payment card files for the applicable employees.

The Fiscal Director 1 believed that the documentation for these employees was lost during the department’s move from the Andrew Jackson Building to the Frost Building in December 2012.

Effects of Problems Noted

When established procedures are not followed, DIDD management and staff cannot ensure that purchases are necessary, authorized, and in compliance with purchasing policies and procedures. Assigning payment cards to employees who do not need them increases the risk of inappropriate purchases made by either that employee or another individual who gains access to the card. Additionally, employees who fail to complete the required forms and supervisors who do not sign the appropriate forms may lack awareness of their payment card responsibilities.

The Chief Financial Officer and Payment Card Coordinator should revoke the payment cards from the two employees who, based on our review, do not need them to perform their job duties. The Chief Financial Officer and Payment Card Coordinator should also implement a regular review process to ensure that only those employees who make purchases on the department's behalf are issued and allowed to retain custody of a payment card. Furthermore, the Chief Financial Officer and Payment Card Coordinator should obtain the missing signatures and documents we identified. They should inspect all cardholder files to ensure that the necessary documents have been obtained, approved, and then maintained.

COMMUNITY SERVICES TRACKING SYSTEM REPLACEMENT

The Department of Intellectual and Developmental Disabilities (DIDD) uses the Community Services Tracking system (CS Tracking) to keep track of persons with intellectual disabilities who receive services from the department's providers. The system maintains provider, rate, cost plan, and service information. CS Tracking works in conjunction with other applications to produce an electronic bill that the department submits to the Bureau of TennCare so that providers can receive reimbursement for Medicaid-funded services. Additionally, DIDD uses the information contained in CS Tracking and other applications to reimburse providers directly for state-funded services.

In our February 2007 financial and compliance audit of the Department of Finance and Administration (F&A), one of DIDD's predecessor agencies; our May 2008 financial and compliance audit of F&A; and our April 2013 risk-based performance audit of DIDD, we cited the department for failure to develop and implement adequate security and internal controls over the CS Tracking system. In response to the prior findings, management concurred and stated that CS Tracking as well as certain other applications would be replaced with a single integrated application system (SIAS).

In its recent efforts to accomplish this goal, the department issued a Request for Proposal (RFP) for a new system in October 2009 and subsequently entered into a contract with the selected vendor in January 2010. After making payments to the vendor totaling nearly \$1 million, however, DIDD canceled the contract in October 2010 because of the vendor's inability to meet critical project deadlines. In April 2012, the department issued a Request for Information (RFI) to gather feedback from potential vendors that could offer the proposed SIAS. In August 2012, DIDD issued another RFP, this one incorporating the vendor comments the department obtained in response to the RFI. Following the selection process, the department executed a contract with a new implementation vendor. This contract became effective in

November 2012. As of June 2013, DIDD continues to work with the new implementation vendor to develop an SIAS, which the department has named “Project Titan.” The department projects the full implementation of Project Titan by June 2014.

The objectives of our review of Community Services Tracking system replacement were to determine whether

- management’s time frame for replacing the CS Tracking system was reasonable;
- DIDD used an appropriate bid methodology to select the implementation vendor for its new computer system;
- DIDD recouped or planned to recoup funds paid to the initial implementation vendor whose contract the department canceled; and
- payment deliverables specified in the implementation vendors’ contracts were based on tangible systems development.

To assess the reasonableness of the department’s CS Tracking replacement time frame, we interviewed appropriate DIDD personnel and attended the middle region Project Titan kick-off meeting held on March 5, 2013. Using the information and documentation obtained from departmental personnel, we drafted a timeline of the significant events surrounding the replacement of CS Tracking and calculated the length of time DIDD had been attempting to implement an alternative computer system.

We obtained and scrutinized bid documents submitted for both the initial and subsequent implementation vendor selection and reviewed the bid committee’s notes to evaluate whether DIDD used an appropriate bid methodology. We compared and contrasted the bid methodology used to choose the first implementation vendor with the bid methodology used to select the second implementation vendor. We also analyzed the due diligence procedures DIDD performed prior to contract execution with the implementation vendors, including reviewing available supporting documentation showing the extent of the department’s contact with the vendors’ references.

To determine whether DIDD recouped or planned to recoup funds, we examined the applicable accounts payable vouchers and calculated the aggregate payment amount to that vendor. We inquired with DIDD’s Information Technology (IT) personnel and legal counsel to gain an understanding of the department’s plans to recoup funds paid to the first implementation vendor and the background behind those decisions. We interviewed IT management and legal staff to ascertain whether the department terminated the first vendor’s contract for convenience or for cause, who made the final decision to pursue that termination route, and whether that decision was in the state’s best interest.

We reviewed the department’s contracts with both the initial and subsequent implementation vendor to achieve our payment deliverables objective. We inspected examples of evidence DIDD accepted as fulfillment of payment deliverables for the initial implementation vendor.

Based on the procedures performed, we determined that

- management's time frame for replacing the CS Tracking system was not reasonable (see finding 7);
- the bid methodologies DIDD used for the first implementation vendor were inappropriate (see finding 7);
- although DIDD had not recouped and did not plan to recoup funds paid to the canceled vendor, this decision was reasonable given the details of the situation; and
- payment deliverables specified in the second implementation vendor's contract were based on tangible systems development, while the deliverables for the initial implementation vendor's contract merely involved the submission of generic system documentation (see finding 7).

Finding 7 – For the past 19 years, the Department of Intellectual and Developmental Disabilities has attempted to replace its outdated Community Services Tracking system, an unreasonable replacement time frame that has allowed a system with inadequate security and internal controls to remain in place and resulted in the expenditure of at least \$4,274,113.80 without producing the desired results

Since 1994, the department, previously a division under the Department of Mental Health and then the Department of Finance and Administration, has engaged in a series of failed attempts to replace its aging Community Services Tracking system (CS Tracking). The Department of Intellectual and Developmental Disabilities (DIDD) uses the system for housing service recipient demographic data, service planning and case management information, service authorizations, and billing rates. In audits dating back to 2007, we have taken findings on the department due to CS Tracking's security and internal control deficiencies. Given the significance of the CS Tracking system and the vulnerabilities we identified, we consider DIDD's 19-year replacement time frame to be incongruous with the best interests of the department's employees, service recipients, and provider agencies.

History of CS Tracking Replacement Efforts

First Major Implementation Effort

According to the Chief Information Officer, the department had originally designed CS Tracking as a short-term solution to manage one month's payment processing and had intended to replace it with a more robust system the following month. Therefore, DIDD has been attempting to supplant CS Tracking since its original implementation date in 1994. We found during our inspection of the department's legacy system history that in the ten years immediately following CS Tracking implementation, DIDD staff focused on enhancing the existing system to meet their needs rather than developing an entirely new system. Based on discussion with the Chief Information Officer, DIDD's first major replacement effort began in 2004 with the Integrated Services Information System (ISIS) project, an in-house solution. Our inquiries with the Chief Information Officer and the Director of Business Solutions revealed that the ISIS

project encountered numerous obstacles, which eventually led to its cancellation in 2008 due to missed deadlines. Based on our analysis of the DIDD's internal budget tracking documentation, the department estimates that it spent \$3,309,900.00 on the failed ISIS project prior to cancellation.

The Chief Information Officer speculated that perhaps the largest obstacle the department faced with the ISIS implementation was a lack of dedicated Information Technology (IT) staff needed to address a project of that size. At the time, DIDD had neither a centralized IT staff nor the staff capacity to devote solely to the project effort. The Director of Business Solutions added that management's shifting priorities contributed to the project failure, although he qualified that some of the priority realignments resulted from the enactment of new legislation and/or additional requirements arising from federal lawsuits. The Chief Information Officer commented that the department's organizational structure also underwent major changes during this time period, culminating in the transfer of information systems management and other administrative support functions for the Division of Intellectual Disabilities Services (then the Division of Mental Retardation Services) from the Department of Mental Health to the Department of Finance and Administration. The Director of Business Solutions further noted that the department replaced its IT Director in 2008, a change in management direction that might have factored into the project's failure toward the end.

Second Major Implementation Effort

The Chief Information Officer reported that upon terminating the ISIS project, DIDD began looking to purchase an off-the-shelf system in 2009 instead of attempting to deliver an alternative in-house solution. After going through the competitive negotiation process, the department contracted with the selected vendor in January 2010. We determined through inquiry with the Chief Information Officer and inspection of the communication between DIDD and the vendor that the department canceled the vendor's contract in October 2011. The Chief Information Officer said that the vendor was unable to meet several project deadlines; most notably, due to delays in the implementation schedule, the vendor's solution would not have been in place in time for DIDD to meet new federal mandates. In addition, despite requirements contained in the contract, the vendor failed to present the department with a Business Rules Engine, which is a software system that executes one or more business rules in a runtime production environment. We determined through our review of journal vouchers that prior to contract termination, DIDD paid the vendor \$964,213.80.

The Chief Information Officer attributed this project failure primarily to poor contract management and vendor involvement. For example, the department awarded the contract solely on a lowest-bid basis; DIDD personnel scored the other respondent higher in all other categories, which include qualifications and experience, technical approach, and oral presentation/software demonstration. Under Section 12-3-218, *Tennessee Code Annotated*, DIDD could have sought approval from the Department of General Services to use the best-value methodology rather than the lowest-bid methodology and therefore pursue the more qualified vendor. The Chief Information Officer said that another hindrance included the improper development of contract deliverables, because vendor payments were tied to the submission of project documentation rather than completion of actual work product or system development. Furthermore, similar to

ISIS, this project experienced a change in IT management. When we performed our review of project documentation, we also discovered that DIDD did not conduct adequate due diligence procedures prior to contract execution. According to the Chief Information Officer, the former IT Director told him that she had conducted vendor reference checks via telephone with each of the individuals listed as points of contact by the vendor, but the Chief Information Officer added that as issues arose during the project, DIDD learned that one of the vendor's references had experienced similar problems during its implementation of the vendor's product. Since the department did not maintain documentary evidence of its consultations with the vendor's references, we could not determine whether the former IT Director failed to contact this reference or whether the reference failed to disclose the difficulties it encountered.

Third Major Implementation Effort

Based on our review of the department's system documentation, we found that in 2012, DIDD embarked on its third major implementation effort, Project Titan, which was ongoing as of June 2013. The Chief Information Officer explained that with Project Titan, DIDD has attempted to address each of the issues that caused previous projects to collapse. The department has leveraged strategic partnerships with the Department of Finance and Administration's Business Solutions Delivery Group, the Department of General Services' Central Procurement Office, and information systems industry leaders. DIDD has established a dedicated project team as well, which includes key subject matter experts and project stakeholders. Moreover, our inspection of the Project Titan implementation vendor's contract showed that payment deliverables centered on tangible system development, not submission of generic system documentation. As of June 2013, DIDD anticipates attaining the first Project Titan milestone by mid-summer 2013 and reaching all project milestones by June 2014. The department estimates that it will cost \$11,760,550 to complete Project Titan.

Timeline of Significant Events in System Replacement

We have presented a history of major steps in DIDD's quest to implement a new computer system in the chart below.

Community Services Tracking System (CS Tracking) Replacement Timeline

Event	Date
CS Tracking system implementation	1994
Management determination that CS Tracking should be replaced	1994
Executive Order 30 transferred the information systems management function for Mental Retardation Services (later Intellectual Disabilities Services) from Department of Mental Health to Department of Finance and Administration	2002
First major CS Tracking replacement effort (Integrative Services Information System, ISIS) began	2004
ISIS project canceled	2008
Initial issuance of Request for Proposal (RFP) for second major replacement effort	Oct. 2009
Effective date of contract with selected first implementation vendor	Jan. 2010
Intellectual Disabilities Services became a stand-alone department	Jan. 2011
First implementation vendor's contract canceled	Oct. 2011
Issuance of Request for Information for third major replacement effort (Project Titan)	April 2012
Initial issuance of Project Titan RFP	Aug. 2012
Effective date of contract with second implementation vendor	Nov. 2012
Target date for first major Project Titan milestone	Mid-Summer 2013
Target date for full Project Titan system implementation	June 2014

Source: Discussions with departmental staff and review of applicable documentation.

Repercussions of Elongated Replacement Time Frame

By the department's own admission, CS Tracking is not sufficient to support its current processes. In response to our 2007 and 2008 findings, DIDD management referenced CS Tracking's "general inadequacy." In the department's 2012 risk assessment, management listed the impending replacement of CS Tracking with a new information system as a control activity to mitigate the risks noted in our prior findings. In addition, Volume 1 of the 2011 *Agency Strategic Plan* states as an obstacle to the department achieving its objectives, "DIDD does not have an adequate information system in place." The department added in its 2012 *Top to Bottom Review* that by replacing CS Tracking and certain other systems, "DIDD will be able to improve efficiency and lower operational costs, while providing greater protection and improved service delivery to individuals and families." When failing to complete prior project replacement efforts, DIDD expended monumental personnel resources, as well as financial resources totaling

\$4,274,113.80 from just the first and second major implementation efforts, with relatively little return on investment. Therefore, it is pivotal that the department succeed in its latest system implementation effort in order to avoid further waste of state resources.

Recommendation

The Commissioner, the Chief Information Officer, and other top departmental officials should remain intrinsically involved in the replacement of the Community Services Tracking system. The Commissioner should work with the Chief Information Officer to closely monitor the progress of Project Titan in order to ensure that the system implementation effort remains on schedule. Management should also act quickly to mitigate any risks that threaten the execution of the project's implementation time frame. Additionally, the Commissioner should take the necessary steps to ensure that the department manages the implementation vendor's efforts and contract appropriately, devotes sufficient staff resources to the project, and continues to collaborate with the Department of Finance and Administration's Business Solutions Delivery Group and other applicable state entities.

Management's Comment

We concur.

The challenge of developing and implementing IT systems (in multiple state agencies) has been documented, and actions taken toward improvement.

As noted in the Comptroller's Special Report, issued March 5, 2012, "Oversight for System Development Projects – A review of TFACTS Implementation", the overarching recommendation was that "...the state develop a formalized process which involves a central, knowledgeable, and meaningful point of approval and on-going review of the acquisition and deployment of systems." In response to this recommendation, the "Business Solutions Delivery" unit was created.

The development and deployment of Project Titan is guided and monitored by three different bodies; the aforementioned Business Solutions Delivery unit, a Management Advisory Committee, and a Project Steering Committee.

The Management Advisory Committee is comprised of DIDD subject matter experts and/or managers from across the state and within each impacted business unit. This group meets on a monthly and/or as needed basis to review the project status and schedule. In addition they provide recommendations to the Project Steering Committee related to risk mitigation, approval of project deliverables, and project resource allocation.

The Project Steering Committee is comprised of DIDD upper level managers, the Project Executive Sponsor, and non-DIDD stakeholders including representatives from TennCare, Finance and Administration, and Office for Information Resources. The primary function of the

Project Steering Committee (PSC) is to provide oversight and guidance to the project team to help ensure the successful outcome of the project and that project objectives are being adequately addressed. In practice these responsibilities are carried out by performing the following functions:

- Monitoring and reviewing of the project at regular Project Steering Committee (PSC) meetings
- Providing assistance to the project when required such as removing barriers and addressing project staffing
- Providing executive level decisions and support
- Reviewing project scope as emergent issues force changes to be considered, validating that scope aligns with the Titan Charter as well as the business objectives of the project sponsor and key stakeholder groups
- Resolving project conflicts and disputes
- Receiving and evaluating reports from quality assurance efforts
- Approval of completion of the project contract phases and other milestones defined by the project team
- Approval of project scope, cost, schedule or quality revisions
- Final approval of all project deliverables.

The Business Solutions Delivery unit is actively engaged with both Committees, and provides input and guidance to ensure that DIDD follows the appropriate best practices in its Project Governance methodology and that the project remains in scope, on time, and within budget.

As of September 2013, both committees have reviewed and accepted the functional design documents, identified as the first major milestone for Project Titan. The date for all milestones to be reached has been slightly pushed back (from June 2014 to August 2014). The DIDD Senior Project Manager continues to provide weekly updates to the Project Executive Sponsor. In addition, the Department's annual Risk Assessment will continue to evaluate the concerns and risks associated with this deficiency.

CLOSURE OF CLOVER BOTTOM DEVELOPMENTAL CENTER

Clover Bottom Developmental Center (CBDC) opened in 1923 and admitted 248 individuals during the first nine months of operation. In 1975, a plan was developed for CBDC to provide individualized habilitative care and training programs. In December 1995, *People First of Tennessee v. Clover Bottom Developmental Center* challenged the conditions at CBDC in Nashville. As a response to the litigation, in December 2009, the state announced its intent to close CBDC. Residents were to be provided appropriate services and supports in alternative

settings such as small, privately operated intermediate care facilities (ICFs), community-based waiver services, state-operated ICFs, or other appropriate placements.

As of December 2012, there were 42 residents at CBDC. On November 19, 2012, DIDD broke ground in Davidson County for the construction of the first 4 of the 11 four-person Middle Tennessee Community Homes / ICFs for more medically fragile residents. Construction of the remaining five of the four-person homes and the two homes to serve eight of the more behaviorally challenged residents had not been started as of May 3, 2013.



The objectives of our review of the Department of Intellectual and Developmental Disabilities' (DIDD) closure of CBDC were to determine

- the causes of the delay in the closure of the Clover Bottom Developmental Center and the opening of the community homes in the Middle Tennessee Region;
- costs associated with the department's operations of the Clover Bottom Developmental Center and the costs to build the community homes in the Middle Tennessee Region; and
- if the department will meet the January 1, 2014, deadline of opening 4 of the 11 community homes and the June 30, 2014, deadline of opening 7 of the 11 community homes for the Middle Tennessee Region.

To achieve our objectives, we conducted interviews with applicable Department of Intellectual and Developmental Disabilities staff. To determine factors contributing to delays in opening the community homes, we obtained the project timeline, which started with the department's purchase of the land through construction and completion of a community home. We obtained Clover Bottom Developmental Center's Edison expenditures for fiscal years 2011 and 2012 to determine operation costs. We obtained the Middle Tennessee Region's community homes' completed value from the department's properties listing to determine the costs to build the community homes. We read the Construction Meeting minutes for the time period October

2010 through May 2013 and obtained the Department of Intellectual and Developmental Disabilities' Middle Tennessee Community Homes property locations listing to determine if the department will meet its deadline.

Based on the procedures we performed, we determined

- that the primary reason for the delay is the amount of time it took the department to purchase land, which on average was 225 days;
- that the department spent \$34,685,631.89 in fiscal year 2011 and \$23,275,332.62 in fiscal year 2012 to operate the Clover Bottom Developmental Center, and the completed value for each community home that is built in the Middle Tennessee Region is approximately \$850,000; and
- that the department is not scheduled to meet its deadline (see observation 4).

Observation 4 – The Department of Intellectual and Developmental Disabilities is unable to meet its nearing deadline to close the Clover Bottom Developmental Center and open the Middle Tennessee Community Homes

The Department of Intellectual and Developmental Disabilities is unable to meet its June 30, 2014, deadline to close the Clover Bottom Developmental Center (CBDC) and open the Middle Tennessee Community Homes. Of the 11 community homes the department plans to build, 4 are scheduled to be operational by January 1, 2014, but only 2 will meet this opening deadline. The department has not started construction on the remaining seven community homes, which have an operational deadline of June 30, 2014. As a result of these delays, CBDC residents could experience further delays in transitioning from the institutional setting to community living.

At the 2009 Budget Hearing, the department first announced its plans to close the Clover Bottom Developmental Center and relocate the most medically fragile and physically challenged residents to community-based intermediate care facilities by June 2010. Problems related to land acquisition, facility design, and construction delays caused the department to extend the project's completion date several times. The State Building Commission (SBC) oversight required a land acquisition closing process, which resulted in the department losing desirable community home tracts to other buyers. Until SBC policies were streamlined at the former Commissioner's urging in January 2013, the department took an average of 226 days to procure land for its community homes. In addition, when the former Commissioner took his position in the spring of 2011, he reviewed the community homes' architectural designs and decided that the homes should be smaller and reflect a community living model instead of a hospital layout. Effective June 1, 2013, Governor Bill Haslam appointed the former Department of Intellectual and Developmental Disabilities Commissioner as the new Department of Children's Services Commissioner. The department was still looking for property to purchase while the new architectural designs were in the approval process. In 2012, the new architectural designs were approved and construction was started on 4 of the 11 community homes.

As of May 3, 2013, the Facility Administrator stated that the two community homes on Tulip Grove Road were on schedule to be operational by the January 1, 2014, deadline. As of May 3, 2013, the other two community homes on Earhart Road were three weeks behind schedule due to weather and soil conditions. The Facility Administrator said that the construction contract allows an extension of completing the community homes to February 2014, if weather or disputable time cause delays. The other seven community homes are awaiting design development approval, which is a normal part of the process. This means that once the Department of General Services and the designer approve the developmental design, the projects can be bid out for construction. As of May 3, 2013, the Facility Administrator did not know when construction would begin for the other seven community homes. The construction contract states that the community home will be completed in 360 days once the contract is awarded.

It is in the department's and certainly the development center's residents' best interest for the department to meet the deadline to close the CBDC and open the Middle Tennessee Community Homes to fulfill its commitment to individuals with intellectual disabilities by providing them the opportunity to live in quality homes and to be a part of the community in which they live. The result of continued delays in the closure of the CBDC and the opening of the Middle Tennessee Community Homes increases anxiety for CBDC individuals and/or their families.

COLLABORATION AMONG STATE AGENCIES

The Department of Intellectual and Developmental Disabilities operates and communicates with other state agencies that provide services to the intellectually and developmentally disabled (e.g., the Tennessee Higher Education Commission, the Department of Education, the Department of Labor and Workforce Development, the Department of Human Services, and the Department of Mental Health and Substance Abuse Services). These collaborative areas include the following:

- individuals with an intellectual or developmental disability who transition from high school to postsecondary education,
- individuals with an intellectual or developmental disability who transition from high school to the workforce,
- assessing Intelligence Quotients (IQs), and
- service gaps for individuals with a dual diagnosis (intellectual or developmental disability plus a psychiatric diagnosis or challenging behavior).

Postsecondary Education

The Tennessee Alliance for Postsecondary Opportunities for Students with Intellectual Disabilities (Alliance) was formed in May 2007 to increase awareness about the need for postsecondary opportunities in Tennessee, to gather information about postsecondary programs in other states, and to develop a pilot program on a Tennessee college campus. The first program in Tennessee, Next Steps at Vanderbilt University, began in January 2010; the second program,

FUTURE at the University of Tennessee-Knoxville, began in August 2011; the third program, Tiger Life at the University of Memphis, enrolled students in January 2013; and the fourth program, IDEAL at Lipscomb University, will start enrolling students in January 2014. The Alliance, which continues to encourage more programs on campuses across Tennessee, is composed of representatives from state and local agencies, self-advocates, and family members, representatives from colleges and universities in Tennessee, and business owners (e.g. the Tennessee Council on Developmental Disabilities, the Tennessee Higher Education Commission, the Department of Intellectual and Developmental Disabilities, the Department of Education, the Department of Human Services, and The Arc of Williamson County).

Workforce

Tennesseans with disabilities, including those with intellectual and developmental disabilities, mental illnesses, substance abuse disorders, and other disabilities, disproportionately experience high levels of unemployment, underemployment, and dependence upon publicly funded programs. State agencies and key stakeholders coordinated to start the Employment First Initiative to increase opportunities for competitive and integrated employment, where work is performed in a typical work setting for a competitive wage. The state agencies and key stakeholders include the Department of Intellectual and Developmental Disabilities, the Department of Labor and Workforce Development, the Department of Mental Health and Substance Abuse Services, the Department of Education, the Department of Human Services, the Bureau of TennCare, the Tennessee Council on Developmental Disabilities, the Vanderbilt Kennedy Center, the Disability Law and Advocacy Center of Tennessee, and the University of Tennessee Center for Literacy, Education, and Employment.

Intelligence Quotients

Intellectual disability is a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18. Intellectual functioning, also called intelligence, refers to general mental capacity, such as learning, reasoning, problem solving, and so on. One criterion to measure intellectual functioning is an IQ test. Generally, an IQ test score of around 70 or as high as 75 indicates a limitation in intellectual functioning. DIDD frequently authorizes IQ testing for pre-admission evaluations when an individual is going through the intake process to receive services. The IQ testing for the pre-admission evaluation is done mostly by contractors.

Dual Diagnosis

Approximately 40 to 50% of people with intellectual and developmental disabilities experience psychiatric or behavioral problems. DIDD and the Department of Mental Health and Substance Abuse Services are working together to develop a directory of providers to identify service gaps for persons with a dual diagnosis (having an intellectual or developmental disability plus a psychiatric diagnosis or challenging behavior). The collaboration efforts discussed above between the Department of Intellectual and Developmental Disabilities and other state agencies

increase the opportunities to provide services to the intellectually and developmentally disabled individuals in Tennessee.

The objectives of our review of collaboration among state agencies were to determine whether

- the Department of Intellectual and Developmental Disabilities played a role in the transitioning of individuals in high school with intellectual disabilities to postsecondary education or the workforce;
- the Department of Intellectual and Developmental Disabilities played a role in determining and assessing IQs (Intelligence Quotients) and the other components of the approach to determine an intellectual disability; and
- the Department of Intellectual and Developmental Disabilities had collaborated with the Department of Mental Health and Substance Abuse Services regarding service gaps for individuals with a dual diagnosis.

To assess the department's role in the transitioning of individuals in high school to postsecondary education, we interviewed key personnel within the department, the Executive Director of the Tennessee Council on Developmental Disabilities, and the Director of Next Steps at Vanderbilt University; reviewed the United States Government Accountability Office July 2012 report *Students with Disabilities: Better Federal Coordination Could Lessen Challenges in the Transition from High School*; reviewed a listing of current postsecondary programs in Tennessee, reviewed the Tennessee General Assembly Fiscal Review Committee SB0036/HB0021 bill dated February 15, 2013; reviewed Vanderbilt University's 2009 presentation, *Post Secondary Education for Students with Intellectual Disabilities*; reviewed Vanderbilt University's June 2011 *Post-Secondary Tips Resources*; reviewed an article in the Tennessean, "Developmental Disabilities Won't Shut Door to College," dated December 29, 2008; reviewed an article from the United States Department of Education, "Federal Program That Helps Intellectual Disabilities Students Transition to Post Secondary Education," dated October 5, 2010; and reviewed an article from the Public News Service, "Stepping Up so People with Disabilities Can Attend Tennessee College," dated February 19, 2013.

We interviewed key personnel within the department, reviewed *The Tennessee Ticket to Work Initiative* presentation dated December 14, 2011; reviewed the *Meeting Employer Workforce Needs with Qualified Job Seekers with Disabilities* presentation dated December 14, 2011; reviewed the highlights from the December 2011 meeting of the Tennessee Employment Consortium; reviewed the United States Department of Justice's *Motion to Intervene v. State of Oregon, Complainant against State of Oregon*, and the *State of Oregon Findings Letter* dated June 29, 2012; reviewed the following articles on the American Disabilities Act website: *About Olmstead* and *Olmstead: Community Integration for Everyone*; reviewed the Office of Disability Employment Policy's *Employment First State Leadership Mentoring Program* and application; reviewed the Economic Systems Base Contract dated April 24, 2012; reviewed the *Advancing Employment* presentation dated July 20, 2012; reviewed the department's *Employment and Day Services Protocol* dated February 14, 2013; and reviewed the *State of Tennessee Executive Order*

No. 28 dated June 19, 2013, to assess the department's role in the transitioning of individuals in high school to the workforce.

To determine the role the department played in assessing IQs, we interviewed key personnel within the department and read the definition of an intellectual disability from the American Association on Intellectual and Developmental Disabilities.

We interviewed key personnel within the department, reviewed the *TNFORWARD Top to Bottom Review*; reviewed the Intensive Behavior Protection from Harm Workgroup meeting minutes for April 26, 2012; reviewed the Tennessee Association for Behavior Analysis presentation given on October 18, 2012; reviewed the Crisis Workgroup meeting minutes for November 29, 2012; reviewed the Behavior Services Advisory Council meeting minutes for the period May 31, 2012, through March 21, 2013; reviewed the Focus Group Study presentation given on February 26, 2013; and reviewed service gaps survey results for August 2012 and April 2013, to ensure the department had collaborated with the Department of Mental Health and Substance Abuse Services regarding service gaps for individuals with a dual diagnosis.

Based on the procedures performed, we determined that

- the Department of Intellectual and Developmental Disabilities played an advocate role in the transitioning of individuals in high school with intellectual and developmental disabilities to postsecondary education, supporting the efforts of the Tennessee Council on Developmental Disabilities;
- the Department of Intellectual and Developmental Disabilities played an active role in the transitioning of individuals with intellectual and developmental disabilities to the workforce and is moving towards providing integrated and competitive employment opportunities (see observation 5);
- the Department of Intellectual and Developmental Disabilities played a minor role in the determination and assessment of an individual's intelligence quotient (IQ) to determine an intellectual disability; and
- the Department of Intellectual and Developmental Disabilities is collaborating with the Department of Mental Health and Substance Abuse Services; however, there are still gaps in services for people with a dual diagnosis (see observation 6).

Observation 5 –The Department of Intellectual and Developmental Disabilities continues to focus on integrated and competitive employment opportunities for individuals with intellectual disabilities

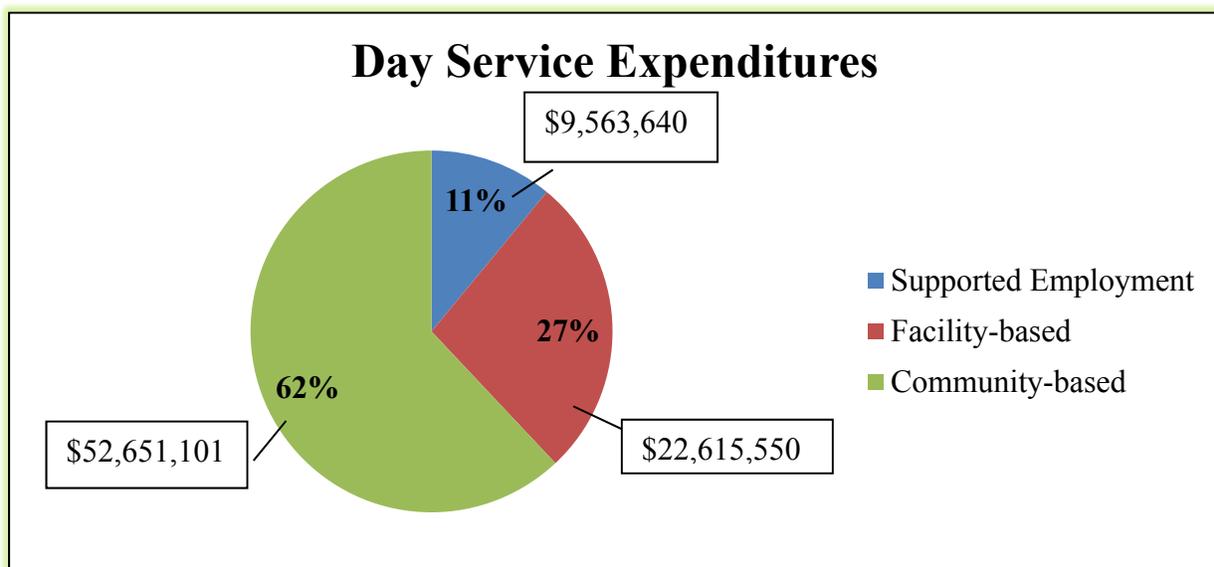
The Department of Intellectual and Developmental Disabilities (DIDD) offers employment opportunities to individuals receiving service through the three Medicaid home and community-based services (HCBS) waiver programs. The employment opportunities for individuals in the waiver programs are community-based day services, supported employment day services, and facility-based day services. Community-based day services are designed to enable individuals to become more independent, integrated, and productive in the community as

well as assist the individual to build relationships and natural supports. A natural support is a system or network that helps an individual achieve the lifestyle an individual prefers. Supported employment day services require licensed providers to employ a job coach to work on-site and supervise the individual. Facility-based day services are offered through a licensed provider, who provides services in community locations such as community recreation centers, job sites, or sheltered workshops.

In 2009, the United States Department of Justice, Civil Rights Division, launched an effort to enforce the Supreme Court’s decision in *Olmstead v. L.C.*, a ruling that requires states to eliminate unnecessary segregation of individuals with disabilities and to ensure that individuals with disabilities receive services in the most integrated setting appropriate to their needs. On June 29, 2012, the United States Department of Justice issued a findings letter to Oregon’s Attorney General that stated:

The State [Oregon] plans, structures, and administers its system of providing employment and vocational services in a manner that delivers such services primarily in segregated sheltered workshops, rather than in integrated community employment. Sheltered workshops segregate individuals from the community and provide little or no opportunity to interact with persons without disabilities, other than paid staff.

Therefore, the facility-based day services (e.g., sheltered workshops) do not allow for integrated and competitive employment opportunities for individuals with an intellectual disability. To identify the breakdown of the supported employment day services, the facility-based day services, and the community-based day services, the department analyzed its expenditures for the period July 1, 2010, through May 31, 2011, which totaled \$84,830,291. See the pie chart below.



Source: *Advancing Employment* presentation provided by the Director of Provider Supports and Services.

The department took the initiative to address the need to provide integrated and competitive employment opportunities by participating as a subcontractor in a grant between the United States Department of Labor's Office of Disability Employment Policy and Economic Systems Inc. This grant allows the department access to consultants who help the transition from sheltered workshops to integrated and competitive employment. These consultants provide

- fiscal funding assistance to providers to show them how to close down the sheltered workshops but still operate a business;
- customized employment training for providers and DIDD staff; and
- policy revision training, including revamping the Medicaid HCBS waivers to address the transition.

In addition, the *State of Tennessee Executive Order by the Governor No. 28*, which was signed on June 19, 2013, established the Tennessee Employment First Initiative and the Employment First Taskforce to expand and focus on integrated and competitive employment opportunities for Tennesseans with disabilities. According to the *Executive Order No. 28*, "The Taskforce [Employment First Taskforce] shall consist of representatives from state agencies administering disability services, family members of persons receiving employment services, vocational rehabilitation, workforce services and education, as well as consumer advocates and third party disability service providers." The Employment First Taskforce plans to initiate the following actions to increase integrated and competitive employment opportunities for Tennesseans with disabilities:

- identify state agency policies and procedures that create barriers and disincentives for employment of individuals with disabilities;
- develop recommendations to reduce or eliminate barriers and disincentives to better meet the needs of individuals who desire employment;
- identify best practices, effective partnerships, sources of available federal funds, and opportunities for shared services among state agencies;
- review and consider the recommendations of the United States Department of Labor's Office of Disability and Employment Policy; and
- develop training on disability employment for state agencies, provider agencies, individuals supported, and their families in order to raise awareness.

Since individuals with disabilities experience high levels of unemployment, not increasing integrated and competitive employment opportunities is contrary to the state and department's main mission to integrate individuals with an intellectual disability into their communities. In addition, it is in the department's best interest to continue to help individuals with an intellectual disability secure and maintain employment so that the individual can have a better quality of life.

The Department of Intellectual and Developmental Disabilities should continue its involvement in the Employment First Taskforce to increase integrated and competitive employment opportunities for individuals with disabilities. The Director of Provider Supports

and Services should continue to help providers transition from the use of sheltered workshops offered through facility-based day services to integrated and competitive employment opportunities and continue to revise policies, including the Medicaid home and community-based services waivers to address this transition.

Observation 6 – The Department of Intellectual and Developmental Disabilities continues to identify individuals with a dual diagnosis, determine where service gaps exist, and improve services provided for the dually diagnosed; however, service gaps for these individuals still exist

The Department of Intellectual and Developmental Disabilities (DIDD) established a goal in the *TNFORWARD Top to Bottom Review* to identify individuals with a dual diagnosis, determine where service gaps exist, and improve services provided for the dually diagnosed. Dual diagnosis exists when an individual has an intellectual or developmental disability plus a psychiatric diagnosis or challenging behavior. Collaborative efforts were established between DIDD and the Department of Mental Health and Substance Abuse Services (DMHSAS) to identify service gaps for individuals with a dual diagnosis and improve services provided. DIDD has responsibility over providing services for individuals with an intellectual or developmental disability and DMHSAS has responsibility over providing services for individuals with a psychiatric diagnosis or challenging behavior. Based on discussions with the State Director of Behavioral and Psychological Services, service gaps for dually diagnosed individuals still exist.

DIDD took the following steps to identify service gaps for individuals with a dual diagnosis and improve services provided:

- conducted a research project comparing individuals with high levels of restraint (restraint group) to individuals with high levels of police involvement and psychiatric hospitalization (crisis group);
- formed a Behavior Services Advisory Council;
- started a pilot project with the DMHSAS for the delivery of crisis services for individuals with intellectual or developmental disabilities;
- conducted monthly behavioral health training in each region of Tennessee (west, middle, and east) for providers;
- conducted surveys to gather information from behavior analysts (for example, counselors, psychiatrists, and psychologists) and providers;
- designed and implemented a focus group study of individuals served, family members, support groups, and provider directors;
- implemented a clinical model (Intensive Behavior Residential Services) to address the needs of individuals with severe challenging behavior; and
- developed new provider manual standards to include more stringent guidelines for the provision of behavioral services.

Based on a survey conducted in August 2012 by the State Director of Behavioral and Psychological Services, survey results indicated that DIDD's contracted behavior analysts believed that not having behavior analysts in the underserved areas of the state resulted in service gaps for the population in need of such services. The underserved areas often result from the department's inability to attract and retain behavior analysts in certain regions of the state. In addition, in a survey conducted in April 2013 by the State Director of Behavioral and Psychological Services, behavior analysts who work for providers identified counseling as a service gap area. Counseling can include different types of therapy (e.g., psychotherapy, cognitive behavior therapy, supportive therapy, or play therapy) to assist the individual in controlling anxiety, depression, or more severe disorders of mood and thinking.

Since approximately 40 to 50% of individuals who have an intellectual or developmental disability experience psychiatric or behavior problems, not identifying service gaps for individuals with a dual diagnosis and improving services provided increases the risk of not providing necessary services at all or providing a lower quality of services to individuals who are dually diagnosed.

The Department of Intellectual and Developmental Disabilities should continue its collaboration efforts with the Department of Mental Health and Substance Abuse Services to identify individuals with a dual diagnosis, determine where service gaps exist, and improve services provided to dually diagnosed individuals. To identify service gaps for individuals with a dual diagnosis and improve services provided, the State Director of Behavioral and Psychological Services should continue to

- conduct research and surveys,
- conduct Behavior Services Advisory Council meetings,
- conduct monthly behavioral training for providers, and
- develop new provider manual standards.

HOT-LINE CALL PROCEDURES

Since October 1983, the Office of the Comptroller of the Treasury has provided a toll-free hot-line for reporting fraud, waste, and abuse of government funds and property. Upon processing the hot-line calls, Comptroller staff provide a transcript of the call to the applicable department for follow-up. The Comptroller staff annually request an update on the status of the hot-line calls from each applicable department. Each department submits a report to the Comptroller staff at the conclusion of the follow-up of the hot-line call.

The objectives of our review of hot-line call procedures were to determine

- the department's process for handling hot-line calls received from the Comptroller of the Treasury; and

- how many hot-line calls the department received, how many hot-line calls are currently open, and how long it took the department to close a hot-line call.

To achieve our objectives, we conducted interviews and performed an analysis of the department's hot-line calls.

Based on the procedures we performed, we determined

- that the department's Commissioner received the hot-line calls, which are referred to the Office of Risk Management and Licensure Director to investigate and send a follow-up report to the Comptroller of the Treasury; and
- that the department received three hot-line calls for calendar year 2011 and ten hot-line calls for calendar year 2012; as of May 21, 2013, there are six hot-line calls open, and on average the department closed a hot-line call in seven months and 13 days.

FAMILY SUPPORT PROGRAM

Program History and Purpose

The Tennessee legislature established the Family Support Program in 1992 at the urging of disability advocates and families. Available in all 95 counties of the state, which are divided into nine districts, the Family Support Program is coordinated by approved local contract agencies and volunteers with oversight from DIDD.

The Family Support Program is designed to assist individuals with severe disabilities and their families with remaining together in their homes and communities. The primary purpose of the program is to support

- families who have school-aged or younger children with severe disabilities;
- adults with severe disabilities who choose to live with their families; and
- adults with severe disabilities not supported by other residential programs funded by state or federal funds.

Family Support services can include, but are not limited to, the following: respite care, daycare services, home modifications, equipment, supplies, personal assistance, transportation, homemaker services, housing costs, health-related needs, nursing, and counseling. The program is entirely funded by state dollars, with 85 percent going toward direct services to individuals and 15 percent going toward contract agencies for program administration. Funding is allocated to counties based on population.

Unlike many other programs and services for families and persons with disabilities, the Family Support Program is truly family-driven in the sense that each family, with assistance

from Family Support Coordinators, leads the decision-making process concerning the type of support they need to receive.

The Family Support Program operates under distinct eligibility requirements and is the only program in the state that provides funding to all ages. One of the key guiding principles of the Family Support Program is that the determination of the presence of a severe disability is based on function rather than diagnosis. Disability type or label is not the primary issue; it is, instead, the impact of the disability on a person's life.

Section 1.4.c of the DIDD *Provider Manual* further specifies

- 1) The applying family must have a family member who has a severe disability; and
- 2) The severe disability must be one that is attributable to a mental or physical impairment; is likely to continue indefinitely; and results in substantial functional limitations in three or more major life activities, such as self-care, receptive/expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency.

Another defining aspect of the Family Support Program is the amount of flexibility it offers families. Family Support is designed to be highly individualized. Families can choose the services and supports based on their needs and personal preferences, instead of services handled in a "one size fits all" model. Most importantly, as a family's needs change, the program changes with them.

Family Support is not a substitute for more comprehensive services provided under other programs including the Medicaid Home and Community Based Services Waiver, TennCare, Medicare, or private insurance, but does allow families alternative opportunities to fill in the service gaps which cannot be filled by insurance and other funding sources.

Program Operations

DIDD establishes policies for the program in conjunction with the State Family Support Council, which assists DIDD in oversight of the program and in the resolution of issues related to implementation of the program. To provide oversight of the operation of Family Support Services within their service area, DIDD's contract agencies are required to establish and maintain a Local Family Support Council that is composed of persons who live within the service areas and a majority of individuals who have a severe or developmental disability or have a family member with a severe or developmental disability. The Local Family Support Council services include serving as the primary decision making group for family selection and funding; establishing priorities for selection of service recipients, offering advice and counsel to the DIDD contracted agency; and reviewing the operation and effectiveness of service delivery and recommending any necessary changes in the services.

The objectives of our review of the Family Support Program were to determine

- if the Family Support Program was operating in accordance with *Tennessee Family Support Guidelines 2012-2013*;
- if management was performing data verification procedures of the data collected from contract agencies for the Family Support Program to help identify services needed for individuals with developmental disabilities; and
- the accuracy of the data collected from contract agencies for the Family Support Program to help identify services needed for individuals with developmental disabilities.

To achieve our objectives, we conducted interviews with key departmental personnel and the contract agencies' family support staff. We read the *Tennessee Family Support Guidelines 2012-2013* and the Family Support State Council meeting minutes for meetings during the period August 2011 through February 2013 to gain an understanding of the Family Support Program. In addition, to determine the accuracy of the data collected, we obtained a listing of contract agencies from the Family Support Program Coordinator and compared the listing to the contract agencies listed on the department's website, and we obtained the Family Support Program data for fiscal year 2012-2013. From the data, we selected the recently completed quarter ended December 31, 2012, to perform testwork on a nonstatistical sample of 10 of the 18 contract agencies' data. For the 10 contract agencies, we selected the five with the highest expenditure amount for the quarter ended December 31, 2012, and randomly selected the other five to perform testwork.

Based on the procedures we performed, we determined

- that the Family Support Program did operate in accordance with the *Tennessee Family Support Guidelines 2012-2013*, which is to support families who have school-aged or younger children with severe disabilities, adults with severe disabilities who choose to live with their families, or adults with severe disabilities not supported by other residential programs funded by state or federal funds;
- that management was not performing data verification procedures of the data collected from contract agencies for the Family Support Program (see finding 8); and
- that the data collected from contract agencies for the Family Support Program was not accurate (see finding 8).

Finding 8 – The Department of Intellectual and Developmental Disabilities did not verify data submitted by the Family Support Program contract agencies, which resulted in the department using unverified data to identify services needed for individuals with a developmental disability

The Department of Intellectual and Developmental Disabilities (DIDD) requires the Family Support Program contract agencies to submit data every quarter that shows

- the service(s) rendered, classified by the number of individuals served and the amount spent (quarter and year-to-date);
- the number of persons served, classified by age and disability (year-to-date);
- the number of individuals served, amount spent, and number of individuals on the waiting list by county (year-to-date); and
- the information for individuals who are waiting for services based on the DIDD waiting list, classified by age when disability occurred (either prior to the age of 22 or after), and if the individual has an intellectual disability (year-to-date).

We performed testwork on the services rendered by the number of individuals served. Through discussions and our testwork, we determined that DIDD did not verify the reported data from the Family Support contract agencies for services rendered by the number of individuals served. As a result, unverified data was used by DIDD and the State Family Support Council to identify services needed for individuals with developmental disabilities.

Background

DIDD contracted with 18 agencies across the state to execute the Family Support Program for fiscal year 2013. To become a contract agency for the Family Support Program, an agency must complete an application and submit it to the applicable district. The district rates each application based on a point system and submits the application to the State Family Support Council for its review and recommendation. Finally, applications that are recommended are submitted to DIDD's Commissioner for approval. The department contracts with these agencies for a three-year period and provides funding to the contractor based on total county population. Each contracted agency receives a minimum of \$23,800. In fiscal year 2013, the Tennessee General Assembly appropriated \$7,383,600 in state funds to DIDD for the Family Support Program. In order to receive reimbursement from DIDD, contract agencies are required to submit monthly invoices and maintain a file for each individual served that includes receipts of services rendered. DIDD's Fiscal Accountability Review (FAR) monitors conduct annual on-site visits of the contract agencies to ensure that the agencies do not overspend the annual Family Support Program allotment. In addition, Family Support Program staff review contract agency invoices against the budgeted amount quarterly, and Fiscal staff review contract agency invoices against the budgeted amount monthly to ensure that the agencies do not overspend their budgets.

As discussed above, DIDD requires contract agencies to submit data every quarter to the department and to the State Family Support Council that shows the number of individuals served, the amount spent, and the number of individuals on the waiting list. As an oversight

function, the council and the department use the quarterly data to identify the service needs for individuals with developmental disabilities and to prepare the year-to-date data in the department's annual report to the Tennessee General Assembly for budgetary purposes.

Based on discussions with the former Office of Policy and Innovation Deputy Commissioner, former Deputy Director of Policy and Innovation, and DIDD Family Support Coordinator, we determined that while the department has collected data on the proportion of the Family Support Program participants with a developmental disability, it did not take steps to verify the reliability of the data submitted quarterly. Although the quarterly report format affords agencies consistency in reporting, the former Office of Policy and Innovation Deputy Commissioner and the former Deputy Director of Policy and Innovation noted that the Family Support Program lacks sufficient personnel resources to cross-reference quarterly contract agency files with the monthly invoices submitted. The DIDD Family Support Coordinator also acknowledged that the department does not take any steps to ensure the reliability of data on the quarterly reports.

During the completion of our audit the former Office of Policy and Innovation Deputy Commissioner and the former Deputy Director of Policy and Innovation transitioned to the Department of Children's Services (DCS), effective June 1, 2013. The former Office of Policy and Innovation Deputy Commissioner was named DCS's Child Safety Deputy Commissioner and the former Deputy Director of Policy and Innovation was named DCS's State Director of Training and Development.

Testwork Results

Since the department does not verify the reliability of the number of individuals served, as reported on the quarterly reports, we decided to perform verification procedures ourselves. We pulled a sample of ten quarterly reports submitted by 10 of the 18 different agencies and tested the accuracy of those quarterly reports for the numbers of individuals served for the second quarter of fiscal year 2013 (quarter ended December 31, 2012). We determined that for eight of those reports, the numbers of individuals served were not accurately reported by the contract agencies. For details of the testwork, please see the table below.

Numbers Served - Second Quarter, Fiscal Year 2013			
Agency Name	Reported by Agency	Counted by Auditors	Over/ (Under)
Shelby Residential and Vocational Services	442	437	5
The Team Centers, Inc.	304	474	(170)
The Arc of Davidson County	343	343	0
Emory Valley Center, Inc.	181	206	(25)
Cerebral Palsy Center	187	178	9
Helen R. Tucker Adult Developmental Center	108	110	(2)
The Arc of Williamson County	74	76	(2)
Community Development Center	154	154	0
Habilitation and Training Services, Inc.	247	260	(13)
United Cerebral Palsy of Middle Tennessee	70	111	(41)

After discussing the inaccuracies with each of the contract agencies' Family Support staff, we concluded that the inaccurate reporting was due to human error by the staff. Each of the contract agencies' Family Support staff maintain records of the individuals served, and when the staff fill out the quarterly reports, they perform a manual count of the individuals served by service type. The Family Support staff conceded that the manual process contributes to an increased risk of errors and that changes are needed. In addition, one of the contract agencies acknowledged that data entry errors also contributed to the miscount.

Since the Family Support Program is the key program through which individuals with developmental disabilities other than intellectual disabilities qualify for services, not validating data on the number of individuals served provided by contract agencies affects future planning efforts to expand developmental disability services. In addition, not validating data increases the risk that the Tennessee General Assembly will use unverified data to make decisions about the allocation of the state's resources, which could negatively affect services to the state's vulnerable citizens.

Recommendation

In order to ensure that the quarterly reports contain reliable information, the department's Family Support Coordinator, or the FAR monitors, should review the quarterly reports and perform a recount of the number of individuals served. Although it may not be feasible to verify

the reliability of each quarterly report by each agency, it is reasonable to verify reports on a random sample basis. The Family Support Coordinator should also encourage each of the contract agencies' Family Support staff to perform their own recounts if they use manual counts to report data and to consider developing automated processes to track individuals served.

Management's Comment

We concur in part.

The Department does in fact receive reports from each agency contracted to administer the Family Support Program. Further, as noted in the audit report, DIDD's Fiscal Accountability Review monitors conduct annual onsite visits of the contract agencies. In addition, Fiscal staff review contract agency invoices against the budgeted amount monthly to ensure that agencies do not overspend their budgets. Thus, data submitted by the Family Support Program contract agencies is monitored and verified to ensure that spending does not exceed the appropriated (and contracted) amounts.

Although the numbers of persons served is not necessarily an accurate representation of the numbers of individuals who would benefit from and qualify to receive such assistance, we do agree that current processes do not verify the numbers served as reported by the contract agencies on a quarterly basis.

When the grants associated with the Family Support Program are due for renewal, DIDD will update the reporting requirements to promote the collection of consistent data regarding the individuals receiving assistance through the program. We will also modify the quarterly reporting format to address this issue.

The Fiscal Accountability Review (FAR) unit within the Quality Management office already performs an annual review of each agency that contracts to administer the Family Support Program. The scope of the FAR review at each Family Support agency will be enhanced to include a verification of the submitted quarterly reports on a random basis as recommended by the auditors.

Auditor Comment

Management does not identify in their response which portion of the finding they do not concur with. In addition, management's comments incorrectly state that we reviewed the Family Support contract agencies' budgeted amounts when in fact that was not our stated audit objective or part of our audit methodology. It should also be noted that, during our exit conference on September 19, 2013, management fully concurred with this finding.

WAITING LIST AND CASE MANAGEMENT SERVICES

Due to the limited availability of slots, individuals with intellectual disabilities may not receive Medicaid waiver services through the Department of Intellectual and Developmental Disabilities (DIDD) as soon as they meet all eligibility requirements. The department keeps track of these individuals using its waiting list for services. In 2000, an advocacy group, Tennessee Protection and Advocacy, filed a lawsuit on behalf of Medicaid-eligible citizens of Tennessee who were on the state's waiting list or who had been denied the opportunity to apply for services. In 2004, the state entered into a resolution with the lawsuit's plaintiffs called the Brown Waiting List Settlement Agreement. The terms of the agreement required in part that the state establish a comprehensive waiting list. Prior to that time, provider agencies managed their own individual waiting lists, and the regional offices of the department (then the Division of Mental Retardation Services under the Department of Finance and Administration) also maintained lists. To comply with the settlement agreement, the state established a formal waiting list by making an effort to locate these separate lists and incorporate them into the official list. As of March 2013, DIDD's waiting list included 7,169 individuals. Some individuals on the waiting list have been seeking services since 1994/1995, while others have been waiting for one or two days.

Another component of the Brown Waiting List Settlement Agreement involves the state's provision of case management services. The department assigns a case manager to each individual on its waiting list. The case managers, who are DIDD state employees, assist the individuals with accessing alternative services, including resources within their communities. As of February 2013, the department had 24 case managers who are responsible for the individuals on the waiting lists from its three regions. These case managers have an average caseload of approximately 333 individuals.

A few years ago, the courts found that DIDD complied with the requirements of the settlement agreement, which, by its terms, ended on December 31, 2009. In February 2010, the U.S. District Court issued a final order declaring the case closed. Even though the state successfully exited the Brown lawsuit, the number of individuals on the waiting list remains a critical issue for the department. In fact, our December 2004 performance audit report contained a finding describing DIDD's failure to adequately address the needs of the individuals on its waiting list, while our April 2011 performance audit report included an observation concerning the department's high waiting list numbers.

The objectives of our review of the DIDD waiting list and case management services were to determine whether

- the addition of individuals who are seeking services continued to exceed individuals who were removed from the waiting list because they received services and
- the department's process for removing individuals from the waiting list was reasonable and transparent.

To gain an understanding of the department's waiting list and case management services, we interviewed key departmental personnel and advocacy group representatives. We also

reviewed the DIDD 2011 Annual Report, the department's website, and The Arc of Tennessee's *Waiting List Issue Paper*. To determine whether additions to the waiting list continued to exceed removals, we analyzed the department's Statewide and Regional Waiting List Reports for July 2012 through March 2013 and compared additions to removals over that period.

We reviewed the requirements contained in DIDD's three Medicaid waivers to assess the reasonableness and transparency of the department's process for removing individuals from the waiting list. We also requested and reviewed data to determine both the longest and shortest amount of time an individual had been on the waiting list as of April 12, 2013. For the five individuals most recently removed from the waiting list and moved to a Medicaid waiver as of April 12, 2013, we scrutinized the circumstances surrounding their removal. For the period July 1, 2012, through March 31, 2013, we requested a breakdown of the 172 removals from the waiting list to a waiver by category of need. We analyzed the breakdown and contacted the appropriate departmental personnel to discuss any discrepancies noted.

Based on the procedures performed, we determined that

- additions to the waiting list of individuals seeking services exceeded removals for a majority of the months we analyzed (see finding 9); and
- although DIDD's process for removing individuals from the waiting list was reasonable and transparent, the department did not always properly update individuals' categories of needs either prior to or in conjunction with removal to a waiver (see finding 9).

Finding 9 – Until such time as top state officials can find a sufficient funding solution which allows the Department of Intellectual and Developmental Disabilities to provide much needed services to individuals with intellectual disabilities, the high number of individuals on the waiting list for Medicaid services will continue to plague the department, taking a heavy financial and emotional toll on the individuals needing services and their caregivers; furthermore, management must maintain the current “needs” status of all individuals currently served so that DIDD management can communicate the increasing demands for services to top state officials

Individuals with intellectual disabilities may not receive waiver services through the department immediately, even though they meet Medicaid eligibility requirements. The Department of Intellectual and Developmental Disabilities (DIDD) places these individuals on its waiting list for services. The department's regional Intake and Case Management units assign each individual seeking services an initial level of need and update the individual's classification as his or her needs change. Our testwork revealed—as had prior audits dating back to 2004—that the department's waiting list numbers remain high, which places immense stress on the individuals needing services and their families. We also found that although DIDD properly filled open home and community-based services (HCBS) waiver slots with individuals from the waiting list based on its established procedures, staff did not always update the records of those individuals who were transferred to a waiver. The department must maintain the current “needs”

status of all individuals served so that management can make appropriate decisions regarding funding and services.

Waiting List Background

Waiting List Origin and Process for Joining the Waiting List

According to the Director of Intake and Enrollment, the department (then a division under the Department of Finance and Administration) began maintaining an official waiting list for Medicaid waiver services in 2004 in response to the Brown Waiting List Settlement Agreement. In addition to the waiting list origin, the Director of Intake and Enrollment explained the process for joining the waiting list. She noted that DIDD routes all inquiries received from persons seeking access to services through the department's regional office Intake and Case Management units. The department may receive referrals from the individual needing services, family members, conservators, schools, hospitals, or any other concerned individuals. If DIDD does not have an open HCBS waiver slot for the referred individual, then the Intake and Case Management staff add him or her to the waiting list.

Waiting List Classifications

Furthermore, the Director of Intake and Enrollment described the department's classification of individuals on the waiting list into one of four categories based on need. Those categories are crisis, urgent, active, and deferred. The department's category of need definitions are as follows:

- **Crisis:** The person needs services immediately due to one or more of the following: homelessness, death or incapacitation of all available caregivers, or imminent danger to self or others.
- **Urgent:** The person meets the classification of "urgent" if one or more of the following criteria are met: aging or failing health of caregiver and no alternative available to provide supports, a living situation that presents a significant risk of abuse or neglect, increasing risk to self or others, stability of current living situation that is severely threatened because of extensive needs or family catastrophe, and discharge from another service system (e.g., Children's Services or a mental health institute) is imminent.
- **Active:** The person and/or family or guardian is requesting access to services but does not yet have the intensive needs to meet the criteria for "in crisis" or "urgent."
- **Deferred:** The person and/or family or guardian does not have intensive needs at the current time but is requesting access to services at some point in the future (after 12 months or more).

Process for Removing Individuals From Waiting List to Medicaid Waivers

Our inquiries with the Director of Intake and Enrollment disclosed that during our audit period of January 15, 2011, through May 31, 2013, the department's practice was to approve

individuals on the waiting list to begin the Medicaid waiver enrollment process based on level of need. DIDD has three Regional Intake Committees (one each in the east, middle, and west regions) and a Central Office Intake Committee that oversee waiting list removals to a Medicaid waiver. The three Regional Intake Committees meet monthly to evaluate cases and determine which individuals in their regions have the most serious need. The Regional Intake Committees then forward the names of these individuals to the Central Office Intake Committee, which also meets monthly to review the case files of the individuals submitted by the regions and provide final approval for selected individuals to initiate the Medicaid waiver enrollment process.

Department's Provision of Case Management Services

Based on discussion with the Director of Intake and Enrollment, as a result of the 2004 Brown Waiting List Settlement Agreement, the department must offer case management services to each individual on the waiting list. If individuals' status changes while they are awaiting services, the case managers can perform reassessments to determine whether the individuals now meet the criteria for a different category of need. Additionally, case managers provide information about community services that may be available. When individuals receive money through state-funded programs such as the Family Support Program, the case managers can assist in determining options for use of the funds and in locating service providers. Case managers may also assist in accessing benefits available through insurance programs or the Bureau of TennCare, including assistance in filing appeals for services or eligibility issues.

Statewide Waiting List Demographics

Analysis of July 2012 Through March 2013 Waiting List Numbers

To evaluate whether the department's waiting list numbers have increased or decreased, we reviewed DIDD's statewide waiting list demographics for July 2012 through March 2013. We found that waiting list additions exceeded removals for five of the nine months for which data was available (56%). For the other four months, additions matched removals for one month (11%), while removals outpaced additions for three months (33%). Details are presented in the following table.

**Statewide Waiting List Demographics
July 2012 – March 2013**

	July 2012	Aug. 2012	Sept. 2012	Oct. 2012	Nov. 2012	Dec. 2012	Jan. 2013	Feb. 2013	March 2013
Crisis	83	82	82	82	87	94	94	65	69
Urgent	793	793	787	792	795	796	793	808	818
Active	4,823	4,836	4,844	4,858	4,872	4,866	4,862	4,863	4,848
Deferred	1,494	1,505	1,509	1,509	1,520	1,518	1,515	1,514	1,434
Total	7,193	7,216	7,222	7,241	7,274	7,274	7,264	7,250	7,169
Total Number Added to Waiting List									
	39	49	39	44	48	27	29	28	52
Number Removed to Self-Determination Waiver									
	4	7	7	3	2	6	1	5	2
Number Removed to Statewide Waiver									
	16	13	13	14	9	14	18	21	17
Number Removed to Arlington Waiver									
	-	-	-	-	-	-	-	-	-
Number Removed for Other Reasons									
	5	6	13	8	4	7	19	16	114
Total Number Removed	25	26	33	25	15	27	38	42	133
<i>Net Additions (Reductions)</i>	<i>14</i>	<i>23</i>	<i>6</i>	<i>19</i>	<i>33</i>	<i>-</i>	<i>(9)</i>	<i>(14)</i>	<i>(81)</i>

Source: Department of Intellectual and Developmental Disabilities Waiting List Reports for July 2012 through March 2013.

Comparison of 2003 – 2012 Waiting List Numbers

In order to place the current waiting list census into historical perspective, we compared the December 2003 and December 2010 waiting list numbers with the December 2012 waiting list population. Our analysis showed that 690 more individuals were on the waiting list in December 2012 than in December 2010 (an increase of 10%), and 4,111 more individuals were

on the waiting list in December 2012 than in December 2003 (an increase of 130%). We included additional details in the chart below.

**Waiting List Census Analysis
2003 - 2012**

Classification	Dec. 2003	Dec. 2010	Dec. 2012	Increases From 2010 to 2012	Percent Increase 2010 to 2012	Increases From 2003 to 2012	Percent Increase 2003 to 2012
Crisis	79	79	94	15	19%	15	19%
Urgent	413	763	796	33	4%	383	93%
Active	1,961	4,494	4,866	372	8%	2,905	148%
Deferred	710	1,248	1,518	270	22%	808	114%
Total	3,163	6,584	7,274	690	10%	4,111	130%

Source: December 2003 and December 2010 data – April 2011 Department of Finance and Administration sunset audit report. December 2012 data – Department of Intellectual and Developmental Disabilities Waiting List Reports for July 2012 through January 2013.

Departmental Staff’s Explanations for Waiting List Census Trends

We inquired with departmental staff to identify the basis of waiting list census trends. As in the prior two audits, DIDD personnel voiced concerns that the department had not been able to move more individuals off the waiting list because of insufficient state funding and the number of waiver slots available. The Director of Intake and Enrollment specifically noted that based on current appropriation levels, DIDD was only able to serve those with the most intense needs.

As a result of DIDD staff’s comments, we examined the number of waiver slots available. We determined that each of DIDD’s three Medicaid waivers, which are approved by the federal Centers for Medicare and Medicaid Services, imposed limits on the maximum number of individuals receiving services. As of March 2013, available waiver slots were capped as follows:

Waiver Slot Limitations as of March 2013

Waiver	Maximum Slots
Self-Determination	1,802
Statewide	6,300
Arlington	345
Total	8,447

Source: Medicaid waiver applications.

Based on our analysis, the 7,169 individuals on the waiting list in March 2013 nearly matched the 8,447 maximum waiver slots, with a difference of only 1,278.

Additionally, we interviewed the Coordinator of Special Projects for Quality Management to identify a reason for the stabilization (December 2012) and subsequent decrease (January - March 2013) of waiting list numbers and to determine whether the department anticipated that its waiting list numbers would continue to decrease. The Coordinator of Special Projects for Quality Management reported that she was unable to identify a data pattern for additions and removals from the waiting list, with the exception of actions related to internal quality assurance activities completed by case managers. In March 2013, for example, a majority of the 133 individuals were removed voluntarily because the west region contacted individuals belonging to a protected class who currently resided in nursing homes to see if those individuals still desired DIDD services. The department removed from the waiting list the people who chose to remain in their current residential facility and not pursue DIDD services. The Coordinator of Special Projects for Quality Management did not project a continued decrease in waiting list numbers since the department had not experienced such a decline before.

Furthermore, we inquired about whether, rather than removing individuals from the waiting list to an available waiver slot strictly based on need, DIDD had considered spending less money on individuals with the most serious needs in order to free up funds for individuals with a lesser need. This alternative could prevent those individuals from moving to a higher need category in the future and would subsequently decrease DIDD's waiting list numbers. The Director of Intake and Enrollment explained that under DIDD's current Medicaid waivers, one of the state's core assurances is that it must provide for the health, safety, and welfare of the people supported. The self-determination waiver currently includes a monetary cap for services; however, the statewide and Arlington waivers contain no such cap. As a result, DIDD must provide all services that are deemed medically necessary for individuals on those two waivers.

Individuals' Category of Need Records Not Properly Updated at Time of Removal From Waiting List to Waiver

In addition to the large number of individuals on the waiting list also described in prior audits, we identified an issue in our current audit involving outdated waiting list removal records. To determine whether DIDD had abided by its stated practice of removing individuals with the most intense needs from the waiting list to a Medicaid waiver, we requested a list of the individuals removed to a waiver during the period July 2012 – March 2013, identified by category of need. Our testwork revealed that of the 172 individuals removed, regional Intake staff failed to update the category of need records for 25 individuals (15%) to reflect that they met crisis criteria. The Excel spreadsheet we received from the Coordinator of Special Projects for Quality Management classified waiting list removals as follows:

**Classification of Individuals Removed From a Waiting List to a Waiver
July 2012 – March 2013**

Category	Number	Percentage
Deferred	2	1%
Active	9	5%
Urgent	14	8%
Crisis	147	85%
Total	172	100%

Source: Excel spreadsheet maintained by departmental staff.

When we discovered that some individuals who were removed from the waiver were not classified as having the most serious need (i.e., included in the crisis category), we requested and reviewed the waiver enrollment forms for those individuals. We found that the individuals had actually experienced worsening conditions and therefore met the crisis category requirements prior to waiver enrollment.

The Coordinator of Special Projects for Quality Management explained that upon a person’s removal from the waiting list for enrollment, Intake staff complete a change form, which they then submit to a waiting list data entry manager. The data entry manager updates the department’s records to reflect the individual’s removal from the waiver. In the cases where the individual’s category of need was not correctly listed as crisis, Intake staff completed the change form for the individual to be removed from the waiting list and enrolled in the waiver but failed to update and check the “crisis” category portion of the form. Since Intake staff did not correctly complete the change form, the data entry personnel were unaware that the individual’s category of need should be changed to crisis. The Coordinator of Special Projects for Quality Management noted that ideally, the Intake staff would submit the change form immediately when the individual is determined to be in crisis and prior to enrollment initiation. She emphasized that the change form should be used whenever any changes in an individual’s situation occur, not just waiver enrollment. The Coordinator of Special Projects for Quality Management stated that Intake management initiated further process review to address the problems we identified. According to the Coordinator of Special Projects for Quality Management, new procedures ensure that staff submit the change form immediately when the person descends into a crisis situation and that staff are not holding the change form and only submitting it for waiting list removal and waiver enrollment.

Effects of Waiting List Problems Noted

Despite the assistance provided by case managers, the individuals on the waiting list receive only a fraction of the services they need. In its 2012 *Waiting List Issue Paper*, The Arc of Tennessee (a nonprofit organization of and for people with all types of developmental disabilities and their families) pinpoints the heavy financial and emotional consequences of this service gap to individuals with intellectual disabilities and their caregivers:

The need for expanding home and community services for people with intellectual disabilities in Tennessee is at a critical stage. Over 7,000 adults and children are waiting for services, many of whom have been on waiting lists for years. Without supports, young people with intellectual disabilities sit at home, losing all the skills they developed during their school years. Parents, siblings or other relatives are forced to quit work to care for their family members with an intellectual disability. Family members neglect their own health trying to “do it all,” especially as they and their loved ones face the challenges of aging. Many families are forced into poverty by the added costs of care. The result is thousands of Tennessee families suffering from extraordinary stress.

In essence, until top state officials find sufficient funding solutions, the DIDD management cannot reduce the waiting list census and cannot fulfill its vision to “[s]upport all Tennesseans with intellectual and developmental disabilities to live fulfilling and rewarding lives.” Furthermore, by failing to properly update individuals’ category of need records, the department incurs the risk of using inaccurate needs data in its decision-making processes, and may not accurately communicate to top state officials the identified needs of the state’s intellectually disabled individuals.

Recommendation

The Commissioner of the Department of Intellectual and Developmental Disabilities should take every opportunity to discuss the overwhelming needs of the state’s intellectually disabled citizens with members of the General Assembly, the Governor, and other top officials until funding solutions are found. In the meantime, the Commissioner and top department management should continue to evaluate and prioritize all available services to these citizens. Specifically, the Director of Intake and Enrollment and the Coordinator of Special Projects for Quality Management should continue to track waiting list additions and removals and explore options for decreasing the number of individuals on the department’s waiting list for services. The Commissioner and other applicable departmental staff should also persist in investigating options to address the needs of the individuals already on the waiting list. Additionally, the Director of Intake and Enrollment and the Coordinator of Special Projects for Quality Management should work with the regional Intake directors to train Intake staff to submit the waiting list change forms immediately upon receiving notification of a change in an individual’s condition. The Director of Intake and Enrollment, the Coordinator of Special Projects for Quality Management, and the regional Intake Directors should modify their waiting list record-updating processes as necessary. To ensure that each individual’s category of need is reported accurately, the regional Intake Directors and their staff should systematically review existing waiting list records as well.

Management's Comment

We concur in part.

We acknowledge that there are individuals on a waiting list for home and community services; however, we do not agree that this should constitute a finding. The Department is committed to serving individuals with intellectual and developmental disabilities. However, State law makes clear that our programs are subject to funding by the General Assembly, see specifically *Tennessee Code Annotated* 33-1-204 (a) and (b).

33-1-204. Unnecessary entitlements not created -- Programs subject to funding by general assembly.

(a) The provisions of this title shall not create entitlement to services and supports from the state except to the extent that services and supports are necessarily attached to deprivation of liberty by placement in facilities operated by the department. Implementation of any service or support at state expense under this title is subject to the availability of funds appropriated for that purpose in the general appropriations act.

(b) While the department of intellectual and developmental disabilities is charged with the planning and development of services for persons with developmental disabilities, such services shall be subject to the availability of funding, and to approval of any waiver amendments which would be required to effectuate such new programs at such time that they are developed. The reassignment of responsibility for developmental disabilities services to the department of intellectual and developmental disabilities does not create an entitlement to services for persons with developmental disabilities. Nor does it expand or affect in any way the population of persons who are currently eligible for programs and services currently available to persons with mental retardation.

Since becoming a Department, DIDD has prepared and submitted two budgets: FY 2013 and FY 2014. In developing its annual budget, the State of Tennessee is bound by the State's Constitution which requires that the State operate within a balanced budget. In each of those years, due to lower than anticipated State revenues resulting from the recession, the budget instructions received by the Department included *base* reductions of 5%. In addition, in August 2013, the Department was instructed to plan for another 5% *base* reduction for the FY 2015 budget.

The instructions further specified that any requests for *additional* funding would have to be offset by *additional* budget cuts in *excess* of the required base reduction for that year.

While the Department is committed to serving individuals with intellectual disabilities, we nonetheless have a fiduciary responsibility to act in accordance with the instruction given by the Administrative branch of State government, and to manage the State's limited resources through challenging economic times.

While the State has a waiting list for services, there is a process in place that is effectively working to prioritize individuals with the greatest need (i.e., those in “crisis”) and, within the availability of appropriations, to enroll those on the waiting list most in need into waiver services.

The existence of a waiting list is not unique to Tennessee. Per the December 2012 Kaiser Commission’s report, *Medicaid Home and Community-Based Services Program: 2009 Data Update*, in 2011, 38 of the 48 states that administer a 1915(c) Home Community Based Services (HCBS) waiver reported having waiting list(s) for services.

Since 2006, the Department has reduced its workforce by 1878 positions since 2006, allowing DIDD to meet budget reduction requirements, while also increasing the number of funded waiver slots by 205 in 2013. That this could be accomplished while managing through “the worst recession since the Great Depression” is the clearest demonstration of our commitment to providing services and supports to more people.

DIDD is actively pursuing additional avenues to increase the number of people we serve. This will require us to re-evaluate current program expenditures to ensure that existing services are being delivered in the most cost-effective manner possible in order to stretch limited funds to serve more people.

Finally, we concur that waiting list information should be updated as individuals’ levels of need change and that once a person is enrolled into the waiver, his or her name should be removed from the waiting list. Applicable staff across all three regions have been counseled with regarding the need for this to be done in a timely fashion. However, we do not agree that it is necessary to update the status of a person who is being enrolled as “crisis”, so long as it is determined that the person in fact meets crisis criteria and is enrolled in accordance with the State’s waiting list policy. The primary focus each month is the actual intake and enrollment of the individuals into service and, as the audit report cited, all individuals that were enrolled did meet the crisis status as required. Simply updating their status to reflect crisis at the time of enrollment adds administrative burden while yielding no value.

The Office of Risk Management and Licensure will revise the 2014 Risk Assessment to address this concern.

Auditor Comment

We do not agree with the basis of management’s partial concurrence. It should also be noted that during our exit conference on September 19, 2013, management stated that they fully concurred with the issues we identified.

The waiting list numbers are high. There is a program enrollment limit of 8,447, and there are 7,169 individuals on the waiting list. A funding solution is necessary in order to allow the department to provide critical services to more individuals and reduce the waiting list.

While we agree, and state in our report, that the department's process for removing individuals from the waiting list was reasonable and transparent, we found that management's documentation of crisis status was insufficient at the time they removed individuals from the waiting list. In fact, some individuals who were removed from the waiting list and enrolled in a waiver were identified as deferred, active, or urgent status, rather than in crisis.

STATUS OF FEDERAL LAWSUITS

In recent years, several federal lawsuits have influenced the service system of the Department of Intellectual and Developmental Disabilities (DIDD) and its predecessor agencies, the Department of Mental Health and the Department of Finance and Administration. Although the state has successfully exited some of those lawsuits, DIDD still seeks to comply with the terms of the Arlington Developmental Center Remedial Order for the *United States v. State of Tennessee (Arlington)* lawsuit and the Clover Bottom/Greene Valley Developmental Center Settlement Agreement for the *People First of Tennessee v. Clover Bottom Developmental Center* lawsuit.

The objectives of our review of the status of federal lawsuits were to determine whether

- the department had made adequate progress toward complying with the terms of the *United States v. State of Tennessee (Arlington)* and *People First of Tennessee v. Clover Bottom Developmental Center* lawsuit settlement agreements and
- exiting the lawsuits would potentially result in cost savings to the department.

To evaluate whether the department had made adequate progress toward complying with the terms of the lawsuit settlement agreements, we contacted legal staff to obtain an update on the status of the Arlington Developmental Center Remedial Order and the Clover Bottom/Greene Valley Developmental Center Settlement Agreement. We read the Arlington Exit Plan and related exhibits, as well as Governor Bill Haslam's Arlington Developmental Center lawsuit update in his State of the State address given on January 28, 2013. We inspected the 2010 – 2012 Clover Bottom Developmental Center (CBDC) Quality Review Panel (QRP) reports, the 2012 Greene Valley Developmental Center QRP report, and the 2011 and 2012 Community Services QRP reports. We also prepared a schedule of the CBDC QRP compliance report scores for 2010 - 2012, comparing the percentage of settlement agreement paragraphs for which CBDC was in full compliance, in partial compliance, and in noncompliance each year.

We obtained from management an estimate of the cost of the Arlington Developmental Center and Clover Bottom/Greene Valley Developmental Center lawsuits for the time period with data available in order to analyze potential cost savings from exiting the lawsuits. To assess the reasonableness of the estimates, we traced management's cost breakdowns for that time frame to corroborating evidence. We also obtained an estimate of the amount of annual resources, both monetary and personnel, which would be available to the department upon compliance with and exit from the Arlington lawsuit. We inspected documentation supporting management's cost savings calculations.

Based on the procedures we performed, we determined that

- the department had made adequate progress toward complying with the terms of the federal lawsuit settlement agreements (see observation 7) and
- exiting the lawsuit would potentially result in cost savings for the department (see observation 7).

Observation 7 – The Department of Intellectual and Developmental Disabilities has made further progress in the dismissal of its remaining two federal lawsuits, which could potentially reduce departmental expenditures and allow the department to devote financial and personnel resources to other critical operations

Spanning the last three decades, a series of federal lawsuits have molded the operations of the Department of Intellectual and Developmental Disabilities (DIDD) and its predecessor agencies. The state has expended hundreds of millions of taxpayer dollars in efforts to comply with the terms of the various settlement agreements and, therefore, persuade the courts to dismiss the lawsuits. As noted in the prior sunset audit released in April 2011, the state successfully exited one federal lawsuit, the Brown Waiting List Settlement, in February 2010, when the U.S. District Court declared the case closed. Although the state remains bound by the terms of the federal Arlington Developmental Center Remedial Order and the Clover Bottom/Greene Valley Developmental Center Settlement Agreement, DIDD has recently made significant strides toward exiting those two lawsuits as well.

Lawsuit Background and Status as of May 2013

Arlington Developmental Center Remedial Order

Based on discussion with DIDD attorneys, in January 1992, the U.S. Department of Justice sued the State of Tennessee for violations of the Civil Rights of Institutionalized Persons Act (CRIPA) at the Arlington Developmental Center (ADC). This case is known as *United States v. State of Tennessee (Arlington)*. As a result of the lawsuit, the U.S. District Court placed the facility under an order in November 1993 to correct subpar conditions. The court appointed a monitor to ensure that ADC complied with the terms of the remedial order.

The department's legal counsel reported that in 2007, the state embarked on a three-year process to close ADC. In preparation for the impending closure, the state sought appropriate placements to meet the needs of each existing facility resident. As required by the remedial order, DIDD worked with the court monitor to secure her approval for each resident's transition. One element of this endeavor was the state's construction of 12 four-person homes in the Arlington area to meet the needs of the more medically fragile residents. The state owns and operates these homes, called the West Tennessee Community Homes, as Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID). The state officially closed ADC in October 2010 after moving the final residents to their new community homes.

Following the closure of ADC, the state filed a motion with the federal court in January 2012 to vacate all outstanding orders and to dismiss the case. In September 2012, the court denied the state's motion to vacate and issued an order for mandatory mediation. The state subsequently appealed this ruling to the United States Court of Appeals for the Sixth Circuit. The order for mandatory mediation resulted in the state's and the other lawsuit parties' agreement upon an exit plan in December 2012. In January 2013, the U.S. District Court approved the exit plan and signed the agreed order. The exit plan established an implementation time frame of on or before December 31, 2013.

Our discussions with DIDD's legal staff disclosed that as of February 2013, DIDD had begun implementation of the exit plan, which stipulates that the state must fulfill the following six objectives in order for the courts to dismiss the ADC lawsuit:

1. an intake review of 182 potential new at-risk lawsuit class members;
2. a review of Arlington class members who currently reside in nursing facilities to determine if they are appropriate for community placement and to provide for a transition to the community if the class member wishes to move from the nursing facility to the community;
3. DIDD's subcontracting with the Department of Health to undertake certain survey, certification, and enforcement functions for privately operated ICFs/IID;
4. the state's submission to the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services and (if approved) implementation on or before October 1, 2013, of both an amendment to the statewide home and community-based services waiver that permits the state to cover intensive behavioral residential services and also a renewal of the self-determination waiver that permits the state to cover semi-independent living services for enrollees in that waiver;
5. continuing and developing meaningful and real opportunities for class members to obtain competitive employment, supported work, and/or volunteer jobs in the communities by taking certain steps and advancing actions already in place; and
6. demolition of all residential cottages on the ADC grounds, except those attached to the Baker Building (which must not be used for residential purposes) and development of a plan for the proposed sale of the ADC property.

Clover Bottom/Greene Valley Developmental Center Settlement Agreement

The department also remains subject to the terms of the Clover Bottom/Greene Valley Developmental Center Settlement Agreement. DIDD's legal personnel explained that in December 1995, *People First of Tennessee v. Clover Bottom Developmental Center* challenged the conditions at Clover Bottom Developmental Center in Nashville (CBDC), Nat T. Winston Developmental Center in Bolivar, Greene Valley Developmental Center (GVDC) in Greeneville, and the Harold Jordan Center (HJC) in Nashville. The parties to the lawsuit reached a settlement agreement in 1996. Since that time, the State of Tennessee closed the Nat T. Winston Developmental Center in 1998, and the courts released GVDC from the litigation in 2006 based on substantial compliance with the agreed order. Additionally, in 2008, the U.S. District Court

entered an order releasing HJC based on substantial compliance with the terms of the settlement agreement.

In an attempt to also propel CBDC toward compliance, in 2009 the state announced its intent to close the facility. DIDD then developed a plan for existing residents to be provided appropriate services and supports in alternative settings, such as privately operated ICFs/IID, state-operated ICFs/IID, community-based waiver services, or other suitable placements. As of December 2012, 42 individuals resided at CBDC. To meet the needs of these individuals, the department planned to construct 11 four-person ICFs/IID in the Nashville area, which would be known as the Middle Tennessee Community Homes. DIDD projected that CBDC would be closed by July 2014, following the construction of the community homes and resulting transfer of the remaining CBDC residents to those facilities. We present further information about the impending CBDC closure in observation 4 on page 85.

While CBDC stays open, the Quality Review Panel (QRP), established by the lawsuit, continues to conduct an annual assessment of conditions and services offered at the facility, according to DIDD's legal team. For each applicable settlement agreement paragraph, the QRP determines whether CBDC is in compliance, partial compliance, or noncompliance. As of May 2013, the latest QRP review of the developmental center took place in October 2012, with the formal report of findings published in December 2012. Of the 103 settlement agreement paragraphs reviewed, the QRP found CBDC to be in compliance for 53 paragraphs, partial compliance for 26, and noncompliance for 11. The QRP deemed the other 13 paragraphs no longer applicable.

In order to gauge CBDC's progress regarding compliance with the terms of the lawsuit settlement agreement, we performed an analysis of CBDC's QRP report scores from 2010 to 2012. Our testwork revealed that although the full compliance level percentage increased from 2010 to 2012 and the partial compliance level percentage decreased over that same period, the noncompliance percentage levels also increased not because conditions had worsened, but rather because the number of the settlement agreement paragraphs which were no longer applicable had increased. We include further details in the chart below.

Clover Bottom Developmental Center Quality Review Panel Report Score Analysis

	2010	2011	2012
Compliance	55	57	53
Partial Compliance	37	29	26
Non-Compliance	10	11	11
Not Applicable	0	4	13
Total Settlement Agreement Paragraphs Reviewed	102	101	103
Percentage of Settlement Agreement Paragraphs in Full Compliance (Calculation Excludes Non-applicable Paragraphs)	53.9%	58.8%	58.9%
Percentage of Settlement Agreement Paragraphs in Partial Compliance (Calculation Excludes Non-applicable Paragraphs)	36.3%	29.9%	28.9%
Percentage of Settlement Agreement Paragraphs in Non- Compliance (Calculation Excludes Non-applicable Paragraphs)	9.8%	11.3%	12.2%

Source for breakdown of compliance levels: 2010 – 2011 Quality Review Panel reports.

Potential Effects of Exiting the Federal Lawsuits

In order to evaluate the possible ramifications of exiting the two remaining federal lawsuits, we examined the amount of financial resources that the Arlington Developmental Center Remedial Order and the Clover Bottom/Greene Valley Developmental Center Settlement Agreement had consumed since their inception. According to the department’s Budget Director, tracking the costs associated with the lawsuits is difficult as they span 20 years. For most of the lawsuit costs, DIDD only had data from 2005 to the present. For a few cost components, such as the court monitor, the department was able to compile data back to 2001. Available data revealed that through April 2013, Arlington lawsuit costs totaled approximately \$240 million, while CBDC/GVDC lawsuit costs totaled about \$40 million.

Furthermore, we obtained from the Fiscal and Administrative Services Assistant Commissioner and the Budget Director an estimate of the annual resources, both monetary and personnel, that would be available upon exiting the Arlington lawsuit. Based on their calculations, DIDD’s potential savings could be significant, exceeding more than \$1 million annually. We will refrain from publishing the details of these potential savings since, as the Fiscal and Administrative Services Assistant Commissioner noted, the projections are tenuous because the department’s future budgets are subject to the will of the General Assembly.

As described above, the dismissals of the *United States v. State of Tennessee (Arlington)* and *People First of Tennessee v. Clover Bottom Developmental Center* lawsuits are pivotal to making much-needed financial and human capital available that the department could use to

advance its other priorities, such as expanding service options for individuals with developmental disabilities other than intellectual disabilities (as described in finding 1 on page 14).

In order to remove DIDD from existing federal litigation, the Commissioner should continue to collaborate with legal, financial, and programmatic staff to focus the department's efforts on complying with the terms of the Arlington exit plan and the CBDC segment of the Clover Bottom/Greene Valley Settlement Agreement.

FRAUD, WASTE, AND ABUSE

Management of each state entity, including the Department of Intellectual and Developmental Disabilities (DIDD), possesses the responsibility to establish and implement internal control systems and procedures to prevent and detect fraud, waste, and abuse. Fraud is an intentional act or omission designed to deceive or cheat, resulting in a detriment to another and/or bringing about some benefit to oneself or others. Fraudulent activities may include, but are not limited to, the following:

- theft, misappropriation, misapplication, destruction, removal, or concealment of any institutional assets or resources;
- improper reporting of financial transactions;
- authorization or receipt of payment for hours not worked;
- inappropriate or unauthorized use, alteration, or manipulation of computer data;
- forgery or unauthorized alteration of documents;
- falsification of reports to management or external agencies;
- pursuit of a personal benefit or advantage in violation of conflict of interest policies;
- concealment or misrepresentation of events or data; and
- acceptance of bribes, kickbacks, or rebates.

Waste and abuse do not necessarily involve fraud or violation of laws, regulations, or provisions of a contract or grant agreement. Instead, waste and abuse are behaviors that are deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Waste primarily involves mismanagement, inappropriate actions, or inadequate oversight. Abuse, on the other hand, includes misuse of authority or position for personal financial interest or those of a close family member or business associate.

During the course of our audit of DIDD, we received certain allegations involving fraud, waste, and abuse. We subsequently conducted an examination into these allegations to assess their validity.

The objectives of our review of the fraud, waste, and abuse allegations included determining whether

- the former Office of Policy and Innovation Deputy Commissioner overturned the Protection from Harm cases included in the allegation, and if so, whether he had the authority to take this action;
- the department had begun implementing a new safety model and sent a staff member to Sweden to receive training on this new model, as alleged;
- DIDD improperly restricted the Request for Proposal (RFP) for its new computer system to favor a particular vendor; and
- departmental staff received Samsung tablets from Microsoft, and if so, whether staff accounted for those tablets appropriately.

To fulfill each of our objectives, we interviewed key DIDD personnel. For our Protection from Harm objective, we obtained and reviewed the investigation case files for the affected service recipients. We inspected regulations governing the department's Protection from Harm investigation process, including applicable *Tennessee Code Annotated* provisions and *Provider Manual* sections and the department's Protection from Harm policies and procedures.

We performed Internet research on various safety models and analyzed their strengths and weaknesses. We scrutinized the travel claims of the staff member in question and examined background information on the applicable training offered in Sweden.

To accomplish our RFP objective, we obtained and studied the RFP, investigating certain requirements in more detail. We requested and inspected other documentation associated with the procurement process, including any pre-proposal conference documentation, system proposals, vendor reference checks, departmental staff's communications with other state entities and with prospective vendors, and the system implementation contract and related amendments. Additionally, we contacted four potential implementation vendors to identify the reasons they decided against submitting a proposal in response to the RFP.

For our Samsung tablet objective, we surveyed DIDD's Information System Inventory spreadsheet, which contains records of the current location and other details of all Information System assets, to identify the location of the Samsung tablets. We traveled to that location, found Samsung tablets, and reconciled the serial number listed on the inventory spreadsheet with the serial number displayed on the tablets. We checked the tablets for evidence of a state asset inventory tag. Upon verifying the existence of the Samsung tablets, we completed Internet research to assess their fair market value. We also read over the state's asset categorization guidelines as well as emails departmental staff exchanged with the Microsoft representative.

Based on the procedures performed, we determined that

- the former Office of Policy and Innovation Deputy Commissioner overturned the Protection from Harm cases included in the allegation without the authority to take these actions (see finding 10);

- the department had begun implementing a new safety model and sent a staff member to Sweden to receive training on this new model, as alleged (see observation 8);
- DIDD’s procurement process for its new computer system contained multiple deficiencies (see observation 9); and
- departmental staff received Samsung tablets from Microsoft but did not account for those tablets appropriately (see observation 10).

Finding 10 – In overturning two Protection from Harm cases involving the deaths of service recipients, the former Office of Policy and Innovation Deputy Commissioner circumvented the Department of Intellectual and Developmental Disabilities’ established policies and procedures, an action that could lead to increased litigation against the department, compromise the safety of service recipients, and impede the department’s ability to hold service providers accountable for wrongdoing

Section 33-1-305, *Tennessee Code Annotated*, gives the Commissioner of the Department of Intellectual and Developmental Disabilities (DIDD) the authority to “investigate complaints by a service recipient or anyone on behalf of a service recipient.” The DIDD Commissioner has delegated this power to the department’s Protection from Harm Division, which investigates all allegations and reports of abuse, neglect, or exploitation that are received by the department. DIDD has implemented policies and procedures to govern the Protection from Harm investigations. We found, however, that the former Office of Policy and Innovation Deputy Commissioner overturned two Protection from Harm cases involving the deaths of service recipients without the authority to do so per the department’s established guidelines. We also identified a less significant issue involving DIDD’s documentation of an Investigation Review Committee meeting.

Background

The Protection from Harm Division receives allegations and reports of abuse, neglect, and exploitation through email, fax, and telephone calls from the service provider(s), service recipients, and individuals on behalf of service recipients. The department has developed specific service provider reporting requirements. Pursuant to section 18.3(B) of the *Provider Manual*, the department mandates that service providers notify the DIDD Investigation Hotline of deaths; alleged or suspected abuse, neglect, or exploitation; serious injury of known or unknown cause; and suspicious injury (i.e., caused by abuse or neglect) as soon as possible and no later than four hours after the incident occurs.

The department stations Protection from Harm staff in each of its three regions. We describe the investigation process below.

- The on-call investigator for the service provider’s region begins the investigation upon receiving the hotline call.

- After conducting an examination into the allegations, the regional investigator produces and issues the Final Investigation Report, which documents all of the information surrounding the incident, including whether the allegations were substantiated or unsubstantiated.
- Following the completion of the Final Investigation Report, the department's Protection from Harm Division allows the service provider to request a review of the report's accuracy when there is a disagreement with the conclusion or a question that the integrity of the investigation may have been compromised. The department only grants such a review when the service provider's disagreement or question of integrity is based on new or additional evidence.

The Investigation Review Committee performs the review of the Final Investigation Report. The Investigation Review Committee is composed of a mixture of individuals from the department's Office of Health Services, Office of Program Operations, and Office of Policy and Innovation, along with the Director of Behavioral and Psychological Services. DIDD has policies and procedures that confer the authority to review, overturn, uphold, and modify Protection from Harm investigations to the Investigation Review Committee. These policies and procedures, which became effective May 1, 2006, state, "Once a Final Investigation Report is reviewed and closed by the Investigation Review Committee, the decision by the Committee is final."

Testwork Results

Substantiated Investigations Overturned

During our testwork, we found that DIDD's former Office of Policy and Innovation Deputy Commissioner modified or overturned the substantiated investigations into the deaths of two service recipients. Specifically, the former Deputy Commissioner modified or overturned the results of an investigation in April 2012 that had been reviewed and upheld by the Investigation Review Committee. The Deputy Commissioner also overturned an investigation in May 2012 that had not been reviewed by the Investigation Review Committee. Both investigation cases involved the same provider agency. We will refrain from publishing the details of these cases due to their sensitive nature and to protect the privacy of the service recipients' family members. Our inspection revealed that at the time of the former Deputy Commissioner's actions, the department's Protection from Harm policy did not give any one individual the power to overturn, uphold, or modify a Protection from Harm investigation. Therefore, the former Office of Policy and Innovation Deputy Commissioner acted outside his authority and bypassed the department's existing internal controls.

According to the former Office of Policy and Innovation Deputy Commissioner, he believed that a newly drafted policy giving the Commissioner or the Commissioner's designee the power to overturn Protection from Harm cases had been signed and approved. Based on our review, however, the drafted policy did not explicitly give the Commissioner or his or her designee this authority; it merely removed the statement that "the decision by the committee is final" and instead stipulated, "The department shall establish and maintain an Investigation Review Committee. The committee shall review and examine investigations based on new

evidence and make recommendations to the Commissioner or his or her designee, on investigation outcomes.” Additionally, our testwork disclosed that the former Commissioner never approved the proposed policy. We also discovered that the effective date on this draft policy was November 12, 2012, which was after the former Office of Policy and Innovation Deputy Commissioner modified or overturned the two investigations. Therefore, the Protection from Harm policy from May 1, 2006, remained in effect.

Furthermore, we discussed justification to overturn these cases with the current Commissioner, who served as the Office of Program Operations Deputy Commissioner until her promotion to Commissioner on June 1, 2013. At the time she became aware that the cases were overturned, the Commissioner stated that as the Office of Program Operations Deputy Commissioner, she had disagreed with the Office of Policy and Innovation Deputy Commissioner’s decision to overturn the cases. She also reported that after the Office of Policy and Innovation Deputy Commissioner overturned the substantiated investigations, DIDD conducted an extensive review of the provider agency involved in the service recipient deaths. According to the current Commissioner, the review included a trip to every service recipient’s home to complete a general wellness review, an Individual Support Plan review, and a medical and behavior support plan review. The department required the provider agency to submit a corrective action plan for all findings that resulted from this review.

The current Commissioner explained that the Office of Program Operations staff automatically perform a review on any provider agency where potentially significant performance issues have been identified. In this case, since the deaths of service recipients were involved and because the provider served a specialized population of behaviorally challenged individuals, the Deputy Commissioners collaborated to develop a customized review process. As a result, staff from the Office of Health Services, the Protection from Harm Division, and the Office of General Counsel participated in the review, in addition to personnel from the Office of Program Operations.

Less Significant Item Noted

While analyzing the files related to the two overturned investigations, we discovered that the Investigation Review Committee did not sufficiently document one of its meetings. Although the department’s files included the Investigation Review Committee’s final decision to uphold, modify, or overturn the investigation results, the committee did not maintain the following relevant information required by best practices:

1. the position of each attendee (e.g., an Investigation Review Committee member or the committee chair, other DIDD staff, a provider representative, or a member of the general public);
2. a list of the committee members, if any, who were absent from the meeting;
3. the source of the factors considered in the decision-making process (e.g., comments from departmental staff, review of DIDD policies, interviews with provider employees, etc.); or

4. a breakdown of committee members' votes to either substantiate or reverse the findings of the regional investigators.

Conclusion

During the completion of our audit, the former Office of Policy and Innovation Deputy Commissioner transitioned to the Department of Children's Services (DCS) effective June 1, 2013. At the same time as the former Deputy Commissioner's transfer, the former DIDD Commissioner became the DCS Commissioner.

DIDD has a responsibility to ensure that all policies and procedures are followed. By failing to fulfill this responsibility, the department opens itself up to litigation and, more importantly, increased safety risk for service recipients if providers are not held accountable for wrongdoing.

By not maintaining relevant details concerning the Investigation Review Committee meetings, DIDD impairs the ability of interested parties to evaluate the propriety of the committee's decisions as well as transparency and accountability in the Protection from Harm process. Additionally, it is critical to thoroughly document what transpires at the meetings in case legal issues arise.

Recommendation

The Department of Intellectual and Developmental Disabilities Commissioner should monitor staff members to ensure that they are following the policies and procedures that have been officially implemented. In addition, she should ensure that all Deputy Commissioners, Assistant Commissioners, and other managerial staff understand that there are official channels that a policy must go through prior to implementation. The Commissioner should also ensure that staff document all relevant details of the Investigation Review Committee meetings.

Management's Comment

We concur.

The Department has a responsibility to ensure that all policies and procedures are followed. In June 2013, the Department issued policy 80.2.3, Investigation Review Committee, to clarify and further strengthen the Department's requirements pertaining to the functioning and final authority of the Investigation Review Committee (IRC). This policy, which applies to all DIDD staff, specifies that once the review is closed by the IRC, the decision by the committee is final. It cannot be overturned.

The recommendations pertaining to best practices and the IRC minutes have also been noted. The IRC is a component of the Protection From Harm Division and we recognize that the activities and operations of this Division, by their very nature, have a significant intersection and overlay with the Department's legal responsibilities and duties. Subsequent to the change in

Commissioners, the Department's organizational structure was modified and one of the changes is that the Protection From Harm Director is a licensed attorney who reports directly to the Department's General Counsel.

That policy 80.2.3 was issued and the Department's organizational structure was realigned months before the draft finding was received speaks clearly to our commitment to ensure transparency and accountability for these decisions, and to ensure that all policies and procedures are known and followed by all Departmental staff.

Observation 8 – During our audit period, the Department of Intellectual and Developmental Disabilities explored the possibility of transitioning to Just Culture, a new safety model

The Department of Intellectual and Developmental Disabilities (DIDD) operates a nationally recognized Protection from Harm system that was developed to address concerns arising from a series of federal lawsuits filed against the department. DIDD's Protection from Harm system requires service providers to report allegations of abuse, neglect, and exploitation of service recipients. The Protection from Harm investigators open investigations into all allegations reported and document their findings in reports that the department uses to determine the appropriate actions, if any, to be taken against the provider and/or the provider's staff. Prior to our audit period of January 15, 2011, through May 31, 2013, the U.S. Department of Justice recommended that other states, including Texas, follow DIDD's incident reporting and investigation management model. During our audit period, DIDD began supplementing the existing Protection from Harm system with concepts derived from a new safety model known as Just Culture, which is an alternative approach to conducting investigations and assessing accountability for errors.

Background on DIDD's Use of Just Culture

The former Office of Policy and Innovation Deputy Commissioner introduced the idea of Just Culture, also sometimes referred to as Safety Culture or Safety Systems, when he started working for DIDD in August 2011. According to the department's former Director of Safety Systems, although Just Culture is a relatively new concept within the healthcare industry, the model has been used in the aviation and nuclear power industries since the mid-to-late 1990s. The former Director of Safety Systems added that the basic idea behind Just Culture is that when a caregiver makes a mistake or an accident occurs, the caregiver might not be at fault. Instead, a deficiency might exist within the system the organization has designed and implemented. Examples of such system deficiencies include inadequate training and supervision.

Following our discussion with the former Director of Safety Systems, we conducted our own research into Just Culture. We found that within the healthcare industry, St. Joseph Health System defines Just Culture as a "culture that recognizes that competent professionals make mistakes and acknowledges that even competent professionals will develop unhealthy norms (shortcuts, 'routine rule violations'), but has zero tolerance for reckless behavior." As potential

benefits of this safety model, Rebecca Miller, Scott Griffith, and Amy Vogelsmeier write in their 2010 article “A Statewide Approach to a Just Culture for Patient Safety: The Missouri Story,” published in the *Journal of Nursing Regulation*, that Just Culture “leads to improved risk management and increased reporting of near misses and errors—and subsequently to learning and error prevention. . . . A Just Culture is an open, learning culture that encourages staff members to do everything possible to design a better system and make better behavioral choices to improve the safety of care.”

Additionally, we examined the research of Dr. Sidney Dekker, an expert on Just Culture who served as a professor at Griffith University in Australia as of July 2013 and formerly worked as a professor at Lund University in Sweden. His 2008 paper, *Just culture: who gets to draw the line?*, states that Just Culture is meant to “balance learning from incidents with accountability for their consequences.” Dekker’s paper also addresses the biggest area of concern within Just Culture, that no specific properties or guides exist to determine whether a caregiver deserves to receive blame based upon his or her actions. Rather, individuals who may or may not have preconceived notions make this determination.

Departmental Staff Received Training on Just Culture in Sweden

In order to gain more information on the concept of Just Culture, the department decided to send the former Director of Safety Systems to Lund University in Lund, Sweden, for a master’s program focused on Just Culture. According to the former Director of Safety Systems, this program is unique since it allows participants to complete their degrees while continuing to work in their home country. The former Director of Safety Systems claimed that no comparable programs were offered in the United States at the time he was approved to travel to Sweden for the training.

Based on our inquiries with the former Director of Safety Systems, former Office of Policy and Innovation Deputy Commissioner, and the former DIDD Commissioner, we determined that DIDD paid for the former Director of Safety Systems’ airfare, hotel, and transportation in Sweden, but the former Director of Safety Systems said that he paid the tuition himself. Our review of DIDD’s travel expenditures and the former Director of Safety Systems’ travel claim revealed that the department paid \$973.90 for airfare, \$1,205.33 for lodging, and \$250.00 for transportation in Sweden, for a total of \$2,429.23. The former Director of Safety Systems added that the master’s program requires him to travel to Lund for two more learning laboratories, one in September 2013 and the other in February 2014.

Future of Just Culture at DIDD and Other State Entities

Effective June 1, 2013, Governor Bill Haslam appointed the former DIDD Commissioner as the new Department of Children’s Services (DCS) Commissioner; he then appointed a new Commissioner over DIDD. Also effective June 1, 2013, the former Office of Policy and Innovation Deputy Commissioner and the former Director of Safety Systems transitioned to DCS. Given these organizational changes, we decided to meet with the newly appointed Commissioner to discuss the future of Just Culture at DIDD. The new DIDD Commissioner told us on June 12, 2013, that she planned to put the implementation of Just Culture on hold until

management and staff could gather more evidence about the effectiveness of the model for the department. Although DIDD plans to postpone the implementation of Just Culture, our interviews with the former Office of Policy and Innovation Deputy Commissioner and the former DIDD Commissioner disclosed that they had already started to implement Just Culture at the Department of Children's Services.

Consequences of Safety Model Selection

Based on our discussions with DIDD's new Commissioner and the former Office of Policy and Innovation Deputy Commissioner, we determined that the ultimate goal of both the Just Culture system and the department's existing Protection from Harm system was to protect service recipients. A system of best practices should address any allegations of abuse, neglect, and exploitation of service recipients and ultimately determine whether a caregiver acted with the service recipients' best interests in mind. Any changes to supplement the existing Protection from Harm system should be thoroughly vetted to ensure improvements since failure to implement an adequate safety model could potentially endanger the health and welfare of service recipients and increase the risks of legal actions against the department.

Before implementing the Just Culture safety model, the Department of Intellectual and Developmental Disabilities and other state entities should conduct thorough research, specifically with respect to how the department's Protection from Harm investigations impact the service recipient's care as well as decisions on consequences for the caregiver. Furthermore, any state entity that decides to implement Just Culture as a supplement to the existing system should ensure that the proper accountability and transparency frameworks are in place to protect the safety of the individuals served.

Observation 9 – The department's process for procuring implementation services for Project Titan, its new computer system, contained multiple deficiencies that limited transparency and accountability and might have reduced competition

In a contract with an effective date of November 17, 2012, the Department of Intellectual and Developmental Disabilities (DIDD) procured the services of Mid-America Consulting Group, Inc., as the implementation vendor for Project Titan, the department's new computer system. When we analyzed DIDD's procurement process, however, we identified multiple areas for improvement. Specifically, we found that

- Mid-America's early involvement in the department's procurement effort might have given the company an advantage over other vendors;
- the language in the Project Titan Request for Proposal (RFP) might have unnecessarily restricted competition;
- DIDD did not maintain minutes for its Project Titan pre-proposal conference;
- despite limited response to its RFP, the department failed to follow up with vendors that had previously provided notification of their intent to submit a proposal; and

- DIDD did not document one of its reference checks for Mid-America.

Background

Department's Need for Project Titan

In order to support its mission to employ person-centered practices in a service delivery system designed to improve the quality of life for Tennesseans with intellectual and developmental disabilities, DIDD relies heavily on paper-based, labor-intensive processes and also disparate computer applications, some of which are aging and contain deficiencies. The department's remedy for these ailments is implementing a single integrated application system, nicknamed "Project Titan." DIDD management intends for Project Titan to replace three financial applications—Community Services Tracking, Provider Claims Processing, and the Patient Tracking and Billing System; its Protection from Harm system, Incidents & Investigations; and a number of manual Microsoft Excel spreadsheets and Crystal Reports that staff use for various tasks.

Involvement of Business Solutions Delivery Group

Due to the department's history of failed system replacements efforts, management secured the involvement of the Department of Finance and Administration's Business Solutions Delivery Group in Project Titan. (We detail the department's prior system implementation projects in finding 7 on page 78). The Business Solutions Delivery Group provides DIDD with project management resources, along with a project management methodology designed to mirror industry best practices.

Procurement Process

The department's procurement process for Project Titan was twofold, involving the attainment of both software and implementation services. With Project Titan, DIDD leveraged an existing state enterprise master agreement to procure the Microsoft Dynamics software. The department then used competitive negotiation to find a company to design, configure, test, and implement the system. The competitive negotiation consisted of two stages:

1. DIDD issued a Request for Information (RFI) on April 20, 2012, for the purpose of understanding the knowledge and capabilities of the vendor community regarding the implementation of Microsoft Dynamics. We determined through inquiry and inspection, however, that the only vendor that submitted a response to the RFI was Mid-America.
2. DIDD issued an RFP on August 8, 2012, to solicit bids for the configuration and implementation of Microsoft Dynamics for Project Titan. The department established September 14, 2012, as the deadline for vendors to submit a proposal. Based on our discussions with the Chief Information Officer and the Contract Manager and inspection of bid documents, only one vendor—Mid-America—responded to DIDD's

Project Titan RFP. Since departmental management determined that Mid-America met the RFP requirements, DIDD awarded the contract to that vendor.

Purpose of Pre-proposal Conference

Prior to the RFP deadline, state entities commonly conduct a pre-proposal conference for representatives of companies considering submitting a bid. The purpose of the pre-proposal conference is to discuss the RFP scope of services, offering potential bidders the opportunity to ask questions, obtain additional information, and seek clarification on the RFP, if needed. As part of the question-and-answer period, vendors may object to any of the RFP specifications.

Testwork Results

Mid-America's Early Engagement in Project Titan

Based on our inquiries with departmental personnel and review of procurement documentation, we found that Mid-America had been involved in Project Titan since the project's inception, as described below.

- *Jointly submitted original project proposal with Microsoft* – On December 30, 2011, before DIDD publicly announced that it was seeking vendors for Project Titan, Microsoft and Mid-America submitted a joint proposal to departmental management for a single integrated application system. The Chief Information Officer postulated that management made significant changes to the project afterwards, including scope expansion; however, he conceded that the original proposal contained Mid-America's statement of qualifications, from which management derived criteria later used as the Project Titan RFP specifications.
- *Personally endorsed by Microsoft* – According to the Chief Information Officer, Microsoft expressly recommended Mid-America as the Project Titan implementation vendor, claiming that Mid-America could successfully complete the project and that the vendor was the expert in developing the sort of system needed by DIDD. Therefore, the department decided to use Mid-America's qualifications as a baseline. The Chief Information Officer explained that DIDD was willing to accept anyone of equal or greater competence, but the department did not want to risk the success of the project on a less qualified vendor.
- *Referenced in early communications with the Department of General Services* – In a Business Case Discussion document dated March 6, 2012, the former Deputy Commissioner of Policy and Innovation and the Chief Information Officer directly mentioned Mid-America as a potential provider of implementation services to the Department of General Services (DGS), which provided procurement oversight to DIDD. The former Deputy Commissioner of Policy and Innovation (now the Child Safety Deputy Commissioner at the Department of Children's Services) and the Chief Information Officer prepared this document before DGS staff determined that DIDD would have to acquire an implementation vendor for Project Titan through competitive negotiation.

- *Interacted with department to develop mobile application software* – Based on our discussion with the Chief Information Officer, Microsoft desired to create a mobile application to demonstrate Microsoft Dynamics for DIDD. Microsoft procured the services of Mid-America to develop the application’s software. The Chief Information Officer stated that management conducted a meeting with Mid-America representatives to discuss project requirements, but after management learned that DIDD would have to obtain implementation services via competitive negotiation, the department scrapped the mobile application project in order to maintain an arms-length relationship with Mid-America.

When we asked the Chief Information Officer about Mid-America’s early involvement in Project Titan, he acknowledged that Mid-America began the procurement process with an advantage. He claimed, though, that this advantage later dissipated because DIDD distanced itself from the vendor once management discovered that they had to take the RFP route to procure implementation services. The Chief Information Officer also thought that other vendors were given more than adequate opportunity to respond to the RFP and that Mid-America received no special treatment. He added that it was hard to have an advantage when there are no other competitors. The Chief Information Officer said that he felt comfortable that the department made sufficient efforts to include other vendors. Additionally, he pointed out that DIDD received guidance and oversight from DGS during the Project Titan procurement effort; DGS personnel handled the bulk of the RFP process, including “putting it on the street” and performing reviews and quality checks.

Project Titan RFP Language Might Have Been Unnecessarily Restrictive

One of the Mid-America qualifications that the department adopted for the Project Titan RFP was membership in the Microsoft Dynamics President’s Club or Inner Circle. Upon reviewing Microsoft’s press releases, though, we found that Microsoft awarded membership status based on sales achievements, not development or innovation. Given this information, we believe membership status might have been a superfluous restriction that did not add proven value to Project Titan. When we questioned the Chief Information Officer, he defended DIDD’s decision to incorporate the membership requirement in the RFP. He asserted that Microsoft is selective in awarding membership status and that membership demonstrates a level of partnership with Microsoft, a proven track record of success, and knowledge of Microsoft products. The Chief Information Officer added that since the department had decided to use the Microsoft Dynamics software, management wanted some seal of approval from Microsoft for the selected implementation vendor. The Business Solutions Delivery Group Senior Project Manager admitted the Microsoft Inner Circle and President’s Club memberships measure quantity of implementations but not necessarily quality.

Minutes for Project Titan Pre-proposal Conference Not Maintained

We discovered through inspection that DIDD held a pre-proposal conference related to its Project Titan RFP on August 17, 2012. Our discussions with the Contract Manager revealed that she failed to record and maintain minutes pertaining to this conference, however. The Contract Manager claimed that no vendors had submitted questions for the department to address, but

without records, we could not verify the accuracy of her statement. According to the Contract Manager, she did not draft minutes because section 1.7 of the RFP stipulated that the department’s responses to the prospective bidders were non-binding.

Follow Up With Nonresponsive Vendors Not Conducted

Despite receiving only one response to the Project Titan RFP, the Chief Information Officer, the Contract Manager, and the Business Solutions Delivery Group personnel all failed to follow the best practice of contacting previously interested vendors to obtain an explanation for their nonresponsiveness. In addition to Mid-America, four more vendors had officially notified the department that they intended to submit a proposal. When we contacted those vendors ourselves, they provided valuable insights into DIDD’s procurement process and identified potential problems. We include a summary of our communication with the four vendors in the following table.

Name	Vendor’s Response	Potential Problem for DIDD
Vendor 1	Representatives from this vendor opted not to submit a proposal because they did not believe they had a legitimate chance of winning the Project Titan implementation contract. The vendor’s exploratory team reported that “there was a vendor that was being or had been selected so they pulled out.”	Impaired competition
Vendor 2	This company did not respond to the Project Titan RFP because “it looked like it was written for a product/solution that a vendor likely has worked with this department on.”	Impaired competition
Vendor 3	The vendor chose to be nonresponsive because of the “general lack of detailed requirements” in the RFP.	RFP language too broad
Vendor 4	The vendor did not submit a proposal because implementing the full suite of the Microsoft Dynamics product fell outside its expertise.	None

Source: Auditor communication with vendors.

The Chief Information Officer did not consider it necessary to contact the four nonresponsive vendors since the department had received a proposal from Mid-America that satisfied the RFP requirements.

Reference Check Not Documented

Through inquiry and inspection, we determined that in the proposal submitted to DIDD, Mid-America included as references both New York's Office of Mental Retardation and Developmental Disabilities and Florida's Agency for Persons with Disabilities. When we inquired with the Chief Information Officer about the due diligence procedures that DIDD performed prior to contract execution, he replied that the department's Information Technology (IT) staff had conducted teleconferences with both New York and Florida representatives. In response to our requests, the Chief Information Officer was able to provide a record of the Florida reference check but not the New York reference. The Chief Information Officer explained that IT staff do not normally document vendor reference checks, adding that the department only had notes for the Florida reference check because he was unable to personally participate in the teleconference.

Conclusion

DIDD management and staff have a duty to act in the best interest of the state in general and the department in particular. By becoming closely involved with a single vendor before finalizing a procurement method, DIDD gave the appearance of favoring that vendor. In addition, by adopting RFP requirements that might not provide a definitive benefit, DIDD potentially reduced competition without just cause. Failure to retain a thorough account of the pre-proposal conference, including any comments made and questions asked by vendors and the department's subsequent responses, compromises the transparency and accountability of the procurement process. Furthermore, by not seeking feedback from nonresponsive vendors, the department misses the opportunity to address potential problems with its current procurement efforts and to improve on future procurement efforts. By failing to create and maintain appropriate records, the department also impedes stakeholders' ability to assess and then mitigate any problems disclosed by the vendor's references.

The Commissioner should ensure that interested vendors are granted equal access to departmental personnel. The Commissioner should work with the Contract Manager to ensure that solicitation requests do not contain unnecessary restrictions. In order to optimize transparency and accountability, the Commissioner should collaborate with the Chief Information Officer and Contract Manager to ensure that Information Technology staff, along with other DIDD personnel, chronicle the outcomes of all pre-proposal conferences and vendor reference checks. Also, the Contract Manager should follow up with vendors when the department receives limited response to its procurement requests.

Observation 10 – The Department of Intellectual and Developmental Disabilities failed to return two Samsung tablets to Microsoft after the end of a 90-day trial period as required and also failed to assign state asset inventory tags to the tablets, increasing the risk of asset misappropriation

The Department of Intellectual and Developmental Disabilities (DIDD) received two Samsung Slate Series 7 tablets as part of a Microsoft pilot project to design and implement a mobile application. Microsoft sent the tablets to the department for a 90-day trial period. We discovered, however, that the department failed to return the tablets at the end of the trial period and also failed to tag tablets as state inventory.

Background

On April 13, 2012, DIDD agreed to enter into a pilot project with Microsoft to demonstrate a mobile application that could be tied into the department's new computer system, Project Titan. As part of the pilot project, Microsoft representatives promoting the Dynamics Customer Relationship Management software sent DIDD two Samsung Slate Series 7 tablets on April 17, 2012. Using the Mid-America Consulting Group as the developer for the mobile application, Microsoft wished to showcase the Dynamics software's ability to allow for real-time investigation updates. Under DIDD's current system, investigators must hand-write their reports and subsequently key that information into the department's Incidents & Investigations database. Therefore, DIDD experiences a lag time before reports are available to management and other investigators. During the pilot project, when DIDD management learned that they would have to use competition negotiation to procure implementation services for Project Titan, DIDD and Mid-America decided to cease work on the mobile application to avoid compromising Mid-America's ability to bid on the contract for Project Titan implementation services. For more information about Mid-America's role in Project Titan, see observation 9 on page 125.

End of Trial Period

Based on our discussions with DIDD's Chief Information Officer, the department did not return the tablets on or after July 16, 2012, the end of the 90-day trial period. The Chief Information Officer stated that he was unaware that the tablets were on loan and to be used for the pilot project only. As a result of our inquiries, the Chief Information Officer contacted the department's Microsoft representative on June 24, 2013, to determine the steps he should take to return the tablets. As of July 12, 2013, the Chief Information Officer had not received a response from the Microsoft representative.

Tagging of Tablets

Since DIDD failed to return the tablets to Microsoft, we researched requirements for tagging assets maintained in state custody following the conclusion of a trial period. The Fiscal Director 1 with the Department of Finance and Administration told us that DIDD should tag the item as an asset if the item has a remaining useful life of at least three years at the end of the trial period, in accordance with industry best practices, and if the asset also meets other criteria set

forth in the state's guidelines, including the Department of General Services' *Asset Ordering Overview*. Based on our analysis, the tablets had a remaining useful life of at least three years when the trial period ended. The *Asset Ordering Overview* further states that all items received that meet the following requirements should be tagged as a state asset:

Requirements for an item being marked as an Asset...

B. All equipment purchases with a cost between \$100.00 and \$4,999.00 ... should be an account code 70999000 (sensitive minor equipment) or 72299000 (sensitive computer equipment)...

Sensitive Item Listing:

** Subject to change

...Computers, All Types

... H. Donated equipment items that meet the above criteria should be added based upon estimated fair market value at the date of donation.

We contacted DIDD's Information Resource Support Specialist to determine whether or not DIDD assigned a state asset inventory tag number to the Samsung tablets at the end of the trial period. Our communications with the Information Resource Support Specialist revealed that the department had not tagged the tablets. The Information Resource Support Specialist was able to give us an Information System Inventory spreadsheet that documented the current location of the tablets and their serial numbers, however. We visited the location listed and viewed the tablets, matching the serial number listed on the Information System Inventory spreadsheet to the serial number on the respective tablet. We also physically confirmed that neither of the tablets had an attached state asset inventory tag.

Upon finding that the Samsung tablets were not tagged as required by industry best practices and state policies, we requested an explanation from applicable DIDD personnel. The department's Procurement Officer reported to us that in normal circumstances, any assets that are ordered would be shipped to her, and she would then record the asset in Edison, the state's accounting system. Edison contains an Asset Management Module that allows departments to enter and assign a state inventory tag number that is used to track state assets. Based on the information provided by the Information Resource Support Specialist, we met with the Chief Information Officer to discuss the procurement process for the tablets. The Chief Information Officer explained that the Samsung tablets did not go through the normal procurement process. Instead, Microsoft sent the tablets directly to the Chief Information Officer, and therefore, the Procurement Officer was unable to enter the tablets' information into the Edison Asset Management Module because she was unaware of their arrival.

During our meeting with the Chief Information Officer, he initially claimed that the department had assigned state inventory tags to the tablets. When we informed the Chief Information Officer that the tablets did not have tags assigned to them, he then asserted that the department was not required to tag the tablets. His reasoning was that the tablets were of no value to DIDD because they required wireless Internet connection, which the department did not

possess. Since the tablets had no value to the department, the Chief Information Officer erroneously believed that they did not need an asset inventory tag number assigned. As discussed above, though, the *Asset Ordering Overview* requires that donated items be assessed based upon fair market value. Our Internet research disclosed that the Samsung Slate Series 7 Tablets were valued at \$1,199 each at the time of donation. Thus, both of the tablets would have been classified as sensitive computer equipment and should have been tagged as state assets.

Conclusion

By not returning the Samsung tablets to Microsoft at the end of the 90-day trial period, the Chief Information Officer might have opened the department up to unnecessary charges for keeping the tablets. Additionally, by failing to tag the tablets, DIDD limited its ability to track whether the assets were still in the possession of the department, thereby heightening the risk of misplacement and theft.

If the Microsoft representative requests that the department return the tablets, the Chief Information Officer should comply with Microsoft's instructions as soon as possible. If the Microsoft representative allows the department to keep the Samsung Slate Series 7 tablets, the Chief Information Officer should obtain state asset inventory tag numbers for those items. Also, the Commissioner should make sure that all individuals who receive procured or donated items are aware of and are following the requirements established by the Department of General Services in the *Asset Ordering Overview*.

PERFORMANCE MEASURES

Executive agencies are required by the Governmental Accountability Act of 2002 and Section 9-4-5606(b), *Tennessee Code Annotated*, to annually submit a strategic plan for delivering services and the proposed program performance measures and standards to assist the General Assembly in making meaningful decisions about the allocation of the state's resources in meeting vital needs.

The objectives of our review of the Department of Intellectual and Developmental Disabilities' strategic plans and program performance measures were to

- note any change in services or performance measures from the previous plan;
- identify any performance standards or measures inconsistent with services described in the strategic plan and any measures that would not help determine whether the department had met the standard; and
- assess the adequacy of the methods used by the department to track, calculate, and report performance measures.

To determine the existence of any change in services or performance measures from the previous plan, we compared the services and measures presented in Volume 1 of the 2012 *Agency Strategic Plan* with the services and measures listed in Volume 1 of the 2011 *Agency*

Strategic Plan. To identify any performance standards or measures inconsistent with services described in the strategic plan and any measures that would not help determine whether the department had met the standard, we inspected Volume 1 of the department’s 2011 and 2012 strategic plans. To assess the adequacy of the methods used by the department to track, calculate, and report performance measures, we sent Performance Measures Information Forms to applicable staff; the forms contained questions on the department’s processes for performance measures development, data collection and calculation, and review for each performance measure listed in the department’s 2012 strategic plan. We reviewed the completed forms and obtained corroborating evidence for management’s explanations.

Based on the procedures performed, we found

- some services and performance measures had changed since the previous plan;
- performance standards and measures were consistent with services described in the strategic plan, and measures were found to be helpful in determining whether the department had met the standard; and
- the methods used by the department to track, calculate, and report performance measures were adequate, except for the insufficient review process for the Family Support Program performance measure (see finding 1 on page 14).

See Appendix 2 on page 137 for the department’s performance measures for each division.

TITLE VI

Title VI of the Civil Rights Act of 1964 states that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

The objectives of our review of Title VI were to determine if the Department of Intellectual and Developmental Disabilities

- received federal financial assistance;
- prepared a Title VI Implementation Plan;
- submitted the Title VI Implementation Plan for Fiscal Year 2012 to the Tennessee Human Rights Commission by October 1, 2012; and
- had procedures for handling Title VI complaints and if the department received any Title VI related complaints during the past two years.

To achieve our objectives, we interviewed the Director of Civil Rights. We reviewed the Title VI Compliance Program Annual Report for fiscal year 2011 to 2012 from the Tennessee Human Rights Commission to determine federal financial assistance received. We obtained a copy of the Title VI Implementation Plan for fiscal year 2012. We obtained documentation

received from the Tennessee Human Rights Commission confirming that the Title VI Implementation Plan was received by October 1, 2012. We reviewed the Title VI Implementation Plans for fiscal year 2010 to 2011 and fiscal year 2011 to 2012, and we reviewed documentation from the complaints received.

Based on the procedures performed, we found that the department

- received \$815,783,000 in federal financial assistance;
- prepared a Title VI Implementation Plan;
- submitted the Title VI Implementation Plan to Tennessee Human Rights Commission by October 1, 2012; and
- had procedures for handling Title VI complaints and received eight complaints during the last two years.

The Human Rights Commission is charged with the responsibility of verifying that all state governmental entities that are recipients of federal financial assistance comply with the requirements of Title VI of the Civil Rights Act of 1964 pursuant to the State of Tennessee Public Acts, 2009 Public Chapter No. 437. For the Tennessee Title VI Compliance Program Annual Report prepared by the Human Rights Commission, which covers the period July 1, 2011, through June 30, 2012, the Department of Intellectual and Developmental Disabilities was issued no findings.

See Appendix 3, page 146 for the department's staff ethnicity and gender demographics.

APPENDICES

Appendix 1

BUSINESS UNIT CODES

Department of Intellectual and Developmental Disabilities business unit codes:

- 344.01 Intellectual Disabilities Services Administration
- 344.02 Community Intellectual Disability Services
- 344.04 Quality Assurance Program
- 344.11 Clover Bottom Developmental Center
- 344.12 Greene Valley Developmental Center
- 344.15 Harold Jordan Center
- 344.20 West Tennessee Regional Office
- 344.21 Middle Tennessee Regional Office
- 344.22 East Tennessee Regional Office
- 344.30 West Tennessee Resource Center
- 344.31 Middle Tennessee Resource Center
- 344.32 East Tennessee Resource Center
- 344.40 West Tennessee Community Homes
- 344.41 Middle Tennessee Resource Center
- 344.42 East Tennessee Community Homes
- 344.50 Major Maintenance
- 344.81 Developmental Disabilities Council
- 344.82 Mental Retardation - Capital Projects

Appendix 2

Performance Measures Information (Source: Departmental Management and Agency Strategic Plans)

As stated in the Tennessee Governmental Accountability Act of 2002, “accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government.” In accordance with this act, all executive branch agencies are required to submit annually to the Department of Finance and Administration a strategic plan and program performance measures. The department publishes the resulting information in two volumes: *Agency Strategic Plans: Volume 1 - Five-Year Strategic Plans* and *Volume 2 - Program Performance Measures*. Agencies were required to begin submitting performance-based budget requests according to a schedule developed by the department, beginning with three agencies in fiscal year 2005, with all executive-branch agencies included no later than fiscal year 2012. The Department of Intellectual and Developmental Disabilities (DIDD) began submitting performance-based budget requests effective for fiscal year 2012, its first full fiscal year as a stand-alone department.

Detailed below are the Department of Intellectual and Developmental Disabilities’ performance standards and performance measures, as reported in the September 2012 *Volume 2 - Program Performance Measures*. Also reported below is a description of the agency’s processes for (1) identifying/developing the standards and measures; (2) collecting the data used in the measures; and (3) ensuring that the standards and measures reported are appropriate and that the data is accurate.

We did not audit, sample, or test this information, the procedures used to determine the information, or the controls over the validity of the information.

Performance Standards and Measures

Administration and Policy

Intellectual Disabilities Services Administration

Standard: Administrative costs to total services costs will not exceed 10.00%.

Measure: Percent of administrative costs to total services cost.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
2.90%	9.80%	9.80%

Standard: Resolve and close complaint cases within 30 days of receipt.

Measure: Percent of complaint cases closed within 30 days of receipt

Appendix 2 (CONT.)

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
98%	99%	98%

Administrative Costs

The department’s goal is to administer social services to Tennesseans by maximizing available funds and operating with low administrative costs. The DIDD Budget Director collects the necessary data utilizing a monthly expenditures report from Edison, the state’s enterprise resource planning system, and calculates the performance measure by dividing total administrative costs by total departmental costs. The Fiscal and Administrative Services Assistant Commissioner and the Budget Director review the measure and associated data/calculations. Furthermore, the department conducts a team review with additional staff involved.

Complaint Cases

Most complaints received by the DIDD Customer Focused Services Division (formerly known as the Complaint Resolution Unit) are from persons served, their families, and/or the providers that serve them. Departmental personnel want to ensure that they are responsive to those groups and that the groups’ concerns are resolved in a timely manner. The Regional Customer Focused Services Coordinators collect and document the incoming complaints by entering them into the Client Oriented Survey Management Operating System for tracking. On a monthly basis, the data are reviewed on regional and statewide levels. DIDD calculates the performance measure by dividing the total number of complaint cases appropriately resolved within 30 days of receipt by the total number of complaints. The Assistant State Director of Customer Focused Services reviews the measure and related data and calculations. The *Complaint Resolutions System Handbook* serves as the department’s written procedures for collecting the data and calculating and verifying the measure. In its 2012 *Agency Strategic Plan*, the department transferred this performance measure from the Quality Assurance Program to the Intellectual Disabilities Services Administration.

Developmental Disabilities Council

Standard: Provide training and educational opportunities to Tennesseans with disabilities and family members.

Measure: Number of individuals provided training and educational opportunities.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
2,615	1,271	2,220

Appendix 2 (CONT.)

Standard: Provide Tennesseans with disabilities, family members, professional organizations, policymakers, and the public with reliable sources of information about disability issues, services, and supports.

Measure: Number of individuals provided disability resources and information.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
41,302	91,400	42,100

Training and Educational Opportunities

The council is measuring its success at fostering and supporting training and educational opportunities to Tennesseans with disabilities and their families. The council’s five-year State Plan, on which staff report progress to the Administration on Intellectual and Developmental Disabilities, has two goals (Leadership Development and Service System Improvement) which center on educational and training activities. The council’s State Plan Leadership Development goal is that Tennesseans with disabilities and families will be better able to access services, influence policy, communicate needs, and build relationships in their communities. Without such a goal, the council would be out of compliance with federal reporting requirements. The Service System Improvement goal focuses on funding of best practice activities, public policy education, and coalition development so that Tennesseans with disabilities may be more independent, productive, and integrated into community life. Council staff collect data through quarterly progress reports from projects and staff activity updates; staff then enter this data into the Developmental Disabilities Suite database, which is maintained in partnership by the Administration on Intellectual and Developmental Disabilities and the National Association of Councils on Developmental Disabilities. The council derives its reported performance measure calculation by aggregating data from the quarterly progress reports. While data from the first three quarters represents actual numbers, the fourth quarter data is an estimate since DIDD’s *Agency Strategic Plan* is due before that data becomes available. The council estimates the fourth quarter data based on extrapolations from the first three quarters with modifications for any planned variations based on the project work plans. Each December, the department requests that the council provide actual fourth quarter data. Council program staff review the performance measure and related data/calculations. Specifically, the Director of the Grant Program reviews quarterly program reports and develops a summary progress report. Further, council program staff attend regular grantee meetings through participation in advisory boards. The council’s Executive Director and Project Review Committee are responsible for reviewing the summary report, along with overseeing the overall progress of grants.

Reliable Information Sources

The council seeks to measure its success at providing Tennesseans with disabilities and their family members with reliable sources of information about disability issues, services, and supports which they can use to increase their access to services. Additionally, the council collects data on outreach and education efforts to the general public, including professionals and providers, as well as policymakers. Council staff gather data through quarterly progress reports from projects and staff activity updates. Staff then enter this data into the Developmental

Appendix 2 (CONT.)

Disabilities Suite. While data from the first three quarters represents actual numbers, the fourth quarter data is an estimate since DIDD's strategic plan is due before that data becomes available. The council estimates the fourth quarter data based on extrapolations from the first three quarters with modifications for any planned variations based on the project work plans. Each December, the department requests that the council provide actual fourth quarter data. Council staff review the performance measure and accompanying data and calculations. Specifically, the Director of the Grant Program reviews quarterly program reports and develops a summary progress report. Additionally, council program staff participate in regular grantee meetings.

Community Services

Community Intellectual Disabilities Services

Standard: Provide support services to families with a family member who has a severe disability.

Measure: Number of individuals receiving family support services.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
4,107	4,500	2,897

Standard: Provide continuous monitoring of health and welfare of waiver participants.

Measure: Percent of participant satisfaction survey respondents who reported being treated well by direct support staff.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
90.2%	99%	99%

Support Services

The Family Support Program provides resources to assist individuals with a severe or developmental disability and their families with remaining together in their homes and communities. The department financially caps services to allow more Tennesseans to be served, as possible. On a quarterly basis, contract agencies submit numbers of persons served by the Family Support Program to the DIDD Director of Family Support Services, who enters the statewide numbers into an Excel database. The Director of Family Support Services conducts a programmatic review of the files during the three-year contract period, and staff initiate contact with families and council members to assure that families are receiving the services and funding for which they were approved. Additionally, DIDD Quality Management completes an annual fiscal accountability review of the contract agencies. DIDD uses the *Family Support Guidelines* as its written procedures for this performance measure. The support services measure was new to the department's 2012 strategic plan.

Appendix 2 (CONT.)

Auditor Comment: "As" discussed in finding "I" on page "14, however, the "department "does "not perform procedures to verify the accuracy of the contract agency data on the number of individuals served by the Family Support Program.

Continuous Monitoring

DIDD desires to continually improve its performance quality. To this end, DIDD contracts with an independent group to conduct an annual customer satisfaction survey, which consists of one-on-one interviews of persons served by the department. The independent group calculates the number of positive responses about how Direct Service Providers treat the individuals served by the total number of persons surveyed. Both the Director and Administrative Services Assistant 3 of the Office of Civil Rights review the performance measure and associated data/calculations for appropriateness and accuracy.

Quality Assurance Program

Standard: Increase the percentage of providers surveyed by DIDD Quality Assurance performing in the exceptional and proficient category.

Measure: Percent of contracted provider agencies surveyed by Quality Assurance performing in the exceptional and proficient category.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
77%	78%	79%

Standard: Increase the number of investigations closed within 30 days.

Measure: Percent of investigations closed within 30 days.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
96%	98%	98%

Quality Assurance Categories

DIDD is measuring the quality of services administered by contracted providers to ensure the safety and well-being of persons supported by the department. Quality Assurance surveyors conduct an annual review of all providers statewide and calculate a final score based on their numeric scores in the applicable survey domains, which are focus areas. The department has established five categories of performance level, with “exceptional” and “proficient” as the two highest ratings. DIDD arrives at the measure by dividing the total number of providers rating as “proficient” or “exceptional” by the total number of providers surveyed in that same time period. The Assistant Commissioner for Quality Management, the Deputy Director of Quality Assurance, and the Deputy Director of Compliance review the appropriateness and accuracy of the performance measure data and related calculations. In addition, a Statewide Quality Management Committee of senior management officials performs monthly data reviews. As of

Appendix 2 (CONT.)

March 2013, the department's *Provider Manual* is in the process of being updated. Upon finalizing the update, DIDD will modify its QA surveys based upon any updated expectations.

This performance measure was new to the department's 2012 strategic plan.

Investigations Closed

Assuring the protection and safety of persons supported is a primary mission of DIDD. DIDD's Investigations Unit of the Protection from Harm Division investigates all allegations of abuse, neglect, and/or exploitation for persons receiving services through the department. When an investigation is opened, the DIDD investigator submits a Tip Sheet to explain the nature of the investigation. Investigations Unit personnel input the details of each case opened into an internal Incidents and Investigations database as they are received. The Investigations Unit later updates the database when the department closes the case, documenting the findings of the investigation. The department computes this measure by dividing the total number of investigations closed within 30 days of being opened divided by the total number of investigations opened in that same time period.

West, Middle, and East Tennessee Regional Offices

Standard: Maximize percentage of waiver participants surveyed who have had an annual re-evaluation completed within 12 months of their initial evaluation or last annual re-evaluation.

Measure: Percent of waiver participants surveyed who had an annual re-evaluation completed within 12 months of their initial evaluation or last annual re-evaluation as required for federal participation in the waiver program.

	Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
West Tennessee Regional Office	100%	100%	100%
Middle Tennessee Regional Office	100%	100%	100%
East Tennessee Regional Office	100%	100%	100%

As the waiver involves federal funding, all enrollees must meet the eligibility criteria for waiver participation and have their eligibility reverified on an annual basis in order for the state to continue receiving the federal funds. Support Coordinators, state Case Managers, and Qualified Intellectual Disabilities Professionals collect the data used in this measure through an annual review process. Information collected is individual, specific, and verified with the Bureau of TennCare (medical eligibility) and the Department of Human Services (financial eligibility). The measure is a count of the people who had timely (within 12 months) evaluation divided by a count of total people due for an evaluation. Regional Administrative Service Units review the performance measure data. Additionally, each year, the Quality Assurance Unit reviews a random sample of enrollees to determine compliance with the requirement for an annual re-evaluation. These data are reported to TennCare and the federal Centers for Medicare and

Appendix 2 (CONT.)

Medicaid Services. Chapter 1 of DIDD’s *Provider Manual* covers the eligibility process. As stated above, the manual is currently undergoing revision.

West, Middle, and East Tennessee Resource Centers

Standard: Provide clinical and medical services through the resource centers.

Measure: Number of individuals receiving services at the resource centers.

	Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
West Tennessee Resource Center	393	450	575
Middle Tennessee Resource Center	437	475	525
East Tennessee Resource Center	292	315	475

A resource center has been established in each of the three regions of the DIDD service system to provide services which are not readily available in the community. Use of the services provided documents the demand for the service and is considered as the department determines if the state will continue to be a provider of that service. All resource center staff, excluding administrative support staff, submit daily data sheets that reflect the names of individuals receiving service as well as the total amount of time for each service. Administrative support staff enter the data into an Excel database, which the Resource Center Directors review at least monthly. The department uses the data for monthly reporting to stakeholders, making management decisions, and preparing an allocation of services rendered. Central Office, Regional Office, and Resource Center Directors all review the measure and supporting calculations for accuracy and appropriateness. As the services at the resource centers become more established, DIDD will explore ways that the operations and data collection methods can be coordinated on a statewide basis.

West, Middle, and East Tennessee Community Homes

Standard: Reduce serious injuries to consumers each year.

Measure: The number of serious injuries to consumers.

	Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
West Tennessee Community Homes	1	5	2
Middle Tennessee Community Homes	Not Applicable	Not Applicable	1
East Tennessee Community Homes	4	8	8

Appendix 2 (CONT.)

A safe living environment is important for a good quality of life for people served in state-operated homes. While not all injuries can be avoided, staff strive to prevent harm as they are able, and DIDD designed its service system to have safeguards in place appropriate for the individuals served. Community home staff report serious injuries to the Incidents Management Unit of the Protection from Harm Division as they occur by filling out an incident report form as required by departmental policy and intermediate care facility regulations. The measure is a count of serious injuries to residents of the community homes during the fiscal year. The Deputy Commissioner for Program Operations, the Director for Protection from Harm, the Regional Directors, the Director of Incident Management, and the Community Home Managers conduct a review of the performance measure and associated data/calculations. A Statewide Quality Management Committee of senior management officials also reviews the performance measure monthly. Although none of the Middle Tennessee Community Homes have been constructed as of March 2013, the department plans to have at least some of the homes operational by January 2014.

Developmental Centers

Clover Bottom Developmental Center, Greene Valley Developmental Center, and Harold Jordan Center

Standard: Reduce serious injuries to consumers each year.

Measure: The number of serious injuries to consumers.

	Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
Clover Bottom Developmental Center	9	10	8
Greene Valley Developmental Center	21	45	20
Harold Jordan Center	2	5	5

A safe living environment is important for a good quality of life for people served in state-operated homes. While not all injuries can be avoided, staff strive to prevent harm as they are able, and DIDD designed its service system to have safeguards in place appropriate for the individuals served. Facility staff report serious injuries to the Incidents Management Unit of the Protection from Harm Division as they occur by completing a Reportable Incident Form as required by departmental policy and intermediate care facility regulations. The measure is a count of serious injuries to developmental center residents during the fiscal year. The Deputy Commissioner for Program Operations, the Director for Protection from Harm, the Regional Directors, the Director of Incident Management, Chief Officers, the Facility Incident Management Committee, and the Quality Improvement Committee conduct reviews of the performance measure and supporting calculations for appropriateness and accuracy. Additionally, a Statewide Quality Management Committee of senior management officials reviews the performance measure monthly.

Appendix 2 (CONT.)

Major Maintenance

Standard: Minimize the percentage of major maintenance funds disbursed for emergency maintenance of the facilities each year.

Measure: Percent of funds disbursed for emergency maintenance.

Actual (FY 2011-2012)	Estimate (FY 2012-2013)	Target (FY 2013-2014)
88%	50%	75%

The department works to identify maintenance issues prior to their elevation to emergency status so that fiscal planning is easier to manage and necessary repairs are less costly. Fiscal and Administration staff merge the expenditures and accounts payable data found in two reports produced by Edison (the state's accounting system) at the time DIDD strategic plan information is required, which is by July of each year. Staff also run the two Edison reports prior to the October 1 budget submission and the final budget document submission in late January or early February of each year. The formula for calculating this measure is expenditure items determined to be an "emergency" expense divided by total Major Maintenance expenditures. The DIDD Facilities Manager, the Budget Director, and the Assistant Commissioner for Fiscal and Administrative Services review the performance data and associated calculations.

Appendix 3

Title VI and Other Information

Department of Intellectual and Developmental Disabilities Staff Positions by Gender and Ethnicity January 2013

(Source: Department of Intellectual and Developmental Disabilities Director of Civil Rights)

Title	Gender		Ethnicity		
	Male	Female	White	African American	Other
ACCOUNT CLERK	1	4	5		
ACCOUNTANT 2	2	3	2	2	1
ACCOUNTANT 3	2	5	6	1	
ACCOUNTING MANAGER	3		3		
ACCOUNTING TECHNICIAN 1	2	3	5		
ACCOUNTING TECHNICIAN 2	1	4	4	1	
ADMIN ASSISTANT 1	1	7	3	5	
ADMIN ASSISTANT 3		1	1		
ADMIN SECRETARY	1	25	16	9	1
ADMIN SERVICES ASSISTANT 2	5	21	19	7	
ADMIN SERVICES ASSISTANT 3		17	14	3	
ADMIN SERVICES ASSISTANT 4		5	3	2	
ADMIN SERVICES ASSISTANT 5		2	1		1
ADMIN SERVICES ASSISTANT SUPT	1		1		
ADMIN SERVICES MANAGER	1	3	4		
ASSISTANT COMMISSIONER 2	1	1	2		
ATTORNEY 3	1		1		
ATTORNEY 4	1	1	2		
AUDIOLOGIST 1		1	1		
AUDITOR 2	1		1		
AUDITOR 3	1	1	2		
AUDITOR 4		2	2		
BEAUTICIAN		1	1		
BEHAVIOR MANAGEMENT SPECIALIST		2	1		1
BOILER OPERATOR 1	5		5		
BOILER OPERATOR SUPERVISOR	2		2		
BUDGET ANALYSIS DIRECTOR 2		1	1		
BUDGET ANALYST 2		1		1	
BUILDING MAINTENANCE WORKER 2	5		3	1	1
BUILDING MAINTENANCE WORKER 3	4		4		
CASE MANAGEMENT PROGRAM SPEC	11	54	34	31	
CLERK 2		5	3	2	
CLERK 3	3	3	6		
COMMISSIONER 3	1		1		
COOK 1	1	6	7		
COOK 2		1	1		
COUNSELING ASSOCIATE 2	3	10	11	1	1
CUSTODIAL WORKER 1	7	11	16	2	
CUSTODIAL WORKER 2	7	2	7	2	
CUSTODIAL WORKER SUPV 2	1			1	
DATA PROCESSING OPERATOR 2		1	1		

Appendix 3 (CONT.)

Title	Gender		Ethnicity		
	Male	Female	White	African American	Other
DENTAL ASSISTANT 2		1		1	
DENTAL HYGIENIST		2	2		
DENTIST	1	1	1	1	
DEPUTY COMMISSIONER 2	1	1	2		
DEV CENTER ASSISTANT SUPT	1	2	3		
DEV CENTER SUPERINTENDENT		2	2		
DEV DIS COUNCIL EXEC DIRECTOR		1	1		
DEV DISABILITIES PROGRAM D	1	3	4		
DEV SVCS PROG COOR 1		3	2	1	
DEV SVCS PROG COOR 2	5	27	22	8	2
DEV SVCS REGNL DIRECTOR	2	1	2	1	
DEV SVCS REGNL MONITOR	2	18	12	6	2
DEV SVCS REGNL PROG ADMR	2	6	5	3	
DEV SVCS REGNL PROG DIRECTOR	3	15	14	4	
DEV TECHNICIAN	141	446	451	131	5
DEV TECHNICIAN SUPERVISOR 1	11	32	30	13	
DEV TECHNICIAN SUPERVISOR 2	20	30	39	10	1
DIETITIAN		7	5		2
DIETITIAN SUPERVISOR		2	1		1
DISTRIBUTED COMPUTER OPER 2		1	1		
EQUIPMENT MECHANIC 1	1		1		
EQUIPMENT MECHANIC 2	2		2		
EXECUTIVE ADMIN ASSISTANT 2		1		1	
EXECUTIVE ADMIN ASSISTANT 3		3	2	1	
EXECUTIVE HOUSEKEEPER 2	2		1	1	
EXECUTIVE SECRETARY 1		5	5		
FACILITIES MANAGER 3	3		3		
FACILITIES SAFETY OFFICER 3	1		1		
FACILITIES SUPERVISOR	5		5		
FACILITIES SURVEYOR	3		2	1	
FACILITY ADMINISTRATOR 3	1		1		
FISCAL DIRECTOR 1	3	2	5		
FISCAL DIRECTOR 2	1		1		
FISCAL DIRECTOR 3	1		1		
FOOD SERVICE SUPERVISOR 2		4	4		
FOOD SERVICE SUPERVISOR 3	1	1	2		
FOOD SERVICE WORKER	12	5	17		
GENERAL COUNSEL 3		1	1		
GROUNDS WORKER 1	1		1		
GROUNDS WORKER 2	1		1		
HABILITATION THERAPIST	7	18	11	14	
HABILITATION THERAPIST SUPV		3	1	2	
HABILITATION THERAPY TECH	22	150	32	140	
HEALTH INFO MANAGER		2	2		
HEATING & REFRIGERATION MECH 3	2		2		
HR ANALYST 2		6	3	2	1
HR ANALYST 3		2	2		

Appendix 3 (CONT.)

Title	Gender		Ethnicity		
	Male	Female	White	African American	Other
HR DIRECTOR 1	1	1	2		
HR DIRECTOR 3		1	1		
HR MANAGER 1		1	1		
HR MANAGER 2		1	1		
HR TECHNICIAN 1		1	1		
HR TECHNICIAN 2		3	3		
HR TECHNICIAN 3		1		1	
HR TRANSACTIONS SUPERVISOR		1	1		
IDD ADMINISTRATOR	1	2	3		
IDD PROGRAM SPECIALIST 2	11	36	25	21	1
IDD PROGRAM SPECIALIST 3	24	54	54	23	1
IDD QA & IMPROVEMENT ADMR		1		1	
INFO RESOURCE SUPPORT SPEC 2	1	1	2		
INFO RESOURCE SUPPORT SPEC 3	4	1	3	2	
INFO RESOURCE SUPPORT SPEC 4	4	1	5		
INFO RESOURCE SUPPORT SPEC 5		1	1		
INFORMATION SYSTEMS ANA 3		2	2		
INFORMATION SYSTEMS ANA 4	3	3	5		1
INFORMATION SYSTEMS ANA SUPV	1		1		
INFORMATION SYSTEMS CONSULT	3	1	4		
INFORMATION SYSTEMS DIRECTOR 3	2		2		
INFORMATION SYSTEMS MANAGER 3	3	1	1	3	
LAUNDRY MANAGER 1		1	1		
LAUNDRY WORKER 1		3	3		
LEGAL ASSISTANT		1	1		
LICENSED PRACTICAL NURSE 2	4	51	42	13	
LICENSED PRACTICAL NURSE 3	1	37	28	7	3
LOCKSMITH	1		1		
MAINTENANCE CARPENTER 1	1		1		
MAINTENANCE CARPENTER 2	3		3		
MAINTENANCE ELECTRICIAN 2	1		1		
MAINTENANCE PAINTER 2	2		1	1	
MAINTENANCE PLUMBER 1	1		1		
MAINTENANCE PLUMBER 2	2		2		
MEDICAL RECORDS ASSISTANT		1	1		
MEDICAL TECHNOLOGIST 1		1	1		
MEDICAL TECHNOLOGIST 2		1	1		
MEDICAL TRANSCRIBER 1		1	1		
MEDICAL TRANSCRIBER 2		1	1		
MH/IDD INSTITUTIONAL PROG COOR		1		1	
MH/IDD INSTITUTIONAL PROG DIR	5	11	12	4	
MH/IDD INVESTIGATOR	20	30	35	13	2
MH/IDD NURSING CONSULTANT		1	1		
MH/IDD PLANNER		1	1		
MH/IDD PROGRAM DIRECTOR	13	13	21	5	
MH/IDD STD COORDINATOR		2	1	1	
NURSE PRACTITIONER		4	3	1	
OCC THERAPIST		13	9	1	3
OCC THERAPY ASSISTANT (CERT)	1	11	10	2	

Appendix 3 (CONT.)

Title	Gender		Ethnicity		
	Male	Female	White	African American	Other
OCC THERAPY DIRECTOR		2	2		
OCC THERAPY TECHNICIAN		3	3		
PATIENT ACCOUNTS SPECIALIST 3		1	1		
PHARMACIST 1		1	1		
PHARMACIST 2		1	1		
PHARMACY TECHNICIAN	1	2	3		
PHYSICAL THERAPIST	5	7	9		3
PHYSICAL THERAPY ASST (CERT)	6	6	11	1	
PHYSICAL THERAPY DIRECTOR	1	1	2		
PHYSICAL THERAPY TECHNICIAN		3	3		
PHYSICIAN	2		1		1
PHYSICIAN-DEVL CENTER MED DIR	2		1	1	
PHYSICIAN-PSYCHIATRIST		2	1		1
PHYSICIAN-SPECIALTY	2	2	1	1	2
PROCUREMENT OFFICER 1	1	1	2		
PROCUREMENT OFFICER 2	1	1	2		
PROGRAM MONITOR 2		1	1		
PROGRAM MONITOR 3		1	1		
PROGRAM MONITOR 4		1	1		
PROGRAMMER/ANALYST 3		1			1
PROGRAMMER/ANALYST 4	2	1	1	1	1
PROGRAMMER/ANALYST SUPERVISOR	2		2		
PROPERTY OFFICER 1	1		1		
PSYCHOLOGICAL EXAMINER 2	5	6	11		
PSYCHOLOGIST	1	1	2		
PSYCHOLOGY DIRECTOR	2	1	3		
RECREATION THERAPIST 1		2	2		
RECREATION THERAPIST 2		1	1		
RECREATION THERAPY TECHNICIAN	1	6	6	1	
REGISTERED NURSE 2	2	10	11	1	
REGISTERED NURSE 3	5	50	21	8	26
REGISTERED NURSE 4		37	31	5	1
REGISTERED NURSE 5	3	3	5	1	
REHAB TECHNOLOGY SPECIALIST	1		1		
RESPIRATORY CARE TECH-CERT	3	4	6		1
RESPIRATORY CARE THERAPIST	1	4	5		
RESPIRATORY CARE THERAPY DIR	1	1	2		
SECRETARY	1	41	39	3	
SECURITY CHIEF	1		1		
SECURITY GUARD 1	3	1	2		2
SECURITY GUARD 2	1			1	
SOCIAL SERVICES SPECIALIST 2		3		3	
SPEECH & LANG PATHOLOGIST	1	16	15	2	
SPEECH & LANG PATHOLOGY DIR		1	1		
STOREKEEPER 1	1	1	2		
STOREKEEPER 2	1	1	2		
STORES CLERK	1		1		
STORES MANAGER	1		1		
TELEPHONE OPERATOR 1		6	4	2	

Appendix 3 (CONT.)

Title	Gender		Ethnicity		
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>African American</i>	<i>Other</i>
TELEPHONE OPERATOR 2		1	1		
TELEPHONE OPS SUPERVISOR		1	1		
THERAPEUTIC EQUIPMENT WORKER	17		16	1	
TRAINING OFFICER 1		1		1	
TRAINING OFFICER 2		2	2		
TRAINING SPECIALIST 2		1	1		
VEHICLE OPERATOR	7	3	8	2	
WEBSITE DEVELOPER 2	1		1		
X-RAY TECHNICIAN 3		1	1		
Totals	534	1551	1468	547	70

Appendix 4

Revenues and Expenditures Information (Source: *The Budget Fiscal Year 2012-2013*)

Revenues by Source For the Fiscal Year Ending June 30, 2011

Function and Division	State	Federal *	Other **	Total
Intellectual Disabilities Services Administration	\$2,992,400	\$ -	\$12,160,300	\$15,152,700
Tennessee Council on Developmental Disabilities	322,500	1,721,400	114,400	2,158,300
Community Intellectual Disabilities Services	15,992,400	-	591,562,800	607,555,200
Quality Assurance Program	21,800	-	8,649,600	8,671,400
East Tennessee Regional Office	16,500	-	10,033,200	10,049,700
Middle Tennessee Regional Office	-	-	11,294,100	11,294,100
West Tennessee Regional Office	347,600	-	15,436,400	15,784,000
East Tennessee Resource Center	-	-	-	-
Middle Tennessee Resource Center	-	-	-	-
West Tennessee Resource Center	590,200	-	3,123,800	3,714,000
East Tennessee Community Homes	48,600	-	2,723,400	2,772,000
Middle Tennessee Community Homes	-	-	-	-
West Tennessee Community Homes	10,988,300	-	4,819,000	15,807,300
Arlington Developmental Center	4,643,900	-	-	4,643,900
Clover Bottom Developmental Center	8,753,100	-	26,100,500	34,856,600
Greene Valley Developmental Center	14,458,400	-	53,483,600	67,942,000
Harold Jordan Center	4,136,600	-	-	4,136,600
Major Maintenance	93,300	-	97,500	190,800
Function and Division Total	\$63,405,600	\$1,721,400	\$739,598,600	\$804,725,600
Percentage of Total	7.9%	0.2%	91.9%	100.0%

Appendix 4 (CONT.)

***The Tennessee Council on Developmental Disabilities is an independent entity but is attached for budget coding purposes to the Department of Intellectual and Developmental Disabilities. This federal revenue is for the Developmental Disabilities Basic Support and Advocacy Grants.**

****The majority of the “Other” revenue is from interdepartmental revenue from TennCare for all of the services for intellectual disabilities provided by the Department of Intellectual and Developmental Disabilities.**

Expenditures by Category
For the Fiscal Year Ending June 30, 2012

Function and Division	Payroll	Operational	Total
Intellectual Disabilities Services Administration	\$10,209,500	\$4,943,200	\$15,152,700
Tennessee Council on Developmental Disabilities	588,100	1,570,200	2,158,300
Community Intellectual Disabilities Services	-	607,555,200	607,555,200
Quality Assurance Program	7,776,300	895,100	8,671,400
East Tennessee Regional Office	8,118,300	1,931,400	10,049,700
Middle Tennessee Regional Office	9,646,100	1,648,000	11,294,100
West Tennessee Regional Office	10,762,100	5,021,900	15,784,000
East Tennessee Resource Center	-	-	-
Middle Tennessee Resource Center	-	-	-
West Tennessee Resource Center	2,577,500	1,136,500	3,714,000
East Tennessee Community Homes	2,386,400	385,600	2,772,000
Middle Tennessee Community Homes	-	-	-
West Tennessee Community Homes	9,682,500	6,124,800	15,807,300
Arlington Developmental Center	3,825,200	818,700	4,643,900
Clover Bottom Developmental Center	18,812,900	16,040,700	34,853,600
Greene Valley Developmental Center	54,374,200	13,567,800	67,942,000
Harold Jordan Center	1,864,100	2,272,500	4,136,600
Major Maintenance	-	190,800	190,800
Function and Division Total	\$140,623,200	\$664,102,400	\$804,725,600
Percentage of Total	17.5%	82.5%	100.0%

Appendix 5

Summary of April 2013 Risk-based Performance Audit Findings and Update on Prior Community Services Tracking System and Medicaid Cost Report Findings (Source: State Audit's April 2013 Department of Intellectual and Developmental Disabilities Risk-based Performance Audit Report)

The risk-based performance audit report of the Department of Intellectual and Developmental Disabilities (DIDD), which was released in April 2013 and covered the period January 15, 2011, through July 17, 2012, contained seven findings. Departmental management concurred with all seven findings. Since we finished our fieldwork prior to the due date for management's follow-up agreement submission and because departmental management had only a limited time period to implement necessary corrective actions, we did not perform testwork to assess the status of the risk-based performance findings as part of our current audit, with the exception of finding 2 involving the Community Services Tracking system (CS Tracking) and finding 6 involving Medicaid cost reports. We performed limited procedures to follow up on those two findings. A brief summary of each finding, along with our CS Tracking and Medicaid cost report testwork results (presented in italics), is included below.

Finding 1 – Improvements to the department's monitoring process and updates to the Provider Manual are still needed and could further reduce management's risk of errors, fraud, waste, and abuse

Our review of the department's monitoring processes again found areas where improvements are needed in the monitors' methodologies and in the *Provider Manual*.

Finding 2 – As noted in the prior two audits, the department's controls over the Community Services Tracking system are inadequate, resulting in \$21,234.50 in provider overpayments and increasing opportunities for fraudulent transactions

As noted in the prior two audits, security and internal controls over the CS Tracking system were inadequate. We found provider overpayments totaling \$223.25, and the department's internal review disclosed an additional \$21,011.25 in provider overpayments.

One corrective action that management described in response to this finding was the replacement of the CS Tracking system with a new computer system by the end of fiscal year 2014. During our testwork for the current audit, we determined that the amount of time the department has taken to replace CS Tracking was not reasonable. See the current audit finding 7 on page 78 for further information.

Appendix 5 (CONT.)

Finding 3 – Internal controls over individual residents’ trust funds and personal inventory items at Clover Bottom Developmental Center and Harold Jordan Center were still inadequate, increasing the risk for fraud, waste, or abuse

As noted in prior audits that date back to 2003, employees did not always follow established procedures for unspent funds remaining from purchases made on behalf of individuals residing in the centers. Additionally, individuals’ personal inventory items were not always accounted for properly.

Finding 4 – Controls over individual residents’ trust funds at Greene Valley Developmental Center and East Tennessee community homes were inadequate, increasing the risk for misuse or loss

As noted in the prior audit, management and staff did not always adequately safeguard individual residents’ money at the developmental center. In addition, Community Home Supervisors did not retain the Safe Logs at the East Tennessee community homes.

Finding 5 – Management has not mitigated the risks associated with inadequate controls over the Greene Valley Developmental Center pharmacy and supply inventories, increasing the likelihood of asset misappropriation or loss

Pharmacy and supply inventory physical counts differed from inventory listings, and supply inventory duties were inadequately segregated.

Finding 6 – Management failed to establish controls governing the preparation of developmental center cost reports, increasing the risk that the department may receive improper Medicaid reimbursements from the TennCare program

Management of the department did not implement adequate controls over its process for preparation of the developmental center cost reports, which are used to request Medicaid reimbursement from the Bureau of TennCare. As a result, the department may have received more or less Medicaid reimbursement funds than it was entitled to receive. The central office expenditures portions of the Clover Bottom Developmental Center’s and Greene Valley Developmental Center’s fiscal year 2010 and 2011 Medicaid cost reports were not adequately supported.

Based on discussion with the Chief Financial Officer, as of May 29, 2013, the department had implemented all of the recommendations described in management’s comments to the finding, with one exception. Due to hiring restrictions imposed by the Department of Human Resources, DIDD had not yet been able to devote approximately 50% of one full-time equivalent

Appendix 5 (CONT.)

to ensure that the department is familiar with federal rule, policy, or procedural changes that could impact cost reporting. The Chief Financial Officer anticipated that the final fiscal year 2012 Medicaid cost reports would be submitted before the September 30, 2013, deadline. Since the 2012 cost reports had not yet been finalized, we were unable to conduct testwork to determine whether prior problems had been remedied.

In addition to State Audit's risk-based performance audit review, the federal government also performed an analysis of the state's fiscal year 2010 and 2011 Medicaid cost reports. The United States Department of Health and Human Services, Office of Inspector General (OIG) issued a report on April 18, 2013, on whether Tennessee calculated and reported its payment rates for state-operated intermediate care facilities for beneficiaries with intellectual and developmental disabilities in accordance with federal requirements. The OIG found that while Tennessee correctly reported costs in total, the state incorrectly allotted costs between two categories. According to OIG, the misallocation did not result in any overpayments made to the state. OIG's report noted that based on the federal findings and recommendations, the state submitted revised fiscal year 2010 and 2011 cost reports. OIG added, though, that the state must still correct the underlying accounting system issues that led to the incorrect allocations. Furthermore, OIG cited the Bureau of TennCare within the Department of Finance and Administration for failure to develop and implement a process to reconcile the cost report amounts either with the monthly reports in Medicaid Management Information System (MMIS), TennCare's Medicaid claims system, or with Edison, the state's accounting system.

TennCare responded to OIG that incorrect mapping in MMIS resulted in the transmission of data to the incorrect program code in Edison. TennCare also stated that it had rectified the issues observed by OIG and strengthened controls over reconciling MMIS to the cost reports. The DIDD Chief Financial Officer explained that TennCare was responsible for making any necessary system modifications.

Finding 7 – The department did not follow information systems' industry best practices regarding computer access, resulting in the increased risk of fraudulent activity or loss of data

Based on our computer access testwork, the department did not follow information systems' industry best practices regarding user access.