

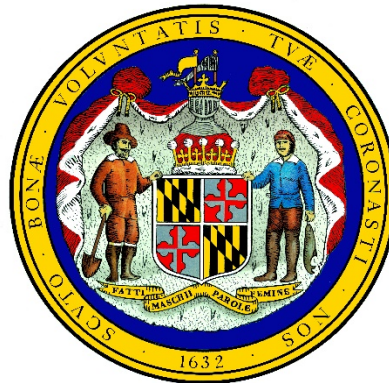
Audit Report

Department of Public Safety and Correctional Services Incarcerated Individual Healthcare Contracts

November 2024

Public Notice

In compliance with the requirements of the State Government Article Section 2-1224(i), of the Annotated Code of Maryland, the Office of Legislative Audits has redacted cybersecurity findings and related auditee responses from this public report.



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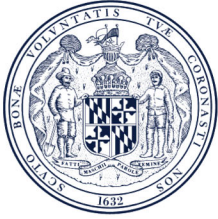
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

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Brian S. Tanen, CPA, CFE
Legislative Auditor

November 25, 2024

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Department of Public Safety and Correctional Services (DPSCS) Incarcerated Individual Healthcare Contracts for the period beginning April 1, 2018 and ending December 31, 2023. Through its correctional institutions and parole and probation programs, DPSCS has statewide responsibility for the supervision and rehabilitation of incarcerated individuals and paroled individuals.

This report addresses concerns identified during our recent audit of the central operations of DPSCS regarding DPSCS' procurement and monitoring of the medical, mental health, and pharmaceutical contracts used to provide comprehensive healthcare services to its pretrial and resident populations. A separate report on our audit of the central operations of DPSCS was issued on September 17, 2024. During the audit period DPSCS had a significant vacancy rate, which may have contributed, at least in part, to the findings in this report.

Our audit disclosed numerous issues with DPSCS' procurements of the three healthcare contracts. For example, the medical and mental health contract solicitations did not establish adequate hourly rates to ensure that the contractors could recruit and retain a sufficient number of health professionals and DPSCS could not support that the number of health professionals required by the contracts was sufficient to ensure that incarcerated individuals received satisfactory services. Furthermore, DPSCS awarded the medical and mental health contracts despite significant concerns with the contractors' ability to provide the services, failed to disclose the concerns to the Board of Public Works and did not develop a contingency plan in the event the contractors could not fulfill the contract requirements.

DPSCS did not ensure the medical and mental health contractors completed critical health exams within the required timeframes and we noted a significant number of exams were not completed. For example, between July and September 2023, the mental health contractor did not complete 548 suicide risk evaluations and 682 mental health exams. The failure to complete these exams is significant because they enable DPSCS to address the needs of incarcerated individuals. DPSCS also did not ensure that the medical contractor resolved complaints filed by incarcerated individuals properly and timely. Our testing disclosed that the contractor did not maintain adequate documentation of its investigations and did not always resolve the complaints timely.

Our audit disclosed that DPSCS did not verify that the staffing levels reported by the medical and mental health contractors were accurate and did not follow up when errors in the reported data were identified. DPSCS also did not ensure amounts invoiced and paid for pharmaceuticals reflected actual pharmaceuticals provided by the contractor.

DPSCS did not document the basis for a \$20 million settlement agreement with the medical contractor that waived liquidated damages totaling at least \$40.5 million and reduced the contract staffing requirements by 15 percent (132 positions). For example, DPSCS could not substantiate how the settlement amount was determined and the extent to which the liquidated damages it waived offset the amount that DPSCS paid to the contractor. DPSCS also could not explain how it determined these 132 positions were no longer necessary nor did DPSCS obtain approval from the Board of Public Works when it reduced the staffing requirements of the contract.

DPSCS did not assess liquidated damages on the mental health contract as provided for in the contract, and damages assessed on the medical contract were significantly lower than provided for in the related contract. Specifically, DPSCS waived \$10.5 million in liquidated damages assessable to the mental health contractor between March 2022 and January 2024 to allow the contractor to use these funds to recruit and retain additional medical professionals. DPSCS did not determine the costs associated with the contractor's recruiting and retention efforts and did not formally modify the contract to reflect these additional costs. For the medical contract, the methodology DPSCS used to assess liquidated damages resulted in an overall lower assessment than the methodology specified by the contract. For example, DPSCS' methodology resulted in it assessing \$809,000 less than allowed by the contract between October and December 2023.

Furthermore, our audit disclosed a cybersecurity-related finding. However, in accordance with the State Government Article, Section 2-1224(i) of the

Annotated Code of Maryland, we have redacted the finding from this audit report. Specifically, State law requires the Office of Legislative Audits to redact cybersecurity findings in a manner consistent with auditing best practices before the report is made available to the public. The term “cybersecurity” is defined in the State Finance and Procurement Article, Section 3.5-301(b), and using our professional judgment we have determined that the redacted finding falls under the referenced definition. The specifics of the cybersecurity finding were previously communicated to those parties responsible for acting on our recommendations.

Finally, our audit included a review to determine the status of one of the six findings contained in our preceding DPSCS audit report. We determined that DPSCS satisfactorily addressed this finding.

DPSCS’ response to this audit is included as an Appendix B to this report. Consistent with State law, we have redacted the elements of DPSCS’ response related to the cybersecurity audit finding. We have also edited the response to remove certain vendor names or products, as allowed by our policy.

In accordance with State law, we have reviewed the response and, while DPSCS generally agrees with the recommendations in this report, we identified several instances in which statements in the response conflict or disagree with the report findings. In each instance, we reviewed and reassessed our audit documentation, and reaffirmed the validity of our finding.

In accordance with generally accepted government auditing standards, we have included general “auditor’s comments” in Appendix A in relation to DPSCS’ disagreements with the report findings. In relation to those significant instances in which DPSCS did not agree with specific information included in the report finding, we have also inserted “auditor’s comments” within DPSCS’ response to explain our position.

We will advise the Joint Audit and Evaluation Committee of any outstanding issues that we cannot resolve with DPSCS. Notwithstanding the aforementioned disagreements, we wish to acknowledge the cooperation extended to us during the

audit by DPSCS, its agreement with our recommendations, and willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

Brian S. Tanen

Brian S. Tanen, CPA, CFE
Legislative Auditor

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Background Information

Agency Responsibilities

Through its correctional institutions and parole and probation programs, the Department of Public Safety and Correctional Services (DPSCS) has statewide responsibility for the supervision and rehabilitation of incarcerated and paroled individuals. DPSCS also sets standards for criminal justice training and operates criminal justice information systems.

As further described below, DPSCS has agreements with third-party contractors to provide comprehensive healthcare services to its incarcerated population. Our recent DPSCS – Central Operations audit identified significant concerns with the procurement and monitoring of these contracts. Similar issues regarding these contracts have been addressed in OLA’s routine fiscal compliance audits, a special review, and a performance audit dating back to February 2007 (see Exhibit 1). As a result, we excluded these contracts from that audit and expanded the scope of our review during this audit to provide the necessary audit resources and coverage.

As noted in Figure 1 on the following page, according to the State’s records, during fiscal year 2023, DPSCS expenditures totaled approximately \$1.55 billion. Personnel costs accounted for the majority of these expenditures. During the period December 31, 2019 through June 30, 2023, DPSCS had vacancy rates that ranged from 13.1 percent to 21.5 percent. As of June 30, 2023, approximately 13.1 percent of the total 9,220 positions were vacant. These vacancies may have contributed, at least in part, to the findings in this report.

Figure 1
DPSCS Positions, Expenditures, and Funding Sources

Full-Time Equivalent Positions as of June 30, 2023		
	Positions	Percent
Filled	8,009	86.9%
Frozen ¹	4	0.0%
Vacant	1,207	13.1%
Total	9,220	
Fiscal Year 2023 Expenditures		
	Expenditures	Percent
Salaries, Wages, and Fringe		
Benefits	\$1,035,394,397	66.9%
Technical and Special Fees	8,356,870	0.5%
Operating Expenses	503,884,514	32.6%
Total	\$1,547,635,781	
Fiscal Year 2023 Funding Sources		
	Funding	Percent
General Fund	\$1,403,247,440	90.7%
Special Fund	94,641,496	6.1%
Federal	42,383,488	2.7%
Reimbursable Fund	7,363,357	0.5%
Total	\$1,547,635,781	

Source: State financial records and DPSCS personnel records

Healthcare Service Contracts

According to DPSCS records, as of June 2023, there was a daily average population of 17, 673 individuals incarcerated (pretrial and sentenced) in DPSCS' 18 detention and correctional facilities. DPSCS is responsible for the healthcare delivery system that provides comprehensive primary, secondary, specialty health, and hospitalization services. The healthcare delivery system includes medical, mental health, pharmaceutical, and dental services that were provided

¹ Prior to December 1, 2021, a hiring freeze resulted in certain positions being frozen. Agencies were not authorized to fill frozen positions according to budgetary instructions from the Department of Budget and Management. Any position that is currently marked as frozen has not been filled since the freeze was lifted; however, these positions now are available to be filled.

through four contracts with initial award amounts totaling approximately \$1.15 billion. In December 2023, DPSCS processed no-cost contract modifications for both the medical and mental health contracts extending the contracts through March 2024. In March 2024, DPSCS requested additional contract modifications to the medical and mental health contracts to allow sufficient time to complete new procurements for these services (see Figure 2).

This audit focused on the procurement and monitoring associated with the medical, mental health, and pharmaceutical contracts that collectively accounted for \$1.05 billion (97 percent) of DPSCS’ healthcare expenditures. In June 2024, subsequent to the period covered by this review, DPSCS finalized two procurements to replace the existing medical and mental health contracts. The new medical and mental health contracts will be subject to review during our next DPSCS Central Operations audit.

Figure 2
DPSCS Health Care Contracts
(\$ in millions)

Type	Original Contract Term	Original Contract Amount	Contract Modifications	Modified Contract Term	Total Contract Amount	Payments as of June 30, 2024
Medical	January 2019 - December 2023	\$680.0	\$160.0	January 2024 - December 2024	\$840.0	\$732.7
Mental Health	January 2018 - December 2023	155.6	26.4	January 2024 - December 2024	182.0	157.3
Pharmaceutical	January 2020 - December 2024	250.0	-		250.0	161.5
Dental	January 2022 - January 2027	67.6	-		67.6	29.1
Totals		\$1,153.2	\$186.4		\$1,339.6	\$1,080.6

Source: DPSCS records

Status of Findings From Preceding Audit Report

Our audit included a review to determine the current status of one of the six findings contained in our November 20, 2019 audit report of DPSCS Central Operations. We determined that DPSCS satisfactorily addressed this finding. The status of the remaining five findings were addressed in our DPSCS Central Operations audit report dated September 17, 2024.

Findings and Recommendations

Contract Procurements

Finding 1

DPSCS did not structure the medical and mental health procurements to ensure that it obtained adequate healthcare services for incarcerated individuals and could not justify that the payment structure was the most advantageous to the State.

Analysis

DPSCS did not structure the medical and mental health procurements to ensure that it obtained adequate healthcare services for incarcerated individuals and could not justify that the payment structure was the most advantageous to the State.

Contract Payment Methodology Was Not Justified

DPSCS could not justify the use of a fixed fee payment structure for the medical and mental health services contracts, resulting in a lack of assurance that these services were obtained at the most advantageous prices. Under the contracts, DPSCS paid a fixed fee to cover the cost of staffing, medical equipment and supplies, certain inpatient hospital visits, and the contractors' overhead and profit. DPSCS advised that it selected the fixed fee structure based on its survey of healthcare contracts in other states and because this methodology transferred cost overruns to the contractors. However, DPSCS could not document this survey and we found fixed fee contracts were not commonly used by other states.

A fixed fee model for these services may not be in the State's best interest because it guaranteed the contractors payment regardless of the level of staffing provided and the actual costs incurred for equipment, supplies, and hospital visits. Furthermore, we noted that under this model DPSCS' healthcare costs increased from \$120 million to \$168.7 million (41 percent) between fiscal year 2018 and 2023 even though the average number of individuals incarcerated during this period declined by 18 percent.²

² Specifically, the average number of incarcerated individuals decreased from 21,632 in 2018 to 17,673 in 2023.

DPSCS also could not document that it considered other payment structures. In this regard, a New York University Law Review³ published in November 2020 found that healthcare providers within correctional facilities across the country, including Maryland’s medical service contractor, typically employ a capitation model where a flat rate is paid for each incarcerated individual. The Law Review also noted certain providers used a cost-plus model which reimburses the contractor for actual expenses plus a fee-for-profit margin, thus providing transparency.

Staffing Level Requirements Were Not Supported and Were Inconsistent

DPSCS could not support that the staffing levels established in the contract were sufficient to provide the required medical and mental health services to incarcerated individuals. The request for proposals (RFPs) for these contracts specified the number of health professionals the contractors were to provide at each DPSCS facility. DPSCS could not explain how it developed these requirements and we found that the ratio of medical health professionals to incarcerated individuals varied significantly between facilities. For example, the ratio of incarcerated individuals for each registered nurse (RN) under the medical contract ranged from 12 to 502 depending on the facility.⁴ This is significant because insufficient staffing may have contributed to the contractors’ failure to perform numerous required medical and mental health examinations (see Finding 3).

Hourly Rate Requirements Were Not Established

The solicitations did not establish adequate hourly rates for the medical and mental health professionals who directly provided services to incarcerated individuals to ensure that the contractors could recruit and retain a sufficient number of staff. Specifically, the solicitations only required the contractors to pay the health professionals more than the State’s hourly living wage (for example, \$14.24 at the time the medical contract was awarded). As detailed further in Finding 2, our review disclosed certain rates proposed by the contractors selected for award were significantly below the statewide average for the position. The failure to establish sufficient hourly rates may have contributed, at least in part, to the contractors’ inability to meet the required staffing levels at any point during the contract period.

³ The New York University Law Review *Mismanaged Care: Exploring the Costs and Benefits of Private vs. Public Healthcare in Correctional Facilities* (November 2020) analyzed the effectiveness and drawbacks of privatized versus public healthcare systems within correctional facilities.

⁴ At one facility there was 17 RNs for 201 incarcerated individuals and at the other facility there was 1 RN for the 502 incarcerated individuals.

Performance Bonds Were Not Required

DPSCS did not require the medical and mental health contractors to obtain performance bonds to ensure the State was protected in the event the contractor did not fulfill their contractual obligations. State law authorizes agencies to require performance bonds for service contracts exceeding \$100,000.

Performance bonds were warranted for these procurements given the past performance issues under these contracts in general (see Exhibit 1), and specifically with the selected medical contractor that had performance issues under a prior contract with DPSCS spanning from 2005 through 2012.

Recommendation 1

We recommend that DPSCS

- a. consider alternative payment structures (such as a capitation model) for future procurements of healthcare services, and ensure the methodology selected is in the State's best interest;**
- b. document the basis for staffing requirements at each facility, including a determination that the staffing levels are sufficient to ensure incarcerated individuals receive adequate healthcare services;**
- c. ensure minimum hourly rates paid to medical and mental health professionals are competitive with similar positions within the State; and**
- d. require performance bonds for incarcerated individual healthcare contracts.**

Finding 2

DPSCS awarded the medical and mental health contracts despite significant concerns with the contract proposals. DPSCS did not disclose these concerns to the Board of Public Works (BPW) and did not develop a contingency plan in the event the contractors were unable to fulfill the contract requirements.

Analysis

DPSCS awarded the medical and mental health contracts despite significant concerns with the contract proposals. DPSCS did not disclose these concerns to the BPW and did not develop a contingency plan in the event the contractors were unable to fulfill the contract requirements.

Medical and Mental Health Contracts Awarded Despite Concerns

DPSCS' evaluations of the contractors' proposals expressed concerns with the contractors' ability to recruit and retain the required level of staff. While the

evaluations did not elaborate on these concerns, our analysis⁵ found that the hourly rates paid by the contractors for certain key positions (including those that were directly responsible for performing critical exams of incarcerated individuals) were significantly below the statewide average (see Figure 3 on the following page). For example, in calendar year 2023, a registered nurse employed by the medical contractor would have been paid \$25,500 less than the statewide average.

DPSCS' evaluation of the medical contractor also noted that the three states the contractor listed as references had advised DPSCS that the contractor had challenges providing staff, and that the contractor had recently terminated contracts with other states. We determined that at least one of these contracts was terminated due to its inability to provide the required staff.

Despite these concerns, DPSCS moved forward with awarding the contracts to the respective contractors. There was no documentation to support this decision or any other considerations such as resoliciting for these services.

⁵ We compared the contractor's minimum hourly rates to the average hourly rate for the State of Maryland (according to the US Bureau of Labor Statistics) for 5 positions under each contract. These positions accounted for 68 percent and 73 percent of the total staff to be provided by the medical and mental contractors, respectively.

Figure 3

Comparison of Contractor Rates and Statewide Average for Calendar Year 2023

Position	Required Positions	Contract Minimum Hourly Rate	Statewide Average Hourly Rate	Difference		Annualized Difference Per Position
				Hourly Rate	Percent	
Medical Services						
Licensed Practical Nurses	217	\$22.86	\$31.95	\$(9.09)	(28%)	\$(18,917)
Registered Nurses	173	33.45	44.27	(10.82)	(32%)	(25,512)
Nurse Practitioners and Physician Assistants	45	55.74	56.39	(0.65)	(1%)	(1,342)
Medical Records Clerk	42	15.61	30.26	(14.65)	(94%)	(30,475)
Certified Nursing Assistant	28	15.61	19.60	(3.99)	(26%)	(8,302)
Mental Health Services						
Registered Nurses	53	\$34.88	\$44.27	\$(9.39)	(21%)	\$(19,525)
Licensed Practical Nurses	43	24.29	31.95	(7.66)	(24%)	(15,933)
Licensed Clinical Professional Counselors	21	25.20	29.74	(4.54)	(15%)	(9,440)
Psychiatrist	19	123.11	130.06	(6.95)	(5%)	(14,453)
Nurse Practitioner	10	73.37	61.54	11.83	19%	24,598

Source: Contractor Technical Proposals and the U.S. Bureau of Labor Statistics

DPSCS Did Not Disclose Concerns with the Contractors to the BPW

DPSCS could not document that it disclosed the aforementioned concerns to the BPW. DPSCS advised that the concerns may have been disclosed during preliminary meetings with BPW staff but the DPSCS employees that were responsible for the procurement are no longer with the agency. Moreover, BPW questioned the medical contractor’s ability to perform satisfactorily without having to increase the contract amount in the future, considering the financial proposal submitted was \$49.7 million lower than the incumbent contractor’s proposal. DPSCS responded that “the procurement was competitive, and that the contractor had demonstrated its ability to perform”. Given the aforementioned concerns with the contractor’s proposal and its failure to provide the minimum staffing and other deliverables during the entire contract period, DPSCS’ statements to BPW appeared unfounded.

DPSCS Did Not Develop a Contingency Plan

DPSCS did not establish a contingency plan in the event the contractors were unable to meet the staffing requirements. For example, DPSCS did not develop a

plan to supplement the medical staffing in its facilities if the contractors were unable to provide the required staff (such as hiring supplemental nurses and other medical professionals). Given the prior history with these contracts and the concerns noted during the procurement, a contingency plan may have helped to address the staffing shortages and DPSCS could have pursued recovery of the related costs from the contractors.

DPSCS also did not consider modifying the payment structure of the contract so that it only paid for staff that were actually provided; as explained in Finding 1, the fixed fee structure meant that the contractors were paid the full amount regardless of the level of staffing they provided.

Recommendation 2

We recommend that for future procurements, DPSCS

- a. document steps taken to address concerns identified during procurements and the justification for awarding contracts despite the concerns;**
- b. disclose concerns when presenting awards to the BPW; and**
- c. develop a contingency plan to address concerns with the medical and mental health contractors' ability to provide the required services, including its ability to recruit and retain medical professionals.**

Contract Monitoring

Finding 3

DPSCS did not adequately monitor healthcare contractors to ensure critical health examinations were completed within the required timeframes.

Analysis

DPSCS did not adequately monitor healthcare contractors to ensure critical health examinations were completed within the required timeframes. The medical and mental health contracts provided for several required exams for incarcerated individuals (see Figure 4 on the following page). Our review disclosed the following conditions related to DPSCS monitoring of the contractors' compliance with these exams.

Figure 4

Summary of Required Exams for Incarcerated Individuals

Contractor	Exam Type	Exam Must Be Conducted Within
Medical	Intake Screening	2 hours of arrival at a DPSCS facility
Medical	Physical Exam	7 days of admission to a DPSCS facility
Mental Health	Suicide Risk Evaluation	24 hours of admission to a DPSCS facility or 72 hours of placement in special confinement
Mental Health	Mental Health Exam	7 days of admission to a DPSCS facility

Source: DPSCS healthcare contracts

DPSCS Did Not Adequately Monitor Intake Screenings and Medical Exams

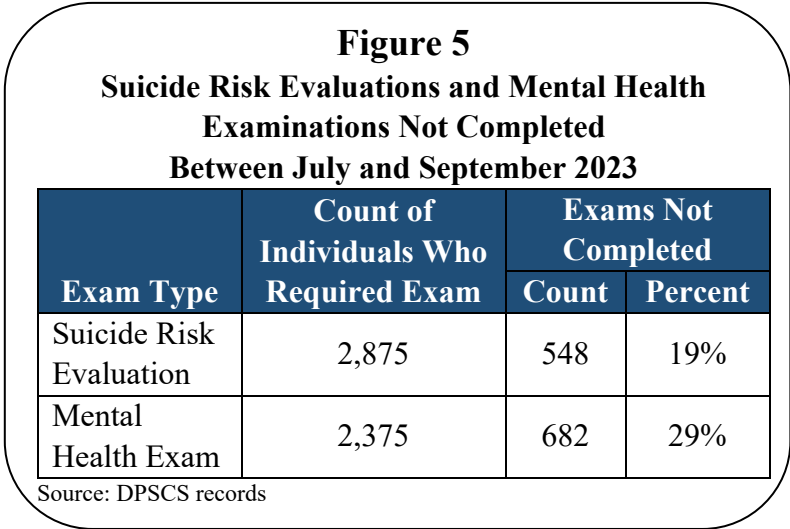
DPSCS did not adequately ensure that the medical contractor completed intake screenings, properly performed physical exams, or ensure missing or incomplete screenings and exams were completed. These screenings and exams are critical to addressing the health needs of incarcerated individuals and protecting DPSCS’ incarcerated population and staff.

- As of July 2024, DPSCS only performed a review of intake screenings for one month during the contract period to verify that they were completed by the contractor. DPSCS also did not follow up with the contractor to ensure that missing screenings identified by the review were subsequently completed. Specifically, DPSCS reviewed 127 intakes at the five intake facilities during December 2023 and found that 56 intake screenings were not completed including 27 of the 30 incarcerated individuals at one facility. DPSCS could not document that it addressed the missing screenings.
- As of July 2024, DPSCS had only reviewed physical exams performed during 3 months⁶ since the contract was initiated in 2019 and did not ensure deficiencies identified by the reviews were corrected. In this regard, DPSCS’ review of 243 physical exams identified significant deficiencies with the contractor exams, including the failure to test for tuberculosis and sexually transmitted diseases (STD) and conduct required dental screenings. However, DPSCS did not follow up with the medical contractor to ensure these tests were subsequently performed.

⁶ DPSCS reviewed physical exams performed in September 2020, May 2022, and December 2023.

DPSCS Did Not Adequately Monitor Suicide Risk and Mental Health Exams

DPSCS did not ensure the mental health contractor completed suicide risk evaluations and mental health exams. According to DPSCS records, between July and September 2023, the contractor was required to complete 2,875 suicide risk evaluations and 2,375 mental health exams. Although DPSCS’ monthly reviews identified that the contractor did not perform 548 suicide risk evaluations and 682 mental health exams (see Figure 5), it did not follow up to ensure these exams were subsequently completed.



Our test of 10 of these individuals disclosed that as of June 2024, 8 individuals still had not received either a suicide risk evaluation or mental health exam. The failure to complete these exams is significant because they enable DPSCS to take timely action to address the mental health needs of incarcerated individuals, including those at higher risk of suicide.

Recommendation 3

We recommend that DPSCS develop comprehensive procedures to ensure that the contractors properly complete critical medical and mental health examinations within the required timeframes, including those noted above.

Finding 4
DPSCS did not have comprehensive procedures to ensure that the medical contractor properly and timely resolved medical related complaints filed by incarcerated individuals.

Analysis

DPSCS did not have comprehensive procedures to ensure that the medical contractor properly and timely resolved medical related complaints filed by incarcerated individuals. The nature of these complaints included concerns about medication and medical treatment (for example, not receiving prescribed medication or necessary medical treatment). Complaints are submitted to the applicable facility which is responsible for forwarding the healthcare related complaints to the applicable contractor for investigation. According to DPSCS

records, between May and October 2023 it forwarded 369 complaints to the medical contractor for investigation. State regulations provide that these complaints are to be investigated and resolved within 45 days of the date filed⁷ and that certain individuals be interviewed during the complaint investigation.

Our test of 18 complaints resolved by the medical contractor during this period identified 17 complaints for which DPSCS could not document that the complaint was investigated in accordance with State regulations. For example, the contractor did not document that it interviewed the relevant medical professional and/or incarcerated individual for 11 complaints, as required. Accordingly, we were unable to verify that these complaints were properly resolved.

Additionally, 10 of the 18 complaints were resolved between 1 to 6 months late. For example, one complaint submitted in June 2023, regarding the medical contractor's failure to perform STD related testing even though the individual was experiencing symptoms, was not resolved until January 2024. DPSCS could not support that it had followed up with the contractor to address the untimely resolution of these complaints.

Recommendation 4

We recommend that DPSCS establish procedures to ensure, at least on a test basis, that incarcerated individuals' complaints are properly investigated and resolved timely.

Finding 5

DPSCS did not verify that the staffing levels reported by the medical and mental health contractors were accurate and did not follow up when errors in the reported data were identified.

Analysis

DPSCS did not verify that the staffing levels reported by the medical and mental health contractors were accurate and did not follow up when errors in the reported data were identified.⁸ The contractors provided monthly staffing reports which were used by DPSCS to determine contractors' compliance with the staffing requirements. While the contracts were structured so that actual staffing did not impact the amounts paid, these staffing reports were the primary means for

⁷ State regulations provide that complaints are to be investigated within 30 days of the date files and allows the managing official to grant an extension of 15 days under certain conditions.

⁸ A similar finding was included in our September 2017 *Monitoring of Contractor Performance for the Assessment of Liquidated Damages Under the Inmate Medical Healthcare Services Contract* report (see Exhibit 1).

DPSCS to monitor the staffing provided by the contractors and take timely and appropriate follow up action including assessing liquidated damages as further discussed in Finding 9.

Our review disclosed that DPSCS did not make any attempts to verify the reported staffing on the medical contract and only verified the staffing for the mental health contract once in July 2020. In addition, DPSCS did not attempt to resolve discrepancies identified by the July 2020 review. For example, DPSCS found instances in which the employees and hours worked on the monthly staffing report did not agree to the contractor's timekeeping system. As a result, there was a lack of assurance that staffing reports provided by the contractor were accurate.

Recommendation 5

We recommend DPSCS verify the accuracy of contractor supplied staffing reports and follow up when errors in the reported data are identified.

Finding 6

DPSCS did not have procedures to ensure amounts invoiced and paid for pharmaceuticals reflected actual pharmaceuticals provided by the contractor.

Analysis

DPSCS did not have procedures to ensure amounts invoiced and paid for pharmaceuticals reflected actual pharmaceuticals provided by the contractor. The contractor invoiced DPSCS for pharmaceuticals delivered to the various DPSCS facilities. Our review disclosed that DPSCS did not have procedures to confirm that the invoiced pharmaceuticals were received by the respective facilities. According to DPSCS records, payments to the pharmaceutical contractor totaled \$161.5 million as June 30, 2024.

We selected 10 payments⁹ for pharmaceuticals totaling \$7.6 million made between October and December 2023 and requested documentation (such as receiving reports) to support that the pharmaceuticals paid for were actually received. As of September 2024, DPSCS could not support these payments. Specifically, DPSCS advised that it could not readily verify that these 10 payments corresponded to pharmaceuticals provided by the contractor.

⁹ We selected payments based upon the materiality of the payment, the 10 payments selected for testing represented 96-percent of the payments during the three-month period between October and December 2023.

Recommendation 6

We recommend that DPSCS establish procedures to verify that pharmaceuticals invoiced were received by the facilities, including those noted above.

We determined that Finding 7 related to “cybersecurity,” as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Consequently, the specifics of the following finding, including the analysis, related recommendation(s), along with DPSCS’ responses, have been redacted from this report copy.

Finding 7
Redacted cybersecurity-related finding.

Contract Settlement

Finding 8
DPSCS did not document the basis for a \$20 million settlement agreement with the medical contractor that also waived liquidated damages totaling at least \$40.5 million and significantly reduced the contract staffing requirements. In addition, DPSCS did not obtain BPW approval for the settlement as required.

Analysis

DPSCS did not document the basis and obtain required BPW approval for a settlement agreement with the medical contractor. Between October 2019 and October 2022, the contractor filed 17 claims requesting additional compensation totaling \$142.9 million generally related to the delayed contract start, increased offsite care and diagnostic expenses, reimbursement for payments by third parties, and the COVID-19 public health emergency. In March 2023, DPSCS entered into a settlement agreement with the contractor, under which DPSCS paid the contractor \$20 million, waived liquidated damages assessable from the start of the contract (January 2019) through June 2023, and reduced the staff to be provided by the contractor by 132 positions (15 percent) for the remainder of the contract term.

Settlement Amount and Cost of Waived Damages Not Supported

DPSCS could not support the \$20 million settlement payment and the cost of the waived liquidated damages. While DPSCS advised us that it entered into the settlement because it was not cost-beneficial to pursue litigation, DPSCS could not provide documentation to support this assertion. DPSCS also could not substantiate how the settlement amount was determined, including the total liquidated damages it waived and the extent to which this amount offset the amount that DPSCS paid the contractor. According to DPSCS records, liquidated damages for the period from January 2019 through October 2021 totaled at least \$40.5 million; DPSCS did not determine the liquidated damages assessable between November 2021 and June 2023.

No Documentation to Support Reduced Staffing Levels

DPSCS could not support its decision to significantly reduce the staffing requirements in the contract. DPSCS management advised us that the declining population of incarcerated individuals meant that fewer medical professionals were needed. However, DPSCS could not explain how it determined that these 132 positions were no longer necessary and that the reduced staffing levels were sufficient to ensure incarcerated individuals received adequate care. Furthermore, DPSCS did not reduce the amount paid to the contractor to account for the eliminated positions.

No BPW Approval

DPSCS did not obtain approval from BPW for reducing the staffing levels required by the contract. DPSCS's management advised us that BPW approval was not required because DPSCS has the authority to settle contract claims and this change was included in the aforementioned settlement agreement. However, BPW officials advised us that the reduction of staffing could be considered a significant modification to the scope of the contract. State regulations require contract modifications that materially change the scope of the original contract or individually change any cost component of the contract by more than \$50,000 to be reported to BPW for approval.

Recommendation 8

We recommend that DPSCS

- a. document the basis for executing contract settlements, including the cost benefit of the settlement;**
- b. maintain documentation to support that contract modifications are reasonable and in the best interest of the State; and**
- c. obtain approval from BPW prior to executing significant contract modifications that change the scope of services.**

Liquidated Damages

Finding 9

DPSCS did not assess liquidated damages on the mental health contract as provided for in the contract, and damages assessed on the medical contract were significantly lower than provided for in the related contract.

Analysis

DPSCS did not assess liquidated damages on the mental health contract as provided for in the contract, and damages assessed on the medical contract were significantly lower than provided for in the related contract. The contracts provided that liquidated damages would be assessed when the contractors did not provide at least 96 percent of the required staffing for each position at each DPSCS facility. According to staffing reports provided by the contractors, neither contractor provided the required staffing levels in any month of their respective contract terms.

Liquidated Damages Were Not Assessed to the Mental Health Contract

DPSCS did not assess the mental health contractor liquidated damages totaling approximately \$10.5 million between March 2022 and January 2024. In August 2022, the contractor advised that the COVID-19 pandemic had adversely impacted its ability to provide the required staffing and requested DPSCS to waive liquidated damages from March 2022 through the remainder of the contract term so that it could use these funds for recruiting and retention.

DPSCS granted the request without an analysis to determine the actual costs associated with the contractor's recruiting and retention efforts to determine if this request was reasonable and without a formal contract modification to reflect the current costs. DPSCS advised us that it considered a formal modification to be unnecessary because the contract permitted it to waive liquidated damages for circumstances beyond the contractor's control.

Our review disclosed that the contractor provided 81 percent or less of the required staffing in each month since March 2022. Accordingly, we believe DPSCS' decision to waive its primary mechanism for holding the contractor accountable (liquidated damages) for a nearly two-year period was not justified. As of January 2024, DPSCS could have assessed liquidated damages totaling \$10.5 million based on the contractor's reported staffing levels during this period. Furthermore, BPW officials advised us that waiving future liquidated damages could be considered a significant change to the contract scope, which would require a formal contract modification and BPW approval.

Liquidated Damages Were Not Properly Calculated for the Medical Contract
DPSCS assessed the medical contractor liquidated damages based on the statewide staffing levels for each position instead of on a per-position basis at each facility as stipulated in the contract.¹⁰ The use of a statewide approach means that facilities with full staffing offset vacancies at other facilities, which reduces the overall liquidated damage assessment. For example, this approach resulted in DPSCS failing to assess liquidated damages totaling \$809,000 between October and December 2023.

Recommendation 9

We recommend that DPSCS

- a. assess liquidated damages in accordance with the contracts, and**
- b. consult with its legal counsel and determine the feasibility of assessing additional liquidated damages for instances in which the original amount was not calculated in accordance with the contract or was based on inaccurate staffing reports.**

¹⁰ DPSCS is responsible for 18 detention and correctional facilities. According to the contract certain facilities had more than one healthcare service unit, in which staffing requirements were separately required.

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Department of Public Safety and Correctional Services (DPSCS) Incarcerated Individual Healthcare Contracts for the period beginning April 1, 2018 and ending December 31, 2023.¹¹ The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine DPSCS' financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit only included the procurement and monitoring of health care service contracts administered by DPSCS. We also determined the status of one of the six findings contained in our audit report of DPSCS Central Operations dated November 11, 2019.

Our audit did not include an evaluation of the disbursement and procurement transactions (other than incarcerated individual healthcare contracts), and any other major financial-related areas which were addressed in our DPSCS Central Operations audit. In addition, our audit did not include the computer operations of the DPSCS Information and Technology and Communications Division and the Maryland Correctional Enterprises, which are audited separately. Our audit also did not include incarcerated individual cash receipts, incarcerated individual funds, other earnings and overtime payments related to the Division of Correction employees, and usage of a biometric timekeeping system by correctional officers; these activities are audited during our DPSCS regional operations audit.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit

¹¹ Our recent DPSCS – Central Operations audit covered the period between April 1, 2018 and May 31, 2022. As a result of significant concerns with the procurement and monitoring of DPSCS's healthcare contracts we expanded the scope of review during this audit to provide coverage through December 31, 2023.

period of April 1, 2018 through December 31, 2023, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of the DPSCS' operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as expenditure data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit. We also performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

DPSCS' management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records; effectiveness and efficiency of operations, including safeguarding of assets; and compliance with applicable laws, rules, and regulations are achieved. As provided in *Government Auditing Standards*, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to DPSCS, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect DPSCS' ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, and regulations. Other less significant findings were communicated to DPSCS that did not warrant inclusion in this report.

State Government Article Section 2-1224(i) requires that we redact in a manner consistent with auditing best practices any cybersecurity findings before a report is made available to the public. This results in the issuance of two different versions of an audit report that contains cybersecurity findings – a redacted version for the public and an unredacted version for government officials responsible for acting on our audit recommendations.

The State Finance and Procurement Article, Section 3.5-301(b), states that cybersecurity is defined as “processes or capabilities wherein systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.” Based on that definition, and in our professional judgment, we concluded that certain findings in this report fall under that definition. Consequently, for the publicly available audit report all specifics as to the nature of cybersecurity findings and required corrective actions have been redacted. We have determined that such aforementioned practices, and government auditing standards, support the redaction of this information from the public audit report. The specifics of these cybersecurity findings have been communicated to DPSCS and those parties responsible for acting on our recommendations in an unredacted audit report.

The DPSCS response to our findings and recommendations is included as an appendix to this report. Depending on the version of the audit report, responses to any cybersecurity findings may be redacted in accordance with State law. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise DPSCS regarding the results of our review of its response.

Exhibit 1
Summary of Inmate Healthcare Findings in OLA Audit Reports
Issued January 1, 2007 to August 31, 2024 (Page 1 of 2)

Audit Findings
The Department of Public Safety and Correctional Services (DPSCS) – Central Operations – Report Issued November 20, 2019
Finding 2 – DPSCS did not conduct a documented review of consumer price index adjustments for the inmate medical and mental health contracts. We noted errors resulting in overpayments totaling \$1 million.
DPSCS – Monitoring of Contractor Performance for the Assessment of Liquidated Damages Under the Inmate Medical Healthcare Services Contract – Report Issued September 12, 2017
Finding 1 – During fiscal year 2016, the Office of Inmate Health Clinical Services had not established processes to pursue liquidated damages for contractor noncompliance regarding the timeliness of an inmates' initial reception/intake examination (RIE) and the administration of medications.
Finding 2 – High staffing vacancy rates in some service delivery areas during fiscal year 2016 suggest that liquidated damages should be assessed at that level rather than on a statewide level to ensure quality of care is not compromised.
Finding 3 – DPSCS, based on contractor supplied data, routinely assessed liquidated damages for the contractor's failure to meet required staffing levels, but improvements are necessary to ensure the reliability of that data.
Finding 4 – Contractor reports were not verified nor used to assess liquidated damages for RIEs identified as untimely, and those reports did not contain data to determine the full extent of untimely RIEs that may have occurred.
Finding 5 – A process had not been established to assess liquidated damages when medication was not administered timely or the administration was not documented in the medical records, even though there were indications of some problems with contractor performance.
Finding 6 – The lack of automated reports was an impediment to effectively determining the full extent of contractor noncompliance for purposes of assessing liquidated damages for RIE and medication administration.
Finding 7 – DPSCS did not make use of a sampling methodology, as permitted by the contract, for purposes of determining compliance with contract provisions and assessing liquidated damages.
DPSCS – Office of the Secretary and Other Units – Report Issued November 18, 2015
Finding 3 – The Office did not assess its inmate mental healthcare contractor with liquidated damages, totaling \$840,000, for not meeting required staffing levels. In addition, the Office authorized an increase in staffing levels for more than a year before modifying the contract and seeking Board of Public Works approval.

Exhibit 1
Summary of Inmate Healthcare Findings in OLA Audit Reports
Issued January 1, 2007 to August 31, 2024 (Page 2 of 2)

Audit Findings
DPSCS – Office of the Secretary and Other Units – Report Issued September 15, 2010
Finding 1 – Critical data necessary for adequately monitoring certain significant contracts were not sufficiently verified.
Performance Audit Report – Inmate Healthcare – Report Issued February 21, 2007
Finding 1 – Staffing levels provided, as reported by the medical contractor, should be periodically verified to supporting documentation.
Finding 2 – OIHS should closely monitor contractor compliance with pre-approved work schedules.
Finding 3 – OIHS should determine the appropriate contractor staffing levels needed to provide all required services to inmates.
Finding 4 – Medical exams of arrestees should be completed within seven days of arrest as required.
Finding 5 – A process should be put in place to ensure that inmates with chronic medical conditions receive appropriate treatment as required.
Finding 6 – Corrective actions should be taken to address reported healthcare deficiencies.
Finding 7 – A methadone detoxification program should be implemented as required.
Finding 8 – Action should be taken to address identified service delivery problems and medical contractor reports should be verified for reliability.
Finding 9 – A timely independent review should be conducted of the adequacy of care rendered subsequent to each inmate death.
Finding 10 – OIHS should ensure that all significant healthcare violations and performance deficiencies are identified and documented timely and that full liquidated damages are assessed as soon as practical.
Finding 11 – Outstanding issues delaying the implementation of the electronic patient records computer system need to be resolved.
Finding 12 – Actions should be taken to address contractor-reported weaknesses in coordination.

APPENDIX A

Auditor's Comments on DPSCS' Response

Although the written responses provided by DPSCS indicated general agreement with our findings and recommendations, the responses included certain disagreements with Findings 1 and 2 of our report. DPSCS continues to characterize the medical and mental health contracts as successful procurements despite the deficiencies identified in our analysis and the performance issues with both contractors, most critically the consistent failure to provide the minimum staffing and properly complete key health examinations of incarcerated individuals.

After reviewing the areas of disagreement, we reviewed and reassessed our audit documentation and reaffirmed the validity of our findings and related recommendations. We continue to believe that the findings and conclusions contained in the audit report are factually accurate, fairly presented, and properly supported in accordance with government auditing standards. Although we reviewed each response in its entirety, we did not deem it necessary to provide a point-by-point rebuttal, but rather provided the Auditor's Comments to certain DPSCS responses.

APPENDIX B



Department of Public Safety and Correctional Services

Office of the Secretary

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STATE OF MARYLAND

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ANGELINA GUARINO
ASSISTANT SECRETARY
DATA, POLICY AND GRANTS

RENARD E. BROOKS
ASSISTANT SECRETARY
PROGRAMS, TREATMENT & RE-
ENTRY SERVICES

November 21, 2024

Mr. Brian S. Tanen, CPA, CFE
Legislative Auditor
Office of Legislative Audits
Department of Legislative Services
The Warehouse at Camden Yards
351 West Camden Street, Suite 400
Baltimore, Maryland 21201

Dear Mr. Tanen:

The Department of Public Safety and Correctional Services (DPSCS) has reviewed the Draft Audit Report dated November 2024 for the DPSCS – Incarcerated Individual Healthcare Contracts. We appreciate the constructive findings and recommendations that were made as the result of this audit.

Please find attached the Department's itemized responses to the audit findings and recommendations. The Department's Office of the Inspector General will conduct periodic follow up audits to monitor the status of compliance.

If you have any questions regarding this response, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn J. Scruggs".

Carolyn J. Scruggs
Secretary

Attachment

Copy: Adam Flasch, Deputy Chief of Staff for Public Safety and Homeland Security

Department of Public Safety and Correctional Services Incarcerated Individual Healthcare Contracts

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Contract Procurements

Finding 1

DPSCS did not structure the medical and mental health procurements to ensure that it obtained adequate healthcare services for incarcerated individuals and could not justify that the payment structure was the most advantageous to the State.

We recommend that DPSCS

- a. consider alternative payment structures (such as a capitation model) for future procurements of healthcare services, and ensure the methodology selected is in the State’s best interest;**
- b. document the basis for staffing requirements at each facility, including a determination that the staffing levels are sufficient to ensure incarcerated individuals receive adequate healthcare services;**
- c. ensure minimum hourly rates paid to medical and mental health professionals are competitive with similar positions within the State; and**
- d. require performance bonds for incarcerated individual healthcare contracts.**

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	<p>DPSCS offers the following comments:</p> <p><u>Contract Payment Methodology Was Not Justified</u> The DPSCS structured the medical and mental health procurements to ensure that it obtained adequate healthcare services at the most advantageous price. Furthermore, DPSCS adhered to the State procurement process as required by COMAR Title 21. Discussions were held by DPSCS to determine the payment methodology, but it is not standard practice to document the decision process and discussions related to how the payment methodology was determined.</p> <p><u>Staffing Level Requirements Were Not Supported and Were Inconsistent</u> It is inaccurate to say the staffing levels were “inconsistent.” The staffing levels for the Mental Health Contract were determined based upon the policies and processes for each facility, and based upon the</p>

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	<p>needs of the incarcerated individual population at each facility. The staffing requirements were set up to meet the individual needs of each facility, and would not have been “consistent” as a result.</p> <p>There is no standard staffing formula to determine whether staffing levels for the Medical Contract are sufficient. The staffing plan was discussed, determined, and incorporated into the scope of work created with close review of the National Commission on Correctional Healthcare (NCCHC), which did not provide an identifiable formula for staffing.</p> <p>The NCCHC manual on Standards for Health Services in prisons, and Standards for Health Services in jails states “Staffing requires a sufficient number of health staff of varying types to provide inmates with adequate and timely evaluation and treatment, consistent with contemporary standards of care. The responsible health authority must approve the staffing plan and the adequacy and effectiveness of the staffing plan should be assessed by the facility’s ability to meet the health needs of the incarcerated population. The number and types of qualified health care professionals required depends on the size of the facility, the types and scope of health services delivered, the needs of the inmate population and the organizational structure. It is not possible to specify exact ratios, but the number of staff must be sufficient to ensure that there are no unreasonable delays in patients receiving necessary care.”</p> <p><u>Hourly Rate Requirements Were Not Established</u></p> <p>It is not a standard practice for the State to establish minimum hourly rates in a solicitation. We solicited proposals and expected the Offerors to be able to provide a competitive rate. The solicitation included a Living Wage requirement because the solicitation exceeded \$100,000 and was therefore Living Wage eligible per State law.</p>		
Recommendation 1a	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	<p>The DPSCS Procurement Office considers all payment structures when putting procurements out to bid. The current DOC and Pretrial contracts are a combination of a fixed price and fixed price incentive structure, and this was determined to be the most appropriate and reasonable method that is in the State's best interest.</p>		

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Recommendation 1b	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	The DPSCS will document, to the extent possible, the basis for staffing requirements at each facility, including a determination that the staffing levels are sufficient to ensure incarcerated individuals receive adequate healthcare services. However, it should be noted that it is not a standard practice to document all of the decision points made while drafting a solicitation.		
Recommendation 1c	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	The new medical and mental health contracts required that the vendors be at the 75th% quartile for the Bureau of Labor Statistics (BLS) hourly rate, which guarantees a competitive rate with similar positions within the State.		
Recommendation 1d	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	Performance bonds were incorporated within the most recently awarded medical and mental health contracts.		

Auditor’s Comment: Although DPSCS agrees with the recommendations, it disputes the conclusion that staffing levels established by the contracts were inconsistent among facilities. As noted in our analysis, the ratio of medical health professionals to incarcerated individuals varied significantly between facilities. While we acknowledge that there may be plausible explanations for these variances, neither the response nor the documentation provided by DPSCS at the time of our review explains how the staffing levels were developed or how DPSCS determined they were sufficient to ensure incarcerated individuals received adequate services. Accordingly, we believe our finding is factually accurate as presented in the report.

Finding 2
DPSCS awarded the medical and mental health contracts despite significant concerns with the contract proposals. DPSCS did not disclose these concerns to the Board of Public Works (BPW) and did not develop a contingency plan in the event the contractors were unable to fulfill the contract requirements.

- We recommend that for future procurements, DPSCS**
- a. document steps taken to address concerns identified during procurements and the justification for awarding contracts despite the concerns;**
 - b. disclose concerns when presenting awards to the BPW; and**

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- c. develop a contingency plan to address concerns with the medical and mental health contractors' ability to provide the required services, including its ability to recruit and retain medical professionals.

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	<p>DPSCS offers the following comments:</p> <p>The DPSCS took the most responsive and responsible offer it had received that best aligned with the needs of the agency and the budget at the time. It is understood that there may be concerns with all vendors when reviewing and awarding contracts; however, after extensive review by the Procurement Officer and the Evaluation Committee, the selected vendor did not display any concerns that precluded them from being awarded this contract.</p> <p><u>Medical and Mental Health Contracts Awarded Despite Concerns</u></p> <p>Although the review of proposals and completion of reference checks are both part of the evaluation process, a distinction needs to be made between the two. Reference checks are used by the Evaluation Committee to determine whether the Offeror is responsible or not, but it certainly is not the defining factor that determines the strength of a proposal, as they are inherently based on opinions of other entities, not facts.</p> <p>The OLA report states that the DPSCS' evaluations of the contractor's proposals expressed concerns with the contractor's ability to recruit and retain the required level of staff. However, DPSCS' evaluations of what would be the Successful Offeror's proposal did not express concerns about the Successful Offeror's ability to recruit and retain the required level of staff.</p> <p>As part of the evaluation process, DPSCS completed a reference check on all Offerors. The OLA reviewed the reference check notes from one of the Evaluation Committee members and inaccurately determined that references "advised DPSCS that the contractor had challenges providing staff, and that the contractor had recently terminated contracts with other states." Actually, the reference check notes did not state that "the contractor had recently terminated contracts with other states." This is something DPSCS found out after the fact and was not made aware of during the evaluation period. In addition, the reference check notes</p>

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stated that the would-be Successful Offeror had the highest staffing retention rate and excellent customer client relations. In comparison, the notes said the other Offerors had fair to poor retention rates and fair to good customer client relations. As for challenges encountered, the reference check notes said the would-be Successful Offeror had some challenges with the temporary staffing of on-call Registered Nurses; however, the Evaluation Committee Member did not include this challenge as having any impact on the contract award decision in their final evaluation committee notes. As a result, it is not entirely accurate for the OLA to report that the references advised DPSCS of challenges providing staff.

The OLA report states that no documentation was drafted to support DPSCS' decision to award the contracts to respective contractors. This is not accurate as Procurement Officer's Determinations were prepared for the Mental Health and Medical Health contracts justifying the Procurement Officer's decision to proceed with a contract award to the Successful Offeror.

Finally, the OLA completed an analysis based upon hourly rates for Calendar Year 2023 in Figure 3, but this analysis did not take into account the long-term consequences COVID-19 had on the medical field, which could not have possibly been predicted. The hourly rates that should be compared in this chart should be from 2019, which is what the Procurement Officer and Evaluation Committee based their review of the proposals on, not any of the years that were in the future, with unknown Bureau of Labor Statistics (BLS) rates. The information used by the OLA to create Figure 3 would not have been available to DPSCS when the procurement was being reviewed and awarded.

DPSCS Did Not Disclose Concerns with Contractors to the BPW

Only the most responsive and responsible bids/advantageous offers received are provided with a contract award. The DPSCS would not recommend the BPW to approve a contract award unless it believed it met the criteria for an award. The evaluation committee did not have any concerns with the Contractor's proposal and therefore the Department would not have had any concerns to present to the BPW.

DPSCS Did Not Develop a Contingency Plan

The Department did not have a reason at the time of contract award to believe that the Successful Offeror would have difficulty recruiting and hiring staff. As stated earlier, the COVID-19 pandemic had unexpected

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	consequences that especially impacted the medical field workforce. Even if a contingency plan had been created, it is conjecture to say that a contingency plan would have had an impact on the Contractor's staffing and retention rates during and after COVID-19.		
Recommendation 2a	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	<p>The Department is already in compliance with COMAR 21.05.03.04.F, which requires a Procurement Officer Determination (POD) to be prepared for the award recommendation for any Request For Proposals (RFPs). These PODs provide a description of why the procurement is necessary, explanation for why offers are rejected, and justification for why the recommended awardee is the most advantageous to the State.</p> <p>Going forward, the Department will document steps taken to address any concerns identified during procurements, and the justification for awarding contracts despite any concerns.</p>		
Recommendation 2b	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	If there are any issues or concerns, the Department will disclose them to the BPW.		
Recommendation 2c	Disagree	Estimated Completion Date:	N/A
Please provide details of corrective action or explain disagreement.	The DPSCS does not have the ability (i.e., staff, time, funds) to create contingency plans for every professional services contract. There are clauses built into the contract, such as the Termination for Default or Termination for Convenience, that provide the State with a contingency plan. Ensuring that contractors are held to the requirements of their contracts is the most important action that DPSCS can take.		

Auditor's Comment: DPSCS' response indicates that it was not aware that the contractor had recently terminated contracts with other states until after the contractor was selected for award. This information was explicitly indicated in the contractor's technical proposal. Thus, it is unclear why DPSCS would not have been aware of this information.

While DPSCS asserts that the Procurement Officer's Determinations it prepared were sufficient justification for awarding the contracts, these documents did not address the concerns noted in our analysis or any related considerations.

DPSCS indicated that Figure 3 should not be based on calendar year 2023 data because this information was not available to DPSCS at the time of the procurement. DPSCS did not provide us with any analysis of 2019 salary data

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during or subsequent to the audit that would contradict the conclusions reached in our finding. In this regard, our analysis of other years during the contract periods disclosed similar significant differences between the contractors’ hourly rates and the statewide average. Consequently, we believe the presentation of calendar year 2023 data in the report, which represents the most current available data at the time of our review, is appropriate to demonstrate the magnitude of this issue.

Finally, DPSCS’ response to recommendation 2c indicates that it did not have the ability to create contingency plans for every professional services contract. This recommendation clearly pertains to the medical and mental health contracts for which DPSCS had collectively paid approximately \$890 million as of June 30, 2024. Given these contractors’ consistent failure to meet the minimum performance standards, we continue to believe that DPSCS should develop a contingency plan to ensure that it is able to obtain all required services for incarcerated individuals.

Contract Monitoring

Finding 3
DPSCS did not adequately monitor healthcare contractors to ensure critical health examinations were completed within the required timeframes.

We recommend that DPSCS develop comprehensive procedures to ensure that the contractors properly complete critical medical and mental health examinations within the required timeframes, including those noted above.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.	When the OLA came back to begin this audit, the DPSCS (as of 4/5/2022) was already performing periodic audits of medical intake exams, periodic physical exams, and mental health intake exams.		
Recommendation 3	Agree	Estimated Completion Date:	9/15/2024
Please provide details of corrective action or explain disagreement.	The DPSCS has developed comprehensive written audit procedures to ensure that the contractors properly complete critical medical and mental health examinations within the required timeframes.		

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Finding 4
DPSCS did not have comprehensive procedures to ensure that the medical contractor properly and timely resolved medical related complaints filed by incarcerated individuals.

We recommend that DPSCS establish procedures to ensure, at least on a test basis, that incarcerated individuals' complaints are properly investigated and resolved timely.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.			
Recommendation 4	Agree	Estimated Completion Date:	2/1/2025
Please provide details of corrective action or explain disagreement.	The DPSCS will establish written procedures to ensure, at least on a test basis, that incarcerated individuals' complaints are properly investigated and resolved timely.		

Finding 5
DPSCS did not verify that the staffing levels reported by the medical and mental health contractors were accurate and did not follow up when errors in the reported data were identified.

We recommend DPSCS verify the accuracy of contractor supplied staffing reports and follow up when errors in the reported data are identified.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.			
Recommendation 5	Agree	Estimated Completion Date:	2/28/2025
Please provide details of corrective action or explain disagreement.	The DPSCS will verify the accuracy of contractor supplied staffing reports and follow up when errors in the reported data are identified.		

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Finding 6

DPSCS did not have procedures to ensure amounts invoiced and paid for pharmaceuticals reflected actual pharmaceuticals provided by the contractor.

We recommend that DPSCS establish procedures to verify that pharmaceuticals invoiced were received by the facilities, including those noted above.

Agency Response			
Analysis			
Please provide additional comments as deemed necessary.			
Recommendation 6	Agree	Estimated Completion Date:	12/31/2024
Please provide details of corrective action or explain disagreement.	The DPSCS will establish written procedures to verify that pharmaceuticals invoiced were received by the facilities.		

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The Office of Legislative Audits (OLA) has determined that Finding 7 related to “cybersecurity,” as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Although the specifics of the finding, including the analysis, related recommendation(s), along with DPSCS’ responses, have been redacted from this report copy, DPSCS’ responses indicated agreement with the finding and related recommendations.

Finding 7
Redacted cybersecurity-related finding.

Agency Response has been redacted by OLA.

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Contract Settlement

Finding 8

DPSCS did not document the basis for a \$20 million settlement agreement with the medical contractor that also waived liquidated damages totaling at least \$40.5 million and significantly reduced the contract staffing requirements. In addition, DPSCS did not obtain BPW approval for the settlement as required.

We recommend that DPSCS

- a. document the basis for executing contract settlements, including the cost benefit of the settlement;**
- b. maintain documentation to support that contract modifications are reasonable and in the best interest of the State; and**
- c. obtain approval from BPW prior to executing significant contract modifications that change the scope of services.**

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	<p>DPSCS offers the following comments:</p> <p>By the Fall of 2022, all claims were being held in anticipation of reaching a settlement, and the settlement demand was reduced to approximately \$40,000,000.</p> <p>When evaluating the DPSCS liability for any of the claims, it was determined that there was merit to the following claims:</p> <ol style="list-style-type: none"> 1. Medicaid deductions being made in violation of contract provisions; 2. COVID services were required from the contractor even after the contractor was advised that the services would be provided by the Maryland Department of Health (MDH); 3. Out-of-date and inaccurate information was provided in the RFP and was not updated even where more current information was available; 4. The prior contractor's failure to perform adequately towards the end of its contract left conditions worse than the selected contractor anticipated; and

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	<p>5. The prior contractor deferred certain services to the new contractor when it realized it would not be awarded the new contract.</p> <p>The DPSCS also determined that a retroactive waiver of liquidated damages for staffing shortages was reasonable and necessary given the hiring issues all medical providers were facing during the COVID-19 state of emergency.</p> <p>In November 2022, during settlement negotiations, a fiscal analysis was completed to assess whether there were sufficient funds remaining in the contract to pay for a potential settlement. It was determined that, given the not-to-exceed amount approved by the BPW and the actual spending against the contract, there were likely sufficient funds remaining in the contract to discuss settlement without needing a contract modification. A judgment was made that the contractor would likely succeed on most, if not all, of its contract claims, so a decision was made that it was in the best interest of the State to attempt to settle the claims. As a result, there were negotiations with the contractor and a settlement amount of \$20,000,000 was agreed upon.</p> <p>This settlement was considered a matter of contract administration that did not encumber funds beyond that which had already been approved by the BPW. This action was not the result of any action filed in court and was consistent with the way settlement of contract disputes in the past had been resolved.</p> <p>In regards to this situation specifically, these events occurred during the COVID-19 pandemic. This time period was a unique, once in a lifetime event that required unique and once in a lifetime responses and review. Accommodations were made for the vendor as healthcare was a particularly challenging field during the pandemic, and this will likely not happen again in the future.</p>		
Recommendation 8a	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	<p>The DPSCS will ensure documentation for the basis of executing contract settlements including the cost benefit of the settlement.</p> <p>It should be noted that many discussions and negotiations of these types of complicated legal settlements are often done on the phone, and only the final negotiated decision becomes part of any agreement between the parties.</p>		

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Recommendation 8b	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	It is already the DPSCS practice to maintain documentation to support the fact that modifications are reasonable and in the best interest of the State. The DPSCS keeps emails and documentation, along with Procurement Officer Determinations, that provide this support.		
Recommendation 8c	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	The DPSCS will ensure that substantial modifications to the scope of services will get the BPW review and any approval. We are working on ensuring that both Procurement Officers and Contract Managers attend to the details of the contract and maintain that all work is in compliance with the original scope of the contract.		

Auditor’s Comment: Although DPSCS agreed with the recommendations, it provided significant comments regarding our analysis. We reviewed these comments and concluded that they did not dispute the facts presented in our analysis. Accordingly, we continue to believe our finding is accurate as presented.

Liquidated Damages

Finding 9
DPSCS did not assess liquidated damages on the mental health contract as provided for in the contract, and damages assessed on the medical contract were significantly lower than provided for in the related contract.

We recommend that DPSCS

- a. assess liquidated damages in accordance with the contracts, and
- b. consult with its legal counsel and determine the feasibility of assessing additional liquidated damages for instances in which the original amount was not calculated in accordance with the contract or was based on inaccurate staffing reports.

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	DPSCS offers the following comments: The COVID-19 pandemic was a unique, once in a lifetime event that required unique and once in a lifetime responses and review. It was

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	<p>determined that it was not in the State’s best interests to assess liquidated damages during COVID-19, as staffing sufficient medical personnel in our facilities was virtually impossible. The previous healthcare contracts did have LDs that were assessed prior to and after COVID-19.</p> <p>The time period where LDs were not collected was done after contract claims were filed, and settlements nullified LD’s, so the decision to not collect LDs was still in accordance with settlement decisions related to the medical and mental health contracts.</p>		
Recommendation 9a	Agree	Estimated Completion Date:	Ongoing
Please provide details of corrective action or explain disagreement.	The DPSCS has and will assess liquidated damages (LDs) in accordance with the contracts when deemed appropriate.		
Recommendation 9b	Agree	Estimated Completion Date:	1/6/2025
Please provide details of corrective action or explain disagreement.	The DPSCS included LD calculations that have been developed with necessary requirements to fulfill the new contracts. The feasibility of assessing additional retroactive LD’s for instances in which the previous contract’s original amounts were not calculated in accordance with the contract, or was based on inaccurate staffing, is a legal question which will need to be reviewed by legal counsel.		

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