

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

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NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF MEDICAID MANAGEMENT INFORMATION SYSTEMS SERVICES

RALEIGH, NC

INVESTIGATIVE REPORT
MAY 2015



NCOSA
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The Office of the State Auditor investigated complaints about the qualifications, hiring practices, and pay for temporary employees of the Office of Medicaid Management Information Systems Services (OMMISS) within the North Carolina Department of Health and Human Services (Department). In addition, concerns were raised about excessive compensatory time accumulated by the OMMISS Director and misrepresentations to the General Assembly regarding overtime reporting and payments.

BACKGROUND

OMMISS administered the computer systems that managed the claims processing for more than 70,000 enrolled providers of North Carolina's Medicaid program and other health care plans. It directed the project to develop and implement the new NCTracks system, which went live July 1, 2013.

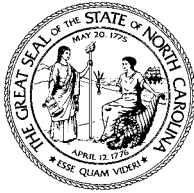
KEY FINDINGS

- At least \$1.6 million wasted through excessive wages and commissions, unjustified overtime, and holiday pay to ineligible employees
- OMMISS Director engaged in or allowed nepotism
- OMMISS Director received unauthorized compensatory time that may result in inflated retirement benefits
- Reports to General Assembly omitted at least \$260,000 of overtime and compensatory time
- Lack of adequate oversight of OMMISS despite findings in prior audit reports

KEY RECOMMENDATIONS

- The Department's management should provide adequate oversight of personnel actions including salary administration, hiring, and overtime related to temporary employees
- The Department should implement policies and procedures that prevent nepotism or even the appearance of nepotism
- The Department's CIO should more closely monitor, review, and approve in the State's online payroll system the work time and leave of employees who directly report to him
- The Department should comply with Session Law by including on the monthly reports to the General Assembly the total amount of overtime and compensatory time related to the Medicaid Management Information Systems replacement project
- The Department should develop and implement procedures to ensure the proper administrative oversight of the Office of NCTracks, the successor organization to OMMISS

Key findings and recommendations are not inclusive of all findings and recommendations in the report.



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AUDITOR'S TRANSMITTAL

May 13, 2015

The Honorable Pat McCrory, Governor
Members of the North Carolina General Assembly
Dr. Aldona Wos, Secretary, Department of Health and Human Services

Ladies and Gentlemen:

Pursuant to *North Carolina General Statute §147-64.6(c)(16)*, we have completed an investigation of allegations concerning the North Carolina Department of Health and Human Services. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with *G.S. §147-64.6(c)(12)*. We appreciate the cooperation received from the management and employees of the Department of Health and Human Services during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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Article V, Chapter 147 of the North Carolina General Statutes, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every state agency and any organization that receives public funding. The Auditor also has the power to summon people to produce records and to answer questions under oath.



BACKGROUND

The Office of the State Auditor received allegations through the *State Auditor's Hotline* regarding the Director of the Office of Medicaid Management Information Systems Services (OMMISS) within the North Carolina Department of Health and Human Services (Department). The following list summarizes the allegations received through the *Hotline*:

- The OMMISS Director facilitated excessive overtime pay, holiday pay to ineligible employees, and unjustified pay rates for temporary employees.
- The Department misrepresented to the General Assembly the amount of overtime worked and paid to employees.
- Temporary and state employees received preferential treatment because of their personal relationships or connections to the OMMISS Director.
- The OMMISS Director earned and recorded compensatory time for which she was not eligible.

Our investigation of these allegations included the following procedures:

- Review of applicable state and Department personnel policies and procedures, personnel records, and the North Carolina General Statutes
- Interviews with employees and officials from the Department (including OMMISS temporary and full-time employees), North Carolina Office of State Human Resources, North Carolina Office of Information Technology Services, North Carolina General Assembly, and temporary staffing agencies
- Examination and analysis of available documents and records related to the allegations
- Forensic examination of the OMMISS Director's computers

This report presents the results of our investigation. The investigation was conducted pursuant to *North Carolina General Statute § 147-64.6 (c) (16)*.

North Carolina Department of Health and Human Services (Department)¹

The Department's mission is to improve the health, safety, and well-being of all North Carolina citizens while providing specific services to special populations including individuals who are deaf, blind, developmentally disabled, mentally ill, or economically disadvantaged.

The Department is divided into divisions and offices that fall under four broad service areas: health, human services, administrative, and support functions. The Department also oversees developmental centers, mental retardation centers, psychiatric hospitals, alcohol and drug abuse treatment centers, and two residential programs for children.

¹ <http://www.ncdhhs.gov/aboutdhhs/index.htm>

Office of Medicaid Management Information Systems Services (OMMISS)²

OMMISS administered the computer systems which managed the claims processing for more than 70,000 enrolled providers of North Carolina's Medicaid program and other health care plans. OMMISS directed the development and implementation of the new NCTracks system, which went live July 1, 2013, to replace the previous Medicaid Management Information System.

During the replacement, the Department employed a combination of permanent, temporary, and contract employees. The Department used several private temporary staffing agencies located in Wake County to hire temporary employees for the project.

² <http://ncmmis.ncdhhs.gov/>



FINDINGS AND RECOMMENDATIONS

1. AT LEAST \$1.6 MILLION WASTED THROUGH EXCESSIVE WAGES AND COMMISSIONS, UNJUSTIFIED OVERTIME, AND HOLIDAY PAY TO INELIGIBLE EMPLOYEES

From July 1, 2011, through June 30, 2014, the Office of Medicaid Management Information Systems Services (OMMISS) wasted at least \$1,667,164³ by paying: (1) \$807,741 to temporary employees at rates that exceeded their qualifications; (2) \$598,673 to temporary staffing agencies for commissions that exceeded the rates charged by the state-operated temporary staffing service; (3) \$234,724 to employees for unjustified overtime; and (4) \$26,026 for holiday pay to ineligible employees.

The OMMISS Director's abuse of her authority through the hiring process caused these excessive costs. According to the Department's Chief Information Officer (CIO), all hiring and signature authorization for temporary employees remained with the OMMISS Director and managers.

Salaries Excessive Compared to Temporary Employees' Qualifications

For fiscal years 2012 through 2014, OMMISS paid 12 temporary employees \$807,741 more than their qualifications justified (See Table 1). OMMISS management⁴ set temporary employees' pay rates and wasted funds which could have been used for other project purposes. The investigation identified at least three different areas in which the temporary employees' pay rates were unjustified: (1) the OMMISS Director overruled the pay rate set by a private temporary staffing agency, (2) OMMISS management used payroll service agreements, and (3) an Office of State Human Resources official determined that pay rates were excessive.

The OMMISS Director overruled the recommended pay rate set by a private temporary staffing agency. The temporary staffing agency recommended a starting pay range of \$12 to \$13 per hour for the OMMISS Director's executive assistant based on her skills and experience. The OMMISS Director initially set her pay at \$20 per hour and increased her pay to \$25.75 per hour after one week. The OMMISS Director said she set the pay rates for those employees who reported directly to her.

For five temporary employees reviewed, the investigation revealed that OMMISS management simply used the private temporary service staffing agencies to pay the employees. Using a "payroll service agreement" method, OMMISS management would direct employees to a specific private temporary staffing agency and inform that staffing agency what pay rate to use rather than allowing the staffing agency to analyze the employees' qualifications to set an appropriate rate.

During the investigation, an Office of State Human Resources (OSHR) official analyzed the qualifications⁵ of the 12 temporary employees listed in Table 1 and determined their appropriate pay rates based on their qualifications, job titles, and/or job specifications. For all 12 employees, the OSHR official concluded that the pay rates OMMISS set exceeded the employees' qualifications.

³ The investigation included the review of three fiscal years (2012, 2013, and 2014). Investigators did not review all temporary employees within OMMISS.

⁴ The OMMISS Director and managers and supervisors within OMMISS comprise "OMMISS management."

⁵ The OSHR official used temporary employees' applications and/or resumes.

Examples of excessive salaries paid to temporary employees include the following:

- OMMISS management paid a temporary operational program manager \$89.39 per hour, which is 78% more than the OSHR official determined the appropriate pay rate (\$50.22) should have been. From July 1, 2011, through June 30, 2014, this employee received \$244,420 more than his qualifications justified. Because this *temporary* employee has worked at OMMISS since October 2004, the amount of unjustified salary payments may be much higher.
- An OSHR official determined the appropriate pay rate for a temporary business analyst should have been \$33.57 per hour. OMMISS management paid the employee \$70 per hour, 109% more than the OSHR official determined as appropriate. From July 1, 2011, through June 30, 2014, this employee received \$199,183 more than her qualifications justified.
- OMMISS management paid a health insurance claims consultant \$74.00 per hour, which is 73% more than the OSHR official determined the appropriate pay rate (\$42.83) should have been. From July 1, 2011, through June 30, 2014, this employee received \$103,484 more than her qualifications justified. Because this *temporary* employee has worked at OMMISS since August 2008, the amount of unjustified salary payments may be much higher
- An OSHR official determined the appropriate pay rate for a temporary business analyst for project support should have been \$23.31 per hour. OMMISS management set the employee's pay at \$36 per hour, 54% more than the OSHR determination. From July 1, 2011, through June 30, 2014, this temporary employee received \$60,404 more than his qualifications justified.

TABLE 1
CALCULATION OF SALARIES EXCEEDING TEMPORARY EMPLOYEES' QUALIFICATIONS

Job Title	Pay Rates		Base Salaries for Fiscal Years 2012 through 2014		
	Actual	Qualified ^a	Actual Salaries Paid ^b	Qualified Amounts ^a	Difference
Operations Program Manager Consultant	\$ 89.39	\$ 50.22	\$ 557,793.60	\$ 313,372.80	\$ 244,420.80
Business Analyst	62.50		408,660.00	209,476.80	199,183.20
	64.00				
	70.00	33.57			
Health Insurance Claims Consultant	74.00	42.83	245,680.00	142,195.60	103,484.40
Business Analyst ^c	36.00	23.31	171,360.00	110,955.60	60,404.40
Business & Tech. Applications Analyst	63.71	50.22	244,646.40	192,844.80	51,801.60
Business Systems Analyst	67.50	52.10	167,400.00	129,208.00	38,192.00
Technical Resource	15.00		138,220.00	105,830.40	32,389.60
	22.50				
	23.50	16.96			
Executive Assistant	25.75	17.60	91,670.00	62,656.00	29,014.00
Budget Analyst ^c	25.75		192,870.00	172,221.00	20,649.00
	35.00	27.60			
Business & Tech. Applications Analyst	70.00	50.22	61,600.00	44,193.60	17,406.40
Contract Assistant ^c	22.75		172,604.00	163,176.00	9,428.00
	30.90	26.15			
Receptionist	19.00		122,040.00	120,672.00	1,368.00
	20.00	19.34			
TOTAL			\$ 2,574,544.00	\$ 1,766,802.60	\$ 807,741.40

^a Qualified pay rates and salaries were determined by an Office of State Human Resources official

^b Actual salaries paid do not include the additional overtime paid to the temporary employees

^c Temporary employees initially hired as the OMMISS Director's executive assistant and later moved to another position at OMMISS

The OMMISS Director disputed that temporary employees were overpaid by noting that there were no formal job descriptions for the temporary positions. She said, “It was not about qualifying them for the position; it was about talking to see if they were qualified to fill the role.”

The OMMISS Director tried to justify the higher pay rates for her administrative staff by saying, “They have to be able to do at least 75% of business analyst type work.” However, during interviews with these employees, they did not demonstrate those abilities and could not explain any duties beyond those of an administrative assistant.

OMMISS management’s practice of paying temporary employees more than their qualifications justify conflicts with the *State Human Resources Manual*. The State’s workforce planning, recruitment and selection policy states, “Agency management is responsible for documenting the salary decisions.”⁶ The manual also states, “All agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria.”⁷

Commission Rates Charged by Private Sector Staffing Agencies’ Exceeded Temporary Solutions Rate

For fiscal years 2012 through 2014, OMMISS paid \$598,673 more in commissions to private temporary staffing agencies than they would have paid Temporary Solutions, the state-operated temporary staffing service,⁸ to place 13 temporary employee (See Table 2). For one temporary employee, OMMISS paid \$77,763 more to the staffing agency than they would have paid to Temporary Solutions.

The commission rates charged by the private sector staffing agencies ranged from an 8% to a 55% mark-up to the billing rate with an average of 35%. Temporary Solutions charged state agencies a flat mark-up rate of \$2 per hour worked per employee in addition to charging for Federal Insurance Contributions Act (FICA) taxes, which fund Social Security and Medicare programs.

By paying higher commissions to temporary staffing agencies, OMMISS wasted \$598,673. These funds could have been used for other project purposes.

OMMISS paid excessive commissions because the OMMISS Director used various private temporary staffing agencies to avoid state policy which limits temporary employment to a maximum of 12 consecutive months. The private temporary staffing agencies do not limit temporary employment to a specified length of time. For example, a business analyst worked at OMMISS from February 2007 through October 2014 and an operational program manager worked at OMMISS from October 2004 through present. Overall, at least 14 temporary employees worked at OMMISS longer than 12 consecutive months.⁹

⁶ *State Human Resources Manual*, Career Banding Salary Administration, Section 4, Page 6, Revised January 1, 2015.

⁷ *State Human Resources Manual*, Workforce Planning, Recruitment and Selection, Section 2, Page 35, Revised January 1, 2014.

⁸ Temporary Solutions is located within the Office of State Human Resources.

⁹ The investigation included the review of three fiscal years (2012, 2013, and 2014). Investigators did not review all temporary employees within OMMISS.

The State Human Resources Manual states that “in no case shall the temporary employment period exceed 12 consecutive months.”¹⁰

TABLE 2 COMPARISON OF PAYMENTS FOR TEMPORARY STAFFING AGENCY SERVICES Fiscal Years 2012 through 2014				
Job Title	Staffing Agencies' Commissions^a	Temporary Solutions^b	Difference	
Business & Tech. Applications Analyst	\$ 106,686	\$ 28,923	\$	77,763
Business Analyst	101,330	32,647		68,683
Budget Analyst	97,742	30,756		66,986
Business & Tech. Applications Analyst	85,913	23,242		62,671
Business Analyst	83,007	27,150		55,857
Executive Assistant	79,036	17,701		61,335
Contract Assistant	68,716	24,460		44,256
Business Systems Analyst	63,411	16,502		46,909
Receptionist	67,728	27,369		40,359
Business Analyst	60,519	23,634		36,885
Operations Program Manager Consultant	54,237	40,459		13,778
Technical Resource	34,319	20,116		14,203
Business & Tech. Applications Analyst	14,909	5,921		8,988
Total Difference			\$	598,673
^a Amounts paid include all fees paid to private temporary staffing agencies				
^b Amounts include \$2 per hour flat fee plus charges for FICA				

Significant and Unjustified Overtime

From July 1, 2011, through June 30, 2014, OMMISS paid five temporary employees \$234,724 without documented justification for 5,841 hours of overtime. These employees included two business analysts, an office receptionist, the OMMISS Director's executive assistant, and a contract monitor. These payments included:

- In fiscal year 2013, a business analyst worked 823 hours of overtime (averaging 15.83 hours per week) and received \$44,442 in overtime. In fiscal year 2014, the business analyst worked 627 hours of overtime (averaging 12.06 hours per week) and received \$33,858 in overtime.
- In fiscal year 2012, the office receptionist worked 442 hours of overtime (averaging 8.50 hours per week) and received \$12,597 in overtime payments. In fiscal year 2013, the office receptionist worked 721.25 hours of overtime (averaging 13.61 hours per week) and received \$21,325 in overtime payments. In fiscal year 2014, the office receptionist worked 474 overtime hours (averaging 9.12 hours per week) and received \$14,220 in overtime payments.

¹⁰ *State Human Resources Manual*, Employment and Records, Section 3, Page 6, Revised November 1, 2014.

- For fiscal year 2014, the OMMISS Director's executive assistant worked 910.25 overtime hours (averaged 17.5 overtime hours per week) and received \$35,158 in overtime payments.

OMMISS management allowed temporary employees to work significant amounts of overtime without documented justification. As a result, OMMISS may have wasted \$234,724 that could have been used for other project purposes, to reduce the amount of costs overruns, or to reduce the impact of delays as identified in the January 2012 Office of the State Auditor performance audit report.

The temporary employees could not provide reasonable explanations that justified the need for them to work overtime. When questioned regarding the reason for the excessive overtime, these employees provided limited explanations.

For example, the receptionist said her overtime included:

- "The phones were super busy off the hook...even after hours."
- "Lots and lots of typing"
- "If I need to make copies of something or, for instance, if I need to make copies of the (sign-in) sheets for the front."
- "Put nametags up for new people because it's difficult for me to leave my desk during the day."

The executive assistant, who worked an average of 17.5 hours of overtime per week, said the extent of her overtime derived from:

- Arriving to work 15 minutes early to open the office and staying 15 to 20 minutes late to close the office at the end of the day.
- "I usually stayed as long as [the OMMISS Director] stayed...When we were going live (July 1, 2013) we worked a lot of overtime...from an extra eight to 10 hours every week." However, her timesheets indicated she worked an average of 32 overtime hours per week during the five-week period of the project going live.

A lack of oversight contributed to the excessive and unjustified overtime. The OMMISS Director said she knew that temporary employees worked overtime due to discussions at management meetings. However, she said she did not monitor overtime for employees that did not report directly to her. The Department's CIO said he did not review or approve overtime worked by temporary employees and was unaware of how much overtime temporary employees worked.

The *State Human Resources Manual* states, "It shall be the responsibility of each agency or executive head to determine that the provision of overtime pay is administrated in the best

interest of the State. Although each agency head is responsible for the manner in which overtime is authorized, it is equally important to control unauthorized overtime.”¹¹

Payment for Holiday Leave to Ineligible Employees

For fiscal years 2012 through 2014, OMMISS paid at least \$26,026 for holiday leave to nine temporary employees. The staffing agency’s contracts included six paid holidays for these temporary employees.¹² OMMISS management elected to pay these temporary employees an additional six holidays to equal the 12 annual holidays received by state employees.

The inclusion of paid holidays increased the costs charged by the staffing agency using funds that could have been used for other project purposes.

In an e-mail from the OMMISS information technology manager to the staffing agency, the manager wrote:

“The State is committed to paying the holidays until such time as [temporary employee] would have earned them through [the staffing agency]. We realize it would not be sometime when she will be eligible for paid holidays from [the staffing agency] so the State will pay them until then and will pay for any holidays that [the staffing agency] does not pay for.”

This practice conflicts with the *State Human Resources Manual*, which states that temporary employees are not eligible for paid holidays.¹³

RECOMMENDATIONS

- The Department’s management should provide adequate oversight of personnel actions including salary administration, hiring, and overtime related to temporary employees.
- The Department should use Temporary Solutions to fill its temporary employee needs.
- The Department should seek legal counsel to determine whether any unjustified payments including holiday pay can be collected from temporary employees.
- The Department should revise its contracts with private temporary staffing agencies to cease paying holiday leave to temporary employees.

¹¹ *State Human Resources Manual*, Salary Administration, Hours of Work and Overtime Compensation, Section 4, Page 47, Revised January 1, 2011.

¹² OMMISS contracts with the private temporary staffing agencies provided that temporary employees who work more than 1,975 hours within the previous 12 months would receive six paid state holidays.

¹³ *State Human Resources Manual*, Employment and Records, Appointment Types and Career Status, Section 3, Page 7, Revised November 1, 2014.

2. OMMISS DIRECTOR ENGAGED IN OR ALLOWED NEPOTISM

The Office of Medicaid Management Information Systems Services (OMMISS) employed at least 11 separate groups of family members including family members of the OMMISS Director. In addition, at least 15 individuals had personal connections to the OMMISS Director. At least seven of those 15 were not qualified and/or received unjustified pay rates (See Table 1).

OMMISS Director Hired Family Groups

The 11 groups of family members included the following:

- The OMMISS Director and her daughter
- The OMMISS Director and her ex-husband
- The OMMISS Director and her ex-husband's wife
- The receptionist and her husband
- A contract monitor and her son
- An information technology manager and her daughter
- A networking analyst and his daughter
- A former information technology manager who currently works for Computer Sciences Corporation (the Medicaid vendor for NCTracks) and his wife
- Another former information technology manager and her daughter
- An office assistant and her husband (a technology support specialist)
- The office assistant listed above and her brother

OMMISS Director Hired Individuals with Personal Connections to Her

At least six OMMISS employees regularly attended the same church as the OMMISS Director. The OMMISS Director said she directly hired four executive assistants who attended the church. These executive assistants' starting pay rates exceeded their qualifications. (See Table 1, footnote c). The last executive assistant received \$86,852 in regular and overtime pay during the 2014 fiscal year. That amount exceeded her qualifications and the annual earnings of the executive assistant to the highest official in every state agency (See Table 3).

TABLE 3
EXECUTIVE ASSISTANTS' TOTAL EARNINGS FOR FY2014

Job Title	State Agency	FY 2014 Earnings^b
Executive Assistant	OMMISS	\$ 86,852
Personal Secretary to Governor	Office of the Governor	78,000
Special Assistant	Office of State Budget and Management	69,478
Executive Assistant III	Administrative Office of the Courts	67,661
Special Assistant to the Attorney General	Dept. of Justice	67,323
Executive Assistant	Dept. of State Treasurer	65,179
Administrative Officer	Dept. of Transportation	62,928
Executive Assistant	Dept. of Commerce	62,290
Administrative Officer II	Dept. of Revenue	62,265
Executive Assistant	Office of ITS	59,330
Executive Assistant	Office of the State Auditor	57,886
Administrative Officer II	Dept. of Cultural Resources	56,619
Executive Assistant	Dept. of Administration	56,608
Administrative Officer I	Dept. of Labor	55,685
Director of Operations	Lieutenant Governor	55,009
Executive Assistant to Chief of Staff	Office of the Governor	54,999
Executive Assistant	Office of State Controller	53,923
Executive Assistant II	Dept. of Public Instruction	52,244
Administrative Officer to the Secretary	Dept. of Health & Human Services	52,000
Executive Assistant II	Dept. of Agriculture	50,335
Executive Assistant II	Dept. of Insurance	49,024
Administrative Support	Community College System	48,867
Executive Assistant II	Dept. of Secretary of State	43,396
Administrative Assistant ^a	Dept. of Environ. and Natural Resources	N/A

^a Administrative Assistant started work at the agency during the fiscal year.
^b 2014 Earnings include base salary, overtime payments, and longevity payments.

A technology support specialist (who is a state employee) and an office assistant (his wife) employed at OMMISS also attended the church. The wife's brother was one of the four executive assistants. He is the youth pastor at the church and has known the OMMISS Director since the 1990s when he was a student and she was the Vice President of Information Technology at Saint Augustine's University.¹⁴

Other employees said that they learned about jobs at OMMISS through other affiliations with the OMMISS Director.

- One employee learned about a job opportunity because her sister was the OMMISS Director's hairdresser.
- Another employee became aware of a job because her mother was the OMMISS Director's neighbor. She received a higher pay rate than her qualifications justified.

¹⁴ After the investigation began, the youth pastor's photograph was removed from the church's website even though he continues to hold that position within the church.

- Yet another employee learned about her job because her husband was already employed at OMMISS and he had previously worked with the OMMISS Director at Saint Augustine's University. She also received a higher pay rate than her qualifications justified.

Table 4 summarizes the connections between the OMMISS Director and at least 15 individuals employed within OMMISS.

Job Title	Connection to OMMISS Director	Unqualified for Position	Pay Rate Exceeded Qualifications
Business Analyst	Church	X	X
Contract Assistant	Church	X	X
Executive Assistant	Church	X	X
Budget Analyst	Church	X	X
Office Assistant	Church		
Technology Support Specialist	Church		
Business System Analyst	Sister of OMMISS Director's hairdresser		
Technical Resource	Daughter of OMMISS Director's neighbor	X	X
Receptionist	Wife of OMMISS state employee who worked with OMMISS Director at St. Augustine's University	X	X
Technology Support Specialist	Worked with OMMISS Director at St. Augustine's University		
Business & Tech. Applications Analyst	Worked with OMMISS Director at the Department		X
Payroll Service	Ex-husband of OMMISS Director		
Office Assistant	Daughter of OMMISS Director		
Project Support Specialist	Wife of ex-husband of OMMISS Director		
Office Assistant	Son of church member and Contract Assistant		

Nepotism Led to Hiring of Unqualified Individuals

One manager said the OMMISS Director provided a contract assistant to him without his input and this employee did not initially possess the skills needed to perform her duties. He said this employee would not have been his first choice for this position. The OMMISS Director moved some of the administrative staff from their initial positions to other positions within OMMISS. Hiring managers within OMMISS provided instances in which they requested a need to post a position through Office of State Human Resources (OSHR) but the OMMISS Director denied their requests.

Lack of Oversight Allowed Nepotism

The Department's former Assistant Secretary for Finance and Business Operations¹⁵ did not provide proper oversight of the OMMISS Director's hiring decisions. The OMMISS Director abused her authority by hiring individuals connected to her.

When asked for her definition of "nepotism," the OMMISS Director answered, "[I] never really thought about it." She tried to avoid the question but then read the following definition she found on her smartphone: "The practice among those with power or influence of favoring relatives or friends, especially by giving them jobs."

Nepotism may conflict with hiring and promoting the most qualified candidate for a job.¹⁶ In publicly-funded organizations, nepotism may create the appearance of impropriety. Hiring someone based on familial relationships rather than credentials and experience may lead to inferior service such as the project not being completed as timely or as effectively.¹⁷

Although the State's nepotism policy¹⁸ only addresses individuals that report directly to their family members, the State's workforce planning, recruitment and selection policy reads in part: "All agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria."¹⁹

RECOMMENDATIONS

- The Department should implement policies and procedures that prevent nepotism or even the appearance of nepotism.
- The Department should comply with state hiring policies to ensure that only the most qualified applicants are hired.
- The Department's CIO and the Department's Human Resources division should review all hiring decisions (including temporary employees) to ensure that employees are qualified and paid at the appropriate rate.

3. OMMISS DIRECTOR RECEIVED UNAUTHORIZED COMPENSATORY TIME THAT MAY RESULT IN INFLATED RETIREMENT BENEFITS

From January 1, 2013, to October 31, 2014, the Office of Medicaid Management Information Systems Services (OMMISS) Director received 2,120.5 compensatory hours despite her position reclassification that prohibited her from earning compensatory time.

- As of October 31, 2014, the OMMISS Director had a balance of 1,661.5 compensatory hours.

¹⁵ The former Assistant Secretary for Finance and Business Operations retired on February 1, 2013.

¹⁶ <http://smallbusiness.chron.com/business-ethics-nepotism-72225.html>.

¹⁷ http://www.scu.edu/ethics/practicing/focusareas/government_ethics/introduction/cronyism.html.

¹⁸ *State Human Resources Manual*, Workforce Planning, Recruitment and Selection, Section 2, Page 35, Revised January 1, 2014.

¹⁹ *State Human Resources Manual*, Workforce Planning, Recruitment and Selection, Section 2, Page 35, Revised January 1, 2014.

- From January 2013 to the start of the investigation in July 2014, the OMMISS Director worked an average of 64.84 hours per week. After the investigation began, the OMMISS Director decreased her work hours to an average of 45.19 hours per week.

Maintaining a significant compensatory leave balance allowed the OMMISS Director to accumulate large vacation and sick leave balances.²⁰

Because the OMMISS Director retired effective February 1, 2015, her retirement benefits may have increased as a result of the accumulated vacation and sick leave balances. The vacation leave balances would have been payable to the OMMISS Director when her employment ended and the sick leave balance would have added to her length of service with the State.

The OMMISS Director retired effective February 1, 2015. On January 27, 2015, investigators notified Department management about her unauthorized compensatory time and its effects on her vacation leave and sick leave balances. If the Department did not adjust her vacation or sick leave balances for the unauthorized compensatory time, the OMMISS Director received retirement benefits for unauthorized leave.

The Department's Chief Information Officer (CIO), who was the OMMISS Director's direct supervisor, did not provide proper oversight of the OMMISS Director's working time and leave balances despite a February 2013 Office of the State Auditor financial related audit report detailing excessive overtime payments to the OMMISS Director:

- The Department's former Deputy Director of Human Resources sent an e-mail to the CIO on August 21, 2013 that stated, "As we have discussed, we have removed the Director from the list since she was reclassified and received a salary increase to offset the compensatory time" (See Finding 5).
- In an e-mail dated August 29, 2013, the CIO stated that he "will work individually with (the OMMISS Director) on her comp time."
- The CIO approved the OMMISS Director's worktime on paper which included her compensatory time. He never reviewed or approved her worktime in the State's online payroll system. He did not know who approved the OMMISS Director's time in the online payroll system.²¹
- The CIO told investigators in December 2014, that he did not know the OMMISS Director's compensatory time balance but said he was not surprised she had a large compensatory time balance. He said, "I really don't understand comp time. I've never seen comp time in my life."

The OMMISS Director received a 25% salary increase, effective January 1, 2013. The Office of State Human Resources (OSHR) assumed that the OMMISS Director was not earning compensatory time based on the reclassification and salary increase.

²⁰ The State's online payroll system deducts vacation leave from any existing compensatory time balance prior to deducting from the vacation leave balance.

²¹ Our investigation revealed that the OMMISS Director's leave was approved in the online payroll system by either a budget officer within the Department's Division of Information Resource Management or a personnel assistant within the Department's Division of Human Resources.

- Correspondence from the Department and OSHR indicated the OMMISS Director was not eligible to earn compensatory time due to her 25% salary increase effective January 1, 2013.
- A September 26, 2012, letter from the Department's former acting Secretary to OSHR stated, "These salary adjustments should be made in lieu of extended duty payments or accumulation of compensatory time off."
- According to an e-mail from OSHR to DHHS dated August 21, 2013, the OMMISS Director "was reclassified and received a salary increase to offset the compensatory time."

RECOMMENDATIONS

- The Department's CIO should more closely monitor, review, and approve in the State's online payroll system the work time and leave of employees who directly report to him.
- The Department should fully investigate the OMMISS Director's compensatory time balance and adjust her compensatory time, vacation leave, and sick leave balances and any associated retirement benefits for any leave taken after January 1, 2013.

4. REPORTS TO GENERAL ASSEMBLY OMITTED AT LEAST \$260,000 OF OVERTIME AND COMPENSATORY TIME

The Department of Health and Human Services (Department) submitted monthly reports to the General Assembly that misrepresented the total amount of overtime and compensatory time worked and paid on the Medicaid Management Information Systems replacement project. The reports omitted:

- 2,811 overtime hours (\$191,630) worked by temporary employees from August 1, 2013 through July 31, 2014
- 1,078 compensatory hours (\$69,930) earned by the Office of Medicaid Management Information Systems Services (OMMISS) Director
- An undetermined number of hours earned by employees from other Department divisions that worked on the project

Without accurate and complete information, the General Assembly cannot hold the Department accountable and make better informed decisions regarding the amount and cost of overtime and compensatory time charged to the project.

The Department provided explanations for why the reports to the General Assembly were not complete. Specifically:

- Department management said they interpreted the Session Law to only include state employees eligible to earn compensatory time. Department management said they

did not seek clarification from the General Assembly or its Fiscal Research Division as to what data to include on the monthly reports.

- The Department only included state employees who worked at OMMISS in the monthly reports. The Department excluded state employees working in other Department divisions as well as temporary employees or contract employees working at OMMISS.
- The Department originally included the OMMISS Director on the August 2013 report but removed her based on the Office of State Human Resources's (OSHR) belief that she was ineligible to earn compensatory time (See Finding 4). The Department's former Deputy Director of Human Resources sent an e-mail to the Department's Chief Information Officer (CIO) that stated, "As we have discussed, we have removed the Director from the list since she was reclassified and received a salary increase to offset the compensatory time." An OSHR Division Director confirmed the recommendation to remove the OMMISS Director from the reports because she received a salary increase in lieu of accruing compensatory time.

Multiple state officials involved in the creation of the Session Law and the preparation and approval of the report required by the Session Law believed **all** employees working on the project should have been included in the report:

- A North Carolina State House Representative who served as Co-Chair on the Joint Legislative Oversight Committee on Health and Human Services who stated the General Assembly enacted the Session Law because "the committee was concerned that employees were abusing overtime to bump up their pay"
- An OSHR Division Director
- The Department's former Deputy Director of Human Resources who said "We felt internally that the reason for that report was because of [the OMMISS Director]"
- The Director of General Assembly's Fiscal Research Division
- A Principal Fiscal Analyst at Fiscal Research

These state officials said the report should include regular state employees (including the OMMISS Director and employees from other Department divisions), temporary employees, and contractual employees. They stated that **anyone** working on the project who earned compensatory time and/or overtime should be included on the report.

Section 12A.4.(i) of Session Law 2013-360 read in part:

Beginning August 1, 2013, the Department shall submit a monthly report to the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division on the total amount of approved overtime and compensatory time related to the replacement MMIS for the preceding calendar month.

RECOMMENDATIONS

- The Department should comply with Session Law by including on the monthly reports to the General Assembly the total amount of overtime and compensatory time related to the Medicaid Management Information Systems replacement project.
- The Department should provide to the General Assembly revised reports that correct the omissions of previous monthly reports.

5. STATE REGULATIONS FOR HIRING INFORMATION TECHNOLOGY SERVICES CONTRACTORS VIOLATED

The Office of Medicaid Management Information Systems Services (OMMISS) violated Session Law by hiring at least four information technology staff and contractors without the required approval by the Office of Information Technology Services (ITS). OMMISS hired these employees directly through private temporary staffing agencies and personal service contracts.

OMMISS paid at least \$961,020²² to these four employees that could have been saved or reduced by using state employees or by creating state time-limited positions. State law requires ITS to determine if information technology personal services can be performed by a state employee.

Due to the lack of oversight by the Department's management, the OMMISS Director circumvented state hiring policies by failing to obtain proper approvals.

- The OMMISS Director said she did not know that information technology personal services contracts required approval by ITS even though her position classification is "IT Director."
- The Department CIO stated he was not engaged in the hiring at OMMISS. According to the CIO, all hiring and signature authorization for temporary employees remained with the OMMISS Director and managers.²³

Session Law 2011-145 (House Bill 200) states that "no contracts for information technology personal services, or providing personnel to perform information technology functions, may be established or renewed without express written approval from the Statewide Information Technology Procurement Office....All contract positions requiring information technology skills are subject to the provisions of this section."

²² The \$961,020 represents the total amount paid to these four employees. Some of these employees' pay rates exceeded their qualifications as identified in Finding 1. In addition, one of these employees received overtime payments that may not have been justified as included in Finding 1.

²³ Two of these four employees were hired after the CIO began employment with the Department.

RECOMMENDATIONS

- The Department should adhere to requirements outlined in Session Law 2011-145 (House Bill 200) regarding contracting for information technology personal services.
- The Department should ensure all staff is aware of, understands, and follows hiring regulations.

6. LACK OF ADEQUATE OVERSIGHT OF OMMISS DESPITE FINDINGS IN PRIOR AUDIT REPORTS

The Office of the State Auditor (OSA) notified the Department of Health and Human Services (Department) in prior years about the lack of effective management and oversight of the Office of Medicaid Management Information Systems Services (OMMISS).²⁴

- In January 2012, OSA issued a performance audit report that cited NCTracks (Medicaid Management Information Systems replacement) project cost overruns and delays. The hiring of unqualified employees, excessive amounts of unjustified overtime, and unwarranted pay rates contributed to the project not meeting its cost budget.
- In February 2013, OSA issued a financial related audit report detailing excessive overtime payments to the OMMISS Director and other managers reporting to her related to the NCTracks project.

Despite these prior notifications, the Department failed to take steps to prevent and detect abuse and waste of state resources as follows:

- At least \$1.6 million wasted through excessive wages and commissions, unjustified overtime, and holiday pay to ineligible employees (See Finding 1)
- OMMISS Director engaged in or allowed nepotism (See Finding 2)
- OMMISS Director received unauthorized compensatory time that may result in inflated retirement benefits (See Finding 3)
- Reports to the General Assembly omitted at least \$260,000 of overtime and compensatory time (See Finding 4)
- State regulations for hiring Information Technology services contractors violated (See Finding 5)

State resources could have been used for other NCTracks project purposes, to reduce the amount of cost overruns, or to reduce the impact of delays identified in prior audit reports.

The Department's management gave the OMMISS Director broad authority regarding hiring decisions and pay rates without approving those decisions. The OMMISS Director authorized all hiring including temporary employees.

²⁴ In addition to the two performance audits cited in this finding, OSA also issued two information systems audit reports in December 2013 and July 2014 that revealed more than 3,200 defects since implementation and missed project milestones.

In addition, the Department did not properly monitor the OMMISS Director's working hours and leave balances even though she was the subject of a finding in the February 2013 audit report. The CIO told investigators in December 2014, that he did not know the OMMISS Director's compensatory time balance but said he was not surprised she had a large compensatory time balance. However, he stated in an e-mail dated August 29, 2013, that he "will work individually with (the OMMISS Director) on her comp time."

Government managers are responsible for the careful use of money and resources and should spend no more than necessary according to the U.S. Government Accountability Office (GAO). Specifically, the GAO states that management is responsible for "Using its financial, physical, and informational resources legally, effectively, efficiently, economically, ethically, and equitably to achieve the purposes for which the resources were furnished or the program was established."²⁵

The Office of State Human Resources states that the competencies of the CIO's position include understanding "organizational dynamics and the dynamics of state policies. Knows what information and resources are available to understand customer needs and to manage the organization appropriately....Responsible for business management of the work unit through structural set up of organization to ensure effective management of financial and human resources."²⁶

RECOMMENDATION

- The Department should develop and implement procedures to ensure the proper administrative oversight of the Office of NCTracks, the successor organization to OMMISS.

²⁵ GAO, Government Auditing Standards, 2011 Revision.

²⁶ Office of State Human Resources, Class Specs for Information Technology Executive, NC 12217, OSP 8/1/2006.

The Office of the State Auditor (OSA) ensures that the Governor, the General Assembly, and the citizens of North Carolina receive only complete and accurate information from the reports issued by this office. Therefore, we provide additional explanations when an agency's response to our findings and recommendations could potentially obscure an issue, mislead a reader, or inappropriately minimize the importance of our findings and recommendations. To ensure the availability of complete and accurate information, OSA offers the following corrections/clarification to the Department of Health and Human Services (Department) response to this investigative report.

Throughout its response, the Department refers to the "successful" launch of NCTracks and the magnitude of that project. Those points are irrelevant to the findings in this investigative report which focus on (1) the Office of Medicaid Management Information Systems Services (OMMISS) Director's abuse of her authority in hiring decisions and (2) the Department's lack of policies and procedures in place to prevent or detect her abuses, particularly after two prior OSA reports identified ineffective management and oversight of OMMISS.

The Department's response claims that the investigative report makes "inferences" but OSA relies on sufficient, appropriate evidence to support its findings and conclusions.

The Department's response claims that OSA tries to "apply inapplicable standards and policies" and it does so by rationalizing that the Department did not violate a specific state law, regulation, or policy in certain situations. While no state law may **directly** apply regarding hiring of temporary employees, the existing laws, regulations, and policies for hiring state employees provide a rational, logical, and reasonable standard to ensure that only **qualified** individuals are hired and **paid at rates commensurate** with their **qualifications**.

Finding 1

Excessive Salaries

In its response, the Department claims the "\$1.6 million wasted through excessive wages and commissions, unjustified overtime, and holiday pay to ineligible employees" was "overstated". Additionally, the Department takes issue with OSA's determination that salaries were excessive compared to the qualifications of the 12 temporary employees analyzed. However, the amount OSA calculated as wasted could have been much higher if the analysis had not been limited to three fiscal years (many of these employees worked much longer periods) or to the limited number of employees analyzed as there were dozens of other temporary employees used by OMMISS over the past decade. Also, the OSA analysis, which calculated the \$1.6 million wasted, was based on an Office of State Human Resources (OSHR) expert who compared the qualifications (based on applications and résumés provided by the Department), job titles, and job specifications for the 12 temporary employees in question to the salaries paid by the private temporary staffing agencies.

It should also be noted that the investigation revealed that OMMISS management often set those salaries independent of any analysis of appropriate pay rates by the private temporary staffing agencies. While the Department attempts to justify temporary workers' salaries by comparing them to market rates as well as what other DHHS temporary employees received, that analysis did not consider those temporary employees' actual qualifications.

In its response, the Department takes issue with a reference to the state's hiring policy and believes that OSA "inaccurately applies requirements." Instead, OSA referenced the existing state policy for hiring state employees as a logical, rational, and reasonable standard because the policy states that only **qualified** employees should be hired and their pay should be **commensurate** with their **qualifications**.

The Department's argument that it may pay temporary employees whatever the Department chooses because no state policy exists does not provide sufficient rationale. Although the State may not have specific policies that address the hiring of temporary employees, that does not prevent any agency's management from making sound decisions that would prevent the misuse of state resources.

The Department's response attempts to confuse the issue regarding the pay rates for the temporary employees by mentioning the commissions billed to the Department. OSA's analysis of appropriate pay rates in Table 1 **excluded** any commission paid to private temporary staffing agencies and only compared appropriate salaries determined by the OSHR expert to salaries paid by the private temporary staffing agencies.

The Department's response contends that the private temporary staffing agencies set the pay rates for the employees in question. However, the OMMISS Director did not hire employees from a pool of qualified applicants from the private temporary staffing agencies. The investigation revealed that the OMMISS Director hand-picked employees, directed employees to specific private temporary staffing agencies, and set their pay rates. The State's intent for using private temporary staffing agencies is to take advantage of their existing pool of qualified applicants but the OMMISS Director circumvented that process.

Commission Rates

The Department's response claims that the comparison between the Temporary Solutions billing rates and the commissions charged by private temporary staffing agencies is not "fair" and that the sum is "overstated" because it does not include charges for unemployment insurance, workers' compensation, health insurance, or leave benefits. However, the Temporary Solutions Program Director told investigators that the unemployment insurance charge is included in the \$2 bill rate and that workers' compensation charges only apply when a specific claim is filed. The Program Director also told investigators that qualified temporary employees may elect to receive health benefits but less than 100 of the 3,000 (3%) Temporary Solutions employees have elected to receive that coverage. Payment of vacation leave is not permissible for Temporary Solutions so the Department's argument only bolsters OSA's point that using private temporary staffing agencies is more expensive.

In its response, the Department notes that the private temporary staffing agencies used by OMMISS management were on an approved list of vendors. OSA never questioned that fact. The relevant point of the finding is that the commissions paid to those private temporary staffing agencies far exceeded the amounts that would have been paid if the Department had used Temporary Solutions (See Table 2). Again, the amount OSA calculated as wasted could have been much higher if the analysis had not been limited to three fiscal years (many of these employees worked much longer periods) or to the limited number of employees analyzed as there were dozens of other temporary employees used by OMMISS over the past decade.

Overtime

In its response, the Department questions why OSA relied on the actual comments of the five employees who received excessive overtime payments when questioned about the tasks they

performed during the overtime period. OSA obtained stronger, more direct evidence from the employees who had first-hand knowledge of what they did and when rather than secondary/indirect sources. These five employees were unable to provide reasonable explanations as to what activities they actually performed while working overtime. Also, these five employees had direct connections to the OMMISS Director and the Department terminated their employment after our investigation began.

The Department's justification for the amount of overtime paid to these five individuals was attributable to the size of the NCTracks project. However, the Department's response fails to acknowledge that these employees performed administrative tasks rather than actual programming or call center responsibilities.

The Department's response indicates overtime payments, made to the five employees whose overtime was excessive, were limited to eight months around the July 1, 2013 "go live" date for the NCTracks project and that the overtime was "several years" ago. In reality, these employees earned large amounts of overtime prior to and well after the "go live" period (overtime during the "go live" period accounted for only 11.3%, 17.3%, 31.9%, 44.4%, and 44.4% of total overtime questioned for each employee). Further, each of these five employees received overtime pay in the month immediately preceding interviews with OSA investigators in July 2014.

In its response, the Department characterizes OSA's expectation that the CIO provide proper oversight for the review of temporary workers' overtime as "perplexing" and "unreasonable". However, the CIO told investigators that, after our investigation began, he started reviewing the overtime of temporary workers within OMMISS. Additionally, the CIO directly supervised the OMMISS Director who repeatedly abused her position in the hiring of temporary workers and compensation paid to those workers. Given two prior OSA audit reports that focused on the OMMISS Director, the CIO had a greater responsibility to oversee the OMMISS Director's decisions.

The most recent performance evaluation for the OMMISS Director indicated that the CIO rated the OMMISS Director as "exceptional" for "using the most cost-effective procurement method" for staffing the project. The OMMISS Director's annual performance evaluation included only three key responsibilities; staffing the project was one of those three key responsibilities. Further, using "the State's temporary hiring organization" (i.e. Temporary Solutions) was a "measurable expectation" on her performance evaluation. Based on this information, it is a reasonable expectation that the Department's CIO would have a good working knowledge of the temporary employees' overtime to evaluate that performance measure and support the rating of "exceptional."

In its response, the Department focuses on the lack of a statewide policy regarding the selection and compensation of temporary workers as justification for their actions. However, the lack of adequate state policies does not alleviate management's obligation to act responsibly as stewards of state resources.

Finding 2

In its response the Department dismisses the behavior of the OMMISS Director's hiring of her ex-husband, her ex-husband's wife, and her daughter as not "technically" violating state policy. The Department takes the same stance regarding the OMMISS Director's hiring employees who had a personal connection to her as well as **allowing** the hiring of family members of other OMMISS employees.

The report explicitly states that the relationships within OMMISS did not violate the existing state policy but clearly includes at least three other definitions of “nepotism” that apply to the connections cited in the report. Again, no agency is prohibited from implementing more stringent policies when current state policies may fall short in the prudent management of the State’s resources.

The Department also focuses on the fact that OSA would not permit the Department’s management or internal audit staff to be present during employee interviews. Allowing the presence of Department management or internal audit staff when conducting investigative interviews is not an accepted investigative practice. Allowing the presence of Department management would discourage open and honest responses from interviewees and may even introduce an element of intimidation to interviewees.

It is important to note that the Department’s internal auditors interviewed Department employees **immediately** after OSA to obtain the questions and answers from the OSA interviews.

In its response (footnote 6), the Department incorrectly claims that OSA withheld information about the specific relationships questioned. To the contrary, OSA provided the names and relationships of all individuals identified in Finding 2 to the Department’s internal audit staff on March 24, 2015.

The Department’s response claims that the OMMISS Director did not hire “individuals she may have known from the community or her prior work experience.” However, during interviews with investigators, the OMMISS Director and multiple temporary employees admitted the connections through church, prior business connections, and family members between the OMMISS Director and employees she hired.

In its response, the Department states that comparing **total earnings** of the OMMISS Director’s executive assistant to **total earnings** of other executive assistants is not an “apples to apples” comparison. The Department bases its argument on the fact that the OMMISS Director’s executive assistant was paid time-and-a-half for overtime while some executive assistants do not receive paid overtime. However, OSA included **all earnings** (including overtime and longevity pay) for **all** executive assistants. For executive assistants ineligible to receive overtime, their salaries are set at a higher rate to compensate for not receiving paid overtime. Comparing total earnings for all executive assistants revealed that the OMMISS Director’s executive assistant was the highest paid executive assistant in state government. It should also be noted that the Department terminated the OMMISS Director’s executive assistant after this investigation began when it discovered she was not “being compensated appropriately.”

Lack of Oversight

The Department claims the former Assistant Secretary of Finance should not have been expected to review the hiring decisions of the OMMISS Director. However, until January 2013, the OMMISS Director directly reported to and was evaluated annually by the Assistant Secretary of Finance. The OMMISS Director’s annual performance evaluation included only three key responsibilities; staffing the NCTracks project was one of those three key responsibilities. On the 2012 performance evaluation, the former Assistant Secretary for Finance rated the OMMISS Director as “exceptional” for “using the most cost-effective procurement method” for staffing the project. To deliver that performance assessment on that “key” responsibility suggests the Assistant Secretary was aware of the hiring decisions made by the OMMISS Director. Additionally, the use of “the State’s temporary hiring organization” (i.e. Temporary Solutions) was a “measurable expectation” on the OMMISS Director’s performance evaluation.

The Department claims it is an “unrealistic expectation” for “upper management” to know about “every decision of every employee.” The OSA investigative report does not make this claim; however, the report does state that Department management should implement controls to prevent the appearance of nepotism or favoritism in hiring decisions.

The Department's response misrepresents that private temporary staffing agencies may not have had “multiple qualified applicants to offer” positions. Their argument fails to recognize that the OMMISS Director often hand-picked the employees and directed them to specific private temporary staffing agencies without giving the private temporary staffing agencies an opportunity to determine if they had multiple qualified applicants for positions.

Table 4

In its response, the Department claims “the purpose of this table is unclear.” However, the table clearly shows the multiple connections between the OMMISS Director and friends and family members employed by OMMISS. As the Department recognized in its response, those connections could “create significant issues for an organization.”

In its response, the Department states that its CIO should not be expected to review “all hiring decisions within the offices he oversees.” The OSA investigative report does not state that he should. However, the Department's CIO is responsible for ensuring adequate policies and procedures are in place to ensure the most qualified individuals are hired. In addition, since February 2013, the OMMISS Director directly reported to the CIO who completed her annual performance evaluation in 2014. The performance evaluation included a key responsibility for “using the most cost-effective procurement method” for staffing the project including using Temporary Solutions as a “measurable expectation.” To evaluate that responsibility, the CIO should have been aware of the hiring decisions made by the OMMISS Director.

Finding 3

In its response, the Department states that the OMMISS Director's retirement benefits were not inflated by her accumulation of compensatory time. The Department's response steers the reader away from the real focus of the finding (how the Director's retirement benefits were inflated) and instead focuses only on payouts for vacation leave. The facts regarding the inflation of the Director's retirement benefits are as follows:

- Because the OMMISS Director was allowed to earn compensatory time for the overtime she recorded, the compensatory time accumulation allowed the OMMISS Director to use compensatory time instead of vacation leave or sick leave.
- Upon retirement, all vacation leave accumulated over 240 hours converts to sick leave. Vacation leave exceeding 240 hours also converts to sick leave at each calendar year end.
- Upon retirement, all accumulated sick leave is credited to service time and becomes part of the calculation of retirement benefits.

If the OMMISS Director had not been allowed to earn compensatory time, she would have had to use vacation leave or sick leave. Therefore, she would have retired with less service time which would have resulted in a reduced retirement benefit.

In its response, the Department disputes that the OMMISS Director was ineligible to earn compensatory time. However, sufficient, appropriate evidence obtained during the investigation indicates that OSHR specifically instructed the Department to remove the OMMISS Director from their overtime report to the General Assembly because she “received a salary increase to

offset her compensatory time.” In its response to Finding 4, the Department admits that OSHR believed the OMMISS Director “was ineligible to earn compensatory time.” As the State’s oversight and expert in human resources, OSHR would have the final word as the interpreter and rule-maker.

Finding 4

In its response, the Department states that it and OSHR “differ from OSA as to the interpretation” of Session Law 2013-360. OSA’s interpretation of the specific language in the Session Law was based on interviews with the following individuals:

- Co-chair of the Legislative Oversight Committee
- Staff members from the General Assembly’s Fiscal Research Division
- **An OSHR Division Director**
- The Department’s former Deputy Director of Human Resources

All of the above individuals believed that the OMMISS Director, temporary employees, and other Department employees working in other divisions were inappropriately omitted from the report.

In its response, the Department admits it did not seek “clarification” and “believed [it] understood” while making “incorrect assumptions.” The General Assembly expects agency management to understand Session Laws that provide specific directives, especially considering this directive for reporting overtime was in response to a prior audit report which dealt with excessive overtime paid to the OMMISS Director and other OMMISS staff members.

The Department claims that its incorrect “interpretation” of the Session Law should cause the amounts attributable to temporary workers to be removed from the report. It is illogical to believe that an incorrect interpretation absolves the Department of its responsibility to correctly report overtime as required by Session Law. Again, everyone interviewed at the General Assembly, Fiscal Research, and OSHR believed that temporary employees should have been included in the reports to the General Assembly.

In its response, the Department states that “there is no practical way of measuring” the amount of overtime of employees working in other Department divisions related to the replacement MMIS project. However, multiple ways of allocating costs to different projects are available to the Department. Nonetheless, difficulty in calculating an amount does not excuse the Department from complying with General Assembly directives.

The Department’s response acknowledges that it re-submitted reports to the General Assembly when it “discovered the previously submitted reports were understated.” However, the Department became aware that the reports were understated only after being informed by OSA during this investigation. In addition, the “amended reports” still did not include temporary employees or Department employees working in other divisions

Finding 5

In its response, the Department disagrees that it violated state regulations because it “believed” three of the four positions identified did not require approval by the Office of Information Technology Services (ITS). OSA based its conclusions concerning the violation of state regulations on job titles, job specifications, and an analysis by an expert at ITS. The Department claims that these employees were simply misclassified. Based on its response, the Department admitted hiring (and paying) employees with one particular skill set for positions requiring a different skill set.

The Department rationalizes (while admitting failure to follow policy) that the hiring of the fourth temporary employee was acceptable because the private temporary staffing agency utilized was on an approved list. Whether or not the temporary staffing agency was on an approved list is irrelevant. The relevant issue is whether hiring the fourth employee required approval by ITS. Again, the Department failed to comply with the state regulation requiring approval by ITS.

The Department also seems to deflect responsibility by noting that other state agencies may not have complied with state regulations. The fact that other agencies did not comply with state rules does not absolve Department management from its responsibility to comply with North Carolina laws and regulations.

Finding 6

The Department's response does not address the wasteful expenditures, noncompliance with laws and regulations, and lack of oversight identified in the report. Instead, the Department focused on increased oversight from hiring a CIO and the success and magnitude of the NCTracks project. Simply hiring a CIO does not guarantee proper oversight of a function, especially if the CIO does not implement sufficient policies and procedures to ensure proper oversight. Neither the success nor magnitude of the NCTracks project relieves the Department of its responsibility to provide proper oversight of state resources.

In addition, OSA learned that the CIO did not complete either the interim or annual performance evaluations of the OMMISS Director in 2013, during his first year directly supervising her and during the height of the project. The Department's claim that the hiring of a CIO "increased the oversight of OMMISS" is not supported when the CIO did not even complete a performance evaluation of the OMMISS Director as required by state policy.



North Carolina Department of Health and Human Services

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

April 21, 2015

The Honorable Beth Wood, State Auditor
North Carolina Office of the State Auditor
20601 Mail Service Center
Raleigh, NC 27699-0601

Dear Auditor Wood:

Thank you for the opportunity to review the Office of the State Auditor's (OSA) draft investigative report *North Carolina Department of Health and Human Services – Office of Medicaid Management Information Systems Services*. In large part, your investigation was focused on certain temporary workers who were first retained by the Department of Health and Human Services (DHHS) beginning in 2004.

Your investigation brought to the attention of the current management of DHHS an issue that appears to have existed across state government for a number of years – the lack of appropriate safeguards and procedures required of state agencies for the selection and compensation of temporary workers from private temporary staffing agencies. While DHHS is not responsible for the development of a statewide policy regarding temporary workers, in response to the longstanding issues identified by your investigation, DHHS has undertaken the development of a DHHS internal policy to eliminate the type of long-standing issues identified in your draft report.

Your investigation examined the questionable compensation of several temporary workers within OMMISS, the majority of whom were first retained by DHHS prior to 2011. Upon learning of this potential issue, DHHS management initiated its own investigation of the rate of compensation for these temporary workers. In instances where DHHS could not document that the OMMISS temporary worker was being compensated appropriately and commensurate with the job duties they were performing, DHHS promptly terminated that temporary worker. DHHS appreciates your office bringing this matter to its attention so that appropriate action could be taken.

Another focus of your investigation was on the personal relationships between a number of workers within OMMISS, some of whom you indicated had familial connections with the former OMMISS Director. From our internal investigation, it appears that the vast majority of the temporary workers referenced in your draft report were temporary workers who were initially retained a number of years ago and most of whom no longer work at OMMISS. DHHS investigated to determine whether there was a violation of the State's policy prohibiting nepotism. From DHHS' internal investigation, no person related to the former OMMISS Director was actually supervised by the former OMMISS Director. However, DHHS agrees

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 April 21, 2015
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with the point made in OSA's draft report – that all employers must assure that personal relationships between individuals in the workplace do not impact the work or create a perception that “who you know” has an influence on any decision made in the workplace.

Additionally, your investigation revealed to us an error in the reporting by DHHS of the compensatory time of one of its employees. DHHS has identified the cause of the error and has undertaken corrective action, including the supplementation of certain reports previously provided to the General Assembly.

Finally, your draft report focused on the management and oversight of OMMISS. As you know, the primary focus of OMMISS for the past two years has been on the successful launch of the new claims payment system. Not only did the new Chief Information Officer (CIO) launch the new system successfully on July 1, 2013, he also successfully led OMMISS to certification of this new payment system. The biggest IT project in North Carolina's history (which, as you know, audit reports issued several years ago indicated a number of issues and delays) was finally completed and, according to just announced news from the federal government, has passed a stringent audit by the federal government that proves that the new claims payment system is operating correctly. This success means North Carolina will receive approximately \$19M from the federal government and will be entitled to have the federal government contribute additional monies for the operation of this system going forward. DHHS believes the recent notification from the federal government is proof of the excellence that the new CIO's leadership and management imparted to this division.

DHHS disagrees with some of the inferences and conclusions contained within this draft report. DHHS believes the attempt, in several situations in OSA's draft report, to apply inapplicable standards and policies, results in a flawed analysis of some of the important and valuable findings of OSA's investigators.

Per your request, please find the response that DHHS has prepared for incorporation into the final report issued by OSA.

FINDING 1. “At least \$1.6 million dollars wasted through excessive wages and commissions, unjustified overtime, and holiday pay to ineligible employees”

DHHS Response: DHHS disagrees with the sum identified in this Finding and contends it is overstated.

DHHS has categorized the 12 temporary workers identified by OSA in Table 1 into the following three groups: 1) temporary workers terminated by DHHS after its internal investigation of this matter¹, 2) appropriately compensated temporary workers who were no longer engaged by DHHS at the time DHHS investigated this matter,² and 3) appropriately compensated temporary workers currently engaged by DHHS.³

¹ The temporary workers identified on Table 1 who comprise group one are as follows: Contract Assistant, Receptionist, Business Analyst (the second Business Analyst identified in Table 1), Budget Analyst, and Executive Assistant.

² The temporary workers identified on Table 1 who comprise group two are as follows: Business & Tech. Applications Analyst, Business & Tech. Applications Analyst, Health Insurance Claims Consultant, and Business Systems Analyst.

³ The temporary workers identified on Table 1 who comprise group three are as follows: Operations Program Manager Consultant, Business Analyst (the first Business Analyst identified in Table 1), and Technical Resource.

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As to the temporary workers in group one, DHHS agrees that it appears these temporary workers may have received compensation in excess of the compensation that should have been paid to the private temporary staffing agency for the temporary workers in this group. However, for the reasons explained below, DHHS disagrees with OSA's inclusion in this Finding of the compensation paid to the temporary workers in groups two and three. DHHS' investigation indicates these temporary workers were appropriately compensated for the duties and responsibilities they performed for the organization.

"Salaries Excessive Compared to Temporary Employees Qualifications"

DHHS disagrees with OSA's characterization as "excessive" of the compensation of seven temporary workers identified in Table 1 (workers in groups two and three.) However, DHHS does not dispute OSA's finding with respect to the remaining five temporary workers identified in Table 1 (group one).⁴

As to the first group of temporary workers, as soon as DHHS learned of the allegation from OSA regarding compensation issues of these temporary workers, DHHS launched an internal investigation. DHHS identified issues with these temporary workers' compensation. When DHHS was unable to document that the OMMISS temporary worker was being compensated appropriately and commensurate with the job duties they were performing, DHHS promptly terminated that temporary worker. As to this first group of temporary workers identified in Table 1, DHHS does not dispute that these five temporary workers, (who were first engaged by OMMISS from 2006 through 2012), received compensation that appears to have been in excess of the compensation that should have been paid to the private temporary staffing agency for these temporary workers.

As to the second group of temporary workers, when DHHS received the draft audit report from OSA, these temporary workers were no longer engaged by DHHS. Although DHHS was no longer expending funds for these workers, DHHS did undertake an analysis of the past compensation of these workers by comparing their compensation to the compensation approved by OITS for temporary workers in similar roles at DHHS. As explained below, DHHS contends these workers were appropriately compensated and that OSA should not include the compensation attributable to these workers in this Finding.

With respect to the third group of temporary workers, DHHS disagrees with OSA's compensation analysis of these workers. As explained below, DHHS contends these temporary workers were appropriately compensated and that OSA should not include the compensation attributable to these workers in this Finding.

In Table 1, in its draft report, OSA indicates the "qualified rate" was determined by an Office of State Human Resources (OSHR) official who determined the rates using these temporary workers' qualifications, job titles, and/or job specifications. In its draft report OSA asserts that "OMMISS management's practice of paying temporary employees more than their qualifications justify conflicts with the *State Human Resource Manual*". This assertion inaccurately applies requirements from this manual. In addition, there is not an OSHR policy that addresses temporary workers furnished by a private temporary staffing agency. The workers at issue in this matter are all temporary workers furnished by a private temporary staffing

⁴ The five temporary workers referenced here are those identified in Table 1 as the following: Contract Assistant, Receptionist, Business Analyst, Budget Analyst and Executive Assistant.

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agency. OSA's use of this criteria to determine payment rates for these temporary workers is not appropriate.

When a state agency contracts with a private temporary staffing agency, the bill rate that is charged by that agency for the temporary worker is typically based upon a market pay rate plus a percentage mark-up (commission). In contrast, for most state employees, the current pay scale for their position is not based upon annual updated competitive market pay rate data. Accordingly, the pay rate paid by a private temporary staffing agency to a temporary worker may be higher than what is paid to a regular state employee. With respect to OSA's contention regarding the use of time-limited positions, a number of issues regarding the creation and duration of a time-limited position limited the feasibility of this option.

During DHHS' investigation, internal Department professionals reviewed the qualifications of the temporary workers in groups two and three together with information regarding the actual job duties and responsibilities of these temporary workers. DHHS determined that these seven temporary workers identified in Table 1 had pay rates consistent with their qualifications, job duties and responsibilities and applicable market rates typically paid by private temporary staffing agencies for those job duties. In addition to DHHS' internal analysis of the compensation of these workers, one of the temporary workers in group three had their initial compensation set by ITS and another temporary worker in group three has gone through the IT supplemental staffing process administered by the Office of Information Technology Services (ITS). This process, in part, was designed to assist with determining appropriate compensation.

Based on the information DHHS has reviewed there were five, not twelve, temporary workers hired by OMMISS whose pay rates appear to have exceeded their qualifications. The discussion in OSA's draft report regarding the seven remaining temporary workers fails to identify clear, applicable rules or policies which were violated and includes an incomplete compensation analysis. Accordingly, DHHS does not agree with the total sum provided in the draft report by OSA.

However, for the five temporary workers DHHS and OSA agree were inappropriately compensated, DHHS agrees with the amount calculated by OSA of approximately \$120,863. This sum is significantly less than the total amount of \$807,741 present in OSA's draft audit report for the twelve temporary workers identified in Table 1.

"Commission Rates Charged by Private Sector Staffing Agencies' Exceeded Temporary Solutions Rate"
 DHHS disagrees with OSA's assertion regarding excessive commission rates.

OSA's comparison of the \$2 flat rate charged by Temporary Solutions against the commissions paid by OMMISS to the private temporary staffing agencies is not a fair comparison. DHHS contends OSA's sum is overstated. OSA uses the commission charged by Temporary Solutions as the standard against which commissions paid by OMMISS are compared. However, the Temporary Solutions' commission used by OSA does not include a charge for workers compensation or unemployment insurance.

In contrast, most of the private temporary staffing agency commissions paid by DHHS that OSA used in this comparison include a charge for workers compensation and unemployment insurance. In addition to the commission charged by Temporary Solutions, it also bills state agencies separately for the employer portion of health insurance coverage for those temporary workers who elect this coverage. This cost is typically factored into the bill rate charged to state agencies by private temporary staffing agencies. Private temporary staffing agencies also typically build into their bill rate a charge for leave benefits for an eligible

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temporary worker. For these reasons, OSA's calculation of "excessive commission" paid by DHHS is flawed and overstated.

Additionally, at the time most of these temporary workers were initially hired, the State lacked a comprehensive policy on the hiring and compensation of temporary workers and the appropriate payment of commissions to private temporary staffing agencies. On February 27, 2013, in recognition of several state-wide issues involving the hiring of temporary workers, Executive Order No. 4 (EO #4) was issued. EO #4 required state agencies to use Temporary Solutions as the primary source for hiring temporary workers.

In May 2013, shortly after the issuance of EO #4, in recognition of certain staffing challenges, OSHR provided additional guidance to state agencies as the agencies worked to implement EO #4. This guidance included a process by which agencies could request to use private temporary staffing agencies in lieu of Temporary Solutions. DHHS followed this process by submitting its list of utilized private temporary staffing agencies in June 2013 and again in July 2013 per request by OSHR. All of the temporary workers identified on Tables 1 and 2 were provided to OMMISS by private temporary staffing agencies contained on the lists submitted by DHHS to OSHR.

DHHS disagrees with OSA's assertions regarding "excessive commissions" and contends OSA should delete the sum attributable to these commissions from the total amount provided by OSA in this Finding. Since OSA failed to include the full cost associated with using Temporary Solutions in its analysis, the amount attributed by OSA to "excessive commissions" is overstated when OSA attempted to compare the commissions cost of Temporary Solutions to the commissions actually paid to private temporary staffing agencies.

"Significant and Unjustified Overtime"

DHHS disagrees with OSA's assertion regarding overtime in this finding.

In the draft report, OSA contends that during the period July 1, 2011, through June 30, 2014, the sum of \$234,724 was paid for overtime to five temporary workers "without documented justification". OSA's draft report fails to identify any standard or requirement for "documented justification" that was violated. It appears the basis relied upon by OSA for this portion of the Finding were comments made by temporary workers who worked the hours. Based on these comments, the draft report concludes these temporary workers "... could not provide reasonable explanations that justified the need for them to work overtime."

During the relevant time periods this overtime was accrued, OMMISS was working to bring online a new replacement MMIS. The design and development of this massive IT system was the largest IT project in North Carolina's state government history. A number of state employees and temporary staff worked incredible hours to meet critical deadlines. The fact that some temporary workers, several years after accruing the overtime, failed to recount the specific work they did is not unexplainable.

There were procedures in place during the relevant time periods for the review and approval of overtime for all temporary workers. Every temporary worker reports to a supervisor or manager that must oversee and direct the temporary worker's workload. At the end of each pay period, that same supervisor or manager must sign off on the temporary worker's timesheet and attest to the hours worked. Nowhere in the draft report is it mentioned that the auditors spoke with the supervisors or managers that actually approved these

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temporary worker's time to determine the supervisor's rationale in approving the overtime and what the needs of the organization were that necessitated the overtime.

The inclusion of the statement in OSA's draft report that the Department's CIO said that he does not approve overtime worked by temporary workers, is perplexing. There are approximately 420 state employees in the organization led by the CIO. DHHS contends it would be unreasonable to expect that a CIO of an organization this size, (a CIO responsible for overseeing the largest IT projects in state government history), to be expected to expend his time reviewing and approving work hours for staff he does not directly supervise.

DHHS agrees that oversight of overtime hours is an important management responsibility. That is why it is DHHS' practice and expectation that supervisors and managers review and approve the time of their direct staff – whether online in the BEACON system or through the use of paper time sheets. From the internal review of this matter, DHHS believes that process was followed. Therefore, DHHS disagrees that these overtime hours were not properly authorized or “documented”. It is unclear what OSA contends would have constituted proper documentation.

DHHS disagrees with your inclusion of the overtime hours for the temporary workers. DHHS believes that OMMISS management had sufficient procedures in place as evidenced by documentation that supports management review and approval of the overtime hours.

“Payment for Holiday Leave to Ineligible Employees”

DHHS agrees with OSA's finding regarding payments for holiday leave for certain temporary workers.

DHHS agrees that compensation to some temporary workers, via holiday leave pay, was inappropriate. While this may have been the rate negotiated with the private temporary staffing agency, DHHS agrees that this portion of the compensation arrangement exceeded the normal and customary practice in effect at the time for the compensation of temporary workers and reflected poor judgement on the part of the former OMMISS Director. The amount attributable for this is approximately \$26,026.

OSA Calculations in Finding 1 Grossly Overstate Actual Effect

DHHS disagrees with the OSA's total calculations in this finding.

DHHS believes a more accurate sum attributable for the total amount of questionable costs associated with OSA's findings more closely approximates \$146,889 over the three year period OSA reviewed rather than the \$1.6M identified by OSA.

OSA Recommendations

OSA's investigation brought to light an issue that is not unique to DHHS. As DHHS undertook its own internal investigation, it discovered the absence of a statewide policy for ALL agencies regarding the selection and compensation of temporary workers from private temporary staffing agencies. DHHS believes the absence of such a policy was a primary cause of the hiring and compensation issues identified. For years, there has been a lack of appropriate checks and balances on a manager's decisions regarding temporary workers. There has also been an absence of procedures which would provide guidance and assistance to managers in making many of the necessary decisions regarding temporary workers.

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As DHHS discovered some of the issues addressed in your draft report, DHHS took immediate action by evaluating the process in place at OMMISS and conducting our own evaluation of the qualifications and pay rates of the temporary workers identified by your audit. As a result of the DHHS internal investigation, several temporary workers were terminated. DHHS has since developed an internal policy to avoid such issues in the future.

DHHS' new policy addresses your recommendation that DHHS management should provide proper oversight related to salary administration and engagement of temporary workers. However, as to your recommendation regarding the monitoring and approval of overtime for these temporary workers, DHHS contends the current policies and practices related to monitoring and approval of overtime for these temporary workers is adequate. DHHS welcomes suggestions as to how that process could be reasonably improved.

DHHS will follow OSA's recommendation to seek legal counsel to determine if there is any legal recourse that DHHS can take related to recovery of any inappropriately paid holiday pay.

FINDING 2. "OMMISS Director engaged in or allowed nepotism"

DHHS Response: The DHHS internal investigation did not substantiate the allegation that the former OMMISS Director engaged in "nepotism" as that term is defined by the State government policy on nepotism. However, DHHS agrees with OSA that the employment of family members within an organization, regardless of the supervision structure, frequently results in a number of issues within an organization. DHHS is unaware of any current employment arrangement within OMMISS that violates the State's nepotism policy.

"OMMISS Director Hired Family Groups"

The OSA draft report states that 11 "groups of family members" were hired by the former OMMISS Director or by those she supervised with the inference that there is some violation of policy and/or regulation related to that fact. However, the draft report fails to provide the facts or analysis necessary to understand how the situations identified equate to nepotism as that term is defined by the current State policy. Eight of the "groups of family members" referenced in the draft report are not individuals related to the former OMMISS Director. As to the three individuals who are identified in the draft report as "related" to the OMMISS Director – her ex-husband, her ex-husband's wife and her daughter – neither the ex-husband or his wife fall within the definition of "immediate family" and the daughter did not report to the former OMMISS Director. Nonetheless, DHHS recognizes and agrees with OSA that hiring practices such as this should be avoided.

Although the OSA's draft report refers to these situations as "nepotism", OSA's own draft report indicates it understands that the situations outlined above do NOT violate the State's nepotism policy. As OSA accurately notes in its draft report, the State's nepotism policy "only addresses individuals that report directly to their family members..." It is unclear why these relationships were added to OSA's draft report under the heading of "engaged in nepotism" if no evidence is provided that shows the violation of the State

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definition of nepotism.⁵ None of the facts uncovered through DHHS' internal investigation revealed that "nepotism", as that term is defined by the state-wide policy, occurred.⁶

Nonetheless, DHHS agrees that every organization should use care as individuals with relationships to each other are hired. These types of situations, if not handled appropriately, can create significant issues for an organization. While a situation may not be precisely prohibited by the current nepotism policy, the judgment of a manager is called into question when that manager allows the hiring practices of those he or she supervises to create an appearance that a particular individual or group of individuals are hired or given preferential treatment based on "who they know".

"OMMISS Director Hired Individuals with Personal Connections to Her"

DHHS' investigation did not substantiate that the former OMMISS Director engaged in "nepotism" by hiring individuals she may have known from the community or from her prior work experience. However, DHHS concurs with OSA's investigative findings that it appears that for some temporary workers the former OMMISS Director may have deviated or allowed staff to deviate from the normal procedures that were in place for hiring temporary workers. It appears that several temporary workers were hired at a higher compensation rate than their qualifications warranted and were also offered additional benefits that were appropriate or routinely made available to other temporary workers. This created a perception of inequitable hiring practices of temporary workers and a perception within the organization that some temporary workers, based on their prior relationships to the former OMMISS Director or others on staff, received a higher rate of compensation and additional benefits. Upon learning of this allegation from OSA, DHHS management undertook an internal review of this situation and in instances where DHHS was unable to document that the temporary worker was being compensated appropriately and commensurate with other temporary staff in the organization, DHHS promptly terminated that temporary worker.

Table 3

DHHS disagrees with OSA's attempt to compare the earnings of the OMMISS Director's executive assistant to other State employees in similar positions in Table 3. This Table is not an "apples to apples" comparison.

The OMMISS Director's executive assistant was subject to the Fair Labor Standards Act (FLSA). This means that DHHS was required to pay time and a half for any overtime hours worked by this individual. DHHS believes that some of the state employees in Table 3 to whom this individual is compared are not

⁵ *State Human Resources Manual*, Workforce Planning, Recruitment and Selection, Section 2, Page 38, Revised January 1, 2014 defines "nepotism" as: "Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations."

⁶ DHHS' request to be present during OSA's interviews was denied. DHHS' only has the information provided to it through this draft report and some supplemental material that was provided upon request by OSA. DHHS' internal investigation about the relationships referenced in OSA's report was stymied by its inability to know from OSA the specific relationships referenced and from being denied access to the interviews with DHHS staff on this issue.

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subject to FLSA. The significance of this is that workers who are exempt from FLSA do not earn overtime pay. The former OMMISS Director's executive assistant's base compensation was only \$53,560 (which is comparable to the other employees in the Table). The former OMMISS Director's executive assistant was in a work unit that required significant amounts of overtime which resulted in her receiving overtime pay in addition to her base pay.

"Lack of Oversight Allowed Nepotism"

DHHS disagrees with OSA's suggestion that the Department's former Assistant Secretary for Finance and Business Operations did not provide proper oversight of the former OMMISS Director's hiring decisions. In an organization of this size, supervisors and managers have authority to make many decisions that would not be reviewed at the level of an Assistant Secretary. It is an unrealistic expectation that every decision of every employee within an organization is known to upper management.

As for the hiring of actual state employees (versus temporary workers engaged through a private temporary staffing agency) these hiring decisions must be vetted and approved through the agency's human resources office. These hiring decisions follow a specific process that is set forth in rules and policy from the Office of State Human Resources. As has been previously mentioned in this response, during the relevant time periods of this investigation, no such policies or rules existed regarding the hiring of temporary workers.

The reference to the *State Human Resources Manual* that requires agencies to "select from the pool of the most qualified persons to fill vacant positions" is a requirement that is not applicable to this situation. This citation is a reference to the process for hiring a state employee, not a temporary worker. Since there is no requirement to post a temporary worker position there is not the "pool" referenced in this manual from which to select the temporary worker. While the private temporary staffing agency may send several resumes to the hiring manager for review, it is sometimes the case that the private temporary staffing agency may not have multiple qualified applicants to offer. This standard is not applicable to the facts at hand.

The former OMMISS Director clearly had the authority to obtain the services of temporary workers to fill the needs of the division under her direction. It is not reasonable to expect the Assistant Secretary to have gained knowledge of these types of personal relationships, even with greater scrutiny.

Table 4

The purpose of this Table is unclear. In it, OSA identifies a number of individuals it contends had a "connection" to the former OMMISS Director. However, OSA only questions the qualifications/pay rate for some of the individuals identified in this Table. In response to Finding 1, DHHS has already addressed OSA's Finding regarding temporary workers who may have received compensation in excess of their qualifications. For the reasons explained in DHHS' response to Finding 1, DHHS does not agree with every OSA designation "unqualified/excessive pay" on this Table. (Please see DHHS' response to Finding 1.)

OSA Recommendations

The Department adheres to the state-wide policy in effect regarding nepotism.

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The Department does comply with applicable state hiring policies to ensure that the most qualified applicants are hired into non-temporary positions. Temporary workers engaged through private temporary staffing agencies do not fall within the state hiring policies referenced in this section of the report. The Department recognizes that prior to the implementation of EO #4, there was a state-wide absence of appropriate safeguards and procedures regarding the engagement of temporary workers. DHHS has undertaken the development of an internal policy to address many of the issues identified by this investigation.

There is not an expectation that the Department's CIO will be involved in reviewing all hiring decisions within the offices he oversees. There are approximately 420 positions within these offices not including temporary and contract resources. The CIO oversees an office working on approximately \$1.2B in IT projects. It would not be effective or efficient for him to utilize his time to review every hiring decision made within his organization. This task is appropriately assigned to those managers that report to him or to others who, in turn report to him. DHHS agrees that the Department's Human Resources Division should be more involved in the process of the engagement of temporary workers and the new DHHS internal policy includes this in the process.

FINDING 3. "OMMISS Director received unauthorized compensatory time that may result in inflated retirement benefits"

DHHS Response: DHHS disagrees with this finding. DHHS' review of this employee's accrued compensatory time confirms her retirement benefits were not affected or inflated.

DHHS provided OSA documentation evidencing the fact the retirement benefits of the former OMMISS Director were not affected or inflated by any disputed compensatory time. The former OMMISS Director retired effective February 1, 2015.

DHHS disagrees with OSA's determination that the former OMMISS Director was prohibited from accruing compensatory time. OSA appears to take the position, incorrectly, that due to a raise received by the former OMMISS Director, she allegedly would be ineligible to earn any compensatory time. The raise referenced by OSA was initiated in December 2012, and approved in January 2013. However, there is no documentation of any prohibition of the accrual of compensatory leave noted anywhere in the formal approval by OSHR or in the BEACON system. Additionally, the salary raise justification DHHS sent to OSHR requesting approval for the raise lacks any reference of this alleged condition for approval of the raise.

Typically a salary raise justification sent to OSHR includes important conditions and facts to justify the approval for the raise. In addition to the silence in the justification regarding this seemingly important item, there is no written memo memorializing this alleged condition. In the approval paperwork entered into the system, no such condition is noted.

No information was provided to the employee that she would be treated differently than other state employees and be ineligible to earn compensatory time. In fact, it would be extremely unusual for this type of decision to be made - singling out one employee to be excluded from a benefit for which other employees continue to be eligible. The former OMMISS Director indicated that she continued recording

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all of her hours worked as she had always done. The former OMMISS Director's hours worked were reviewed and approved by the CIO on a paper time sheet and loaded into the BEACON System by his administrative support.

Importantly, other than a brief email from a DHHS HR staff member regarding deleting the former OMMISS Director from the OMMISS compensatory report to OSHR, her direct supervisor, the CIO, was never provided with documentation that this employee was ineligible to accrue compensatory time. That lack of information and understanding is clearly evidenced in the CIO's reply email that he would manage the employee's compensatory time.

There is quite a long history involved in the OSA interpretation that the former OMMISS Director was ineligible to receive compensatory time. However, DHHS contends that OSA has misinterpreted a series of communications from several years ago between former employees of DHHS and OSHR.

In a memo dated September 26, 2012 from the Acting Secretary for DHHS to the Interim State Personnel Director, DHHS described its future plans for dealing with the issue of compensatory time earned by OMMISS employees. In the memo DHHS requested that OSHR:

“...conduct a market analysis of similar positions to provide data that will assist the State in setting competitive market rates as we seek to retain and recruit employees. Based on the results of this analysis, I further request that salary adjustments be made for all appropriate employees in the MMISS and NCFAS IT project teams once the study is concluded.”

In a memo dated October 19, 2012, OSHR responded to DHHS' request. In a pertinent part, OSHR replied:

“With the ability to adjust MMIS base salaries to the appropriate labor market rate, the practice of **paying cash** to FLSA exempt staff for compensatory hours over 200 will end on January 31, 2013. However, I am granting an exception to the 12 months cumulative limit of the Compensatory Time Policy for MMIS staff to receive an additional six months (for a total of 18 months) to use compensatory time earned from February 1, 2013 through September 30, 2013. The 18 months will be calculated from the date the compensatory leave is earned. Extending the time period in which this compensatory time may be used acknowledges the additional hours this staff will be working in the five months leading up to ‘go live’ in July 2013 and the initial 90 days of the implementation phase. Compensatory time earned, but not paid out or used prior to February 1, 2013, must be used within twelve months from the date it was earned. Unused compensatory leave shall be lost if it is not taken within this designated time frame. The labor market salary adjustments and the exception granting MMIS staff 18 months to use compensatory time earned between February 1 and September 30, 2013 recognizes the staff's effort and contributions to this important project.”
(emphasis added)

Expectedly, the former OMMISS Director did work in excess of a 40 hour work week and hours over her normal schedule were added into her compensatory leave balance. The compensatory leave that was eligible for the 18 months exception granted by the Interim State Personnel Director specifically related to those hours worked in excess of her normal schedule from February 1, 2013 through September 30, 2013.

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DHHS contends that the OSA questioned compensatory time of this employee did not actually affect this employee's retirement benefits or inflate any benefits she received. A thorough review was conducted of the former OMMISS Director's compensatory hours along with her normal working hours. Even if the former OMMISS Director had received no additional compensatory time after July 31, 2013 (the date the new legislative reporting requirement took affect) a careful review of her already accrued compensatory leave balance revealed she had enough previously approved compensatory time to cover any absences she may have had from August 1, 2013 through January 31, 2015.

When the former OMMISS Director retired effective February 1, 2015, she had over 240 hours of accumulated vacation. The OSHR State Human Resources Manual Leave Policy, Section 5, Page 117 states the following:

“Vacation leave may be accumulated without any applicable maximum until December 31 of each year. However, if the employee separates from service, payment for accumulated leave shall not exceed 240 hours....”

The former OMMISS Director's final vacation balance once she was paid out for the 240 hours allowed by policy, was 13.33 hours. This 13.33 hours was the amount she earned for being in pay status for at least half the working days in the month of January 2015. Since she was using the 18 months of compensatory time that was approved from the Interim State Personnel Director for any absences that occurred from July 1, 2014 through January 31, 2015, there was an excess amount of vacation (13.33 hours) she essentially lost.

The former OMMISS Director did not receive any direct payment for her compensatory leave balance at the time of her retirement. In addition, she will not have access to or receive any payment for the excess annual leave hours. As a result, the former OMMISS Director's retirement benefits were not “inflated” due to any “unauthorized compensatory” time.

OSA Recommendations

Recommending that the CIO “more closely monitor and review and approve in the State's online payroll system” ignores the fact that the CIO currently and at all times herein, carefully monitored the time of every employee he directly supervised. The CIO reviews the time for each of his direct reports and after review, either approves or disapproves the submitted time.

As described in the response above, DHHS reviewed the former OMMISS Director's leave balances upon her retirement and determined that there was no effect on the former OMMISS Director's retirement benefits related to compensatory leave questioned by OSA.

FINDING 4. “Reports to General Assembly omitted at least \$260,000 of overtime and compensatory time”

DHHS Response: DHHS agrees that prior reports submitted inadvertently omitted some compensatory time. As is explained below, an error was made by DHHS and OSHR in the process of approving

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compensatory time and the reporting of that time to the General Assembly. DHHS disagrees with the sum contained in this finding since it is overstated.

DHHS does agree that DHHS and OSHR differ from OSA as to the interpretation of Session Law 2013-360, Section 12.A.4(i). As DHHS and OSHR worked together to implement the reporting requirements of this session law, both DHHS and OSHR believed the reporting sought was for the overtime and compensatory time of actual state employees, not temporary workers.

Undoubtedly, in response to an earlier situation in 2012, regarding the pay-out for compensatory time to a number of employees of OMMISS, the General Assembly enacted a provision in Session Law 2013-360, Section 12.A.4(i), to provide for additional oversight of the compensatory time of OMMISS state employees⁷. In pertinent part, that law provided:

*Section 12A.4(i) ...the Department shall not approve any overtime or compensatory time related to the replacement MMIS after August 1, 2013, **without the prior written approval of the Office of State Personnel** for each specific instance of overtime or compensatory time.” (emphasis added)*

The statute goes on to require that the department will submit to the legislative oversight committees as well as the Fiscal Research Division a monthly report on

*“...the total amount **of approved** overtime and compensatory time related to the MMIS...” (emphasis added)*

As DHHS and OSHR put in place a process to effectuate the requirements of the session law referenced above, neither agency initially discussed whether the overtime of temporary workers should be included in the report. Neither agency sought clarification since both agencies believed they understood the purpose and requirement of the new law. Both agencies believed the purpose of this requirement was to provide additional oversight to DHHS in the approval of compensatory time of state employees who previously had received unprecedented payments for compensatory time earned while working on the replacement MMIS. While it is accurate that there was an error in the process used by DHHS and OSHR regarding the approval of compensatory time of one employee and the reporting of that time to the General Assembly, the email communications that contemporaneously document how this occurred reveal it was due to the incorrect assumptions of several staff members at both agencies.

Accordingly, as revealed by the compensatory time reports, the agencies agreed on a process by which OMMISS would estimate the amount of compensatory time and overtime that its state employees would likely accrue during a given month and submit that projection for review and approval by OSHR. OSHR would review and note their approval or disapproval. At the end of the month, DHHS would “true up” with OSHR and submit the actual compensatory time/overtime actually earned by the state employee as well as

⁷ DHHS included the compensatory/overtime of all OMMISS state employees in this report except as explained above. However, there certainly may have been employees of DHHS who worked in other divisions who, as a part of their duties and responsibilities, performed some work “related to the replacement MMIS”. However, since these employees are not dedicated to the project and are not part of the OMMISS organization, current time keeping systems do not permit DHHS to track their time spent on the project. Additionally, even if DHHS could have tracked their time spent on the project, it would have been difficult or impossible to determine whether the overtime of a worker with responsibilities other than working on the replacement MMIS was “related to the replacement MMIS” or to their other job duties and responsibilities.

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the estimated compensatory time/over time estimated for the upcoming month. DHHS would subsequently report, as required by the session law, the actual earned compensatory time/overtime of the OMMISS state employees to the required legislative bodies.

Former OMMISS Director's Compensatory Time

When OSA first brought this issue to DHHS' attention, DHHS began a review of the submitted reports and the report preparation process and documentation between the Department and OSHR. What DHHS learned was that in the first report DHHS submitted to OSHR, DHHS included the projected compensatory time of the former OMMISS Director. This fact is noted in the OSA draft report.

However, staff of OSHR involved in the approval incorrectly believed that the former OMMISS Director was ineligible to earn compensatory time. Accordingly, OSHR's approval back to DHHS noted that the former OMMISS Director should not be on the report as they believed she was ineligible to earn compensatory time. At that point, it is clear that within DHHS there was a miscommunication regarding the future handling of the former OMMISS Director's future compensatory time. As a result that compensatory time was not included on future reports to OSHR and subsequently, incorrectly, excluded from reports filed with the General Assembly.

It is clear that the cause of this error in reporting resulted from the confusion and misunderstanding between DHHS and OSHR as to the former OMMISS Director's ability to continue to accrue compensatory leave. (See DHHS response to Finding 3 for additional detail on this issue.)

When DHHS discovered the previously submitted reports were understated, a revised report was prepared and submitted to OSHR to request retroactive approval for the compensatory leave hours dating from the effective date of the initial report. Additionally, corrected reports were also submitted to the legislature.

As these compensatory leave hours are utilized on a first in, first out basis, none of the accrued hours that were previously unapproved had been used by the former OMMISS Director. Therefore, the OSA calculation identifying the sum of \$69,930 as the impact attributed to this issue is incorrect and should be deleted from the sum indicated in this finding.

Temporary Workers' Overtime

As noted previously, based upon a review of email communications and subsequent discussions with DHHS, as well as OSHR officials, it is clear that neither agency interpreted the session law at issue as requiring the reporting of the overtime of temporary workers. The employees involved in implementing a process for the reporting and approval of these hours believed the requirement of the session law was a direct result of previous audit/investigation findings related to payment of overtime and compensatory time to OMMISS *state employees*.

Given that DHHS and OSHR staff responsible for implementation of the new reporting and approval procedure between the two agencies believed they understood the requirements and that two different agencies interpreted the session law similarly, neither agency sought further clarification of the session law. Overtime paid to temporary workers was not part of the report to either OSHR or to the General Assembly.

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Based on the interpretation of DHHS and OSHR in the implementation of this reporting requirement, the sum of \$191,630 attributable to overtime of temporary workers for the period August 1, 2013 – July 31, 2014 should be deleted from this Finding in OSA’s draft report.

Employees Outside OMMISS

DHHS did not underreport the time of these workers. As noted in footnote 4 above, there is no practical way of measuring or determining which DHHS employees 1) worked outside of the OMMISS division and 2) accrued compensatory time or overtime during this period on a matter that could be considered to be “related to the replacement MMIS”.

OSA Recommendations

The Department agrees with the Auditor’s recommendation that the monthly reports should comply with Session Law. The Department has already filed amended reports that include accurate information from the inception of the reporting requirement. DHHS will seek clarification from the General Assembly as to whether DHHS should submit a supplemental report regarding the overtime paid to temporary workers during the relevant reporting periods.⁸

FINDING 5. “State regulations for hiring information technology services contractors violated”

DHHS Response: DHHS disagrees that it violated state regulations in the hiring of three of the four temporary workers identified in this finding. Based upon the primary job duties of three of the four temporary workers, DHHS believed these positions did not require sourcing through the IT supplemental staffing process administered by the Office of Information Technology Services (ITS) per Session Law 2011-145. These three temporary workers were engaged to provide duties such as: contract monitoring, process management coordination or administrative coordination, none of which are IT professional roles.

For the three temporary workers referenced above, DHHS acknowledges that the job title and applicable specifications used to classify these three temporary workers may have created a misunderstanding of the primary duties being performed such that it appeared that ITS approval process should have been followed. A careful review of these three workers’ actual duties and responsibilities reveals that while these temporary workers were providing services in support of the OMMISS IT project, the services they provided were not of an IT professional nature that would subject their engagement to the ITS approval process.

As to the remaining temporary worker, this fourth individual was an IT professional who had been employed as a state employee by DHHS for a number of years as an IT professional. A review of this temporary worker’s primary duties and responsibilities indicates that DHHS should have followed the ITS

⁸ The funding for the overtime hours of the temporary employees dedicated to the OMMISS office is 90% federal funds and 10% state funds. In contrast, compensatory time awarded to a state employee who is on this project is likely to be a liability to the state if that compensatory time is exercised after that employee ceases to be associated with the MMIS replacement project as this percentage of federal funding will not be available to offset the liability. OSHR and DHHS both understood the legislature’s sensitivity for incurring a substantial state liability for the compensatory time of state employees. This was yet another reason that led both agencies to believe the session law pertained to compensatory and overtime pay of STATE EMPLOYEES and not TEMPORARY WORKERS.

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approval process to fill the temporary need for this role.⁹ DHHS agrees with OSA's finding as to this one temporary worker.¹⁰

As explained above, for three of the four temporary workers referenced in this Finding, DHHS was not required to follow the ITS approval process to engage these temporaries. As to the fourth temporary worker, regardless of whether DHHS correctly followed the procedure, this individual was engaged to perform necessary duties and responsibilities within OMMISS. OMMISS would have incurred the expense for this temporary worker regardless of the process it utilized to engage this worker. Accordingly, the figure referenced by OSA in this Finding is illusory since OMMISS would have paid someone to perform this necessary work.

OSA Recommendations

DHHS' new internal policy will strengthen DHHS' process for assuring compliance with the requirements outlined in Session Law 2011-145.

FINDING 6. "Lack of adequate oversight of OMMISS despite findings in prior audit reports"

DHHS Response: DHHS disagrees with this finding. To the contrary, DHHS has increased the oversight of OMMISS as evidenced by the hiring of the agency's first CIO in February 2013.

When the new administration arrived (coincidentally at approximately the same time that the February 2013, OSA audit report referenced in this Finding was released), it was apparent to the new DHHS leadership that OMMISS and other IT projects within the agency both needed and deserved the oversight and attention of an executive level official with extensive IT management experience. This decision was based on a number of factors such as: DHHS is an organization with approximately 18,000 positions, DHHS has an approximately \$19B budget, DHHS had a number of large IT projects underway including the two largest IT projects ever undertaken in the history of North Carolina.

Accordingly, the role of the DHHS CIO was created and an individual with extensive IT management experience was recruited to fill this new position.¹¹ Since the arrival of the DHHS CIO, a number of initiatives have been undertaken to better oversee IT operations at DHHS.

The CIO put in place a number of changes to allow DHHS to successfully go live with the replacement MMIS on July 1, 2013. At the time he was hired, this was the most critical IT need facing DHHS. A failure to successfully go live on this date would result in approximately \$4.8M in additional monthly costs to taxpayers. Furthermore, additional delays would impact the State's compliance with federally mandated changes to the Medicaid program. The primary focus of OMMISS for the past two years has been on the successful launch of the new claims payment system. Six months after implementation, the replacement

⁹ This temporary employee was sourced through an ITS approved private temporary staffing agency.

¹⁰ Based on the recent February 2015 report of the Program Evaluation Division, it appears that all state agencies experienced similar compliance issues by failing to comply with required ITS approval processes.

¹¹ The individual hired as the DHHS CIO has in excess of 30 years of experience leading large technology and operation's organizations in the banking industry. The last financial institution where he was employed was RBC USA – a subsidiary of the 10th largest bank in the world. The CIO brings not only extensive, complex large operation IT experience – he also brings executive management experience from similarly complex IT initiatives.

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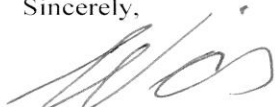
MMIS system paid more claims than the legacy system for the same prior year six month period. It had a lower claim denial rate. It pended only two percent of the claims versus fourteen percent from the legacy platform. Finally, after six months of production, over three thousand new providers were successfully added to NCTracks.

Not only did the new CIO launch up the new system successfully on July 1, 2013, he also successfully led OMMISS to certification of this new payment system. The biggest IT project in North Carolina's history was finally completed and, according to just announced news from the federal government, has passed a stringent audit by the federal government that proves that the new claims payment system is operating correctly. This success means North Carolina will receive approximately \$19M from the federal government and will be entitled to have the federal government contribute additional monies for the operation of this system going forward. DHHS believes the recent notification from the federal government is proof of the excellence that the new CIO's leadership and management imparted to this division.

OSA Recommendation

DHHS will continue to identify opportunities to develop and implement procedures to ensure even stronger administrative oversight of the Office of NCTracks, the successor organization to OMMISS.

Sincerely,



Aldona Z. Wos, M.D.
Secretary

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