



Washington State Auditor's Office

Troy Kelley

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Whistleblower Investigation Report
Department of Social and Health
Services

For the period July 1, 2013 through June 30, 2014

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Washington State Auditor Troy Kelley

April 16, 2015

Kevin Quigley, Secretary
Department of Social and Health Services

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 14-030 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

TROY KELLEY
STATE AUDITOR
OLYMPIA, WA

cc: Mr. Andrew Colvin, Public Disclosure and Ethics Administrator
Governor Jay Inslee
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

In May 2014, our Office received a submission asserting an Assistant Secretary at the Department of Social and Health Services (DSHS) allowed the purchase of over \$200,000 of communication services from two vendors without valid contracts. It was also asserted a vendor was allowed access to a confidential, automated reporting line without a confidentiality agreement with DSHS. Additionally the complaint asserted the DSHS is paying for services no longer being used.

We found no reasonable cause to believe the subject approved purchases for services without valid contracts, nor did he approve payments for services not provided.

We found no reasonable cause to believe a violation of law occurred when the vendor accessed the automated reporting line.

Background

Effective October 1, 2011, the Consolidated Technology Services agency (CTS) was established replacing the Department of Information Services (DIS). According to a CTS attorney, all contracts in effect during the transition from DIS to CTS were valid based on the bill's language.

The DSHS Complaint Resolution Unit (CRU) maintains a hotline to receive complaints about nursing homes, assisted living facilities, adult family homes, and supported living, as well as individual allegations of abuse, neglect, and exploitation. The original hotline was built in-house using products from Avaya, Inc. The hotline is completely automated with the caller leaving voicemail messages, which may include personal and medical information.

About the Investigation

During the investigation, we spoke to several witnesses involved in the contract process and several who currently work with the hotline.

In August 2006, DSHS entered into a master contract agreement with Avaya. Although the contract was to expire in August 2009, the contract provided for one-year extensions, not to exceed four years. DSHS worked directly with Avaya for all product maintenance and upgrades. The final contract expired August 16, 2013.

In late 2013, CTS informed DSHS' Residential Care Services (RCS), which oversees the CRU and the hotline, that the hotline system would no longer be supported beginning in 2014. The

RCS worked with CTS to obtain a new master contract. CTS presented the DSHS work group one option as a replacement for the hotline. The new contract with Cerium Networks, Inc. included equipment, software, and tech support which were provided by a subcontractor, Interactive NW, Inc. (INI). A talk-to-text option was provided by AT&T Watson, a subcontractor of Interactive NW, Inc. The contract was signed on August 14, 2013 and became effective August 15, 2013.

The contract had two phases: the first for development and licensing and the second for deployment. Because the work group did not anticipate a need for the vendors to listen to the calls, confidentiality agreements were not discussed.

The new hotline began operating on December 17, 2013. On December 26, 2013, in order to troubleshoot technical errors in the system, an INI representative accessed messages left on the CRU hotline. On February 4, 2014, the new CRU manager was told by INI that it had access to listen to the hotline calls and needed access in order to address issues DSHS was having with the system. DSHS suspended INI's ability to access the line when it realized there was no confidentiality agreement in place. As a result, from February to August 2014, the hotline functioned without technical support. On August 14, 2014, with the help of the Attorney General's Office, DSHS signed a business associate agreement with INI ensuring confidentiality protections were in place. Support was then restored.

According to Federal Regulations, a business associate agreement is a contract between a covered entity (DSHS) and a business associate (INI). A business associate agreement is needed in order to disclose protected health information for the proper management and administration of the business associate. We found there was no agreement in place when the project began; therefore the vendor potentially had access confidential information. We reviewed the transcripts of the calls INI had accessed on December 26, 2013. Based on this review, we found no reasonable cause to believe confidential information was disclosed in violation of law. DSHS' initial failure to enter into a business associate agreement is not, standing alone, a violation of law. A violation would occur if protected confidential information was disclosed, which we found did not occur in this instance.

In February 2014, the talk-to-text function provided by AT&T Watson was disabled and never restored because the feature failed to accurately transcribe the messages left by customers. The vendor provided DSHS with "service hour" credits as reimbursement for payments that had been made. Therefore, we found no reasonable cause to believe the subject approved payment for services not rendered.

State Auditor's Office Concluding Remarks

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 39.26.120 Competitive solicitation.

(1) Insofar as practicable, all purchases of or contracts for goods and services must be based on a competitive solicitation process. This process may include electronic or web-based solicitations, bids, and signatures. This requirement also applies to procurement of goods and services executed by agencies under delegated authority granted in accordance with RCW 39.26.090 or under RCW 28B.10.029.

(2) Subsection (1) of this section applies to contract amendments that substantially change the scope of work of the original contract or substantially increase the value of the original contract.

45 CFR Section 164.504(e)

(2) *Implementation specifications: Business associate contracts.* A contract between the covered entity and a business associate must:

(i) Establish the permitted and required uses and disclosures of such information by the business associate. The contract may not authorize the business associate to use or further disclose the information in a manner that would violate the requirements of this subpart, if done by the covered entity, except that:

(A) The contract may permit the business associate to use and disclose protected health information for the proper management and administration of the business associate, as provided in paragraph (e)(4) of this section; and

(B) The contract may permit the business associate to provide data aggregation services relating to the health care operations of the covered entity.

(ii) Provide that the business associate will:

(A) Not use or further disclose the information other than as permitted or required by the contract or as required by law;

(B) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by its contract;

(C) Report to the covered entity any use or disclosure of the information not provided for by its contract of which it becomes aware;

(D) Ensure that any agents, including a subcontractor, to whom it provides protected health information received from, or created or received by the business associate on behalf of, the covered entity agrees to the same restrictions and conditions that apply to the business associate with respect to such information;

(E) Make available protected health information in accordance with § [164.524](#);

(F) Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with § [164.526](#);

(G) Make available the information required to provide an accounting of disclosures in accordance with § [164.528](#);

(H) Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on behalf of, the covered entity available to the Secretary for purposes of determining the covered entity's compliance with this subpart; and

(I) At termination of the contract, if feasible, return or destroy all protected health information received from, or created or received by the business associate on behalf of, the covered entity that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(iii) Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.