

## LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE MINUTES

April 17, 2023

The Legislative Performance Audit and Oversight Committee met on Monday, April 17, 2023 at 9:00 AM in the LOB Room 212.

Members in attendance were as follows:

Rep. Keith Erf  
Rep. Ken Weyler  
Rep. Gerald Griffin  
Rep. Lucy Weber  
Sen. Cindy Rosenwald, Chair  
Sen. Carrie Gendreau  
Sen. Rebecca Whitley  
Sen. Howard Pearl  
Sen. Timothy Lang

The meeting was called to order by Representative Weber at 9:00 AM.

### VOTE ON CHAIR:

On a motion by Representative Erf, seconded by Senator Whitley, that Senator Rosenwald be elected Chair.

### VOTE ON ACCEPTANCE OF THE NOVEMBER 10, 2022 MEETING MINUTES:

On a motion by Representative Weber, seconded by Representative Erf, that the minutes of the November 10, 2022 meeting be accepted. MOTION ADOPTED.

### STATUS OF ONGOING PERFORMANCE AUDITS:

Stephen Smith, Director of Audits, provided the Committee with brief updates of ongoing performance audits:

- Weatherization Assistance Program – is complete and was presented to and released by the Fiscal Committee in March.
- Mental Health Workforce Licensing – field work has been concluded, observations and report drafting are in process. The goal is to have a draft report to all boards by June, and Fiscal Committee presentation is targeted for September.
- Special Education Dispute Resolution Processes – field work has been completed and report draft is expected late June.
- State Oversight of Special Education – we anticipate presenting this report in early 2024. Frank Edelblut, Commissioner of the Department of Education, discussed his concerns

regarding the general dispute resolution process. He wanted to ensure that students with disabilities receive the best possible services, and that the scoping of this audit provides the outcome they're looking for. Steven Grady, Senior Audit Manager, ensured the Committee that they will be looking at the Department's compliance or non-compliance with the requirements that are imposed. They will also be looking at the system the Department has in place, and whether it contributes to achieving those expected outcomes that the Legislature has imposed upon the Department in RSA 186-C. On a motion by Representative Weber, moved to accept the scope statement as written, seconded by Senator Whitley. MOTION ADOPTED.

- NH Commission for Human Rights – an entrance meeting has been scheduled.
- HB 1135 requires a performance audit of Education Freedom Account Program – in our queue for October of 2023.

#### TABLED AND SUSPENDED TOPIC, NEW TOPICS, AND PRIORITIZE AUDIT WORK:

Stephen Smith, Director of Audits, provided the Committee with a brief update of other audit topics:

- Bureau of Elderly and Adult Services – this audit was suspended in November 2021 by this Committee. When we began this audit, we became aware of legal proceedings and lawsuits that were going to be central to the audit topic. As not to interfere with the audit, the Committee recommended it be suspended.
- Public Access to Bodies of Water – in the past, it was decided not to move forward with this audit as there might be another committee responsible for this topic.
- Secretary of State's Archives and Records – this audit was tabled due to the fact it is unclear in statute if the LBA can perform a performance audit on the constitutional duties of a constitutional officer. Senator Whitley volunteered to work with Senate Research to get more legislative history on the provision.
- Office of Professional Licensure and Certification (OPLC) – OPLC is undergoing restructuring, transitioning, and turnover within their office. The Committee has decided to table a full-blown audit.

#### DATE OF NEXT MEETING AND ADJOURNMENT:

Next meeting will be at the call of the Chair. Senator Rosenwald adjourned the meeting at 10:43 AM.

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Sen. Cindy Rosenwald, Chair

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Preliminary Compilation Of Selected NHED Requirements

**Background**

In April 2023, LPAOC requested citations for Department of Education (NHED) special education-related duties.

This compilation summarizes draft LBA workpapers and preliminary results through August 4, 2023. Audit procedures related to its content are ongoing. Our final view on NHED duties will be reflected in our final audit report. We expect the final audit report to be published in calendar year 2024. This compilation was not reviewed by NHED management.

We provide citations to the U.S. Code of Federal Regulations (CFR), primarily for:

1. 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards*,
2. 34 CFR Part 76, *State-administered Programs*, and
3. 34 CFR Part 300, *Assistance To States For The Education Of Children With Disabilities*;

Citations for certain State Revised Statutes Annotated (RSA) and State Board of Education administrative rules (Ed) are also provided.

The compilation is organized into four sections:

1. State program design,
2. local special education program approval,
3. monitoring, and
4. enforcement.

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## **State Program Design**

Federal requirements imposed conditions on the State to receive federal funds. Federal requirements did not impose on the State a specific special education program design. The State was responsible for designing an effective program (2 CFR §200.400; and see generally 34 CFR §300; RSA 186-C; Ed 1100). The NHED was the responsible State regulatory agency (34 CFR §77.1(c); 34 CFR §300.41; RSA 21-N:2, II(a); RSA 21-N:6, II; Ed 1102.05(e); and see generally RSA 186-C and Ed 1100). It had to establish and maintain an effective system of internal controls that provided reasonable assurance program objectives were achieved. Objectives were: 1) effectiveness and efficiency of operations, 2) reliability of reporting, and 3) compliance with laws and regulations (2 CFR §200.1; 2 CFR §200.303). The State program had to:

1. ensure local education agencies (LEA) complied with State and federal requirements (2 CFR §200.400; 34 CFR §76.770; 34 CFR §300.149(b); 34 CFR §300.600; RSA 186-C:3-a, I);
2. ensure the rights of children with disabilities and their parents were protected (34 CFR §300.1(b); RSA 186-C:1, II);
3. prepare special education students for further education, employment, and independent living (34 CFR §300.1(a); RSA 186-C:1, I);
4. ensure a free appropriate public education was available in the least restrictive environment (34 CFR §300.1(a); 34 CFR §300.114; RSA 186-C:1, I; Ed 1101.01; Ed 1111.01);
5. ensure special education students could attend an approved program capable of implementing their individualized education program (RSA 186-C:9) and continue in such a program until they received a regular high school diploma, no longer required special education, or aged-out (RSA 186-C:9);
6. be fully coordinated and integrated with the State's general education curriculum and instruction activities (RSA 186-C:3), as well as ensure special education students were included in all general assessments (34 CFR §300.160; RSA 193-C:6);
7. have established performance goals for special education students (34 CFR §300.157(a)(1));
8. assess and ensure the effectiveness of efforts to educate special education students (34 CFR §300.1(d); RSA 186-C:3-a, II; RSA 186-C:3-a, V);
9. assist LEAs with providing for the education of special education students (34 CFR §300.1(c); RSA 186-C:3-a, I; RSA 186-C:3-a, III); and
10. support and facilitate LEA and school-level system improvement designed to enable special education students to meet challenging State academic achievement standards (34 CFR §300.199(b)).

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Program goals had to promote the purposes of the program (34 CFR §300.157(a)(1); see 34 CFR §300.1), and:

1. be the same as those established for the accountability system specified in the *Consolidated State Plan* developed under the federal Elementary and Secondary Education Act (ESEA) (34 CFR §300.157(a)(2));
2. be consistent, when appropriate, with other goals and academic standards for all students (34 CFR §300.157(a)(4); see also RSA 193-E:1; RSA 193-C:3, III(c));
3. address graduation and dropout rates, and other State-determined factors (34 CFR §300.157(a)(3));
4. include targeted levels of performance, expressed as a tangible, measurable objective such as a quantitative standard, value, or rate, against which actual achievement could be compared (2 CFR §200.1); and
5. be used to assess progress (34 CFR §300.157(b)).

The NHED had to:

1. ensure compliance with federal (2 CFR §200.400(b); 34 CFR §300.149(a)(1); RSA 186-C:3; RSA 186-C:5, III) and State (RSA 21-G:9, I; RSA 21-N:4, IX; RSA 21-N:6, II; RSA 186-C:3; RSA 186-C:5, III) requirements;
2. ensure efficient and effective administration (2 CFR §200.400(a); 2 CFR §200.400(c); RSA 21-G:9, I; RSA 21-G:9, II(e); RSA 21-G:9, III);
3. monitor and maintain information on national and regional trends, instructions, and issues affecting special education in the State (RSA 186-C:3-a, II);
4. collect, organize, and analyze data and information about programs, conditions, instruction, and trends in special education in the State (RSA 186-C:3-a, II);
5. develop and analyze information on issues and problems, and assist LEAs in dealing with them (RSA 186-C:3-a, I-a);
6. assess LEA needs for assistance (RSA 186-C:3-a, II(a)) and provide technical assistance and information so LEAs may effectively and efficiently identify, clarify, and address their responsibilities (RSA 186-C:3-a, III);
7. develop and promote evidence-based practices supporting the education special education students (RSA 186-C:3-a, II(e));

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8. identify cost effective and appropriate alternative programs that meet the needs of special education students (RSA 186-C:3-a, II(b));
9. develop cost and service level benchmarks for LEAs to measure the effectiveness of their programs (RSA 186-C:3-a, II(d));
10. focus resources on special education students requiring extensive services (RSA 186-C:3-a, II(c));
11. ensure the regulation of LEAs did not exceed what was necessary to ensure compliance (RSA 186-C:3-a, I-a; and see RSA 21-N:1, II(b); RSA 186-C:3-a, V; RSA 186-C:16-c; 34 CFR §300.199); and
12. accommodate public participation before any policy and procedure was adopted or amended (34 CFR §300.165 (a)).

Additionally, the NHED had to:

1. monitor controls over its own operations (2 CFR §200.303).
2. annually report on special education demographics, finances, compliance, and performance for the State and each LEA (RSA 186-C:3-a, II-a);
3. annually report on aspects of compliance and performance to the federal government (2 CFR §200.329(c); 34 CFR §300.600(a)(4)); and
4. biennially report on its operation, organization, finances, and major accomplishments (RSA 20:7; and see RSA 20:6; RSA 20:11).

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**Local Special Education Program Approval**

The NHED had to annually approve each compliant special education program (34 CFR §76.400; 34 CFR §300.200; 34 CFR §300.600(a)(2); RSA 186-C:5, I; RSA 186-C:10; Ed 1126.01(a); Ed 1126.02(b); Ed 1126.03(a)). Approval had to:

1. ensure programs complied with requirements, including standards related to improving educational results and functional outcomes (RSA 186-C:5, II; Ed 1126.01; Ed 1126.02);
2. consider each LEA's risk of noncompliance (2 CFR §200.332(b)) and impose specific, additional conditions when necessary (2 CFR §200.332(c));
3. use professionally recognized program evaluation and other verification methods to ensure reliable and valid findings and corrective actions (RSA 186-C:5, III);
4. ensure special education students' needs were met (RSA 186-C:3-a, V); and
5. ensure accountability for failing to meet standards (RSA 186-C:3-a, V).

LEA programs' policies and procedures had to be consistent with State policies and procedures (34 CFR §300.201; and see 34 CFR §§300.101-300.163 and 34 CFR §§300.165-300.174; Ed 1126.01; Ed 1126.02), such as those related to:

1. free appropriate public education (34 CFR §300.101; Ed 1126.01(b));
2. individual education programs (34 CFR §300.112; Ed 1126.02(b)(3)(f); Ed 1126.01(b)(8));
3. least restrictive environment (34 CFR §300.114; Ed 1126.02(b)(3)(c); Ed 1126.02(b)(16)); placements (34 CFR §300.116; Ed 1126.01(b)(8));
4. monitoring (34 CFR §300.120; Ed 1126.02(b)(9));
5. performance goals (34 CFR §300.157);
6. compliance with federal and State requirements (Ed 1126.02(b)(10); Ed 1126.02(b)(11)); and
7. public participation before any policy and procedure was adopted or amended (34 CFR §300.165 (a)).

Noncompliant programs were not to be approved (34 CFR §76.400(d)) and were ineligible for State and federal funding (Ed 1126.01(a)).

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**Monitoring**

NHED had to monitor special education programs' operation (2 CFR 200.329(a); 2 CFR 200.332(d); 34 CFR 300.600(a)(1); RSA 186-C:3-a, V) following established procedures (34 CFR §300.149(b); RSA 186-C:5, I(a); and see RSA 186-C:16; RSA 541-A; Part Ed 1126).

1. Monitoring methods included, but were not limited to:
  - a. on-site visits (RSA 186-C:5, III(d); Ed 1126.02(b)),
  - b. examining records (RSA 186-C:5, III(d); Ed 1126.02(b)),
  - c. an annual NHED audit of all allocated State and federal special education funds (Ed 1125.04), and
  - d. under certain circumstances, an annual single audit of an LEA by a third party (2 CFR §200.501(b); 2 CFR §200.504; 2 CFR §200.332(f)).
  
2. Monitoring had to:
  - a. ensure compliance with federal (2 CFR §300.329(a); 2 CFR §200.332(d); 34 CFR §300.600(b)(2); RSA 186-C:5, II) and State requirements (RSA 186-C:5, II);
  - b. ensure each program met State educational standards (34 CFR 300.149(a)(2)(ii));
  - c. ensure performance expectations (2 CFR 200.329(a)) and goals (2 CFR §200.332(d)) were achieved;
  - d. ensure students' special education needs were met (RSA 186-C:3-a, V);
  - e. ensure compliance with standards related to improving educational results and functional outcomes (34 CFR §300.600(b)(1); RSA 186-C:5, II);
  - f. use quantitative and qualitative indicators to measure performance in priority areas (34 CFR §300.600(c));
  - g. use professionally recognized program evaluation and other verification methods to ensure reliable and valid findings and corrective actions (RSA 186-C:5, III); and
  - i. ensure accountability for failing to meet standards (34 CFR §300.600(e); RSA 186-C:3-a, V; and see Ed 1126.03).
  
3. The NHED had to make an annual determination about each LEA's performance (34 CFR 300.600(a)(2)) and issue a written report before the expiration of an existing program approval (RSA 186-C:5, IV; Ed 1126.03(a)). The report had to:
  - a. grant full or conditional approval, or deny, suspend, or revoke program approval (RSA 186-C:5, IV);
  - b. contain findings, indicating compliance or noncompliance with statutes and rules (Ed 1126.03(a)) and detailing failures to meet performance outcome or indicator measures related to achieving educational results and functional outcomes (RSA 186-C:5, III; RSA 186-C:5, IV(a)); and
  - c. include corrective actions to remedy noncompliance or failure to meet performance outcome or indicator measures, and the timelines for completing corrective actions (RSA 186-C:5, IV(b); Ed 1126.03(b)).



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4. The NHED was also authorized to issue reports outside the regular process, direct noncompliant LEAs to remedy noncompliance, and impose remedies provided for under the NHED's enforcement authority (RSA 186-C:5, IV(d); RSA 186-C:5, V).
5. The NHED had to ensure noncompliance was corrected as soon as possible, but no more than one year after it was identified (34 CFR §300.600(e)). The NHED was also responsible for resolving findings in LEA audits conducted by third parties (2 CFR §200.303(d)).
6. At the conclusion of the time limit for corrective action, the NHED had to issue a written report on the extent to which corrective actions were taken to achieve compliance (RSA 186-C:5, V(b)).

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**Enforcement**

The NHED had to enforce compliance with federal and State requirements, consistent with federal and State provisions (34 CFR §300.600(a)(3); RSA 186-C:5, V(a); RSA 186-C:5, V(c); RSA 186-C:5, V(d); Ed 1125.01(b); and see 34 CFR §300.200; 34 CFR §300.201).

1. Enforcement followed an NHED-issued order resulting from an investigated complaint, a due process hearing, or monitoring (RSA 186-C:5, V(a); Ed 1125.01(a)).
2. Enforcement mechanisms included:
  - a. requiring corrective action plan development, implementation, and monitoring (34 CFR §300.600(a)(3); 34 CFR §300.604(b)(2)(i) RSA 186-C:5, V(e)(1); Ed 1125.02(e)(1));
  - b. technical assistance (34 CFR §300.600(a)(3); 34 CFR §300.604(a)(1); RSA 186-C:5, V(e)(2); Ed 1125.02(e)(2)) and professional development (RSA 186-C:5, V(e)(3); Ed 1125.02(e)(3));
  - c. imposing additional conditions on the grant (34 CFR §300.600(a)(3); 34 CFR §300.604(a)(3) and see 2 CFR §200.339; 2 CFR §200.208);
  - d. disallowing some or all of the cost of a noncompliant activity (2 CFR §200.339(b)) and ordering the repayment of misspent or misapplied funds (RSA 186-C:5, V(e)(11); Ed 1125.02(e)(10));
  - e. withholding some or all funds (34 CFR §300.600(a)(3); 34 CFR §300.604(b)(2)(v); 34 CFR §300.604(c)(2); and see 2 CFR §200.339(a); 2 CFR §200.339(e); 34 CFR §300.222; RSA 186-C:5, V(e)(10); Ed 1125.02(e)(9));
  - f. ordering corrective or remedial actions, including compensatory education (RSA 186-C:5, V(e)(4); Ed 1125.02(e)(4));
  - g. targeting or redirecting federal special education funds (RSA 186-C:5, V(e)(5); Ed 1125.02(e)(5));
  - h. referring credentialed individuals to the Bureau of Credentialing for a review of their compliance with licensure or certification requirements (RSA 186-C:5, V(e)(6); Ed 1125.02(e)(6));
  - i. reviewing program compliance weekly, monthly, or quarterly using desk audits or scheduled or unannounced on-site reviews (RSA 186-C:5, V(e)(8); Ed 1125.02(f));
  - j. requiring redirection of federal funds to remediate noncompliance of more than one year (RSA 186-C:5, V(e)(9); Ed 1125.02(e)(8));
  - k. wholly or partly suspending or terminating the award (2 CFR §200.339(c); 2 CFR §200.340);
  - l. referral to the Department of Justice (RSA 186-C:5, V(e)(12); Ed 1125.02(e)(11));
  - m. ordering relocation of students from a noncompliant private provider to a compliant program (RSA 186-C:5, V(e)(13); Ed 1125.02(e)(12));
  - n. ordering the cessation of program operation (RSA 186-C:5, V(e)(7); Ed 1125.02(e)(7));
  - o. mandatory revocation of program approval if it did not provide a free, appropriate public education and did not timely correct noncompliance (Ed 1126.03(d)(5));

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- p. mandatory revocation of program approval if a condition endangering student health, welfare, or safety existed (Ed 1126.03(d)(5)); and
  - q. any other authority available to monitor and enforce requirements (34 CFR §300.608(b)), and any other legally available remedy (2 CFR §200.339(f); and see RSA 186-C:5, V(e); Ed 1125.02(e)).
3. If an LEA did not timely comply with an order, the Commissioner had to give notice of further enforcement action to be taken (RSA 186-C:5, V(c); Ed 1125.02(c)).

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**STATE OF NEW HAMPSHIRE  
OFFICE OF LEGISLATIVE BUDGET ASSISTANT, AUDIT DIVISION**

**PROPOSED PERFORMANCE AUDIT SCOPE  
NH COMMISSION FOR HUMAN RIGHTS**

In January 2023, the Fiscal Committee of the General Court approved a joint Legislative Performance Audit and Oversight Committee request to conduct a performance audit of the New Hampshire Commission for Human Rights (Commission). The purpose of this audit is to evaluate the Commission's efficiency and effectiveness of enforcing laws against discrimination when receiving, investigating, and making findings on complaints. We held an entrance conference to discuss the audit with representatives of the Commission in May 2023.

**BACKGROUND**

RSA 354-A:1 prohibits discrimination based on age, sex or sexual orientation, gender identity, race, creed, color, marital status, familial status, physical or mental disability, or national origin. The Commission was founded to eliminate and prevent discrimination in employment, in places of public accommodation, and in housing accommodation. In addition, the Commission also engages in public outreach, education, and training. The Commission consists of seven voting members appointed by the Governor with consent of the Executive Council. The Governor designates one commissioner as chair who serves as the chief executive officer of the Commission. Commissioners serve a term of five years. As of May 2023, Commission staff consisted of an Executive Director, Assistant Director, five Investigators, Intake Coordinator, Paralegal, and Secretary. The Executive Director does not report directly to either the chair or Commission-at-large but will communicate with them for advice and consent. The Executive Director position is classified. The Commission is administratively attached to the Department of Justice.

The Commission is tasked with receiving, investigating, and making findings upon complaints alleging violations of discrimination laws. The Commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production of any books or papers relating to any matter under investigation, or in question, before the Commission.

**Role Of Federal Equal Employment Opportunity Commission**

The Commission is under contract with the Federal Equal Employment Opportunity Commission (EEOC) to complete a certain number of cases each year. The EEOC is reimbursed \$100 for each case intake and \$830 for each closed case. The EEOC is only focused on employment discrimination whereas the Commission also reviews complaints related to housing, education, and public accommodations in addition to employment. The EEOC also provides the case management systems used by the Commission. Additionally, the EEOC provides training to Commission staff and participates in joint education and outreach activities for the public.

**Process**

The Executive Director reported making changes to case processing in February 2022 to improve efficiency. The current process starts when a complainant files a charge of discrimination with the

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Commission. Once filed, the charge is sent to the entity against whom the charge is made, known as the respondent. An investigator is then assigned, and an investigation is commenced. At any point, the complainant can withdraw the charge, or the charge can be settled. If the charge is settled, the case is dismissed. If the charge remains, the investigation is completed, and an investigative report is issued. The investigative report goes to the investigating commissioner assigned to the case who then determines whether there is probable cause for the charge to proceed. If the investigating commissioner finds there is no probable cause, the case is dismissed. If probable cause is found, an Order of Notice of Public Hearing is issued. If conciliation can be achieved, the case is dismissed. If conciliation cannot be achieved, the case moves forward to a hearing before the Commission. After a probable cause finding is issued, either party can remove the case to Superior Court. If the case is heard by the Commission, a written decision is issued. The decision may be appealed to Superior Court.

**Case Backlog**

As of June 8, 2023, there was a backlog of 260 cases with the oldest case filed in January 2022. A case is considered to be in the backlog if a complaint has been received but not assigned to an investigator. Assignments to investigators are estimated to take approximately one year; cases are assigned in the order they are docketed, oldest to newest. Investigator turnover has been reported as one reason for the backlog because, as investigators leave, their assigned cases are redistributed among remaining investigators.

**Expenditures And Staffing**

In SFY 2022, the Commission spent approximately \$831,000 of which approximately \$707,000 was for salaries and benefits (85.1%). The Commission consisted of 10 positions as of May 2023 (eight full-time classified positions, and two part-time positions). The Commission received four new investigator positions for State fiscal year (SFY) 2024, along with funding for one full-time administrative assistant II position, conversion to one permanent full-time paralegal position and full-time secretary II position in lieu of two part time positions, and creation of one part-time intake coordinator.

**AUDIT SCOPE**

The following audit scope was proposed by the joint Legislative Performance Audit And Oversight Committee, and subsequently approved by the Fiscal Committee:

***Is the Commission For Human Rights efficiently and effectively enforcing laws against discrimination when receiving, investigating, and making findings on complaints?***

To address this question, we plan to:

- review relevant State and federal laws, regulations, rules, declaratory rulings, orders, plans, procedures, guidance, and similar materials;
- review relevant audits, guidance, and related materials from other states and national organizations;

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- interview Commission members, management, and staff;
- obtain perspectives from stakeholders outside the Commission;
- observe Commission meetings;
- review case histories and analyze relevant records;
- review and analyze case processing practices; and
- potentially survey complainants and respondents or their attorneys.

The audit period will be SFY 2020 through SFY 2023. We will examine Commission management controls and other relevant matters outside the audit period when they affect program operations during and after the audit period.

We anticipate completing this audit and presenting the final report to the Fiscal Committee in calendar year 2024.

# Senate Research



SR#9209 NH Constitutional Officers  
To: Jay Henry, LBA  
From: Patrick Murphy, Senate Research  
Date: July 26, 2023

## Question Asked

You have asked for an update to previous research completed by this office, SR#8289 NH Constitutional Officers and RSA 14:31-a,I(d).

## Answer

This memo will use SR#8289 (1/22/2018) as a baseline and will include bold language to offer updates or will state that no new amendments have been adopted since the original SR#8289.

With respect to **RSA 14:31-a,I(d)**<sup>1</sup> governing the Audit Division of the Legislative Budget Assistant (LBA) and the section's statement "This paragraph shall not apply to constitutional officers in the execution of their constitutional duties", you have asked about:

- a definition of "constitutional officers";
- a definition of "constitutional duties"; and,
- which duties, if any, are possibly auditable?

This request is further to a prior request to this office<sup>2</sup> and relates to the office of Secretary of State in New Hampshire (NH).

No specific definition of "constitutional officers" or "constitutional duties" has been found in NH resources but some illustrations were found and are provided below along with other information found.

- According to *Black's Law Dictionary* (10<sup>th</sup> Ed., 2014):
  - **constitutional officer** (18c) A government official whose office is created by a constitution, rather than by a statute; one whose term of office is fixed and defined by a constitution.No entries were found for "constitutional duty" or "constitutional duties."

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<sup>1</sup> <http://www.gencourt.state.nh.us/rsa/html/l/14/14-31-a.htm>

<sup>2</sup> SR 8245, Nov. 15, 2017.

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# Senate Research

- In the course of research, references were found to Sunset reports and to **1987 Ch. 284 *An Act relative to sunset review of the secretary of state - legislative services*** (HB 105).
- Also seen was reference to LBA Financial Audit Reports for the Secretary of State for 2007 and 1996.
- Searches of recent (last 5 years) news clips yielded no information for this request; please let us know if you would like us to look for older clips.  
**An updated search of news clips covering the years since this initial memo was conducted, and no new relevant information was found.**
- The NH Constitution<sup>3</sup> provides in Part II:  
[Art.] 67. [Election of Secretary and Treasurer.] The secretary and treasurer shall be chosen by joint ballot of the senators and representatives assembled in one room.  
June 2, 1784  
Amended 1950 deleting commissary-general.  
**No amendments have been adopted since the drafting of this initial memo.**
- RSAs governing the NH Department of State (**RSA 5**)<sup>4</sup> and the State Treasurer (**RSA 6**)<sup>5</sup> both provide for an oath of office<sup>6</sup> and for the office-holder to give a specified bond.<sup>7</sup> The terms “audit” and “audits” do not appear in **RSA 5**. By contrast, “audit” does appear in **RSA 6**,<sup>8</sup> in particular in: **(statements still applies)**

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<sup>3</sup> See generally <https://www.nh.gov/constitution/constitution.html>, NH Constitution established October 31, 1783 to take effect June 2, 1784 as subsequently amended and in force January 2007.

<sup>4</sup> <http://www.gencourt.state.nh.us/rsa/html/l/5/5-mrg.htm>

<sup>5</sup> <http://www.gencourt.state.nh.us/rsa/html/l/6/6-mrg.htm>; the State Treasurer’s website lists the following statutes as also governing the state treasury: RSAs 6-A, 6-B, 6-C, 9:13-e, 11, 162-F, 195-H and 471-C, <https://www.nh.gov/treasury/laws-rules/index.htm>

<sup>6</sup> RSA 5:1 and RSA 6:1, respectively.

<sup>7</sup> RSA 5:1 and RSA 6:3, respectively. Oaths of office and bonds are also required for the Deputy Secretary of State (RSA 5:16), the Deputy State Treasurers (RSA 6:22) and the Assistant State Treasurers (RSA 6:29).

<sup>8</sup> Seven hits for “audit” and zero for “audits.”





# Senate Research

**RSA 6:26 *Audit of Accounts.*** – The legislative budget assistant shall audit the accounts of the state treasurer as provided in RSA 14:31, II.<sup>9</sup>

Source. RL 22:26. 1950, 5, part 6:1, par. 12(XI). 1953, 121:2.

**Has not been amended since 1953.**

- According to the RSAs, the Secretary of State’s duties “shall be those of both a legislative branch as well as an executive branch officer” (**RSA 5:1,I**).<sup>10</sup> Annotations indicate this sentence was added to **RSA 5:1** in 1994.

**No amendments have been made to RSA 5:1 since 1994 so this information from 2018 still applies.**

- *Opinion of the Justices*, 106 NH 402 at 404 (1965)  
... Although the Constitution requires that the Secretary of State be chosen by the Legislature (Const., Pt. II, Art. 67) his duties are executive as well as legislative, and continue unabated after adjournment of the Legislature. Const., Pt. II, Art. 68; RSA ch. 5.

...  
**I have searched for judicial opinions since this original memo was drafted and searches have not returned any relevant information.**

- *Opinion of the Justices*, 115 NH 159 at 161 (1975)  
... The constitution provides for certain constitutional State officers and directs the manner in which they are to be appointed or elected. Thus the secretary of state and the State treasurer are chosen by joint ballot of the senate and house of representatives. N.H.Const. pt. II, art. 67. Judges, the attorney general, coroners<sup>[11]</sup> and military officers are appointed by the Governor and Council. N.H.Const. pt. II, art. 46. The method of selection of constitutional officers is provided by the constitution and may not be altered by the legislature. ...

**I have searched for judicial opinions since this original memo was drafted and searches have not returned any relevant information.**

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<sup>9</sup> <http://www.gencourt.state.nh.us/rsa/html/l/6/6-26.htm>

<sup>10</sup> <http://www.gencourt.state.nh.us/rsa/html/l/5/5-1.htm>

<sup>11</sup> Reference to coroners repealed 1976; questions proposed by the 1974 NH Constitutional Convention submitted to the voters November 2, 1976: question 7 adopted by the voters, see Q.7 part (c). Source: *Manual for the General Court* No. 45 (1977), pp. 687-688.



# Senate Research

- As indicated in the information provided by this office in November, **RSA 14:31-a** in its current form appears to have originated in 1987 and, indeed, the section's statement on constitutional officers in the execution of their constitutional duties is in the enactment **1987 Ch. 416** *An Act relative to the advisory budget control committee and the fiscal committee, the legislative budget assistant, and legislative audit and oversight (SB 34)*, specifically in **416:9**. **No amendments have been adopted to RSA 14:31-a since 2016, prior to this original memo.**
- Section **1987, 416:9** states it “repealed and reenacted” **RSA 14:31-a** and the source note for that RSA begins with “1973, 376:62.” A check of the 1973 enactment shows that the exact text of the original **14:31-a** (added as a new section in 1973) was actually moved by **1987, 416** to new designation **14:31-c** where wording to that identical in the 1973 enactment is currently shown.  
**No relevant updates to this point.**
- Also with respect to **1987, 416**, this enactment was the result of a Committee of Conference. *See 1987 House Journal* excerpt pp. 1089-1094 at 1091, copy **attached**: CofC amendment, note **Section 9** affecting **RSA 14:31-a** and note RSA paragraph IV (RSA parts since renumbered).  
**No relevant updates to this point.**
- Two other RSAs were affected in **1987 Ch. 416**. These two RSAs were the so-called Sunset laws **RSA 17-F** and **RSA 17-G**, repealed by **1987, 416:13** (see again **1987 House Journal** excerpt). A check of the Sunset laws as adopted in **1977 Ch. 436** *An Act establishing procedures for the periodic termination, review and renewal of state agencies and programs* (HB 1016) shows the following exemptions:

**17-G: 4 Exemptions.** The provisions of this chapter shall not apply to the following state agencies and programs:

- I. Offices or agencies required by provisions of the New Hampshire Constitution;



# Senate Research

II. The Laconia state school and training center, the New Hampshire hospital, the New Hampshire home for the elderly, the state prison, the state library, the veteran's home and the youth development center;

III. The New Hampshire state retirement system.

**No new information to add to this point since the repeals in 1987.**

- Also found in the course of research (and note its also being referred to in **RSA 21-I:13, XI**):

**RSA 14:27-c Retirement Benefits; Certain Legislative and Constitutional Officers.** –

I. “. . . the full-time sergeant at arms, clerk, or assistant clerk of the house of representatives or the senate who is in office on the effective date of this section and the full-time secretary of state, deputy secretary of state, or state treasurer . . .”

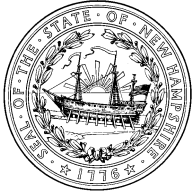
Source. 1986, 65:1. 1988, 282:4, eff. July 1, 1988 [12]

**No amendments have been adopted to this section since 1988 so this point still currently applies.**

If we can provide you with further information, please let us know.

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<sup>12</sup> <http://www.gencourt.state.nh.us/rsa/html/l/14/14-27-c.htm>



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
***DIVISION OF FINANCE AND PROCUREMENT***

**Lori A. Weaver**  
Interim Commissioner

**Nathan White**  
Chief Financial Officer

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**Memorandum**

To: Jay Henry, Supervisor of Performance Audits, NH Office of Legislative Budget Assistant  
From: Robert Moore, Bureau of Contracts & Procurement Director, DHHS  
Nathan White, Chief Financial Officer, DHHS

**Purpose:** To provide an overview of the Department of Health and Human Services' (DHHS) Bureau of Contracts and Procurement (Contracts Bureau) and procurement processes.

**State Contracting:** The Department of Administrative Services (DAS) is responsible to purchase all goods and services for all state agencies and manages statewide contracts that are used by agencies to purchase goods or services. Non-statewide service contracts are the responsibility of individual state agencies. At DHHS, the DHHS Contracts Bureau centrally manages the creation and approval of most agreements.

**Central DHHS Contracts Bureau**

The DHHS Contracts Bureau is responsible to facilitate all solicitations and contracts, not covered by DAS statewide contracts. The centralized Contracts Bureau allows for the development of department-wide procedures and standardization of roles/responsibilities for various aspects of the procurement process, including:

- Initiating the procurement process;
- Developing scopes of work (e.g., deliverables);
- Establishing business/technical requirements;
- Conducting quality control and legal reviews;
- Writing and issuing Requests for Bids, Proposals, Applications, Grants, Quotes, and Information;
- Scoring responses to solicitations;
- Negotiating and executing resulting agreements/amendments; and
- Finalizing and processing agreements/amendments for G&C approval.

**Team Model:** The DHHS Contracts Bureau includes three teams, each led by a team lead and assigned to specific Division areas. This allows for: (1) consistent communications between staff in contracts, finance, programs, and other key stakeholder areas, (2) appropriate span of control levels (3) consistent workloads, and (4) ability to respond to priority needs.

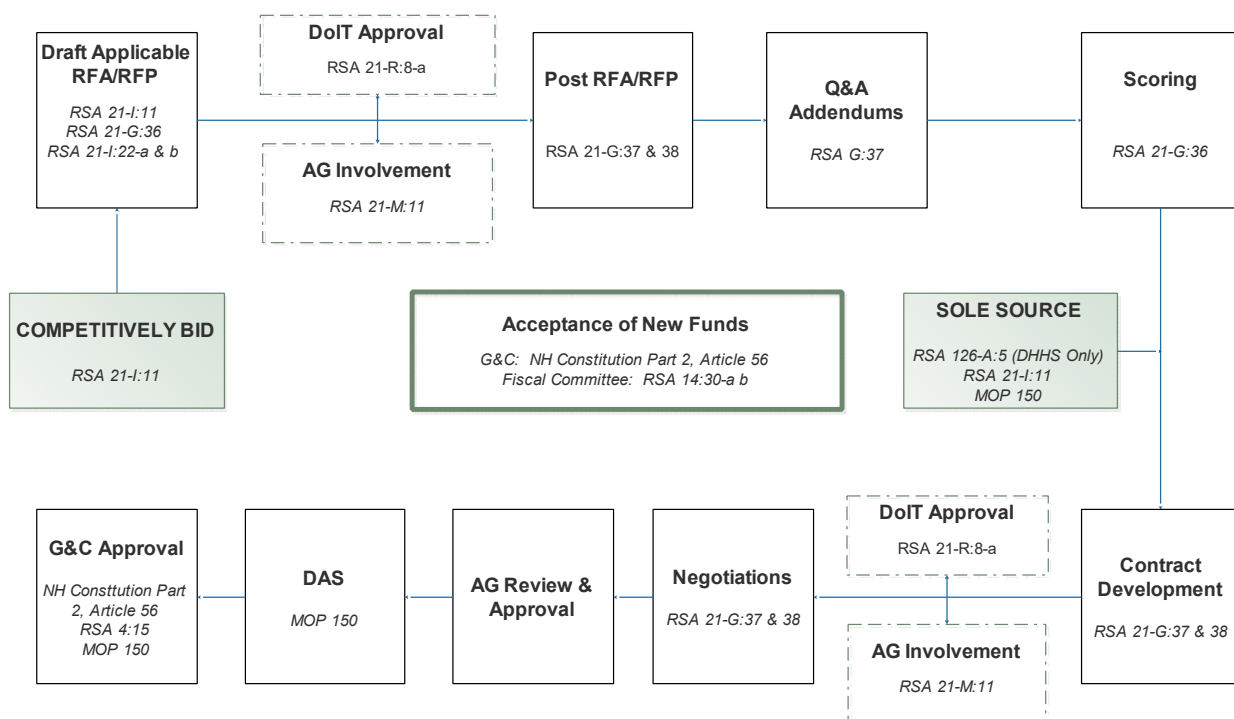
**Inventory & Tracking Log:** The DHHS Contracts Bureau maintains a reliable dual purpose tracking tool/project management system of all active legal agreements or amendments under development or previously approved. This is posted biweekly and made available on the DHHS

intranet to ensure all DHHS staff know the status of procurements and reliable reporting is accessible.

**Continuous Forecasting:** Utilizing the active procurement inventory, the DHHS Contracts Bureau conducts forecasting by having each Division area complete a forecasting tool to facilitate decision-making and identify actions that need to be taken (e.g., amend, re-procure, allow to expire) to ensure agreements are renewed in a timely manner and do not expire. The Contracts Bureau currently conducts this forecasting biannually.

**Contract Development:** Below is high-level overview of the standard procurement process, including applicable statutory, constitutional, or administrative requirements adhered to during each phase in the process. A DHHS Program Lead is responsible for identifying the business/technical requirements and deliverables required in an agreement, in collaboration with information security, information technology, legal, finance, privacy, and contracts staff. Contracts Bureau staff are primarily responsible for 1) incorporating business/technical/oversight requirements and deliverables into the appropriate standard solicitation or contract template and enforceable language; 2) facilitating required reviews/approvals; and 3) facilitating contract execution.

### Single Agency Contracting Process

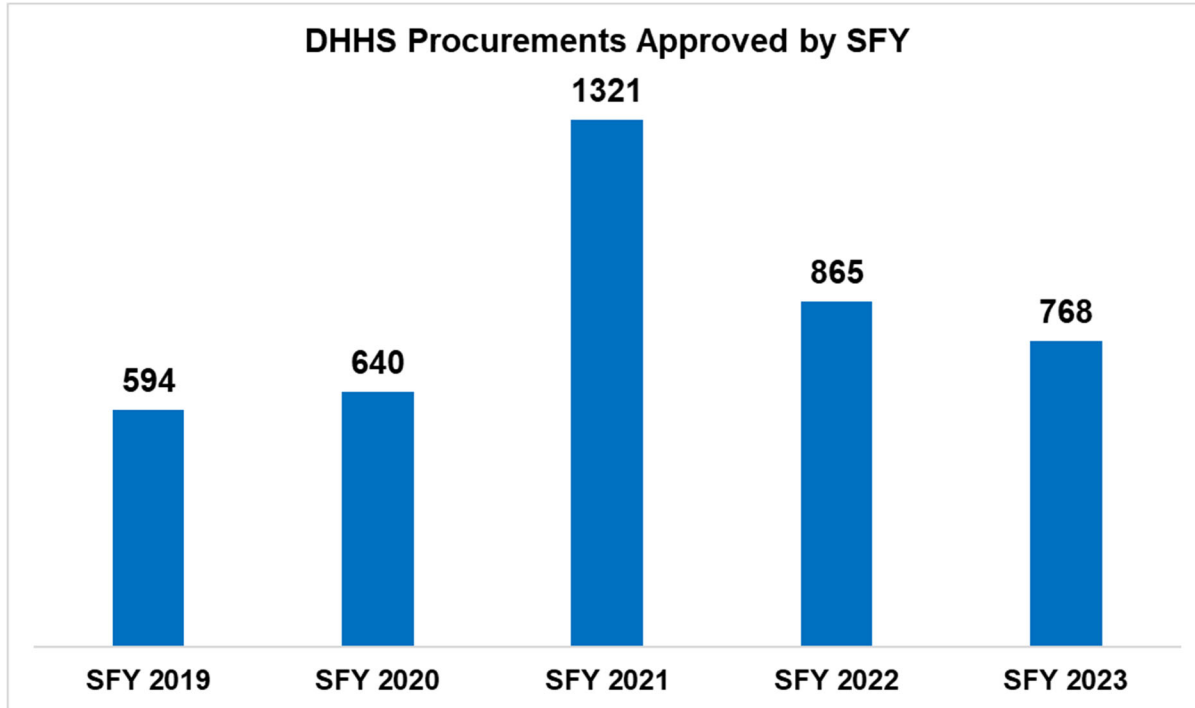


**Governor and Executive Councilors (G&C) Review & Approval:** The Contracts Bureau submits all required contracts, amendments, and other expenditures to G&C for review and approval. G&C is responsible for the prudent and economical expenditure of money appropriated by the Legislature. As such, all DHHS contracts over \$10,000, certain other expenditures, and

all amendments to contracts previously approved by G&C, must be authorized by G&C, in accordance with the NH Constitution, Part 2.

**DHHS Agreement Types & Volume**

For State Fiscal Years 2019 through 2023, DHHS received approval for an annual average of 830+ contracts, amendments, and other agreements totaling approximately \$1.2 billion. DHHS currently has 830+ active legal agreements of various types with approximately 640 unique vendors:



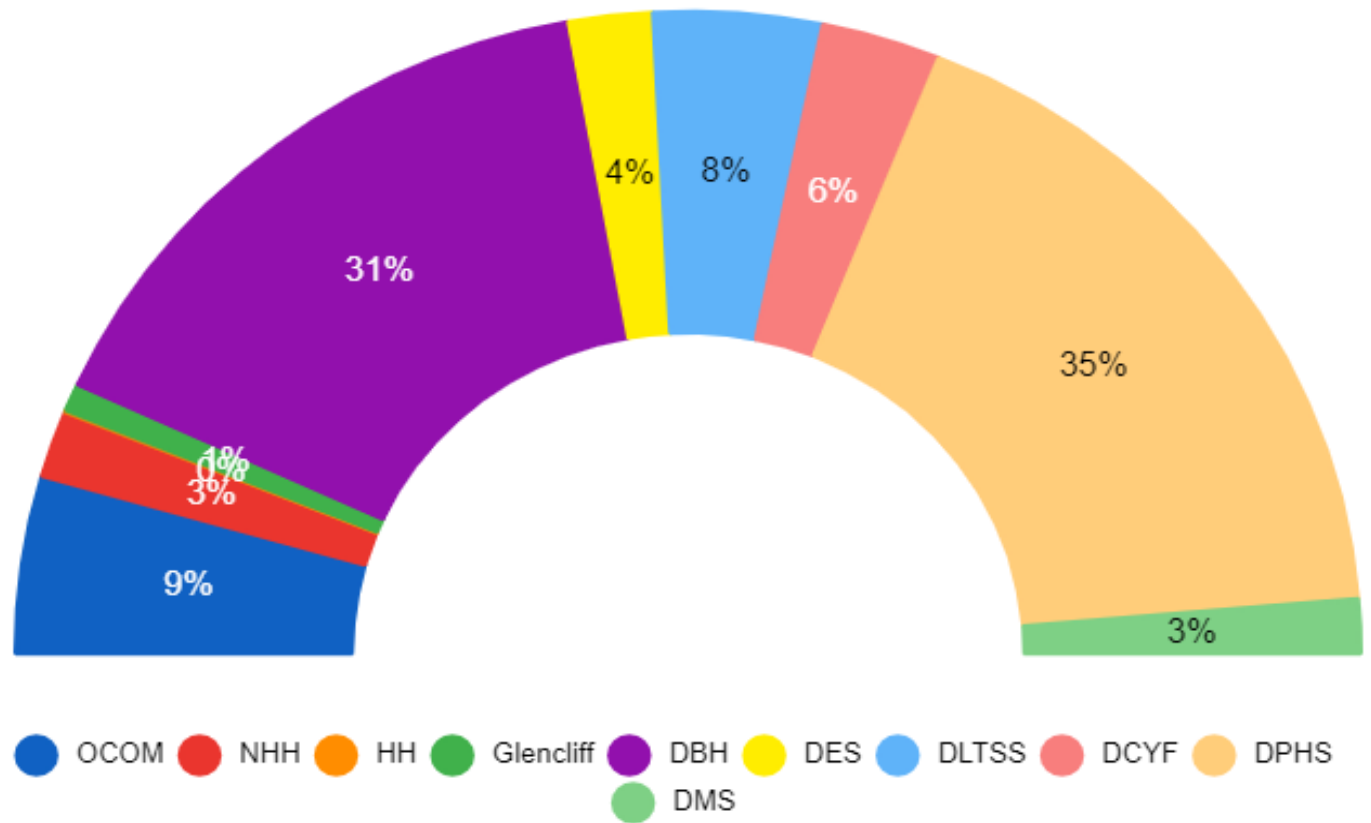
**Agreement Type:** The Contracts Bureau facilitates the development and/or approval of many different types of agreements. The following provides an overview of the types of agreements in effect as of July 31, 2023.

Agreement Type	Count
(SC) Service Contract	654
(SLRP) State Loan Repayment Program	61
(GA) Grant Agreements	37
(MOU) Memorandum of Understanding	30
(MD) Membership Dues	13
(CPA) Cooperative Project Agreement	12

(ESC) Equipment Service Contract	10
(LA) Lease Agreement	4
(UPA) Use of Premises Agreement	3
Other	7

**Volume by Program Area:** From 2018 to date, DHHS Divisions with the most procurements have been Public Health Services (DPHS - 35%) and Behavioral Health (DBH - 31%), followed by the Office of the Commissioner (OCOM – 9%); Long Term Supports and Services (DLTSS – 8%); Children, Youth and Families (DCYF – 6%); Economic Stability (DES – 4%); Medicaid Services (DMS – 3%); New Hampshire Hospital (NHH – 3%); Glenclyff Home (GH – 1%); and Hampstead Hospital and Residential Treatment Facility (HH <1%).

**% of DHHS Projects Approved**



### **Contract Monitoring and Management**

**Risk Assessments:** During the contracts development process DHHS conducts an organizational and financial risk assessment for each contracted vendor identified as a subrecipient (as defined in 2 CFR 200.331) to ensure vendors are properly monitored proportional to their risk of noncompliance with contractual and regulatory requirements. Based on the results of the risk assessment, Program, Contracts, and Legal identify appropriate monitoring provisions to be included in the agreement, such as recurring programmatic and/or fiscal reporting, meetings, file reviews, and/or site visits. The appropriate oversight provisions are incorporated into the final agreement and managed throughout the life of the contract. For example, some providers are required to provide monthly financial statements that are reviewed by DHHS staff.

**Contract Management:** Once a contract is in effect, DHHS staff are responsible to actively manage the contract, which includes:

- Ensuring vendor requirements and deliverables are met;
- Conducting monitoring activities as required in the agreement;
- Reviewing and approving invoices, which can include validating supporting documentation;
- Reviewing vendor reports; and
- Communicating with the vendor or working with DHHS legal taking corrective action to address deficient vendor performance.

The extent of oversight is very dependent upon the nature of the funding source, programmatic or financial risk, delivery of the service, and other factors. As noted above, each contract is customized to meet the specific needs of the Department and must ensure that services are delivered and Contractors are accountable. For example, DHHS' largest Managed Care Organization contracts include extensive oversight, reporting, and liquidated damages provisions. A vast majority of DHHS' contracts are cost-reimbursement contracts, which means payment is only made after the delivery of services can be validated.