

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS**

**INTERNAL CONTROL REVIEW
SALARY AND BENEFIT EXPENDITURES
FEBRUARY 2024**



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To The Fiscal Committee Of The General Court:

This report presents the results of our assessment of the internal controls in place over the authorization, payment, recording, and reporting of the Department of Corrections' (Department) salary and benefit expenditures paid during the nine months ended March 31, 2023.

We conducted our work 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.

The purpose of this audit was to determine whether the controls in place over the authorization, payment, recording, and reporting of the Department's salary and benefit expenditures paid during the nine months ended March 31, 2023, were properly designed, implemented, and operating effectively. Additionally, our audit was designed to determine whether the salary and benefit expenditures were paid in accordance with applicable statutes, administrative rules, and documented Department of Administrative Services (DAS) policies and procedures.

The Department, DAS, and the Department of Information Technology provided auditee responses which are included with each finding in this report. We did not audit the responses provided by these State agencies.

Office of Legislative Budget Assistant

Office of Legislative Budget Assistant

February 2024

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**STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
INTERNAL CONTROL REVIEW - SALARY AND BENEFIT EXPENDITURES**

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ABBREVIATIONS USED

CBA	Collective Bargaining Agreement
COSO	Committee of Sponsoring Organizations of the Treadway Commission
DAS	Department of Administrative Services
DEAM	Department of Administrative Services, Division of Enterprise Applications Management
Department	Department of Corrections
DoIT	Department of Information Technology
DoP	Department of Administrative Services, Division of Personnel
FLSA	Fair Labor Standards Act
NH FIRST	New Hampshire State Government Accounting and Financial Reporting System
PPD	Policy and Procedure Directive
WFM	Workforce Management System, State of New Hampshire Time Management System Module

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**STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
INTERNAL CONTROL REVIEW – SALARY AND BENEFIT EXPENDITURES**

EXECUTIVE SUMMARY

The Department of Corrections (Department) had not established adequate internal controls over the authorization, payment, recording, and reporting of salary and benefit expenditures during the nine months ended March 31, 2023. While the Department's controls over new hires, pay changes, and timekeeping were tested and found to be operating effectively, certain necessary controls were not properly designed, implemented, or operating effectively. Some salary and benefit expenditures were not paid in accordance with applicable statutes, administrative rules, and documented Department of Administrative Services policies and procedures.

During the audit, we found:

- The Department lacks personnel with sufficient payroll expertise needed to manage the complexity of the Department's payroll. The payroll process is complicated as it has several different nonstandard shifts, operates under six different Collective Bargaining Agreements, and must comply with the federal Fair Labor Standards Act and numerous state statutes and administrative rules.
- The Department does not have a formal risk assessment process nor a formal business continuity and disaster recovery plan for critical administrative support and financial reporting activities supported by written policies and procedures to identify, analyze, and respond to risks.
- The Department lacks agency specific policies and procedures for paying recruitment and retention incentives, income protection leave, and for the mobility punch function within the State's Workforce Management System.
- The Department lacks an effective monitoring control over the bi-weekly payroll and manual check processes to ensure payroll is being processed accurately and in accordance with applicable compliance requirements.

As noted in the observations contained in this report, significant weaknesses existed in all five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
INTERNAL CONTROL REVIEW – SALARY AND BENEFIT EXPENDITURES

BACKGROUND

The Department of Corrections (Department) traces its history back to the opening of its first State prison in 1812. The current Department was established in 1983 by RSA 21-H:3, which consolidated the State's existing Probation Department, Parole Department, and Men's Prison. The Department is organized into six divisions, including: the Division of Administration, Division of Field Services, Division of Medical and Psychiatric Services, Division of Professional Standards, Division of Personnel and Information, and the Division of Rehabilitative Services.

The Department is headquartered in Concord, NH, where centralized activities, such as administration and payroll (salaries and benefits) processing, occur. The Department operates three prisons: the New Hampshire State Prison for Men, the New Hampshire Correctional Facility for Women (both located in Concord), and the Northern New Hampshire Correctional Facility (located in Berlin); as well as the Secure Psychiatric Unit (located within the men's prison) and the Residential Treatment Unit. In addition to the three prisons, the Department also operates the Corrections Transitional Work Center, and the North End, Calumet House, and Shea Farm Transitional Housing Units. The Department's Division of Field Services also has district offices in each county throughout the State for probation and parole officers to work out of.

The State Prisons (correctional facilities) are administered by a Warden who is responsible for the operation of the facility; its security staff; provision of access and space to other Department employees who have duty stations within each respective prison; and the care, custody, safety, and treatment of inmates housed in their facility. The Wardens serve at the pleasure of the Commissioner and are unclassified employees. Employees with the rank of Major oversee the security within the prisons and are at the top of the Correctional Officers hierarchy.

The Division of Personnel and Information is located in the Department's headquarters and is responsible for the administration of payroll, benefits, and human resources functions. The Office consists of a Payroll Supervisor and two Human Resources Technicians that are supervised by an Administrator II and overseen by an Administrator IV who reports to the Director of the Division of Personnel and Information. Human Resources Coordinators are also located within each prison and are overseen by the Director of Human Resources who reports to the Director of the Division of Personnel and Information. The Division of Administration is responsible for monitoring payroll expenditures to ensure the Department does not overspend and performing necessary transfers to cover shortfalls when they occur and is overseen by a Division Director and Deputy Director.

The Department's budget and actual transactions are recorded primarily in the State's General Fund. The Department recorded \$86.3 million of salary and benefit expenditures in NH FIRST during the nine months ended March 31, 2023 as shown in the table below:

Class	Class Description	Amount	Percent of Total
10	Personal Services Permanent Classified	\$38,264,391	44.32%
11	Personal Services Unclassified	1,554,387	1.80%
12	Personal Services Unclassified	138,637	0.16%
18	Overtime	14,470,523	16.76%
19	Holiday Pay	934,671	1.08%
50	Personal Services Temporary Appointment	1,258,483	1.46%
59	Temporary Full Time	37,200	0.04%
60	Benefits	29,676,663	34.38%
	Total	\$86,334,955	100.00%

Source: NH FIRST Salaries and Benefits Summarized by Class for the Nine Months Ended March 31, 2023

The Department primarily utilizes the NH FIRST payroll module to account for recurring payroll expenditures, but the general ledger module is also used by the Department's Financial Office to record transfers, adjustments, and corrections.

Payroll expenditures are reported by pay codes providing further detail of the types of expenditures. Significant salary expenditure pay codes used by the Department during the nine months ended March 31, 2023 are listed below:

- *Regular Pay Actual* comprised the largest pay code and totaled \$27.5 million.
- *Overtime FT 1.5* (portion of overtime paid at the employees' hourly rate) was the second largest pay code and totaled \$8.6 million.
- *Overtime Premium* (portion of overtime paid at .5 times the federal Fair Labor Standards Act weighted-average weekly basic rate) totaled \$4.4 million.
- *Retention Incentive* totaled \$2.8 million.
- *Annual Leave Usage* totaled \$2.2 million.

Significant benefit expenditures by pay code for the nine months ended March 31, 2023 are listed below:

- *New Hampshire Retirement System* contributions totaled \$16.3 million.
- *Health Maintenance Organization* contributions totaled \$10.3 million.

As of March 31, 2023, the Department had 710 full-time classified, 19 unclassified, and 53 part-time employees. The Department was also responsible for processing pay for the nine non-classified members of the administratively attached Adult Parole Board. The number of employees paid in accordance with Collective Bargaining Agreements are shown in the table below.

Background

Collective Bargaining Agreement	Number of Employees
State Employees Association	311
Teamsters Local 633	221
State Employees Association, Corrections Supervisors	88
New Hampshire Probation and Parole Officers Association	64
New Hampshire Probation and Parole Command Staff Association	11
Internal Affairs Association of New Hampshire	14
Unrepresented Employees*	54
Nonclassified*	9
Unclassified*	19
Total	791

**Denotes employees not represented by Collective Bargaining Agreement*

Source: NH FIRST Employees Summarized by Union Code for the Nine Months Ended March 31, 2023

OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

1. Assess the Department's internal controls over the authorization, payment, recording, and reporting of salary and benefit expenditures processed in and out of the General Fund. This includes assessing the control environment, risk assessment, control activities, information and communication, and monitoring, and determining the adequacy of management's policies and procedures.
2. Assess the adequacy of the design of internal controls over the authorization, payment, recording, and reporting of salary and benefit expenditures processed in and out of the General Fund.
3. Assess the establishment and implementation of internal controls as designed.
4. Assess the operation of the internal controls, including:
 - Functional compliance with statutes, rules, contracts, and written policies and procedures related to the authorization, payment, recording, and reporting of salary and benefit expenditures.
 - Effective segregation of duties and responsibilities for control activities.

Audit Scope

The scope of our audit included a review of the internal controls over the authorization, payment, recording, and reporting of the Department's salary and benefit expenditures paid during the nine months ended March 31, 2023. The scope of the audit also included determining whether the salary and benefit expenditures were paid in accordance with applicable statutes, administrative rules, contracts, and documented Department of Administrative Services policies and procedures.

The audit period was July 1, 2022 through March 31, 2023.

Audit Methodology

1. Interviewed Department of Corrections' and Department of Administrative Services' personnel.
2. Reviewed internal control documentation, including the State's and the Department's:
 - Policies and procedures;
 - Documentation of systems, applications, forms and instructions, and other relevant information; and
 - Significant contracts and grant agreements.

3. Reviewed laws, rules, regulations, and policies and procedures over the authorization, payment, recording, and reporting of the Department's salary and benefit expenditures including:
 - State statutes;
 - Federal laws and regulations;
 - New Hampshire administrative rules;
 - Department of Administrative Services Manual of Procedures;
 - Collective Bargaining Agreements;
 - State-wide policies and procedures; and
 - Agency-based policies and procedures.
4. Observed the salary and benefit expenditure processes.
5. Reviewed the design and operation of controls through tests of transactions, review, and evaluation of supporting documentation.
6. Performed analyses of NH FIRST salary and benefit expenditure transactions.

PRIOR AUDIT

There are no prior audits that specifically addressed internal controls over the Department of Corrections' authorization, payment, recording, and reporting of salary and benefit expenditures. The Office of Legislative Budget Assistant issued a financial audit report of the Department of Corrections for the nine months ended March 31, 2010 and performance audit reports of the Department of Corrections Security and Nonsecurity Staffing in November 2012. Some findings in those prior reports are within the scope of this Internal Control Review. The Current Status of Prior Audit Findings on page 33 of this report presents the status, as of February 2024, of those prior findings that are applicable to the scope of this Internal Control Review. A copy of the prior audit reports can be accessed at the Office of Legislative Budget Assistant's website at: www.gencourt.state.nh.us/lba/default.aspx.

FINDINGS AND RECOMMENDATIONS

Observation No. 1

Internal Control Structure Over Salaries And Benefits Processing Needs Strengthening

The internal control structure in place at the Department of Corrections (Department) during the audit period exhibited weaknesses that impacted its ability to process salary and benefit expenditures accurately, efficiently, and effectively, and in accordance with the Collective Bargaining Agreements (CBA), administrative rules, and the federal Fair Labor Standards Act (FLSA).

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) has developed an integrated framework to assist entities with the design, implementation, and evaluation of an effective internal control system. The framework, adopted by the U.S. Government Accountability Office (GAO), consists of the following five interrelated control components: control environment, risk assessment, control activities, information and communication, and monitoring. Each of these components represents an integral piece of an entity's internal control structure.

During the nine months ended March 31, 2023, auditors noted weaknesses in each of the five components of internal control, as described below:

Control Environment

An entity's control environment is the set of standards, processes, and structure that allows it to carry out its internal controls across the organization. Management is responsible for setting the "tone at the top" and emphasizing the importance of its internal control processes and ethical standards. An entity's control environment includes, among other things, its commitment to competence, its organizational structure, and its assignment of authority and responsibility. The control environment has a pervasive influence on the way an entity's business activities are structured and controlled.

The Department's payroll process is one of the most complex within the State. During the nine months ended March 31, 2023, the Department employed 791 people, operated under six different CBA, had several different non-standard shifts, and paid out \$86.3 million in salary and benefit expenditures. In addition to the various CBA, the Department must comply with the federal Fair Labor Standards Act, as well as numerous State statutes and administrative rules. The Department experienced severe staffing shortages of as much as 50% for correctional officers. The staffing shortages not only required the Department to force its existing correctional officers to work between three and five mandatory eight-hour overtime shifts per week, but also compelled it to call upon the assistance of the New Hampshire National Guard to ensure minimum staffing requirements were met.

The complex nature of the Department's payroll activities, combined with the extreme staffing shortages, increases the risk that errors or frauds might occur within the payroll process without being detected and corrected during the normal course of business. Several factors exacerbated this risk including, but not limited to, the following:

- *A Lack Of Payroll Expertise Within The Department* – Both the Director of the Division of Personnel and Information and the Human Resources Administrator began employment during the audit period. Both possessed little direct payroll or human resources management experience at the time of hire, causing heavy reliance on the Administrator II. The Payroll Supervisor was promoted from Human Resources Technician just over a year ago. Succinct descriptions of the Director’s job duties could not be obtained.
- *Lack Of Documented Policies And Procedures Over Key Areas* – As further discussed in the control activities section, the Department lacked written policies and procedures over many key areas of payroll processing, including the biweekly payroll process. It also did not have policies and procedures over the more nuanced areas including, but not limited to, recruitment and retention incentives, income protection leave, the processing of employee job reallocations, and the payroll monitoring process.
- *Relatively New Time Management System* – The Department served as one of two pilot agencies for the State’s new time management system, WFM (Workforce Management), which was implemented on March 26, 2021, approximately one-and-one-half years prior to the beginning of our audit period. Core employees involved in the WFM implementation are no longer employed at the Department, and there have not been sufficient policies and procedures established to allow for current employees taking over those roles to process salaries and benefits efficiently and effectively. The system implementation has caused the Department difficulties in processing payroll efficiently, and it appears the Department does not fully understand how the system works.
- *Ongoing Support And Assistance From Division Of Enterprise Application Management (DEAM)* – The Department required ongoing support from the Department of Administrative Services DEAM for a variety of issues stemming from the implementation of the WFM system to ensure timely processing of its biweekly payroll.
- *Non-compliance With RSA 15-A, Financial Interest Statement Filings* - The Department was not in compliance with RSA 15-A, Financial Interest Statement filings, as described in further detail in Observation No. 14.
- *Non-compliance With Executive Branch Ethics Committee Advisory Opinion* – An employee at a director-level within the Department was directly involved in the hiring process of a family member, contrary to the Executive Branch Ethics Committee Advisory Opinion 2008-001, and RSA 21-G:22, as described in further detail in Observation No. 12.
- *Lack Of Timely Performance Evaluations* – The Department did not complete timely employee performance evaluations as required by statute and administrative rule.

Risk Assessment

Risk assessment is the process of identifying, assessing, and responding to risks related to the achievements of an entity’s objectives. The Department has not established a formal risk assessment process for its financial accounting and reporting activities, including activities related to the processing of salary and benefit expenditures.

Additionally, the lack of a formal risk assessment process has also contributed to the Department’s delay in developing a comprehensive disaster recovery and continuity of operations plan for

critical administrative support and financial reporting activities, as further described in Observation No. 2.

Control Activities & Information and Communication

Control activities are the processes in place, established through documented policies and procedures, that help to ensure an entity's objectives are carried out as intended by management. Information and communication includes the entity's process for communicating information, including objectives and responsibilities for internal control, necessary to ensure the internal controls are functioning effectively.

Auditors determined that, while the Department did have some basic control activities in place over its routine salaries and benefits processing functions, these processes were not formally documented in management approved policies and procedures, and therefore were not effectively communicated.

Additionally, the Department did not establish effective policies and procedures over several of its more nuanced salaries and benefits expenditures processes and, as a result, did not have sufficient control activities in place to ensure the accurate processing of salary and benefit expenditures as described below:

- *Income Protection Leave* – Five out of ten manual payroll checks issued during the period of review were a result of the Department's inability to accurately process employees' income protection leave. Upon inquiry, it was determined the Department lacks documented policies and procedures describing the process of paying for income protection leave.
- *Recruitment And Retention Incentives* – As further described in Observation No. 3, the Department has not established Department-specific policies and procedures for employee recruitment and retention incentive programs including, but not limited to, the following:
 - Description of the programs, retention periods, and impact on FLSA over-time rate;
 - Eligibility requirements;
 - Method and timing of payments; and
 - Process for recouping payments, if necessary.
- *Mobility Punches* - The Department has not established formal policies and procedures over employees' ability to punch in and out of shifts from a mobile device, as further described in Observation No. 4.
- *Reallocations Of Employee Pay* – The Department has not established formal policies and procedures over the process of reallocating employee pay provided for by the State's DAS - Division of Personnel, resulting in multiple employees being paid incorrectly for an extended period. The reallocation weakness is further described in Observation No. 6.
- *Manual Checks* – While the Department has a process in place for the review, approval, and issuance of manual checks, it does not appear to be operating effectively. Three of the ten manual checks issued during the audit period to correct errors not detected during the

routine biweekly payroll process contained further undetected and unresolved errors in employee compensation, as further described in Observation No. 5.

Monitoring

Monitoring includes evaluations conducted by the entity to determine whether each component of internal control is present and functioning. The following weaknesses within the Department's monitoring processes were identified:

- *Lack Of Timely Review Of Established Policy And Procedure Directives (PPDs)* – The Department did not perform a timely review of its established PPDs to ensure they remain current and effective, as further described in Observation No. 13.
- *Lack Of Documented Payroll Monitoring Procedures* – The Department has not established effective monitoring controls for its bi-weekly payroll process, supported by management approved policy and procedure documents, to ensure payroll is processed accurately, and in accordance with applicable compliance requirements, as further described in Observation No. 7.

Due to the complexities of the Department's operations and payroll process, combined with the lack of strong internal controls, the weaknesses noted above create an environment that is conducive for errors and fraud to occur and go undetected in the normal course of business.

Recommendation:

We recommend the Department:

- **Ensure its key personnel responsible for the processing of salary and benefit expenditures have sufficient training and adequate staff resources and guidance. The Department should identify areas where technical payroll knowledge is deficient and provide payroll staff with proper training. The Department should also identify where WFM technical knowledge is deficient and seek additional training with the Department of Administrative Services.**
- **Develop job descriptions as necessary, so that all employees understand their key roles and responsibilities.**
- **Train payroll employees on relevant laws, rules, and regulations necessary for processing payroll or seek to hire employees that possess the technical expertise.**
- **Develop formally documented, agency-specific policies and procedures covering the key areas of the salary and benefit expenditure processes. The policies and procedures should be formally approved by management, and periodically reviewed to ensure they remain relevant and effective.**

Department of Corrections Response:

The Department concurs in part.

The Department concurs that it needs more training and guidance from the State Department of Administrative Services: Bureau of the Division of Personnel (DAS:DOP). The NH Department of Corrections had already initiated requests for assistance in training and guidance from the Department of Administrative Services, specifically the Division of Personnel, Bureau of Accounting, and Employee Relations prior to and even during this audit and will continue to do so. The Department recognizes the importance of timely and accurate payroll and will take the necessary steps to make significant improvements. Further, the Department will work with its Division of Professional Standards to identify and continue to update policy and procedures.

We do not concur that we need job descriptions for unclassified positions whose responsibilities are outlined in statute, exemplified in founded case law and whose areas of responsibilities of oversight are mapped in departmental policies.

We do not concur that the Department does not have policies and procedures as referenced in observation 1 but do concur we can improve our policies. Examples include the following:

We do not concur that the Department lack procedures for the payment of Income Protection Leave, Recruitment and Retention Incentives or the application of payment associated with Reallocations approved by the DAS:DOP and approved by the Governor and Executive Council as outlined in state administrative rules (Per). The State of New Hampshire is one employer, the examples outlined above including Income Protection Leave payment is predicated by the procedures outlined by the State Division of Personnel available even publicly on-line at their website and Reallocations in which payment by the Department is predicated at the direction of the State Department of Administrative Services, Division of Personnel. Further, the ARPA funded Recruitment and Retention Incentives authorized through Governor & Executive Council and Fiscal Committee of the General Court (i.e., FIS 22-240, FIS 22-242, FIS 22-239, FIS 22-241 & FIS 22-320) referenced in this audit and the payment thereof are outlined in the policies published by the Director of Personnel at DAS:DOP. The Department worked with DAS:DOP through the policy to affirm payment which DAS:DOP authorized. The Department also points to the auditor's language on page 7 of the report that "[T]he complex nature of the Department's payroll activities...increases the risk that errors or frauds might occur within the payroll process without being detected and corrected...". We did detect fraud and prosecuted it with our system of checks (See web-based media article referencing the Former New Hampshire Corrections Officer Craig Come Pleads Guilty to Theft by Deception and Official Oppression) but we do concur we need to formally document the system. The Department has repeatedly advocated for an electronic time management system to assist in processing payment of employees more efficiently and to ensure they are in-line with the laws, rules, and bargaining agreements. The audit's criticism that the Department continues to need the support of DEAM is because the software product has not fulfilled the requirements including not providing 24-hour punches process for our 24-hour operations resulting in a heavy administrative burden of payroll review each payroll cycle. The system continues not to recognize employee time punches that cross midnight which results in hundreds of manual corrections by supervisors within the Department. Outside parties proposed

to not schedule people at our 24-hour facilities whose schedules cross midnight. This is not a practical recommendation and thus we continue to vet the software issues with DEAM.

Observation No. 2

Prepare And Implement Fundamental Internal Control Processes And Plans

The Department has not prepared and implemented certain internal control processes and plans that are generally regarded as fundamental to efficient and effective internal controls. During the nine months ended March 31, 2023, the Department had not established or maintained a formal risk assessment process, a continuity of operations plan, or a disaster recovery plan for critical administrative support and financial reporting activities.

Risk Assessment

Risk assessment is the process of identifying, assessing, and responding to risks related to the achievement of the entity's objectives and is one of the five generally accepted components of internal control. A prerequisite to an effective risk assessment is the establishment and recognition of objectives and the identification of risks that may put achieving those objectives in jeopardy. An effective and documented risk assessment process is an ongoing process that is foundational to the development and implementation of controls intended to identify and eliminate, mitigate, or otherwise manage identified risks. A formal and well-planned risk assessment process increases the likelihood that the appropriate balance between the cost and benefit of controls can be understood and become the basis for controls put into operation. As risks change over time due to changes in processes, information technology, and environment, controls intended to mitigate risk may become inefficient and ineffective. Without an ongoing risk assessment process, the identification and response to risk often occurs in a reactive mode, after a risk has been realized and a loss incurred.

Business Continuity and Disaster Recovery Plans

Business continuity plans are put in place to ensure that an entity will be able to maintain all areas of its essential operations or be able to resume essential operations as quickly as possible in the event of a crisis or emergency. Disaster recovery plans consist of information technologies and best practices designed to prevent or minimize data loss and disruption of operations resulting from catastrophic events. Disaster recovery planning is the subset of business continuity planning that focuses on recovering information technology infrastructure and systems. Formulating a disaster recovery plan involves strategizing, planning, deploying appropriate technology, and continuous planning that focuses on recovering information technology through continuous testing. Without reliable and practicable business continuity and disaster recovery plans, the Department has little protection from the impact of significantly disruptive events.

While the Department did have an emergency management policy and procedure directive in place for the overall operation of the prisons, its scope did not encompass contingency planning for critical administrative support and financial reporting activities to rise to the level of an effective business continuity plan or disaster recovery plan.

Failing to perform risk assessments and establish and implement these core plans increases the risk that the Department's operations could be negatively impacted by foreseeable, but unplanned events.

Recommendation:

We recommend the Department:

- **Establish a formal risk assessment process, supported by written policies and procedures, for identifying, monitoring, and responding to risks that could affect its ability to achieve its objectives.**
- **Establish, document, and maintain business continuity and disaster recovery plans for critical administrative support and financial reporting activities. The plans should be readily accessible to stakeholders responsible for their implementation and be reviewed on a recurring basis. The plans should be tested periodically to ensure they remain reliable and practical for the Department's current operations, information technology systems, and changing environments.**

Department of Corrections Response:

The Department concurs in part. The Department has a robust emergency operations plan and policies related to identifying and mitigating risks. Further, the Department has plans in place to maintain operations in the event of natural and human-caused disasters, and those plans were successfully activated through the COVID-19 pandemic. In the event of a disaster impacting payroll operations, the Department, as part of the State of NH-One Employer, will rely heavily on the State's Departments of Information Technology and State Administrative Services since they are the principal proprietors of the NH FIRST and Work Force Management software. The Department of Corrections is an end-user. The State of New Hampshire has an Emergency Operations Plan that can be found on the Department of Safety, Division of Homeland Security website.

Observation No. 3

Establish Department-specific Policies And Procedures For Employee Incentive Payments

The Department has not established agency-specific policies and procedures for the payment of recruitment and retention incentives.

Recruitment and retention incentive programs are authorized by RSA 21-I:42, VI, and developed by the Department of Administrative Services, Division of Personnel (DoP). The DoP issued policies covering the incentive programs to provide guidance to State agencies for the implementation of the programs. These policies recommend each agency adopt agency-specific plans to implement and administer their incentive programs to ensure effective implementation of the programs.

During the nine months ended March 31, 2023, the Department disbursed \$2.8 million in retention incentive payments, and \$157,000 in recruitment incentive payments for the following recruitment and retention incentive programs:

1. Direct care retention incentives to direct care and institutional employees in the amount of \$2,000 for full-time and \$500 for part-time employees. To be eligible, employees must be engaged in the care and treatment of patients or inmates or are continually exposed to patients or inmates in the normal course of performing their duties at the State prisons. These payments were approved by the Fiscal Committee on June 17, 2022.
2. Temporary recruitment incentives consisting of a \$10,000 sign-on payment for new full-time correctional officers, to be paid as soon as practical within the first few pay periods of employment. This incentive program required newly hired corrections officers to commit to a minimum of at least one year of employment through a legal employment agreement. The employee was also required to be continuously employed in a qualifying position through the applicable recruitment incentive period, perform satisfactorily at the conclusion of one year of employment, and must not be or have been on an extended leave of absence with or without pay. These payments were approved by the Fiscal Committee on September 9, 2022.
3. Temporary retention incentives consisting of a \$10,000 payment to certified correctional officers of all ranks, to be paid in two parts: \$5,000 in the paycheck cycle following Governor and Executive Council and Fiscal Committee approval or as soon as practical, and \$5,000 in April 2023 for those still employed in those ranks. The incentive was applicable to all full-time, certified correctional officers working at the State prisons, State transitional housing units and work centers, and the secure psychiatric unit. These payments were approved by the Fiscal Committee on September 9, 2022.

Review of employee retention and incentive payments made during the audit period revealed the following:

1. A \$5,000 retention incentive was paid to an internal affairs investigator. While internal affairs investigators were included in the retention incentive funding request to the Fiscal Committee, it is unclear whether these positions met the scope and were intended to be classified as *certified correctional officers* for purposes of the incentive payments. An auditor comparison of supplemental job descriptions for correctional officers and internal affairs investigators revealed differences in job responsibilities.

The State of New Hampshire Employee Retention Incentive Program Policy issued by the DoP references “qualified” positions but does not specifically define qualified positions. The letter submitted to the Fiscal Committee requesting funding approval for the program specifies the payments are for “sworn law enforcement in the ranks of corrections officers and to direct care nurses”. Absent a documented State definition of “qualified” positions, it is unclear if internal affairs investigators are intended to be eligible recipients of the incentives.

2. Three employees received the \$10,000 recruitment incentive and terminated employment prior to reaching one year of service, contrary to the legal employment agreement. The

Department reports that conversations with the Attorney General's Office have been ongoing but, as of September 2023, no action has been taken to recoup a portion of the incentive. While the State of New Hampshire Employee Recruitment Incentive Program Policy issued by the DoP states the incentive must be repaid if the employee fails to complete one year of service, it does not include a process for recouping the payments.

3. Two employees enrolled in the Corrections Academy received the \$10,000 retention incentive. It is not clear they were eligible for the incentive because they were not yet certified correctional officers at the time of the first \$5,000 payment.

The Department reported it had not established a retention and recruitment incentive policy and procedure document specific to the Department, as it believed the policies and procedures issued by the DoP, combined with the information contained in the funding requests submitted to the Fiscal Committee, were sufficient to administer the program. Written policies and procedures covering the following topics would have been helpful to Department staff when processing employee incentive payments during the audit period:

- The designated retention period required to receive the retention incentive for existing correctional officers of all ranks.
- Payroll procedures for entering and processing incentive payments in NH FIRST.
- Procedures for reviewing, in NH FIRST, the calculation of overtime paid during the pay period in which any retention incentive has been issued.
- Procedures for identifying and recouping recruitment incentive payments for employees who do not complete the required one-year service period.
- Procedures for the treatment of extended leave of absence, with or without pay, and its impact on recruitment incentive payments. These payments are received in advance, and it is unclear how extended absences impact the incentive payments.
- Procedures to effectuate the responsibilities of the Department's Appointing Authorities as described in Section 6 of the DoP policies including:
 1. a listing of eligible employees, including job titles;
 2. identification of the retention period;
 3. method and timing of incentive payments;
 4. evaluation of the incentive payment's impact on the FLSA over-time rate during the pay period; and
 5. process for recouping recruitment incentive payments for employees who do not complete the one-year service period.

Recommendation:

The Department should establish formally documented, management-approved policies and procedures for the recruitment and retention incentive programs at the Department. The policies and procedures should cover all aspects of the incentive programs necessary for staff to effectuate the State of New Hampshire's Recruitment and Retention Incentive Program Policies.

Department of Corrections Response:

The Department does not concur and functioned in accordance with the guidance received by the Department of Justice and Division of Personnel to adopt the State's policy, as far as payment of these incentives, definitions of application and the State of NH's procedures to seek recoupment of payment for agreements breached through this program. Following this audit, the Department will review and consider implementing policies to address this recommendation in consultation with agency legal counsel. As the audit has identified, the Department has experienced significant staffing shortage in our certified corrections officers ranks. Our corrections investigators are part of those ranks and are required to meet the Police Standards and Training Council certification as corrections officers. Further, they filled and continue to fill staffing shortages with their certification specifically within the intent of the retention incentive. The State policy adopted stated "the eligible employee is continuously employed in a qualifying position throughout the applicable Retention Period, and be performing satisfactorily at the conclusion of that period...". In addition, NH RSA 106-L has further defined "Law enforcement officer" means certified or certifiable by the police standards and training council. These certification standards are outlined in detail in state administrative rules – Pol and are the standards under which state corrections officers are certified and deemed certifiable.

LBA Rejoinder: While the Department reports it adopted the State's policy, the State-wide policy does not address the nuances of the Department of Corrections and does not cover all aspects of the incentive programs necessary for staff to effectively carry out the State-wide policy, as previously described in detail in bulleted items 1-5, above. As a result, we maintain our position that the Department should establish formal policies and procedures for the recruitment and retention incentive programs at the Department.

Observation No. 4

Policies And Procedures For The Use Of Mobility Punches Should Be Implemented

The Department has not established policies and procedures for the use of mobility punches.

The implementation of the Workforce Management System in March 2021 enabled the use of "mobility punches" which allows the Department's employees to punch in and out of shifts via a mobile device.

The Department's current Time and Attendance Policy and Procedure Directive (PPD) specifies only that "employees shall clock in and clock out (also known as punches) using the NH FIRST application on their work computer, or by use of an issued badge for clocking in and clocking out on a physical time clock in the facility." The policy does not make mention of, or provide for, the use of mobile devices to punch in and out of shifts.

During initial inquiry, management reported that only a handful of employees who worked in the Commissioner's Office had been approved to punch in and out of their shifts via a mobile device. Additional follow-up revealed it was left up to director leadership to determine who had approval. That determination by leadership was not documented in a formal listing. The Department also

reported that mobility punches were not periodically reviewed, as it was unable to obtain that information from the WFM system.

Auditors obtained a listing of mobile sign-ins and employee punches that occurred during the nine months ended March 31, 2023, from the DAS, Division of Enterprise Applications Management (DEAM). Review of the listing revealed the number of employees utilizing the mobile punches far exceeded the handful initially described by the Department. The listing also included numerous punches made by correctional officers, who would typically punch in and out via physical timeclocks located at the prisons. A cursory review of the listing with the Department's Administrator revealed the listing was larger than anticipated, and the majority of employees noted on the listing were not assigned State-issued devices. It is unclear whether these employees were approved to use the mobility punch function.

An auditor request for a more in-depth review and assessment of the mobility punches listing to be performed by the Department resulted in the Department's assertion that some mobility punches may indicate a misuse of the system.

The absence of formal guidance specifying which employees are eligible to use the mobility punch function and under what circumstances it is permissible, combined with the lack of internal controls for the use of mobility punches, increases the risk that employees may punch in and out of shifts inappropriately, or for shifts not actually worked, without being detected by management during the normal course of business.

Recommendation:

The Department should evaluate the use of the mobility punch function within the WFM system to determine whether: 1) the misuses require further investigation of possible fraud and 2) continued use is deemed appropriate.

If the Department decides to continue to allow the use of mobility punches, it should amend its current Time and Attendance PPD to incorporate policies and procedures for using mobility punches, including the identification of:

- **employees who are eligible to punch in and out of shifts via mobile device, and**
- **circumstances under which it is appropriate to punch in and out of shifts via mobile device.**

The Department should work in conjunction with the DAS-DEAM to gain access to reports to review mobility punches made by staff. The Department should also develop a policy and procedure providing for a periodic review of employee mobility punches by an individual at the appropriate level of management.

Department of Corrections Response:

The Department concurs with this recommendation and will make more clear our existing policy PPD 1279.00 Time and Attendance Reporting Procedures the Department's policy requirements regarding mobility punches. The current policy instructs staff that they have only two formal

approaches to punch into the system: "Employees shall clock in and clock out (also known as punches) using the NH FIRST application on their work computer, or by use of an issued badge for clocking in and clocking out on a physical time clock in the facility." The Department will need a reliable source report that affirms the punch is truly a mobile punch and not a web-based access punch as we have not had access to such a reporting resource at this time.

Observation No. 5

Manual Payroll Check Process Should Be Adequately Controlled

The Department's process for issuing manual payroll checks is not sufficiently documented, or effectively controlled.

The Department processes manual payroll checks to ensure employees are paid timely and accurately, as a result of its inability to detect and correct errors during the normal bi-weekly payroll process. Observation No. 7 further describes the Department's lack of effective monitoring and review procedures.

During the nine months ended March 31, 2023, the Department processed ten manual payroll checks to correct for undetected errors in the bi-weekly payroll process. Three of the ten, or 30%, of the manual payroll checks contained multiple, undetected additional errors resulting in potential underpayments to the employees, and inaccurate overstatement of leave accruals, as further described below:

1. All three of the manual payroll check request worksheets calculated the employees' overtime pay at time-and-one-half of the employee's base rate* rather than time-and-one-half of the employee's regular rate** as required under the federal Fair Labor Standards Act (FLSA).

Definition of Pay Rates:

* *base rate = collectively bargained rate of pay*

** *regular rate = computed as follows: total compensation in the work period (except for statutory exclusions) ÷ total hours worked in the work period*

2. Two of the manual payroll check request worksheets failed to convert minutes worked to fractions of hours when calculating compensation owed to employees. For example, an employee who worked 19 hours and 21 minutes of overtime was compensated for 19.21 hours of overtime instead of the 19.35 hours they should have been paid for when the minutes were converted to a fraction of an hour.
3. Two of the manual payroll check requests were necessary because the Department failed to switch compensation for overtime shifts worked from the system-default of compensatory leave accrual at the rate of time-and-one half to paying the employee for the overtime worked. As a result, the Department issued manual checks for payment of the overtime, but failed to correspondingly remove the system-accrued compensatory leave

time from the employees' leave balances. As of September 2023, the erroneous compensatory leave accruals had not been removed.

Auditors noted the manual payroll check request worksheets were signed by the preparer and approved by management.

The potential monetary impact of the noted errors is shown below:

Employee	Error Type	FLSA Underpayment	Overstatement Compensatory Leave Accrual (Hours)	Overstatement Compensatory Leave Accrual (Dollars) (if paid out at current hourly rate)
A	1	\$52.81	None	None
B	1, 2, & 3	\$10.21	6.30	\$ 142.74
C	1, 2, & 3	\$32.41	46.88	\$1,894.42
Total		\$95.43	53.18	\$2,037.16

The Department indicated that the FLSA regular rate is too complex for the Department to calculate manually. Thus, the rate of time-and-one-half of the employees' base rate was used on the manual payroll check request worksheets instead.

Recommendation:

We recommend the Department:

- **Develop and implement internal controls to ensure that manual check requests are clerically accurate and calculated in compliance with applicable requirements.**
- **Ensure that staff requesting manual payroll checks have appropriate training and knowledge to manually calculate pay codes that are typically calculated automatically by the WFM timekeeping system.**
- **Establish formally documented policies and procedures for the manual payroll check request process. The policies and procedures should include an effective management review and approval control.**

Department of Corrections Response:

The Department concurs and will implement improved processes to ensure compliance and appropriate management approval.

Observation No. 6

Controls Over Job Reallocations Should Be Strengthened

The Department has not established formally documented policies and procedures for the processing of employee job reallocations.

With the approval of the Director of the Division of Personnel (DoP), employee positions may be reallocated or reclassified into a class (labor grade) with a higher salary grade due to documented changes in the position's job function. Administrative rule Per 303.06(a) specifies that in these cases "the incumbent's salary shall be increased to the lowest level in the new class which shall provide an increase equaling at least one annual increment in the former class."

Upon approval from the Director of the DoP, the Department, in collaboration with the respective employees' union officials, performed a reallocation of 71 active probation and parole officers, effective July 1, 2022, increasing their pay by either two or three labor grades. In the process of performing the reallocations, the Department erroneously placed three of the 71 probation and parole officers into steps higher than those authorized by administrative rule Per 303.06.

Neither the Department nor the DoP identified the error, and the employees were paid at the higher, incorrect rate, for approximately 11 months. The Department only identified the errors during the process of performing a subsequent reallocation of corrections investigators during July 2023.

The Department estimates that total overpayments made to the three identified employees amounted to \$15,393. A preliminary review of the Department's estimate indicated it is likely understated as the calculation excludes overtime premium pay-codes (the half-time portion of time-and-one-half) and did not consider the potential impacts of payment at time-and-one-half of the regular rate, as required by the FLSA, as described in Observation No. 5.

Additionally, one of five termination payouts tested revealed the employee was underpaid \$1,610 as a result of the incorrect hourly rate of pay used in the payout calculation. This employee, who was part of a job reallocation effective July 1, 2022, retired effective July 28, 2022. The termination was not paid using the new reallocation rate that went into effect July 1, 2022.

Recommendation:

Job reallocation policies and procedures should be implemented to ensure that future reallocations are sufficiently controlled and entered into NH FIRST correctly. Policies and procedures should include a review and approval control to ensure the reallocations have been performed accurately.

The Department should ensure that the payroll staff performing the reallocations have appropriate training and knowledge to ensure the reallocations are performed in compliance with administrative rule.

Department of Corrections Response:

The Department concurs. The Department relies on the collaborative work with the Division of Personnel to manage all reallocations and believed the approval from the Division of Personnel on reallocation work orders ensured they were entered correctly. Going forward, the Department will work with the Division of Personnel to ensure all reallocations are properly documented in NH FIRST and in compliance with administrative rule.

Observation No. 7

Implement Effective Monitoring Controls Over Salary And Benefit Expenditures

The Department has not implemented effective monitoring controls over its salary and benefit expenditures.

While the Department has implemented some procedures for the periodic monitoring and review of salary and benefit expenditures, the processes in place have not been formally documented, and management approval is not formally evidenced.

The following weaknesses relative to the Department's monitoring of salary and benefit expenditures were identified during the audit:

1. The Department performs a review of the payroll register, which details pay by employee, on a biweekly basis as part of the normal payroll cycle. According to the Department, the purpose of the review, which is not documented in policies or procedures or supported by evidence of management approval, is to ensure that errors previously identified by employees or their supervisors have been appropriately resolved. Auditors noted the biweekly review of the payroll register is not an effective monitoring control. For example:
 - a. An employee who transferred from the Department to another State agency in early October 2022 continued to have salary and benefit expenditures totaling \$14,000 posted to Department accounts through late November 2022. A transfer of expenditures performed in December 2022 moved the expenditures to the correct State agency accounts. This error was not identified through the Department's bi-weekly review of the payroll register but was subsequently identified through a high-level management review performed by the Department's Finance Bureau, as described below.
2. Monthly, the Department's Finance Bureau performs a high-level review of salary and benefit expenditures comparing activity across periods to identify trends and anomalies. While the high-level review appears to be an effective monitoring control, the process can be strengthened by incorporating evidence of supervisory review, and supported with a formally documented, management approved policy and procedure.

Failure to develop and implement effective monitoring and review controls increases the risk that errors or fraud could occur without being detected and corrected in a timely manner, during the normal course of business.

Recommendation:

We recommend the Department:

- **Strengthen controls over its monitoring and review processes. Formal policies and procedures, approved by management, should be established to ensure the processes can continue to be completed in the absence or departure of key employees, and to ensure consistency in approach. Policies and procedures over the review of payroll should include:**
 - **A separate management review and approval function, by someone independent of the preparation process and at the appropriate level of management.**
 - **Steps to ensure identified errors or discrepancies resulting from the reviews are appropriately addressed.**

- **Consider additional staffing resources for the payroll office to ensure that monitoring and review procedures can be effectively implemented.**

Auditee Response:

The Department concurs with the recommendations.

Observation No. 8

Seek Clarification Of Double-Time Compensation Provisions

Due to conflicting language between Article 7.2.a and Article 7.2.b.1 of the 2021-2023 Teamsters Local 633 CBA, it is unclear whether Corrections Officers and Corporals were appropriately compensated for double-time hours worked during the nine months ended March 31, 2023.

Article 7.2.a of the Teamsters Local 633 CBA states, “Overtime is defined as authorized work performed in excess of eighty (80) hours in a fourteen (14) consecutive day work period;” [emphasis added] while Article 7.2.b.1 of the Agreement states, “Unit employees shall be entitled to two times the regular rate of compensation for any overtime in excess of 16 hours in any given work week.” [emphasis added].

Hours eligible for double-time premium pay are automatically determined by the NH FIRST state-wide accounting system based on timekeeping information uploaded from the Workforce Management System (WFM). During the nine months ended March 31, 2023, NH FIRST considered each week of the biweekly pay period discretely. As a result, to substitute for the provision of “*in any given work week*” as prescribed in Article 7.2.b.1 of the CBA, hours eligible for double-time premium pay were calculated by prorating the overtime definition of 80 hours in a consecutive 14-day period in Article 7.2.a to 40 hours in a 7-day consecutive period. It is unclear if this practice is consistent with the definition of overtime established in Article 7.2.a of the CBA.

Calculating double-time premium pay on a work week basis (where a basic work week is 40 hours in a 7-day consecutive period) rather than a work period basis (where a basic work period is 80

hours in a 14-day consecutive period) results in a potential loss of 16 double-time premium eligible hours.

The example below illustrates the potential loss of double-time premium eligible hours when the 16 hour overtime threshold in the CBA is applied on a work week basis versus work period basis. The illustration is based on a total of 122 hours worked in a 14-day pay period, with 58 hours worked during the first 7-day period, and 64 hours worked during the second 7-day period.

Calculation of Double-Time Compensation Pursuant To 2021 - 2023 Teamster Local 633 CBA Provisions			
	Current State Practice Using 40 hours in a 7-day consecutive work week (Article 7.2.b.1)		Contradictory CBA Provision Using 80 hours in a 14-day consecutive work period (Article 7.2.a)
	<u>Time worked (hours)</u>		<u>Time worked (hours)</u>
Work Week 1 (7 Days)	58	Work Period (14 Days)	122
Basic Work Week Requirement	40	Basic Work Period Requirement	80
Overtime Eligible Hours	18	Overtime Eligible Hours	42
Overtime Hours Required for Double-time	16	Overtime Hours Required for Double-time	16
Double-Time Eligible Hours	2	Double-Time Eligible Hours	26
Work Week 2 (7 Days)	64		-
Basic Work Week Requirement	40		-
Overtime Eligible Hours	24		-
Overtime Hours Required for Double-time	16		-
Double-Time Eligible Hours	8		-
Total Double-Time Premium Eligible Hours	10	Total Double-Time Premium Eligible Hours	26
Difference in Eligible Double-Time Hours (Potential Underpayment of Hours)			16

Recommendation:

The Department of Administrative Services (DAS) should seek formal clarification from the Attorney General’s Office on Articles 7.2.a and 7.2.b.1 of the CBA to determine whether the Department’s double-time compensation practices in effect during the nine months ended March 31, 2023 were being carried out in accordance with the CBA.

Department of Administrative Services Response:

We concur in part. We acknowledge there is perceived ambiguity between the FLSA 40-hour work week and alternative work weeks that are permitted under the FLSA. While the common understanding of the parties is that this article provides for double overtime as it pertains to a 40-hour work week, even though not required by the FLSA, DAS will seek formal clarification from the Attorney General's Office to confirm our practices conform to the CBA and FLSA.

Overtime eligibility under the FLSA is determined based on the number of hours actually worked in one week. Generally, the FLSA requires that non-exempt employees be paid at no less than 1.5 times their regular rate for any hours actually worked in excess of 40 in a single week. 29 CFR 553.230, implementing section 7(k) of the FLSA, allows overtime to be determined on a work period basis, instead of weekly, for certain protective services employees. Consistent therewith, Corrections Officers at the Department of Corrections have FLSA overtime calculated based on a 14-day work period. For a 14-day work period, the FLSA requires that overtime be paid at time-and one-half for all hours worked in excess of 86. Under Article 7.1.a. of the CBA, overtime is paid for all hours worked in excess of 80, thus exceeding the requirements of the FLSA.

The double overtime provisions of the contract provide an additional benefit when an employee exceeds a certain number of hours in a single work week, even when the "regular" overtime threshold for the specified work period has not been reached. This was the express intent of Article 7.2.b.1. We acknowledge that the use of the term "overtime" in that article may be confusing because the FLSA meaning of that term applies to hours worked in excess of the basic work period. The parties to the CBA understood the term to apply to a contractually agreed upon weekly threshold without altering the longer basic work period.

Observation No. 9

Seek Clarification On The Compensation Of Academic Employees

It is unclear whether the Department of Corrections' academic employees are being compensated appropriately.

A review of newly hired employees during the nine months ended March 31, 2023 revealed that both Associate College Professors selected for review received a pro rata increase in their 37.5 hourly wage schedule noted in the SEA CBA for additional working days in excess of the standard 180-day academic year.

The Department of Administrative Services, Division of Personnel, reported the authority for the pro rata increase in pay comes from a 1992 arbitration decision between the State of New Hampshire and the State Employees' Association of New Hampshire. The arbitration decision addresses the meaning and application of RSA 99:1-a, which previously stated:

"...The salary ranges provided herein for academic positions shall apply to those state employees in academic positions who work for an academic year which does not exceed 180 working days. Those academic employees working more than an academic year shall receive a pro rata increase in their salary based upon the number of additional working days per year.

The intent of this section is to adjust the salaries of employees in academic positions. It is not intended to cause changes in academic work schedules.”

It is unclear if the 1992 arbitration decision remains applicable as RSA 99:1-a referenced in the decision was repealed and reenacted, effective July 1, 2021, excluding the reference to the statute which permitted a pro rata increase in salary based upon the number of additional working days per year.

Recommendation:

The Department should seek clarification from the Attorney General’s Office as to whether the Department’s current practice of providing a pro rata salary increase to academic employees who worked in excess of the standard 180-day academic year is authorized by statute or Collective Bargaining Agreement.

Department of Administrative Services Response:

We concur in part. DAS acknowledges that it may be necessary to re-establish documented academic wage schedules in order to memorialize the existing obligation to pay in accordance with previously established schedules to which the State is bound, regardless of the amendment to RSA 99.

Academic employees have, for several decades, worked either a 180-day academic schedule or a full year. Prior to its amendment in 2021, RSA 99:1-a authorized annual wages for such employees paid for work performed over a 180-day academic year. The statute further authorized prorated payment for those employees working in excess of the academic year.

RSA 99:1-a previously established a base schedule for full-time employees working a 37.5-hour per week schedule. All other pay schedules were derivatives of that basic wage schedule. For example, for full-time employees working a 40-hour week, a separate schedule was developed reflecting the same hourly rate applied over a 40-hour week. The resultant wage schedule, in that example, showed a difference in annual pay of approximately 6%, which represents the additional 6% hours worked for 40-hour employees. The rate of pay remained unchanged. But the aggregate pay reflected the hours worked. This has been the case for all derivative schedules, including those for academic employees. Moreover, all such schedules have been incorporated into and made part of the various collective bargaining agreements over the years.

When RSA 99:1-a was amended in 2021, the base schedule was removed and replaced with a requirement that the Department of Administrative Services implement pay schedules consistent with those that have been collectively bargained. At the time of the repeal, a wage schedule specific to academic employees based on the statutory calculation was not incorporated into the CBA within the applicable appendix (although it appears that such a schedule was expressly incorporated in 2015 and prior years). Rather, compensation for those employees was (and is) calculated in accordance with the statute. Notwithstanding the statutory change, the State remains obligated to continue paying wages consistent with that calculation because RSA 273-A:5, I(i) prohibits changes to terms and conditions of employment, except through bargaining. Specifically RSA 273-A:5, I, (i) states:

It shall be a prohibited practice for any public employer: ... (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation, or rule.

Therefore, after having previously established academic compensation in accordance with the statute and with prior contracts, the amendments to RSA 99:1-a cannot alter the State's obligation to continue paying wages accordingly. The Division of Personnel can re-establish academic wage schedules consistent with the calculations currently in use, after which those schedules can be incorporated into future collective bargaining agreements.

Observation No. 10

Non-Exempt Classification Listing Should Be Published

The Department of Administrative Services (DAS), Division of Personnel did not publish the Non-Exempt Classification Listing referenced in the respective Collective Bargaining Agreements (CBA) as Appendix B.

The State Employees Association CBA for 2021 – 2023, Section 7. Overtime Distinctions states: “For purposes of this article a distinction between employee types, exempt and non-exempt, applies. Non-exempt classifications are listed in Appendix B.”

As of March 2023, four months from the June 30, 2023 end date of the 2021 – 2023 CBA term, the Non-Exempt Classification Listing was listed as “coming soon” on the DAS website. Upon auditor inquiry, the DAS explained that, since there had been no revisions to the 2019 – 2021 Appendix B, it had been carried forward. As of September 2023, an Exempt Classification Listing has been published for the new CBA 2023-2025 term; however, the Non-Exempt Classification Listing for CBA term 2021- 2023 remains unpublished.

Neglecting to publish the non-exempt employee classification listing as specified in the CBA potentially creates confusion among employers and employees affected by the CBA and increases the risk that the State may not compensate its employees in accordance with the federal Fair Labor Standards Act, which defines who is eligible for overtime pay, on the basis of exempt or non-exempt status.

Recommendation:

We recommend non-exempt employee classification listings be published and made available via the DAS website, as specified in the CBAs.

Department of Administrative Services Response:

We concur. We agree that posting of established appendices, including listing of exempt or non-exempt positions, is helpful to both employees and State administration. Following the most recent round of bargaining, those appendices have been posted, as recommended.

Observation No. 11

Test Of Backup Information Should Be Performed

The Workforce Management System (WFM) servers and database files are backed up daily. The physical backup tapes are not periodically tested as required to ensure usability.

The WFM System, a timekeeping, scheduling, and personnel management module within NH FIRST, has been utilized by the Department since April 2021, and is maintained by the DAS, Division of Enterprise Applications Management (DEAM) and the Department of Information Technology (DoIT). The DoIT Statewide Information Security Manual states, "Test backup information at least annually to verify media reliability and information integrity."

Not testing data backups increases the risk that backup data may be incomplete, corrupted, or otherwise unavailable during situations where a recovery of data from the backup files is warranted.

Recommendation:

DAS should work with DoIT and implement procedures to ensure backup data is periodically tested, on at least an annual basis, as prescribed in the DoIT Statewide Information Security Manual.

Departments of Administrative Services and Information Technology Response:

DAS and DoIT concur. DoIT annual disaster recovery testing procedures have been updated to include a step to restore a file from a Workforce Management System backup that had been archived.

Observation No. 12

The Department Should Adhere To Conflict Of Interest Statute And Executive Branch Ethics Committee Advisory Opinion

The Department did not comply with RSA 21-G:22 which prohibits executive branch officials from participating "in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties."

The Executive Branch Ethics Committee Advisory Opinion 2008-001 states, "a department head or supervisor is required by RSA 21-G:22 not to participate in such hiring or supervisory decisions, therefore, recusal is required. Recusal means not participating in deliberations, making recommendations, giving advice, considering resumes or evaluations, or in any other way assuming responsibility for or participating in any aspect of the work or decision-making relating to filling the vacancy or supervising the spouse or dependent family member. Likewise, because there may be a non-pecuniary conflict with other family members, the same process as discussed above should be utilized."

Auditors noted that a Department employee in a director-level position had submitted a Request for Rule Exception to the DAS, Division of Personnel on behalf of their mother, to receive a waiver to submit a paper application for employment rather than filing electronically through NH FIRST. The employee's mother was eventually hired by the Department for the position.

Neglecting to recuse current employees, especially those in a director-level position, from the hiring process of a family member can lead to the appearance of an unfair advantage, potentially impacting a fair and impartial hiring process.

Recommendation:

We recommend the Department:

- **Comply with RSA 21-G:22 and the related Executive Branch Ethics Committee Advisory Opinion regarding conflicts of interest, including ensuring appropriate steps are taken during the hiring process; and**
- **Establish preventative and detective controls to ensure employees in familial relationships are not in a position to: 1) review, approve, or participate in transactions processed by one another or 2) make important management decisions without the involvement and oversight of the Department's Commissioner.**

Department of Corrections Response:

The Department concurs. The Department has a policy in place designed to limit conflicts of interest between family members. The Department will implement controls to ensure relatives are adhering to the policy. Following the receipt of the audit, the employee was counselled, and the applicable employees were notified of the steps necessary to avoid a conflict. Further, employees in human resources were informed of the appropriate chain of command to use to prevent a conflict of interest.

Observation No. 13

Internal Policy and Procedure Directives Should Be Reviewed Timely

The Department is not in compliance with its own Policy and Procedure Directive (PPD) 1050, *Administrative Rule and Policy Management*, section c.4., which requires its established PPDs be reviewed "every three years, from the effective date; or any time that a substantive change in law, or operations, requires it."

A review of 44 of the Department's internal PPDs that were potentially relevant to our audit objective revealed that 25, or approximately 57%, had not been reviewed within three years of the effective date, as required by PPD 1050. The Department reports that its extreme staffing shortages prohibited it from ensuring that the PPDs were reviewed within the three-year time frame.

Regular review and revision of existing policies and procedures are an important part of an entity's internal control environment. While the core components and the intent of a policy may remain the same, the details of how to implement it may need to be revised to align with changes occurring within the entity due to new systems, technologies, or changes in laws and regulations. Outdated policies and procedures may be unclear or inconsistent with current practice and can lead to confusion among the employees resulting in procedures or controls not being carried out in accordance with the Department's objectives.

Recommendation:

The Department should develop a plan to ensure PPDs are reviewed at least every three years, in accordance with its established policy.

Department of Corrections Response:

The Department concurs with the recommendation. Prior to the COVID-19 pandemic, there was a policy administrator that managed all policies for the Department. During COVID-19, that individual left employment with the Department and the Department has been unable to fill that vacancy. During the audit, the Department took steps to reclassify the position to a higher labor grade in hopes of recruiting a candidate that will efficiently and effectively manage the Department's policies including updates every three years.

Observation No. 14

Statements Of Financial Interests Should Be Filed As Required By Statute

Six out of 17 of the Department's required filers, or approximately 35%, had not filed timely statements of financial interests for calendar-year 2023, in accordance with RSA 15-A:3.

RSA 15-A:3, I (c) requires every person appointed by the governor, governor and council, president of the senate, or speaker of the house of representatives to any board, commission, committee, board of directors, authority, or equivalent State entity whether regulatory, advisory, or administrative in nature and (d) requires all agency heads to file statements of financial interests with the Secretary of State.

Statements of financial interests are due annually by the third Friday in January, or within 14 days of assuming office or appointment pursuant to RSA 15-A:6. For calendar year 2023, statements of financial interests were required to be filed with the Secretary of State no later than January 20, 2023.

During review of statements of financial interest filings, the following was noted:

- None of the wardens of any of the three State prisons had filed statements of financial interests for calendar year 2023.

- Three Division Directors had not filed statements of financial interests for calendar year 2023.

Subsequent to auditor inquiry, the six non-filers completed and filed statements of financial interests with the Secretary of State as of April 23, 2023.

Recommendation:

The Department should establish policies and procedures to ensure that all required employees submit statements of financial interest by the required filing deadline, in accordance with RSA 15-A:6. As part of these procedures, the Department should consider sending annual reminders to applicable employees to remind them of the filing requirements.

Department of Corrections Response:

The Department concurs with the recommendation and has implemented official published procedures so that all required employees and members of boards or commissions associated with the Department submit their statements of financial interest by the required filing deadline.

Observation No. 15

Organizational Structure Should Align With Statute

The Department's current organizational structure is not in strict compliance with statute.

RSA 21-H:4, III specifies that a Division of Medical and Psychiatric Services be included as one of the Department's organizational units, and be "under the joint supervision of a medical director and an unclassified non-medical director, who shall respectively have the duties and responsibilities provided in RSA 622:43, and who shall act in an advisory and coordinative capacity in assisting other agencies and activities in the provision of mental health and psychiatric services to persons involved in the criminal justice system."

While the Department has an internal organizational unit to perform the functions of the Division of Medical and Psychiatric Services, the Department refers to it as the Division of Medical and Forensic Services on both its website and organizational chart which does not align with the State statute, creating ambiguity.

The Department reports that it adjusted the name of the unit to the Division of Medical and Forensic Services because the statutory language is too narrow to encompass all the duties of the Division; and has not had the time to initiate statutory changes to ensure its current structure aligns with statute.

Recommendation:

The Department should seek a statutory revision to specify the Division of Medical and Forensic Services as the required organizational unit rather than the Division of Medical and Psychiatric Services, to ensure its organizational structure is consistent with statute.

Department of Corrections Response:

The Department concurs with the recommendation and will take steps to seek a legislative name change.

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CURRENT STATUS OF PRIOR AUDIT FINDINGS

The following is a summary of the status, as of February 2024, of the observations contained in the Department of Corrections financial audit report for the nine months ended March 31, 2010, and the Department of Corrections Security Staffing performance audit report dated November 2012 that relate to the internal controls over the authorization, payment, recording, and reporting of salary and benefit expenditures paid during the nine months ended March 31, 2023. These reports can be accessed at, and printed from the Office of Legislative Budget Assistant website: www.pencourt.state.nh.us/lba/default.aspx

2010 Financial Audit Internal Control Comments

		<u>Status</u>	
<i>Significant Deficiencies</i>			
2010-1	<p>Payroll Process Should Be More Efficient And Controlled</p> <p><i>Consider both short term and intermediate term solutions to payroll issues by instituting controls, eliminating redundancy, advising employees of management's requirement for employee adherence to the control processes, and reviewing automated alternatives to the current paper-based and labor intensive payroll system.</i></p>	●	○
2010-2	<p>Payroll Controls Should Be Made More Effective</p> <p><i>Review controls over payroll to ensure payroll activities are supported by all components of a strong control structure including a strong control environment, risk assessment and response, control activities, information and communication, and monitoring of control compliance and effectiveness. Employees should be reminded through directives and training of the importance and necessity to comply with the intended controls. (See current Observation No. 1)</i></p>	●	○
2010-3	<p>Variations In Employee Workdays Should Be Subject To Approved Agreements</p> <p><i>Document agreements with individual employees for work schedules that vary from the standard workday and workweek schedule. The agreements should be approved by a Department supervisor at least one level higher than the employee's immediate supervisor.</i></p>	●	●

Status

2010-4 **Telework Agreements Should Be In Place** ● ●
Follow the policies as provided in the Division of Personnel's Telework Technical Assistance Manual, to ensure current telework agreements are in place with all employees allowed to work these schedules. Additionally, have sufficient, properly designed controls in place to ensure that employees working telework schedules are adequately supervised to provide confidence the work arrangement is secure, efficient, and effective for the State, Department, and employee.

**2012 Performance Audit
 Security Staffing**

2012-4 **Improve Management Of Overtime** ● ●
Assign overtime posts to uniformed employees with the same rank as the overtime post when possible or compensate higher-ranking employees volunteering for overtime in lower-paying posts at the lower rate, develop and implement policy and procedure to identify opportunities for offsetting, and limit the total amount of overtime any uniformed employee can work in a given pay period.

Status Key

	<u>Status</u>		<u>Count</u>
Resolved	●	●	3
Remediation In Process (Action beyond meeting and discussion)	●	○	2
Unresolved	○	○	0