

**Joint Legislative Committee on Performance  
Evaluation and Expenditure Review (PEER)**

Report to  
the Mississippi Legislature



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## **The Department of Human Services' Use of Revenue Maximization Contracts**

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In 1995, the Mississippi Department of Human Services (MDHS) entered a contract with the Institutes for Health and Human Services, Inc. (IHHS), a private consulting firm, for the purpose of identifying additional revenues the department could claim under Title IV-E of the Social Security Act. Title IV-E provides federal financial assistance to the state for foster care, adoption assistance payments, and some administrative costs.

On August 10, 2000, the federal Office of Inspector General, Office of Audit Services, recommended disallowance of \$14.7 million in federal reimbursements resulting from MDHS's contract with IHHS for the period October 1, 1993, to June 30, 1997. On October 20, 2000, the federal Administration for Children and Families accepted these recommendations. MDHS has repaid \$3 million of this amount and is disputing the repayment of the remaining \$11.7 million.

On February 8, 2000, the State Auditor's Office issued its Single Audit Management Report of several state programs receiving federal financial assistance in FY 1999. In this audit report, the State Auditor's Office took exception to more than \$7 million in retroactive claims prepared by IHHS.

The Department of Human Services' contract with IHHS did not protect the state's interest, which would have been best served by adherence to the elements of a model contracting system. Due to the potential for costly federal audit exceptions, PEER recommends that state agencies consider revenue maximization contracts only after careful determination of need and adherence to model public contracting and management practices.

**December 6, 2000**

**PEER: The Mississippi Legislature's Oversight Agency**

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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On December 6, 2000, the PEER Committee authorized release of the report entitled **The Department of Human Services' Use of Revenue Maximization Contracts.**

A handwritten signature in cursive script, appearing to read "William Canon", written over a horizontal line.

Senator William Canon, Chairman

**This report does not recommend increased funding or additional staff.**

**December 6, 2000**

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# The Department of Human Services' Use of Revenue Maximization Contracts

## Executive Summary

PEER reviewed a "revenue maximization" contract between the Mississippi Department of Human Services and the Institutes for Health and Human Services, Inc. (IHHS) to determine the extent to which the contract protected the state's interest. The purpose of the contract was to identify additional revenues the department could claim under Title IV-E of the Social Security Act. Title IV-E provides federal financial assistance to the state for foster care, adoption assistance payments, and some administrative costs.

PEER also reviewed the results of a federal audit of IHHS's work on this contract and a single audit management report by the Office of the State Auditor.

### ***Audit Exceptions***

On August 10, 2000, the Office of Inspector General, Office of Audit Services, recommended disallowance of \$14.7 million in federal reimbursements resulting from MDHS's revenue maximization contract with IHHS for the period October 1, 1993, to June 30, 1997. On October 20, 2000, the federal Administration for Children and Families accepted these recommendations.

MDHS has repaid \$3 million of this amount and is disputing the repayment of \$11.7 million the Inspector General says was based on ineligible or unallowable costs prepared for the state by IHHS. The Exhibit, page viii, details these exceptions by category, amount demanded, and status.

MDHS appealed the disallowances to the Departmental Appeals Board of the U.S. Department of Health and Human Services. The department is also seeking reconsideration by the Administration for Children and Families of the disallowances.

On February 8, 2000, the State Auditor's Office released a Single Audit Management Report that was an audit of several state programs receiving federal financial assistance for state Fiscal Year 1999. In the audit, which included the Title IV-E program, state auditors took exception to more than \$7 million in retroactive claims prepared by IHHS. State auditors also recommended that the department initiate internal controls that would ensure compliance with all state and federal laws, regulations, and grant requirements.

**Exhibit: Inspector General's Audit Exceptions Regarding Title IV-E Claims Made by Mississippi Department of Human Services for 1993-1997, by Category, Amount Demanded, and Status**

<b>CATEGORY OF EXPENSES</b>	<b>AMOUNT DEMANDED</b>	<b>AMOUNT REPAYED</b>	<b>AMOUNT IN DISPUTE</b>
<b>Administrative &amp; Training Costs</b>			
Unallowable costs	\$8,739,634		\$8,739,634
Undocumented administrative and training costs	476,476		476,476
Incorrect federal match rate claimed	219,000	\$219,000	
<b>Sub-total</b>	<b>\$9,435,110</b>	<b>\$219,000</b>	<b>\$9,216,110</b>
<b>Foster Care Maintenance Payments</b>			
Unallowable institutional payments	\$2,515,577		\$2,515,577
Undocumented maintenance payments	294,626	\$294,626	
<b>Sub-total</b>	<b>\$2,810,203</b>	<b>\$294,626</b>	<b>\$2,515,577</b>
<b>Other Administrative Costs</b>			
Unallowable consultant fee costs	\$2,534,699	\$2,534,699	
<b>Sub-total</b>	<b>\$2,534,699</b>	<b>\$2,534,699</b>	<b>-0-</b>
<b>Total</b>	<b>\$14,780,012</b>	<b>\$3,048,325</b>	<b>\$11,731,687</b>

## ***Contract Deficiencies***

MDHS's contract with IHHS did not protect the state's interest, which would have been best served by adherence to the elements of a model contracting system. Such a system, or a set of "best practices," involves at least seven steps, including:

- documentation of need;
- development of a formal request for proposals (RFP) or request for qualifications;
- notice of intent, or method of advertising its RFP;
- impartial evaluation of proposals received;
- development of a written contract;
- contract monitoring; and,
- contract evaluation.

Major deficiencies in MDHS's contract with IHHS included MDHS's failure to assess its need for the services. PEER questions the need for any state agency to contract for "revenue maximization" services, because this function should logically be performed by agency personnel who should have sufficient knowledge of the programs they administer to know what federal funds are available and how to obtain them.

MDHS also entered into the contract without issuing a request for proposals or competitively bidding for the contract. Therefore, the agency does not know whether it could have obtained the same services at a lower rate. Also, the contract did not include measurable performance standards of IHHS's work or indemnification for the state in the event of audit exceptions.

## **Recommendations**

1. The Mississippi Department of Human Services should ensure that its staff receives regular training in relevant federal laws and regulations in the programs that offer revenue maximization opportunities. Regardless of whether the department performs the task itself or uses an outside consultant, accurate and up-to-date knowledge of these programs is necessary for proper oversight of contract performance.



2. The Mississippi Department of Human Services should only consider use of outside revenue maximization consultants after careful determination of need and adherence to the remainder of the “best practices” associated with sound public contracting and procurement procedures.

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# The Department of Human Services' Use of Revenue Maximization Contracts

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## Introduction

### Authority

The PEER Committee reviewed the Mississippi Department of Human Services' (MDHS) use of an independent consultant to increase federal revenues. PEER conducted this review pursuant to the authority granted by MISS. CODE ANN. § 5-3-57 et seq. (1972).

### Scope and Purpose

PEER reviewed a contract by the state Department of Human Services with an independent consultant for "revenue maximization" and the results of a federal audit of the consultant's work. Revenue maximization, also known as "income augmentation," "revenue enhancement," or "income optimization," generally refers to the efforts of state and local governments to increase the amount of federal revenue they receive.

Specifically, PEER focused on determining the extent to which the state's interest was protected through MDHS's revenue maximization contract. PEER also reviewed similar proposals by other contractors submitted to both MDHS and the Division of Medicaid.

## Method

PEER reviewed and analyzed contracts between MDHS and the consultant, the Institutes of Health and Human Services, Inc. (IHHS), related documents, relevant federal statutes and regulations, as well as model public procurement practices. PEER also reviewed two unsolicited revenue maximization proposals submitted to MDHS between May and June 2000 and three proposals submitted to Medicaid in the same period. PEER also interviewed current and former state and federal officials within MDHS and the U. S. Department of Health and Human Services. PEER also interviewed officials in other states who have used or are using revenue maximization consultants.

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## Chapter I. Background: The MDHS/IHHS contract and other proposed contracts to increase federal revenues to the state

### Revenue Maximization Contract at MDHS

In 1991, MDHS entered into two contracts with the Institutes for Health and Human Services, Inc. (IHHS), a private consulting firm based in Saratoga Springs, New York. Both called for revenue maximization—one under the now defunct Job Training and Partnership Act and the other under Titles IV-A, IV-E, and XX of the Social Security Act.

In 1992, MDHS terminated the IHHS contracts. In August 1995, MDHS entered into a new contract with IHHS specifically to identify additional revenues the department could be claiming under Title IV-E of the Social Security Act. Title IV-E of the Social Security provides federal financial assistance to the state for foster care, adoption assistance payments, and some administrative costs.

The consultant's work focused on so-called "retroactive" claims, reviewing cases up to two years old. The consultant identified cases that fit eligibility guidelines for the federal foster care program and prepared claims for reimbursement. MDHS then submitted the IHHS-prepared claims for reimbursement to the Administration for Children and Families within the U. S. Department of Health and Human Services.

IHHS also assumed responsibility in 1998 for determining whether new MDHS clients were eligible for Title IV-E. This requires review of the cases of those children placed in the custody of MDHS who are then moved by the department into an "out-of-home" placement.

IHHS was paid on a contingency fee basis, which meant that payment was based on the amount of the increase in federal funds generated. As of November 14, 2000, the state has paid IHHS \$7,247,540.84 for revenue maximization efforts, plus \$983,533 for a new time-keeping system used by social workers.

The department's current contract with IHHS will expire December 31, 2000.

## Other Proposed Contracts for MDHS and Medicaid

Three other consultants--Maximus, Davis and Associates, and Health Management Associates--have proposed revenue maximization services for MDHS and the Division of Medicaid. Maximus of Arlington, VA, is the group that previously handled child support collections in Hinds and Warren counties. Davis and Associates of Washington, DC, and Atlanta, GA, is allied with Health Management Systems, Inc., based in New York. Health Management Associates is headquartered in Tallahassee, FL. Health Management Systems, Inc., is not associated with Health Management Associates, Inc., nor are the two organizations associated with IHHS.

MDHS officials stated the department was not planning to consider the proposals, one of which consisted solely of a visual presentation. Division of Medicaid officials stated that all the proposals that it has received are “under review.”

Both the Maximus and the Davis and Associates proposals are based on a contingency fee, which means the contractors receive a percentage of the funds generated as a result of their work. The greater the increase in federal funds through the Title IV-E program, the more money the contractors earn. This is in contrast to a fixed-fee contract, in which the consultant performs the service for a specific amount. Regardless of how much is generated by the contractor’s efforts, the fee remains the same. The Health Management Associates, Inc., plan is based on a fixed fee for service.

### Proposed Maximus Projects

Maximus, which made identical proposals to both MDHS and Medicaid, estimated that it could recover up to \$15 million a year in additional Medicaid funds for human services programs. The proposal stated that “remaining recovery opportunities” existed within:

- Medicaid targeted case management for child welfare and juvenile justice services (\$10 to \$15 million annually);
- additional Title IV-E child welfare revenue;
- Medicaid for school-based health services;

- mental health; and,
- Medicaid third-party liability.

No specific actions or further estimates of additional federal revenue to either agency are included in the Maximus proposal. The only written materials presented to MDHS officials were copies of slides of a computer presentation program from the June 29, 2000, meeting. The Maximus proposal is based on a contingency fee arrangement, which means the firm receives an unnamed percentage of the additional federal funds it recovers.

### **Proposed Davis and Associates/Health Management Systems Projects**

The written proposals by Davis and Associates state that its project would increase revenues at MDHS, the State Department of Education, and the state departments of Health, Mental Health, and Rehabilitation Services, as well as the Division of Medicaid.

Both the Maximus and Davis and Associates submissions are based on a contingency fee contract.

The Davis and Associates MDHS plan estimated a one-time retroactive recovery of \$25.5 to \$40.5 million. Davis and Associates also estimated that its plan would result in \$29.4 to \$49.4 million annual recovery in a proposal that calls for a retooling of the cost rate structures in numerous programs. The proposal calls for other changes in order to claim additional federal reimbursements under a variety of federal funding streams, including Title IV-E, Title IV-B (Child Welfare Services), federally funded aging programs, Social Services Block Grant programs, and the Temporary Assistance to Needy Families (TANF) program.

The Davis and Associates plan for Medicaid estimates it could recover \$11 million in new revenue each year and \$4 million in new child support collections. The child support collection funds could be collected through a computer program designed to track non-supporting absent parents. The proposal stated that the amount of annual recovery for several specific maximization projects at Medicaid is unknown until after completion of an in-depth feasibility study.

The Davis and Associates plan for Medicaid focuses on Title XXI [Children's Health Insurance Program], Title IV-B (Child Welfare services), Title IV-E, and the TANF programs. Like its MDHS proposal, the Davis and Associates Medicaid proposal estimated recovery of an unknown amount of additional revenues through departments of Health, Education, Mental Health,

Rehabilitation Services, and Corrections and the Division of Medicaid, as well as MDHS.

## Health Management Associates Proposal

Health Management Associates, Inc., submitted a \$98,715 proposal to put together “special financing arrangements” which “take advantage of the difference in the aggregate between current Medicaid payments to certain types of providers and the Medicare upper payment limit.” The proposal is based on the fact that “states have the option of paying providers up to a maximum of the amount that Medicare would pay for similar services.”

The proposal makes no firm estimates of potential revenues, but seeks to use these special financing arrangements in three areas:

- long-term care payments;
- outpatient payments; and,
- inpatient disproportionate share hospital payments.

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## Chapter II. What is the national experience with revenue maximization contracts?

At least three other states that have used revenue maximization contracts and outside consultants in the Title IV-E program have experienced serious audit exceptions by federal officials and have been forced to repay money. A fourth state, Wisconsin, has had a positive experience with a revenue maximization contract.

### Revenue Maximization Consultants in the Title IV-E Program

PEER's review of revenue maximization literature revealed two potential types of problems: (1) federal audit exceptions demanding repayment of significant sums of money from states and local governments; and, (2) policy issues. PEER's examination was to identify states that used revenue maximization consultants to increase federal funds through Title IV-E and then experienced audit exceptions. As discussed in greater detail below, the states identified faced combined repayment demands by the U.S. Department of Health and Human Services of nearly \$17.2 million.

Nationally, the troubling policy issue arising with use of revenue maximization practices for these types of services is that an agency may have a greater financial interest in removing a child from a home if the child is eligible for federal foster care funds. Conversely, in trying to take full advantage of available federal funds, some children might not receive needed services if they do not qualify for federal programs.

### Alabama's Experience with Revenue Maximization

***Alabama repaid the federal government \$2 million due to inappropriately prepared claims by an outside consultant.***

In Alabama, an outside consultant upgraded the cases of nearly 2,000 children in the Title IV-E program by reclassifying the status of the children. The reclassification by the Institute for Human Services Management, Inc. (IHSM), resulted in an overpayment of \$4.4 million. State auditors first detected the errors during a routine audit.



Alabama's Department of Human Resources ultimately repaid \$2 million in ineligible claims prepared by an outside consultant.

In 1995, an Inspector General's review showed that the inappropriate classifications continued. In sampling thirty case files, the Inspector General found that eleven were improperly categorized, based on records in the child's file. Four were improperly classed as eligible for IV-E, while seven who should have been declared eligible were not, resulting in underpayment.

Although the Inspector General noted that Alabama did not receive the correct amount of federal match, the review also stated that without a case-by-case review, it was impossible to quantify the amount the state would have received.

## Nebraska's Experience with Revenue Maximization

*Nebraska repaid \$259,081 in federal funds deemed ineligible as part of a revenue maximization consultant's contingency fee.*

In 1994, Nebraska contracted with Maximus to generate additional federal revenues for its health and human services programs. The consultant's fee was contingency fee based, or dependent on the amount of additional revenue Maximus raised. The consultant received twelve and one-half percent of additional revenue under a variety of federal programs, including Title IV-E. The state sought reimbursement of the contingency fee it paid Maximus.

In May 1998 the U.S. Department of Health and Human Services' Departmental Appeals Board concluded that contingency fee contracts were not an allowable administrative cost under federal regulations.

The Division of Cost Allocation within the U. S. Department of Health and Human Services disallowed \$259,081 in federal funds out of a total of \$535,193, a decision the Regional Director of the U. S. Department of Health and Human Services upheld. Nebraska appealed the disallowance to the Departmental Appeals Board, which in May 1998 concluded that contingency fee contracts were not an allowable administrative cost under federal regulations. The board reasoned that under federal regulations that require administrative costs to be "necessary and reasonable for proper and efficient administration of the grant programs," contingency contract fees were unallowable because the fee bore no relationship to the contractor's effort.

## Indiana's Experience with Revenue Maximization

*Indiana experienced total audit exceptions of \$14.9 million for erroneously paid claims over a two-year period.*

Indiana's Family and Social Services Administration repaid \$8.5 million in disallowed claims prepared by IHHS.

In 1990, the Indiana Family and Social Services Administration, Department of Families and Children, entered into a contract with IHHS to identify additional retroactive Title IV-E cases for reimbursement. A review that covered IHHS-prepared claims for the period 1991 to 1993 disallowed \$6.4 million in retroactive claims due to what the Inspector General "ineligible and duplicate claims."

The results of the first review prompted an audit by the Inspector General of retroactive claims for calendar year 1993. The audit recommended disallowance of \$8.5 million, which Indiana repaid.

## Wisconsin's Experience with Revenue Maximization

*Wisconsin has experienced \$100 million additional revenue due to the work of its contractor, Maximus.*

Maximus has generated nearly \$100 million for Wisconsin's human services agency, with no OIG findings or recommendations for disallowance.

The Department of Health and Family Services in Wisconsin has generated an additional \$100 million in retroactive claims for its human services programs as a result of an "income augmentation" contract with the private consulting firm Maximus. Wisconsin turned to the concept of revenue maximization in the mid-1990s to recoup some of the funding losses sustained as a result of welfare reform and conversion of the former Aid to Families with Dependent Children (AFDC) program to the Temporary Assistance to Needy Families program (TANF).

Furthermore, a 1998 audit of Wisconsin's Title IV-E program by the Office of Inspector General had no findings or recommendations for disallowance. Instead, the OIG found that the state could have claimed slightly more on its Title IV-E claims, a Wisconsin Department of Health and Family Services official said.

The Maximus proposal was selected from several respondents to a request for proposals. The Wisconsin/Maximus contract calls for a ten percent contingency fee for the company based on incremental increases in the state's Title IV-E reimbursements. The state paid this fee solely from state funds and did not seek federal reimbursement for these costs. The contract also contains a provision that makes the company liable for up

to ten percent of any disallowance against the state. Finally, the company agreed to provide legal assistance to the state in fighting any audit exceptions, should they occur.

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## Chapter III. What problems has MDHS had with the use of revenue maximization contracts?

The Office of Inspector General recommended a disallowance of approximately \$14.8 million in federal reimbursements for the period October 1, 1993, to June 30, 1997, resulting from MDHS's revenue maximization contract with IHHS. MDHS has repaid \$3 million and is disputing the repayment of approximately \$11.7 million in federal funds the Inspector General says was based on ineligible or unallowable costs prepared for the state by IHHS.

In addition, the State Auditor questioned \$7,047,645 in FY 1999 foster care reimbursement requests prepared by IHHS and submitted by DHS to the federal Administration for Children and Families.

### Office of Inspector General Audit Exceptions

The disallowance represents 93% of the increase in federal funding Mississippi experienced based on the work of IHHS.

In October 1998, the Office of Inspector General, Office of Audit Services, initiated an audit of Mississippi's Title IV-E program for the period October 1, 1993, to June 30, 1997.

In its final report issued August 10, 2000, the Office of Inspector General, Office of Audit Services, recommended a total disallowance of \$14,780,012 in federal reimbursements to the state over a four-year period. This amount constitutes ninety-three percent of the \$15,938,647 increase in federal funding based on the work of IHHS for that four-year period.

The OIG recommended the state "make adjustments" or repayments of approximately \$14.8 million, as shown in the Exhibit on page 12. MDHS has repaid \$3 million and is disputing repayment of the remaining \$11.7 million.

**Exhibit: Inspector General's Audit Exceptions Regarding Title IV-E Claims Made by Mississippi Department of Human Services for 1993-1997, by Category, Amount Demanded, and Status**

CATEGORY OF EXPENSES	AMOUNT DEMANDED	AMOUNT REPAID	AMOUNT IN DISPUTE
<b>Administrative &amp; Training Costs</b>			
Unallowable costs	\$8,739,634		\$8,739,634
Undocumented administrative and training costs	\$476,476		\$476,476
Incorrect federal match rate claimed	\$219,000	\$219,000	
<b>Subtotal</b>	<b>\$9,435,110</b>	<b>\$219,000</b>	<b>\$9,216,110</b>
<b>Foster Care Maintenance Payments</b>			
Unallowable institutional payments	\$2,515,577		\$2,515,577
Undocumented maintenance payments	\$294,626	\$294,626	
<b>Subtotal</b>	<b>\$2,810,203</b>	<b>\$294,626</b>	<b>\$2,515,577</b>
<b>Other Administrative Costs</b>			
Unallowable consultant fee costs	\$2,534,699	\$2,534,699	
<b>Subtotal</b>	<b>\$2,534,699</b>	<b>\$2,534,699</b>	<b>-0-</b>
<b>Total</b>	<b>\$14,780,012</b>	<b>\$3,048,325</b>	<b>\$11,731,687</b>

**SOURCE:** Office of Inspector General, Office of Audit Services, U.S. Department of Health and Human Services, *Review of Mississippi's Retroactive Claim for Foster Care Administrative and Training Costs and Maintenance Payments*, Report No. A-04-98-00126.

**Administrative and Training Exceptions: \$9.4 million**

Federal regulations allow states to claim reimbursement for administrative expenses deemed necessary and proper for efficient operation of the foster care program. The OIG audit recommended disallowance of administrative and training costs in three categories:

- (1) \$8,739,634 for administrative costs that the Inspector General alleged included unallowable services, such as arranging for physician examinations;
- (2) \$476,476 for what OIG said were undocumented administrative and training costs; and,

- (3) \$219,000 because the state applied for reimbursement at an incorrect matching rate of about seventy-five percent, versus the correct rate of fifty percent. MDHS repaid the \$219,000 when the Inspector General brought the error to the department's attention, which was while the audit was still underway. The department repaid the money by way of a "negative adjustment" or a reduction in the quarterly amount due the department from the Administration for Children and Families.

According to the Inspector General, MDHS lacked sufficient internal controls to ensure that submitted claims met all applicable Title IV-E requirements and the department failed to monitor its consultant's preparation of retroactive claims.

The Inspector General stated that the problems occurred because MDHS lacked sufficient internal controls to ensure that the submitted claims met all applicable Title IV-E requirements. Furthermore, the Inspector General said MDHS failed to monitor the activities of its consultants and sub-contractors in preparation of the retroactive claims.

The largest amount recommended for disallowance in this category, \$8,739,634, concerns how social workers' time and services were charged to the foster care program. The Inspector General found the state's claims included services specifically excluded from reimbursement under federal regulations, such as counseling or investigations.

### Foster Care Maintenance Payments Exceptions: \$2.8 million

The Inspector General found that MDHS did not properly calculate costs of foster care, included claims for excluded services, and lacked supporting documentation for some foster care maintenance payments.

The state pays for the care of foster children in both an institutional and emergency shelter setting. These costs can be eligible for reimbursement under Title IV-E, so long as the cost of care is computed according to federal regulations. The audit contends that MDHS failed to calculate this cost properly because the department failed to approve the providers' rates before submitting its claim for reimbursement.

In addition, the Inspector General found that the state included claims for excluded services by some institutions and incorrectly computed some of the rates paid to others. Also, the Inspector General stated that the department lacked supporting documentation for \$294,626 in foster care maintenance payments, or payments to foster home board parents for care of foster children.

The Inspector General again asserts the overclaim occurred because MDHS did not supervise the work of its consultants and did not ensure accurate preparation of the retroactive claims by its consultants. The Inspector General recommended that the state repay Title IV-E \$2,515,577 for the ineligible institutional payments. MDHS repaid \$294,626 for what the Inspector General

contended were undocumented maintenance payments as soon as the Inspector General notified the department of the error, which was prior to release of its audit report. The department absorbed the repayment by taking a reduction in its quarterly grant award from the Administration for Children and Families.

### **Administrative Payments (Contingency Fee Payments Not Allowed under Federal Regulations): \$2.5 million**

The Inspector General disallowed \$2,534,699 in claims based on IHHS's contingency fee.

Title IV-E allows reimbursement to states for administrative costs that are necessary for the "proper and efficient" operation of the program. Under an Office of Management and Budget (OMB) regulation known as Circular A-87, however, contingent fees do not constitute a "reasonable" cost associated with administration of a state Title IV-E program. Based on OMB Circular A-87, the Inspector General recommended disallowance of \$2,534,699 in claims based on the fee of IHHS.

When the contract was initially executed in August 1995, Circular A-87 lacked any strict prohibition against the use of contingent fees in such contracts. In September 1995, however, new regulations took effect that did specifically bar the use of contingent fee contracts in figuring a state's allowable costs. MDHS officials contended they were unaware that contingent fee costs were excluded from calculation for eligible reimbursement expenses. The state is not challenging this recommendation by the Inspector General and repaid the disallowed amount before the OIG issued its report. As with the earlier disallowances, the department repaid the money by decreasing the quarterly amount to which it was entitled under Title IV-E.

### **Documentation to Support IHHS Invoices to MDHS is Lacking**

PEER could not verify the accuracy of IHHS billings to the state from the documentation provided for review.

During the course of its review, PEER examined IHHS billing invoices, along with federal government financial grant documents, or "Notice of Grant Award" documents. PEER was unable to verify the accuracy of IHHS billings to the state from the documentation provided for review. In at least six instances, the Notice of Grant Award, upon which the IHHS contingency fee is based, was not provided. Department personnel stated that the notices were sent to different entities within the department, which rendered record-keeping difficult. In other

instances, PEER could not verify the amounts charged by IHHS with the available grant award notices.

## Mississippi's Options Regarding These Audit Exceptions

On October, 20, 2000, the U. S. Administration for Children and Families accepted the Inspector General's audit findings and requested that the state repay the \$11,731,687 now outstanding, as shown in the Exhibit on page 12. The state has already repaid \$3,048,325.

On November 22, MDHS appealed the decision to the Departmental Appeals Board of the U.S. Health and Human Services Department, while seeking a reconsideration of the original decision with Administration for Children and Families.

## State Department of Audit Single Audit Management Report

***In an audit of selected MDHS federal programs for FY 1999, the state Department of Audit questioned more than \$7 million in reimbursement requests prepared by IHHS. The State Auditor considered this finding a material weakness and noncompliance.***

State auditors considered the \$7,047,645 charged to the foster care Title IV-E program during FY 1999 as prior period adjustments for federal reimbursement purposes to be questioned costs.

Under the Single Audit Amendments of 1996, the federal government requires an audit of state programs receiving federal funds to ensure compliance with all applicable laws and regulations. On February 8, 2000, the State Auditor issued a Single Audit Management Report on its audit of selected federal programs of the Mississippi Department of Human Services for the year ended June 30, 1999. One of the selected federal programs audited by the Department of Audit was MDHS's foster care Title IV-E program. Due to inadequate documentation, the auditors concluded that they could not determine whether reimbursement requests prepared by IHHS were for foster care expenditures incurred with the federal two-year time limit for requesting such reimbursements. (Original foster care rosters that MDHS used to report the amounts of foster care payments were destroyed by an IHHS project director.) In addition, due to the creation of a new time study to reallocate payroll costs associated with county social workers, the auditors could not determine whether such costs had been included on previous reimbursement requests. Due to this lack of documentation, state auditors considered the \$7,047,645 charged to the foster care Title IV-E program during FY 1999 as prior period



adjustments for federal reimbursement purposes to be questioned costs. (The federal portion of the questioned costs was \$3,606,645, with the remaining amount, \$3,441,000, being state funds.) The State Auditor's Office recommended that the department implement procedures to ensure compliance with the period of availability requirement for the foster care Title IV-E program. In addition, the State Auditor recommended that the department implement procedures to ensure that all source documentation is adequately safeguarded and available for audit review. Finally, the State Auditor recommended that the department contact the federal grantor for resolution of the questioned costs.

The State Auditor's report also noted the following reportable conditions:

- State auditors found that the department did not obtain federal approval of amendments to the cost allocation plan before implementing changes in the way expenses were charged to the Title IV-E program, among other federal programs.
- A sample of forty cash draws in several federal programs, including the Title IV-E program, revealed a lack of supporting documentation for the requests, as well as an absence of written policies and procedures for requesting federal funds.
- A sample of twenty-three foster care licensing files showed seven did not meet federal and state regulations that require detailed records. State auditors noted that such a failure could result in foster children being placed in facilities that do not comply with eligibility standards.
- A test of forty foster care children files reviewed showed that ten (or twenty-five percent) did not have complete or accurate required information. The State Auditor noted that such a lapse could result in payment of an incorrect rate to a foster care home parent or facility or inclusion of children who are not eligible for Title IV-E services. The federal Office of Inspector General noted a similar problem in its audit discussed earlier.
- MDHS did not follow a competitive procurement process in the award of Fiscal Year 1999 purchase of service contracts for the foster care program.

Finally, among other audit findings, state auditors found the state did not operate its Title IV-E program under an approved state plan for the 1999 fiscal year.

The State Auditor's office recommended development and implementation of policies and procedures--or the strengthening of existing measures--to ensure adequate internal controls to comply with federal and state laws and regulations.

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## Chapter IV. Did the MDHS/IHHS contract adequately protect the state's interests?

**MDHS's contract with IHHS did not protect the state's interest, which would have been best served by adherence to the elements of a model contracting system.**

Major deficiencies in MDHS's contract with IHHS include the department's failure to assess its need for the services and competitively bid the proposal. Also, the agreement did not provide for indemnification for the state in the event of audit exceptions.

PEER reviewed federal laws and regulations and other legal materials to define the components of an effective, efficient, and fair contracting process. These elements should protect the state when it contracts for outside services.

These components comprise a system that first examines the need for such services, including whether the services can better be provided in-house or via contract; provides for competitive and fair bid solicitation and selection; and includes an effective contract monitoring provision. Such a process, or a set of "best practices," involves at least seven steps, including:

- documentation of need;
- development of a formal request for proposals (RFP) or request for qualifications;
- notice of intent, or method of advertising its RFP;
- impartial evaluation of proposals received;
- development of a written contract;
- contract monitoring; and,
- contract evaluation.

Major deficiencies in MDHS's contract with IHHS, which are discussed in greater depth in the following sections, include the department's failure to assess its need for the services and competitively bid the proposal. Also, the agreement did not provide for indemnification for the state in the event of audit exceptions.

## Element No. 1: Documentation of Need

***MDHS did not conduct a needs assessment prior to entering into its contract with IHHS. In fact, the contract came about as a result of IHHS's making an unsolicited proposal to MDHS.***

The first step in contracting for services is to determine whether it is more cost-effective to contract for the services or to provide the services in-house. A needs assessment should be a formal process which includes written documentation of the following:

- specific details on the consultant services to be provided;
- intended benefits to the contracting entity;
- reason why the entity cannot perform the service itself or cannot perform the service at a lower cost than the consultant;
- detriments that would result if the consultant services were not rendered;
- urgency of the service; and,
- justification for any claims of a sole source consultant.

The first step in contracting for services is to determine whether it is more cost-effective to contract for the services or to provide the services in-house.

Logically, the “service” of maximizing federal funding to a program would be performed most efficiently and effectively in-house. State program personnel should have sufficient knowledge of the programs that they administer to know what federal funds are available and what steps should be taken to obtain the funds. It is not cost-effective to pay a consultant a percentage of the federal funds due to an agency for work that agency staff should be performing as part of their routine job duties. Further, if agency staff members do not have the level of basic program knowledge necessary to identify available federal funds, the staff cannot effectively oversee the work of a consultant in this area and the agency thereby runs the risk of incurring significant audit exceptions. Therefore, PEER questions the need for any agency to contract for “revenue maximization” services. However, if an agency is able to demonstrate formally that such a revenue maximization contract would be cost-effective, the agency should procure these services using the elements of sound contracting discussed in this chapter.

State Department of Human Services officials maintain that while they had trained staff who understood the programs, they lacked enough personnel to take full advantage of all available federal funding opportunities.

## Element No. 2: Development of a Request for Proposals

*MDHS entered into the contract with IHHS without issuing a request for proposals; therefore, the agency does not know whether it could have obtained better services at a lower rate from a different service provider.*

The underlying assumption behind competitively selecting consultants by way of an RFP process is that the agency may obtain a lower price for a specified service by soliciting from a broad range of sellers. Requests for proposals should include:

- instructions and information to bidders concerning delivery of bids;
- details concerning the proposed goods/services to be provided;
- cost information;
- general information about the individual or firm, including experience with similar services;
- delivery and performance schedules;
- contract terms and conditions; and,
- specific factors by which the proposals will be evaluated.

The underlying assumption behind competitively selecting consultants by way of an RFP process is that the agency may obtain a lower price for a specified service by soliciting from a broad range of sellers.

Inclusion of these elements allows bidders to interpret agency needs in the same way and make their best offer in response to these needs.

The rationale for competitive selection of consultants through a formal request for proposal process applies to contract renewals as well as new contracts. Contract extensions should not exceed two years, as the advantages of competitive bidding are lost when a contract is repeatedly renewed with the same contractor over long periods. Regardless of whether a public body uses competitive bidding, it should prepare and issue written invitations to bid, including evaluation criteria and other terms that the public body must include in the contract.

### Element No. 3 : Notice of Intent

***Because MDHS did not competitively bid its revenue maximization contract, it did not issue a notice of intent or receive competing proposals to evaluate.***

The agency's notice of intent to hire consultants should be distributed in a manner to inform the widest range of qualified service providers. Whether the information is distributed by mail, newspaper, or electronically, the hiring agency should ensure that the recipient list includes a full spectrum of potential service providers.

### Element No. 4 : Evaluation of Proposals

***Since MDHS did not competitively bid its revenue maximization contract, there was no unbiased evaluation of submitted offers.***

The contracting agency should establish a staff review committee to examine and evaluate each proposal received. The committee should establish written criteria by which to evaluate and review each proposal in an effort to recommend the one that would be in the best interest of the state and the bidding entity.

### Element No. 5 : Development of a Written Contract

***The MDHS/IHHS contract did not include such basic protections for the state as an indemnity clause, although it provided for legal representation assistance and some contribution in case of audit disallowance. Inclusion of such provisions would have provided additional protection for the state in the event of audit exceptions.***

A written contract for services should contain basic elements designed to protect the purchaser of the services.

Business principles dictate that an agreement to compensate an individual for services rendered or goods produced should be detailed in a written contractual document enforceable in a court of law. The document should specify in detail the duties and responsibilities of both parties and expected final results of the agreement. The written contract for services should contain the following basic elements designed to protect the buyer of these services:

- definition of common terms within the contract, including specific duties and responsibilities, what constitutes non-performance, breach, and default;
- indemnity or “make whole” provisions, which provide for financial reimbursement of the purchaser in case of negligence or non-performance of the contract. In some cases, a bond may secure indemnity for the state; and,
- a basic contract monitoring mechanism, including measurable performance standards and provision for supervision and oversight to ensure adequate performance.

The written contract between MDHS and IHHS did not:

- clearly define basic contractual terms, such as default;
- include measurable performance standards within the contract;
- include standard indemnification provisions for protecting the state’s interests; or,
- require the contractor to pay the full costs of legal defense, as well as any payment and penalties or damages arising out of the contractor’s performance under the agreement.

Further, use of a contingency fee does not encourage careful attention to documentation and other requirements, particularly when the provider bears no responsibility for potential problems.

***The MDHS/IHHS contract did require some contribution and provided for legal representation.***

In an appendix to the original contract, IHHS agreed to share “proportionately” in audit exceptions “related directly to IHHS work, payable 90 days after MDHS incurs disallowance or 90 days after MDHS pays the disallowance.” What constitutes “proportionately,” however, is not defined in the contract.

IHHS also agreed in the contract to “provide whatever legal services are necessary in order to respond to any ‘negative incentives’ that are imposed by DHHS [U.S. Department of Health and Human Services] with regard to MDHS’s Title IV-E funding, and address any other legal issues that arise with regard to the agency’s Title IV-E claims.” IHHS has

provided some information to assist the department in responding to the audit exceptions.

## Element No. 6: Contract Monitoring

***MDHS's contract with IHHS lacked contractual definitions of or standards of performance, and the agency did not systematically monitor the contractor's performance.***

The contracting agency should periodically compare progress of the consultant to the measurable criteria of performance contained in the written contract.

## Element No. 7: Contract Evaluation

***Because MDHS has continued to renew the IHHS contract, the agency has not conducted a post-contract review of the contractor's performance.***

Post-contract evaluation is a means of determining how well a contractor performed assigned tasks. The evaluation should focus on the utility of the deliverables to the agency and the performance of the contractor. Such evaluations help the agency to determine whether similar contracts should be sought in the future.



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## Chapter V. Recommendations

1. The Mississippi Department of Human Services should ensure that its staff receives regular training in relevant federal laws and regulations in the programs that offer revenue maximization opportunities. Regardless of whether the department performs the task itself or uses an outside consultant, accurate and up-to-date knowledge of these programs is necessary for proper oversight of contract performance.
2. The Mississippi Department of Human Services should only consider use of outside revenue maximization consultants after careful determination of need and adherence to the remainder of the “best practices” associated with sound public contracting and procurement procedures.

# Agency Response



STATE OF MISSISSIPPI  
DAVID RONALD MUSGROVE, GOVERNOR  
DEPARTMENT OF HUMAN SERVICES  
BETTYE WARD FLETCHER  
EXECUTIVE DIRECTOR

November 29, 2000

Max K. Arinder, PhD  
Executive Director  
PEER Committee  
222 North President Street  
Jackson, MS 39201

Re: PEER Report on "The Department of Human Services' Use of Revenue Maximization Contracts"

Dear Dr. Arinder:

We have reviewed drafts of the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) report on "The Department of Human Services' Use of Revenue Maximization Contracts." The following is the Mississippi Department of Human Services (MDHS) response to the November 27, 2000, draft report.

**Audit Exceptions**  
**(Office of the Inspector General)**

The Office of the Inspector General, Office of Audit Services (OIG), reviewed federal reimbursements resulting from retroactive claims filed by MDHS for the period of October 1, 1993 to June 30, 1997. These retroactive claims represented administrative costs and maintenance payments for children who were eligible for the Title IV-E Foster Care program.

It is the opinion of the OIG and the determination of the Administration for Children and Families (ACF) that MDHS submitted \$14,780,012 in claims for unallowable costs. We concurred with certain cost determinations and repaid \$3,048,325 to the ACF, when these items were brought to our attention. We do not concur with the OIG opinion or the ACF determination that \$11,731,687 in retroactive claims were for unallowable costs. On November 22, 2000, we began the process of appealing the ACF determination with the Departmental Appeals Board in Washington, D.C. MDHS offers the following reasons for considering our claims allowable.

**(1) \$8,739,634 for “Unallowable Services”**

This element of the recommended disallowance relates to the retroactive claims submitted using the Social Services Time Study (SSTS). The SSTS was the time management system that **had been approved by the Division of Cost Allocation (DCA) and the Administration for Children and Families (ACF)**. A new time study, the Random Moment Time Study (RMTS), was approved by DCA and ACF to be effective beginning July 1, 1997. The audit report at page 5 states the SSTS was “...the appropriate time study...” and that, in compiling its claim, the State appropriately used the SSTS rather than the RMTS.

Based upon the collective experience of our program staff and outside consultants – i.e., The Institutes for Health & Human Services, Inc. (IHHS) and KPMG/Peat Marwick, LLP – various codes and activities that were included in the SSTS process were analyzed. To avoid any possibility of overclaiming, we did not include all of the codes and activities that were related to the Title IV-E program. We developed a matrix that showed specific codes and activities that were related to the Title IV-E program and determined the *actual value* (i.e., the total minutes for the applicable time study period) and the *discounted value* (i.e., the *actual values* less 10%-20%) for those codes and activities.<sup>1</sup>

**Summary:**

- According to the audit report, MDHS used “...the appropriate time study in preparing its claim.” However, the OIG did not agree with our method of applying this time study in preparing the retroactive claims. MDHS does not concur with the OIG opinion and we are appealing this matter.
- Only original time reporting documents were used in preparing the claims. The process of discounting the results of the SSTS was a conservative approach to preparing the claims.
- MDHS is prepared to demonstrate the basis for the discounted values reasonably relates to the amounts claimed.

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<sup>1</sup>It is important to note the actual results of the SSTS process – as generated by the actual responses of the Social Workers who filled out the SSTS forms (original time reports) – were used to develop all of the adjustments that were included in the Title IV-E claims for the period in question. The fact that MDHS chose to discount the results of the SSTS in order to eliminate any possible unallowable costs should be viewed as a good faith effort on the part of MDHS to avoid any possibility that we might claim Title IV-E funds to which we were not entitled.

**(2) \$476,476 for “Undocumented Administrative and Training Costs”**

The audit report states these undocumented costs represent the difference between the total dollars we claimed for administrative and training costs and the amount we could support through documentation provided for OIG review. In order to adequately respond to this finding, we need more information. We asked for more information from the OIG in a letter dated May 22, 2000, but we were told in a letter dated June 21, 2000, that there was no case specific information related to this disallowance. There may be differences between the information the OIG has documented in its working papers and the information we have on file.

Summary:

- We were not given enough information by the OIG to respond to this finding. MDHS does not concur with this finding and we are appealing this matter.

**(3) \$219,000 for “Incorrect FFP Rate”**

This element relates to a *negative adjustment* MDHS made to one of its quarterly federal reports to account for a refund we received from a vendor for computer equipment. MDHS incorrectly used a 50 percent federal financial participation (FFP) rate instead of the appropriate 75 percent FFP rate in developing that *negative adjustment*. This understated the amount that was to be refunded to the federal government by \$219,000. MDHS voluntarily reported an additional \$219,000 *negative adjustment* on the January - March, 1999 quarterly expenditure report. This matter was completely resolved before audit field work ended.

Summary:

- MDHS made an inadvertent error when reimbursing the federal government for a refund we received from a vendor for computer equipment.
- When the error was discovered, MDHS immediately made a *negative adjustment* of \$219,000 to a subsequent quarterly expenditure report.
- This entire matter was resolved almost a year before the issuance of the audit report.

**(4) \$2,515,577 for “Unallowable Institutional Payments”**

This disallowance is related to claims submitted for payments to Residential Treatment Facilities and Emergency Shelters. **MDHS only included claims for institutional payments for children who were Title IV-E eligible.**

Institutions were paid daily rates based on negotiated contracts. In order to determine the portion of the daily rates paid to each institution that could be properly charged to the Title IV-E program, MDHS requested detailed cost information from the institutions. MDHS then analyzed that information and identified allowable Title IV-E costs. MDHS, **not the institutions**, identified the allowable Title IV-E portion of their rates. Based on MDHS experience, these rates were considerably less than the actual cost of providing care for “special needs” children and were considerably less than the institutions charged to care for these children, who were Title IV-E eligible.

MDHS used some rates that were established for 1998 to help determine some of the institutions’ Title IV-E rates for prior periods, because this was the only accurate information available. This is a reasonable approximation of the prior year costs, since the institutions costs did not significantly fluctuate during that time period. We do not agree with the OIG and ACF interpretation that OMB Circular A-87 and/or ASMB C-10 apply(ies) to institutions’ rates. The audit report states “that the results of an acceptable time or effort reporting covering one period of time cannot be applied to a different period.” We do not agree with the OIG and ACF interpretation that this same principle applies to the institutions’ rates.

Summary:

- We only included institutional payments for claims for children who were Title IV-E eligible.
- MDHS, not the institutions, identified the allowable Title IV-E portions of the institutions rates.
- We do not agree with the OIG and ACF interpretation of the application of OMB Circular A-87 and ASMB C-10 to institutional rates.
- The disallowance of all claims for payments to institutions that cared for allowable children is unjustifiable and excessive. Therefore, MDHS does not concur with this finding and we are appealing this matter.

**(5) \$294,626 for “Undocumented Maintenance Payments”**

MDHS made a *negative adjustment* for the entire \$294,626 to the April - June, 1999 quarterly expenditure report in order to correct any potential overclaiming. Thus, to the extent this problem may have resulted in inappropriate Title IV-E claims, it had already been corrected almost one year before the audit report was issued.

Summary:

- MDHS made a correcting adjustment to a quarterly expenditure report one year prior to the issuance of the audit report.

**(6) \$2,534,699 for “Unallowable Consultant Fees”**

MDHS submitted \$2,534,699 in unallowable claims for fees paid to the Institute for Health and Human Services (IHHS) during the audit period. These unallowable costs were corrected by recording a *negative adjustment* to the July - September, 1999 quarterly expenditure report. When MDHS entered the contract with IHHS in August 1995, we were not aware contingency fee arrangements did not meet the Office of Management and Budget (OMB) Circular A-87 reimbursement requirements. Decision No. 1660, dated May 26, 1998, by the Departmental Appeals Board and a revision to OMB Circular A-87, dated August 29, 1997, clarified this issue.

Summary

- MDHS incorrectly claimed \$2,534,699 in federal funds for consultant fees.
- When this error was noted, MDHS made a *negative adjustment* to a subsequent quarterly expenditure report.

**Audit Exceptions  
(Office of the State Auditor)**

The Office of the State Auditor (OSA) routinely audits federal programs at the Mississippi Department of Human Services in order to comply with the federal Single Audit Act Amendments of 1996. The Foster Care program was one of eight federal programs audited by the OSA for fiscal year 1999.

The audit findings listed below were noted in the OSA Single Audit Report for the fiscal year ended June 30, 1999. **These findings were not related to the Mississippi Department of Human Services revenue maximization contract.**

- **Changes to the Cost Allocation Plan Should Be Carefully Monitored**

During fiscal year 2000, we made a concerted effort to address this finding. We have submitted amendments to the Department of Health and Human Services - Division of Cost Allocation (DCA), along with additional information and changes, as requested. On April 19, 2000, our staff met in Atlanta with representatives from the Department of Health and Human Services - Administration for Children and Families (ACF) and representatives from DCA for the purpose of resolving concerns related to the amendment. We are currently negotiating with DCA and ACF.

- **Controls Over Cash Management Should Be Strengthened**

We have implemented additional control procedures related to cash management. These procedures include performing detailed supervisory reviews of cash requests and making notes on our worksheets to explain why amounts requested differed from amounts calculated. In addition to procedures documented in the MARS Policy and Procedures Manual, we have written our step-by-step procedures for requesting federal funds.

- **Controls Over Licensing Foster Care Homes and Facilities Should Be Strengthened**

Controls have been strengthened to ensure existing policies are followed. Licensure staff currently receive a report indicating the license period for facilities. Staff review the report on a monthly basis and send notices two months prior to the license expiration. Case records are controlled by assigning one person responsibility for the files. Re-evaluation procedures now require Form 450 to be completed in its entirety.

- **Competitive Procurement Practices Should Be Followed**

The contracts cited in this finding related to residential facilities. These facilities offer specialized care for special needs children. MDHS requested a waiver from the competitive bid process for these contracts. We received approval of this waiver from the Personnel Service Contract Review Board.

In addition to the Single Audit findings, the following audit finding was included in the management letter to MDHS dated February 8, 2000. **This finding also does not relate to the Mississippi Department of Human Services revenue maximization contract.**

- **All Documents Needed for Approval of the Foster Care Program State Plan Should Be Submitted Promptly**

The 1999 Title IV-E State Plan was given a conditional approval, because there were policies referenced in the plan that were not effective at the submission date. MDHS was not operating without an approved plan. The policies that were not effective at the time of submission were not given federal approval.

Two of the audit findings cited in the OSA Single Audit report are related to the MDHS revenue maximization contract:

- **Controls to Ensure Compliance with the Period of Availability Requirement Should Be Implemented**

Procedures have been implemented to ensure compliance with the period of availability requirements for the Foster Care Title IV-E program. Through a collaborative effort between program and administrative staff, we have established controls to monitor the activities of our third-party contractor. These controls include obtaining and reviewing supporting documentation for adjustments made to federal financial reports. All adjustments and supporting documents are now filed in a systematic manner and are readily available for audit review. This support was reviewed by the OIG during their audit of our retroactive claims.

- **Eligibility Review Procedures for the Foster Care Program Should be Strengthened**

In each of the ten instances noted, the children were eligible for the Foster Care program. Since receiving the OSA management letter, we have developed an Eligibility Determination Quality Assurance Checklist to ensure eligibility determinations are complete and documented. This checklist is now being used to strengthen our review procedures and to ensure appropriate documentation are in case files.



## **Contract Deficiencies**

As a public entity charged with the responsibility of delivering a broad range of services to the citizens of this State, we are also mindful of the need to be good stewards of the State's resources. We continually seek to fulfil our mission efficiently and effectively. While we may not have followed each of the steps of "best practices" outlined in the PEER report, the department did follow fundamental business practices concerning this contract.

### **Basic Contractual Terms**

The Agreement did contain basic contractual terms used by the Mississippi Department of Human Services and later, used by the Personal Service Contract Review Board (PSCRB), including provisions regarding the ownership of documents and other materials, confidentiality, assignments, termination for cause, governing (applicable) laws, the right to audit, record retention, compliance with laws (the Warranties Section), indemnification (civil action, inappropriate payments, and legal services provisions), and availability of funds. The termination for cause section is a default condition which ties default to the contractor's failure to comply with, or breach of, its obligations under the Agreement. The language of the termination for cause provides for default in the same manner as the language recommended by PSCRB regulations. Once the Agreement came under the purview of PSCRB, it included all of the mandatory provisions required by PSCRB -- applicable law, availability of funds, representation regarding contingent fees, representation regarding gratuities as prescribed by PSCRB regulations, procurement regulations (subjecting the Agreement to the PSCRB regulation), stop work order, and compliance with laws. While the original Agreement could not subject the contractor to PSCRB regulations (since PSCRB was not in existence), the Agreement did address suspension of services and conflict of interest and code of conduct in the procurement and administration of the contracts (see Standard Assurances set forth in the MDHS Subgrantee/Contract Manual and the Code of Federal Regulations and OMB Circulars cited in the Manual).

### **Adherence to Federal Regulations**

MDHS and the contractor agreed to refer to applicable statutes of Mississippi and all policies, rules and regulations of MDHS. Even with the provision as written, the contractor was still required to adhere to all applicable laws and regulations of the federal funding source by:

MDHS' Subgrantee/Contract Manual, 1992 and revised 1996, was made applicable to all MDHS contractual arrangements with various entities involving the use of funds provided by MDHS. The Manual made contractual arrangements subject to all regulations, policies, guidelines and requirements imposed by the federal sponsoring agency, including OMB Circulars.

The Technical Approach and WorkPlan, incorporated in the Agreement under Section 2, states that the contractor would ensure that all applicable matching requirements are identified and properly satisfied and would ensure that the Title IV-E Program (the program for which revenue maximization was actually undertaken) was in full compliance with all requirements of the federal funding source, the United States Department of Health and Human Services (DHHS).

#### **Internal and External Oversight/Monitoring**

The Agreement provided MDHS with the authority to conduct any oversight or review of the contractor's performance that MDHS deemed necessary. This authority was provided through the "Right to Audit" provisions, Section 10 of the Agreement, and was further delineated in the Audit Section of the Subgrantee/Contract Manual.

#### **Standard Indemnification Provisions**

The Civil Action and Inappropriate Payment provisions of the Agreement covered standard indemnification language and required the contractor to pay for damages and losses sustained by MDHS. However, with or without the clauses, MDHS would still be authorized to pursue action against the contractor for its damages sustained as a result of the contractor's action. The Technical Approach & WorkPlan imposed an additional requirement upon the contractor, i.e., the contractor was to provide whatever legal services are necessary to respond to any negative incentives imposed by DHHS and to address any other legal issues regarding the Title IV-E claims.

#### **Contributions and Legal Representation**

While "proportionately" was not defined in the Agreement, words and phrases are used according to their common and ordinary meaning. Webster's Dictionary defines proportion as "the relation of one part to another or to the whole with respect

to magnitude, quantity, or degree, . . . proper or equal share.” What is proportionate would be determined based upon the facts of the case, i.e., the portion of the disallowance attributable to the contractor's action as compared to the portion attributable to MDHS' action. Basic contract provisions only require the contractor to be responsible for damages caused by the acts, negligence, or omissions of the contractor and/or its officers, employees, and agents. This necessarily requires a determination as to what part of the damages are attributable to the parties to the contract, whether the word “proportionately” was or was not used. Under MDHS’ policies, the determination would be formed upon the mutual agreement of the parties. If the parties could not agree, then it would become the subject of a dispute and resolved pursuant to MDHS Administrative Policy 18. Under the contract, the contractor's proportionate share would include amounts paid to it for revenue maximization funds that are the subject of the audit exception.

### **National Experience**

The PEER report contains a section on the national experience with revenue maximization contracts. This section states PEER made a review of literature that indicates children may not receive needed services, if they do not qualify for federal programs. MDHS was not given the opportunity to examine this literature or to review its source or context.

It is the policy and practice of the Mississippi Department of Human Services to provide services in a professional, accurate and compassionate manner. These services are provided to children based on an evaluation of their needs and the needs of their families. In addition, Section 43-15-3, Miss. Code Ann. (1972) requires us to provide these services to **all** children in our custody.

While national policy issues may indicate otherwise, the Mississippi Department of Human Services does not remove a child from his or her home unless it is in the best interest of that child, normally by court order. Eligibility for federal foster care funds is not considered as a part of this process. Our first and foremost concern is, and always has been, for the safety and well-being of our children.

### **Recommendations**

The Mississippi Department of Human Services agrees staff training is essential to effectively manage any service program. For this reason, structured training programs to help our employees provide professional and accurate services have been in place since 1994.

Max K. Arinder, PhD  
November 29, 2000  
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Our Division of Families and Children's Services Training Unit conducts a four week intensive training session with all new social workers. This training specifically addresses eligibility determination requirements, detailed directions on procedures for completing eligibility determination forms and explanations of federal regulations. County office staff were also trained annually by our independent consultant on the eligibility process and changes in federal and state regulations.

We also emphasize the importance of all staff being informed of current changes in policies and laws. County and state office staff are provided copies of all Action Transmittals (policy changes) received from the federal funding agency. This information is disseminated quickly and systematically.

Written procedures are another integral part of managing our service program. Every county and state office maintains the Foster Care Policy Manual and the Title IV-E State Plan. This written documentation serves as a ready reference for staff.

In addition, we recognize the necessity of following sound public contracting and procurement procedures. Therefore, pursuant to the Mississippi Administrative Procedure Act, MDHS adopted and established the Subgrantee/Contract Manual to govern our contractual services. Subsequent to our initial contract with a private consulting firm, the state has established laws and regulations governing the procurement of professional services. The Mississippi Department of Human Services follows these state procurement regulations as a matter of routine practice.

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We sincerely appreciate the courtesy and professionalism demonstrated by Ms. Lynn Watkins and Ms. Linda Triplett throughout the review. Please let me know if additional information is needed regarding this matter.

Sincerely,



Bettye Ward Fletcher  
Executive Director

BWF/ap

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