Performance Audit

Department of Public Welfare's

Oversight of Financial Management Services providers

NOVEMBER 2013

Commonwealth of Pennsylvania

Eugene A. DePasquale - Auditor General

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EUGENE A. DEPASQUALE
AUDITOR GENERAL

November 14, 2013

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

Dear Governor Corbett:

This report contains the results of the Department of the Auditor General's performance audit of the Department of Public Welfare and its grant agreement with PCG Public Partnerships, LLC (PPL). The audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code and in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The primary focus of our audit was on the duties and responsibilities of DPW with regard to financial management services (FMS). Our objectives included determining whether: (1) the compensation paid to PPL was reasonable compared to that paid to the previous FMS providers and if that compensation provided an efficient and effective use of state and federal funds; (2) DPW provided adequate direction pertaining to the transition from previous FMS vendors to PPL, specifically whether payroll checks issued to direct care workers were timely; and (3) DPW adequately oversees and monitors the activities of PPL and that services provided are in compliance with applicable laws, regulations, contracts, and grant agreements. The audit focused on DPW's activities beginning in January 2012, with the start of the FMS procurement process, and continuing through August 30, 2013. The audit also covered DPW's monitoring activities of the former FMS providers from 2008 through 2012.

We found that DPW failed to adequately monitor the former FMS providers and allowed their noncompliance with program requirements to continue for years, which was a major contributing factor in direct care workers not getting paid on time, and in some cases months. We also found that DPW mismanaged the FMS transition and ignored numerous red flags that PPL was not ready to take over FMS on January 1, 2013.

We also found that while DPW worked with PPL to address the numerous issues that arose during the transition, including late payments to direct care workers, DPW still does not adequately monitor PPL, thereby exhibiting a pattern of providing poor oversight to the FMS program. Further, we found that DPW allowed some of the former FMS providers to pay an hourly wage rate to direct care workers that was more than the allowable maximum Medicaid rate for years. Even though DPW became aware of these overpayments as early as 2009, it waited until August 2013 to correct them, which jeopardized the continued viability of the FMS program.

We also found that the procurement process was unfair to other vendors who might have bid lower and ultimately performed better. Finally, we found that while DPW did achieve a lower administrative cost from PPL than what it paid to the former providers, this lower fee was the result of providing PPL an $18 million cash advance and ongoing bi-weekly cash advances for the duration of the agreement term. These cost savings are offset by the additional costs DPW incurred for persons moving from the consumer-directed model to the more expensive agency-directed model as a result of the problematic transition to PPL.

We offer seven recommendations to address the identified deficiencies. Our expectation is that the recommendations will improve DPW's oversight of FMS, now and in the future, and will provide a framework for corrective action when necessary. We will follow up at the appropriate time to determine whether and to what extent DPW has implemented the recommendations.

Finally, we would like to thank DPW officials for the cooperation extended to us throughout the audit.

Sincerely,

EUGENE A. DEPASQUALE
Auditor General

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Executive Summary

In 2012, the Pennsylvania Department of Public Welfare (DPW) entered into an agreement with PCG Public Partnerships, LLC (PPL). The purpose of this agreement is for PPL to provide financial management services (FMS) to approximately 20,000 persons who receive long-term care services and support in their homes and communities.

The Department of the Auditor General's Taxpayer Hotline and Pennsylvania General Assembly members' offices were inundated with complaints from waiver participants and their direct care workers regarding the January 2013 problematic transition to PPL. Specifically, direct care workers spoke of not receiving their paychecks from PPL, while waiver participants were confused about the transition and afraid they could lose the personal care services that allowed them to remain in their homes.

In response to those concerns, the Department of the Auditor General initiated a performance audit of DPW's contract with PPL. The objectives covered by this audit included the compensation arrangements with PPL, the contract transition phase, and DPW's monitoring of the activities of PPL. (Additional information on the audit objectives, scope, and methodology can be found in Appendix A.)

Our audit work showed that beginning in December 2008, DPW had agreements with 36 different providers for FMS across the state. However, from 2009 through 2012, DPW did not adequately monitor these providers leading to continued instances of noncompliance with applicable laws, regulations, and FMS standards by some of these providers. Instead of taking appropriate corrective action against the providers, DPW allowed the noncompliance to continue for years. Finally, in 2012, DPW decided that it would be easier to start over with a new provider than it would be to aggressively monitor the former providers, calling such monitoring "cumbersome."

DPW issued a request for applications in January 2012, and finally selected one vendor, PPL, to provide FMS statewide in August 2012. However, in the middle of this procurement process, some of the former providers unexpectedly terminated their agreements with DPW, which ultimately resulted in hundreds of direct care workers not getting paid in July 2012. When DPW investigated the issue, DPW found that documentation needed from some of the former providers to process payroll payments was inaccurate, incomplete, or nonexistent. DPW also began to realize the scope and magnitude of the information that PPL would need to obtain by its planned January 1, 2013, transition date to ensure the nonpayment issue was not repeated. This documentation issue was the first sign that PPL would have a formidable task that significantly increased its workload prior to the planned start date.

In the short time frame that DPW had to transition 20,000 participants' files to PPL, DPW ignored many red flags that PPL was not fully prepared to pay all direct care workers by January 1, 2013. The most notable red flag that DPW ignored was PPL itself sounding the alarm about its inability to ensure timely payments to direct care workers on the start date. As a result, thousands of direct care workers were not paid timely, in some cases for months, beginning January 1, 2013. DPW worked alongside PPL for the first six months of 2013 to address the many transition issues that were created by DPW's lax monitoring of the former providers and by its failure to recognize the warning signs that a January 1, 2013, start date was unrealistic. Once those issues were addressed, DPW should have assumed a strong oversight role of PPL, but instead, we found that DPW continued its past practice of poor oversight of FMS.

The results of our audit are summarized in the following six findings that are presented in this report:

1) DPW's poor oversight of the former FMS providers led to undue stress and financial strain for hundreds of direct care workers.

2) DPW's procurement process was unfair to other vendors who might have bid lower and ultimately performed better.

3) DPW's mismanagement of the FMS transition led to thousands of direct care workers not getting paid consistently on time. DPW ignored numerous red flags thereby missing the opportunity to ensure that waiver participants transitioned to PPL as seamlessly as possible.

4) DPW incurred additional costs with PPL, and it did not achieve expected efficiencies.

5) DPW continues to put the well-being of waiver participants and direct care workers at risk by not adequately monitoring PPL.

6) DPW failed to ensure that only allowable hourly wage rates were paid to direct care workers and allowed this noncompliance to continue for years.

In its written response to the audit report, DPW disagreed with each of our findings. (See page 63 for DPW's entire response).

While DPW stated throughout its response that DPW officials monitored the former FMS providers, the results of our audit show that DPW's monitoring was inadequate, both in depth and in frequency. DPW failed to follow up on the former FMS providers' deficiencies and did not take enforcement actions against the providers to try to achieve compliance with applicable laws, regulations, and FMS standards.

While DPW no longer has agreements with any of the previous providers, we found that DPW's lax monitoring practices continue with PPL. In an effort to address the numerous issues that developed during the transition phase, DPW asserts that it "worked closely" with PPL to help ensure that direct care workers were paid and waiver participants were served. However, in doing so, we found that DPW eased its monitoring of PPL—in essence repeating the lax monitoring procedures it had used with the former FMS providers. DPW's past practice of trusting the providers to ensure compliance with applicable laws, regulations, and standards cannot continue. The "multi-faceted and complicated set of problems" that DPW may have faced because of changes in the home and community-based waiver services program is not an excuse for repeating these lenient monitoring practices. DPW must accept its oversight responsibilities and implement adequate monitoring procedures to ensure that PPL, or any other contracted vendor, is in full compliance.

We made seven recommendations for DPW to implement to improve its oversight of FMS. We were disappointed to see that DPW's response indicated that it would only "consider" our recommendations rather than actually implementing the recommendations. DPW's response to our recommendations further illustrates its reluctance to take full responsibility for FMS oversight.

Introduction and Background

This report presents our findings, conclusions, and recommendations related to the Pennsylvania Department of Public Welfare's (DPW) oversight of financial management services (FMS) to persons enrolled in certain Medicaid waiver programs.

The following background information is intended to provide an understanding of the nature and profile of FMS and to put the significance of our findings into context.

Duties and mission of DPW

According to its website, DPW's mission is as follows:

> Our mission is to promote, improve, and sustain the quality of family life; break the cycle of dependency; promote respect for employees; protect and serve Pennsylvania's most vulnerable citizens; and manage our resources effectively.

DPW has seven program offices that administer services that provide care and support to Pennsylvania citizens. This audit focused on services provided by the Office of Developmental Programs and the Office of Long Term Living.

Office of Developmental Programs. This office works with individuals and families to provide supportive services and care for people with cognitive disabilities, especially intellectual disabilities and disorders falling in the autism spectrum.

Office of Long Term Living. This office, which is a joint partnership between DPW and the Pennsylvania Department of Aging, addresses housing and care needs for older Pennsylvanians.

The individuals served by the Office of Developmental Programs and the Office of Long Term Living (herein referred to as DPW for ease of reference) can choose to receive care in their homes rather than live in assisted living facilities or other institutions. This audit focused on certain services provided to persons who receive care from DPW in their homes.

Home and Community-based Services

Home and community-based services waiver programs provide long-term care services and support to individuals at risk for institutionalization but who want to remain in their home and community.

These programs are supported with both federal and state funds through the Medical Assistance program (Medicaid). The federal government pays the state a specified percentage for program expenditures,[1] and the state funds the remaining expenses for the care and services provided for in its Medicaid state plan.

The home and community-based services waiver programs are called "waiver" programs because the state asks the federal government to "waive" certain Medicaid requirements that apply to institutional care so that Pennsylvania can use the same funds to provide support and services for people to remain in their homes.

Examples of services include: personal care assistance, such as bathing, meal preparation, and dressing; accessibility adaptations and equipment; counseling; and respite care.

Personal care assistance services are a critical component of the home and community-based services waiver programs. The delivery of services by personal care attendants can be provided through two different models. Individuals can choose which model of care they prefer, and they can switch between the two models at their discretion. These models are described below.

Consumer-directed model. In this model, the waiver participants, or their representatives, hire, train, schedule, and supervise the personal care attendants. This model gives waiver participants the most control over their care. Waiver participants who choose this model also receive financial management services (FMS) to assist them with certain tasks of being an employer.

Agency-directed model. In this model, a provider agency takes on the responsibility for hiring, training, scheduling, and

[1] The federal Medical Assistance percentage to Pennsylvania in federal fiscal year 2012 was 55.07 percent.

supervising the personal care attendants. The agency-directed model is more expensive for the commonwealth.

There are several home and community-based services waiver programs in Pennsylvania, but not all of them offer the consumer-directed model. This audit focused on the following waiver programs where personal care attendants can be hired through the consumer-directed model:

Aging Waiver. For persons age 60 and older who are deemed Nursing Facility Clinically Eligible.[2]

Attendant Care Waiver.[3] For persons ages 18 to 59 with a physical impairment lasting 12 months or more.

OBRA[4] Waiver. For persons age 18 or older who are developmentally disabled, where the disability manifested before age 22 and is likely to continue indefinitely.

COMMCARE Waiver. For persons age 21 or older with a traumatic brain injury who require a Special Rehabilitation Facility level of care (facility where more than 70 percent of the residents have a neurological-muscular diagnosis and severe functional limitations).

Independence Waiver. For persons age 18 or older who have a physical disability which is likely to continue indefinitely and who meet the Nursing Facility Clinically Eligible level of care.

Consolidated Waiver. For persons age 3 or older with a diagnosis of mental retardation.

Person/Family Directed Support Waiver. For persons age 3 or older with a diagnosis of mental retardation (includes some different services than those offered with the Consolidated Waiver).

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[2] Nursing Facility Clinically Eligible (NFCE) has the following criteria: 1) an illness, injury, disability, or medical condition diagnosed by a physician; 2) individual requires care and service above the level of room and board of a nursing facility; 3) a physician certifies the individual as NFCE; and 4) the care and services required are either skilled nursing or rehabilitation services or health-related care and services that need to be provided on a regular basis in the context of a planned program of health care and management.
[3] This waiver is under the state Attendant Care Services Act (Act 150 of 1986).
[4] The federal Omnibus Budget Reconciliation Act of 1987.

Financial Management Services

Prior to 2006, most vendors provided both service coordination and financial management services to waiver participants. In 2006, the federal Centers for Medicare and Medicaid Services (CMS) decided to unbundle these services. CMS instructed the states to create a discrete service definition for financial management services (FMS) and to develop separate standards and a reimbursement rate for providing these services.

DPW finalized new FMS standards in December 2008 and began to enter into agreements with various providers for FMS. From 2009 through 2012, DPW contracted with as many as 36 different providers for FMS. The contracted vendors were responsible for providing the following financial management services:

- Processing payroll payments of direct care workers
- Withholding, depositing, and filing payroll taxes of the direct care workers
- Providing year-end tax forms, including W-2 forms
- Providing spending reports to waiver participants on a monthly basis
- Troubleshooting direct care workers' timesheet issues and providing customer service on payroll
- Verifying prospective direct care workers citizenship
- Brokering workers' compensation insurance policies and renewals and paying premiums for waiver participants
- Providing orientation and skills training to waiver participants and their representatives on how to be an employer of direct care workers

In 2012, DPW decided to divide the state into three regions and contract with just one provider for each region. In January 2012, DPW issued a Request for Application (RFA)[5] seeking a FMS provider in each of the three regions. Ultimately, DPW selected only one vendor, Public Partnerships, LLC (PPL) to provide FMS for all three regions. (See Finding Two for more information on the selection of this new FMS provider.)

[5] A Request for Application (RFA) is used for grant agreements whereas a Request for Proposals (RFP) is used for contracts. Both result in a binding legal agreement that details terms and conditions expected of the two parties.

PPL, which is a division of Public Consulting Group, was established in 1999. PPL is headquartered in Boston and has eight offices throughout the country. PPL provides services, including FMS, in 21 states and the District of Columbia, for various self-directed waiver programs. Prior to providing FMS in Pennsylvania, PPL served approximately 39,000 consumers annually.

DPW finalized the grant agreement with PPL on October 23, 2012. It is important to note that the agreement with PPL was a "grant agreement" and not a "contract." The reason is that DPW itself was not receiving the services of PPL; rather, waiver participants receive the services of PPL. A contract would have been appropriate if PPL were providing the services directly to DPW.

The term of the grant agreement between DPW and PPL is October 1, 2012, through December 31, 2014. DPW has the option to extend the term of the grant agreement for two additional one-year periods, which, if exercised, would extend the grant agreement until December 31, 2016.

DPW has oversight responsibility for FMS

The federal law[6] governing FMS for waiver programs requires states that use a vendor to provide FMS to provide oversight of those services. Such oversight is to be accomplished by monitoring and assessing the performance of the FMS provider to assure the integrity of the financial transactions they perform.

Since DPW contracted with vendors to provide financial management services, it is DPW's responsibility to provide oversight of FMS. Specifically, DPW must ensure that FMS providers comply with all grant agreement provisions as well as all applicable laws, regulations, and FMS standards.

See Appendix B for a time line of DPW's oversight of FMS, as well as cross-references of important dates and events to the related audit findings.

[6] Medical Assistance Program regulations, 42 C.F.R. Part 441 (Services: Requirements and Limits Applicable to Specific Services) and 42 C.F.R. § 441.484.

Finding One

DPW's poor oversight of the former FMS providers led to undue stress and financial strain for hundreds of direct care workers.

Some direct care workers who provided services to home and community-based waiver participants were not paid their wages on time by DPW's former financial management services (FMS) providers. A major contributing factor of these late payments was DPW's ineffective oversight of those providers since 2008.

DPW failed to adequately monitor 35 FMS providers to ensure they complied with all applicable laws, regulations, and FMS standards. Further, when DPW identified instances of noncompliance, DPW allowed these providers to remain noncompliant by not following up to ensure that the providers actually implemented the corrective action plans.

One area of noncompliance was the failure to maintain necessary records. Many of the former providers were cited for not maintaining forms necessary to process payroll. Furthermore, much of the waiver participant and direct care worker documentation that was maintained was inadequate and inaccurate. The effect of this poor recordkeeping came to light when waiver participants elected to switch FMS providers, and the new FMS providers could not process payroll because of the missing or inaccurate information. Therefore, direct care workers were left waiting for paychecks for months at a time.

DPW had a responsibility to ensure FMS providers were in compliance with all requirements of the law, regulations, and standards, and more importantly, to ensure that waiver participants were fully served by all providers in their respective waiver programs.

DPW failed to adequately monitor FMS providers.

DPW's primary monitoring tool was a one-time review of 35 former providers' activities to determine the extent to which the provider complied with the FMS standards that DPW developed in 2008.[7] According to the schedule provided by

[7] The other provider was monitored on an ongoing basis by a different office within DPW.

DPW, the monitoring review team conducted 12 reviews in 2009, 22 reviews in 2010, and only one review in 2011.

DPW officials told us that they also held group meetings with the providers to discuss any problems and issues that were identified during the onsite reviews. However, these officials could not provide us with any meeting minutes or dates of such meetings so that we could determine the frequency of the meetings, who was in attendance, and what was actually discussed.

Conducting only a single monitoring review on each provider over a four-year period is not sufficient to ensure that providers are operating in compliance with the grant agreement. Such infrequent monitoring is unacceptable and risky to the continued viability of the entire home and community-based waiver program.

Further, we found that a significant portion of the monitoring reviews focused on whether the FMS providers created policies to address the FMS standards. In analyzing the results of three of DPW's monitoring reviews, we noted that DPW cited an FMS provider for failure to document if participants demographic data was transferred when those participants opted to change FMS providers. However, DPW did not examine the files and records of the FMS provider to determine whether the participants' demographic data was actually in the files, and if so, if the data was complete and accurate.

We found that DPW's monitoring reviews were too limited when instead, they should have been both more thorough and more frequent.

DPW allowed noncompliance with program requirements to continue for years.

In conducting its monitoring reviews, DPW found numerous instances where the FMS providers were not in compliance with laws, regulations, and/or FMS standards. From the three monitoring reviews we examined, we found that DPW cited the FMS providers for failing to do the following in compliance with provisions of the Internal Revenue Code, Centers for Medicare and Medicaid Services (CMS) regulations, and FMS standards:

- maintain separate accounts for financial management services monies
- develop adequate fiscal controls
- include required forms in the enrollment packets
- maintain documentation, including appropriate federal, state, and local government agency forms, in participants' files
- include the unemployment compensation form, I-9, in direct care workers' files

DPW presented FMS providers with a report on the review team's findings and required the FMS providers to design a corrective action plan stating how the provider could come into compliance. While DPW approved these corrective action plans, DPW failed to ensure that the FMS providers implemented the corrective steps to become compliant. Because DPW did not conduct any onsite follow-up reviews, it had no way to verify that the providers corrected the deficiencies.

> "Many FMS providers continued to experience difficulty with complying with IRS codes, CMS regulatory requirements, and provider standards."
> *--DPW information packet provided to audit team at its entrance conference*

DPW officials stated to us that they provided guidance and technical assistance to the FMS providers but found that the noncompliance continued. These officials also told us that some of the FMS providers stated that they would not stop the co-mingling of funds, which was one of the most frequently cited findings.

Allowing the noncompliance to continue was unacceptable and risky to the continued viability of the entire home and community-based waiver program. DPW retained the option to terminate any FMS provider's agreement. The agreement stated that either party could terminate the agreement without cause. DPW had adequate evidence and ample opportunity—especially since it knew that some FMS providers deliberately chose to not comply with requirements—to terminate the agreements, yet DPW chose not to do so. Just as DPW expects Medicaid participants to comply with all waiver requirements, DPW should have insisted upon full compliance from its Medicaid service providers.

Terminating agreements was the only real enforcement actions DPW could take. While not all FMS providers were in violation of requirements, those providers who continued to violate FMS requirements should have been terminated. In those cases, waiver participants would have had to choose a new FMS provider. However, those FMS providers who acted in accordance with all requirements could have been available to provide FMS services to those waiver participants.

Instead, DPW allowed FMS vendors to continue to be noncompliant. Not only did DPW not adequately monitor the FMS providers, but when it did conduct a monitoring review, DPW failed to take action to ensure compliance. Here again, DPW failed in its oversight responsibilities.

Missing and inaccurate records led to direct care workers not getting paid.

DPW officials stated that they thought there was no end in sight with the FMS providers' noncompliance. Instead of DPW doing its job and taking appropriate action to correct the FMS providers' noncompliance, DPW decided to start over and to seek up to three regional FMS providers. (For more information on the procurement process, see Finding Two.)

> "On July 1, 2012, consumers and care givers were transferred to CFM with inaccurate, incomplete, or in many cases, no information at all regarding the participants' demographic information. This is a regrettable situation that has impacted many Pennsylvanians."
>
> *--former DPW Secretary's September 28, 2012, response to inquiry from former Auditor General*

After DPW began the procurement process, some of the 36 former FMS providers exercised their option to terminate their agreements without cause. These providers had to inform their waiver participants that the participants would need to choose a new FMS provider.

When these waiver participants transferred to a new FMS provider, it quickly became apparent that DPW's failure to adequately monitor and oversee the former FMS providers had real and dramatic consequences to the waiver participants and their associated direct care workers.

Specifically, when waiver participants enrolled with different FMS providers, some waiver participants found that their direct care workers were not getting paid. After numerous waiver participants and direct care workers contacted DPW to find out why paychecks were not being mailed, DPW initiated an examination in July 2012.

DPW found that the FMS providers who terminated their agreements had inaccurate, incomplete, or in many cases, no information at all regarding the waiver participants' demographic information. Missing information included records that would have clearly matched waiver participants with their direct care workers and information on payroll withholding and hourly pay rates for direct care workers.

During its review, DPW also found that other information was missing from provider files, which continued to make the transition to other FMS providers problematic, and more importantly, demonstrated to DPW that the transition to the newly-selected provider(s) in 2013 would be highly challenging. Missing information from FMS provider files included the following:

> DPW officials stated "that they should have done more reviews and looked at basic demographic information more when doing their reviews."
>
> --*DPW officials' statement in meetings with Auditor General staff*

- employee ID numbers
- participant and direct care worker demographic information (needed for mailings)
- work pay rates
- direct care worker W-4 information
- participants' authorizations
- update/accurate service plan information
- I-9 forms
- state tax payment information

DPW officials stated to us that they were "stunned" and "surprised" at the scope of the incomplete and inaccurate data in the providers' files. They went on to state that they should have done more reviews and looked at basic demographic information more thoroughly when conducting their reviews. Instead, they trusted the vendors to maintain accurate and complete information.

Conclusion: DPW failed to fulfill its basic oversight responsibilities of FMS providers.

As a result of our work, we concluded that DPW failed to adequately monitor the former FMS providers. Moreover, when DPW did conduct monitoring reviews of the providers and found instances of noncompliance, DPW failed to ensure that the FMS providers took corrective action to come into compliance with FMS requirements. Specifically, we found the following:

- DPW failed to monitor 35 former FMS providers more than once, with the last review conducted in February 2011.

- DPW failed to verify if the former FMS providers maintained adequate and accurate demographic data.

- DPW failed to conduct onsite follow-up reviews when instances of noncompliance were identified to ensure that corrective actions were taken.

- DPW failed to terminate any of the former FMS provider agreements even though sustained and deliberate noncompliance continued.

When waiver participants were forced to transfer to other FMS providers due to sudden agreement terminations in 2012, DPW's failure to ensure FMS providers complied with all FMS requirements was a major contributing factor in direct care workers not getting paid on time, and in some cases, for months—and potentially jeopardized the care of waiver participants.

Department of the Auditor General's Evaluation of DPW's Response:

Following is the Department of the Auditor General's evaluation of significant points from DPW's response to Finding One. DPW's response to the report appears in full beginning on page 63.

In its response, DPW acknowledged that, prior to 2008, "active monitoring was non-existent." DPW stated that it "initiated monitoring in 2009," but monitoring the former FMS providers for compliance was "cumbersome." DPW is the agency charged with oversight of the FMS program; therefore, it should provide the appropriate level of monitoring regardless of the challenges that come with that role.

DPW also admitted that it "believed that it would never achieve the compliance that was required from the previous providers." We believe that DPW should have taken decisive action to enforce the performance review provision of each FMS grant agreement, called for a "corrective action plan," and ultimately terminated the agreements for those providers who were continuously noncompliant. Such action would have sent the message to all the providers that DPW takes its oversight role, as well as compliance by the providers, seriously and that DPW would not tolerate noncompliance.

Further, we respectfully disagree with DPW's assertion that there was no factual finding that direct care workers were not getting paid before the transfer to PPL. The fact is that the former secretary of DPW sent a letter to the former Auditor General in which the secretary stated that he wanted to address the concerns related to "direct care workers not receiving paychecks" in the summer of 2012. The secretary attributed the nonpayment to some of the former providers unexpectedly terminating their provider agreements when DPW issued its RFA.

Further, in our first meeting with DPW officials, they provided information to us about the FMS transition and the issues DPW experienced when former providers terminated their agreements before the hiring of PPL. That packet of information contained a document that stated "many direct care workers didn't get paid or were paid incorrectly." Accordingly, the statements we made in our report were based on DPW's own assertions.

Finally, we believe that DPW's contention that the "documentation issue may not have come to light without the transition" is the agency's own admission that it did not monitor strongly enough to have in-depth knowledge on the FMS program. If DPW would have monitored the FMS program in depth and at a scope appropriate for a multi-million dollar program, then it would have known that there were documentation issues and could have addressed them immediately.

Finding Two

DPW's procurement process was unfair to other vendors who might have bid lower and ultimately performed better.

On January 5, 2012, DPW issued a Request for Application (RFA) seeking applicants to provide FMS within three separate regions of the state. Applicants could submit proposals for one or more of the three regions. We found that DPW's procurement process was not as competitive and fair as it might appear because a key provision of the RFA was unfavorable to the former FMS providers and, therefore, discouraged some providers from submitting applications. Moreover, DPW added an $18 million cash advance to the final grant agreement that was not included in the RFA.

If the other applicants had known that the requirements would be altered so much, they may have submitted different bids and other vendors may have decided to bid based on the altered terms. As a result, DPW could have potentially received lower costing and/or more responsive bids from applicants who might have ultimately performed more efficiently and effectively than the selected vendor.

Background for Finding Two:

DPW selected PPL—a non-Pennsylvania-based company—to provide FMS statewide.

According to the RFA, the primary purpose for seeking new FMS providers was to ensure:

- FMS is provided consistently across all home and community-based services' waivers and certain state-funded programs.
- All federal, state, and local taxes are managed consistently and reduce the employer-related burden to individuals receiving participant-directed services.
- The commonwealth achieves cost savings and efficiencies through the regionalization of FMS while enhancing services to eligible customers.

The RFA required both a technical proposal and a cost proposal. Because FMS involves various and complex federal and state laws and policies, DPW evaluated applicants based on their technical understanding of the program, their ability to deliver services, and the cost of providing the services.

DPW received 11 proposals from 7 different companies—4 for the western region, 3 for the central region, and 4 for the eastern region. Six of the seven applicants were already providing FMS in Pennsylvania, but the seventh applicant, PPL, did not provide FMS in Pennsylvania.

Although PPL provides services in 21 other states, it had never provided FMS to a program as large as Pennsylvania's, nor did it have offices in Pennsylvania. DPW had nearly 20,000 waiver participants that it expected the new FMS providers would serve. PPL stated in its response to the RFA that it was currently serving a total of 39,071 consumers, with its smallest state program serving 47 consumers and its largest state serving 12,747. If selected in Pennsylvania, PPL would increase its customers by 57 percent over its current service levels. In addition, when taking over FMS in other states, PPL, for the most part, transitioned files from just one former FMS provider. Transitioning clients from as many as 36 former providers would be challenging even for an experienced provider like PPL.

Once all applications were submitted, the evaluation committee first rated each applicant's technical proposal based on 23 components. Each component was rated between 0 to 100 percent, and then the 23 scores were averaged for a final technical score. Applicants who scored at least 70 percent on their technical proposals moved to the second phase of the evaluation process where their cost proposals were scored. However, if the technical score was below 70 percent, the rest of the application was not considered. For example, as shown on the table on the next page, Applicant E in the central region had a technical score of 69.77 percent, yet its cost score was not evaluated because DPW did not round the score to 70.

The evaluation team rated seven technical proposals 70 percent or greater; the other four applicants were eliminated from the next steps in the process since their technical scores were lower than 70 percent. For the seven proposals whose technical scores were 70 percent or greater, the evaluation team then reviewed and rated their accompanying cost proposals. The evaluation team did not have any minimum thresholds for the cost scores.

The evaluation team determined the overall combined score based on weighing the technical score as 60 percent and the cost score as 40 percent. The maximum overall score that could be given was 10,300 points, with a maximum of 6,000 for the technical proposal, a maximum of 4,000 for the cost proposal, and a maximum of 300 for a proposal including domestic workforce utilization. Using this scoring system, the highest overall score should have been selected in each region, barring any extenuating circumstances.

DPW did not provide the evaluation team's scoring sheets for each applicant; therefore, we could not verify the accuracy of the scores or evaluate the reasonableness of the scoring process. Instead, DPW provided a summary of the results for all 11 proposals as shown below.

	Technical Score (percent) [a/]	Cost Score (points)	Overall Score (points)	Applicant's Average Proposed Administrative Fee/Month [b/]
Western Region:				
PPL (winning vendor)	*89.33%*	*4,000.00*	*10,300.00*	*$84.50*
Applicant A	79.12%	2,935.58	8,459.50	$121.45
Applicant B	68.91%	N/A [c/]	N/A [/]	N/A
Applicant C	52.83%	N/A	N/A	N/A
Central Region:				
PPL (winning vendor)	*90.16%*	*1,969.81*	*8,269.81*	*$107.50*
Applicant D	77.66%	4,000.00	9,436.69	$75.92
Applicant E	69.77%	N/A	N/A	N/A
Eastern Region:				
PPL (winning vendor)	*89.30%*	*3,452.26*	*9,752.26*	*$80.50*
Applicant F	75.83%	4,000.00	9,301.44	$69.76
Applicant A	79.01%	2,629.13	8,148.37	$107.24
Applicant B	68.92%	N/A	N/A	N/A

Notes:

[a]/ DPW did not provide the points for the technical score. The highest technical score equates to 6,000 points. The highest cost score is 4,000 points.

[b/] Average fee calculated based on applicant's cost submittal which provided a fee rate for each of four years.

[c/] N/A means that the evaluation team did not score the cost proposal because the technical proposal was not scored at 70 percent or higher. As a result, there was no overall score.

As the table shows, PPL did not have the highest overall score in the central region. Nonetheless, the evaluation team recommended that PPL be selected to provide FMS statewide citing its concern that Applicant D did not meet the conflict-free requirement[8] of the RFA. DPW accepted the evaluation team's recommendation and ultimately selected PPL to provide FMS statewide.

DPW agreed to give PPL an $18 million cash advance even though it told other vendors that a cash advance was not an option.

The RFA did not include any provisions allowing for the selected provider to receive a cash advance payment for the performance of any FMS services, including payroll processing. In fact, during the question and answer phase of the procurement process,[9] DPW received two questions asking if there would be consideration for upfront dollars or if the commonwealth would use cash advances. The answer to both questions was "No."

Question: "Will the Commonwealth utilize cash advances or the gross adjustment process to establish working capital for the payment of the direct services due to the nature of the reimbursement system?"

Answer: "No."

--question related to RFA for FMS; response from DPW

Initial Cash Advance. Even though DPW clearly stated during the procurement process that cash advances would not be provided, during the grant agreement negotiations, PPL requested a cash advance be provided to it for payroll processing beginning on January 1, 2013. DPW reversed its position and agreed to provide an $18 million cash advance to PPL, and this cash advance became part of the executed grant agreement.

DPW officials stated to us that they felt that the FMS transition changed from the initial release of the RFA as a result of the findings of DPW's July 2012 review of former FMS providers' files (see Finding One), as well as choosing one statewide provider (PPL) instead of three regional providers.

[8] In short, the conflict-free provision of the RFA required an applicant to show that neither its governing body nor individual employees could work for or be affiliated with an existing provider of home and community-based waiver services. The evaluation team believed that Applicant D did not show enough evidence that all of its employees would meet this conflict-free requirement.

[9] DPW held a pre-proposal conference on January 25, 2012, for prospective applicants to have an opportunity to ask the department questions. On February 8, 2012, DPW released answers to the 414 questions submitted at the pre-proposal conference.

During the negotiation process, DPW informed PPL of the extent of missing or incorrect data that would complicate PPL's transition. Furthermore, DPW told PPL that it would need to audit each of the former providers' information to ensure the data was correct.

DPW agreed to provide an $18 million cash advance to PPL.
--term of the final grant agreement

While the negotiation process allows for terms and conditions that were not included in a RFA to be added to an agreement, allowing a large cash advance was a significant alteration to the original terms. This change might not have been requested, or considered, if DPW had done its job of monitoring the former providers. Moreover, DPW should have issued a new RFA with new terms—and been transparent about those terms—and sought new proposals for the actual scope of work that needed to be done.

Instead, DPW put itself in a very poor negotiating position because it required the selected vendor, PPL, to do more work than originally proposed when transitioning existing waiver participants. This additional work was the direct result of DPW's poor oversight of former FMS providers, and in the end, DPW's own inadequate monitoring opened the door for PPL to place more demands on DPW.

DPW also put itself in a poor position in allowing this cash advance by setting a dangerous precedent for future vendors to follow PPL's lead and ask for cash advances.

DPW's providing of an $18 million cash advance to PPL was "unfair" to other applicants.
--former FMS provider CEO's statement to Auditor General staff

The RFA requested each applicant to provide audited financial statements for the three most recent fiscal years to show that the applicant "possesses the financial capability to assure good faith performance of this agreement." Our analysis of PPL's financial statements indicated that PPL was in a strong financial position and could have easily handled the upfront payroll costs. Even so, DPW agreed to provide this $18 million cash advance. [10]

The fact that DPW altered the terms of the RFA by allowing a cash advance is significant because the procurement process could have been vastly different since the playing field would have been more level if all potential providers knew they did not have to cover such large payroll costs up front. Some

[10] The grant agreement stated that DPW would recoup the cash advance by placing weekly credits of $900,000 on all payments scheduled to be made to PPL between February 13, 2013, and June 26, 2013.

vendors' operations were too small to cover such expensive payroll costs up front without a cash advance.

If other vendors had known that such cash advances would be allowed, they could have submitted proposals—or those vendors that did bid could have sent in different proposals. When we met with some of the former 36 FMS providers, one company's chief executive officer stated that payroll processing costs were excessive and did not allow many of the former providers to submit a proposal. He thought the $18 million cash advance to PPL was "unfair."

By allowing the initial cash advance, DPW opened the door for additional demands from PPL, and PPL took advantage of that open door by requesting ongoing cash advances.

Ongoing Cash Advances. On July 5, 2013, DPW and PPL signed a grant agreement amendment to provide ongoing cash advance payments to PPL effective July 1, 2013, through the entire remaining grant agreement term, which could be as much as three years. It is difficult to understand why DPW agreed to ongoing cash advances considering PPL's robust financial position. In other words, PPL had sufficient funds to cover payroll costs on its own and did not need cash advances to continue operations.

> DPW provides a cash advance every two weeks to PPL in order to fund the direct care workers' payroll payments for the duration of the grant agreement term.
>
> *--July 5, 2013, amendment to PPL grant agreement*

The amendment requires DPW to provide a cash advance every two weeks to PPL to fund the direct care workers' payroll payments. DPW forecasts the advance payment amount based on previous payroll claims, and DPW is supposed to reconcile and update the payment amount every six months. The amendment states that DPW may discontinue the advance payments if it finds that PPL is not in compliance with all required payroll processing requirements.

DPW officials stated that PPL requested these ongoing cash advances because PPL did not want "to use any of its own money" for payroll processing. Clearly DPW intended for the selected provider(s) to use their own monies to make payroll payments and then be reimbursed by DPW as evidenced by DPW's response to cash advance questions posed during the "Question and Answer" portion of the RFA process.

When DPW granted the initial cash advance to PPL, it set a dangerous precedent that allowed PPL to ask for ongoing cash advances. Moreover, when PPL requested ongoing cash advances, PPL was still working through challenges that resulted from the missing and incorrect data and was about to take on the challenge of correcting wage rates (which we discuss more in Finding Six). These challenges were a direct result of DPW's poor monitoring and oversight of the former FMS providers, so here again, DPW was in a weak negotiating position.

According to DPW officials, cash advances to FMS providers are not a common occurrence. However, DPW has provided cash advances in conjunction with other grant agreements, but none have approached the magnitude of the $18 million advance to PPL.[11]

DPW's inclusion of a restrictive conflict-free requirement in the RFA essentially eliminated former FMS providers from the process.

The RFA included a conflict-free requirement. DPW officials stated that this requirement was placed in the RFA because some of the former 36 FMS providers also provided waiver program services. In those cases, DPW found that the former FMS providers would direct participants to the other services they provided. Therefore, DPW officials believed that it was important to include a conflict-free requirement in the RFA so that the new FMS provider(s) would not steer participants to the providers' other waiver services.[12] The extent to which applicants met this conflict-free requirement was scored in the technical evaluation section.

According to the RFA, the parameters of the conflict-free requirement are further defined as follows:

- Provider must be free of any conflict of interest with any existing or future waiver/program providers.
- To ensure an objective, unbiased process, the provider must be free of real or perceived conflict of interests.

[11] For example, DPW gave a $7.5 million cash advance in fiscal year 2010-11 to a hospital system that it contracts with in the southeastern part of the state. DPW gave this same hospital system cash advances of $5.5 million in both fiscal years 2011-12 and 2012-13. These advances were made for cash flow purposes and granted to encourage this vendor to remain in that region of the state.

[12] DPW's regulations do not require FMS providers to be conflict-free; however, DPW was free to add any requirements it deemed necessary into the RFA.

- Provider may not be part of, or affiliated with, any provider of home and community-based services.
- None of the FMS provider's personnel may work for any home and community-based service providers.
- Neither the governing body nor individual members of the FMS provider can be affiliated with an existing provider of home and community-based waiver services.
- Provider cannot be a developmental disabilities services provider within Pennsylvania.

DPW knew that former FMS providers provided other home and community-based waiver services. Therefore, the inclusion of this conflict-free requirement in the RFA was not favorable to those former providers, and it discouraged them from submitting applications. We found that during the question and answer phase of the procurement process, DPW received questions asking why the current FMS providers were being excluded. DPW replied that if they could organize their business to show they were conflict-free, then they were not excluded. In addition, many parties posed questions on their specific service arrangements to clarify if they met the conflict-free requirement.

As we noted earlier in this finding, one applicant (Applicant D) had a higher overall score than PPL in the central region. The evaluation team asked this applicant to submit additional information to demonstrate how it would meet the conflict-free requirement. However, after reviewing the additional information, the evaluation team was still not satisfied that Applicant D met the conflict-free requirement; therefore, the team recommended PPL.

The team made its decision based on the organization charts Applicant D submitted. Those organization charts included newly-created positions, but since the positions were still vacant, DPW was concerned any new hires might not be conflict-free. The applicant was reluctant to risk hiring new employees before the contract was signed, and DPW was reluctant to risk noncompliance with the conflict-free requirement. As such, the conflict-free requirement made it nearly impossible for Applicant D to win. Meanwhile, complying with the conflict-free requirement was not an issue for PPL since it did not provide waiver services in Pennsylvania.

Clearly DPW was willing to negotiate specific terms of the agreement, as evidenced by the extensive cash advance negotiations that occurred between DPW and PPL. Therefore, it is difficult to understand why DPW did not attempt negotiations with Applicant D. If DPW had worked out an agreement with Applicant D, DPW could have possibly saved millions of dollars over the life of the contract since Applicant D's proposed four-year administrative cost for the central region was $7.7 million lower than PPL's costs.[13]

While DPW did not select Applicant D to provide FMS in the central region because it determined that this provider could not comply with the conflict-free requirements, DPW allowed PPL to hire this provider as a subcontractor. The RFA states that subcontractors must meet the same requirements as grantees. When we asked DPW why it ignored this requirement, DPW responded that it thought the work the subcontractor was doing for PPL was limited and did not relate to conflict-free tasks.

DPW excluded a cost component from the scoring process which was unfavorable to former FMS providers.

The RFA stated that the selected vendor(s) would be paid an administrative fee for each waiver participant served. In addition a $45 transition fee would be paid for each participant that transitioned from any former provider to the new FMS provider(s). Each of the applicants would be paid some level of a transition fee. PPL would be paid the highest transition fee amount since it was not serving any FMS participants. The other applicants would be paid a transition fee amount, but only for those participants they had not previously served.

Even though the RFA says that DPW will pay providers two fees, scoring of the cost proposals was based on only one fee, the proposed administrative fee. In other words, the $45 transition fee was not included in the scoring process.

[13] Our calculation was 4,782 participants in the central region x $31.58 difference between PPL's proposed monthly administrative fee and Applicant D's fee x 12 months = $1,812,187 for one year.

For example, if the expected 20,000 participants transitioned, PPL would receive $900,000. But if another applicant was currently serving 2,000 participants, then that applicant would be paid only for transitioning the remaining 18,000 individuals, or $810,000. In that regard, DPW would pay the highest fee to PPL and a lower fee to the other applicants.

If the $45 transition fee had been included in the scoring process, PPL's cost score would have been lower because the total costs paid to PPL would have been higher. While the transition fee most likely would not have changed the procurement results, it should have been included in the scoring process so that the evaluation team could evaluate cost proposals based on the full costs. Further, the inclusion of all costs in the evaluations would be consistent with the objective of ensuring a fair competition among qualified vendors, as well as promoting an open and transparent procurement process.

Conclusion: DPW did not ensure fair and just competition among qualified vendors.

DPW issued a competitive request for application, but the procurement process did not ensure fair competition among qualified vendors[14] because the conflict-free requirement was so restrictive it was unfavorable—and even excluded—many, if not all, of the former FMS providers and discouraged other former providers from submitting applications.

Further, DPW allowed PPL, the selected vendor, to obtain not only an initial cash advance but also ongoing cash advances for the full term of the agreement even though during the procurement process DPW stated it would not provide any cash advances. When DPW stated that no cash advances would be allowed, it discouraged many of the former FMS providers from applying since the payroll processing requirements were too large for their small operations, and it may have even discouraged other vendors from submitting applications.

[14] While medical assistance provider agreements administered by DPW have been exempted from the state's *Procurement Handbook*, it is important to note that the handbook provides for good principles for all commonwealth procurements that would have served DPW well during the RFA procurement process. For example, the handbook provides that a request for proposal, which is much like a RFA, "establishes the common standard that ensures fair and just competition among qualified offerors…[and] should provide offerors withal information needed to prepare proposals that meet the using agency's needs." (*See Procurement Handbook*, Part 1, Chapter 6, page 10, revised July 9, 2013.)

Based on the results of our audit work, we concluded that the terms of the RFA put former FMS providers at a competitive disadvantage during the procurement process. The former providers considered whether to respond—and in some cases actually developed responses—based on the information in the RFA and not on the terms that DPW agreed to after a provider was selected.

If the other applicants had known that the requirements would be altered so much, they might have submitted different bids based on the altered requirements. Additionally, other providers who did not send in applications in the first place might have responded to the RFA had they known the terms would be altered so much. Overall, DPW could have potentially received lower costing and/or more responsive bids from applicants who may have ultimately performed more efficiently and effectively than PPL if DPW had a transparent RFA process.

Department of the Auditor General's Evaluation of DPW's Response:

Following is the Department of the Auditor General's evaluation of significant points from DPW's response to Finding Two. DPW's response to the report appears in full beginning on page 63.

In its response, with regard to the $18 million initial cash advance, DPW stated that it believed "it was unrealistic to expect any vendor to go out of pocket in that amount."[15] DPW also stated that it granted PPL ongoing cash advances to ensure direct care workers would continue to receive timely payments. These statements contradict the evidence that we found during our audit. Specifically, we noted that the RFA included statements that a cash advance would not be used to make payroll payments. In fact, the RFA stated that "the selected offeror(s) must have a sound financial and reporting structure to efficiently serve participants." Moreover, the RFA stated that offerors must submit information about the financial condition of the company, including audited financial statements for the three most recent years. DPW reviewed the financial information to determine if the offeror was financially stable enough to cover upfront payroll costs.

[15] Although DPW also stated that our draft report left "unstated" that it had recouped the initial advance prior to the end of the fiscal year (June 30, 2013), it is important to note that our report addresses this issue in footnote #10.

Furthermore, as we stated in our finding, when interested applicants asked DPW officials during the "Question and Answer" period if cash advances would be allowed, DPW officials responded "No." As such, DPW expected the selected FMS provider to be able to make all payroll payments, and cash advances would not be necessary. In reality, DPW provided the cash advances to PPL to incentivize PPL to continue to work through the documentation issues after PPL was made aware of the extent of missing and inaccurate data from the former providers.

In its response, DPW disagreed with our conclusion that it did not ensure fair and just competition among qualified vendors during the procurement process. While we acknowledge that DPW adhered to prescribed procurement practices when seeking a new FMS provider, our audit evidence supports our stated conclusion that the process was unfair. For example, because DPW required current providers who were interested in responding to the RFA to completely reorganize their businesses before being awarded a new agreement, we continue to believe the procurement process was not fair. It is unreasonable to expect a business to change its organizational structure and incur additional payroll costs to meet one component of the RFA (conflict-free) before offering that business a contract. Because DPW knew this requirement would be nearly impossible to meet, the RFA was exclusionary just by the very nature of this requirement.

Finally, DPW refused to provide the detailed scoring sheets used in the RFA selection process; therefore, we were unable to verify the validity of the scoring and determine how fair the process actually was, especially for those applicants whose technical scores were less than one percent below the 70 percent cut-off point.

Finding Three

DPW's mismanagement of the FMS transition led to thousands of direct care workers not getting paid consistently on time.

DPW planned for PPL to begin providing FMS to all waiver participants on January 1, 2013. DPW did not meet this goal because it ignored numerous warning signs indicating that more time was needed to transition to PPL and that keeping the January 1, 2013, transition date would result in chaos. DPW's mismanagement of the FMS transition negatively impacted thousands of waiver participants and their direct care workers.

"It is especially disheartening to know that a professional who is charged with caring for our family members, our seniors, our vulnerable residents so that they can retain their independence and stay in their homes had to suffer without pay for months—not weeks. These workers deserve fair pay for a fair day's work; waiting five months for a paycheck is insulting and unacceptable."
--letter from member of PA Legislature to the Secretary of DPW

DPW expected that PPL would transfer nearly 20,000 existing waiver participants and their associated direct care workers to PPL's records during the four-month period of September 1, 2012, to December 31, 2012. However, that time line was based on the assumptions that PPL would obtain complete and reliable demographic information from the former FMS providers and that the grant agreement would be finalized by September 1.

Instead, the grant agreement was not finalized until October 23, 2012, and it became increasingly apparent that some of the former providers did not maintain complete and reliable documentation. Nonetheless, DPW did not push back the January 1, 2013, start date.

DPW's negotiations over the $18 million cash advance delayed the finalization of the grant agreement and shortened the planned transition period by two months.

DPW ignored two major delays in the procurement process that caused the finalization of the grant agreement with PPL to be delayed until October 23, 2012, which was nearly two months after the planned start date for transitioning participants to the new FMS provider.

Red Flag #1: Delays in selecting a new FMS provider

DPW issued its RFA on January 5, 2012, but did not select the new FMS provider until August 8, 2012. Several factors contributed to this lengthy selection process. Some of the former FMS providers filed a protest regarding the issuance of the RFA. Responding to this protest pushed back the start of the evaluation process one month from April 1, 2012, to May 1, 2012.

Two months into the evaluation process, on July 10, 2012, the evaluation team required an applicant to provide additional information to demonstrate how it would meet the conflict-free requirement (as we discussed in Finding Two). After review of that information, it took another month until the evaluation team recommended PPL to be the FMS provider statewide. On August 8, 2012, DPW accepted this recommendation.

DPW planned for the selected provider to begin transferring existing waiver participants' files and records on September 1, 2012. The winning vendor, PPL, was chosen on August 8—only 23 days before the start of the transition—and contract negotiations and certain start-up activities on PPL's part had to occur before the transition could logistically start. These delays were DPW's first warning sign that the transition date was overly ambitious, but DPW ignored this red flag and, to the detriment of the waiver program, forged ahead with its planned implementation date of January 1, 2013.

Red Flag #2: Lengthy negotiation process

After PPL was selected on August 8, 2012, DPW began contract negotiations with PPL. As we discussed in Finding Two, during the negotiation process DPW informed PPL of the large amount of missing and inaccurate data that would affect the transition and PPL's need to audit former providers' files. During these same negotiations, PPL requested a cash advance for payroll processing. This negotiation for an $18 million cash advance lasted more than two months, with a final grant agreement not being signed until October 23, 2012.

As previously stated, DPW expected PPL to transition existing participants beginning on September 1, 2012, but because the contract was not signed until October 23, 2012, PPL had missed that target date by seven weeks. Again, DPW ignored the warning signs and kept the January 1, 2013, transition date in place.

DPW's short FMS transition period was unrealistic and resulted in a chaotic and problematic transition.

DPW ignored the delay in two significant transition activities which should have started on September 1, 2012, but did not start, for the most part, until after the grant agreement was signed on October 23, 2012. These delays caused the transition process to become confusing and problematic for DPW, PPL, and especially for waiver participants and their direct care workers.

"I began calling PPL around December 1, maybe a little before that, to see where the information on the transition was so my workers and I could be fully prepared for it by January 1. They told me paperwork would arrive on December 7th, then the 10th, then the 15th, and then the 21st. After January 1, I received a request from PPL to fill out an SS4 form immediately and return it to them because they did not have the proper information needed. During the course of this chaos and confusion, I had one of my workers quit on me because he was fed up with not being paid."

--waiver client letter to the Auditor General

Red Flag #3: Former FMS providers were reluctant to transfer files until the grant agreement was finalized

DPW and PPL signed a business associate agreement on September 17, 2013, that essentially permitted the former providers to begin transferring participants' files to PPL even though the actual grant agreement was not yet finalized. According to DPW officials, the majority of the former providers were reluctant to begin the transfer because the providers' legal counsel advised against it. Therefore, most of the former providers did not begin to transfer the participants' files, which included demographic information, to PPL until after October 23, 2012, when PPL had signed its grant agreement and was authorized to be the new FMS provider.

In addition to the delay in transferring the files, DPW was already aware that many of the files from the former FMS providers were incomplete and/or inaccurate. The accuracy of the information in these files was critical. PPL needed this information so that it could contact participants to alert them of the upcoming changes and provide them with the forms necessary to complete the transition.

Even though DPW recognized the problematic situation and knew that there were only weeks to go until the January transition date, DPW once again chose to ignore a clear red flag. Instead, DPW set itself up to fail and fell far short of acting responsibly on behalf of all the participants and direct care workers who planned to transition to PPL.

Red Flag #4: Customer service phone number could not be provided to the public until the formal agreement was signed

PPL could not release its toll-free customer service phone line to the public until after the grant agreement was signed. Once released, the phone line was immediately inundated with calls from waiver participants who had received information from PPL. The callers were seeking clarification on the transition process and the completion of the required forms.

Many participants were confused as to why they were required to complete certain forms for their direct care workers, such as I-9 forms, background checks, and tax forms, stating that such forms were not necessary with their former FMS providers.

PPL customer service representatives explained that the completion of such forms had always been a requirement of the FMS program. According to DPW officials, the former FMS providers were supposed to ensure such forms were completed. However, some former providers either did not ask the participants to complete the forms or just completed the forms for the participants, which according to FMS standards was not a permissible practice.

The phone line was also flooded with calls from participants and their families who were not yet contacted by PPL. These callers were aware of the transition through other sources, including service coordinators and the media, and were calling seeking information and instructions.

DPW was aware that PPL's customer service line was overwhelmed during October, November, and December. In addition, PPL informed DPW that based on the volume and content of the calls, there was significant confusion surrounding the transition process that would negatively impact the planned start date. Nevertheless, DPW ignored these warning signs and failed to push back the implementation date.

PPL sounded the alarm about its inability to ensure timely payments to direct care workers beginning January 1, 2013.

DPW ignored two crucial indicators showing that PPL was not fully ready to implement FMS on January 1, 2013, which resulted in thousands of direct care workers not getting paid timely.

Red Flag #5: DPW's internal review showed that PPL was not ready for the implementation date

In accordance with the transition plan outlined in the RFA, DPW conducted a readiness review of PPL from September 24 to 27, 2012. At the time of this review, PPL was still engaged in contractual negotiations, and waiver participant data had not yet been transferred to PPL.

> Specific to the 15 FMS tasks, DPW's readiness review team found that PPL was only fully ready in 5 areas.
> *--DPW readiness review results September 2012*

DPW's review consisted of determining PPL's compliance with each of the following work tasks included in the RFA:

- work plan and project management
- personnel
- information technology
- general requirements
- knowledge receipt and transition plan
- reporting and project control
- 15 specific FMS tasks

The review team had 55 findings with prominent areas of concern related to providing customer service, enrolling direct care workers, and processing and distributing direct care workers' payroll. Specific to the 15 FMS tasks, the team found that PPL was only fully ready in five areas. DPW required PPL to develop a corrective action plan showing how each of the findings would be addressed with the expectation that DPW would conduct a follow-up review.

Included in the review team's report was a recommendation to DPW officials that a "new time line be constructed to reflect updated priorities and risk areas." The report also noted that there were over 20,000 participants, as well as an unknown number of direct care workers to transition in a 90-day time frame, and PPL had to request, receive, and input information

> In considering readiness, the team stated that DPW should consider the volume of information that needed to be transitioned as well as the challenges DPW faced in July 2012 when some former FMS providers terminated contracts, and recommended to DPW that a "new time line be constructed to reflect updated priorities and risk areas."
>
> *--comments of DPW's Readiness Review team*

from former providers. In considering readiness, the team stated that DPW should consider the volume of information that needed to be transitioned, as well as the challenges DPW faced in July 2012 when some former FMS providers terminated their contracts.

The RFA stated the selected vendor was not permitted to begin serving waiver participants if it did not show acceptable evidence of readiness. The readiness review of PPL resulted in 55 findings which should have been a clear indicator to DPW that PPL was not fully ready for the transition. DPW not only ignored this indicator, it even ignored the recommendation of its own review team—further demonstrating DPW's continued mismanagement of the transition process.

Red Flag #6: PPL officials expressed concerns about making timely payments to direct care workers beginning January 1

DPW formed a Transition Advisory Group[16] for the purpose of ensuring a smooth transition to PPL. The group, which met monthly, held its first meeting on October 10, 2012, only 12 weeks before the implementation date.

At the group's November meeting, PPL officials stated that only 8,000 information packets had been sent to waiver participants. Given there were nearly 20,000 waiver participants, sending only 8,000 packets by mid-November should have been a red flag for DPW that the January 1, 2013, start date was unrealistic.

> 4,000 waiver participants had not received information packets about transitioning to PPL as of December 19, 2012.
>
> *--information PPL provide at December 19 TAG meeting*

During the December meeting, PPL officials stated that they still were unable to contact approximately 4,000 participants. Furthermore, PPL stated that many of the 16,000 information packets that were mailed had been returned due to incorrect addresses.

After hearing PPL statements about the number of participants still waiting for information, several members of the group expressed specific concerns about PPL's ability to pay all direct care workers beginning on January 1. In response to these statements, PPL officials acknowledged that they shared

[16] The Transition Advisory Group was comprised of 24 participants from PPL, DPW, former providers, waiver participants, and stakeholder representatives.

these concerns. In fact, PPL officials stated that the expectation of being fully ready on January 1, 2013, may be too high. With this statement, PPL sounded the alarm that the planned start date was unreasonable.

Nonetheless, with only 12 days to go until January 1, 2013, DPW insisted on keeping that implementation date. DPW ignored the fact that over 4,000 waiver participants had not yet received information packets and that many of the 16,000 mailed packets had been returned due to incorrect addresses and proceeded with its original plan.

Conclusion: DPW ignored numerous red flags thereby missing the opportunity to ensure that waiver participants transitioned to PPL as seamlessly as possible.

> "My mother is 85 years old and suffers from dementia and Parkinson's. She is housebound and wheelchair bound. She receives help through the waiver program so we can keep her and her husband together as they have been married 65 years. My mother has two aides, and neither has been paid since the state, in its infinite wisdom, changed payroll agencies in December. It is March 2, and they have worked for 'free' since December 16."
>
> *--letter from client's family to the Auditor General*

DPW acknowledged that the January 1, 2013, transition to PPL resulted in numerous direct care workers not getting paid timely, and in many cases, payment was delayed for months. Many participants and their direct care workers have called the transition chaotic and disastrous, which could have been avoided if DPW had pushed back the implementation date.

DPW had numerous indicators alerting it to the fact that the January 1, 2013, implementation date was unrealistic, and yet DPW chose to push forward. When we asked DPW officials why they did not push back the start date, they told us that the January 1, 2013, transition date was important for tax purposes because it would simplify processing W-2 forms for 2013. Therefore, it appears that DPW put the planned start date ahead of the well-being of the waiver participants and the direct care workers.

We recognize that a January 1 start date would be ideal for tax purposes; however, PPL officials stated that it had transitioned FMS in other states on other dates besides January 1. DPW should have been more flexible given all the warning signs it had that PPL was not ready. In fact, the ideal start date should have been when PPL was ready so that a smoother transition could have occurred and the waiver participants and their direct care workers would not have been adversely impacted.

Department of the Auditor General's Evaluation of DPW's Response:

Following is the Department of the Auditor General's evaluation of significant points from DPW's response to Finding Three. DPW's response to the report appears in full beginning on page 63.

In its response, DPW acknowledged "serious problems developed during the FMS transition" and "regrets the inconvenience and hardship experienced by the affected direct care workers and their families." But DPW disagreed with our conclusion on the source of the transition issues.

In response to red flag #2 regarding the lengthy negotiation process, DPW stated that the negotiation process should not have affected the transmission of information from the former providers. Instead, DPW blamed the transition issues on the former providers' failure to follow directions. We disagree with DPW's statements, and we reiterate our conclusion that DPW failed to provide adequate oversight of the former providers for years. Furthermore, it was somewhat naïve of DPW to expect the former providers to be compliant during a transition process that would result in the providers' own loss of income.

DPW also stated in its response that it did not ignore the red flag of the overwhelmed customer service telephone line and actually took actions to address call center issues. We acknowledge that DPW worked with PPL on specific actions to improve customer service. Nonetheless, our point is that DPW failed to see the larger picture in the overwhelmed telephone line—a picture in which thousands of participants were confused and did not understand the complex information packets they received from PPL, and worse, that thousands had not received any information packets at all with *only* nine weeks until the implementation date.

DPW also stated that it disagreed with our conclusion that the 55 findings in PPL's readiness review indicated that PPL was not ready for the transition. DPW's disagreement is difficult to understand since several of the 55 findings related to enrolling direct care workers and to processing and distributing direct care workers' payroll. Further, the RFA stated that the selected vendor was not permitted to begin implementation if it did not show acceptable evidence of readiness. DPW's own review team stated as much with its own recommendation that a new time line should be "constructed to reflect updated priorities and risk areas."

Throughout its response to this finding, DPW made several statements that the many issues with the former providers and the breadth and scope of data issues would not have come to light for another year if DPW postponed the transition. Again, DPW missed the point of our finding, which is that once DPW realized the "breadth and scope of data issues," (which it did so in July 2012 based on DPW's own Medical Assistance Advisory Committee meeting minutes), it should have found a way to postpone the project's implementation to avoid the nonpayment crisis. Also, if DPW had conducted more frequent, in-depth monitoring activities of the former FMS providers, DPW could have addressed such issues before a transition even occurred.

Finally, in its response, DPW states that delaying the implementation for "another year" would have created its own set of issues. However, we point out that we did not recommend delaying implementation for a full year. Rather, we stated that the ideal start date would have been when PPL was ready to fully process payroll payments so the waiver participants and their direct care workers would not have been adversely impacted.

Finding Four

DPW incurred additional costs with PPL, and it did not achieve expected efficiencies.

We found that DPW did not achieve anticipated efficiencies with the hiring of PPL as the statewide provider. Further, while DPW achieved a lower administrative fee with PPL, DPW incurred additional unforeseen costs with its decision to switch to a single statewide FMS provider. In our estimation, these additional costs would total nearly $7 million in just one year.

DPW did not achieve the expected efficiencies because the transition to PPL was problematic, even confusing, and left many waiver participants frustrated and overwhelmed. Unfortunately, PPL's automated customer service telephone system did not alleviate these problems, nor did it provide the higher level of customer service DPW anticipated.

According to statements in the RFA, the commonwealth intended to achieve cost savings and efficiencies through the regionalization of FMS while enhancing services to eligible customers. In addition, DPW planned to bring compliance and consistency to the FMS system by issuing the RFA and hiring new FMS provider(s). Overall, we concluded that as of August 27, 2013, DPW had yet to meet the goals stated in the RFA.

DPW attained a lower administrative fee from PPL, but only after agreeing to provide initial and ongoing cash advances.

DPW expected that cost savings with a new FMS provider would be attained through a lower administrative fee, which is paid to FMS providers for each waiver participant served.

Administrative fee. PPL's proposed monthly average administrative fee per participant[17] of $90.83 was about the

[17] PPL proposed an average administrative fee of $84.50 for the western region, $107.50 for the central region, and $80.50 for the eastern region. These averages were calculated based on the annual fee proposed by PPL for each of the four years that the contract could be in effect, which ranged from $79 to $110 per participant per month.

same as the $90.73 average administrative fee DPW paid to the former FMS providers.

It is important to note that DPW intended to save money with a new FMS provider, but at the time DPW selected PPL, and based on the proposed fees, DPW would not have realized any significant savings.

However, during the original agreement negotiation process, PPL agreed to lower its administrative fees in exchange for the $18 million cash advance. PPL's fees originally ranged from $77 to $110 per participant per month, but were reduced to $77 to $104 during negotiations.

When DPW decided to provide PPL ongoing cash advances through its grant amendment, a second negotiation process occurred, and PPL agreed to lower its monthly administrative fees even more, now down to $76 to $82 per participant per month. These fee reductions are effective over the four-year grant agreement (two years with two option years).

DPW officials projected that these reduced administrative fees will save the agency $11.9 million over the four-year period. They based this calculation on the assumption that PPL would serve 22,274 participants in each of the four years. However, as of March 31, 2013, only 17,813 waiver participants were served by PPL. If the client base were to remain at this lower level all four years, DPW's savings from PPL's reduced administrative fee would be $9.5 million.

However, any savings DPW attained from the negotiated lower administrative fee is offset by the additional costs DPW paid to PPL for the transition fee and the additional costs DPW incurred for persons moving from the consumer-directed model to the more expensive agency-directed model (see the following section of this finding).

DPW's problematic transition to PPL cost taxpayers millions of dollars.

While DPW attained a lower administrative fee, it incurred additional unforeseen costs with its decision to switch to a single statewide FMS provider. These additional costs included a transition fee and additional costs from waiver participants moving from the consumer-directed model to the more expensive agency-directed model. Each of these costs is discussed below.

Transition Fee. The grant agreement stated that DPW would pay PPL a one-time $45 transition fee for each waiver participant already receiving FMS that PPL transitioned to its system between the dates of October 1, 2012, and December 31, 2012. DPW expected PPL to transition 20,000 participants, so it was prepared to pay PPL $900,000 in transition fees.

However, due to the volume of inaccurate and incomplete data from the former providers, PPL actually transitioned only 13,039 participants between October 1, 2012, and December 31, 2012. Therefore, DPW paid $586,755 instead of $900,000 to PPL in transition fees, but this lower fee is no real savings when you factor in the "costs" of not transitioning thousands of waiver participants by January 1, 2013.

Regardless of the total transition fee amount paid to PPL, this fee is a cost that DPW would not have incurred if it had not issued the RFA for a new FMS provider.

Agency-Directed Model. Persons receiving home and community-based waiver services can obtain those services through two models. The consumer-directed model allows waiver recipients to hire, train, and schedule their own direct care workers, which requires the need for an FMS provider. In the agency-directed model, a provider agency takes on those responsibilities for the participant including FMS. The consumer-directed model is less expensive for the commonwealth than the agency-directed model, therefore, from a cost standpoint, it is advantageous for the commonwealth to have as many participants in the consumer-directed model as possible.

When the transition to PPL became problematic, many waiver recipients were confused, overwhelmed, and even fearful that they might lose direct care services, thus they opted to move to the agency-directed model and not worry about FMS at all.

However, these departures from the consumer-directed model came at a cost to the commonwealth. Moving to the agency-directed model could have on-going costs if participants never return to the consumer-directed model.

> 1,589 waiver participants, or 7.8 percent of total participants who could have chosen PPL during January to March 2013, moved to the more expensive agency-directed model from the consumer-directed model.
>
> *--data provided by DPW officials*

DPW did not have any information on the costs it incurred for waiver participants who moved from the consumer-directed model to the agency-directed model. However, DPW data for the period January 1, 2013, to March 31, 2013, shows that 1,589 waiver participants, or 7.8 percent of total participants who could have chosen PPL during those months, moved to the agency-directed model from the consumer-directed model. DPW will continue to pay the higher agency-directed model costs for as long as the waiver participant stays in the agency-directed model rather than returning to the consumer-directed model.

Based on 1,589 participants, we calculated that the cost to the commonwealth for participants who moved to the agency-directed model was at least $6.9 million per year higher than if those participants stayed in the consumer-directed model (see assumptions below). We calculated that cost based on the fact that the hourly wage rate for direct care workers in the agency-directed model was $4.36 higher than that in the consumer-directed model, and based on the following assumptions:

- We assumed each of the 1,589 waiver recipients hired only one direct care worker.
- We assumed that each direct care worker worked 20 hours a week for 50 weeks a year, which is the equivalent of a permanent part-time worker.
- We assumed the waiver recipient remained in the agency-directed model for a full year.[18]

If we adjust our calculation to assume that 50 percent of the direct care workers worked 40 hours a week while the remainder worked 20-hour weeks, the calculated cost to the commonwealth for those participants who moved to the agency-directed model is $10.4 million per year higher than if those participants remained in the consumer-directed model.

These estimates do not include any consideration for those waiver participants who were confused and fearful about losing their direct care workers and chose to move to an institution because agency-directed services were not available in the rural areas in which they lived. DPW officials stated that 671

[18] Our calculation was 1,589 clients x 1 direct care worker x $4.36/hour wage difference x 20 hours/week x 50 weeks/year = $6,928,040.

former participants were classified as "inactive" after the FMS transition and presumed that some of those "inactive" persons probably went to institutions. Institutional costs are much more expensive than both the agency-directed model and the consumer-directed model.[19]

Even if all 1,589 participants who went to the agency-directed model returned to the consumer-directed model after one year, DPW still paid at least an additional $6.9 million for these participants moving out of the consumer-directed model for that year. This one-year $6.9 million cost offsets nearly half of DPW's anticipated $11.9 million savings from the administrative fee—and that savings was over four years. In other words, if all 1,589 participants who went to the agency-directed model remained there, the additional costs paid for that model of care will completely surpass the savings DPW attained in a reduced administrative fee,[20] and in fact, DPW will be paying *more* for PPL than if it had not changed providers. Each year that waiver participants remain in the more expensive agency-directed model, DPW will continue to pay higher costs, which will continue to offset savings from a reduced administrative fee.

While some of these participants might have moved to the agency-directed model even if the former FMS providers remained under contract, based on the letters and e-mails we received from waiver participants and their families and representatives, it was not unreasonable for us to conclude that the majority of those transfers happened because participants were not satisfied and/or not served adequately, with the PPL transition.

DPW did not realize anticipated efficiencies with PPL's operations.

The RFA stated that the commonwealth intended to achieve both cost savings and efficiencies while enhancing services to eligible customers with a new FMS provider. As we have just

[19] Institutional costs vary widely based on numerous factors such as an individual's age, income level, service needs, insurance coverage, geographic location, as well as the type of institution. As a result, we did not calculate the cost difference between home and community-based services and institutional care.
[20] Our calculation for this statement is $6.9 million in additional costs to DPW for 1,589 persons to move from the consumer-directed model to the agency-directed model for one year. Therefore, in two years, that cost would be $13.8 million, which exceeds DPW's anticipated savings of $11.9 million over four years from the lower administrative fee rate.

discussed, DPW did not achieve the expected cost savings with PPL, and we found that DPW also failed to attain anticipated efficiencies from PPL.

Two areas where DPW expected PPL would provide efficiencies as the FMS provider included PPL's proposed automated customer service telephone system and the use of PPL's web-based timesheets. The extent to which PPL did not provide efficiencies to DPW in these two areas is discussed below.

> "PPL was clearly NOT capable of handling the workload which was transferred to them all at once in December. They are providing grossly inadequate service. Apart from being denied access to any supervisors at PPL, getting phone messages returned with robo-calls a month after I left them, and at one point being unable to even leave a phone message because 'my number is already recorded in their system.' I have employees who still have not been paid. In short, the whole thing is a big fat mess."
>
> *--waiver client letter to the Auditor General*

<u>Customer Service</u>. Once PPL released its customer service telephone number to the public, PPL was overwhelmed with such a high number of calls from participants and direct care workers that PPL had to hire a subcontractor to assist with customer service calls during the FMS transition. In fact, DPW officials stated that in just one week the PPL customer service phone lines received 70,000 calls.

Indeed, the phone lines were so overwhelmed that many waiver participants told us[21] that they could not even get a customer service representative to answer the phone. In those cases, participants left their contact information on voice mail. These participants stated that when they did not get a return call from PPL after several days, the participants would place another call to PPL, but PPL's automated system would not allow the participants to leave a second message. Instead, participants received an automatic message that said PPL already had their contact information and would call them back. Some participants stated that they waited weeks, or even longer than a month, for a return call from PPL.

Further, waiver participants were upset over the loss of the personal face-to-face customer service that they received from their former FMS providers. Because the former providers were physically located throughout the commonwealth in participants' neighborhoods, those participants who wanted to visit a provider's office to ask questions could do so. In contrast, PPL offers customer service only through its toll-free telephone line, and that call center is located in Arizona.

[21] The Department of the Auditor General received numerous letters, e-mails, and phone calls to its taxpayer hotline to complain about the lack of customer service from DPW and PPL.

One waiver participant stated in a letter to us "the difference between [my former provider] and PPL is [my former provider] cared about its consumers and their employees. PPL doesn't care."

While PPL has a technologically advanced automated customer service phone system, that system did not adequately provide the needed customer service to waiver participants during the FMS transition. In fact, PPL's delays in returning phone calls was another factor that caused direct care workers to miss being paid on January 1, 2013, because participants did not have answers to their questions regarding what forms and information they needed to send to PPL before the transition date.

Web-based timesheets. PPL's web-based portal allows waiver participants and their direct care workers to submit timesheets electronically. DPW officials expected to modernize the former paper-based system by utilizing PPL's web-based system; however, we question whether such an expectation was reasonable and if a web-based timesheet would best meet the users' needs. Further, without the evaluation team's scoring sheets we had no way of knowing the extent to which this proposed web-based timesheet affected scoring among the applicants.

> Even though PPL offers web-based timesheets, which DPW expected to provide efficiencies to payroll processing, only 20 percent of all direct care workers use the electronic timesheet.
>
> *--data provided by both DPW and PPL officials in meetings with Auditor General staff*

Ultimately, we found that the web-based timesheets did not meet users' needs because the majority of direct care workers did not take advantage of the technology. As of August 27, 2013, DPW officials stated that only 20 percent of all direct care workers submitted their timesheets electronically. Direct care workers stated that they did not have access to computers or did not understand how to submit timesheets electronically and, therefore, did not use the web-based timesheets.

PPL also encountered problems with its paper-based timesheets. The new paper timesheets differed dramatically from those of the former FMS providers, causing confusion for direct care workers. PPL designed instructions for completing the paper-based timesheets, but direct care workers found the instructions difficult to understand. PPL itself must have realized that its timesheet was confusing as the first line of the instructions stated: "Whether you have used other timesheets or not, you are probably wondering, 'How in the world am I supposed to fill out this timesheet?'"

Moreover, because DPW did not push back the January 1, 2013, implementation date, PPL did not have adequate time to train direct care workers on correct completion of the timesheets, whether paper-based or web-based.

PPL had to adjust its work plan to allow for more time and more staff to troubleshoot timesheet issues. Here again, waiver participants and direct care workers were left confused and frustrated, and DPW did not gain any efficiencies or move to modernization with electronic timesheets. Troubleshooting these incorrect timesheets caused delays in payroll processing, which was just one more factor in the late payments to direct care workers.

Conclusion: DPW's decision to select PPL as the statewide FMS provider cost millions of dollars more than if it stayed with the former providers.

While DPW expected to attain cost savings by contracting with PPL, any savings it achieved with a lower administrative fee were offset with the additional costs that DPW incurred because it changed FMS providers. Moving beyond financial costs, DPW did not achieve efficiencies or provide enhanced services to waiver participants with the transition to PPL. In summary, through August 27, 2013, we found the following:

> "There are huge flaws in the transitional plans from both PPL and DPW that show a total inept ability to judge and understand the population they are working with—or rather for. Paychecks not going out on time for many caused checking accounts to bounce as many had direct deposit."
>
> *--waiver client letter to the Auditor General*

- DPW negotiated a lower administrative fee from PPL, but only after agreeing to provide PPL with an $18 million initial cash advance and ongoing bi-weekly cash advances.
- DPW paid $586,755 to PPL in transition fees for existing waiver participants that enrolled with PPL from October 1, 2012, to December 31, 2012. DPW incurred this expense only because it hired a new FMS provider.
- DPW waiver programs incurred additional service costs for those waiver participants that left the consumer-directed model and moved to the agency-directed model so that they no longer had to work with an FMS provider. We calculated those additional costs to be at least $6.9 million if all 1,589 participants remained in their new program for a full year.

- DPW did not attain any efficiency with PPL's web-based timesheet with only 20 percent of total direct care workers using it, and PPL's paper-based timesheet confused direct care workers so much that the workers submitted incorrect sheets that delayed payroll processing.
- DPW did not attain any efficiency or enhanced customer service with PPL's automated phone system, which left many participants with unanswered questions and a lack of clear guidance.

Ultimately the poor customer service created one of the largest costs for DPW because waiver participants were left frustrated, dissatisfied, and even angry. Some participants so much so that they transferred to a different program model, which is more expensive, just so they could avoid using a FMS provider. Further, the poor customer service did not allow participants and their direct care workers to have the information they needed to ensure that all correct forms and related information were sent to PPL. Without that information, PPL could not pay direct care workers timely.

While DPW incurred costs with the transition to PPL, in the end, those who paid more were taxpayers who had to pay for these additional costs. Ultimately, waiver participants and direct care workers paid the ultimate cost with added stress and frustration with late paychecks because of the problematic transition.

Department of the Auditor General's Evaluation of DPW's Response:

Following is the Department of the Auditor General's evaluation of significant points from DPW's response to Finding Four. DPW's response to the report appears in full beginning on page 63.

In its response, DPW stated that "the draft audit report's assertion that DPW only achieved a lower administrative fee because it agreed to advance the first bi-weekly payroll is inaccurate." This statement contradicts previously documented statements from DPW officials. In a meeting with several DPW officials, they stated to us that DPW did not want the initial cash advance to be ongoing "since it was not the intention of the grant agreement." These officials also told us that the lower administrative fee was a *direct result* of giving the cash advance.

Further, DPW stated that our calculations related to the additional costs DPW has incurred for those waiver clients who moved out of the consumer-directed model "are largely speculative and include many assumptions." We clearly stated in the body of the finding that our calculations were approximate and based on specific assumptions, and then we described those assumptions.

In the absence of any other data from DPW, we attempted to quantify the effects of the poor transition to PPL by estimating the costs to the department for those participants who switched to a different model of care. We found that the number of waiver participants in the consumer-directed model increased each year, reaching a high of 19,812 for the quarter ending September 30, 2012. But in the next two quarters (which were directly before and after the transition to PPL), the number of participants decreased to 17,813 participants.

Clearly, a reduction of 2,000 participants is not all attributable to participants no longer needing the services. Rather, because these participants are some of the state's most vulnerable citizens in need of constant care, the participants had to go somewhere for care services. Therefore, it is not unreasonable to assume that many of these participants moved to the more expensive agency-directed model of care.

In its response, DPW also stated that some of the former FMS providers "incorrectly informed waiver participants that they may no longer be able to receive direct services from their accustomed provider once the participants were transitioned to PPL, and such misinformation likely affected some participant choices." We believe that as the oversight agency for FMS and as the state agency that is charged with "protecting and serving Pennsylvania's most vulnerable citizens," DPW should have conducted its own outreach efforts to affected participants to allay their fears and to provide the necessary assistance to help them remain in the consumer-directed model of care.

Finally, DPW stated in its response that our audit report does not mention the corrective measures DPW took to remedy PPL's customer service issues and how DPW's efforts resulted in a significant decrease in call center issues. We acknowledged in our report that DPW worked with PPL to address the customer service issues. However, our point was that PPL promised a high level of efficiencies with regard to customer service, and DPW did not achieve those efficiencies, and any efforts DPW took to remedy customer service issues were crisis management.

Also, a decline in call center issues can just as easily be attributed to DPW relaxing the payroll processing rules. In the Transition Advisory Group's February 21, 2013, meeting, a PPL official stated the relaxed rules "allowed PPL to pay timesheets for missing authorizations, rates, missing direct care worker information, missing participant information, and missing common law employer information. The rules behind the missing elements were lifted to ensure payments were made to individuals, while PPL continues to track and gather the incomplete or missing information." Accordingly, as rules were lifted and more direct care workers were paid, it is reasonable to assume that fewer calls came into the customer service telephone line. However, the relaxing of rules provides its own set of concerns, including DPW opening itself up for the fraud and the loss of potentially many thousands of taxpayer dollars.

In fact, as we finalized this report in late October 2013, an actual instance of alleged fraud within the FMS program was reported in the media. Specifically, the Allegheny County district attorney's office obtained an arrest warrant for an employee of a former FMS provider and a number of other people involved in a scheme involving six ghost employees and the theft of tens of thousands of dollars from DPW. According to the criminal complaint, the fraud was able to occur because of a change in how the state processed caregiver payments. This "change" occurred when DPW relaxed payroll processing rules in the summer of 2012 when this particular FMS provider was overwhelmed with additional participants after other providers dropped out of the program. As this incident illustrates, relaxing payment rules can have serious consequences for DPW; therefore, DPW must stop relaxing program rules to address issues that arise with FMS. Instead, DPW must actively and aggressively manage the FMS providers to avoid causing situations that require such a dangerous action on the part of DPW.

Finding Five

DPW continues to put the well-being of waiver participants and direct care workers at risk by not adequately monitoring PPL.

We found that DPW continues to fail in its oversight of FMS by not adequately monitoring the new FMS provider, PPL. As a result, DPW allowed nearly a year to pass in a two-year contract (with two one-year renewal options beginning January 1, 2015) without obtaining adequate information to ensure that PPL is operating in compliance with all laws, regulations, and FMS standards

As discussed throughout this report, the transition to PPL was fraught with problems from the beginning. Therefore, DPW worked in conjunction with PPL the first six months of 2013 to improve the timing of payments to direct care workers. DPW officials stated that during this time they reviewed PPL reports on a daily basis, met with PPL officials as needed, and formed multiple subcommittees to address specific issues of the transition.

We found that while DPW conducted such monitoring activities of PPL, as of August 27, 2013, it has not conducted an in-depth analysis of PPL's activities. Such an analysis would provide DPW with critical information so that it can make an informed assessment on whether it should extend the grant agreement with PPL beginning on January 1, 2015.

DPW failed to set deadlines for PPL to address deficiencies identified during the readiness review.

As discussed in Finding Three, DPW conducted a readiness review of PPL in September 2012 and cited PPL with 55 findings. PPL developed a corrective action plan for each finding. Included in this plan were target dates to correct each finding, with the majority of findings to be corrected by January 1, 2013.

However, because the FMS transition was problematic, DPW postponed the majority of PPL's targeted completion dates to June 2013 to allow PPL to focus on obtaining all required documents from waiver participants and to ensure direct care workers were paid as soon as possible. DPW also delayed its follow-up review on PPL's implementation of the corrective action plan to mid-May 2013.

During this May 2013 review, DPW found that PPL adequately addressed 24 of the 55 findings. The other 31 findings that remained unresolved—57 percent of the total findings—included areas such as ongoing training for waiver participants, unmet reporting requirements, and the continued struggle to collect needed documents and forms from participants.
In analyzing the review team's May 2013 results, we found that DPW did not establish any deadlines for PPL to implement corrective actions on the unresolved 31 findings. Instead, DPW had open-ended target dates, leaving PPL, rather than DPW to determine when the unresolved findings would be corrected. Further, we found that DPW has not set a date to conduct its next follow-up review of PPL to determine the progress PPL is making to address the unresolved findings.

According to PPL's corrective action plan, all 55 findings were to be addressed by February 2013, yet six months later PPL had not addressed 57 percent of the findings.
--results of DPW's May 2013 review of PPL

DPW, as the oversight agency, should assume a stronger monitoring role to ensure PPL performs as expected. This monitoring should include setting deadlines for PPL to implement corrective actions and conducting follow-up reviews to confirm that such actions were taken.

While we recognize that DPW and PPL focused their efforts on ensuring direct care workers got paid as timely as possible, now that payment issues have been resolved, DPW should redirect its efforts to adequately monitoring PPL. DPW is paying PPL to provide services to waiver participants and their direct care workers, therefore, DPW should ensure those services are provided. Waiver participants and their direct care workers expect and rely on DPW for such monitoring.

DPW does not have sufficient information to make the decision on whether its grant agreement with PPL should be extended.

The RFA outlined oversight activities that DPW would conduct to monitor the new FMS provider, including the following:

- Conduct a final walkthrough to ensure PPL had fully transitioned FMS and completed the steps on its work plan.

- Conduct a performance review to determine PPL's compliance with laws, regulations, and FMS standards.
- Obtain and review PPL progress, activity, and tracking reports.
- Analyze PPL's automatic telephone customer satisfaction surveys.

> As of August 27, 2013, DPW had not conducted this walk through because PPL had not implemented the readiness review's corrective action plan.
> *--information provided by DPW officials in meeting with Auditor General staff*

DPW officials told us that they postponed many of their monitoring activities to allow PPL to focus on paying direct care workers as soon as possible. We determined the extent to which DPW conducted each of these monitoring activities as of August 27, 2013. The status of each activity is presented below.

Final system walkthrough. DPW expected to conduct a final walk through of PPL's operations by June 30, 2013, to ensure that PPL's systems were in place as documented in PPL's work plan. As of August 27, 2013, DPW had not conducted this walk through because PPL had not implemented the readiness review's corrective action plan.

Performance review. The RFA states that DPW will develop a schedule to conduct performance reviews of the selected provider. The purpose of these reviews is to assess and document the provider's compliance with laws, regulations, and FMS standards.

We found that as of August 27, 2013, DPW had not conducted any performance reviews, nor had it scheduled any such reviews in the near future. When we asked DPW officials why they were not planning a performance review, they stated that they were waiting until PPL fully implemented its corrective action plan from the readiness review.

Review PPL reports. The grant agreement requires PPL to provide numerous monthly and quarterly reports, as well as an annual report to DPW. While PPL provided DPW with daily reports during the first six months of the transition, and with weekly reports thereafter,[22] those reports did not satisfy the reporting requirements of the RFA.

[22] These daily reports included: 1) the number of time sheets that were received and paid, 2) the number of direct care workers that still had outstanding paperwork, and 3) the number of waiver participants leaving or newly enrolling with PPL for FMS.

As of August 27, 2013, PPL had not provided the required monthly and quarterly reports to DPW. DPW requested PPL to begin to produce these reports in September 2013. However, DPW officials stated that they had to put pressure on PPL to develop these reports; otherwise, they believe PPL would have continued to delay compliance with this requirement.

> PPL won't begin to give DPW required monitoring reports until September and October—up to a year after the contract started.
>
> *--information provided by DPW Staff in meeting with Auditor General staff*

While we are encouraged to see that DPW appears to be more assertive in requiring grant agreement compliance, waiting until September—nearly a full year into a two-year contract—is too long to be without meaningful information to track PPL's activities.

Analyze PPL's customer satisfaction data. PPL stated in its response to the RFA that it would establish a customer satisfaction survey on its toll-free telephone line. At the end of each customer's call, the customer would automatically be directed to the survey. DPW anticipated monitoring PPL's activities with the results of these surveys.

As of August 27, 2013, PPL had not installed this survey instrument on its telephone line. DPW's failure to insist that PPL implement this survey resulted in a missed opportunity to monitor how well PPL served waiver participants, their families, and direct care workers.[23]

Conclusion: DPW exhibited a pattern of providing poor oversight to the FMS program.

As it is currently operating, DPW is making the same mistake with PPL as it did with the former FMS providers by not taking an active monitoring and oversight role. It was DPW's lax monitoring of the former FMS providers that greatly contributed to the problematic transition, and it appears that DPW has not improved its monitoring efforts with PPL.

DPW has not conducted important and required monitoring activities of PPL during the first year of the grant agreement. Instead, DPW officials stated that it focused its efforts on working with PPL to ensure that direct care workers were paid as soon as possible. However, because DPW is the oversight

[23] DPW conducted its own customer satisfaction survey in July 2013, but as of August 2013, DPW had not tabulated the results.

grant administrator, it cannot neglect its monitoring duties and responsibilities.

Now DPW is entering the second contract year, and it still does not have adequate information to know if PPL is meeting all requirements and goals of the FMS agreement. DPW must monitor PPL aggressively to determine if PPL is adequately complying with grant agreement provisions before it decides to renew the agreement with PPL.

Department of the Auditor General's Evaluation of DPW's Response:

Following is the Department of the Auditor General's evaluation of significant points from DPW's response to Finding Five. DPW's response to the report appears in full beginning on page 63.

In its response, DPW stated that it had a deep involvement with fixing transition issues and that it "has been heavily involved with monitoring PPL."

As DPW indicated in its response, we acknowledged in our report that DPW was heavily involved with PPL, but what DPW failed to recognize is that deep involvement is not the same as a strong monitoring role. We agree that DPW worked side-by-side with PPL throughout the first six months of 2013 to address the FMS transition issues. But once that transition period passed, DPW should have taken on a strong, active monitoring role. As we stated in our finding, DPW failed to set deadlines for PPL to address deficiencies identified during the readiness review, failed to conduct performance reviews, did not enforce reporting requirements, and failed to ensure that PPL implemented the customer satisfaction survey on its telephone line.

Further, after working collaboratively with PPL for many months, DPW must change its role with PPL and become PPL's monitor and not PPL's partner. Based on the evidence we obtained that showed DPW's lax monitoring of the former FMS providers, as well as its lack of monitoring of PPL after the transition period passed, it is imperative for DPW to break that pattern and begin to demonstrate a stronger oversight role with PPL.

Finding Six

DPW failed to ensure that only allowable hourly wage rates were paid to direct care workers and allowed this noncompliance to continue for years.

DPW's failure to adequately monitor the former FMS providers created an environment in which those providers paid an hourly wage rate to direct care workers that was more than the allowable maximum Medicaid rates. Even when DPW became aware of these overpayments, it did nothing to stop the noncompliance. In fact, DPW allowed this practice to continue for several years which jeopardized the continued viability of the FMS program.

The payment of an incorrect wage rate to direct care workers created a risk for the commonwealth and a liability for the entire waiver program because future federal funding levels could be reduced and/or federal officials could seek repayment for the wages paid over the allowable maximum rates.

As previously stated, one of the reasons DPW sought a new FMS provider was to start over with the FMS program in an effort to have the program operate in accordance with all laws, regulations, and FMS standards. Accordingly, DPW expected the new FMS provider to correct any hourly wage rates that were more than the allowable maximums. PPL began to correct hourly wage rates in mid-August 2013, but DPW's failure to make these changes in a timely manner caused adverse impacts to waiver participants and their direct care workers.

DPW allowed hourly wage overpayments of at least $475,000 in 2013.

DPW officials stated that since at least 2009 they were aware that some FMS providers were paying an hourly wage rate to direct care workers that was more than the allowable Medicaid maximum rate. DPW officials explained that the overpayment issue occurred because waiver participants, who have the responsibility to set direct care workers' wage rates, set wage rates above the allowable maximum rates. The FMS providers had the responsibility to ensure that participants did not set wage rates above the allowable maximums, but in some cases, the providers failed to do so.

> "Thanks for your hard work, here's a pay cut of $.70 [an hour], or about 6% of your income. Again, no warning, no letter in advance to prepare your budget. Surprise, you are getting a decrease in pay."
>
> *--waiver client letter to the Auditor General after getting July 15*

As we stated in Finding One, DPW did not ensure the providers implemented corrective actions related to instances of noncompliance, which would include these overpayments. Instead, DPW allowed these overpayments to continue even after it knew this problem was ongoing. DPW finally began to address the overpayments when it selected PPL as the new FMS provider.

To correct the overpayment issue, PPL would have to conduct an analysis of wage rates for existing participants, determine those wage rates that are more than allowable maximums, and then make adjustments to correct any of those higher rates. At the October 2012 Transition Advisory Group meeting, DPW informed PPL that it expected PPL to begin these wage corrections by February 1, 2013.

Due to the problematic transition, DPW officials postponed the start date for wage corrections to June 30, thereby allowing the higher payments to continue for months. PPL did not send notices to waiver participants until July 15, 2013, informing them of the correct wage rate for their region and the actions the participants needed to take to adjust their direct care workers' hourly wage rates.

The July 15th letter stated that if PPL did not receive all required forms by August 15, 2013, it would not be allowed to continue to pay the workers. DPW officials confirmed that several waiver participants did not submit the necessary paperwork by the August 15 deadline, and therefore PPL was unable to pay those workers on time. Even though DPW allowed the overpayments to continue for years, the waiver participants were given only one month to understand, complete, and return all required paperwork or face the loss of wages for their direct care workers.

According to DPW, PPL identified 1,649 direct care workers that were being paid over the maximum allowable rate as of August 15, 2013. By late August 2013, PPL had reduced that number to 1,018.

DPW did not have any information on the total amount that was overpaid to direct care workers by the former providers from 2009 through 2012 or by PPL from January 1, 2013, to August 15, 2013. However, we performed our own calculation to determine the estimated total overpayments just for the period January 1, 2013, to August 15, 2013.

Specifically, we estimated that PPL overpaid the 1,649 direct care workers at least $474,912. We calculated that total based on the fact that the average overpayment was 45 cents an hour, and based on the following assumptions:

- each direct care worker worked 20 hours a week, which is an average part-time schedule
- each direct care worker worked each of the 32 weeks between January 1 and August 15, 2013[24]

If we adjust our calculation to assume that 50 percent of the direct care workers worked 40 hours a week while the remainder worked 20-hour weeks, then the estimated overpayment increases to $717,792 for the period January 1, 2013, to August 15, 2013.

We did not attempt to calculate the total overpayment that DPW allowed the former providers to pay from 2009 to 2012 because the number of direct care workers could vary widely. However, at nearly half a million dollars in the first eight months of 2013, it is reasonable to conclude that overpayments since 2009 reached several million dollars.

In addition to the excessive program costs incurred due to the overpayments, DPW's failure to adequately monitor the former FMS providers jeopardized the FMS program. Future federal funding levels could be at risk as a result of past noncompliance and DPW's ineffective oversight of FMS.

DPW's failure to address hourly wage rate overpayments in a timely manner caused a greater financial hardship for thousands of direct care workers.

For years, DPW permitted waiver participants to believe they were paying an allowable wage rate to direct care workers. Therefore, participants and their direct care workers were understandably confused—and angry—when they received PPL's July 15, 2013, wage correction letter. For some workers

[24] Our calculation was 1,649 direct care workers x $.45/hour x 20 hours/week x 32 weeks = $474,912.

the frustrations escalated; first, they did not receive a paycheck for months because of the problematic transition, then they were notified about the impending reduction in pay.

> "I have many attendants in my legislative district who are seeing a seventeen percent reduction in their wages because of 'wage correction.'…Was the Office of Long Term Living negligent in its management of this program?"
>
> *--PA legislator's inquiry to DPW*

The wage adjustments resulted in an unforeseeable real pay cut to direct care workers that was no fault of their own. In some cases, direct care workers were not able to absorb the pay reductions and therefore sought better paying jobs.

When direct care workers quit their jobs, the waiver participants were forced to go through the process of hiring new workers and getting them enrolled with PPL.

Some participants who were unable or unwilling to hire new direct care workers left the consumer-directed model and switched to the more expensive agency-directed model. In other cases, the loss of a direct care worker could have caused a family to reevaluate all care options and move the waiver participant into an institution. The domino effect of wage corrections created unnecessary anxiety and uncertainty in the lives of waiver participants and their families.

We recognize that it is critical for direct care workers' hourly wage rates to be in compliance with allowable rates. Therefore, it is difficult to understand why DPW allowed the noncompliance to continue for years. DPW's failure to timely correct instances of noncompliance led to undue hardships for the waiver participants and their direct care workers.

Conclusion: DPW jeopardized the continued viability of the FMS program by failing to timely correct wage discrepancies.

DPWs lack of oversight and poor monitoring allowed former FMS providers to pay direct care workers more than the allowable Medicaid maximum wage rates for several years. As a result, DPW caused:

- An overpayment of an estimated $474,912 to 1,649 direct care workers from January 1, 2013, through August 15, 2013.
- Future federal funding levels to be jeopardized since federal authorities, including the Centers for Medicare

and Medicaid Services, could audit DPW and seek repayment of overpaid funds.

- Direct care workers to absorb the impacts of a wage reduction.
- Some direct care workers to seek other jobs when the pay reduction caused too much of a financial burden.
- Some waiver participants to move to the more expensive agency-direct model or institutional care when they were unable to hire new direct care workers.

DPW should have never allowed former FMS providers to pay wage rates that were above the allowable maximum rates. Now that PPL has begun to take action to correct wage rates, DPW must ensure that only allowable rates are paid. As part of its ongoing monitoring activities, DPW should actively review wage rate files, even if on a sample basis, to ensure that PPL has implemented sufficient controls to ensure wage rates comply with all applicable laws, regulations, and FMS standards. DPW cannot simply "trust" that PPL will comply with the requirement; instead, DPW must proactively verify this compliance.

Department of the Auditor General's Evaluation of DPW's Response:

Following is the Department of the Auditor General's evaluation of significant points from DPW's response to Finding Six. DPW's response to the report appears in full beginning on page 63.

In its response, DPW stated that it became aware during 2009 through 2011 that some of the former FMS providers had allowed direct care workers to be paid in excess of allowable rates. DPW also stated that it waited until it hired a new FMS vendor to address wage corrections beginning in February 2013, but that date was postponed until the summer of 2013.

Stated simply, DPW should have never allowed the former FMS providers to pay wages in excess of allowable rates. As soon as DPW became aware of incorrect wage rates, it should have taken the necessary actions against the former providers to ensure wage rates were in compliance with standards. If the former providers refused to correct the wage rates, then DPW should have utilized its available enforcement tool under the providers' agreements and terminated the former providers' grant agreements. Instead, DPW allowed noncompliance to continue up to four years with no consequences. DPW's inaction created an environment where the vendors were not incentivized to comply with the program rules.

Finally, DPW did not respond to our conclusion that it jeopardized the continued viability of the program by failing to timely correct wage rates. We believe that DPW still does not understand the importance of its oversight role and how a lack of monitoring could impact the entire program.

Recommendations for the Department of Public Welfare

Based on the findings and conclusions presented in this report, the Department of the Auditor General has developed the recommendations listed below to address the identified deficiencies. Our expectation is that the recommendations presented herein will improve DPW's oversight of FMS, now and in the future, and will provide a framework for corrective action when necessary.

1. DPW should immediately set target dates for PPL to fully implement each step of its corrective action plan to ensure all findings identified in the readiness review have been addressed and for PPL to implement its telephone customer satisfaction surveys. Further, DPW should initiate a status review within 30 days, 60 days, and 90 days of the audit issuance date to ensure strict enforcement of PPL's adherence to those target dates.

2. DPW should immediately conduct an initial performance review of PPL to determine PPL's compliance with all applicable laws, regulations, and FMS standards. As part of this review, DPW should examine, using a risk-based approach, PPL's files and records to ensure they include correct demographic information and required tax and payroll forms.

3. DPW should conduct periodic performance reviews (e.g., quarterly or semi-annual) of PPL to ensure that PPL continues to perform in accordance with the terms of the grant agreement, as well as all applicable laws, regulations, and FMS standards.

4. DPW should conduct regular and consistent reviews, either stand-alone or as part of the periodic performance reviews, of hourly wage rates paid by PPL to ensure that hourly wage rates are within the allowable Medicaid pay ranges.

5. DPW should take immediate action when specific instances of noncompliance with the grant agreement and/or applicable laws, regulations, and FMS standards are identified.

6. To aid DPW in determining if the grant agreement with PPL should be extended for a year or if a new RFA for FMS should be developed and issued, DPW should conduct a cost-benefit analysis of using PPL and make an assessment of PPL's performance by March 31, 2014.

7. In the future, DPW should ensure fair and just competition among all qualified vendors when it issues a new RFA for FMS by making certain that the RFA includes:
   - a full description of all activities and responsibilities that a new vendor would have to perform when transitioning FMS
   - realistic target dates for the FMS transition that make the well-being of waiver participants and direct care workers the top priority
   - full disclosure about the use of cash advances for payroll processing

Appendix A

Objectives, Scope, and Methodology

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives

Our performance audit of DPW's oversight of PPL focused on the following objectives:

1. Determine whether the compensation paid to PPL was reasonable compared to that paid to the previous financial management service providers and determine if that compensation was an efficient and effective use of state and federal funds.

2. Determine whether DPW provided adequate direction pertaining to the transition from previous FMS providers to PPL. Specifically, whether payroll checks issued to direct care workers were timely.

3. Determine whether DPW adequately oversees and monitors the activities of PPL and whether services are provided in compliance with applicable law, regulation, contracts, and/or grant agreements.

Scope

This performance audit report presents information for the period of July 1, 2012, through August 30, 2013, unless otherwise indicated.

DPW management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that DPW is in compliance with applicable laws, regulations, contracts, grant agreements, and administrative policies and procedures. In conducting our audit, we obtained an understanding of DPW's internal controls, including any information systems controls, as they relate to those requirements and that we considered to be significant within the context of our audit objectives. We assessed whether those controls were properly designed and implemented. Any deficiencies in internal control that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

Methodology

To address our audit objectives, we performed the following procedures:

- Obtained and analyzed pertinent laws, regulations, guidelines, policies and procedures related to financial management services.

- Reviewed Governor's Management Directive 305.20, *Grant Administration*, effective date May 26, 2000

- Obtained and reviewed DPW's organization charts, annual reports (2011, 2012, and the first quarter of 2013), and statistical reports to gain an understanding of the nature and profile of DPW and home and community-based services waiver programs.

- Reviewed PPL's website, as well as other publically available information regarding PPL to obtain an understanding of the company and its operations.

- Reviewed the 2012 Request for Application, the pre-proposal conference presentation, and all Question and Answer documents related to DPW's solicitation for regional FMS providers.

- Obtained and analyzed DPW's October 2012 grant agreement with PPL and the July 2013 amendment to that grant agreement.

- Conducted interviews with pertinent DPW officials and PPL staff.

- Conducted a group meeting with representatives of some of the former 36 FMS providers and advocates for waiver participants, their families, and their direct care workers to obtain an understanding of the issues related to the transition to PPL as well as the impact of late payments to workers.

- Obtained and analyzed all responses to the RFA submitted by applicants, as well as DPW's overall evaluation of these responses.

- Obtained and analyzed FMS standards developed by DPW with significant input from former FMS providers and the Centers for Medicare and Medicaid Services (CMS).

- Compared the cost difference between the consumer-directed model versus the agency-directed model for home and community-based services waiver programs, and calculated the costs to the commonwealth for those waiver participants that left the consumer-directed model and moved to the more expensive agency-directed model.

- Obtain and reviewed documents from the Pennsylvania Treasury to verify DPW's payment of an $18 million cash advance to PPL.

- Obtained reports listing the number of direct care workers paid above the maximum allowable wage rates and calculated the amount of the overpayments during the period January 1, 2013, through August 15, 2013.

- Obtained and reviewed the provider agreements with each of the 36 former FMS providers.

- Obtained an understanding of DPW's monitoring procedures for the 36 former FMS providers and reviewed DPW's schedule of performance reviews it conducted of the former FMS providers from 2009 through 2011.

- Obtained and analyzed the performance review reports for the reviews DPW conducted on three former FMS providers. These reviews were conducted in April 2010, March 2011, and July 2011.

- Obtained and analyzed reports prepared by PPL that it submitted to DPW that listed the percentage of direct care workers not paid each week during the FMS transition and the reasons for non-payment, such as missing I-9 forms and other required documents.

- Obtained and reviewed the Transition Advisory Group monthly meeting minutes from October 2012 to March 2013.

- Obtained and reviewed the Medical Assistance Advisory Committee monthly meetings minutes from October 2012 to December 2012.

- Obtained copies of correspondence from DPW to the public discussing the reasons direct care workers were not paid.

- Obtained and reviewed the results of DPW's September 2012 readiness review of PPL and PPL's corrective action plan developed in response to the deficiencies identified.

- Interviewed DPW officials to determine the status of PPL's implementation of that corrective action plan as of August 27, 2013.

- Reviewed various communications from consumers, legislators, waiver participants and their families, and advocates who expressed dissatisfaction with DPW's transition to PPL.

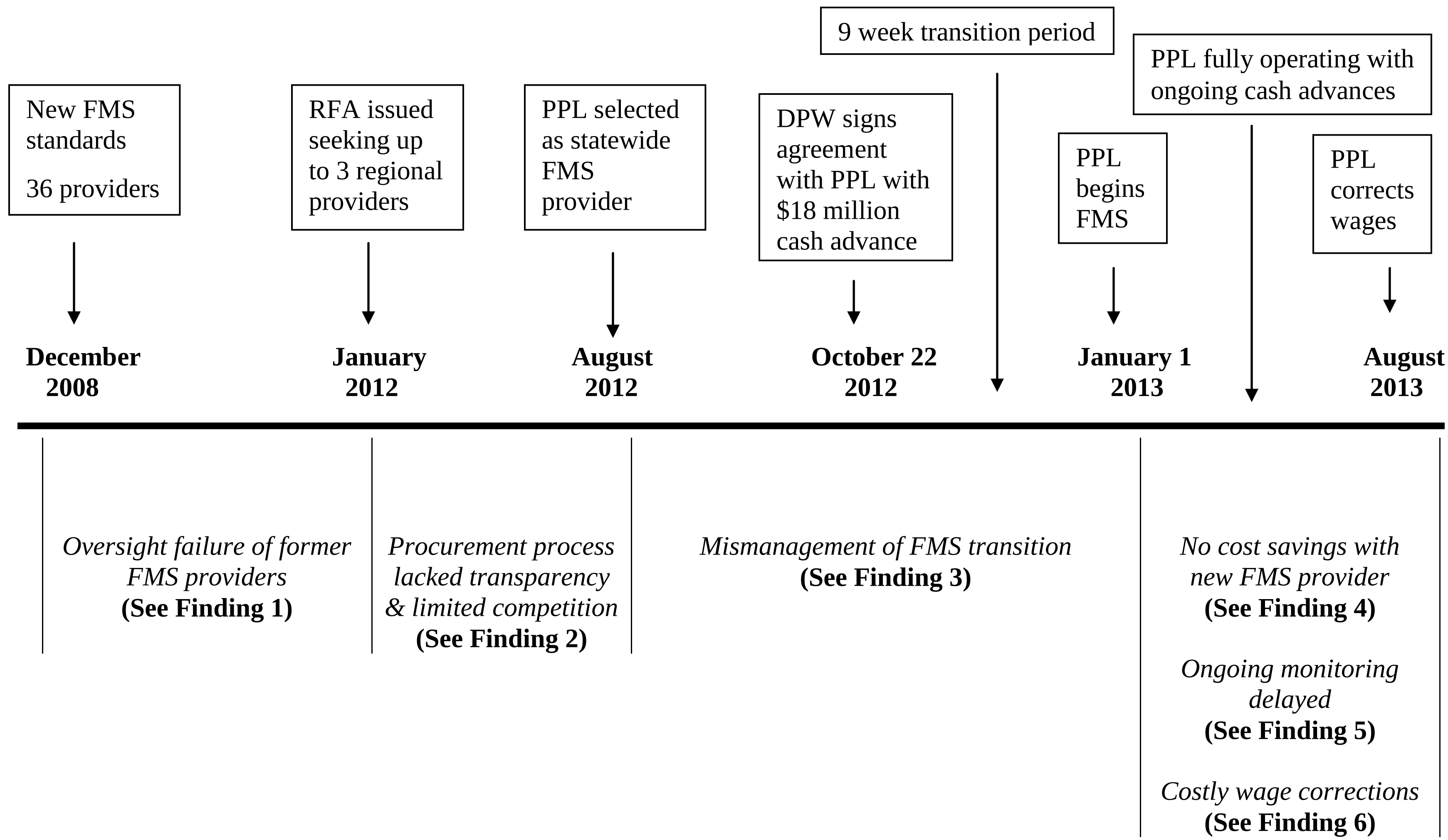
Findings and Recommendations

We developed six findings based on the results of our audit work, and we present seven recommendations to address the issues we identified. We will follow up within the next 12 to 24 months to determine the status of our findings and recommendations.

Our expectation is that the findings and recommendations presented herein will improve DPW's accountability to the public and will provide a framework for corrective action where necessary.

Appendix B

Time line of FMS oversight



Response from Department of Public Welfare

The Department of Public Welfare's full response to this audit report is reproduced on the following pages. A summary of significant points from DPW's response, and our evaluation of those points, can be found after the conclusion of each finding contained in this audit report.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

October 28, 2013

The Honorable Eugene A. DePasquale
Auditor General
Department of the Auditor General
229 Finance Building
Harrisburg, Pennsylvania 17120

Dear Mr. DePasquale:

Thank you for providing the draft findings, draft background section, and draft timeline of the audit report titled Performance Audit, Department of Public Welfare. The Performance Audit was conducted on the Department of Public Welfare (DPW), Office of Long Term Living (OLTL) regarding Financial Management Services (FMS) provided by its competitively-selected provider, PCG Public Partnership, LLC (PPL). The engagement letter dated February 28, 2013 sets forth the scope and standards of the Performance Audit.

In this response, we first provide our general comments, which we believe are necessary to consider when drawing any conclusions. Following those general comments, we provide specific comments to each finding. We ask that you consider our general and specific comments and incorporate those points into the final Performance Audit report.

GENERAL COMMENTS

The draft Performance Audit report does not take into account that, at the same time DPW was addressing (FMS) issues, DPW was acting to address a larger set of problems within DPW's home and community-based services ("HCB Services") consistent with federal guidance. One such problem that DPW intended to address in the HCB Services program was conflicts that occurred when providers acted as both service coordinators and direct care providers for the same participant. In those cases, opportunities existed for service coordinators to increase the number of services to participants for which they also provided care. Additionally, DPW became aware that some FMS providers, who act as payroll companies for participants who choose to direct all or some of their own services and who therefore had access to funds to pay for care, used excess funds for other, unallowable purposes. In short, DPW was faced with a multifaceted and complicated set of problems in the overall HCB Services program for which it was taking action. Viewed in this broader context, the auditors make invalid, and unnecessary, programmatic judgments.

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The draft Performance Audit report does not take into account the history of these problems and how deeply the problems were imbedded into HCB Services. The problems resulted from policy decisions made under prior administrations including the decision to refrain from active monitoring. In fact, prior to 2008, there was no monitoring of FMS providers. We understand that this decision was made on the belief that providers would act responsibly and in accordance with the regulatory requirements that providers committed to follow through their provider agreements with DPW. Whether or not it was reasonable to rely on those commitments, this reliance allowed flawed program practices to develop and become deeply imbedded in FMS.

Further, the draft Performance Audit report does not take into account that OLTL was in regular communication with the federal Centers for Medicare and Medicaid Services (CMS) concerning the problems with HCB Services. CMS contributes payment and has federal oversight of HCB Services, among other responsibilities. Communications with CMS provided not only valuable input, but also directed much of DPW's decision-making. DPW's compliance with CMS directives demonstrates DPW's commitment to effective and necessary program reforms.

The draft Performance Audit report does not acknowledge that DPW acted proactively once it recognized the problems embedded in FMS. To the contrary, the report appears to criticize DPW for acting too quickly before it had 100 percent certainty and the necessary infrastructure to handle these serious problems. DPW did not have the luxury of waiting for absolute certainty and for perfect infrastructure. DPW acted as quickly as possible with the best information and tools that it had. It did so not only to ensure the safety of participants but also to satisfy its obligations to taxpayers by creating a sustainable system that was free of conflict and abuse.

DPW acknowledges that serious problems developed during the FMS transition which delayed payment to some direct care workers. DPW sincerely regrets the hardship that these late payments caused many direct care workers, participants and their families. However, DPW believes that the transition has improved the program which ultimately benefits all involved. The draft audit report fails to quantify many of the transition issues or otherwise acknowledge the current status of the program. Because of these omissions, the reader does not have a clear understanding of the scope of these issues or whether DPW was ultimately successful in addressing these problems. For example, from January 2013 to the present DPW and PPL worked together to ensure compliance and timely payment to direct care workers. By mid-January 2013, 84 percent of the verified time sheets submitted were paid within two weeks of submission. By the end of January, DPW and PPL were able to pay approximately 90 percent of timesheets on-time. Presently, 98.4 percent of verified time sheets submitted are paid within two weeks of submission. This number is well within the industry standard accounting for the typical margin of errors and demonstrates that DPW and PPL were successful in fixing the transition issues.

The draft Performance Audit fails to acknowledge the complexity of any transition from 36 providers to 1 provider which involves more than 20,000 direct care workers. The draft Performance Audit also fails to note that many, if not all, of the problems experienced during transition likely would have occurred regardless of when it took place or which provider had been selected to provide the service. By delaying the implementation another year, DPW and participants would have had to endure 12 more months of an inefficient and ineffective service model. During the readiness review period, many previous providers were either phasing out their FMS operations or had stopped performing them altogether. A delayed implementation would have meant that participants served by these providers would have had to endure two transitions: one to another existing provider that was still providing FMS services and another in a year when DPW implemented the new service model. Quite simply, delaying the implementation of the new service model would have been impractical and unduly burdensome on program participants.

SPECIFIC COMMENTS

Finding One – DPW's poor oversight of the former FMS providers led to undue stress and financial strain for hundreds of direct care workers.

DPW response:

This finding is based on three interrelated premises: DPW failed to adequately monitor FMS providers; DPW allowed the noncompliance of previous providers to go on for "years;" and missing and inaccurate provider records led to direct care workers not getting paid.

As to the first two premises, DPW acknowledges that prior to 2008, active monitoring was non-existent. However, recognizing the need for change, DPW created enforcement standards in 2008 and initiated monitoring in 2009. The report acknowledges those points. The report also acknowledges that DPW found pervasive non-compliance in the FMS system. The report does not accurately acknowledge that DPW reached a reasonable decision point upon which it did act. The decision point was whether more extensive monitoring would ever achieve the desired results once pervasive noncompliance was found or whether it was prudent to be proactive and move to a limited number of providers who had no conflicts of interest and who had no reason to use excess funds for other service components or for non-allowable purposes.

DPW chose the latter for two reasons. First, monitoring the situation was cumbersome – there were more than 20,000 direct care workers spread amongst 36 providers. Second, DPW believed that it would never achieve the compliance that was required from the previous providers. Therefore, DPW began preparations to secure a maximum of three vendors for this service through a competitive procurement process. In contrast, the auditor's focus on one option – more monitoring that would use more and more of the Commonwealth's resources. The auditors then make an inappropriate value judgment on DPW's decision to implement a more efficient system.

The third premise actually relates to FMS providers who voluntarily terminated their enrollment upon learning that DPW had initiated the procurement process. Those providers transmitted incomplete and inaccurate records to the FMS provider who assumed their prior responsibilities. The premise is that missing and inaccurate records upon transfer led to direct care workers not getting paid and that the documents were not complete because DPW failed to monitor the providers. There is no factual finding that direct care workers were not getting paid before the transfer, and in fact, the direct care workers were getting paid prior to the transfer. Without the transition, the documentation issue may not have come to light. Furthermore, DPW informed providers of both the information that needed to be transferred to the new provider and the manner in which the information was to be transferred. Thus, DPW was acting to ensure the completeness of records upon transfer.

Finding Two – DPW's procurement process was unfair to other vendors who might have bid lower and ultimately performed better.

DPW response:

DPW strongly disagrees with Finding Two. This Finding misinterprets and otherwise omits relevant facts that explain and justify DPW's decisions.

AG assertion: DPW agreed to give PPL an $18 million cash advance even though it told other vendors that a cash advance was not an option.

DPW response:

The details of both the initial payroll advance and the interim payroll process are provided below. It is important to note that the cash advance resulted in a $1.5 million pricing reduction, and the cash advance was fully recouped by June 30, 2013.

Initial Payroll Advance [1]

As the draft audit report correctly notes, once a vendor is selected following a competitive procurement, agencies may negotiate terms and conditions that were not included in an RFA. It is therefore incumbent upon agencies, in this case DPW, to use the negotiation process to reach the best possible deal for DPW, the consumers it serves, and taxpayers.

[1] Management Directive 305.20 states the policies, procedures, and guidelines that executive agencies must follow when awarding grants. The Management Directive allows for a variety of different payment methods pursuant to written requests submitted to the Office of Comptroller Operations. In making the advance, DPW complied with these provisions.

As part of its negotiations with PPL, DPW agreed to advance the first bi-weekly direct care worker payroll amount to PPL. Although DPW did not intend to advance the initial by-weekly payroll at the time it issued the RFA, circumstances changed considerably after PPL's selection. First, DPW did not expect that a single vendor would win all three regions included in the RFA. Because a single vendor won all three regions, that vendor became responsible for making an $18 million payment to the more than 20,000 direct care workers before the vendor had received any payment from DPW. DPW believed that it was unrealistic to expect any vendor to go out of pocket in that amount.

Secondly, at the time DPW decided to make the advance payment, the record-keeping problems of many previous FMS providers, as well as the lack of cooperation from certain providers with the transition process, became apparent. Both DPW and PPL became concerned about whether sufficient payroll records existed to allow DPW to timely and completely reimburse PPL for the initial payroll payments in sufficient time for PPL to make the second bi-weekly payroll payments.

The advance was made in attempt to address these concerns. Although there were still problems with timely paying some direct care workers in the days and weeks following January 1, 2013, these problems likely would have been far worse had DPW not made the advance payment.

Unstated in the draft audit report is the fact that DPW recouped the entire initial advance prior to the end of the fiscal year (June 30, 2013) pursuant to the requirements of the grant agreement.

Interim Payroll Process

The draft audit report also questions DPW's decision to amend its initial grant agreement with PPL to institute an interim payroll process. DPW instituted this change effective July 1, 2013 as part of its continued efforts to prevent a reoccurrence of untimely payments to direct care workers.

Under the original terms of the grant agreement, PPL was not required to make payroll payments until it was reimbursed by DPW for the previous bi-weekly payroll. That means that any problems experienced with processing and paying the thousands of weekly claims submitted by PPL, whether those problems were due to errors in submission or simply limitations on the Commonwealth's payment processing systems and capabilities, could negatively impact the timely payment of direct care workers. Therefore, DPW amended the agreement to allow it to make payments based on the amounts of previous payroll cycle payments and then reconcile those payments upwards or downwards based on the actual claims. This process, which is modeled on the FMS program that is administered by the Commonwealth of Virginia, ensures that direct care workers will continue to receive timely payments.

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DPW was able to negotiate $8 million in additional cost savings as part of the amendment that implemented the interim payroll process. Therefore, contrary to the claims made in the draft audit report, the implementation of the interim payroll process resulted in a more effective and efficient program while also achieving additional cost savings for the Commonwealth.

<u>AG assertion</u>: DPW's inclusion of a restrictive conflict-free requirement in the RFA essentially eliminated former FMS providers from the process.

<u>DPW response</u>:

DPW strongly disagrees with Finding Two's claim that the RFA "essentially eliminated former FMS providers" from the competitive process. This assertion is not only unfounded, but directly contradicts both the RFA requirements and DPW's actions. Briefly, as set forth in greater detail below, several former providers failed to achieve the necessary technical scores and could not, or would not, ensure that they were free of any conflicts.

As an initial matter, DPW received applications from several former FMS providers. These applications were evaluated based on the same technical and cost criteria used to evaluate applications submitted by new vendors. Several applications submitted by former providers failed to achieve the minimal required technical score necessary to be considered for selection. This fact is perhaps unsurprising considering the significant performance issues experienced with some previous providers that were discovered by OLTL's extensive monitoring efforts.

In regards to the conflict free requirements included in the RFA, previous providers also provided FMS services to the very consumers for which they also provided direct services. DPW decided to remedy this conflict by including conflict-free requirements as part of the RFA (As the AG admits, DPW "was free to add any requirements it deemed necessary into the RFA.").

During the Question and Answer period, DPW clarified the conflict free requirements by stating that existing direct service providers were not barred from submitting proposals but instead must only demonstrate how they intended to be conflict-free. Such plans included the provider proposing to "spin off" its FMS business from its direct service business through a corporate restructuring. Such a plan would meet the conflict free requirements so long as each entity had a separate and distinct Board of Directors, the companies' administrative functions were kept separate, and employees did not work for both companies. Rather than "essentially eliminating" previous FMS providers from the process, DPW encouraged former providers to submit proposals so long as they demonstrated how they intended to be conflict-free.

Nor did DPW rigidly apply these requirements. For example, Applicant D's initial application failed to include any plan on how it intended to become conflict-free. Although the evaluation committee could have found Applicant D's initial application non-responsive to the RFA requirements and accordingly rejected it, DPW instead gave

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Applicant D an additional opportunity to submit a conflict-free plan. Specially, the evaluation committee requested Applicant D to identify the components of its organization that were currently in conflict, provide a work plan and organizational charts to demonstrate a conflict-free organization, provide a detailed description on how the organization would become conflict free, as well as the opportunity to submit any additional information that Applicant D deemed necessary to demonstrate how it would meet the requirements. Quite simply, by giving Applicant D an additional opportunity to meet the requirements and giving careful consideration to the supplemental submittal, DPW's action do not even remotely suggest a restrictive application of the requirements.

Even after being given this additional opportunity, the evaluation committee determined that Applicant D's supplemental submission failed to demonstrate its willingness and ability to comply with the conflict free requirements by the planned program start date. According to the evaluation committee, Applicant D proposed employing FMS staff, including the FMS program manager, in the non-FMS entity. Applicant D also failed to demonstrate that there would be no overlap between the company's existing and proposed Boards of Directors. In fact, the evaluation committee felt that Applicant D did not submit a conflict-free plan at all, but rather only offered to address the issues during future discussions with DPW, presumably after it had been awarded an agreement.

The draft audit report also claims that "it is difficult to understand why DPW did not attempt negotiations with Applicant D." As is stated above, the evaluation committee believed that Applicant D did not submit a sufficient plan on how it intended to become conflict free despite being given two opportunities to do so. Therefore, DPW could not negotiate because Applicant D failed to meet the RFA requirements and could not be selected.

Finally, the draft audit report questions DPW's decision to later waive the conflict free requirement for the limited purpose of allowing Applicant D to provide some services as a subcontractor to PPL. This was done for two reasons. First, due to the changed circumstances during transition that are discussed above, DPW focused all of its efforts on getting direct care workers paid. As part of those efforts, DPW agreed to waive the conflict free requirements for the limited purpose of allowing Applicant D to assist PPL in obtaining the missing data and file information that were needed to allow PPL to pay some direct care workers. This waiver occurred only after the extent of the file problems became apparent and Applicant D had expressed a willingness to assist. This proved to be the right decision as Applicant D's work helped PPL to get direct care workers paid.

<u>AG assertion</u>: DPW excluded a cost component from the scoring process which was unfavorable to former FMS providers.

DPW response:

Although it is true that DPW could have included the $45 transition fee as part of the cost evaluations, the draft audit report correctly asserts that doing so would not have impacted the final evaluation results.

AG conclusion: DPW did not ensure fair and just competition among qualified vendors.

DPW response:

DPW conducted a fair and competitive procurement in selecting its FMS provider and DPW strongly disagrees with any assertion to the contrary.

As the draft audit report correctly states, grants and Medical Assistance (MA) provider agreements are explicitly exempted from the provisions of the Commonwealth Procurement Code. Although there are no specific requirements for the competitive procurement of MA providers, Management Directive 305.20 states the policies, procedures, and guidelines that executive agencies must follow when awarding grants. The Management Directive provides for three ways that an agency may make grant awards: a competitive application process, through an allocation formula, or through a non-competitive sole source arrangement. In this instance, DPW elected to use the competitive application process method.

If an agency elects to utilize the competitive method, the Management Directive provides that agencies should advertise the availability of grant funds, solicit applications from potential grantees and use predetermined criteria set forth in the solicitation to evaluate applications.

For the FMS procurement, DPW publically advertised the solicitation by posting the RFA on the Department of General Services' (DGS) website. DPW permitted any interested applicant, including former providers, to submit applications. In the RFA, DPW established evaluation criteria. A qualified and experienced evaluation committee used predetermined evaluation criteria to evaluate applications submitted in response to the RFA. DPW required all applicants to propose monthly per-participant rates using the same format and the same number of estimated participants. DPW then used these numbers to calculate the total proposed costs in the same manner for each application. DPW then combined the technical and cost scores to rank each proposal.

Prior to the application due date, DPW allowed interested vendors to submit written questions and then DPW posted written answers to the more than 400 questions it received. No entity was prohibited from submitting proposals, not even direct service providers or those with questionable performance records, and all applicants were given the same amount of time to develop and submit applications.

DPW appropriately and permissibly included conflict of interest requirements in the RFA, yet permitted existing direct services providers to submit proposals provided that they adequately explain their plans for becoming conflict free.

The evaluation committee gave PPL the highest technical score in all three regions. Among qualified applicants, PPL proposed the lowest cost in two regions, and the second lowest cost in the other region. PPL currently provides FMS services in other states and the evaluation committee received positive references from those states. The selection of PPL was far from an arbitrary decision and the process was certainly competitive.

Certainly, additional providers may have submitted responses to the RFA if DPW had signaled a willingness up front to advance the first direct care worker by-weekly payroll payment to the selected provider. Unfortunately, the decision to make the advance was in response to circumstances that developed only after PPL was selected to be the state-wide provider. Instead of re-issuing the RFA and waiting another year to implement the new service model, DPW agreed to the advance, ensured a prompt recoupment of the advance, and negotiated significant rate reductions in exchange for making the advance.

Further, DPW decided to later amend the grant agreement with PPL to institute an interim payroll process as a way to further improve the program. By making this change, DPW was able to achieve additional cost savings while helping to further ensure the timeliness of direct care worker payments.

Finally, DPW questions the relevance of the draft audit report's continued reference to PPL as a "non-Pennsylvania"-based company. Implicit in these references is the belief that DPW should have only awarded grants to Pennsylvania-based companies. Assuming for a moment, as the draft audit report does, the legality of such an out-of-state prohibition in a program significantly funded by federal dollars, the purpose of a competitive procurement is to select the entity that is best able to provide services based on set evaluation criteria. PPL's application was determined to be the most advantageous to the Commonwealth based on the evaluation conducted using the established evaluation criteria.[2]

Finding Three – DPW's mismanagement of the FMS transition led to thousands of direct care workers not getting paid consistently on time.

Again, DPW acknowledges that serious problems developed during the FMS transition which delayed payment to some direct care workers and regrets the inconvenience and hardship experienced by the affected direct care workers and their families. However, DPW disagrees with the draft audit report's conclusions as to the source of, and DPW's reaction to, the transition issues.

[2] The draft audit report also claims that PPL did not have an office in Pennsylvania at the time of award. For purposes of clarity, PPL's parent company did maintain an office in Pennsylvania and PPL has opened offices in Pennsylvania, including a presence in each region included in the RFA.

AG assertion: Red Flag #1: Delays in selecting a new FMS provider

DPW response:

For purposes of clarification, PPL was only required to begin taking on newly enrolled program participants in September. PPL was not required to provide FMS services to existing participants until January 1, 2013.

Despite a lengthy procurement process, DPW selected PPL on August 8, 2012 which was sufficient to begin transition activities in the timeline envisioned by DPW and have PPL prepared to begin providing FMS services to existing participants by January 1, 2013. Therefore, the length of the procurement process had little, if any, impact on any transition issues that later developed.

AG assertion: Red Flag #2: Lengthy negotiation process

DPW response:

Again, PPL was targeted to begin taking on new participants in September, not transitioning the existing participants. The transition of existing participants was always scheduled for January 1, 2013.

Despite the fact that the negotiation process continued longer than expected, many transition activities began prior to the effective date of the agreement. Throughout September DPW and PPL provided direction to former providers regarding transition responsibilities in the form of letters, emails, and meetings, and conducted various trainings. These communications included an explanation of transition activities, the information that needed transferring and the manner in which the information was to be provided, as well as directions for using PPL's web portal. The transferring of files also began during this time. The length of the negotiation process therefore should have had no effect on the compiling and transmission of this information. In fact, former providers had more than a year's notice that DPW planned to competitively procure these services and that a transition would occur in the fall of 2012. As is discussed above in DPW's response to Finding One, many former providers failed to follow these directions.

It is also important to note that DPW was able to achieve significant rate reductions from PPL during this "lengthy" negotiations process.

AG assertion: Red Flag #3: Former FMS providers were reluctant to transfer files until the grant agreement was finalized

DPW response:

As is stated in the draft audit report, DPW and PPL executed data sharing agreements, in mid-September, more than 5 weeks before the grant was fully executed and more than 3.5 months before PPL assumed responsibility for existing participants, that allowed for the transition of files from previous providers to PPL. Even considering those providers that failed to abide by DPW's directions and waited to begin transferring files until the agreement was fully executed in October, the former providers had ample time to transfer the records needed by PPL. It is also important to note that former providers had more than a year's notice that DPW would be significantly reducing the number of providers and therefore a file transfer would need to occur. Through significant effort, DPW and PPL have since been able to substantially complete the files, with the missing paperwork and required data elements.

<u>AG assertion: Red Flag #4: Customer service phone number could not be provided to the public until the formal agreement was signed</u>

<u>DPW response</u>:

First, even though PPL's customer service number was not released until the agreement was signed, it was still provided more than 9 weeks before PPL was responsible for transitioning existing FMS participants. Under normal circumstances, this very well may have been sufficient. However, as discussed elsewhere in this response, the scope of the incomplete files and the missing required documentation was unexpected. As a result, neither DPW nor PPL expected the significant number of phone calls to PPL's customer service hotlines during transition.

DPW disagrees that it "ignored" problems experienced with PPL's customer service call center. To the contrary, DPW required PPL to submit daily logs of customer service center activity to track and trend the nature of the calls, the length of time that calls waited to be answered, and the calls that were returned or sat in voicemail. As a result of these meetings and the call tracking activities, PPL agreed to upgrade the customer service area of their business by adding staff and by expanding phone lines and hours and days of operation. PPL also increased staff training to better address participant calls once it was able to identify the specific paperwork problems experienced by many direct care workers or participants. Despite being given access to call logs and meeting minutes from this period, there is no mention of these corrective measures and activities anywhere in the draft audit report. Nor is there mention of the significant decrease in call center issues once these measures went into effect The draft audit report's claim that DPW "ignored" customer service issues is simply false and contradicted by these facts.

<u>AG assertion: Red Flag #5: DPW's internal review showed that PPL was not ready for the implementation date</u>

<u>DPW response</u>:

DPW disagrees that the readiness review suggested that PPL was not ready for the January 1, 2013 implementation date. The outstanding readiness review items did not impact PPL's ability to process direct care worker payments. Further, the fact that PPL and DPW continued to work on readiness issues after the transition began and continued to perform scheduled follow up activities surrounding the review is also not suggestive that PPL was not prepared to process payments to direct care workers.

Postponing the implementation date was simply not a viable action as doing so would have only delayed necessary program reforms. Delaying the program would have only delayed necessary program reforms, which were designed to ultimately benefit participants.

Under the previous service model many participants were unaware of their basic responsibilities including, but not limited to signing timesheets before submission for payment and selecting appropriate wage ranges for their direct care workers. These issues would not have come to light for another year had DPW decided to postpone implementation. Further, there was no realistic way for DPW to discover the breadth and scope of the incomplete files and missing data elements without completing a transition of files. After difficulties during the first few weeks of transition, DPW and PPL have been able to fix these serious problems and many others precisely because the transition went forward as scheduled.

Further, delaying implementation another year would have been impractical and unduly burdensome on program participants. During the readiness review period, many previous providers were either phasing out their FMS operations or had stopped performing them altogether. A delayed implementation would have meant that participants served by these providers would have had to endure two transitions: one to another existing provider that was still providing FMS services and another in a year when DPW implemented the new service model.

AG assertion: Red Flag #6: PPL officials expressed concerns about making timely payments to direct care workers beginning January 1

DPW response:

As the breadth and scope of the data issues became apparent, both DPW and PPL grew concerned about the ability to timely pay some direct care workers beginning on January 1, 2013. Because of these concerns parties worked diligently in the weeks and months before January 1 to secure the necessary participant and direct care worker paperwork to allow for timely payment.

As is discussed in response to Red Flag #5, postponing implementation another year was not a realistic option. That option became impossible in the final weeks of December 2012 as many providers were no longer providing FMS services, making it impossible to transfer those participants to any provider other than PPL. Therefore, DPW decided to work tirelessly to resolve the issues as quickly as possible and make the January 1st transition as effective as possible.

Finding Four – DPW incurred additional costs with PPL and it did not achieve expected efficiencies.

<u>AG assertion: DPW attained a lower administrative fee from PPL, but only after agreeing to provide initial and ongoing cash advances</u>.

<u>DPW response</u>:

DPW disagrees with the draft audit report's focus on PPL's pre-negotiated rates. The only rates that matter are the ones that are actually paid for FMS services. Further, the draft audit report's assertion that DPW only achieved a lower administrative fee because it agreed to advance the first bi-weekly payroll is inaccurate.

<u>Monthly Administrative Rate</u>

Amongst applicants who met the RFA requirements, PPL's initial rates were the lowest in two of the three RFA regions, and were the second lowest in the third region. From those initial rates, DPW was able to negotiate $3.9 million in rate reductions: $2.4 million prior to agreeing to advance the first bi-weekly payroll, followed by an additional $1.5 million reduction in exchange for agreeing to make the advance. Therefore, from day 1 of the agreement, DPW has paid PPL at rates far lower than those paid to previous providers. The draft audit report criticizes DPW for this accomplishment and seems to suggest that the Commonwealth would have been better off had DPW kept the RFA payment structure in place and paid more for these services than was necessary. DPW strongly disagrees with this suggestion and remains satisfied with the deal it was able to negotiate.

Through the competitive RFA process, in which negotiations with the selected applicant play a major part, DPW achieved significantly reduced administrative rates compared to what was charged by the previous 36 FMS providers. The 35former providers who provided FMS services in programs administered by OLTL previously charged DPW $85.00 per month for each individual served. DPW's competitively procured contractor under the old model, Acumen, previously charged $240.00 per month for individuals enrolled in programs administered by DPW's Office of Developmental Programs (ODP), a rate that was later reduced through negotiations to $200.00 beginning in April 2012.

As is discussed elsewhere in the draft audit report, the RFA divided FMS services across three different regions:

- The Eastern Region (which included all individuals receiving FMS services in OLTL-administered programs in that region);
- The Western Region (which included all individuals receiving FMS services in OLTL-administered programs in that region); and
- The Central Region (which included all individuals receiving FMS services in OLTL-administered programs in that region AND all statewide recipients receiving FMS services in ODP-administered programs).

In the RFA, DPW requested pricing from applicants for all three regions. For the central region, applicants were required to propose a single rate that included all OLTL recipients in the central region plus all ODP recipients throughout the state that previously received services from Acumen. For the period January 1, 2013 through June 30, 2013, PPL's grant agreement included a monthly administrative rate of $77.00 per recipient for all three regions, including those previously serviced by Acumen. These rates are far lower than the $85.00 and $200.00 charged by the former providers.

As is discussed in response to Finding Two, above, DPW amended the grant agreement to institute an interim payroll process effective July 1, 2013. As part of that amendment, DPW negotiated additional pricing reductions in the form of lower administrative rates. The following table illustrates how the current administrative rates are far lower than what was paid to former FMS providers.

Region	PPL Rates 7/31/13-12/31/13	PPL Rates Year 2	PPL Rates Year 3	PPL Rates Year 4	Rates Paid to Former Providers
Eastern Region	$76.00	$76.00	$79.04	$79.04	$85.00
Western Region	$76.00	$76.00	$79.04	$79.04	$85.00
Central Region	$79.00	$79.00	$82.16	$82.16	$85.00
Statewide ODP	$79.00	$79.00	$82.16	$82.16	$200.00

As demonstrated in the above table, not only are PPL's administrative rates lower during the first six months, the rates for all 4 years are lower than what DPW paid previous providers. When these rates are extrapolated over the life of the contract using the estimated number of participants included in the RFA, and assuming that PPL could have charged DPW the maximum number of transition fees, PPL's rates equate to approximately $11 million in savings from the administrative fees that would have been due former FMS providers over the same period. Please see Exhibit 1 for a demonstration of these savings.

AG assertion: DPW's problematic transition to PPL cost taxpayers millions of dollars.

DPW response:

The draft audit report claims that the transition to PPL resulted in "additional unforeseen costs". These include the paying of "transition fees" for existing participants transitioned to PPL and costs associated with individuals moving from the consumer-directed model to the agency-directed model. These calculations are largely speculative and include many assumptions to reach a figure that is impossible to accurately quantify at this time.

Transition fee.

The draft audit report notes DPW's agreement to pay PPL a one-time transition fee of $45 for each existing FMS participant transferred to PPL from a previous provider are costs that DPW would not have incurred had it allowed the previous 36 FMS providers to remain place. DPW agrees.

However, as is stated elsewhere in this response, DPW's monitoring efforts led to the conclusion that the FMS program was in need of dramatic reform. The paying of the transition fees became a necessary expense in the modernization of the program through the competitive procurement process.

For clarity's sake, DPW does not want to leave the impression that it simply agreed to pay the transition fees to PPL. Nor does DPW want to leave the impression that the transition fees actually paid to PPL constituted additional costs that DPW would not have incurred had it selected one of the previous providers. The transition fees were part of the RFA which means that DPW would have paid the fees to any applicant that was competitively chosen to provide services, including former providers. Because the existing participants were spread across 36 different providers in the old FMS models, DPW would have still had to pay a significant number of transition fees to any of the former providers if one had been selected.

Agency-Directed Model.

First, the draft audit report assumes that these individuals left the consumer-directed model purely because of transition issues. There are many reasons that an individual may choose to leave the consumer-directed model for the agency-directed model. In fact, DPW is aware of instances where some providers, fearful of losing business, incorrectly informed participants that they may no longer be able to receive direct services from their accustomed provider once the participants were transitioned to PPL. Such misinformation likely affected some participant choices.

Further, the draft audit report's calculation makes various assumptions regarding the hours worked by direct care workers and the rate of pay in both the consumer-directed and agency-directed models. Until further data becomes available, including, but not limited to the actual hours worked and rates charged by the direct care workers providing services to those participants who left the consumer-directed model, these calculations remain speculative.

DPW fully expected some participants would leave the consumer-directed model during transition due to the implementation of various program changes and additional controls. Change is inherent in any transition, particularly in a program of this size. DPW also understands that some individuals switched service models based solely on issues experienced during transition. But any attempts to quantify the numbers of such participants as well as the potential cost to the Commonwealth, if any, are purely speculative.

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Finally, the draft audit report does not mention the cost avoidance savings that program reforms will generate. Although it is always difficult to predict cost avoidance savings, it is reasonable to assume that additional program controls, including appropriate time sheet, service, and eligibility verification, as well as the removal of conflicts of interest will ensure that only necessary and proper services are paid for thereby further lowering program costs.

Transitions of large, long-term arrangements are not without cost. But that does not mean an agency should never attempt to improve upon the manner in which it provides services. DPW believed that competitively selecting a limited number of providers or a state-wide provider would result in a more efficient and consistent program that it is easier to effectively monitor. There is nothing in the draft audit report to make DPW change that belief.

AG assertion: DPW did not realize anticipated efficiencies with PPL's operations.

DPW response:

Customer Service

DPW does not dispute the challenges faced by PPL's customer service call center during the days immediately following January 1, 2013. Again, the incomplete and/or missing records provided, or in many cases, not provided by previous FMS providers initially impacted PPL's ability to timely pay some direct care workers thereby causing much higher than expected call volumes in the early days of the transition. As is stated elsewhere in the draft report, the breadth of the missing file elements and the lack of understanding of program requirements by many participants surprised OLTL and led to significantly higher call volumes during the initial days of transition.

Missing from the draft audit report is the corrective steps that DPW took to remedy and ultimately fix these issues once the specific issues became apparent. As mentioned in DPW's response to Finding Three, DPW conducted almost daily meetings with PPL during this period. In addition, DPW required PPL to submit daily logs of customer service center activity to track and trend the nature of the calls, the length of time that calls waited to be answered, and the calls that were returned or sat in voicemail. As a result of these meetings and the call tracking activities, PPL agreed to upgrade the customer service area of their business by adding staff and by expanding phone lines and hours and days of operation. PPL also increased staff training to better address participant calls once it was able to identify the specific paperwork problems experienced by many direct care workers or participants.

There is no mention of these corrective measures and activities anywhere in the draft audit report. Nor is there mention of the significant decrease in call center issues once these measures went into effect.

Web-based Timesheets

Efforts to get more individuals to use the web-portal for electronic invoice submission remain on going; however, DPW has been able to convince 20-25 percent of direct care workers to use this feature so far in the first year. In a program that includes more than 20,000 direct care workers, this equates to significant efficiencies from the previous system. Short of requiring electronic invoice submission, DPW and PPL have conducted numerous activities in an effort to convince individuals of the benefits of using the web-portal. In September 2012, DPW and PPL conducted mailings, in-person trainings and webinars regarding PPL's web portal and the availability of electronic timesheets. These trainings were provided to available participants, direct care workers and service coordination agencies in an effort to encourage the use of technology available from PPL. These efforts remain on-going as DPW hopes to further increase the numbers of direct care workers who take advantage of this new benefit.

The draft audit report also fails to list the other implemented and available efficiencies including a direct deposit option for direct care workers, consistent messaging to participants, consistent training to participants and direct care workers, the participants' ability to set employee wages, and the consistent use of forms all of which help to ensure that only necessary and eligible service are provided and paid for.

Finding Five – DPW continues to put the well-being of waiver participants and direct care workers at risk by not adequately monitoring PPL.

DPW response:

The draft audit report acknowledges that DPW worked hand in hand with PPL on a daily basis and conducted significant monitoring of PPL's activities during the first 6 months of 2013 to ensure the transition issues were fixed. These extensive activities, some of which are referenced in the draft audit report, included, but were not limited to:

- Receiving daily progress reports from PPL;
- Conducting almost daily meetings with PPL staff;
- Conducting trainings and meetings with participants, direct care workers, service coordination entities, advocacy groups, family members, and DPW and legislative staff;
- Reviewing reports which regularly tracked the percentage of timesheets paid, the number of timesheets pending for payment and the reasons why, as well as the number of customer service calls their type and changes made to accommodate the high influx of calls; and
- The creation of six sub-committees set up to review and discuss transition issues.

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The information provided to the auditors shows a clear pattern of program improvement and DPW's deep involvement with fixing transition issues and the continued monitoring of the program and PPL's performance.

The information provided to the auditors also demonstrates that DPW has been heavily involved with monitoring PPL even after the transition issues were resolved. These efforts include high level administrative meetings, advisory committee meetings and reviewing ongoing status reports from PPL. OLTL has designated a monitoring team to continue reviewing progress on corrective action items. The parties are resolving these outstanding items through subcommittee and other meetings between DPW and PPL. As supported by the current success rates, these outstanding issues are not impacting the ability to pay direct care workers on time.

Finding Six – DPW failed to ensure that only allowable hourly wage rates were paid to direct care workers and allowed this noncompliance to continue for years.

DPW response:

As discussed in response to Finding One, little to no monitoring took place in the FMS program prior to 2009. As a result of extensive monitoring efforts conducted from 2009 through 2011, DPW became aware that some previous FMS providers had allowed some direct care workers to be paid in excess of allowable amounts. As is stated in the draft audit report, about this time DPW also determined that the overall FMS was program was in need of reform and decided to conduct a competitive procurement process to engage the services of a provider or providers to assist DPW in fixing the program, including the direct care worker wage issues uncovered by OLTL's monitoring efforts.

As is stated in the draft audit report, DPW informed PPL in October 2012 that it expected PPL to begin these wage corrections by February 1, 2013. However, due to the documentation problems that impacted PPL's ability to pay some direct care workers timely beginning on January 1, 2013, DPW postponed the February 1 date to ensure that the wage corrections did not further delay payments. As the draft audit report notes, DPW and PPL began making necessary wage adjustments in the summer of 2013.

These wage corrections continue to this day. But for purposes of clarity, it was the former providers that overpaid direct care workers, DPW's monitoring efforts that uncovered the overpayments, and DPW and its competitively selected provider that are now fixing these and many other program issues.

Recommendations

DPW response:

DPW will consider the recommendations contained in the draft audit report.

Thank you for the opportunity to respond to this draft audit report. Please contact Mr. David R. Bryan, Manager, Audit Resolution Section, Bureau of Financial Operations at (717) 783-7217, or via e-mail at davbryan@pa.gov, if you have any questions regarding this matter.

Sincerely,

Beverly Mackereth

Beverly D. Mackereth
Secretary

c: Mr. John M. Lori
Ms. Helen A. Weigel
Ms. Natalie A. Jacoby
Mr. John Kaschak
Mr. David R. Bryan, Manager, Audit Resolution Section

Exhibit 1

ADMINISTRATIVE RATE COMPARISON

Year 1 Pricing	Number of Participants	Administrative Fee	Total	Prior Administrative Fee	Total	Savings
OLTL 1 1-6	7256	$77.00	$3,352,272	$85	$3,700,560	
OLTL 3 1-6	10236	$77.00	$4,729,032	$85	$5,220,360	
OLTL 1 7-12	7256	$76.00	$3,308,736	$85	$3,700,560	
OLTL 3 7-12	10236	$76.00	$4,667,616	$85	$5,220,360	
ODP 1-6	850	$77.00	$392,700	$200	$1,020,000	
OLTL 2 1-6	3932	$77.00	$1,816,584	$85	$2,005,320	
ODP 7-12	850	$79.00	$402,900	$200	$1,020,000	
OLTL 2 7-12	3932	$79.00	$1,863,768	$85	$2,005,320	
			$20,533,608		$23,892,480	$3,358,872

Year 2 Pricing	Number of Participants	Administrative Fee	Total	Prior Administrative Fee	Total	Savings
OLTL 1	7256	$76.00	$6,617,472	$85	$7,401,120	
OLTL 3	10236	$76.00	$9,335,232	$85	$10,440,720	
ODP	850	$79.00	$805,800	$200	$2,040,000	
OLTL 2	3932	$79.00	$3,727,536	$85	$4,010,640	
			$20,486,040		$23,892,480	$3,406,440

Year 3 Pricing	Number of Participants	Administrative Fee	Total	Prior Administrative Fee	Total	Savings
OLTL 1	7256	$79.04	$6,882,171	$85	$7,401,120	
OLTL 3	10236	$79.04	$9,708,641	$85	$10,440,720	
ODP	850	$82.16	$838,032	$200	$2,040,000	
OLTL 2	3932	$82.16	$3,876,637	$85	$4,010,640	
			$21,305,482		$23,892,480	$2,586,998

Year 4 Pricing	Number of Participants	Administrative Fee	Total	Prior Administrative Fee	Total	Savings
OLTL 1	7256	$79.04	$6,882,171	$85	$7,401,120	
OLTL 3	10236	$79.04	$9,708,641	$85	$10,440,720	
ODP	850	$82.16	$838,032	$200	$2,040,000	
OLTL 2	3932	$82.16	$3,876,637	$85	$4,010,640	
			$21,305,482		$23,892,480	$2,586,998
					Total savings:	$11,939,309

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