

**Behavioral Health Division
Special Review**

ASR # 2019-43

This information is available in alternative formats to individuals with disabilities by calling (651) 431-3623. TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services programs, contact your agency's ADA coordinator.

Department of Human Services

Table of Contents

	Page
Introduction	1
Background	1 – 2
Objectives	2 – 3
Scope	3
Methodology	3
Conclusion	3
Findings and Recommendations	4 – 14
Table 1	15

Audit Participation

The following persons were interviewed during the preparation of this report:

Department of Human Services

Various Staff

Behavioral Health Division

DHS Internal Audit

Gary L. Johnson, CCEP

Kenneth W. Vandermeer, CPA, CFE, CCEP

Mark Allan, CPA, CFE

Hillary Friend

Ellen Sibley, CPA, CIA, CFE

Glenn Smith

Director

Deputy Director

Internal Auditor

Internal Auditor

Internal Auditor

Internal Auditor

Introduction

The Internal Audits Office (IAO) received a complaint in June 2019 from a staff member with the Behavioral Health Division (BHD), which is within the Community Supports Administration (CSA) at the Department of Human Services (DHS). In the complaint and subsequent interviews, the complainant listed a series of allegations against BHD and BHD management, including concerns that Minnesota Statutes 16A.15¹ and 16C.05² violations were not properly documented, and that Office of Grants Management (OGM) Policies 08-02³ and 08-08⁴ were not being followed. In addition, there were allegations that real or perceived conflicts of interest were not properly evaluated by BHD management, and that a risk of double-payment exists for the Women's Recovery Services program due to inadequate controls.

IAO received additional allegations from other sources. For example, we received an anonymous allegation that BHD staff received gifts from grantees in exchange for providing grantees with grant funding, and an allegation from a different BHD staff member that BHD and DHS Licensing engaged in unpromulgated rulemaking regarding the creation of a variance established for Psychiatric Residential Treatment Facilities (PRTF's).

We also received and referred to DHS Human Resources Division (Human Resources) some additional allegations pertaining to a series of personnel-related issues, including accusations of misconduct, claims of disrespectful workplace behavior and concerns relating to conflicts of interest.

Background

The Behavioral Health Division (BHD) was created as a result of a merger in late 2018 between the Alcohol & Other Drug Abuse (ADAD) and the Children's and Adult Mental Health divisions. Previously, both ADAD and the Mental Health divisions were managed by two deputy directors. The BHD merger resulted in one vacant deputy director position, as both previous deputies left the division. The new BHD deputy position was filled in March 2019. The director position, to whom the previous deputy directors reported, has been occupied since September 2017.

BHD funded approximately \$361 million in State Fiscal Year 2018 and \$354 million in State Fiscal Year 2019 for chemical dependency and mental health services. The majority of the funding sources for BHD are state dollars. Over the past several years, the split has been roughly 90% state and 10% federal funding. The Consolidated Chemical Dependency Treatment Fund (CCDTF) provides the majority of the funding from the state.⁵ BHD also received an influx of federal funding meant to address the opioid

¹ Minn. Stat. 16A.15, Subd.3 Allotment and Encumbrance

² Minn. Stat. 16C.05, Subd. 2 Creation and Validity of Contracts

³ Office of Grants Management Policy 08-02 Rating Criteria for Competitive Grant Review

⁴ Office of Grants Management Policy 08-08 Grant Payments

⁵ \$189 million in SFY17, per the 2020-2021 Biennial Budget report for DHS

crisis.⁶ During State Fiscal Year 2018, ADAD and the two Mental Health divisions managed over 150 grants that exceeded \$250,000 each. Programs included in the grants administered by BHD cover a wide range of services, including housing support, children’s mental health screening, chemical dependency treatment, and mental health crisis support.

The concerns we received address a variety of allegations, including:

- (1) A BHD staff member had a conflict of interest with a grantee who received a grant award in 2019,
- (2) 16C violations related to Respite Care Services contracts were being “covered up” by BHD leadership,
- (3) RFP (request for proposal) policies and procedures were ignored, including no documentation of a decision to award a low-scoring proposal for the State Opioid Response (SOR) grant by BHD management,
- (4) BHD approved a large number of advances to grantees without a documented business need,
- (5) Women’s Recovery Services grants were at risk for double-billing of the grant fund and Medicaid (MA),
- (6) Training provided to BHD managers and staff regarding OGM policies on grant management is questionable or may not be sufficient,
- (7) A certain grantee doesn’t have the right license to legally provide services as described in the grant contract amendment for naloxone distribution,
- (8) A BHD grant manager requested and coerced grantees into providing gifts, and
- (9) BHD and Licensing circumvented the rulemaking process when establishing a variance for Psychiatric Residential Treatment Facilities (PRTF) providers.

Objectives

The purpose of our review was to determine if the allegations listed above could be substantiated. We divided our work into nine separate objectives as follows:

- (1) Establish if BHD properly evaluated potential conflicts of interest between staff, including managers, and grant applicants.
- (2) Determine if there is evidence that BHD covered up 16C violations. Also, verify if BHD had a disproportionate share of 16A and 16C violations in State Fiscal Years 2018 and 2019, in comparison to other divisions within DHS, and determine the cause.
- (3) Confirm if BHD was compliant with Office of Grant Management (OGM) Policy 08-02, Rating Criteria for Competitive Grant Review.
- (4) Determine if BHD documented prudent business needs for advance grant payments.
- (5) Verify if BHD or DHS has mitigating controls in place to prevent a grantee from receiving reimbursement through both the Women’s Recovery Services grant and by billing Medicaid for the same recipient.
- (6) Determine if BHD managers, supervisors, and staff received training related to the grant management process, and if the training was provided prior to staff assuming grant management responsibilities.
- (7) Conclude if a certain grantee could legally perform the work detailed in the June 2019 amendment to their grant contract.

⁶ \$10.6 million for SFY18 and SFY19, per DHS fact sheet

- (8) Determine if there is any evidence that the BHD grant manager named in the anonymous allegation has requested gifts from grantees.
- (9) Determine if BHD and Licensing circumvented the rulemaking process when establishing a variance for Psychiatric Residential Treatment Facilities (PRTF) providers.

Scope

The scope of our review was limited to reviewing internal controls and procedural related matters covering the period July 1, 2017, through August 31, 2019. While we did evaluate certain conflict of interest claims and the claim related to a staff person requesting gifts from grantees, this work was limited to determine if sufficient evidence was available to fully evaluate the issue. Full evaluation of personnel related matters is the responsibility of Human Resources and beyond the scope of this project.

Methodology

To accomplish our stated objectives, we conducted interviews with key BHD staff involved with grant contract management, contracts, and financial operations. We also interviewed BHD management, including the director and deputy director. We analyzed state accounting data related to 16A and 16C violations, which we received from the Financial Operations Division (FOD) and compared the number of violations by BHD to other divisions within DHS. FOD also provided payment information for advances to grantees, and we reviewed BHD grant contracts to confirm the amounts and justifications. We researched federal regulations and consulted with DHS Contracting and Legal Compliance staff, the DHS General Counsel's Office and the Minnesota Board of Pharmacy to help gain an understanding of specific BHD grant contracts and amendments. We also discussed conflict of interest related policy and procedural issues with the DHS Ethics Officer.

Additionally, we analyzed state email accounts of select BHD staff for issues contained within the scope of our review. We obtained internal BHD documentation for review, including RFPs, RFP scoring, ranking and rating of grant applicants, conflict of interest disclosures, and internal or external memos. We gained an understanding of internal controls in the Women's Services program through discussions with staff and by reviewing related documents. We also analyzed data from the DHS Warehouse to help us understand service and payment related issues.

Conclusion

The following summary of our work shows that we were able to substantiate allegations related to five of our nine objectives, leaving allegations related to four of our objectives unsubstantiated. Also, our scope included limited work on two personnel related issues. We found evidence that certain staff had a possible conflict of interest and referred what we found to Human Resources. We found no corroborating evidence that a specific staff member requested gifts from grantees, and, accordingly, did not refer that matter to Human Resources.

Findings and Recommendations

Objective 1

- Establish if BHD properly evaluated potential conflicts of interest between staff, including managers, and grant applicants.

Finding 1: BHD management and staff did not always follow Minnesota Statutes or OGM and DHS policies when it comes to conflicts of interest.

We discovered during our review that several conflicts of interest may exist between BHD staff, vendors, and third-party businesses outside of DHS. One potential conflict of interest was disclosed to the DHS Ethics Officer in a memo of understanding but was not properly managed by the employee's supervisor. According to the DHS Ethics Officer, BHD staff and management did not disclose other potential conflicts of interest that we identified during our review as required by statute and BHD procedure. In addition, BHD management did not properly mitigate any of the potential conflicts that we identified.

We forwarded information relating to possible conflicts of interest to Human Resources for further investigation and, if warranted, disciplinary action. To protect the identities of employees involved and to ensure the integrity of any investigation by Human Resources, we have omitted further details from this report.

Recommendations

- *BHD should require mandatory conflict of interest training for all management and staff, including a review of Minnesota Statute 43A.38, DHS Ethics policies, and the Department of Administration Ethics and Conflicts of Interest policies.*
- *BHD should require mandatory training on OGM Policy 08-01 for all management and staff involved in the grants or contract approval process.*
- *BHD should obtain signed conflict of interest disclosure agreements from all BHD management and staff involved in the grants or contracting process on an annual basis.*
- *BHD should submit all signed disclosure statements to the DHS Ethics Officer and document a signed agreement by all parties regarding how the disclosures will be addressed or mitigated. These documents should be reviewed and updated annually.*

Finding 2: BHD and DHS did not have a sufficient process for verifying that conflicts of interest forms are completed, and that real or perceived conflicts are properly vetted.

We determined that BHD developed its own process regarding conflicts of interest, as well as its own conflict of interest form. At times, BHD staff improperly completed this form (for example, not obtaining the necessary signatures, not disclosing all possible conflicts of interest, or not sending a completed form to the DHS Ethics Officer).

Also, BHD management did not compel staff to follow BHD process on disclosing conflicts of interest with outside employment, which requires not only completion of the disclosure form, but also consultation

with the DHS Ethics Officer, in accordance with statutory guidance⁷ provided by the Department of Administration. For example, we found that multiple BHD staff billed DHS for professional services independent of their state job, yet none of these employees submitted a signed conflict of interest form to the DHS Ethics Officer. In addition, the DHS Ethics Officer indicated in different conversations with our office that her signature is not required on the conflict of interest form created by BHD, even though the form lists the Ethics Officer as a signatory.

Allowing administrations or division to develop their own conflict of interest form has resulted in confusion and lack of a standardized process, and inconsistent and ineffective oversight over conflict of interest issues. We believe that having a standardized conflict of interest form used by all DHS administrations and signed by the DHS Ethics Officer would verify that all key elements of a conflict of interest have been discussed, that the potential and actual conflicts of interest are properly evaluated with an approved mitigation plan, and that an established process is being consistently followed.

Additionally, in evaluating this issue, we believe that the DHS Ethics Officer has not been given the technical support needed to track formal discussions related to conflict of interest. We believe a minimal investment in the development of an automated technical solution using a platform such as Agile Apps would make it significantly easier to manage, document and report on the various conflict of interest issues encountered at DHS, freeing up the DHS Ethics Officer to focus less time administratively tracking issues and more time addressing them.

Recommendations

- *BHD should work with the DHS Ethics Officer to identify all BHD employees that have potential conflicts of interest, including those that directly or indirectly bill the department for their services, and determine if a conflict of interest disclosure form was completed by the employee in each case.*
- *The DHS Compliance Office should initiate a project to develop a standard conflict of interest form and related process to be used by all DHS administrations. This form should require the signature of the DHS Ethics Officer to create an official record of the discussion and agreed upon mitigating steps.*

Objective 2

- Determine if there is evidence that BHD covered up 16C violations. Also, verify if BHD has a disproportionate share of 16A and 16C violations in State Fiscal Years 2018 and 2019, in comparison to other divisions within DHS, and determine the cause.

Finding 3: We found no evidence that BHD covered up reporting of 16C violations. We confirmed that BHD had a disproportionate share of 16A and 16C violations in State Fiscal Years 2018 and 2019, in comparison to other divisions within DHS.

Our review found no indication that management or staff within BHD attempted to hide the reporting of those violations. The evidence offered by the complainant was a truncated email thread concerning Respite Care grant contracts with county agencies that expired in December 2018. However, when we

⁷ Minn. Stat. 16C.04

obtained the entire email thread from another source, which the complainant also had but did not share with our office, we discovered that emails with proper instructions were sent by BHD to affected counties, advising them not to begin work on the Respite Care contracts until they were fully executed. We did not evaluate the work completed on these contracts to determine if counties began work on these grants prior to the execution of their contracts.

Also, there was a memo referenced in the email, which the complainant felt was an indication of an attempt to hide violations. However, the memo was never drafted due to the county emails noted above. We found another memo dated August 22, 2018, which appeared similar in nature to the memo referred to by the complainant. This memo was sent by BHD to FOD for 16C violations related to American Indian Mental Health Grants. We confirmed that appropriate 16C violation paperwork was also completed and filed with FOD for the violations.

Recommendation

- *We recommend that BHD review all county submissions for costs incurred during the months of January and February 2019 for the Respite Care grants, to confirm that no counties started work on these contracts prior to contract execution.*

Finding 4: BHD lacked internal controls to prevent a high number of violations of Minnesota Statutes 16A.15 and 16C.05 related to expenses and contract obligations.

We found that BHD incurred over sixty violations of two Minnesota Statutes which govern state agency payments for expenses and contracts during State Fiscal Year 2019. According to these statutes, payments may not be made prior to an obligation, and work may not begin on a contract until an encumbrance is recorded for the amount of the contract liability.

It is important to note that these violations were procedural or process related violations. We found no fraud, waste, or abuse of program funds associated with these 64 violations of procurement law. The process of completing DHS 16A/C forms gives us assurance that DHS management has reviewed and approved the expenditure even though procurement policy and process was not followed. However, procedural violations such as these increase the risk of fraud, waste and abuse, so it is important that the department manage this risk by reducing these violations to an acceptable level.

To keep the number of violations related to contracts in perspective, we compared the total number of violations between divisions and administrations throughout DHS, in relation to the number of grant contracts issued for State Fiscal Year 2019. We found that while BHD had a substantial number of non-governmental organization (NGO) contracts when compared to the next highest area, Children and Family Services (CFS), the number of violations by BHD was disproportionately large. BHD had 42% of all NGO contracts issued between the Community Supports and CFS administrations, but they committed 69% of the 16C violations related to contracts. BHD had 36 violations during State Fiscal Year 2019. The next highest number of violations by another DHS division was less than half this amount. See Table 1.

Both Minnesota Management and Budget (MMB) and DHS have policies in place regarding 16A and 16C violations. These policies require completion of violation forms that must include an explanation of why the violation occurred, and what actions would be taken to reduce future violations.

We reviewed 35⁸ of the forms completed by BHD during State Fiscal Year 2019. We compiled the list of reasons why the violations happened, and the actions BHD would take to mitigate future occurrences. We discovered that 28 of the 35 violations appeared to be the result of poor procedures and monitoring by BHD, and not due to any extenuating circumstances. Some of the reasons listed by BHD included lost paperwork due to retirement of staff, complicated contracts, unavailability of personnel with signing authority, and too much workload for the division. Ten of the forms didn't list any specific reasons for the violation, noting only that the fiscal deadline was missed.

As for the mitigation efforts noted by BHD, the proposed actions included directing contract staff to be more careful while executing contracts and getting an earlier start to preparing contracts internally. BHD also indicated that a new contract coordinator would create a tracking system, centralized grant management within BHD would result in closer monitoring, that a Continuing Improvement project would clarify their processes, and that continuous training would prevent future violations.

Additionally, in a separate memo to FOD, written in August 2018 by the director of BHD regarding 16C violations on grant contract amendments for two separate contracts, it was indicated a tracking tool would be developed to monitor contract status, that BHD would develop and document contracting procedures, and that staff and grantees would be reminded that work cannot begin on contracts until they are fully executed. While some of the mitigation efforts listed by BHD are reasonable approaches to addressing the 16C violations, many were recorded on the 16C violation forms dating back to July 2018.

During the ensuing ten plus months that remained in State Fiscal Year 2019, we did not find evidence that BHD management enacted any of the proposed mitigating actions. In fact, the total number of 16C violations actually increased by approximately 200% between State Fiscal Years 2018 and 2019. Based on our analysis of 16C violations, and on our interviews of various BHD staff, we concluded that: (1) BHD did not adequately document the contracting process within the division, (2) BHD did not adequately clarify roles and responsibilities of staff involved with contracts, and (3) BHD did not provide sufficient training to division staff in order to avoid 16A and 16C violations.

Recommendations

- *BHD management should document and clarify internal policies and procedures regarding purchases and contract oversight.*
- *BHD management should document and explain roles and responsibilities of all staff involved in the contracting process.*
- *BHD management should require mandatory training of all current staff, including management, and any new hires on how to request purchases and process contracts in a timely manner so that 16A and 16C violations are avoided.*

⁸ We did not review one violation which had no dollar amount attached to it, plus an explanation was already provided in FOD's tracking log.

Objective 3

- Confirm if BHD is compliant with Office of Grant Management (OGM) Policy 08-02, Rating Criteria for Competitive Grant Review.

Finding 5: BHD did not document the justification for awarding \$500,487 to a grantee with a low-rated proposal for the State Opioid Response (SOR) grant.

We learned that BHD awarded a SOR grant to an organization which ranked 16th out of 30 applicants, without documenting the reasons for the selection. In response to this specific proposal, the Department funded responders ranked 1 through 10 and the responder ranked 16th, leaving the responders ranked 11th through 15th unfunded. The comments in the proposal scoring sheets did not appear to support the decision; comments by reviewers indicated that the proposal had no data for the target population, the work plan was weak, and it wasn't specific enough.

According to DHS personnel, the grant was awarded on geographic preference and need, and submitted OGM Policy 08-02 as criteria for their decision. These are valid reasons to fund a responder over higher ranked proposal, but this wasn't documented in the grant selection process. OGM Policy 08-02 states that the state agency must include review criteria in a grant request for proposal that identified diversity in grant making. However, it does not address the federal procurement requirements, which require that non-federal entities maintain records sufficient to detail the history of procurement including contractor selection and written procedures for procurement transactions, which ensure that all solicitations are conducted in a manner providing full and open competition.

The combination of: (1) comments in the scoring sheets, (2) competitive advantage for being a culturally specific organization, and (3) the lack of documentation for geographic preference raise questions about the fairness of moving a proposal that was ranked 16th over other proposals ranked 11 through 15. We also found incomplete and inaccurate information in the grants and recipient application evaluations.

While we agree that the geographic preference and need, as told to us by BHD management, is a valid basis for awarding grant funds, the lack of documentation in this instance clouded the transparency in how BHD awarded this grant. Additionally, the lack of established procedures for grant award decisions contributed to the inconsistencies and shortcomings of the grant award process for this SOR grant.

Recommendations

- *BHD should ensure that grant award decisions are properly documented in compliance with federal requirements.*
- *BHD should develop policies and procedures to address steps that are critical to ensuring a consistent, complete and fair grant process and require staff to follow these procedures.*
- *BHD should require training on the federal Uniform guidance in addition to state grant training on the OGM policies to ensure that employees involved in the grant award process are knowledgeable about all requirements.*

Finding 6: BHD administration of Tribal grants needs improvement.

BHD procured certain Tribal grants without providing sufficient justification for the awards. One grant lacked a sole source justification, one competitively awarded grant lacked a proposal, and sole-source awards were not supported by formula calculations. Without this rationale we could not evaluate whether the amounts were fairly calculated and justified. We noted the following:

- CCDTF – Admin Grants – BHD granted nine American Indian tribes sole source awards when the sole source justification totaling \$315,318 listed only eight tribes; the excluded grant totaled \$82,597, which is 26% of the total amount granted. The grant totaling \$82,597 lacked a sole source justification.
- Block Grant – For FY 2020, BHD submitted a grant contract combining the \$10,381 block grant and the \$57,846 continuation grant without submitting a proposal for the competitive block grant.
- Continuation Grants – BHD could not provide formulas to show the calculations underlying the percent of amounts granted.

Sole source procurement can be defined as any contract entered into without a competitive process based on a justification that only one known source exists, or that only one signed supplier can fulfill the requirements. Federal regulations require that to be considered a sole source, a price/cost justification for contracts must be performed and the transaction must be transparent, and we believe it is best practice to extend this requirement to grants. Without a formula to support the sole source grant amounts, we could not determine whether the criteria for awarding the grant was arbitrary or objective. Federal regulations and state policy address the requirements of fair, open and transparent procurement and prohibits any arbitrary action. Contracting officials must be able to justify decisions made and actions taken. This lack of documentation denotes a lack of transparency, and the appearance of favoritism is a risk without adequate justification and documentation.

Recommendation

- *BHD should comply with federal regulations and state policy for fair and transparent procurement, which includes ensuring that sole source justifications exist for all awards, formula calculations are documented to demonstrate the fairness of the award amount, and proposals are retained for all competitive grants.*

Objective 4

- Determine if BHD documented prudent business needs for advance grant payments.

Finding 7: BHD did not conduct due diligence when approving advances to grantees.

We discovered that BHD did not evaluate grantee financial statements prior to approving advances, and also did not use their financial unit to assess the need for requested advances. As a result, BHD was out of compliance with OGM Policy 08-08, which states that recent grantee financial statements must be evaluated as part of the justification for the advance.

We tested 19 grant contracts during State Fiscal Years 2018 and 2019, and found that 14 did not have sufficient justification for the advances. In fact, BHD used the same phrasing for the justification repeatedly, including general comments such as the need to cover “start up” costs and the grantee “does not accrue and fund balance for future operations.” The “start up” cost justification was used for multiple-year advances, well beyond the timeframe that would be considered reasonable for initial outlays for a new program. Also, fund balances would normally not need to be accrued to preserve cash flow for grantees that submit reimbursement requests on a timely basis.

In addition, federal Uniform Guidance states that advance payments should be minimized to the amount needed by the non-Federal entity. In 18 of the 19 advance samples we tested, the smallest percentage of the total annual budget advanced was 22.4%. In two instances, 100% of the budget was advanced. It does not appear that BHD approved advances on a case-by-case analysis, but instead automatically agreed to advances which were nearly a full quarter’s worth of budgeted expenses.

We also found that BHD management inappropriately relied on approval of advances by the Contracts unit within DHS as a sufficient “stamp of approval,” when in fact the only verification performed by Contracts is that a justification is included in the contract. Further scrutiny of the basis for the advance is not conducted by the Contracts unit.

The lack of diligence and scrutiny by BHD exposes DHS to risk of unrecoverable advances to financially unstable grantees and is contrary to direction provided by the Office of Grants Management and their federal counterpart, the Office of Management and Budget.

Recommendations

- *BHD should require their financial unit to review all requested advances for appropriate justification, including an evaluation of grantee financial statements.*
- *BHD should not approve advances beyond the initial year of the grant contract.*

Objective 5

- Verify if BHD or DHS has mitigating controls in place to prevent a grantee from receiving reimbursement through both the Women’s Recovery Services grant and by billing Medicaid for the same recipient.

Finding 8: BHD lacks mitigating controls to prevent double-billing by Women’s Recovery Services grantees.

The Women’s Recovery Services (WRS) grant provides services to women with substance use disorders who are pregnant or have children under the age of 19. The grantees provide services that are not normally covered by a licensed service, such as daycare for children of recipients. In January 2019, grantees were able to bill Medicaid for services which were previously paid for by the grant, though not all grantees have been enrolled with DHS as Medicaid providers. BHD staff indicated that while they conduct site visits of WRS grantees, they lack personnel with financial expertise who may be able to detect billing anomalies.

Through our interviews with BHD staff, supervisors, managers and former managers, we determined that BHD does not have controls in place to detect or prevent Women’s Recovery Services grantees from billing both Medicaid and the grant for the same service. The total grant amount exceeds \$12 million over a three year period ending June 30, 2019, which means that even on a proportional basis, the lack of monitoring controls by BHD over the final six month period of the grant has exposed DHS to a significant amount of overpayment risk for fraudulent claims. In addition, BHD is seeking a continuation of the grant for State Fiscal Years 2020 and 2021 for an additional \$8.5 million, which will also be at risk without the implementation of controls to detect double payments.

Recommendations

- *BHD should develop policies and procedures designed to monitor and detect double billing by grantees. BHD should also verify that all grants where the risk of double billing have been identified are properly evaluated to provide assurance that services using grant funds have not also been billed to MA.*
- *BHD should not renew or develop new grants for Women’s Recovery Services for providers that can directly bill MA and consider ending those portions of existing grants that fund these directly billable services.*

Objective 6

- Determine if BHD managers, supervisors, and staff received training related to the grant management process, and if the training was provided prior to staff assuming grant management responsibilities.

Finding 9: BHD did not ensure that managers, supervisors and staff received adequate training on grant management, including OGM policies.

We learned in our interviews with BHD personnel, which included entry level staff up to senior management, that BHD did not have a process to confirm that employees have received appropriate training on grant management. In addition, BHD did not have an onboarding process for new employees to guide them in how to manage contracts or grants, or how to comply with OGM policies.

While some staff attended training offered by the Contracts unit in November 2017 and January 2018, attendance was sparse, considering the size of the division (107 total staff in November and 115 in January); five staff signed up for the November training, and only three completed the two-day class. In January, thirteen signed up and six finished the course. BHD could not provide any records on staff who may have attended training offered by the Office of Grants Management.

Though not all BHD staff work with contracts and grants, it was noted that no directors, managers or supervisors within BHD completed the training in either November 2017 or January 2018. The current Deputy Director enrolled in OGM policy training in April 2018 but was a no-show for the class.

Recommendation

- *In addition to the training recommendations listed above in Findings 1, 4, and 5, BHD should create an onboarding process for all new employees, which should include mandatory training encompassing DHS ethics and conflicts of interest policies and OGM policies. In addition, the training should also address Minnesota Statutes 16C.04 Ethical Practices and Conflict of Interest, 43A.038 Code of Ethics for Employees in the Executive Branch, and 256B.0914 Conflicts of Interest Related to Medicaid Expenditures.*

Objective 7

- Conclude if a certain grantee can legally perform the work detailed in the June 2019 amendment to their grant contract.

Finding 10: The grantee was legally allowed to perform the work detailed in the June 2019 contract amendment.

We confirmed the grantee can legally distribute Naloxone Overdose kits. We spoke with the Minnesota Board of Pharmacy to understand whether there are requirements in place for organizations who provide naloxone kits and whether there are distinguishing factors for dispensing the drug (to individuals) or disbursing (in mass quantity). In 2014, Minnesota Statutes 604A.04, known as the Good Samaritan Overdose Prevention Statute, was passed, allowing that all licensed health care professionals may directly or by standing order, prescribe, dispense, distribute, or administer naloxone to a person without being subject to civil liability or criminal prosecution. Another pertinent statute defines Naloxone as a “legend drug,”⁹ meaning it is unlawful for any person to have in possession, or to sell, give away, barter, exchange, or distribute. Without the Good Samaritan Overdose Prevention statute, Minnesota would require the grantee to have a standing order in place which would be monitored by the Minnesota Board of Pharmacy.

Objective 8

- Determine if there is any evidence that the BHD grant manager named in the anonymous allegation requested gifts from grantees.

Finding 11: We did not find evidence to substantiate the allegation that a BHD grant manager requested gifts from grantees.

We did not find evidence that a BHD grant manager requested gifts. In our testing, we reviewed email accounts of selected BHD staff members, interviewed current and former staff and managers, and contacted a sample of nine grantees. We felt the lack of corroborating support from the claim, either in emails or discussions with BHD personnel, precluded the necessity to contact all grantees managed by the staff member against whom the allegation was made; we determined a sample was sufficient. All nine grantees responded, and all indicated they had never been asked for gifts by anyone from DHS.

⁹ Minn. Stat. 151.37 - Legend Drugs, Who May Prescribe, Possess

Objective 9

- Determine if BHD and Licensing circumvented the rulemaking process when establishing a variance for Psychiatric Residential Treatment Facilities (PRTF) providers.

Finding 12: Documentation provided by BHD and Licensing supports that BHD and Licensing properly issued a rule variance.

DHS may issue variances as long as certain parameters are maintained. The parameters include input from stakeholders, and creation of a document which lists the alternative conditions necessary for the variance, including the requirements of the governing rule for licensing providers of residential care and treatment for children in out-of-home placement.¹⁰ We reviewed the documentation provided by BHD and Licensing and determined that the documentation supports the conclusion that BHD and Licensing properly issued a variance. Our understanding is that BHD and Licensing may seek a separate statute or rule in the future to address PRTFs through the Uniform Services Standard project, which is a “multi-phase reform of the regulatory structure and requirements of state-funded mental health services in Minnesota.”¹¹

Other Finding

Finding 13: BHD approved a grant for an entity that was not registered with the Secretary of State.

We found that BHD did not verify that a grantee was in good standing with the Secretary of State prior to approving a contract. BHD approved a grant for an organization which was dissolved by the Minnesota Secretary of State in March 2018. BHD later revised the final contract to list the organization’s owner as the grantee, rather than contracting under the name of the dissolved organization.

According to the grant contract between BHD and the owner,¹² the contract states that services provided by the grantee will be performed in accord with “all applicable federal, state, and local laws, ordinances, rules and regulations including business registration requirements of the Office of the Secretary of State.” The failure by the grantee to have an active registration with the Secretary of State is a violation of the grant contract, and should have been discovered by BHD prior to approval of the contract.

Lack of written procedures by BHD, which should include verification of grantee status as registered businesses, exposes DHS to risk of contracting with organizations that are not legitimate and that may provide a false name and/or address on their application. This could result in making it difficult or even impossible for DHS to recover misspent or unspent funds from unscrupulous grantees.

¹⁰ Minn. Rules, Chapter 2960

¹¹ <https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/minnesota-health-care-programs/uniform-service-standards/>

¹² Grant #GRK%160942, Section 3

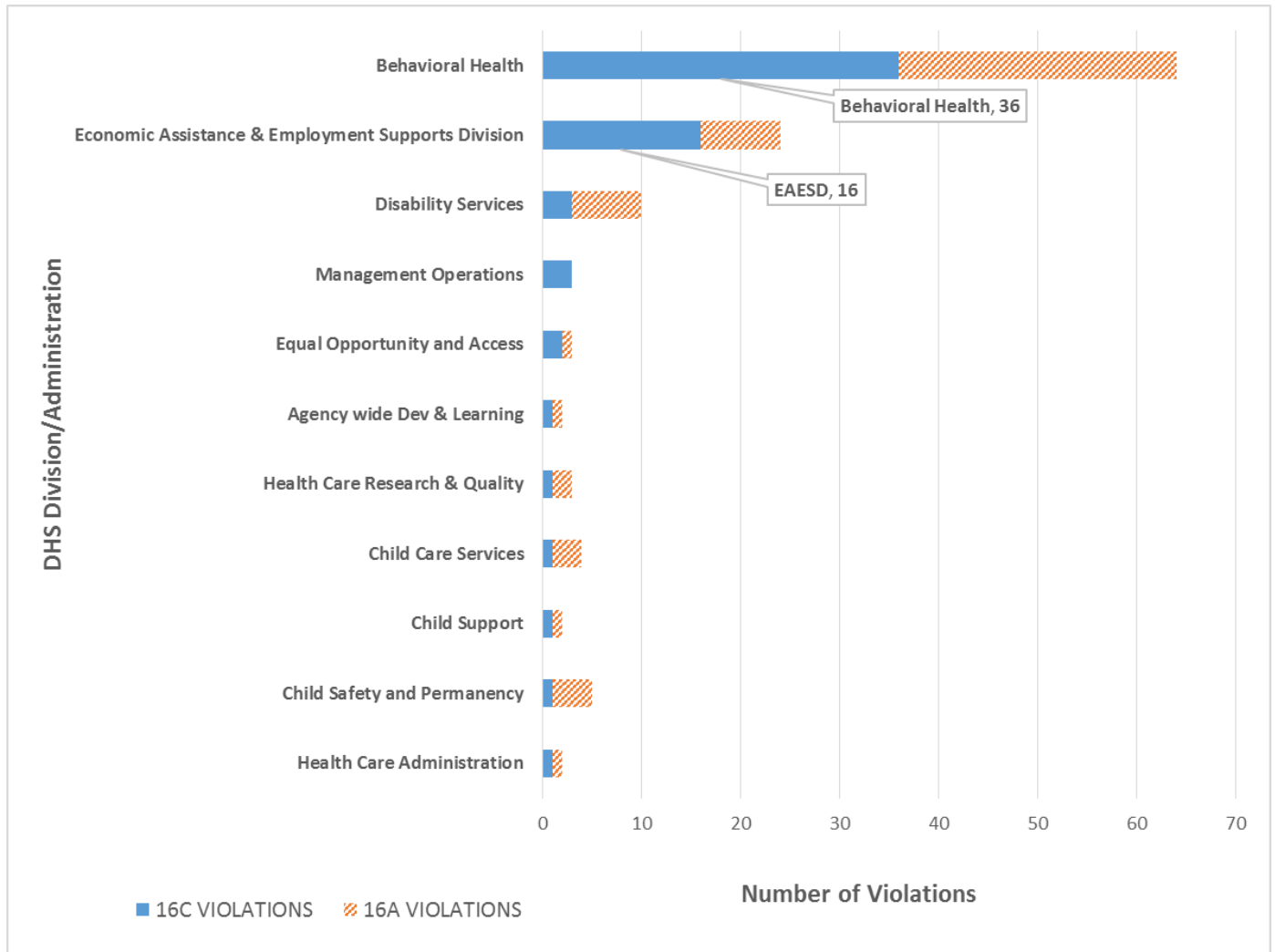
Recommendation

- *As part of their written procedures for the grant contract approval process, BHD should add a step that includes verification of organizational status with the Minnesota Secretary of State.*

TABLE ONE

DHS 16A and 16C Violations

State Fiscal Year 2019



* Excludes DHS divisions which only had 16A violations