

DEPARTMENT OF HEALTH AND HOSPITALS



INVESTIGATIVE AUDIT
ISSUED JUNE 6, 2013

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

June 6, 2013

MS. KATHY H. KLIEBERT, INTERIM SECRETARY
DEPARTMENT OF HEALTH AND HOSPITALS
STATE OF LOUISIANA
Baton Rouge, Louisiana

We have audited certain transactions of the Department of Health and Hospitals. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain financial transactions.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the Nineteenth Judicial District of Louisiana, the United States Attorney for the Middle District of Louisiana, and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

DHH 2013

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EXECUTIVE SUMMARY

Former Fiscal Director Diverted Public Funds to a Private Bank Account for Personal Use

From March 27, 2007, to February 1, 2013, former Department of Health and Hospitals (DHH) Fiscal Director Deborah Loper diverted checks issued to DHH totaling at least \$1,058,446 to a private bank account for personal use. DHH's lack of adequate internal controls over incoming mail and funds transfers appears to have allowed Ms. Loper to divert these checks to a private bank account without detection. Because Capital One Bank allowed Ms. Loper to deposit checks issued to DHH into a private bank account, Ms. Loper was able to convert these public funds for personal use. By diverting public funds for personal use, Ms. Loper may have violated state and federal laws.¹

BACKGROUND AND METHODOLOGY

Organizationally, the Department of Health and Hospitals (DHH) is in the executive branch and directly under the governor and the Department of Civil Service. DHH's mission is to protect and promote health and to ensure access to medical, preventative, and rehabilitative services for all citizens of the state of Louisiana. It provides health and medical services for uninsured and medically indigent persons and maintains a coordination of services with the Louisiana State University Health Sciences Center, local health departments, and federally qualified centers. DHH supervises, coordinates, and provides facilities for mental health; addictive disorders; public health services; services for developmentally disabled; and Medicaid services.

On February 15, 2013, DHH's Fiscal Director Deborah Loper resigned via e-mail to her supervisors. Seven days later on February 22, 2013, Ms. Loper's attorney informed DHH management of a private bank account at Capital One Bank that was controlled by Ms. Loper to which DHH funds may have been diverted. Subsequently, Capital One representatives informed DHH management that this account was actively being investigated and had been frozen on February 19, 2013, with a balance of \$39,405.

On March 1, 2013, DHH notified the Louisiana Legislative Auditor (LLA) of possible misappropriations and issued a press release stating that "DHH's Bureau of Health Care Integrity conducted an internal investigation" which uncovered a misappropriation of public funds by a DHH employee. Immediately after receiving this information, the LLA initiated a concurrent investigation with the Louisiana Inspector General, Louisiana Attorney General, Federal Bureau of Investigation, and the United States Department of Health and Human Services Office of Inspector General.

The procedures performed during this audit included:

- (1) interviewing employees of DHH;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records of DHH;
- (4) gathering documents from external parties; and
- (5) reviewing applicable state and federal laws and regulations.

FINDING AND RECOMMENDATIONS

Former Fiscal Director Diverted Public Funds to a Private Bank Account for Personal Use

From March 27, 2007, to February 1, 2013, former Department of Health and Hospitals (DHH) Fiscal Director Deborah Loper diverted checks issued to DHH totaling at least \$1,058,446 to a private bank account for personal use. DHH's lack of adequate internal controls over incoming mail and funds transfers appears to have allowed Ms. Loper to divert these checks to a private bank account without detection. Because Capital One Bank allowed Ms. Loper to deposit checks issued to DHH into a private bank account, Ms. Loper was able to convert these public funds for personal use. By diverting public funds for personal use, Ms. Loper may have violated state and federal laws.¹

Public Funds Diverted to Private Bank Account

From March 2007 to February 2013, a period of six years, Ms. Loper diverted at least 167 checks issued to DHH totaling \$1,058,446 to a private bank account. The checks issued to DHH and then diverted by Ms. Loper encompassed the following:

- 150 checks totaling \$598,410 received from Medicaid providers for refunds of overpayments or other payment errors;
- 8 checks totaling \$303,402 received from a rural hospital in accordance with a Low Income Needy Care Collaboration Agreement;^A
- 7 checks totaling \$144,134 prepared by DHH for transfers from one DHH account to another; and
- 2 checks totaling \$12,500 received from a research company for service fees associated with a data use agreement.

We found that the majority of checks diverted by Ms. Loper were sent to/received by DHH's Payment Management section and were shuffled between at least three separate employees, three separate DHH sections, and two unsecured mail bins over a period of several days. These checks were not copied, logged, or restrictively endorsed upon receipt by the Payment Management section. We noted that although the Payment Management section and several other DHH sections receive incoming checks, there is only one section, the Deposit Unit, responsible for recording and depositing checks. DHH policies only address the actions required once the Deposit Unit receives the checks (e.g., when they are copied, logged, restrictively endorsed, and deposited). There were no written policies/procedures for the proper processing of checks received in these other sections of DHH.

^A Low Income Needy Care Collaboration Agreements are agreements entered into by the public entity and private hospital where a public entity sends payments to DHH as the non-federal share of the supplemental Medicaid payments for a private hospital.

In addition, numerous DHH employees indicated that it was their practice to give checks to Ms. Loper when they were unsure of the appropriate accounting treatment. For example, we found that seven checks prepared by DHH personnel that were intended to transfer DHH funds between bank accounts were given to Ms. Loper. Because there were no procedures for processing these transactions, Ms. Loper was able to divert these checks without detection.

It should be noted that the majority of checks diverted by Ms. Loper were not otherwise identified as missing because they represented refunds initiated by medical providers for which there were no corresponding receivable recorded in DHH's accounting records. As such, upon receipt of these checks there were no DHH records to reconcile/agree these amounts to in order to ensure they were received and deposited into a DHH bank account.

Private Bank Account

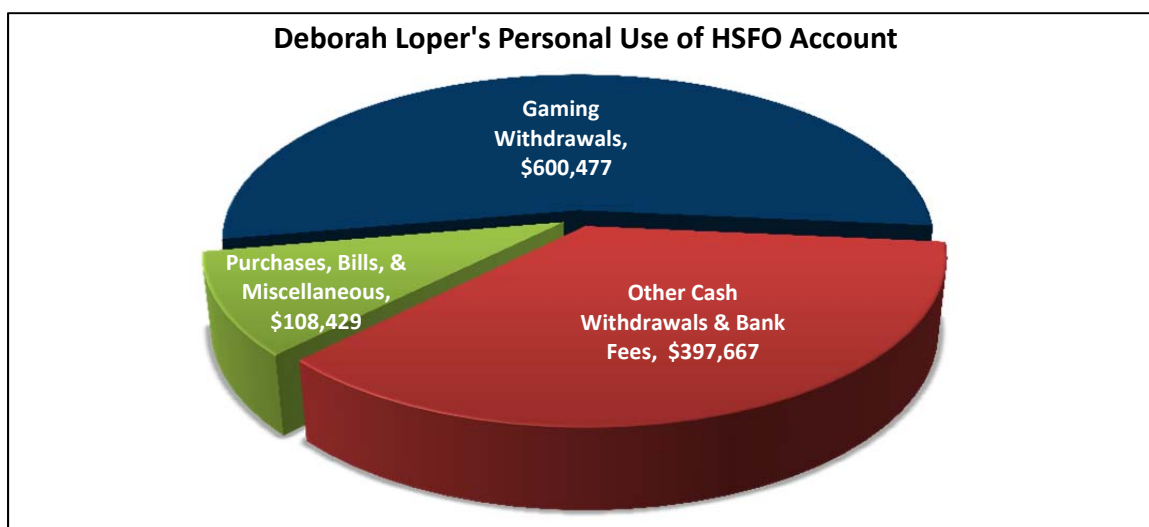
The private bank account used by Ms. Loper to divert checks issued to DHH was a Capital One Bank account in the name of the National Association of State Human Services Finance Officers (HSFO). The HSFO is a nationwide nonprofit organization that organizes training and other events for human services finance officers. This account was opened on October 12, 2006, by Jeff Reynolds, DHH Deputy Medicaid Director and HSFO member, to be used for several Louisiana HSFO events. Mr. Reynolds stated that he made Ms. Loper responsible for all aspects of the Louisiana HSFO financial operations. Ms. Loper was an authorized signer on the account, was the only individual to write checks from the account, and was the primary debit card user for the account. Further, the address listed on the account was Ms. Loper's personal residence. It should be noted that although Mr. Reynolds (the only other authorized signer) had a debit card for the account, his card appears to have been used only for HSFO event expenses and was not used after the conclusion of the final HSFO event in December 2009.

Bank records indicate that on March 27, 2007, Ms. Loper began depositing checks issued to DHH into the Louisiana HSFO account. Capital One Bank accepted and processed these deposits despite the fact that this account receiving the funds was a private, nongovernmental account which was not sanctioned by DHH or the state treasury. Ms. Loper continued this practice while the account was actively being used for HSFO events. After the HSFO events were completed, Ms. Loper sent records (and a check for the remaining HSFO funds) to national HSFO officials accounting for the Louisiana activities. However, a review of these records indicates that Ms. Loper submitted fabricated bank statements to those HSFO officials. These bank statements excluded all nonrelated HSFO transactions such as the deposits of DHH funds and the personal use of those funds.

According to Mr. Reynolds, he instructed Ms. Loper to close the Louisiana HSFO account after the completion of the last event (December 2009). However, contrary to Mr. Reynolds' directive, Ms. Loper did not close the account and continued to divert DHH funds to the account.

Personal Use of Public Funds

Our review indicates that Ms. Loper diverted DHH funds to the private HSFO bank account for her personal use. The funds deposited into this bank account which were not associated with legitimate HSFO business were largely comprised of diverted DHH funds (92%) with the remaining funds coming from unknown sources^B (7.75%) and from Ms. Loper (less than 0.25%). Ms. Loper used these funds to make personal cash withdrawals and purchases totaling \$1,106,573. These personal transactions were not authorized by DHH and had no legitimate public purpose. Ms. Loper continued using the account for personal purposes until February 2013, when Capital One Bank initiated an internal investigation into her use of the account. After speaking with an investigator, Ms. Loper resigned from her position at DHH and the account was frozen on February 19, 2013, with a balance of \$39,405. The following chart illustrates the personal transactions conducted by Ms. Loper.



- **Cash withdrawals made at several gaming establishments.** HSFO bank records and gaming records indicate that Ms. Loper withdrew funds from the Louisiana HSFO account at the same local casino where she engaged in gaming transactions. In addition, Ms. Loper's personal bank records and federal income tax returns for 2009 and 2010 indicate that Ms. Loper participated in a substantial amount of gaming activities which were not funded through her personal accounts. Although Ms. Loper included large amounts of gaming winnings and losses on her federal tax returns, she did not include the diverted public funds as income on these tax returns.

^B As of the date of this report, bank records detailing these deposits were not made available to us. Efforts are continuing to identify the sources of these funds which total \$93,386.

- **Other cash withdrawals and checks made payable to members of Ms. Loper's household.** These transactions included ATM withdrawals using Ms. Loper's debit card, checks payable to cash negotiated by Ms. Loper, and checks to Ms. Loper's boyfriend and son. Many of these transactions caused bank fees to be charged to the account.
- **Purchases made at numerous retail stores, payments for personal utilities, and payments for other miscellaneous debts.** Bank records indicate that Ms. Loper used her HSFO debit card at numerous stores including Wal-Mart, Best Buy, Target, and Academy. Bank records also indicate that Ms. Loper used this account to make payments on utility bills and miscellaneous debts.

We attempted to speak to Ms. Loper and were advised by her attorney that she would not be allowed to speak with us.

Conclusion

From March 27, 2007, to February 1, 2013, former DHH Fiscal Director Deborah Loper diverted checks issued to DHH totaling \$1,058,446 to a private bank account for personal use. By diverting public funds for personal purposes, Ms. Loper may have violated state and federal laws.¹

Recommendations

The diversion of public funds was not discovered by DHH, but was instead discovered by Capital One Bank and then disclosed to DHH by Ms. Loper's attorney. As a result, the following recommendations are intended to aid DHH in detecting and/or preventing any future events of this nature. DHH management should consult with legal counsel to determine the appropriate civil and criminal actions to be taken, including recovery of diverted funds and/or restitution. We also encourage DHH management to consider reinstating the internal audit function at DHH. Lastly, DHH management should implement policies and procedures to ensure that:

- (1) incoming checks are recorded and restrictively endorsed by the first DHH employee that receives them. As much as practicable, DHH should require the use of electronic funds transfer and/or a lock box to receive incoming payments;
- (2) one DHH employee is responsible for checking mail and receiving, logging, and stamping all checks received;
- (3) checks issued to transfer funds are properly recorded, safeguarded, and immediately restrictively endorsed;
- (4) checks are kept in secured locations while at DHH;
- (5) checks are deposited within 24 hours of receipt by DHH;

- (6) employees are trained on the proper handling of incoming mail and checks;
- (7) providers submit monthly reports of funds paid to DHH. These reports should be reconciled to deposits by someone who has no access to the funds; and
- (8) employees reconcile amounts received via incoming checks and funds transfers to amounts deposited on a regular basis.

LEGAL PROVISIONS

¹ **R.S. 14§67** provides, in part, that theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

R.S. 14§71.1, provides, in part, that whoever knowingly executes, or attempts to execute, a scheme or artifice to do any of the following shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than one hundred thousand dollars, or both: (1) To defraud a financial institution. (2) To obtain any of the monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution by means of false or fraudulent pretenses, practices, transactions, representations, or promises.

R.S. 14§134 provides, in part, that malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.

R.S. 14§230 provides, in part, that money laundering is the supervision or facilitation of a financial transaction involving proceeds known to be derived from criminal activity, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or the control of proceeds known to be derived from such violation or to avoid a transaction reporting requirement under state or federal law. It is also the receiving or acquisition of proceeds derived from any violation of criminal activity, or knowingly or intentionally engaging in any transaction that the person knows involves proceeds from any such violation.

18 U.S.C. §666 provides, in part, that theft concerning programs receiving federal funds occurs when an agent of an organization, state, local, or Indian tribal government or any agency thereof embezzles, steals, obtains by fraud, or otherwise intentionally misapplies property that is valued at \$5,000 or more and is owned by or under control of such organization, state, or agency when the organization, state, or agency receives in any one year period, benefits in excess of \$10,000 under a federal program involving a grant contract, or other form of federal assistance.

18 U.S.C. §1344(2), “Bank Fraud” states, in part, that whoever knowingly executes, or attempts to execute, a scheme or artifice to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

26 U.S.C. §7201 provides, in part, that any person who willfully attempts in any manner to evade any tax imposed by the Internal Revenue Code or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony.

APPENDIX A

Management's Response



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

June 5, 2013

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
Post Office Box 94397
P.O. Box 94397
Baton Rouge, LA 70804-9397

Re: Investigative Audit – Fiscal Director

Dear Mr. Purpera,


The Department of Health and Hospitals (DHH) concurs with the recommendations relative to the investigative audit of the DHH Fiscal Director.

Management recognizes its responsibility to establish internal controls regarding financial transactions of DHH. In response to the recommendations in the referenced audit report, management has taken the following actions:

- The Division of Fiscal Management staff has implemented controls over the processing of incoming mail that includes recording checks received on a check log and restrictively endorsing the checks when they are first received. In addition, a new policy has been developed that addresses the proper receipting and safeguarding of checks. All employees will be trained on the new policy. Staff has also contacted Molina to notify providers of the requirement to submit proper documentation with any checks that are submitted to DHH. These procedures are expected to address the internal control weaknesses which were cited in your report.
- DHH has initiated civil proceedings against the employee involved and the bank that accepted the misappropriated funds. Finally, DHH has hired Mr. William Root as the Chief Compliance Officer. Mr. Root is responsible for assessing risk at DHH offices and developing an appropriate audit plan to review and mitigate areas of high risk.

DHH management is confident that these actions will address the recommendations submitted by your office. If you have any questions or need additional information, please contact Pam Diez, Director of Fiscal Management at 225-342-1483.

Cordially,


Kathy H. Kliebert
Interim Secretary

c: Jerry Phillips, Undersecretary
Pam Diez, Director of Fiscal Management
Bill Root, Chief Compliance Officer