

**OFFICE OF THE ATTORNEY GENERAL  
AND  
THE DEPARTMENT OF LAW**

**REPORT ON AUDIT  
FOR THE YEAR ENDED  
JUNE 30, 2012**



## **AUDIT SUMMARY**

Our audit of the Office of the Attorney General and the Department of Law and the Division of Debt Collection found:

- proper recording and reporting of all transactions, in all material respects, in the Commonwealth Accounting and Reporting System;
- a matter involving internal control and its operations necessary to bring to management's attention;
- an instance of noncompliance with applicable laws and regulations or other matters that are required to be reported; and
- the Office has completed corrective action with respect to the prior audit findings titled "Strengthen Internal Controls Over Cash" and "Improve Supporting Documentation for Legal Service Billings."

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## AUDIT FINDING AND RECOMMENDATION

### Improve IT Risk Management and Contingency Plan Process

The Office of the Attorney General (Office) does not schedule and conduct annual Information Technology continuity of operation plan (COOP) tests. The Office also lacks a process to document major findings during its annual risk assessment evaluation.

Without a formalized evaluation process, the Office cannot accurately determine the proper safeguards for current and new data, thereby increasing the risk of data loss or data compromise. Additionally, without a standard process to evaluate the outcome of its COOP test, the Office cannot determine whether it is adequately prepared for potential disruption.

The Commonwealth's information security standard, SEC 501-06, requires agencies annually to conduct a documented self-assessment over the continued validity of its risk assessment. The standard also requires agencies to document COOP tests, their outcomes, and any recommendations. This documentation is instrumental for an agency to determine if any changes are necessary to ensure successful and continuous agency operation.

We recognize that the Office has made some progress from the previous audit and is actively working to address the remaining issues identified. We recommend that the Office dedicate the necessary resources to perform and document annual self-assessments of its risk assessment. We also recommend that the Office schedule and document COOP tests, as well as hold a "post-mortem" that includes the documentation of the results of the test and any recommendations to improve its contingency plans.

## AGENCY HIGHLIGHTS

The Attorney General is the chief executive officer of the Commonwealth of Virginia's Department of Law. The Attorney General and Department of Law, "Office of the Attorney General," acts as the Commonwealth's law firm. The Attorney General and his staff represent the Commonwealth's interests in all civil cases naming the Commonwealth, or any of its agencies or officials, as a party, and in criminal cases on appeal to the Court of Appeals of Virginia and the Supreme Court of Virginia. In cases involving federal law, the Attorney General represents the Commonwealth's interests in federal court. The Office also enforces consumer protection laws and investigates Medicaid fraud.

The Attorney General is also the legal advisor to the Governor and more than 200 state agencies, boards, commissions, and institutions. The Attorney General renders official opinions on the application of the law upon written request of the Governor, members of the General Assembly, members of the judiciary, state officials, or local constitutional officers. The Office handles criminal convictions on appeal and defends the state when prisoners sue concerning their incarceration. In addition, the Office defends legal challenges of the constitutionality of state laws and supervises the appointment and payment of private attorneys hired by other state agencies for various matters. The Office also administers grants to help reduce crimes involving gangs, drugs, and sex predators.

The Office's organizational structure is similar to a private law firm, with divisions devoted to legal specialties. The Office has four legal divisions with offices in Abingdon, Fairfax, Richmond, and Roanoke. A Deputy Attorney General heads each division and reports directly to the Chief Deputy Attorney General. The Administration Division provides finance, human resources, information systems, and operations support to the legal divisions. The following are the legal divisions.

- Civil Litigation Division (includes the Division of Debt Collection)
- Public Safety and Enforcement Division (includes the Medicaid Fraud Control and Tobacco Units)
- Health, Education, and Social Services Division
- Technology, Real Estate, Environment, Financial Law and Transportation Division

As a result of legislation passed during the 2012 General Assembly Session, beginning in fiscal year 2013 the Office of Attorney General will include activities of the Office of Consumer Affairs, Human Rights Council, and complaint-related responsibilities of the Board for Towing and Recovery Operators.

The Division of Debt Collection is a separate agency within the Office. It provides legal services and advice related to the collection of funds owed to the Commonwealth. The following financial information presents separate information on the Office of the Attorney General and the Division of Debt Collection.

### Attorney General's Office

The Office receives approximately half of its funding from the General Fund with the remaining funding coming almost equally from special revenue and federal funds. The special revenue funds are primarily from fees charged to agencies and universities for legal services provided by the Office. State law permits the Attorney General to bill agencies for the legal services if the agency receives all or a part of its funding from non-general funds. The Office also receives federal grants supporting Medicaid fraud control activities and programs to suppress gang activity.

The Office's activities are budgeted in three programs, the largest of which is the Legal Advice program. Attorneys in the Legal Advice program provide legal services to state agencies. The following schedule compares the Office's original and final budgets by program with actual expenses for fiscal year 2012.

#### **2012 Budgeted and Actual Expenses**

<u>Program</u>	<u>Original Budget</u>	<u>Final Budget</u>	<u>Expenses</u>
Legal advice	\$27,081,026	\$28,248,356	\$25,767,829
Medicaid program services	6,142,837	10,062,374	9,046,966
Regulation of business practices	<u>2,241,681</u>	<u>2,609,607</u>	<u>1,963,667</u>
Total	<u>\$35,465,544</u>	<u>\$40,920,337</u>	<u>\$36,778,462</u>

*Source: Commonwealth Accounting and Reporting System*

The following schedule includes detail relating to adjustments to appropriations during fiscal year 2012.

#### **Budget Analysis for Fiscal year 2012**

Original appropriations per Chapter 890	\$35,465,544
Subsequent legislative amendments per Chapter 2	195,000
Adjustments:	
Increase in appropriations to expand the Medicaid Fraud Control Unit	3,904,266
Carry forward of prior year cash balances	531,217
Increase in appropriations for Legal Advice program	325,000
Transfer from central appropriations for salary and benefit changes	260,231
Transfer from Department of Criminal Justice Services for Victim Witness Grants	134,790
Other Adjustments	<u>104,289</u>
Total adjusted appropriations	<u>\$40,920,337</u>

As previously noted, State law permits the Office to bill agencies and universities for legal services if the agency receives all or a part of its funding from non-general funds. The Office calculates an agency's legal service charges for a fiscal year using actual attorney hours worked during the previous fiscal year. At the start of a fiscal year, the Office notifies each agency of their expected charges for the year, and at the beginning of each quarter, the Office bills the agency for that quarter's portion. The following table provides detail of the Office's legal service revenues for fiscal years 2008 through 2012. There was an increase in legal service revenues in fiscal year 2012 due to the Office entering into more memorandums of agreement with agencies receiving services and an increase in attorneys' billable hours.

### **Legal Service Revenues**

<u>Fiscal Year</u>	<u>Revenues</u>
2008	\$5,090,249
2009	4,545,532
2010	5,393,597
2011	5,538,162
2012	6,690,691

*Source: Commonwealth Accounting and Reporting System*

### **Medicaid Fraud Control Unit**

The Virginia Medicaid Fraud Control Unit (MFCU) investigates and prosecutes health care provider insurance fraud against the state and federally funded Medicaid program. Federal regulations require the Office establish the MFCU as a separate and distinct entity from the Department of Medical Assistance Services, the state agency that administers the Medicaid program. The U.S. Department of Health and Human Services has certified the MFCU, and it is one of 49 similar state units plus the District of Columbia in the United States. Federal law has expanded the scope of the MFCU to include any state and federal healthcare programs including Medicare, CHAMPUS, and others, in addition to Medicaid. MFCU has a criminal and a civil unit.

Federal grants fund the MFCU operations and require a 25 percent match of General Funds; however, in fiscal year 2008, the MFCU recovered \$39.8 million in the Purdue OxyContin criminal case and will use these funds indefinitely to provide the 25 percent Commonwealth share of the budget, as prescribed in the court order. The MFCU employs a professional staff of 84 criminal investigators, auditors, and several Assistant Attorneys General who are experienced in commercial and financial investigations.

The table below shows the total amount of MFCU recoveries over the last five years as ordered by the courts (fines, penalties, or restitutions). Because the Virginia Medicaid program is 50 percent federally funded and 50 percent state-funded, Virginia receives half of Medicaid recoveries. All recoveries go into the Virginia Health Care Fund established by the General Assembly in 2004 and must support health care services. In fiscal years 2007 and 2008, the MFCU recovered a total of \$634.5 million due to the settlement in the Purdue OxyContin criminal case. The Commonwealth's

recovery was \$105 million of the \$634.5 million, which went to several state agencies and the settlement restricts how the agencies may use these funds.

### **MFCU Recoveries by Year**

<u>Fiscal Year</u>	<u>Total Recoveries</u>
2008	\$541,099,617
2009	27,607,670
2010	25,390,467
2011	14,573,789
2012	47,212,652

*Source: Medicaid Fraud Case Tracking System*

### **Division of Debt Collection**

The Division of Debt Collection (Division) is a separate agency within the Office. It collects delinquent accounts for state agencies, state-supported institutions of higher education, and their hospitals. The Division receives delinquent accounts from state agencies and takes appropriate action, including litigation, to collect them.

The 2004 General Assembly passed legislation requiring agencies to forward past due accounts over \$3,000 and 60 days old to the Division. This 2004 legislation also mandated the allocation of collections among the creditor agency, the General Fund, and an amount to fund the Division's operations. The General Assembly removed the General Fund Allocation in 2008, and the current allocation of collections is between the creditor agency and the Division.

### **Division Operating Statistics for 2008-2012**

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Maximum employment level	24	24	24	24	24
Division budget	\$1,796,047	\$1,820,469	\$1,820,469	\$1,932,884	\$1,899,884
Number of accounts	10,774	11,286	12,403	14,818	16,386
Active accounts (\$ in millions)	\$141	\$157	\$166.5	\$193.5	\$215.6
Gross collections (\$ in millions)	\$9.7	\$11.8	\$10.4	\$9.3	\$10.5
General Fund Allocation (\$ in millions)	\$ -	\$ -	\$ -	\$ -	\$ -

*Source: Commonwealth Accounting and Reporting System and the Division of Debt Collection*

The Division funds operations with a portion of fees retained from their collections. The Appropriation Act allows the Division to keep \$400,000 as operating capital and requires the transfer of any excess collections to the General Fund by September 1 of each year. The Division



can request to keep more of the balance, but the Department of Planning and Budget must approve this request. At the end of fiscal year 2012, the Division had a cash balance of \$403,366. The Division transferred \$3,366 to the General Fund on August 31, 2012. This transfer was lower than previous years, since during the year the Division performed a review of the rate it charges agencies for collection services. As a result of this review, the Division lowered its rates and processed revenue refunds of \$495,000 to the various agencies that utilized its collection services during the year. The following table details the Division's operating revenues and expenses for the last five fiscal years.

**Revenues and Expenses – Fiscal Years 2008 – 2012**

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Beginning balance	\$3,251,192	\$1,849,860	\$1,024,919	\$887,987	\$761,709
Collection fee revenue	1,899,192	2,095,270	2,311,790	2,075,208	2,354,751
Expenses	(1,699,332)	(1,820,351)	(1,789,415)	(1,748,727)	(1,842,861)
Transfers	(1,601,192)	(1,099,860)	(659,307)	(452,758)	(375,233)
Revenue Refunds	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(495,000)</u>
Ending balance	<u>\$1,849,860</u>	<u>\$1,024,919</u>	<u>\$ 887,987</u>	<u>\$ 761,709</u>	<u>\$ 403,366</u>

*Source: Commonwealth Accounting and Reporting System*



Martha S. Mavredes, CPA  
Auditor of Public Accounts

# Commonwealth of Virginia

*Auditor of Public Accounts*

P.O. Box 1295  
Richmond, Virginia 23218

November 20, 2012

The Honorable Robert F. McDonnell  
Governor of Virginia

The Honorable John M. O'Bannon, III  
Chairman, Joint Legislative Audit  
and Review Commission

The Honorable Kenneth T. Cuccinelli, II  
Attorney General

We have audited the financial records and operations of the **Office of the Attorney General and Department of Law and Division of Debt Collection** for the year ended June 30, 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Audit Objectives

Our audit's primary objectives were to evaluate the accuracy of recorded financial transactions in the Commonwealth Accounting and Reporting System, review the adequacy of the Office's internal controls, test compliance with applicable laws and regulations, and review corrective actions of audit findings from prior year reports.

## Audit Scope and Methodology

The Office of the Attorney General and Department of Law and the Division of Debt Collection's management has responsibility for establishing and maintaining internal control and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

We gained an understanding of the overall internal controls, both automated and manual, sufficient to plan the audit. We considered significance and risk in determining the nature and extent of our audit procedures. Our review encompassed controls over the following significant cycles, classes of transactions, and account balances.

Expenses, including payroll  
Legal service revenue  
Division of Debt Collection

Medicaid Fraud Control Unit  
Information Systems Security

We performed audit tests to determine whether the Office of the Attorney General and Department of Law and the Division of Debt Collection's controls were adequate, had been placed in operation, and were being followed. Our audit also included tests of compliance with provisions of applicable laws and regulations. Our audit procedures included inquiries of appropriate personnel; inspection of documents and records including vouchers, reconciliations, deposit certificates, billings, creditor agency collections and distributions, receipts from recoveries, and contracts; and observation of the Office of the Attorney General and Department of Law and the Division of Debt Collection's operations. We tested transactions and performed analytical procedures, including budgetary and trend analyses.

### Conclusions

We found that the Office of the Attorney General and Department of Law and the Division of Debt Collection properly stated, in all material respects, the amounts recorded and reported in the Commonwealth Accounting and Reporting System. The Office of the Attorney General and Department of Law and the Division of Debt Collection records its financial transactions on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The financial information presented in this report came directly from the Commonwealth Accounting and Reporting System.

We noted a matter involving internal control and its operation and compliance with applicable laws and regulations that requires management's attention and corrective action. This matter is described in the section entitled "Audit Finding and Recommendation."

The Office has taken adequate corrective action with respect to audit findings reported in the prior year.

### Exit Conference and Report Distribution

We discussed this report with management on December 18, 2012. Management's response to the findings identified in our audit is included in the section titled "Agency Response." We did not audit management's response and, accordingly, we express no opinion on it.

This report is intended for the information and use of the Governor and General Assembly, management, and the citizens of the Commonwealth of Virginia and is a public record.

AUDITOR OF PUBLIC ACCOUNTS

SAH/alh



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

December 18, 2012

Mr. Walter Kucharski  
Auditor of Public Accounts  
101 N. 14<sup>th</sup> Street  
Richmond, VA 23219

Dear Mr. Kucharski:

On behalf of the Attorney General, I would like to thank you for providing us an opportunity to comment on the findings and recommendations in the Fiscal Year 2012 audit of the Office of the Attorney General.

We sincerely appreciate your recognition of our proactive efforts to address concerns expressed in prior audits.

Management continues to recognize the need for compliance with SEC 501 requirements. We will actively work towards redressing the concerns noted in the current audit report. We now are planning for annual COOP testing and annual risk assessment (RA) evaluations, and work efforts are in place to address completion and compliance. Our goal is to implement these measures in Fiscal Year 2013, and in no event later than Fiscal Year 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman A. Thomas".

Norman A. Thomas  
Director of Administration

OFFICE OF THE ATTORNEY GENERAL

As of June 30, 2012

Kenneth T. Cuccinelli, II  
Attorney General

Patricia L. West  
Chief Deputy Attorney General

Patrice S. Elliott  
Director of Finance