CALIFORNIA STATE AUDITOR

Bureau of State Audits

Recommendations for Legislative Consideration From Audits Issued During 2010 and 2011

SPECIAL REPORT

January 2012 Report 2011-701

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Dear Governor and Legislative Leaders:

As a resource to the Legislature, the State Auditor's Office aims to assist your efforts to provide oversight and to ensure the accountability of government operations. As such, my office conducts independent audits as mandated or as directed by the Joint Legislative Audit Committee. While our recommendations are typically directed to the agencies we audit, we also make recommendations for the Legislature to consider in the interest of more efficient and effective government operations. This special report summarizes those recommendations we made during calendar years 2010 and 2011 for the Legislature to consider, or recommendations for the state agency to seek legislative changes.

In this special report, we include recommendations intended to improve the effectiveness of child welfare services. For example, to help keep children safe, we recommend the Legislature require all law enforcement staff overseeing sex offenders make sure that the addresses sex offenders submit for registration do not match licensed facilities for children or a foster home. Additionally, we recommend that the Legislature require the Department of Social Services make available to law enforcement in an efficient manner the addresses of its childrens' facilities and foster homes. On page 25, we discuss additional recommendations relating to reviews of child deaths resulting from abuse or neglect.

Additionally, in some instances, we make recommendations intended to increase state revenue. For example, in audit report 2010-125, we found that the State Lands Commission missed opportunities to generate millions of dollars in revenues for the State's General Fund—estimated to be as much as $8.2 million for just some of the 35 leases we reviewed out of the more than 4,000. Furthermore, in audit report 2010-108 we estimate that had the monetary penalties for citations been revised at the rate of inflation, the Department of Public Health could have collected nearly $3.3 million more in revenue.

The Appendix that starts on page 41, includes a listing of legislation chaptered or vetoed during the first year of the 2011–12 Regular Legislative Session based, at least in part, on recommendations from our audit reports.

If you would like more information or assistance regarding any of the recommendations or the background provided in this report, please contact Debbie Meador, Chief of Legislative Affairs, at (916) 445-0255, extension 292.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Contents—Report/Abbreviated Title/Recommendation

California Housing Finance Agency

Expand Expertise of Board Membership

Recommendation

To ensure that the California Housing Finance Agency's (CalHFA) business plans and strategies are thoroughly vetted by an experienced and knowledgeable board, the Legislature should consider amending the statute that specifies the composition of CalHFA's board to include appointees with specific knowledge of housing finance agencies, single-family mortgage lending, bonds and related financial instruments, interest-rate swaps, and risk management.

Background

CalHFA is a state agency responsible for financing affordable housing. Using proceeds from the sale of bonds, CalHFA funds loans for single-family and multifamily housing for low-and moderate-income Californians. CalHFA is entirely self-supporting, and the State is not liable for the financial obligations of CalHFA deriving from bonds that it has issued or loans that it has insured. Although profitable for many years, CalHFA suffered losses of $146 million and $189 million in fiscal years 2008–09 and 2009–10, respectively. The underlying conditions that contributed to these losses—high delinquency rates on CalHFA's single-family loans and the risks and costs associated with its high levels of variable-rate debt—resulted in lower credit ratings for CalHFA, which, taken together with its losses, raised questions about its future solvency.

CalHFA is overseen by a 14-member board, each of whom is appointed by the governor, Legislature, or as specified by statute. State law designates the state treasurer, director of the Department of Housing and Community Development, secretary of the Business, Transportation and Housing Agency, director of the Department of Finance (nonvoting), director of the Governor's Office of Planning and Research (nonvoting), and the executive director of CalHFA (nonvoting) as members of the board. The governor appoints six members of the CalHFA board, subject to Senate confirmation. State law requires that four of these appointees have experience in areas that include (1) an elected official of a city or county engaged in housing programs, (2) residential real estate or mortgage and commercial banking, (3) residential construction, (4) organized labor in the residential construction industry, (5) management of lower-income rental or cooperation housing, and (6) manufactured housing finance and development. The two legislative appointments are considered members of the board representing the public.

Although state law requires that the governor's appointees to the CalHFA board include members with certain types of experience, it does not appear to call for the kind of sophisticated financial expertise that would have been valuable in determining whether CalHFA should launch into variable-rate bond debt and interest-rate swaps to the degree that it did.

Report

2010-123 *California Housing Finance Agency: Most Indicators Point to Continued Solvency Despite Its Financial Difficulties Created, in Part, by Its Past Decisions* (February 2011)

Note: Chapter 408, Statutes of 2011 (Assembly Bill 1222), allows individuals affiliated with the housing, banking, insurance, and other specified industries to serve on the CalHFA board, even though they may have a conflict of interest, provided they publicly disclose the interest and do not attempt to influence or participate in the decision in which they have an interest.

California Department of Transportation: Capital Outlay Support Program

Increase Accountability Through Improved Budgeting and Reporting

Recommendations

To ensure that it receives more complete information on the Capital Outlay Support Program (support program), the Legislature should require the California Department of Transportation (Caltrans) to include in its annual report an expanded methodology for reporting support-to-capital ratios to include, in addition to a support-to-cost ratio analysis based on costs incurred up to the award of the construction contract of State Transportation Improvement Program (STIP) projects, a separate support-to-capital ratio analysis for STIP projects that have completed construction. Further, the Legislature should require Caltrans to report on similar ratios for State Highway Operation and Protection Program (SHOPP) projects based on costs incurred up to the award of the construction contract and for those projects that completed construction.

To increase accountability for budget overruns of support costs, the Legislature should consider legislation that would expressly require the California Transportation Commission (commission) to review and approve project construction support costs when they differ from the amount budgeted by 20 percent or more.

To improve accountability internally and with the public, Caltrans should do the following:

- Create and incorporate an analysis of support cost budget variances in its quarterly report to the agency and in its annual report to the Legislature and the governor. The analysis should report on the number of completed projects with budget variances and on the number of open projects for which the estimates at completion predict budget variances. Further, the analysis should report on the overrun and underrun ratios for those projects, and the portions of the variances due to rates and hours.

- Establish budgets for those STIP projects programmed before the passage of Senate Bill 45 so that overruns may be reported in the quarterly report to the agency and in the annual report to the Legislature and the governor.

- Develop a system to report on the total budgets of support program projects—including initial project support budgets—of projects that have been divided into multiple projects or combined into a larger project.

To ensure that Caltrans does not hire permanent state staff beyond its need for such staff, the Legislature should consider appropriating funding for consultants to address temporary increases in Caltrans' workloads when Caltrans requests such funding.

Background

Caltrans is responsible for the design, construction, maintenance, and operation of the California State Highway System, as well as that portion of the Interstate Highway System within the boundaries of the State. The support program provides the funding and resources necessary to develop and deliver the projects to construction, as well as to administer and oversee the projects once they are under construction. Support program functions include engineering, design, environmental studies, right-of-way acquisition, and construction management of state highway projects. The fiscal year 2010–11 Budget Act allocated $1.8 billion to Caltrans for the support program for support activities associated with about 2,500 capital outlay projects and about 9,300 positions within Caltrans and its 12 districts.

Capital improvement projects that increase the capacity of the State's transportation infrastructure are partially funded through the STIP, and projects that rehabilitate or preserve existing infrastructure are funded through the SHOPP. The SHOPP is a four-year plan of projects, while the STIP is a five-year plan, and both programs are approved by the commission every two years.

Despite a stated goal to reduce overruns in its project budgets, Caltrans has done little analysis to determine the frequency or magnitude of support cost budget overruns. Further, although opportunities exist to inform stakeholders of the extent of these overruns, Caltrans has not done so, limiting valuable information on the efficiency and effectiveness of the support program. Our review of Caltrans data revealed that 62 percent of the projects that completed construction in fiscal years 2007–08 through 2009–10 had support costs that exceeded their respective budgets. These overruns totaled more than $305 million of the $1.4 billion in support cost expenditures for the projects that completed construction during these fiscal years.

Although Caltrans recently sought to hire consultants rather than hire permanent employees to address a temporary increase in workload, it was not successful in doing so. According to the chief of Caltrans' Project Delivery Management Support Office, requests for additional consultants historically have been revised during the legislative budget process to align with a staffing ratio of 10 percent consultants to 90 percent state staff. Caltrans believes its best resource for addressing short-term workload demands is the consultant community, which includes firms that already perform Caltrans' work and understand its requirements. To the extent increases in workload are temporary in nature, it may be more fiscally prudent for Caltrans to address this workload with consultants rather than with permanent state employees.

Report

2010-122 *California Department of Transportation: Its Capital Outlay Support Program Should Strengthen Budgeting Practices, Refine Its Performance Measures, and Improve Internal Controls* (April 2011)

Note: Chapter 6, Statutes of 2011 (AB 105), among other things, requires new mandatory report language related to the Capital Outlay Support Program.

Note: Chapter 38, Statutes of 2011 (AB 115), among other things, revises existing reporting requirements for the Capital Outlay Support Program to make the reports more useful.

Department of Corrections and Rehabilitation

Suspend the Use of COMPAS Until Its Effectiveness Can Be Measured

Recommendation

To ensure that the State does not spend additional resources on Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) system while its usefulness is uncertain, the Department of Corrections and Rehabilitation (Corrections) should suspend its use of the COMPAS core and reentry assessments until it has, among other things, demonstrated to the Legislature that it has a plan to measure and report COMPAS's effect on reducing recidivism. Such a plan could consider whether inmates enrolled in a rehabilitative program based on a COMPAS assessment had lower recidivism rates than those provided rehabilitative programming as a result of non-COMPAS factors.

Background

Although Corrections has been conducting COMPAS assessments as part of the preparole planning process for inmates since 2006 and for inmates entering prison since 2007, the benefits of these assessments are unclear. This is mainly due to the limited opportunities for inmates to participate in Corrections' existing in-prison rehabilitative programs, because factors other than COMPAS assessments—such as security and available bed space—take priority in determining where inmates are assigned for housing and, by extension, the rehabilitative programs they might receive at these facilities. Also, Corrections generally has limited capacity in its rehabilitative programs. Even in the only rehabilitative program area where COMPAS plays a role in determining admission—substance abuse treatment—a limited number of inmates with COMPAS-identified needs receive treatment. In addition, Corrections does not have a plan to evaluate whether COMPAS will help it reach its ultimate goal of reducing prison overcrowding and recidivism.

In the Budget Act of 2006, the Legislature directed Corrections to contract with correctional program experts (Expert Panel) to complete an assessment of California's adult prison and parole programs designed to reduce recidivism. An expert panel convened by Corrections issued its report in June 2007, and recommended that Corrections select and use a tool that would identify an offender's criminal risk factors—attributes directly linked to criminal behavior—so that rehabilitative programs could be identified to treat such factors. Chapter 7, Statutes of 2007, (AB 900) amended state law to require Corrections to conduct assessments of all inmates and to place them in programs that will aid in their reentry to society and that will most likely reduce the chances of reoffending. Citing AB 900 and the Expert Panel's report, Corrections initiated a plan to implement the COMPAS assessments for identifying the criminal risk factors of inmates entering the prison system and those approaching their parole dates.

Report

2010-124 *Department of Corrections and Rehabilitation: The Benefits of Its Correctional Offender Management Profiling for Alternative Sanctions Program Are Uncertain* (September 2011)

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Dymally-Alatorre Bilingual Services Act

Ensure the State Personnel Board Fulfills Its Responsibilities Under the Act

Recommendation

The State Personnel Board (Personnel Board) should seek enough additional staff to fulfill its obligations under the Dymally-Alatorre Bilingual Services Act (Act), or it should seek changes to the Act that would reduce its responsibilities and make them commensurate with its staffing levels.

Background

The Act, originally enacted by the Legislature in 1973 and subsequently amended, is intended to provide for effective communication between the State's residents and their state, county, and municipal governments. Additionally, the Act is intended to ensure that individuals who do not speak or write English or whose primary language is not English are not prevented from using public services because of language barriers. The Act addresses two factors that concerned the Legislature when it was enacted. First, the Legislature found that a substantial portion of California's population could not communicate effectively with government because these individuals spoke a different language than English. Second, employees of state agencies and local government agencies (local agencies) frequently were unable to communicate with constituents requiring their services. Because of these two factors, the Legislature declared that individuals with limited proficiency in English were being denied rights and benefits to which they were entitled.

In defining how its requirements are to be met, the Act distinguishes between state and local agencies. It establishes specific legal mandates for state agencies[1], including the Personnel Board. In contrast, the Act allows local agencies significant discretion in establishing the level and extent of bilingual services they provide.

The current audit found that the Personnel Board has not implemented key recommendations from our 1999 report and that it is not meeting most of its responsibilities under the Act. Specifically, the Personnel Board has not informed all state agencies of their responsibilities under the Act, and it has not ensured that state agencies conduct language surveys to assess their clients' language needs. Additionally, the Personnel Board does not obtain necessary information from state agencies that would allow it to evaluate their compliance with the Act. Furthermore, the Personnel Board does not order deficient agencies to take the necessary actions to make sure that they have sufficient qualified bilingual staff and translated written materials to ensure that individuals who do not speak or write English or whose primary language is not English are not prevented from using public services. Moreover, the Personnel Board's complaint process needs improvement because it does not ensure that complaints are resolved in a timely manner, and its report to the Legislature still does not adequately address whether state agencies are complying with the Act. Because the Personnel Board is not

1 In this summary, state agency is the term used to specify state offices, departments, divisions, bureaus, boards, and commissions, except those specifically exempted from the definition in California Government Code, Section 11000.

meeting its statutory responsibilities to monitor and enforce state agencies' compliance with the Act, the State cannot be certain that individuals with limited proficiency in English have equal access to public services. The Personnel Board's bilingual services program manager cited a lack of resources as the primary reason that the Personnel Board is not meeting its responsibilities.

Report

2010-106 *Dymally-Alatorre Bilingual Services Act: State Agencies Do Not Fully Comply With the Act, and Local Governments Could Do More to Address Their Clients' Needs* (November 2010)

Note: Assembly Bill 305 (as amended March 17, 2011) of the 2011-12 Regular Legislative Session would revise provisions relating to determining if there is a substantial number of non-English speaking people served by a state office and to expand the Personnel Board's reporting requirements under the Act.

Intellectual Property

Develop a Statewide Intellectual Property Policy and Tracking System

Recommendations

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should account for the following:

- Provide guidance to agencies that will give them the understanding necessary to identify when potential intellectual property may exist, including when contractors' work may result in intellectual property, and that will provide them with specific information on intellectual property protections.

- Recognize that not all agencies have the same needs and that a one-size-fits-all approach may not be feasible. An effective policy should provide agencies with flexibility regarding ownership of intellectual property rights.

- Have as one of its primary goals the promotion of the greatest possible public benefit from intellectual property the State creates or funds.

- Recognize that although additional revenue may be a potential benefit of the State's intellectual property, it is not the only benefit, nor should it be the driving force behind a state policy. However, the policy should provide guidance for identifying valuable intellectual property and how to commercialize it, if appropriate.

- Establish the minimum rights agencies should obtain for intellectual property developed by its contractors.

If the Legislature and governor believe it would be valuable to understand the amount of intellectual property the State holds on an ongoing basis, they should consider establishing a mechanism to track the State's intellectual property.

Background

There are four primary types of intellectual property: copyrights, trademarks, patents, and trade secrets. Taken as a whole, federal, state, and common law provide intellectual property owners with an extensive legal tool bag to protect their property interests in the work they create. Owning intellectual property can result in benefits in addition to revenue from licensing it. For example:

- The California Department of Transportation reported that owning its intellectual property enables it to reduce its contract costs because it can allow its contractors to use the intellectual property at little or no cost, eliminating third-party fees contractors must otherwise pay.

- The California Energy Commission's 2010 annual report for the Public Interest Energy Research Program (PIER) states that PIER research has created new jobs because PIER contractors own the intellectual property funded by PIER. The PIER contractors can commercialize the intellectual property, which the annual report noted has led to the creation of new companies or new lines of business in existing companies.

- The Department of Health Care Services stated that much of its intellectual property, including various reports and data, are made available to the public, which could be used for research purposes.

A report issued in November 2000 by the Bureau of State Audits titled *State-Owned Intellectual Property: Opportunities Exist for the State to Improve Administration of Its Copyrights, Trademarks, Patents, and Trade Secrets*—report number 2000-110 included recommendations to the Legislature regarding the management and protection of intellectual property. The recommendations addressed the need for statewide guidance. By not providing guidance to state agencies, the State cannot be certain that each agency is identifying, managing, protecting, and maximizing any benefits from its state-owned intellectual property as necessary and appropriate. Since the issuance of that report, eight legislative proposals related to state management of intellectual property have not been enacted.

More than half of the state agencies responding to our survey expressed the need for this sort of guidance. By providing guidance to state agencies, the State can enable them to use their intellectual property in ways that best serve the public. We believe that statewide policy related to this issue should not be burdensome or inflexible. Rather, it should be informative and reflect certain characteristics. It may be that the State would be best served if its role is primarily to educate the agencies, allowing them to establish individual policies that fit within a broad framework of statewide guidelines. If the State does not act, it will be missing an opportunity to help agencies make informed, thoughtful decisions about their intellectual property.

Further, policy makers may find it valuable to understand on an ongoing basis the amount and types of intellectual property the State owns. The State does not track the amount of intellectual property it owns. We conducted a survey of state agencies and considered other sources of information to provide the summary of state-owned intellectual property included in the Appendix of the audit report.

Report

2011-106 *Intellectual Property: An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ* (November 2011)

Department of Health Care Services

Streamline Medi-Cal Treatment Authorizations

Recommendations

The Department of Health Care Services (Health Care Services) should abolish its policy of responding to drug treatment authorization requests (TARs) by the end of the next business day and should instead ensure that prior-authorization requests to dispense drugs are processed within the legally mandated 24-hour period. Alternatively, it should seek formal authorization from the Centers for Medicare and Medicaid Services to deviate from the 24-hour requirement, and should seek a similar modification to state law. This will ensure that California Medical Assistance Program (Medi-Cal) recipients receive timely access to prescribed drugs.

Additionally, Health Care Services should seek legislation to update existing laws and amend its regulations to render them consistent with its TAR practices. Current state law and regulations specifically require prior authorization for certain medical services; however, Health Care Services generally does not require prior authorizations in practice.

Background

The Department of Health Services administered Medi-Cal until 2007, when the State reorganized it under the California Public Health Act of 2006, which, among other things, divided the Department of Health Services into Health Care Services and the Department of Public Health. Since the reorganization, Health Care Services has been responsible for administering Medi-Cal. Federal regulations require Health Care Services to implement a utilization program to, among other things, control the provision of Medi-Cal services to safeguard against any unnecessary or inappropriate use of those services or excess payments.

State law specifies that Health Care Services may require providers to receive its authorization before rendering certain services, known as "prior authorization." Currently, Health Care Services is not processing drug TARs within legal time limits for prescriptions requiring prior approval. Specifically, it took longer than 24 hours to respond to 84 percent and 58 percent of manually adjudicated drug TARs in fiscal years 2007–08 and 2008–09, respectively, although federal and state law generally require that, when Health Care Services requires a prior authorization before a pharmacist may dispense a drug, it must respond within 24 hours of its receipt of the request for authorization.

Further, state law and regulations specifically require prior authorization for certain medical services. For example, state law requires prior authorization for inpatient hospice services, and state regulations require that intermediate care services be covered only after prior authorization is obtained from a Medi-Cal consultant. Despite this, Health Care Services indicated that it generally does not require prior authorization in practice, and that providers bear the financial risk if a TAR is submitted retroactively because the provider will not be reimbursed for the service if Health Care Services denies the TAR due to a lack of medical necessity supporting the requested service. Additionally, Health Care Services does not specifically monitor its processing times for prior-authorization medical TARs despite its acknowledgement that state law requires that TARs submitted for medical services not yet rendered must be processed within an average of five working days.

Report

2009-112 *Department of Health Care Services: It Needs to Streamline Medi-Cal Treatment Authorizations and Respond to Authorization Requests Within Legal Time Limits* (May 2010)

Department of Public Health

Opportunities to Increase Revenue in State and Federal Health Facilities Citation Penalties Accounts

Recommendations

To increase revenue for the State Health Facilities Citation Penalties Account (state account), the Department of Public Health (Public Health) should seek legislation authorizing Public Health to require facilities that want to contest a Civil Money Penalty (monetary penalty) to pay the penalty upon its appeal, which could then be deposited into an account within a special deposit fund. The original monetary penalty deposited, plus interest accrued in the account, should then be liquidated in accordance with the terms of the decision.

To increase revenue in both the state account and the Federal Health Facilities Citation Penalties Account (federal account), Public Health should seek legislation to:

- Periodically revise the penalty amounts to reflect an inflation indicator, such as the Consumer Price Index.
- Impose a monetary penalty and also recommend that the Centers for Medicare and Medicaid Services (CMS) impose a monetary penalty when Public Health's Licensing and Certification Division (division) determines that a facility is not complying with both state and federal requirements.
- Specify a time frame within which facilities with non-appealed citations that do not qualify for a 35 percent reduction must pay their monetary penalties and allow Public Health to collect interest on late payments of monetary penalties.

To ensure that citation review conferences are completed expeditiously, Public Health should also seek legislation amending its citation review conference process to more closely reflect the federal process by prohibiting facilities from seeking a delay of the payment of monetary penalties on the grounds that the citation review conference has not been completed before the effective date of the monetary penalty.

Background

Public Health is responsible for licensing and monitoring certain health facilities, including more than 2,500 long-term health care facilities (facilities). Teams of evaluators from Public Health's division inspect facilities to ensure that they meet applicable federal and state requirements and investigate any complaints made against a facility. Generally, if a team finds during a survey or complaint investigation that a facility is not in compliance with a state requirement, the division may impose a monetary penalty, and if the team finds noncompliance with a federal requirement, it may make a recommendation to the CMS that it impose a monetary penalty. Monetary penalties collected from facilities are deposited into either the state or the federal accounts, depending on the nature of the noncompliance. Public Health uses the funds in these accounts primarily to pay for temporary management companies, which are firms it appoints to take control of a facility that violates applicable requirements. In recent years, the Department of Aging (Aging) has received an appropriation from the federal account for its Long-Term Care Ombudsman Program (ombudsman program), which is charged with investigating and seeking to resolve complaints made by, or on behalf of, facilities' residents.

However, the Legislature raised concerns about the solvency of the federal account and whether it will be able to support existing services that protect residents of facilities. Specifically, since at least fiscal year 2004–05, Public Health or its predecessor[2] has overstated the fund balances—the amount available for appropriation—for the federal account on the fund condition statements that are included in the governor's budget each year. Of particular note is that Public Health overstated the fund balance by $9.9 million for fiscal year 2008–09. In fact, Public Health estimates that the fund balance for the federal account will be approximately $345,000 by June 30, 2010, and will decrease to $249,000 by June 30, 2011. Errors made in the fund condition statements have masked the fact that the federal fund is now nearly insolvent and this condition may adversely affect services provided by Aging's ombudsman program designed to help protect residents of facilities from abuse and neglect.

Revenue for the state and federal accounts is derived from citations imposing monetary penalties that Public Health's division or CMS issue depending on whether the violation cited is with state or federal requirements. Although the division generally collects payments for all of the citations it issues for which the facilities choose not to appeal that are collectable, the amounts it ultimately collects are less than those originally imposed mainly because state law permits a 35 percent reduction to the monetary penalty if it is paid within a specified time frame. Specifically, during the nearly seven-year period covered in the audit, the division imposed $8.4 million in monetary penalties but collected only $5.6 million. Furthermore, a significant amount of their penalties are stalled in the appeals process. From fiscal year 2003–04 through March 15, 2010, facilities appealed citations totaling $15.7 million in monetary penalties. Of this amount, citations of nearly $9 million were still under appeal and some of these citations were contested roughly eight years ago. The large number of citations stalled in the appeals process is likely due to incentives the appeals process offers facilities, including the delay of payment until the appeal is resolved and the potential that the monetary penalty will be significantly reduced. In fact, 71 percent of the citations issued, appealed, and resolved in the time period covered by the audit received reductions to the original amount imposed. In particular, of the $5.3 million imposed by citations that were appealed and ultimately reduced, facilities were required to pay only $2.1 million.

The audit identified several opportunities for Public Health to increase revenue for both the state and federal accounts by seeking changes to state law and by ensuring the division adheres to current law. For example, we estimate that had the monetary penalties for citations been revised at the rate of inflation, Public Health could have collected nearly $3.3 million more in revenue for the state account.

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2 On July 1, 2007, the Department of Health Services (Health Services) was reorganized and became two departments: the departments of Health Care Services and Public Health. Before it was reorganized, Health Services administered the state and federal accounts. Public Health now administers these accounts.

Report

2010-108 *Department of Public Health: It Reported Inaccurate Financial Information and Can Likely Increase Revenues for the State and Federal Health Facilities Citation Penalties Accounts* (June 2010)

Note: Chapter 729, Statutes of 2011 (AB 641), among other things, eliminates the citation review conference from the citation appeals process for long-term care facilities and allows fines to be levied from both state and federal agencies when an incident violates both state and federal laws.

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Department of Public Health

Seek Guidance to Better Manage Spending for Every Woman Counts Program

Recommendation

To ensure that the Department of Public Health (Public Health) can maintain fiscal control over the Every Woman Counts (EWC) program, it should seek legislation or other guidance from the Legislature to define actions the program may take to make sure that spending stays within amounts appropriated for a fiscal year.

Background

The EWC program is administered by Public Health. Spending nearly $52.1 million in fiscal year 2008–09, the EWC program provides funding for breast and cervical cancer screening services for low-income women. During fiscal year 2008–09, Public Health provided EWC services to nearly 350,000 women. Under the EWC program, medical providers submit claims to the State for the screening services they provide to women enrolled in the program. Although the EWC program provides health-related services to low-income women, the establishing laws did not structure it as an entitlement program. The number of breast and cervical cancer screenings provided—and by extension the number of women served by the EWC program—is inherently limited each year by the level of spending authorized by the Legislature.

The EWC program is funded both by state funds—tobacco tax revenue—and by a federal grant provided by the Centers for Disease Control and Prevention (CDC). However, declines in proceeds from tobacco taxes, along with the fiscal pressures placed on the State's budget resulting from the economic recession, will likely make funding the EWC program more difficult for the Legislature in the future. In June 2009 Public Health informed the Legislature that it would require a $13.8 million budget augmentation to pay for actual and projected claims during fiscal years 2008–09 and 2009–10. Public Health also took steps to reduce the number of women eligible for the EWC program by imposing more stringent eligibility standards and freezing new enrollment for six months beginning in January 2010.

Although Public Health's EWC program has faced declining revenues and increased costs in recent years, state law only requires Public Health to provide breast cancer screening at the level of funding appropriated by the Legislature. According to Public Health, given the high profile of the EWC program, its political sensitivity, and the potential for public outcry, there has been a reluctance to limit services to women in the past. However, such an approach can cause Public Health to spend through its available funding before the fiscal year concludes if more women than expected access screening services.

Recognizing that its clinical claims' budget is based on expenditure trends and growth rates, Public Health needs to work with the Legislature to establish how it should respond when the demand for screening exceeds budget assumptions. Public Health's decision to impose more stringent eligibility requirements beginning January 1, 2010, and to temporarily freeze new enrollment in the EWC program for a six-month period as a cost-containment measure caused frustration with certain members of the Legislature. Even though the Legislature ultimately appropriated additional funding for the EWC program for fiscal years 2008–09 and 2009–10, Public Health could have helped establish expectations for the EWC program upfront during the budget process, stating how many women would be served at a certain level of funding, as it does with its federal award from CDC. If it had done so, Public Health would have been able to indicate whether or not the program had already served the agreed-upon number of women and helped the Legislature decide whether the additional funding was necessary.

Report

2010-103R *Department of Public Health: It Faces Significant Fiscal Challenges and Lacks Transparency in Its Administration of the Every Woman Counts Program* (July 2010)

Note: Assembly Bill 1640 of the 2009–10 Regular Legislative Session would have, among other things, required Public Health to notify the Legislature at least 90 days prior to changing EWC eligibility requirements. However, the governor vetoed this bill on September 29, 2010.

Note: Chapter 717, Statutes of 2010 (Senate Bill 853), requires Public Health to provide the Legislature with quarterly updates on caseload, estimated expenditures, and related program monitoring data for the EWC program.

Department of Developmental Services

Ensure Ability to Provide Effective Oversight of Rate-Setting Practices

Recommendation

The Department of Developmental Services (Developmental Services) should provide effective oversight of the regional centers' rate-setting practices. If Developmental Services believes it needs statutory or regulatory changes to implement this recommendation, it should seek these changes.

Background

In the Lanterman Developmental Disabilities Services Act (Lanterman Act), originally enacted in 1969 and subsequently amended, the State accepted responsibility for providing services and support to clients (consumers) and created the network of regional centers to meet this responsibility. The Lanterman Act defines developmental disabilities as mental retardation, cerebral palsy, epilepsy, autism, and other conditions that are closely related to or require treatment similar to that for mental retardation. Additionally, the Lanterman Act states that the disability must be a "substantial" disability that originated before the person turned 18 years old and can be expected to continue indefinitely.

Californians with developmental disabilities may obtain community-based services via California's network of 21 regional centers—private, nonprofit organizations receiving primary funding and oversight from Developmental Services. In addition to helping their consumers obtain services from school districts, local governments, and other federal and state agencies, the regional centers purchase services such as transportation, health care, respite care, day programs, and residential care from a variety of private providers (vendors). Together these services are meant to meet the unique needs and choices of each consumer so that he or she may live as independently as possible and participate in the mainstream life of the community in which he or she resides.

According to Developmental Services, approximately 240,000 consumers receive services from the regional centers. In fiscal year 2009–10, Developmental Services' community-based services program was expected to spend more than $4 billion. Of this amount, more than $3.4 billion was for direct services purchased by the regional centers for consumers and provided by private vendors. The regional centers themselves were expected to spend approximately $543 million for their operations, administration, and an early intervention program for children from birth to 3 years old. Developmental Services expects to spend about $22.3 million to oversee the regional centers.

Provisions of the Lanterman Act and the regulations promulgated to carry this act out, specify how regional centers are to ensure that services purchased for consumers are allowable. However, state law and regulations allow regional centers to establish many vendor payment rates through negotiation with the vendor, and Developmental Services' monitoring activities have provided only limited assurance that the payment rates established in this way are reasonable. Left to their own discretion, the regional centers have, at times, used some best practices when establishing rates, but more frequently they have not supported established rates with an appropriate level of analysis. At times, regional centers have established payment rates under circumstances that had the appearance of vendor favoritism or fiscal irresponsibility, or that did not comply with recent legislation intended to control the costs of purchased services. Further, although reviews conducted by Developmental Services examine whether a sample of invoices comply with the applicable rate methodology, they do not typically examine how regional centers establish the applicable rate.

Report

2009-118 *Department of Developmental Services: A More Uniform and Transparent Procurement and Rate-Setting Process Would Improve the Cost-Effectiveness of Regional Centers* (August 2010)

Note: Chapter 9, Statutes of 2011 (Senate Bill 74), includes a requirement for regional centers to timely disclose requests for proposals, contract awards, and payment rates for service providers on their Web sites.

Sex Offender Commitment Program

Streamline the Evaluation Process and Comply with Existing Reporting Requirements

Recommendations

To reduce costs for unnecessary evaluations, the Department of Mental Health (Mental Health) should either issue a regulation or seek a statutory amendment to clarify that when resolving a difference of opinion between the two initial evaluators of an offender, Mental Health must seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets sexually violent predator (SVP) criteria.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and about the impact of Jessica's Law on the program.

Background

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sex offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. State law designates these offenders as sexually violent predators. The Sexually Violent Predator Act (Act) lists crimes that qualify as sexually violent offenses and defines predatory to mean acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purposes of victimization. The Act also requires that SVPs have diagnosed mental disorders that make them likely to engage in future sexually violent behavior if they do not receive appropriate treatment and custody. Determining whether offenders are SVPs and committing them for treatment is a civil rather than criminal process. Thus, crimes that offenders committed before passage of the Act can contribute to offenders' commitment as SVPs.

State law requires Mental Health's evaluators to determine whether the offender meets the criteria for the SVP designation (criteria). If the first two evaluators agree that the offender meets the criteria, Mental Health must request a petition for civil commitment. If the first two evaluators disagree, the law requires that Mental Health arrange for two additional evaluators to perform evaluations. If the third evaluator believes the offender is not an SVP, state law generally would not allow Mental Health to recommend the offender for commitment even if the fourth evaluator concludes that the offender meets the necessary criteria. According to Mental Health's own analysis, the average cost of an evaluation completed by a contractor for fiscal year 2009–10 was $3,300; therefore, cost savings could be achieved if the department avoids the unnecessary fourth evaluation.

Mental Health has not submitted required reports about its efforts to hire qualified state employees to conduct evaluations of potential SVPs and about the impact of Jessica's Law on the program. State law requires Mental Health to report semiannually to the Legislature on its progress in hiring qualified state employees to complete evaluations. Although the first of these reports was due by July 10, 2009, Mental Health has yet to submit any reports. In addition, state law required Mental Health to provide a report to the Legislature by January 2, 2010, on the effect of Jessica's Law on the program's costs and on the number of offenders evaluated and committed for treatment. However, Mental Health also failed to submit this report. In May 2011 Mental Health's external audit coordinator stated that the reports were under development or review. Mental Health did not explain why the reports were late or specify a time frame for the reports' completion. Without the reports, the Legislature may not have the information necessary for it to provide oversight and make informed decisions.

Report

2010-116 *Sex Offender Commitment Program: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work* (July 2011)

Foster Family Home and Small Family Home Insurance Fund

Consider Whether to Add Kin-GAP Families to the Insurance Fund and Modify State Law to Provide Claimants Access to Legal Remedies

Recommendations

If the Legislature desires that the Foster Family Home and Small Family Home Insurance Fund (insurance fund) provide coverage to the foster family agencies' (FFAs) certified homes and families participating in the Kinship Guardianship Assistance Payment (Kin-GAP) program, it should amend the pertinent statutes to expand the insurance fund's coverage to include them.

To ensure the expedient disposition of claims, the Legislature should consider amending state law to provide claimants the option of litigating against the insurance fund if the Department of General Services (General Services) does not approve or reject their claims within the 180-day deadline described in state law.

Background

The Department of Social Services (Social Services) is responsible for managing California's county-administered foster care program. Among other things, Social Services, or a county under contract with Social Services, issues licenses to the foster family homes and small family homes (licensed homes) in which the county welfare departments place foster children. Social Services also issues licenses to FFAs, which are organizations that recruit, certify, and train parents who provide foster family homes not licensed by the State (certified homes). The FFAs offer professional support such as crisis intervention and counseling to the foster parents with whom they work, and they find homes or other placements for children.

Since October 1, 1986, California has offered liability protection to licensed homes through the insurance fund. The insurance fund is liable to pay, on behalf of any licensed home, damages that result from valid claims of bodily injury or personal injury arising out of the activities of foster parents while foster children reside in their licensed homes. FFAs and their certified homes are not eligible for coverage under the insurance fund because the law establishing it contains specific definitions for the terms licensed foster family home and licensed small family home, the only types of homes the insurance fund covers.

Implemented in 2000, state law established the Kin-GAP program to provide financial assistance for children whom the courts place in legal guardianship with relatives. The process for establishing this type of legal guardianship involves dismissing the children's dependency or terminating their wardship with the State. As a result, Kin-GAP children are no longer part of the foster care system and the law precludes coverage from the insurance fund for Kin-GAP families. However, the State provides Kin-GAP guardians with assistance payments that are equal to the basic foster care rate for which the children would otherwise be eligible, as well as specialized care increments (if applicable) and clothing allowances.

According to Social Services, since October 1986 Social Services has entered into interagency agreements with General Services to manage the insurance fund's claims process. However, Social Services did not ensure that General Services timely approved or rejected claims filed against the insurance fund. In addition, General Services has not always processed claims in a way that is consistent with state law and its own procedures. Claims against the insurance fund are filed with General Services' Office of Risk and Insurance Management (ORIM). State law requires that Social Services or its contracted agency approve or reject these claims within 180 days of their receipt. Our review of the 118 claims filed against the insurance fund between July 1, 2005, and December 31, 2010, for which information was available revealed that, in many instances, ORIM appears to have met the state-mandated time frame. However, ORIM took between 182 and 415 days to approve or reject 16 of these claims. According to state law, "no person may bring a civil action against a foster parent for which the insurance fund is liable unless that person has first filed a claim against the insurance fund and the claim has been rejected, or the claim has been filed, approved, and paid, and damages in excess of the payment are claimed." Thus, claimants who prefer to seek judicial remedy cannot do so until they receive notification from ORIM on the status of their claim.

Report

2010-121 *Foster Family Home and Small Family Home Insurance Fund: Expanding Its Coverage Will Increase Costs and the Department of Social Services Needs to Improve Its Management of the Insurance Fund* (September 2011)

Child Welfare Services

Strengthen Laws Regarding Registered Sex Offenders and Encourage Internal Death Reviews

Recommendations

To help keep children safe, the Legislature should consider enacting the following:

- A general prohibition of registered sex offenders living or working in licensed children's facilities or child welfare services (CWS) placements.
- A requirement that all law enforcement staff overseeing sex offenders make sure that the addresses sex offenders submit for registration do not match a licensed facility for children or a foster home.
- A requirement that the Department of Social Services (Social Services) make available to law enforcement in an efficient manner the addresses of its children's facilities and foster homes.

To encourage county CWS agencies to conduct formal internal death reviews, Social Services should revise its annual report on child deaths resulting from abuse or neglect to provide information on whether county CWS agencies conducted such a review of child deaths with prior CWS history. To obtain this information, Social Services should revise its regulations to require all county CWS agencies to not only report child deaths resulting from abuse or neglect but to also require a subsequent report indicating whether an internal child death review was completed.

Background

California has a system of laws and agencies designed to prevent and respond to child abuse and neglect. This system—often called child protective services—is part of a larger set of programs commonly referred to as child welfare services. Generally, the CWS system provides family preservation services, removes children from unsafe homes, provides for the temporary placement of these children with relatives or into foster and group homes, and facilitates legal guardianship or the adoption of these children into permanent families when appropriate. While state law requires Social Services to provide system oversight, county CWS agencies carry out required activities.

Despite a 2008 audit recommendation made by the Bureau of State Audits[3], Social Services does not use the Department of Justice's Sex and Arson Registry (sex offender registry) to identify sex offenders who may be inappropriately living or working in its licensed facilities or in the homes of foster children. By comparing the addresses of individuals in the sex offender registry with addresses of Social Services' and counties' licensed facilities and foster homes,

3 *Sex Offender Placement: State Laws Are Not Always Clear, and No One Formally Assesses the Impact Sex Offender Placement Has on Local Communities*, Report 2007-115, April 2008.

we found over 1,000 address matches, nearly 600 of which are considered to be high risk. We provided these address matches to Social Services and, after conducting investigations, it found registered sex offenders inappropriately living or present in several foster homes and other licensed facilities.

All adults living or working in licensed facilities and other potential placements for children in the CWS system (for example, homes of relatives or prospective guardians) must submit to background checks and would be prohibited from living or working in these locations if they have been convicted of a registrable sex offense. If a background check reveals that a person has been convicted of a registrable sex offense, state laws, in effect, prohibit that person from receiving a foster child placement, receiving a license to operate a community care facility (for example, foster or group homes), living in a community care facility except as a client, and from being employed at a community care facility. Registered sex offenders are not expressly prohibited from living in children's facilities or CWS placements similar to the residency prohibitions in Jessica's Law. If a registered sex offender is found improperly residing or working in a licensed facility or CWS placement, the facility or homeowner is required to expel the person or face civil monetary penalties, misdemeanor criminal charges, or having the license or home approval revoked or suspended. However, the sex offender faces no consequences other than potential expulsion from the home or facility.

CWS agencies are not legally required to formally conduct an internal evaluation of the services they delivered to a family prior to a child's death from abuse or neglect. When "death reviews" are not conducted, CWS agencies are missing opportunities to identify needed changes that may prevent similar future tragedies. None of the three counties in our review formally evaluated all such deaths that occurred between 2008 and 2010. In October 2007 the governor approved Senate Bill 39, which requires county CWS agencies to notify Social Services of all child fatalities that occur within their jurisdiction that resulted from abuse or neglect beginning on January 1, 2008. The law also requires Social Services to annually report on these fatalities and on any systemic issues or patterns revealed by this information. Social Services' most recent annual report—published in 2011 about child fatalities in 2009—provides high-level statistical information including each child's CWS history, age, gender, and ethnicity. Although the report provides statewide information, we believe it would be more useful if it included child death information by county, information over multiple years, a comparison of counties to one another, and child deaths as a percentage of each county's total child population.

Report

2011-101.1 *Child Welfare Services: California Can and Must Provide Better Protection and Support for Abused and Neglected Children* (October 2011)

Administrative Office of the Courts

Develop a Realistic Funding Strategy and Improve Reporting and Transparency of CCMS

Recommendations

To address the funding uncertainty facing the California Court Case Management System (CCMS), the Administrative Office of the Courts (AOC) should work with the Judicial Council of California (Judicial Council), the Legislature, and the governor to develop an overall strategy that is realistic given the current fiscal crisis facing the State.

To ensure that financial implications of the statewide case management project are fully understood, the AOC should report to the Judicial Council, the Legislature, and stakeholders a complete accounting of the costs for the interim systems and CCMS. This figure should be clear about the uncertainty surrounding some costs, such as those that the AOC and superior courts will incur for deployment of CCMS. Also, the AOC should require superior courts to identify their past and future costs related to the project, particularly the likely significant costs that superior courts will incur during CCMS deployment, and include these costs in the total cost. Further, the AOC should be clear about the nature of the costs that other entities, such as justice partners, will incur that are not included in its total. Finally, the AOC should update its cost estimate for CCMS on a regular basis as well as when significant assumptions change.

To better manage costs of future information technology projects, the AOC should, among other things, disclose full and accurate cost estimates to the Judicial Council, the Legislature, and stakeholders from the beginning of projects.

To understand whether CCMS is a cost-beneficial solution to the superior courts' case management needs, the AOC should continue with its planned cost-benefit study and ensure it completes this study before spending additional significant resources on the project. The AOC should ensure that this study includes a thorough analysis of the cost and benefits of the statewide case management project, including a consideration of costs and benefits it believes cannot be reasonably quantified. The AOC should carefully evaluate the results of the study and present a recommendation to the Judicial Council regarding the course of action that should be taken with CCMS. Further, the AOC should fully share the results of the study as well as its recommendation to all interested parties, such as the superior courts, justice partners, the Legislature, and the Office of the Chief Information Officer[4]. The AOC should update this cost-benefit analysis periodically and as significant assumptions change.

[4] The Governor's Reorganization No.1 of 2009–10 Regular Session took effect on May 10, 2009. This plan was later certified by Assembly Bill 2408 of the 2009–10 Regular Session, which renamed the Office of the Chief Information Officer as the California Technology Agency.

Background

Proposition 220, approved in 1998 by California voters, began the process of unifying California's superior and municipal courts. The Trial Court Funding Act of 1997 established a funding scheme where these courts receive state, rather than local, funding. With administrative functions provided by the AOC, these superior courts receive funding through allocations from the Judicial Council.

As part of an effort to address technology problems facing the many case management systems used by the superior courts, the AOC, at the direction of the Judicial Council in 2003, continued the development of a single court case management system, referred to as the statewide case management project. The AOC is responsible for managing the development of the most recent version of the statewide case management project, CCMS, which covers all court case types. The AOC asserts that once this system is deployed statewide, CCMS will improve the access, quality, and timeliness of justice; promote public safety; and enable court accountability. CCMS is also designed to include statewide reporting; court interpreter and court reporter scheduling; and the capacity to interact electronically with other justice partner systems, such as those of local sheriffs and district attorneys.

By June 2010 the AOC and several superior courts had spent $407 million on the project. The AOC's records show that as of fiscal year 2015–16—the year in which the AOC estimates that CCMS will be deployed statewide—the full cost of the project is likely to reach nearly $1.9 billion. However, this amount does not include costs that superior courts will incur to implement CCMS.

CCMS is at risk of not being able to obtain the funding needed for statewide deployment. The AOC believes the core portion of CCMS will require roughly $1 billion to deploy the system for use at the 400 court facilities located statewide. However, because future funding for this project is uncertain, it is unclear whether the AOC will be able to obtain the $1 billion deployment cost or the additional $391 million needed to support CCMS through fiscal year 2015–16 when the AOC has estimated that the CCMS will be fully deployed. The AOC is attempting to develop alternative plans to minimize project costs and to deploy CCMS based on the level of funding that may be available, but the AOC believes that without full deployment to all 58 superior courts, the value of CCMS to the judicial branch may diminish.

Although the AOC has fulfilled its reporting requirements to the Legislature, it did not provide to the Legislature additional beneficial information about the projected increases in total project costs. Specifically, the four annual reports that the AOC submitted to the Legislature between 2005 and 2009 did not include comprehensive cost estimates for the project, and the 2010 report did not present the costs in an aggregate manner. As a result, these annual reports did not inform decision makers about the true cost of the statewide case management project. When asked by the Legislature in August 2010 what the true cost of the project will be upon its completion, AOC officials cited $1.3 billion, which excludes both the $557 million that has been or will be spent for the criminal system and the support costs for the civil system and CCMS until CCMS is fully deployed.

Finally, the AOC did not conduct a formalized cost-benefit analysis before making a significant commitment to the statewide case management project. Without such an analysis, it is unable to demonstrate that the cost of the project is warranted. Decision makers use a cost-benefit analysis to compare the benefits of the project's outcomes with the cost required to produce them. In 2007, when it had spent a total of $217 million, the AOC commissioned a study by a consultant that did not analyze whether the project was an appropriate and cost-beneficial solution; rather, it focused on the advantages of all 58 superior courts using CCMS. In addition, the consultant study appears to have been commissioned to justify actions the AOC had already taken and decisions reached regarding the project's scope and magnitude.

However, in October 2010, during our audit fieldwork, the AOC contracted with a consultant to perform the cost-benefit analysis of CCMS, which was completed February 22, 2011. As previously mentioned, the AOC should update this cost-benefit analysis periodically and as significant assumptions change.

Report

2010-102 *Administrative Office of the Courts: The Statewide Case Management Project Faces Significant Challenges Due to Poor Project Management* (February 2011)

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Indian Gaming Special Distribution Fund

Improve the Process for Awarding Indian Gaming Funds

Recommendations

The Legislature should consider amending the law to prohibit projects that are unrelated to casino impacts or are not proportionally related to casino impacts. The amendment should require that counties forfeit equivalent amounts of future money from the Indian Gaming Special Distribution Fund (distribution fund) if their Indian Gaming Local Community Benefit Committees (benefit committee) approve grant applications that fail to provide evidence that projects are funded in proportion to casinos' impacts.

To make certain that the projects' eligibility, merit, and relevance are discussed in a public forum during the projects' selection, the Legislature should also clarify that benefit committees should meet to consider applications before submitting them for tribal sponsorship. Alternatively, the Legislature could emphasize local priorities by amending the law to allow benefit committees to approve any applications that are submitted to them for public debate and committee approval before tribal sponsorship, regardless of the proportionality of a casino's impact.

To provide an incentive for benefit committees to award cities and counties the amounts that the Legislature has appropriated to them for mitigating casino impacts, the Legislature should require that grant funds allocated for each city and county according to the nexus test revert to the distribution fund if they are not awarded to that city or county.

The Legislature should amend the law for allocating distribution funds to counties to include provisions for prorating a county's distribution fund allocation based on the percentage of the year that each gaming device in the county is required to contribute to the fund. Such an amendment would ensure a more proportionate distribution when the number of contributing gaming devices changes during the course of the year.

Background

Since the passage of Proposition 1A in 2000 and the signing of the initial tribal-state gaming compacts, Indian gaming has experienced extensive growth. During this time, additional compacts have been signed, existing compacts have been amended, and various court decisions have changed the landscape of Indian gaming. As of June 2010, Indian tribes operated almost 65,000 class III gaming devices, which include slot machines. According to the National Indian Gaming Commission, revenues from Indian gaming in California and Northern Nevada grew from $2.9 billion in federal fiscal year 2001 to $7 billion in federal fiscal year 2009.

The 1999-model compacts call for each tribe that operates more than 200 grandfathered devices, those in operation as of September 1, 1999, before the compacts were ratified, to deposit a percentage of its average net wins into the distribution fund that state law established in the State Treasury. Generally, the net win of a device is its gross revenue—the amount players pay into the device—less the amount paid out to winners. The percentage of average net wins for grandfathered devices deposited into the distribution fund ranges from 7 percent to 13 percent, depending on how many devices the tribe operated on September 1, 1999.

State law creates, in each county in which Indian gaming occurs, a benefit committee that awards grants from the distribution fund. Each benefit committee is responsible for establishing procedures for local governments within the county to apply for grants and for selecting eligible applications for the distribution of grant funds. State law requires that 60 percent of the funds are allocated using a nexus test and the remainder are awarded as discretionary grants. These criteria are intended to provide a fair and proportionate system for awarding grants to local governments impacted by tribal gaming.

Benefit committees have had difficulty in complying with distribution fund grant requirements and with related laws. Our review of a sample of 20 grants awarded in seven counties in the State revealed that three were unrelated or not proportionally related to any adverse impacts that the respective Indian casinos may have on their surrounding areas. For 10 other grants, the grantees were unable to quantify or provide evidence of the casinos' impacts. Additionally, some counties failed to award local governmental entities within a certain geographical proximity to their respective casinos the minimum amounts that the law sets aside for those entities. One county awarded a distribution fund grant to an ineligible applicant, leaving fewer funds for distribution to eligible entities and projects.

These grants may have been approved because some county benefit committees obtained the tribes' sponsorship for the proposals before selecting them for funding. Requiring the benefit committee to select projects for grant funding before obtaining tribal sponsorship would have several inherent benefits. Not only does the consideration of each grant application by the benefit committee in a public meeting allow for discussion and public comment on each application's relative merits, but it also presents the opportunity for an applicant to provide additional information and clarification on the application.

In reviewing the fiscal year 2008–09 allocation by the State Controller's Office (Controller) from the distribution fund to counties, we found that the Controller used the formula established in law. However, due to newly amended compacts, some tribes ceased making contributions to the distribution fund partway through fiscal year 2007–08—a situation that the law did not anticipate. Had the allocation taken into account the fact that these tribes did not contribute throughout the year, approximately $2 million would have been distributed differently, providing some counties with more money and others with less.

Report

2010-036 *Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants* (February 2011)

Note: Assembly Bill 742 (as amended March 31, 2011) of the 2011–12 Regular Legislative Session, if passed in its current form, would among other things, require grant applications to clearly show how the grant will mitigate the impact of the casino on the applicant agency and require benefit committees to adopt a conflict-of-interest code.

Commission on Teacher Credentialing

Increase the Commission's Ability to Review Enforcement Cases

Recommendation

Once the Commission on Teacher Credentialing (commission) has received the attorney general's legal advice regarding the extent to which the Committee of Credentials (committee) may delegate case closures to the Division of Professional Practices (division), the commission should undertake all necessary procedural and statutory changes to increase the number of cases the committee can review each month.

Background

The commission was created in 1970 with the responsibility to ensure excellence in education by establishing high standards for the preparation and credentialing of public school educators. The law requires the commission to appoint the committee (made up of members of the education community, including teachers, administrators, board members, and representatives of the public) to review allegations of misconduct on credential holders and applicants and make recommendations of adverse actions to the commissioners. The division investigates charges of misconduct or unprofessional conduct against credential holders and applicants on behalf of the committee and commissioners. Such investigations are intended to reveal whether the misconduct renders an individual unfit for the duties authorized by the credential. As of the summer of 2009, the division had accumulated a backlog of about 12,600 unprocessed reports of arrest and prosecution (RAP sheets)—almost three times its typical annual workload.

The limited capacity of the committee to review reported misconduct restricts the division's ability to promptly process cases. According to the assistant general counsel and the division's manager, the committee can review only about 50 to 60 cases each month, whereas the division's fiscal year 2009–10 workload statistics report shows the division opened between 4,288 and 5,662 cases annually during fiscal years 2005–06 through 2009–10. Committee members are expected to work three to four days each month to fulfill the duties of the committee. As a result, in its current configuration it is doubtful that the committee members, who typically also have full-time jobs, could spend more time on committee activities, thereby increasing the number of cases the committee reviews. In its efforts to eliminate current and future workload backlogs, the division implemented some measures to streamline the actions the committee takes to determine whether probable cause exists for adverse action against credential holders accused of misconduct. Specifically, the division will close cases, or will decide not to open cases, if it believes the committee would choose not to recommend disciplinary action against the credential holder. However, we question whether the division has the authority under the law to make these decisions. While the law might permit division staff to review and close some reported cases of misconduct under limited circumstances, only the committee may weigh the impact of misconduct on students and exercise discretion to determine whether to recommend that the commission discipline the credential holder or end an investigation without a recommendation for discipline.

Report

2010-119 *Commission on Teacher Credentialing: Despite Delays in Discipline of Teacher Misconduct, the Division of Professional Practices Has Not Developed an Adequate Strategy or Implemented Processes That Will Safeguard Against Future Backlogs* (April 2011)

State Lands Commission

Permit Monetary Penalties to Enforce Insurance Requirements on Lessees

Recommendation

If the State Lands Commission (commission) believes that assessing a monetary penalty will be effective in encouraging lessees to obtain surety bonds or liability insurance, it should seek legislation to provide this authority.

Background

The commission is responsible for managing the lands that the State acquired from the federal government at statehood, including the beds of navigable rivers and lakes, submerged land along the State's coast, and school lands granted to the State for the benefit of public education. The commission's management of these lands provides the State with revenues from leases and from the State's share of net profits derived from activities conducted on state lands. However, the commission has not always managed its more than 4,000 leases in the State's best interest. As a result, it has missed opportunities to generate millions of dollars in revenues for the State's General Fund—estimated to be as much as $8.2 million for just some of the leases in the sample of 35 we reviewed. The leases managed by the commission include: 85 oil and gas, geothermal, and mineral leases; 900 agricultural, commercial, industrial, right-of-way, and recreational leases; and 3,200 rent-free leases.

Further, the commission is not consistently ensuring that lessees maintain a surety bond and liability insurance to mitigate a potential financial claim resulting from an accident occurring on state land. State law requires that lessees maintain a surety bond and liability insurance for all oil and gas pipeline leases, and according to the chief of land management, most of the commission's other leases contain a provision requiring lessees to acquire and maintain surety bonds and liability insurance. However, according to the chief of land management, the commission does not proactively ensure that lessees have a current surety bond and liability insurance. In fact, for 21 of the 35 leases we reviewed, either the surety bond or the liability insurance or both had expired.

In 2000 the commission created the State Land Compliance Program (compliance program), in part to ensure that lessees maintain a current surety bond and liability insurance. The commission explains, in its description of the compliance program, that failure to have adequate liability insurance and bonds places the State at risk of financial loss resulting from claims of personal injury or property damage caused by accidents on its lands. Further, damages and injury awards could be extremely high and therefore, adequate liability coverage for each lease is of paramount importance. However, despite identifying that some of its pipeline leases did not have current liability insurance and surety bonds, the commission ended the compliance program in 2006.

Although the commission can terminate a lease if the insurance or bond has lapsed, the chief of land management noted that it has not been the commission's practice to do so, because by evicting the lessee the State is solely liable for any accidents that occur on its lands. Further, although it would prefer to, the commission believes that it does not have the statutory authority to impose monetary penalties on lessees when they fail to maintain a surety bond or liability insurance. Up to this point, the commission has not obtained legislative authority to assess penalties, nor has it shown an inclination to take any punitive actions against these lessees.

Report

2010-125 *State Lands Commission: Because It Has Not Managed Public Lands Effectively, the State Has Lost Millions in Revenue for the General Fund* (August 2011)

Department of General Services

Clarify the Intended Use of Small Business and Disabled Veteran Business Enterprises as Subcontractors

Recommendations

The Legislature could provide more clarity regarding the use of small business and Disabled Veteran Business Enterprise (DVBE) subcontractors on state contracts. In doing so, the Legislature should consider the following policy questions associated with the Office Depot contract and revise state law as it deems appropriate. Specifically, the Legislature should consider whether:

- A business relationship such as the one between Office Depot and its subcontractors is what the Legislature envisioned when it created the commercially useful function requirements.
- A firm should be required to have demonstrated experience in a particular line of business before being allowed to participate in state contracts.
- The State should prohibit contractors, which are capable of performing the task contracted for, from subcontracting with small businesses and DVBEs at the cost of eliminating participation opportunities for these entities.
- It is in the State's best interest to limit a particular line of business, such as office supplies, to a relatively small number of small business and DVBE subcontractors rather than the many small businesses and DVBEs that could contract with the State in the absence of strategic sourcing. The Legislature should then revise state law as it deems appropriate.

Background

The Department of General Services (General Services) serves as the business manager for the State and has the authority to establish various types of contracts that leverage the State's buying power. Depending on the volume of purchases for certain goods, General Services might enter into a statewide contract for state agencies to use in meeting their needs. In June 2004, in anticipation of a recommendation by the governor's California Performance Review, General Services awarded a three-year contract to CGI-American Management Systems (CGI) to assist in implementing its strategic-sourcing initiative. The purpose of strategic sourcing was to enter into statewide contracts that leveraged the State's purchasing power to save money on the goods and services purchased most frequently by state agencies.

General Services takes steps to ensure that small businesses and DVBEs are given equitable opportunities to be chosen for a contract. However, the very nature of strategic sourcing, which consolidates expenditures into statewide contracts to achieve lower prices, also can result in fewer contracting opportunities for small businesses and DVBEs. For certain mandatory statewide contracts, including strategically sourced contracts, General Services provides state agencies with the option to contract directly with small businesses and DVBEs in order to meet their required participation goals. Nevertheless, the extent to which strategic sourcing has affected the number of small businesses and DVBEs contracting with the State is unclear.

State law requires that small businesses and DVBEs must perform commercially useful functions in providing goods or services that contribute to the fulfillment of a state contract. Such requirements are designed to ensure that the firms play a meaningful role in any contract in which they participate.

Report

2009-114 *Department of General Services: It No Longer Strategically Sources Contracts and Has Not Assessed Their Impact on Small Businesses and Disabled Veteran Business Enterprises* (July 2010)

Note: Chapter 342, Statutes of 2010 (AB 177), increased penalties, among other things, for persons who incorrectly obtain classification as a small business.

Note: Chapter 383, Statutes of 2010 (AB 2249), among other things, specified that 51 percent of Disabled Veteran Business Enterprises must be unconditionally owned by one or more disabled veterans.

Note: Senate Bill 817, as introduced in the 2011–12 Regular Legislative Session, includes provisions to allow a vendor to meet DVBE goals from sources other than state contracts and allows the calculation to meet participation goals to include specified direct and indirect costs incurred by the vendor. The bill was held in committee.

Division of the State Architect

Strengthen the Field Act and Provide Greater Enforcement Authority

Recommendations

To ensure public safety and provide public assurance that school districts construct projects in accordance with approved plans, the Department of General Services (department), in conjunction with the Division of the State Architect (division), should pursue legislative changes to the Field Act that would prohibit occupancy in cases in which the division has identified significant safety concerns. Further, the Legislature should consider implementing additional penalties for school districts that do not provide all required documents.

Background

The division, part of the department, supervises design and construction for K-12 schools and community colleges as required by a state law known as the Field Act. The Field Act was enacted in April 1933—one month after an earthquake damaged or destroyed almost 200 schools in Long Beach, California—to protect pupils, teachers, and the public. Among other things, the Field Act requires the department—which delegates its responsibilities to the division—to certify school construction projects when they comply with requirements in the Field Act and with the building standards in Title 24 of the California Code of Regulations (building standards). To accomplish this goal, the division reviews and approves plans for school construction projects, certifies project inspectors hired or contracted by school districts, and monitors construction of projects through site visits and regular communication with inspectors. However, more than 2,000, or about 23 percent, of the projects that the division closed in fiscal years 2008–09 through 2010–11, remain uncertified. As of December 2010 the division estimated there were approximately 16,400 uncertified projects in the State.

The Field Act expressly allows school districts to occupy construction projects regardless of whether the division has certified them. A provision in the Field Act notes that *"nothing…shall prevent beneficial occupancy by a school district prior to the issuance of…certification."* This means that the division cannot deny a school district the ability to use a project, even if the division is aware of a serious issue preventing certification. For example, the division's records for one project we reviewed noted that the school district did not install a required fire hydrant for a multipurpose building by the end of construction in August 2007. Nevertheless, the district began using the building at that time and the division did not receive confirmation that the district had installed the hydrant until December 2009.

Further, the Field Act does not provide the division sufficient authority to penalize school district for noncompliance. As a requirement for certification, the Field Act requires that school districts submit several documents, such as final verified reports from project inspectors, design professionals, and contractors. These documents provide additional assurance that districts have constructed projects in accordance with approved plans. Despite the importance of these documents, the Field Act does not provide the division with express statutory authority to penalize districts that do not provide them, aside from authorizing the denial of certification.

The Field Act does grant the division certain limited tools it could use to encourage districts to pursue certification; however, the division has used these tools infrequently and inconsistently. For example, the division has inconsistently used its authority to order districts to stop work on construction projects in situations where the division has identified a potential threat to public safety.

Report

2011-116.1 *Department of General Services: The Division of the State Architect Lacks Enforcement Authority and Has Weak Oversight Procedures, Increasing the Risk That School Construction Projects May Be Unsafe* (December 2011)

Appendix

Legislation Chaptered or Vetoed During the First Year of the 2011–12 Regular Legislative Session

The information in the Table below briefly presents state bills that have been enrolled and in some instances chaptered during the 2011–12 Regular Legislative Session, and were based at least in part, on recommendations from a state auditor's report or the analysis of the bill relied in part on a state auditor's report.

Table
Legislation Chaptered or Vetoed in the 2011–12 Regular Legislative Session

BILL NUMBER/ CHAPTER	REPORT (ABBREVIATED TITLE)	LEGISLATION CHAPTERED OR VETOED
Corrections		
SB 608 Chapter 307, 2011	*2010-118 California Prison Industry Authority (May 2011)*	Authorizes the Prison Industry Authority to offer their goods and services for sale to nonprofit organizations when specified conditions are met.
General Government		
AB 202 Vetoed	*2009-501 State Mandates (October 2009)*	Would have made various changes to the State's process for the determination and reimbursement of educational mandates that streamline the reimbursement process and would have augmented the reporting requirements of the Legislative Analyst's Office with respect to mandates claimed by local education agencies meeting prescribed criteria.
AB 740 Chapter 684, 2011	*2009-103 Departments of Health Care Services and Public Health (September 2009)*	Among other things, requires a state agency to immediately discontinue a contract that the State Personnel Board disapproves and prohibits the agency from entering into another contract for the same or similar services.
AB 898 Chapter 358, 2011	*2008-113 Victims Compensation and Government Claims Board (December 2008)*	Starting January 1, 2012, increases the minimum restitution fine for a felony conviction from $200 to $300 over a three-year period and for a misdemeanor conviction from $100 to $150 over a three-year period.
Health		
AB 102 Chapter 29, 2011	*2004-033 Pharmaceuticals (May 2005)*	Health care budget trailer bill. Establishes the use of an "Average Acquisition Cost" for drug ingredients, which means the average weighted cost determined by the Department of Health Care Services as specified.
AB 641 Chapter 729, 2011	*2010-108 Department of Public Health (June 2010)*	Among other things, eliminates the citation review conference from the citation appeals process for long-term care facilities and allows fines to be levied from both state and federal agencies when an incident violates both state and federal laws.
Higher Education		
SB 8 Chapter 247, 2011	*2007-102.1 California State University (November 2007)*	Modifies the California Public Records Act to include foundations at the University of California, and auxiliary organizations of the California State University, the Board of Governors of the California Community Colleges, and governing boards of community college districts.
Housing		
AB 1222 Chapter 408, 2011	*2010-123 California Housing Finance Agency (February 2011)*	Allows individuals affiliated with the housing, banking, insurance, and other specified industries to serve on the CalHFA board, even though they may have a conflict of interest provided they publicly disclose the interest and do not attempt to influence or participate in the decision in which they have an interest.

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BILL NUMBER/ CHAPTER	REPORT (ABBREVIATED TITLE)	LEGISLATION CHAPTERED OR VETOED
Human Services		
AB 6 Chapter 501, 2011	*2009-101 Department of Social Services (November 2009)*	Among other things, eliminates the Statewide Fingerprint Imaging System requirement for the federal Supplemental Nutrition Assistance Program, known as CalFresh in California.
AB 862 Vetoed	*2009-118 Department of Developmental Services (August 2010)*	Would have added items to an existing list of disclosures posted on the Web site of each of California's 21 nonprofit regional centers.
SB 74 Chapter 9, 2011	*2009-118 Department of Developmental Services (August 2010)*	Department of Developmental Services' budget trailer bill. Includes a requirement for regional centers to timely disclose requests for proposals, contract awards, and payment rates for service providers on their Web sites.
Judiciary		
SB 78* Chapter 10, 2011	*2010-102 Administrative Office of the Courts (February 2011)*	Public safety budget trailer bill. Contains requirements for the state auditor to assess compliance with the new California Judicial Branch Contract Law, which includes conducting regular audits of contracting practices of the judicial branch entities.
Labor and Workforce		
AB 119 Chapter 31, 2011	*2010-112 Employment Development Department (March 2011)*	General government budget trailer bill. Among other things, makes changes related to implementing the Alternate Base Period program.
Transportation		
AB 105 Chapter 6, 2011	*2010-122 California Department of Transportation (April 2011)*	Transportation budget trailer bill. Among other things, requires new mandatory report language related to the Capital Outlay Support Program.
AB 115 Chapter 38, 2011	*2010-122 California Department of Transportation (April 2011)*	Transportation budget trailer bill. Among other things, revises existing reporting requirements for the Capitol Outlay Support Program to make the reports more useful.

* Senate Bill 92 (Chapter 36, Statutes of 2011) made clarifying changes related to the implementation of the audit requirements in Senate Bill 78.