Washington State Auditor's Office

Independence • Respect • Integrity

Whistleblower Investigation Report

Department of Labor and Industries

Published June 25, 2015

Report No. 1014238

Washington State Auditor's Office

June 25, 2015

Joel Sacks, Director
Department of Labor and Industries

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 15-005 at the Department of Labor and Industries.

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,

JAN M. JUTTE, CPA, CGFM

ACTING STATE AUDITOR

OLYMPIA, WA

cc: Mr. Brian Hornback, Audit Coordinator
Governor Jay Inslee
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

Our Office received a whistleblower complaint asserting two employees at the Department of Labor and Industries (Department) engaged in improper governmental action.

Assertion 1: A Medical Program Specialist (subject 1) at the Department falsified performance reports for the Orthopedic Surgeons Quality Project, which resulted in overpayments to surgeons participating in the project.

We found no reasonable cause to believe subject 1 falsified performance reports. However, we did find reasonable cause to believe an improper governmental action occurred when subject 1 entered provider information into the Department's provider payment system, which resulted in over $117,000 of unauthorized payments to providers.

Assertion 2: A Department Manager (subject 2) covered up the falsified reports and failed to correct them.

We found no reasonable cause to believe an improper governmental action occurred.

Background

The Orthopedic and Neurological Surgeon Quality Project (project) was developed in 2006 to improve injured worker's outcomes through more timely access to high quality surgical care. Surgeons participating in the project receive incentive pay for demonstrating occupational health best practices identified by quality indicators.

There are six quality indicators - three required indicators and three additional indicators. The surgeon's performance in each quality indicator is measured using treatment reports provided by the participating surgeons' clinic as well as reports generated by Department staff. After measuring the provider's performance, the provider is assigned a tier number. The amount of their incentive pay is determined by the provider's tier assignment. A surgeon earns Tier 1 if they meet the three required quality indicators, Tier 2 if they meet four or five, and Tier 3 if they meet all six quality indicators.

The incentive is paid to providers when they fill out an Activity Prescription Form (APF). An APF is used by providers to communicate an injured worker's status and treatment plan to the Department. A provider is paid for each APF billed and for their incentive tier level. If a provider has not met the requirements for Tier 1, they will receive APF pay, but no incentive pay. The Department uses the Medical Information Payment System (MIPS) to document program providers and their assigned Tier number.

Project staff assesses each surgeon's performance twice yearly and assigns them to the appropriate incentive tier. The participating surgeon is then notified of their tier assignment for the next billing cycle. Since the project's creation, each six-month cycle is identified as a "Round." The assertions in this matter come from the reports created in Round 14.

About the Investigation

We found project data is stored on numerous spreadsheets. The spreadsheets date back to the project's conception and contain a considerable amount of data and formulas. If data is entered incorrectly on one spreadsheet it can create errors in associated spreadsheets.

In prior rounds, subject 1 held a minimal role communicating with the surgeons and the clinics participating in the project. He was not responsible for running the reports that determine provider tier levels. In early 2013 subject 1 volunteered to run the individual provider reports for Round 14, due in June 2013.

In August 2013 subject 1 sent tier assignment letters to the individual providers. Soon after, the Department began receiving complaints from surgeons who believed they were assigned the wrong tier number. When subject 2 was informed of the complaints, he directed other project staff to redo the reports, determine if any errors were made, document the errors and report the findings back to subject 2.

The staff found significant errors in the spreadsheets created by subject 1. As a result of the incorrect spreadsheets, the tier numbers for 38 of the 93 individual surgeons were assigned incorrectly.

During an interview, subject 1 denied intentionally falsifying the results for Round 14. He said he had no experience running the reports, had not received training and did not have access to a training manual. He said the errors were the result of inexperience. Subject 1 said although tier assignment letters with incorrect information were sent to providers, the tier assignments in MIPS were not changed and no overpayments were issued.

During an interview with subject 2, who supervises subject 1, he said he could see subject 1's cubicle from his office and could tell he was struggling, but subject 1 never complained. He said if subject 1 needed help he should have asked for it. Subject 2 said he did not facilitate training for subject 1 as it is "staffs job to find answers for themselves" and if staff is having problems it is "their responsibility to figure it out."

Using program data provided by the Department and reports generated from MIPS, we recalculated incentive and APF payments made to surgeons for Round 14 and confirmed no improper payments were made as a result of the incorrect Round 14 reports. However, we found subject 1 added unauthorized provider numbers into the system, resulting in more than $117,000 in unauthorized APF and incentive payments to providers.

Access to MIPS

A Department employee's MIPS access level is determined based on job position and business need; subject 1's job position authorized him to have inquiry-only access to MIPS.

Department policy allows exceptions to the standard MIPS access if justification is provided. According to the policy, all justifications must include:

- A clearly defined business need,
- A start and end date, and
- Approval by the user's supervisor.

In July 2012, subject 1 requested edit access to the MIPS provider master screen; this level of access allows users to add providers into MIPS. The MIPS Administrator approved subject 1's request contrary to Department policy as it did not include a business need, a start and end date and did not have approval from his supervisor. The MIPS Administrator said subject 1 requested the edit access to update project tier assignments. However, we found when the subject requested the access provider tier assignments had already been updated through the normal process.

Subject 1 said he requested edit access to the MIPS provider master screen because other Department employees had access and it was easier to make changes himself instead of making a request through the normal channels. He said he asked the project lead if he wanted the access for himself, but the project lead responded having MIPS edit access would not be "a good situation to be in" and declined.

In an email, between subject 1 and a project surgeon's clinic, subject 1 asked the staff member if they wanted him to add additional provider numbers to the project. The staff member responded that she "didn't think [she] had any issues with the providers" in the project, but asked for confirmation that all providers are "correctly set up." Subject 1 then obtained edit access to MIPS and added the additional provider numbers.

Multiple provider numbers

A surgeon's quality indicators are measured based on the provider number that is contracted with the Department. When a surgeon submits bills using multiple provider numbers, he or she receives incentives for treatment that is not measured by the program. After obtaining access to update the provider master screen in MIPS, subject 1 added additional provider numbers for program surgeons.

During an interview, subject 1 said he added the provider numbers into MIPS because it made it easier for the providers to bill the Department. He said he did not know if the additional provider numbers were measured by the Department.

We found the Department issued incentive and APF payments to 11 provider numbers that were not measured for quality indicators. We ran reports on these provider numbers and identified more than $117,000 in unauthorized payments made in 2012 and 2013.

We obtained copies of all program surgeon contracts for this time period. We found each contract had only one provider number for each provider listed, and there were no contracts for the additional provider numbers referenced above.

Subject 1 said he could not recall who he asked for authorization to add the provider numbers, but it would have been either the project lead or subject 2.

We spoke with the project lead who said sometime in mid-2012 subject 1 asked if he could add provider numbers into MIPS. Subject 1 told him a provider asked to add additional provider numbers. He told subject 1 he could not add additional provider numbers as it can cause shortages and accounting errors within the program. He also told him it may be possible to add the additional provider numbers in the future, but it would need to go through a vetting process to make sure it was an appropriate avenue. He asked subject 1 to follow up with the provider and explain why the numbers could not be added.

Subject 2 said subject 1 did not ask him for authorization to add the provider numbers. He said there was no specific policy regarding additional provider numbers at the time, but it was not something that was done. He said he was not aware subject 1 added the provider numbers until the Round 14 reports were redone.

We found subject 1 obtained access to edit provider information in MIPS and used that access to incorporate provider numbers into the Project without authorization, resulting in unauthorized payments of more than $117,000.

Recommendation

We recommend the Department:

- Strengthen internal controls in regard to the Orthopedic and Neurological Surgeon Project and staff access to MIPS.
- Establish program controls that are consistently applied to manage the risks of placing project data on spreadsheets.
- Recover the $117,000 in unauthorized payments made to providers.

Agency's Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) investigative report on Case No. 15-005.

The report included three recommendations:

- *Strengthen internal controls in regard to the Orthopedic and Neurological Surgeon Project and staff access to the Medical Information Payment System (MIPS).*

The agency has added two additional accountabilities as a result of this recommendation. First, review of the MIPS access policy is now included in orientation of new staff in each position responsible for processing and approving MIPS access requests. Second, the Health Services Analysis Program Manager will review a quarterly report listing staff with MIPS provider account access to ensure each staff member has appropriate for the staff job position and business need.

MIPS access is controlled through the Security and Technology Access Request Service (STARS) system. STARS provide access request processes, tracking, audit trail, and notification functions for user accesses at Labor and Industries. Authorization for access and changes to access in MIPS is controlled by the MIPS Operations Manager. Staff involved with processing STARS requests for MIPS access/changes have been reminded of department policy that exceptions to standard MIPS access profiles (based on job position and business need) require written justification to include a clearly defined business need, a start and end date, and approval by the user's supervisor.

- *Establish program controls that are consistently applied to manage the risks of placing project data on spreadsheets.*

Program staff will coordinate with the department's Office of Internal Audit staff to review data management pertaining to the Orthopedic and Neurological Surgeon Project. Program staff will work with Internal Audit to identify controls for data integrity in the spreadsheets, and explore alternate options for program data management.

In addition, Orthopedic and Neurological Surgeon Quality Program resources and responsibility have been transferred to the Occupational Health Services unit. This unit is staffed by personnel with enhanced provider services experience and knowledge and manages all provider best practice programs. This transfer places the responsibility and accountability for managing the program controls and risks pertaining to data management with personnel that better understand the technical aspects of the program.

Finally, supervisors are expected to ensure that adequate training is provided to staff in order to complete assigned tasks. Subject 2's lack of response upon observing that Subject 1 was

struggling with the assignment was unacceptable and not what is expected of Department supervisors.

The Department notes that both Subject 1 and Subject 2 have resigned from the Department.

Recover the $117,000 in unauthorized payments made to providers.

The Department consulted with counsel regarding statutory limitations to recover the unauthorized incentive payments. The Department has determined that it does not have legal authority to recover the unauthorized incentive payments.

The unauthorized incentive payments occurred during the course of a project, the Orthopedic and Neurological Surgeon Quality Program. The program design provided monetary incentive, in addition to standard service billings, to surgeons who demonstrated identified occupational health best practices and timeliness in the delivery of services to injured workers. The program was governed primarily by contracts signed by participating providers. The unauthorized incentive payments were not a result of clerical error, but of an affirmative act by a Department employee who did not have authorization. Additionally, the incentive payments were made to providers outside of a contract. Due to these factors the Department does not have legal authority to recover the overpayments.

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:

Assertion 1:

WAC 292-110-010 - Use of state resources

> (1) Statement of principles - stewardship. The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer or state employee, or with the state officer or state employee who authorizes such use. State officers and employees should ensure that any personal use of state resources permitted by this section is the most efficient in terms of overall time and resources.

RCW 42.40.020 - Definitions.
As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

> (5) "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

Assertion 2:

RCW 42.40.020 Definitions
As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

> (4) "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.