

Audit Report

Maryland Health Benefit Exchange

October 2015



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

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October 2, 2015

Senator Guy J. Guzzone, Co-Chair, Joint Audit Committee
Delegate Craig J. Zucker, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Maryland Health Benefit Exchange (MHBE) for the period beginning June 1, 2011 and ending July 23, 2014. MHBE is primarily responsible for the establishment and operation of the Maryland state-based health insurance exchange, which is intended to provide a marketplace for individuals, families, and small businesses to purchase affordable health coverage in order to reduce the number of Maryland residents who have no health insurance.

Concurrent with this fiscal compliance audit of MHBE, we also conducted a performance audit of the processes employed and the decisions made by the MHBE in advance of the October 1, 2013 launch of the Maryland Health Connection – the internet portal established for the health insurance marketplace. The primary purpose of the performance audit was to identify and analyze factors that caused and contributed to the troubled launch of the Connection and associated computer platforms (hereinafter collectively referred to as the original Exchange System). Since the performance audit also included an evaluation of the procurement and contracting policies and practices for significant contract awards to develop the original Exchange System, those awards, which totaled approximately \$209 million, were not reviewed during the fiscal compliance audit. Additional comments about the performance audit, the results for which will be issued in a separate report, can be found on page 9 of this report.

Our fiscal compliance audit disclosed that MHBE did not ensure that certain sole source and emergency procurements were properly administered in accordance with its policies. MHBE also did not verify that certain vendor billings for hourly services were proper prior to payment, nor had it verified that entities receiving grants totaling \$23.4 million during fiscal year 2014 had spent the funds for appropriate purposes. In addition, MHBE did not submit requests for federal fund reimbursement in a timely manner; we estimated that lost interest income attributable to the delays totaled \$199,000.

We also found that MHBE did not maintain adequate equipment inventory records nor properly account for all equipment purchases, much of which pertained to computer equipment purchased prior to October 1, 2013 for the original Exchange System. MHBE was unable to provide a total value for its equipment, although we identified four contracts that provided for the purchase of equipment totaling approximately \$48.4 million.

We also noted security and control deficiencies over MHBE's information systems. For example, MHBE did not appropriately safeguard certain sensitive personally identifiable information and federal tax information residing on its replacement Exchange System (which was implemented in November 2014) and did not ensure such information still in the custody of vendors responsible for the original Exchange System was being properly secured. Furthermore, user access to the replacement Exchange System network, application files, and servers was not properly restricted.

An executive summary of our findings can be found on page 5 of this report. MHBE's response to our findings and recommendations is included as an appendix to this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas J. Barnickel III".

Thomas J. Barnickel III, CPA
Legislative Auditor

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Executive Summary

Legislative Audit Report on the Maryland Health Benefit Exchange (MHBE) October 2015

- **MHBE did not comply with its procurement policy when purchasing certain goods and services under the emergency and sole source procurement methods. Our review of five such contract awards totaling \$96.5 million disclosed that certain aspects of the procurements were not carried out in accordance with MHBE policies. Also, relevant procurement and contract documentation, such as evidence of negotiating for best price and terms, could not be provided. Consequently, there is a lack of assurance that MHBE obtained these services at the best value (Finding 1).**

MHBE should ensure its procurement policies and requirements are followed for sole source and emergency purchases and should retain relevant procurement and contract documentation to substantiate compliance with the policies.

- **MHBE did not routinely obtain or evidence its review of certain documentation to substantiate vendor billings. Our tests disclosed that MHBE made payments totaling \$8.2 million to vendors for hourly services without first obtaining time and payroll records to verify the propriety of the labor charges billed (Finding 2).**

MHBE should obtain adequate documentation to support all labor charges billed and review the documentation to ensure charges are proper prior to payment.

- **MHBE had not verified the propriety of fiscal year 2014 grant expenditures incurred by six entities providing outreach and enrollment services under the Connector Program. During that year, grant expenditures totaled \$23.4 million (Finding 3).**

MHBE should establish procedures to verify that expenditures charged to grants were appropriate and consistent with the purposes of the grants.

- **MHBE did not submit federal fund reimbursement requests in a timely manner, resulting in a loss of interest income of \$199,000. For expenditures incurred during the period of April 2011 through**

September 2014, MHBE submitted six federal fund reimbursement requests totaling \$73.9 million from 1 to 32 months after the claims could have been submitted (Finding 4).

MHBE should ensure that future requests for federal fund reimbursements are made in a timely manner.

- **MHBE had not implemented procedures to account for and control its equipment inventory, including computer equipment purchased for the original Exchange System (Finding 5).**

MHBE should establish procedures and properly maintain its equipment records, to account for and control its equipment inventory.

- **The Board of Trustees of the Exchange was found to have violated the Open Meetings Act by the State Open Meetings Law Compliance Board (Finding 6).**

The Board of Trustees of the Exchange should implement the recommendations of the Compliance Board to ensure compliance with the Open Meetings Act.

- **Numerous security and control issues were noted regard MHBE's information systems. Specifically, personally identifiable information was not appropriately safeguarded, the MHBE network was not properly secured and administrative access was excessive and not controlled, and assurance was lacking that critical data on contractor servers was secured. (Findings 7 – 10).**

MHBE should take the recommended actions to improve security and controls over its information systems.

Background Information

Agency Creation and Responsibilities

The federal Patient Protection and Affordable Care Act¹ (ACA) signed into law in March 2010 was intended to reform aspects of the private health insurance market, expand the availability and affordability of health care coverage, and improve the health care delivery system with the overall purpose to reduce the number of uninsured people nationally. The ACA mandated that most individuals² have coverage through a public program (such as Medicaid or Medicare) or a private health insurance policy and required a health insurance exchange be made available in all states to offer qualified individuals and small business with coverage effective January 1, 2014. The initial open enrollment period was October 1, 2013 through March 31, 2014.

The Maryland Health Benefit Exchange Act of 2011, Chapter 2, Laws of Maryland 2011, effective June 1, 2011, established the Maryland Health Benefit Exchange (MHBE) as a public corporation and independent unit of state government to implement the ACA in Maryland. Consistent with the ACA, the primary purpose of MHBE is to reduce the number of Maryland residents who have no health insurance.

The Act mandated that a nine-member board, called the Board of Trustees of the Exchange (MHBE Board), be responsible for governing and managing MHBE. Board members include the Secretary of the Department of Health and Mental Hygiene, the Maryland Insurance Commissioner, the Executive Director of the Maryland Health Care Commission, and six other persons appointed by the Governor including three who represent employers and individual consumer interests. Under its enabling legislation, MHBE is also exempt from a number of State rules and regulations, including procurement and inventory control. Consequently, the MHBE Board was responsible for establishing various policies and procedures governing MHBE operations.

MHBE worked with the Department of Health and Mental Hygiene, the Department of Human Resources, and the Maryland Insurance Administration to establish Maryland's state-based health insurance exchange, which was to provide a marketplace for individuals, families, and small businesses to purchase

¹Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

²Beginning January 1, 2014, the ACA requires most U.S. residents to maintain a minimum level of health insurance or pay a penalty. However, there are certain exemptions, which can be found at: <https://www.healthcare.gov>.

affordable health coverage. The original Exchange System, which was to become available on October 1, 2013, consisted of several computer processing platforms that perform various functions and which, acting together, was created to enable Maryland residents, via the internet, to explore qualified health insurance plans, compare rates, and to determine their eligibility for tax credits, cost sharing reductions, and public assistance programs such as Medicaid and the Maryland Children's Health Insurance Program. Once an individual or family selected a qualified health plan or available program, they could use the Maryland Health Connection internet portal of the Exchange System to enroll in that plan or program.

As a result of issues pertaining to the troubled launch of the original Exchange System, the MHBE Board accepted the recommendation of the Maryland Department of Information Technology's Secretary to leverage another state's system to upgrade the Maryland Health Connection for the next open enrollment. On April 1, 2014, the MHBE Board voted to approve this approach resulting in an emergency procurement with the vendor that developed the state of Connecticut's system to retrofit the Connecticut system to meet Maryland's requirements. This replacement Exchange System was implemented in November 2014.

Since April 1, 2014, small business owners have been able to enroll their employees in health insurance plans certified under the ACA Small Business Health Options Program. Employers with one to fifty employees may purchase insurance plans directly from a carrier, a third-party administrator, or a broker, and, for those who are eligible, receive federal small business tax credits.

MHBE also administers the Connector Program, which provides grants to entities organized geographically in Maryland to provide outreach and enrollment services in their respective regions with the purpose of educating and assisting Maryland residents in obtaining health insurance.

Financial Activity

According to State accounting records, MHBE expenditures from July 1, 2011 to June 30, 2014 totaled approximately \$264.3 million. These expenditures were funded by State funds totaling approximately \$29.0 million, and federal funds totaling approximately \$235.3 million. MHBE's expenditures during the period related primarily to information technology (IT) development, outreach and consumer assistance, and agency operations necessary to implement the state-based health insurance exchange.

MHBE's federal funding was primarily sourced through federal ACA grants (\$167.9 million) and Medicaid (\$67.4 million). The Department of Health and Mental Hygiene – Office of the Secretary, on behalf of MHBE, received four types of federal ACA grants: planning and early innovator grants provided support for research and planning on how the exchange would be operated, and for design and implementation of the Exchange System, and establishment level 1 and 2 grants provided support for costs associated with IT development, operations, consumer assistance, outreach/education, and other administrative costs related to implementing state-based exchange operations. Certain Medicaid funding was available due to the Medicaid eligibility determination components within the Exchange System.

Office of Legislative Audits' Performance Audit of MHBE

This fiscal compliance audit was conducted concurrently with a performance audit of the troubled launch of the original Exchange System. The fiscal compliance and performance audit reports are being issued separately.

The performance audit was conducted at the direction of the Maryland General Assembly's Joint Audit Committee to address concerns of the Joint Oversight Committee on the Maryland Health Benefit Exchange. Specifically, we conducted a performance audit of processes employed and the decisions made by MHBE in advance of the October 1, 2013 launch of the Maryland Health Connection. The purpose of the performance audit was to identify and analyze factors that caused and contributed to the troubled launch of the original Exchange System and to make recommendations for future information technology procurement and project development efforts. The audit addressed the following two objectives:

1. Evaluate the adequacy and appropriateness of the procurement and contracting policies and practices for significant contract awards; and
2. Evaluate the extent to which industry best practices for managing information technology development projects were employed, as they relate to governance, planning and design, resource management, coordination, system testing and functionality, and oversight.

According to agency records, there were 68 contract awards totaling approximately \$427.8 million (includes renewals, modifications, and task orders) made between June 11, 2011 and July 15, 2014. During our performance audit, we tested 13 contract awards totaling \$209.0 million which pertained exclusively to the development of the original Exchange System. The remaining 55 contract awards totaling \$218.8 million were subject to review during this fiscal

compliance audit. In summary, the fiscal compliance audit scope included an evaluation of other material procurement and contracting activity occurring prior to and after the launch of the original Exchange System, but excluded any procurements and contracting activities reviewed as part of the performance audit.

MHBE Potential Legal Action or Settlement

On February 24, 2014, MHBE entered into a separation agreement that terminated the contract with the primary vendor that developed the original Exchange System. Approximately \$72.6 million in payments had been made to the primary vendor pertaining to the aforementioned contract; the Maryland Attorney General has announced that a preliminary settlement agreement has been reached with the primary vendor who will pay the State and federal governments a total of \$45 million to settle all claims against this vendor. This settlement is subject to federal approval, which has not been received as of September 1, 2015. The State is considering legal actions against other vendors involved with the development of the original Exchange System.

Other Significant Matters

Federal Audit on Establishment Grant Funds

The United States Department of Health and Human Services (DHHS), Office of the Inspector General (OIG), issued an audit report in March 2015 that concluded that the Department of Health and Mental Hygiene (DHMH), which processes grant allocation and reimbursement requests on behalf of the Maryland Health Benefit Exchange (MHBE), did not allocate \$28.4 million in costs to its establishment grants and Medicaid funds in accordance with federal requirements and its cost allocation plan. According to the DHHS OIG audit report, all \$28.4 million in costs was misallocated to establishment grants, whereas all of these costs should have been allocated to the Medicaid program, which has a lesser federal fund participation rate.

The audit concluded that MHBE's cost allocation methodology did not prospectively use updated or better data when available for certain costs totaling approximately \$15.9 million. Specifically, for the three-month period of April 2014 through June 2014, MHBE used outdated estimated data to calculate allocated costs instead of updated, actual enrollment data that was available as of March 31, 2014. Regarding the remaining \$12.5 million, for the 21-month period of July 2012 through March 2014, the audit report stated MHBE's cost allocation methodology used to estimate enrollment populations was flawed, and MHBE never amended the cost allocation plan. Specifically, the cost allocation methodology included an error related to the use of the calendar year for enrollment estimates that affected qualified health plan and Medicaid enrollees.

The audit recommended that MHBE refund the \$28.4 million to the Centers for Medicare and Medicaid Services (CMS); however, MHBE would be allowed, with CMS approval, to claim a portion of these costs through the Medicaid program at Federal financial participation rates ranging from 50 to 90 percent. In addition, the audit recommended MHBE immediately revise its cost allocation methodology and establish adequate controls to ensure proper allocation of costs.

MHBE disagreed with the finding of \$28.4 million in costs being misallocated, but agreed to establish adequate controls to ensure proper allocation of costs. We were advised by MHBE management that it believes it followed CMS guidance. To what extent MHBE will be required to reimburse the federal government or resubmit the claims at a lower federal participation rate is unknown, as CMS has not concluded on the matter. If CMS requires these funds to be returned or allows the claims to be resubmitted through the Medicaid program at a lesser

reimbursement rate, additional State funds would be needed to cover these past costs.

Advanced Premium Tax Credit

The Advanced Premium Tax Credit (APTC) is a federal tax credit that assists eligible consumers in affording the premium payments for health insurance coverage purchased through exchanges. For this credit, consumers have the choice to apply the credit against (reducing) monthly premium payments to consumer selected insurance companies up to the maximum APTC amount, or claim the entire credit at the end of year as a refundable credit when income taxes are filed with the Internal Revenue Service. According to MHBE records, there were 46,324 Maryland households that purchased insurance policies and were eligible to claim \$100.1 million in APTCs for calendar year 2014.

The original Exchange System developed and managed by MHBE was responsible for determining the eligibility and amount of the maximum APTC that could be claimed for each consumer while shopping for and purchasing insurance through the Exchange. MHBE identified that the original Exchange System was providing a higher maximum APTC than was proper for certain individuals under specific plans for one insurance provider. This was due to a coding error in the system that was corrected in February 2014. Specifically, improper effective dates were used to calculate the maximum APTC for affected individuals that purchased insurance through the original Exchange System between January 7, 2014 and February 2, 2014.

An analysis was performed by a vendor contracted by MHBE to determine the fiscal impact of this error. The vendor reported that during the aforementioned period, there were 3,484 households with policies that received APTCs greater than they should have totaling approximately \$1.7 million. Due to limited functionality of the original Exchange System, and its inability to provide requested reports and other technical issues with the troubled original Exchange System, we did not perform testing to determine if other populations of consumers received proper APTCs, and could not validate the accuracy or completeness of the errors reported by MHBE or the contractor.

As of February 2015, we were advised by MHBE management that it will work with the federal government to determine how the \$1.7 million in excess APTCs will be funded, but consumers will not be held responsible for this error since the consumer had no control over the computational process nor any way of knowing that the calculated results were incorrect. We were further advised that the options for the source of the repayment are the State, the insurance provider, the

federal government (essentially forgiven), or some combination of all three. For the individuals with improper calculations, MHBE sent a letter notifying them that they may have received more financial assistance through the APTC in 2014 than they were eligible for, but are not responsible for repaying this excess amount of the APTC as MHBE has addressed this issue on their behalf.

Medicaid Eligibility Determinations

The original Exchange System that launched on October 1, 2013 was not able to make proper Medicaid eligibility determinations for numerous cases based on consumer information provided. This resulted in populations of individuals being improperly approved for Medicaid benefits; in some instances, the individuals had enrolled in a qualified health plan and were also enrolled in Medicaid. The fiscal impact of these improper eligibility determinations in terms of Medicaid benefits being paid would not impact MHBE's budget, but rather would increase DHMH's Medicaid costs. The total fiscal impact was unknown at the time of our audit.

MHBE and DHMH attempted to identify the underlining issues causing the improper eligibility determinations and provide remediation activities. Although MHBE and DHMH were able to identify certain eligibility requirements, such as citizenship and income verifications, as major contributing factors to the improper determinations, reliable data on the overall number of improper determinations made, and the related fiscal impact, was not developed. For example, MHBE and DHMH management advised us that an indeterminable number of individuals received an improper eligibility determination for several reasons and may have been counted more than once when trying to determine the overall effect of the erroneous determinations.

MHBE and DHMH management also advised us that individuals enrolled during the initial period were subjected to review efforts (for example performing data analysis and researching information on individuals in other State or federal databases) that allowed MHBE and DHMH to remediate some cases. When eligibility could not otherwise be verified, individuals were required to re-enroll through the replacement Exchange System which launched on November 18, 2014. This effectively resulted in a proper Medicaid eligibility redetermination at that time. For individuals that did not re-enroll into the replacement Exchange System, their assistance coverage terminated effective March 31, 2015. As a result, individuals with improper eligibility determinations could have been receiving Medicaid benefits they were not entitled to from January 1, 2014 to March 31, 2015 with the costs paid by the federal government and the State. The extent to which the federal government will take action, if any, on ineligible benefits received by affected individuals is unknown.

Findings and Recommendations

Purchases and Disbursements

Finding 1

The Maryland Health Benefits Exchange (MHBE) procurement policy was not followed for certain contracts awarded under the emergency and sole source procurement methods. In addition, MHBE did not always retain relevant procurement documentation.

Analysis

The MHBE procurement policy was not followed for certain contracts awarded under the emergency and sole source procurement methods. In addition, MHBE did not retain certain relevant procurement documentation to substantiate compliance with policies and requirements. Consequently, there is a lack of assurance that MHBE obtained certain services at the best value.

We reviewed five contracts totaling \$96.5 million procured under the emergency (three contracts totaling \$90.6 million) and sole source (two contracts totaling \$5.9 million) methods between July 2013 and April 2014 that had been approved by the Board of Trustees of the Exchange (MHBE Board), as required. We found problems with certain aspects of these procurements as follows:

- For the two sole source contracts, relating to project manager support and IT software maintenance services, the sole source justifications did not substantiate that only one vendor was available to provide the services as required by MHBE policy. In general, the primary justification for these procurements being sole sourced was because the vendors being contracted with were subcontractors under the terminated primary vendor who developed the original Exchange System. However, this sole source justification also acknowledged that other vendors were available to provide such services. On June 24, 2014, the MHBE Board retroactively ratified these contracts as emergency procurements, even though the contracts had already been awarded under the sole source method in March and April 2014. Although the circumstances pertaining to the need for the original awards suggest that the procurements could have been justified as an emergency procurement, this subsequent action did not provide an effective remedy. In this regard, the re-designation created a different policy violation since MHBE did not seek other bids, which is generally required for emergency procurements. The Board action occurred after the federal Department of Health and Human Services – Office of the Inspector General requested procurement information for these contracts on May 28, 2014.

- Another contract totaling \$1.6 million and a task order under a fourth contract totaling \$1.2 million included five and four-year terms, respectively, even though they were made under the emergency procurement method. The contract related to consumer relationship software solutions and the task order related to a lease agreement for office space. According to the MHBE procurement policy for emergency procurements, this method will be used to meet the immediate emergency and shall not be used to meet long-term requirements.
- Sufficient documentation relating to the MHBE Board's approval process was lacking for all five contracts. Although the MHBE Board officially documented its approval of procurements through its meeting minutes, there were no records indicating what procurement materials were provided to the Board, any concerns raised, or matters discussed. In some instances, the applicable meeting minutes did not include the vendor's name or contract award amount.
- MHBE could not provide certain relevant procurement documentation for all five contracts tested such as documentation to support the negotiations of pricing and contract terms, which is required by policy for all procurements. Also, MHBE was missing certain contract exhibits, such as vendor financial disclosures. It appears that the cause of these documentation retention problems is attributable, in part, to the lack of permanent procurement files.

Under the provisions of the Maryland Health Benefit Exchange Act of 2011, MHBE is not subject to the majority of procurement laws under the State Finance and Procurement Article of the Annotated Code of Maryland or related State Procurement Regulations. Instead, the Act directs the MHBE Board to adopt written policies and procedures governing all procurements of the Exchange.

Recommendation 1

We recommend that MHBE comply with its procurement policy when awarding contracts. Specifically, we recommend that MHBE

- solicit competitive bids when possible and practical for emergency procurements, and ensure that emergency procurement contracts are not issued on a long-term basis;**
- ensure that the proper method is used when making procurements;**
- retain relevant procurement and contract documentation, such as records of negotiations and contract exhibits in a permanent procurement file; and**
- maintain complete records of Board minutes pertaining to contract approvals.**

Finding 2

MHBE made certain payments for contractual services without routinely obtaining or evidencing its review of documentation supporting vendor billings.

Analysis

MHBE did not routinely obtain certain documentation (such as contractor employee's time and payroll records and subcontractor invoices) to substantiate vendors' billed hours. Furthermore, for certain other payments, evidence was lacking to substantiate that MHBE had reviewed the billing documentation submitted by vendors prior to payment. MHBE contracted with certain vendors to obtain various services to remediate and replace the original Exchange System, and provide project management support. Each vendor billed MHBE based on the number of hours worked by its employees and subcontractors to complete specific tasks at hourly rates stipulated in each contract.

Our test of 15 payments totaling \$18.1 million that MHBE made to five vendors between November 2013 and August 2014 disclosed that MHBE did not receive adequate documentation such as time records to support eight payments made to three vendors totaling \$8.2 million. Subsequent to our test, the vendors provided documentation, which appeared to sufficiently support the amounts billed and paid. For additional payments totaling \$3.2 million, there was no evidence MHBE had reviewed the vendor billing documentation prior to making the payments. Expenditures for contractual services (which include hourly services) totaled approximately \$121.5 million in fiscal year 2014.

Recommendation 2

We recommend that MHBE obtain from contractors adequate documentation, such as employee time and payroll records, to support all billed charges, and perform a documented review of the documentation to ensure that such charges are supported and in accordance with the related contract terms prior to making payment.

Connector Program Grants

Finding 3

MHBE had not verified the propriety of grant expenditures for the Connector Program paid with State general funds and federal funds.

Analysis

MHBE had not verified the propriety of grant expenditures for the Connector Program, which totaled approximately \$23.4 million in fiscal year 2014 (\$9 million in general funds and \$14.4 million in federal funds). Effective July 1, 2013, MHBE administered grants supporting the Connector Program, to provide outreach and enrollment services to individuals who did not have insurance and to work with vulnerable and hard-to-reach populations. The Connector Program is administered by six connector entities, each receiving a separate annual grant award, serving in six geographic regions throughout the State. Connector entities submit expenditure reports quarterly to MHBE and are required to return unspent grant funds within 60 days after the end of each State fiscal year.

Although we were advised that MHBE reviewed the fiscal year 2014 quarterly expenditure reports, which were a high-level summary of expenditures, as of January 2015, MHBE did not have a process in place to verify the propriety of expenditures being reported. Specifically, detailed support for expenditures was not obtained and reviewed. Consequently, MHBE lacked assurance that expenditures incurred by the connector entities were appropriate and for purposes specified by the grant agreements.

Grant agreements for these entities state that funds shall be expended in accordance with the budget and that any expenditure not in accordance with the budget or not consistent with the purposes of the grant must be approved by MHBE or MHBE may require repayment of the funds. In addition, Section 7-402 of the State Finance and Procurement Article of the Annotated Code of Maryland requires that, for grants that are State funded, granting agencies shall determine whether the grantee has spent and accounted for the State aid in accordance with the grant agreement.

We were advised that MHBE was developing procedures for monitoring connector entity activity that would include conducting site visits; however, at the time of our review, MHBE had not planned to establish procedures to evaluate the propriety of grant expenditures by reviewing supporting documentation.

Recommendation 3

We recommend that MHBE establish procedures to verify the propriety of expenditures charged to Connector Program grants, including fiscal year 2014 activity and subsequent grant years.

Federal Funds**Finding 4**

Federal fund reimbursement requests were not made timely, resulting in a loss of interest income of \$199,000.

Analysis

Federal fund reimbursement requests were submitted from 1 to 32 months after the claims could have been submitted, resulting in lost interest income to the State of approximately \$199,000 for expenditures made during the period from April 2011 through September 2014. MHBE submits reimbursements requests to the Department of Health and Mental Hygiene – Office of the Secretary (DHMH O/S), and DHMH O/S requests the funds from the federal government on behalf of MHBE. MHBE submitted only six federal fund reimbursement requests that totaled approximately \$73.9 million during the aforementioned period.

According to MHBE management personnel, submissions were not timely because the agency lacked both dedicated personnel (that is, a Chief Financial Officer) and standard procedures to perform the federal fund reimbursement process timely and properly. Procedures were adopted and implemented in September 2014.

Recommendation 4

We recommend that MHBE ensure that future requests for federal fund reimbursements are made in a timely manner.

Equipment

Finding 5

MHBE did not maintain adequate equipment inventory records, nor properly account for all of its equipment.

Analysis

MHBE did not maintain adequate equipment inventory records, nor properly account for its entire equipment inventory at the time of our review in September 2014.

- An equipment inventory control account was not maintained as required by MHBE policy. A control account is a continuous summary of transactions and serves as a total dollar value control over amounts included in the detail records and should be maintained separately from the detailed inventory record and by different personnel.
- MHBE could not provide complete detailed equipment records for equipment owned by MHBE residing at locations other than its headquarters. With respect to equipment at other locations, MHBE provided two detailed equipment records that did not include required information, such as equipment acquisition dates, values, and a sufficient description of the equipment. In addition, MHBE was not able to provide a total value of equipment owned for the entire agency. Although the value of equipment at MHBE is unknown, we reviewed four major contracts that included the purchase of approximately \$48.4 million in equipment by MHBE. This equipment total includes the purchase of software and hardware items, primarily for the Exchange System, for which the individual item costs could not be readily determined.
- Our review of equipment purchased from April 2012 to December 2013 totaling \$33 million under one of the four major contracts disclosed that MHBE did not establish a process to ensure that hardware purchases on the invoices were actually provided by the vendor prior to payment. In this regard, MHBE was not aware of what equipment was actually received until the first physical inventory was performed by federal auditors and MHBE personnel in June 2014. The purpose of this physical inventory was to determine whether the equipment included in the contract requirements and paid for by MHBE was actually received and to establish a detailed equipment record. We were advised by MHBE management that, while performing the inventory, discrepancies resulting from improperly tagged equipment were

identified and resolved. In MHBE's opinion, all items procured under this contract were properly accounted for; however, the resulting records provided to us were incomplete because they did not include certain information required by MHBE policy, such as a sufficient description of the individual equipment items, the cost of each item, and the acquisition dates.

MHBE formally established an internal *Capital Inventory Control Policy* in June 2014 to provide consistent guidance for the management and protection of equipment purchased; however, this *Policy* was not being adhered to at the time of our review. Although MHBE is not subject to the Maryland Department of General Services' *Inventory Control Manual*, this *Manual* was used when preparing the *Policy*. The *Policy* appears to provide for adequate controls over equipment. According to the *Policy*, the equipment records should reflect information such as, but not limited to, item description, property tag number, serial/license number, purchase order, physical location, assignment, acquisition cost and date, accountable officer, and the most recent physical inventory date. Also, according to the *Policy*, an inventory control account summarizing the history of acquisitions and disposals will be maintained, and the detailed equipment records will be periodically reconciled to the inventory control account and the discrepancies investigated.

Recommendation 5

We recommend that MHBE comply with its *Policy* and

- a. establish an independent control account and periodically reconcile the control account to the detail records;**
- b. establish complete detail records reflecting all of MHBE's equipment, including individual item description, acquisition cost and date, and other unique identifying information; and**
- c. ensure that all purchased equipment items are received prior to payment and properly recorded in MHBE's inventory records.**

Board of Trustees of the Exchange Meetings

Finding 6

The MHBE Board was found to have violated the Open Meetings Act by the State Open Meetings Law Compliance Board.

Analysis

The MHBE Board was found to have violated the Open Meetings Act by the State Open Meetings Law Compliance Board. State law established the State Open Meetings Law Compliance Board (Compliance Board) to receive, review and

resolve complaints from any person alleging a violation to the Open Meetings Act. MHBE is subject to the Open Meetings Act, the purpose of which is to increase the public's faith in government, ensure the accountability of government to the public, and enhance the public's ability to participate effectively in the democratic process.

The Compliance Board received six complaints alleging that the MHBE Board violated the Open Meetings Act in numerous ways during MHBE Board meetings held between June 2011 and March 2014. During that period, the MHBE Board held 66 meetings of which 44 included closed sessions. As of November 2014, the Compliance Board had issued three opinions (public record) in reference to four of these six complaints. (The Board decided not to consider the other two complaints.) The Compliance Board reported seven violations based on these three opinions.

The MHBE Board was found to be in violation with the Open Meetings Act relating to content, untimely notice and inadequate disclosures of meetings, and failing to adopt post closed session summaries. For example, the MHBE Board was found to be in violation of the Open Meetings Act because the content of closed session discussions exceeded the scope of the topics allowed by State law for calling the MHBE Board into the closed session. In addition, the MHBE Board acknowledged that it did not regularly prepare a written closing statement before voting to convene in closed sessions held in 2012 and 2013 (there were 32 closed sessions during those two years). The MHBE Board agreed with the Compliance Board's recommendations to address the violations.

Recommendation 6

We recommend that the MHBE Board implement the recommendations of the Compliance Board to ensure future compliance with the Opening Meetings Act.

Information Systems Security and Control

Background

On February 24, 2014, MHBE entered into a separation agreement that terminated the contract with the primary contractor who developed the original Exchange System. Nevertheless, MHBE decided to keep the MHBE-owned equipment containing enrollment data from the original Exchange System launch at a datacenter owned by the parent company of the primary contractor, pending the resolution of litigation with contractors.

Subsequently, MHBE contracted with a vendor to host the replacement Exchange System and related services that became operational in November 2014. To help provide these services, this vendor subcontracted with other vendors for datacenter services, disaster recovery services, system maintenance and operation of servers and network equipment, and wide area network and telecommunications management.

The replacement Exchange System consists of a public consumer internet portal and an internal worker internet portal. The consumer portal allows for consumers to shop for healthcare plans, determine eligibility for various subsidies/tax credits, enroll (or renew enrollment) in qualified healthcare plans or Medicaid, and manage related information (for example, demographics, income, health information). Brokers and connector entities also have access to the consumer portal to assist consumers in enrolling in healthcare plans.

The worker portal provides State employees and contractors the ability to support the consumers' enrollment in healthcare plans or Medicaid, manage related case information, and manage the application process. Numerous State employees from DHMH and the Department of Human Resources (DHR) also assist in supporting MHBE by performing case worker services pertaining to clients. Adjustments were made to preexisting State network connections to enable the MHBE and the applicable DHMH and DHR case workers to connect to the datacenter hosting the replacement Exchange System.

Finding 7

MHBE inappropriately stored sensitive personally identifiable information and federal tax information in clear text.

Analysis

MHBE inappropriately stored sensitive personally identifiable information (PII) and federal tax information (FTI) in clear text.

- As of April 28, 2015, the replacement Exchange System database contained sensitive PII and FTI for 591,858 unique individuals in clear text. This included, but was not limited to, full name, date of birth, social security number, and household income. In addition, we were advised that this sensitive PII and FTI were not protected by other substantial mitigating controls, such as the use of data loss prevention software designed to guard against unauthorized transmission of sensitive data.

- An MHBE server was used as a repository for sensitive enrollment files and for the transfer of these files to health insurance carriers and supporting vendors. We identified two unencrypted files on this server that contained significant amounts of PII, including full names, social security numbers, and addresses. One of these unencrypted files contained records with 338,784 unique social security numbers while the other file contained records with 10,724 unique social security numbers. In addition, we were advised that this sensitive PII was not protected by other substantial mitigating controls, such as the use of data loss prevention software.

PII and FTI, which is commonly sought by criminals for use in identity theft, should be protected by appropriate information system security controls. The State of Maryland Department of Information Technology's (DoIT) *Information Security Policy* states that agencies should protect confidential data using encryption technologies and/or other substantial mitigating controls.

Recommendation 7

We recommend that MHBE

- perform an inventory of its systems and identify all sensitive PII and FTI,**
- determine if this sensitive information is properly protected by encryption or other substantial mitigating controls, and**
- use approved encryption methods to protect all sensitive PII and FTI that are not otherwise properly protected.**

Finding 8

Administrative access to the MHBE network was excessive and access to critical replacement Exchange System files was not properly restricted.

Analysis

Administrative access to the MHBE network was excessive and access to critical replacement Exchange System files was not properly restricted. Consequently, many users could perform critical functions that were not needed to perform their job duties.

- Administrative access to the MHBE network was excessive. Specifically, we noted that 55 accounts, assigned to 50 unique users, were improperly classified as domain administrators. Accounts that are domain administrators are the most powerful and privileged accounts in the network. Similarly, 47 users of 59 accounts were improperly classified as local administrators on a critical database server, application servers, and web server. These users had excessive and unnecessary access and control over these servers. As a result

of these conditions, users of the aforementioned accounts could make unauthorized modifications to critical data without detection.

- MHBE did not properly restrict modification access to critical replacement Exchange System application and web server files. Specifically, we noted that 52 accounts, assigned to 46 unique users, had improper modification access to 898 web server files and directories, and 528 application server program files and directories. As a result, of these conditions, erroneous or unauthorized changes to replacement Exchange System application and web server files and directories, and to replacement Exchange System data, could occur.
- MHBE did not properly restrict access to enrollment and report files, containing unencrypted sensitive PII, on a repository and transfer server. We determined that 5 health insurance carriers, 2 supporting vendors, and 10 report users could access this server for purposes of transferring and receiving files. We were advised that each of these 17 users only required access to the files in their assigned directories; however, the file permissions on this server allowed each of these 17 users improper access to all of the other users' files. As a result of this condition, these 17 users could download files containing substantial amounts of PII from other users' directories.

DoIT's *Information Security Policy* states that each agency must establish an authorization process which specifically grants access to information ensuring that access is strictly controlled, audited, and that it supports the concepts of "least possible privilege" and "need to know."

Recommendation 8

We recommend that

- a. domain administrator and local server administrator privileges only be assigned to users requiring such privileges,**
- b. modification access to critical application and web server files and directories be limited to only those users who require such access, and**
- c. access to enrollment and report files be restricted to only those users who require such access.**

Finding 9

MHBE lacked assurance as to the security over critical data on servers hosted by contractors.

Analysis

MHBE lacked assurance as to the security over critical data on servers hosted by contractors for both the original and replacement Exchange Systems.

Original Exchange System

MHBE lacked assurance that the original Exchange System servers still in the custody of the parent company of the primary contractor were properly secured. These servers hosted enrollment data containing sensitive PII and FTI. As of May 2015, MHBE had neither performed independent security reviews of the aforementioned contractor's data center for the original Exchange System nor obtained reports of independent, standards-based security reviews of the parent company of the primary contractor. Such reviews should include tests to ensure that sufficient controls existed over the equipment, data, and programs residing on the original Exchange System servers following the termination of the contractor's original contract in February 2014.

Based on our inquiries, it was subsequently determined that the aforementioned parent company of the primary contractor did have an independent, standards-based security review of its system (which hosted the original Exchange System) performed for the period January 1, 2014 to September 30, 2014. We reviewed the resulting Service Organization Controls (SOC) report dated January 21, 2015 to ensure that the security review assessed and tested the appropriate controls (for example, security, confidentiality, and privacy) over the system hosting the original Exchange System servers. Although our review did not disclose any significant operational or security-related concerns in the SOC report, MHBE should ensure that security reviews continue to be performed until such time that the equipment, data, and programs residing on the original Exchange System are transferred out of the custody of the parent company of the primary contractor.

Replacement Exchange System

The contract between MHBE and the contractor responsible for hosting the network and servers for the replacement Exchange System did not provide adequate assurances that the network and servers were properly secured.

- The contract did not require an annual independent security review be performed of the replacement Exchange System. Instead, the contract required that the contractor obtain an independent, standards-based security review only once every two years. Based on our experiences at other government agencies, and considering the critical nature and importance of this network and servers, we believe that performing an independent security review only once every two years is not sufficient to provide MHBE with timely assurances that security controls over the hosted systems are adequate.
- The contract did not require that the independent, standards-based security review be structured to provide the proper assurances with respect to controls which address for example, security, availability, and confidentiality. In this regard, our review of the MHBE network disclosed certain control deficiencies such as the lack of a network-based intrusion detection prevention system (See Finding 10).
- The contract did not contain any provisions that the primary contractor's two main subcontractors (which performed material programming and operational services for the replacement Exchange System) were required to obtain independent, standards-based security reviews.

The American Institute of Certified Public Accountants has issued guidance concerning examinations of service organizations. Based on this guidance, service organizations (like the aforementioned contractors and subcontractors) may contract for an independent review of controls and the resultant independent auditor's report is referred to as a SOC report. There are several types of SOC reports, with varying scopes and levels of review and auditor testing. One type of report, referred to as a SOC 2 Type 2 report, includes the results of the auditor's review of controls placed in operation and tests of operating effectiveness for the period under review and could include an evaluation of system security, availability, processing integrity, confidentiality, and privacy.

Recommendation 9

We recommend that MHBE

- obtain SOC reports for periods during which MHBE enrollment data are hosted by the parent company of the primary contractor responsible for the original Exchange System,**
- review all SOC reports and take appropriate action to ensure that any critical operational and security-related concerns are properly addressed, and**
- attempt to amend the existing contract between MHBE and the primary hosting contractor for the replacement Exchange System to mandate that**

comprehensive SOC 2 Type 2 reviews be performed at least annually for MHBE’s hosted operations and when material services are provided by subcontractors.

Finding 10

The MHBE network was not properly secured at the hosting datacenter.

Analysis

The MHBE network was not properly secured at the hosting datacenter for the replacement Exchange System.

- Network-based intrusion detection prevention system (IDPS) coverage did not exist for encrypted traffic entering the MHBE network at the aforementioned datacenter. Although the devices used to filter traffic and apply IDPS coverage to such traffic had the capability to decrypt and inspect such traffic for IDPS purposes, these features were not enabled on these devices. Additionally, host-based intrusion protection system software was not installed directly on any of the servers which received encrypted traffic. In this regard, we identified 16 separate destination servers that received encrypted traffic. DoIT’s *Information Security Policy* requires that agencies protect against malicious code and attacks by implementing protections including the use of IDPS to monitor system events, detect attacks, and identify unauthorized use of information systems and/or confidential information.
- Numerous DHR and DHMH employees (who were not case workers) had unnecessary network-level access to the MHBE worker portal. As a result, these employees had access, at a network level, to the MHBE network devices, thereby putting these devices at risk if they were not properly secured. DoIT’s *Information Security Policy* requires that agencies must ensure that only authorized individuals have access to confidential information and that such access is strictly controlled, audited, and that it supports the concepts of “least possible privilege” and “need to know.”

Recommendation 10

We recommend that MHBE

- a. identify how IDPS coverage should be best applied to encrypted network traffic to these datacenter servers and subsequently implement such coverage; and**

- b. restrict, to the extent possible, network-level access by DHR and DHMH personnel to the worker portal to only those individuals requiring such access.**

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Maryland Health Benefit Exchange (MHBE) for the period beginning June 1, 2011 and ending July 23, 2014. The audit was conducted 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.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine MHBE's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included certain purchases, disbursements, and contract monitoring activities; awarding and monitoring of State-awarded grants; reimbursement requests for expenditures supported by federal funds; information system security; certain human resource and payroll activities (such as setting salaries for unique positions as allowed by State law); and equipment inventory. As described on page 9, this audit excluded certain procurement activities that were reviewed as part of a performance audit we conducted pertaining to the troubled launch of MHBE's original Exchange System.

Our audit did not include certain support services provided to MHBE by the Department of Health and Mental Hygiene – Office of the Secretary. These support services related to financial services, human resources, information technology, grant management, and payroll. These services included, but are not limited to: recording payment transactions in the State's accounting system; providing guidance during fiscal year-end closeout; draw downs of federal funds including indirect cost allocations; reconciling grant revenue and expenditures; processing payroll, timekeeping records, and personnel transactions; and general network management services. These support services are included within the scope of our audit of the Office of the Secretary. In addition, our audit did not include an evaluation of internal controls for federal financial assistance programs because the State of Maryland engages an independent accounting firm to annually audit such programs administered by State agencies, including MHBE.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of MHBE's operations, and tests of transactions. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk. Unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, the results of the tests cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these various sources were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

MHBE's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect MHBE's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. This report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant

findings were communicated to MHBE that did not warrant inclusion in this report.

MHBE's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise MHBE regarding the results of our review of its response.

APPENDIX

750 EAST PRATT STREET, 16TH FLOOR
BALTIMORE, MD 21202
marylandhbe.com



September 23, 2015

Mr. Thomas J. Barnickel III, CPA
Legislative Auditor
Office of Legislative Audits
301 West Preston Street, Room 1202
Baltimore, MD 21201

Dear Mr. Barnickel:

Thank you for your letter and opportunity to respond to the draft fiscal compliance audit report on the Maryland Health Benefit Exchange (MHBE) for the period beginning June 1, 2011 through July 23, 2014. Enclosed you will find MHBE's response and plan to address the report's recommendations.

MHBE appreciates OLA's work and suggestions for improvement. Since the audit, MHBE, which was still a young agency during the audit period, has made considerable progress in enhancing its infrastructure and improving overall operations, accountability, security, and transparency. These efforts are ongoing, and MHBE will incorporate OLA's guidance as it continues to build upon these achievements.

While MHBE does not agree with some of the audit's findings, MHBE largely concurs with OLA's recommendations. The agency has either implemented, or taken significant steps towards implementing, all of these recommendations.

Procurement

MHBE does not agree with the OLA's finding that it acted in violation of its Board of Trustees' procurement policies. The agency solicited competitive bids whenever possible, and when emergency or sole source procurements were necessary, it followed all governing protocols. Many of the contracts reviewed by OLA arose out of the failure of MHBE's first website, which left thousands of Marylanders unable to access health insurance. Stabilization of the website enabled completion of the first open enrollment, with over 400,000 Marylanders obtaining coverage. Thereafter, the 6-month rebuild of MHBE's system, in much less time than developing an IT system of this scale would normally require, resulted in a nationally-recognized turn-around and a highly successful 2nd open enrollment. These imperatives gave rise to unique and exigent circumstances which at times required emergency or sole source procurements. Moreover, the Board of Trustees' procurement policies, consistent with MHBE's statute, place discretion and

approval for significant contracts with the Board of Trustees, which considered and approved all of the procurements reviewed by OLA.

Vendor Payments and Connector Entity Expenditures

While vendors did not always submit employee timesheets or payroll records, MHBE received summaries of vendor work and conducted weekly meetings to review the work of vendors. MHBE also reviews and approves Connector entity performance and expenditure reports. The State's 2014 Single Audit also corroborated that MHBE had complied with federal grant expenditure requirements.

Federal Fund Reimbursement Requests

While MHBE's quarterly Medicaid claims for reimbursement have not always been timely, MHBE must wait for information from a sister agency before submitting its claims in a short window of time. MHBE has implemented processes to ensure that claims are as timely as possible.

Equipment Inventory

MHBE did not initially implement adequate procedures to account for its original IT system equipment purchased by its prime contractor. Since that time, however, MHBE has taken numerous steps to improve oversight, record-keeping, and accounting of all its equipment, including use of the Maryland Inventory Tracking System, in compliance with the Department of General Services' standards.

Compliance with the Open Meetings Act

MHBE agrees that its Board of Trustees had room to improve its Open Meetings Act compliance, and the Board of Trustees has followed OLA and Compliance Board recommendations in this regard, *e.g.* providing advanced notice and reporting of closed session matters.

IT System Security

The security of MHBE's systems is among the agency's highest priorities, and it has protected all confidential data in compliance with federal requirements. Following CMS' *Minimally Acceptable Risk Standards Exchange* (MARS-E) guidelines, MHBE has employed a layered approach to security. Multiple significant security controls - like firewalls, management zones and access monitoring - assure the security of its systems and confidential data. Because of these layers of redundancy, none of the areas identified for improvement by OLA put system security or confidential data at substantial or material risk. MHBE has also received all requisite federal IT security approvals, including receiving authority to connect after onsite reviews by the Center for Consumer Information and Insurance Oversight (CCIO) and the Internal Revenue Service (IRS).

As with every complex IT system, maintaining the highest levels of security requires constant vigilance and enhancement. Committed to that ongoing effort, MHBE is constantly evaluating and implementing potential improvements. The agency was in the course of implementing some of OLA's recommendations at the time of the audit, and it is in the process of addressing the remainder of the recommendations.

U.S. Dept. of Health & Human Services Office of Inspector General (OIG) Report
Finally, as MHBE noted earlier this year, the OIG found no fault with MHBE's use of federal funds to establish Maryland's health insurance marketplace. MHBE respectfully disagreed, however, that MHBE erred in its allocation of costs between Medicaid and grant funds for qualified health plans. Acting throughout in good faith, MHBE followed federal guidance and passed multiple reviews prior to the audit. Since then, CMS has released additional cost allocation guidance, with which MHBE has complied. MHBE looks forward to continuing work with CMS to ensure funds are appropriately allocated, allowable, and reasonable. See <http://www.marylandhbe.com/wp-content/uploads/2015/08/03272015-OIGAuditResponse.pdf>.

In conclusion, MHBE has devoted considerable resources and attention to the development and implementation of optimal procurement, fiscal, inventory control, contract management, and system security practices. MHBE will do everything possible to continue and improve upon this commitment to responsible stewardship of its mission and resources.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,



Carolyn Quattrocki
Executive Director

cc:

Van Mitchell, Secretary, DHMH
Susan Steinberg, Interim Inspector General, DHMH
Sarah Rice, Assistant Attorney General, MHBE
Timothy Brooks, OLA Performance Audit Director
Adam Westover, OLA Audit Manager
Adam Auerback, OLA Performance Senior Auditor
Jonathan Kromm, Deputy Executive Director, MHBE
Caterina Pangilinan, Chief Compliance Officer, MHBE

Auditor's Comment: While MHBE concurred with the recommendations included in the report, in some cases disagreement was indicated regarding the underlying conditions noted. In each instance, the basis for MHBE's disagreement was known to us and considered at the time of the audit. Our comments addressing these disagreements are presented as auditor comments in the following detailed responses.

Maryland Health Benefit Exchange Response

Purchases and Disbursements

Finding 1

The Maryland Health Benefits Exchange (MHBE) procurement policy was not followed for certain contracts awarded under the emergency and sole source procurement methods. In addition, MHBE did not always retain relevant procurement documentation.

Recommendation 1

We recommend that MHBE comply with its procurement policy when awarding contracts. Specifically, we recommend that MHBE -

- a. solicit competitive bids when possible and practical for emergency procurements, and ensure that emergency procurement contracts are not issued on a long-term basis;**
- b. ensure that the proper method is used when making procurements;**
- c. retain relevant procurement and contract documentation, such as records of negotiations and contract exhibits in a permanent procurement file; and**
- d. maintain complete records of Board minutes pertaining to contract approvals.**

MHBE Response to Finding 1

MHBE does not concur with the finding. For noncompetitive procurements, MHBE's Procurement Policies and Procedures require the agency to provide justification for the selection method used in the procurement (*e.g.* emergency or sole source), and to submit those justifications for approval to the MHBE Board of Trustees on contracts above a certain value threshold. *See* Maryland Health Benefit Exchange Procurement Policies and Procedures, available at http://www.marylandhbe.com/wp-content/uploads/2012/10/Permanent_Procurement_Policies1.pdf. As explained below, MHBE followed its Procurement Policies and Procedures, approved by the MHBE Board of Trustees, on all of its procurements, including those sole source and emergency procurements reviewed by the Office of Legislative Audits (OLA).

First, OLA recognizes that each of the procurements it evaluates in this finding was approved by the Board of Trustees, and that approval was "officially documented . . . through its meeting minutes."

Second, OLA's finding that in some emergency contracts MHBE violated its procurement policies by only soliciting a single vendor misinterprets the requirement for vendor solicitation in emergency procurements. MHBE's Procurement Policies and Procedures require the Executive Director to "solicit responses from as many vendors as practicable" under the emergency

circumstances. This provision expressly recognizes that it may not always be practical to conduct a competitive selection or even a quasi-competitive selection in emergent circumstances. Particularly in the context of the failure of the agency's original website and major IT vendor, as well as immovable federal implementation deadlines and open enrollment mandates, MHBE's emergency procurements complied with this requirement; the agency solicited competitive bids to the extent possible and practical. MHBE's Board of Trustees, in turn, endorsed the emergency justifications and approved the contracts.

MHBE complied with its Procurement Policies and Procedures in the case of the two procurements that were originally characterized and approved as sole source, and were later re-characterized by the Board of Trustees as emergency procurements. OLA acknowledges that the procurements were justifiable as emergencies, but states again that MHBE should have solicited more than one vendor. Yet, as reflected in MHBE's and the Board of Trustees' understanding of the original characterization as sole source, the emergency circumstances faced by the agency meant that solicitation of one vendor was the only practicable approach to completing the procurements. As explained above, MHBE's procurement policies require solicitation of multiple vendors only when practicable. Thus, these procurements did not violate MHBE policy.

OLA also finds that two emergency contracts violate MHBE policy because their terms extend beyond one year. Again, OLA misinterprets MHBE's procurement policy, which provides that emergency procurements shall not be used to meet "long-term" requirements. "Long-term," however, does not necessarily include any contract extending beyond one year, but must instead be considered and applied in the context of surrounding circumstances.

With respect to the Task Order cited by OLA related to leasing office space, the underlying contract term between MHBE and its vendor is one year with several one-year renewal options. The Task Order related to the real property lease does not alter this contract term. Rather, the vendor entered into a lease which extends beyond the term of its underlying contract with MHBE, but the contract provides expressly for options to terminate the lease or assign the lease to MHBE, at MHBE's option, if the underlying contract is not renewed. MHBE was able to obtain a significant discount on vendor costs by virtue of the vendor's multi-year lease as compared to what its costs would have been had the vendor been limited to a one-year lease.

In the case of the \$1.6 million contract for Customer Relationship Management (CRM) software, the design of MHBE's call center, developed with the assistance of a separate vendor and put in place for a term of five years, required this type of CRM software. Multiple other vendors, systems, and operations staff utilize and depend upon the CRM. Forced to make this software investment on an emergent basis because of impending federal deadlines, MHBE solicited proposals from all three major providers of CRM software. Because of the dependencies of

other vendors, systems, and operations staff on this major software acquisition for the call center, a shorter timeframe for this software purchase agreement was not practicable or prudent, and the procurement was approved by the Board of Trustees.

Recommendation 1a.

MHBE concurs and is complying with the recommendation that, as required, it solicits competitive bids when possible and practical, and it ensures proper procurement methods are used when making procurements. MHBE does not concur with the recommendation only insofar as MHBE disagrees that "long-term basis" necessarily includes, in every instance, contract terms in excess of one year.

Recommendation 1b.

MHBE concurs with the recommendation.

In April 2015, MHBE's Board approved a procurement procedure which details the steps and documentation required for sole source, emergency and competitive bids. To build upon this effort and to ensure continued development, implementation and monitoring of effective policies and procedures, MHBE has hired a procurement consultant. The consultant is providing expert guidance and assistance to MHBE in making final its policies and procedures, ensuring that all staff is adequately trained, and fully implementing an effective monitoring process. MHBE's Board of Trustees is also actively engaged in overseeing this effort to ensure that MHBE meets all required standards.

Recommendation 1c.

MHBE concurs with recommendation.

Effective April 2015, MHBE implemented the use of a new record retention system based on solicitation numbers. Additionally, the procurement consultant is reviewing this system to refine it further. Under this system, all critical documents relating to a procurement will be retained in a procurement-specific file.

Recommendation 1d.

MHBE concurs with the recommendation.

MHBE now retains accurate documentation of materials received for review and approval by MHBE's Board of Trustees. In addition, MHBE Board meeting minutes now document questions and concerns raised by the Board which relate to the contract under consideration.

Auditor's Comment: Our audit findings identified instances in which MHBE did not comply with the Board's procurement policies. The fact that the MHBE Board ultimately approved these contracts does not mitigate the need to follow policies designed to help

ensure the integrity of the procurement process. MHBE's intended corrective actions will address our recommendations.

Finding 2

MHBE made certain payments for contractual services without routinely obtaining or evidencing its review of documentation supporting vendor billings.

Recommendation 2

We recommend that MHBE obtain from contractors adequate documentation, such as employee time and payroll records, to support all billed charges, and perform a documented review of the documentation to ensure that such charges are supported and in accordance with the related contract terms prior to making payment.

MHBE Response to Finding 2

MHBE concurs in part with the finding, to the extent that vendors did not always submit employee timesheets and payroll records. MHBE does not concur, however, that it did not require, obtain, and review other documentation or backup for invoices. On the contrary, to support their invoices, vendors provided summaries of work conducted during the service period, and MHBE staff reviewed the work of these vendors during weekly meetings. MHBE reviewed these summaries, and in conjunction with the weekly work review meetings, considered whether billed charges were supported.

MHBE concurs with the recommendation. To that end, in May 2015, MHBE hired a Director of the Project Management Office to supervise PMO contractors. The Director of the PMO developed a process, which went into effect in June, 2015, for contractors to track their work product and time expended. Additionally, MHBE has contracted with a procurement consultant to establish additional policies and procedures for the submission and review of appropriate documents in support of invoices. Such procedures will include testing and monitoring of documentation to ensure charges are in accordance with related contracts.

Auditor's Comment: While we were aware that MHBE reviewed documentation to help ensure services were rendered, this review process does not address our concerns of ensuring that billed hours were supported and in accordance with contract terms prior to making payment. MHBE's intended corrective actions will address our recommendations.

Connector Program Grants

Finding 3

MHBE had not verified the propriety of grant expenditures for the Connector Program paid with State general funds and federal funds.

Recommendation 3

We recommend that MHBE establish procedures to verify the propriety of expenditures charged to Connector Program grants, including fiscal year 2014 activity and subsequent grant years.

MHBE Response to Finding 3.

MHBE does not concur with the finding.

MHBE reviews and approves Connector entity performance and invoices prior to payment. On a quarterly basis, MHBE reviews expenditure reports to ensure they align with the Connector entity budgets as set forth in the grant agreement. Corroborating this practice, a review of federal grant expenditures during the A-133 FY 2014 State Single audit found MHBE complied with requirements regarding invoices and expenditures of federal grant funds.

MHBE concurs with the recommendation that MHBE establish documented procedures to verify the propriety of expenditures charged to Connector Program grants. Since the OLA's review, MHBE has developed and implemented a more detailed financial monitoring policy and procedure to ensure grantees spend and account for State funds in accordance with grant agreements.

Auditor's Comment: While we were aware of the reviews described in MHBE's response, we concluded that the reviews did not specifically ensure compliance of the aforementioned State Law to determine whether the grantee spent and accounted for State aid in accordance with the grant agreements. MHBE's intended corrective actions will address our recommendations.

Federal Funds

Finding 4

Federal fund reimbursement requests were not made timely, resulting in a loss of interest income of \$199,000.

Recommendation 4 -

We recommend that MHBE ensure that future requests for federal fund reimbursements are made in a timely manner.

MHBE Response to Finding 4

MHBE concurs with the finding and with the recommendation.

MHBE concurs that the agency did not initially have a dedicated Chief Financial Officer and has not submitted timely Medicaid claims. With respect to the causes for this untimeliness, however, MHBE notes the following: In order to submit Medicaid claims on a timely quarterly basis, claims must be submitted in a small window of time, within 30 days following the end of each quarter. The information necessary to submit Medicaid claims, however, is not available until the 15th day following the end of each quarter. Thus, any delay in this information may result in claims being a quarter in arrears. MHBE does not create this information and must wait until it is made available by a sister agency.

These constraints notwithstanding, MHBE has implemented a process to ensure that claims are not more than a quarter in arrears and that appropriate claim percentages are utilized. In addition, MHBE has had a dedicated Chief Financial Officer on staff since January 2014 to oversee the claims submission for both accuracy and timeliness.

Finally, MHBE notes that per CFR Title 45 Subtitle a subchapter A Part 95 Subpart a Section 95.7, CMS allows for a two-year claim window and will fully reimburse State expenditures claimed within two years.

Equipment

Finding 5

MHBE did not maintain adequate equipment inventory records, nor properly account for all of its equipment.

Recommendation 5

We recommend that MHBE comply with its *Policy* and

- a. establish an independent control account and periodically reconcile the control account to the detail records;**
- b. establish complete detail records reflecting all of MHBE's equipment, including individual item description, acquisition cost and date, and other unique identifying information; and**
- c. ensure that all purchased equipment items are received prior to payment and properly recorded in MHBE's inventory records.**

MHBE Response to Finding 5

MHBE partially concurs with the finding to the extent that MHBE did not initially implement procedures to account for and control its equipment inventory. MHBE staff, however, initiated steps to account for and control inventory purchased on its behalf by its primary IT vendor in late 2013 and early 2014. MHBE provided its primary IT vendor inventory tags to be placed on MHBE equipment. A review by the Secretary of DoIT found that the primary IT vendor placed "inventory tags on all equipment used or slated for use on the project regardless of whether or

not it was equipment purchased on behalf of mhbe [MHBE].” Investigation found that the primary IT vendor had tagged equipment not owned by the State as belonging to MHBE. At the completion of the inventory exercise, the Secretary and the primary IT vendor agreed that “All schedule A and J 1 assets [, or those assets required to be purchased under the contract,] have been identified” with a few acceptable substitutions which added more value to the State’s inventory.

MHBE concurs with the recommendations.

Recommendation 5a.

MHBE concurs with the recommendation to establish an independent control account and periodically reconcile the control account to the detail records. MHBE has transferred procurement activities to its Finance Department and taken other steps to promote procurement oversight and align processes to ensure accurate accounting of invoices for equipment purchased on behalf of MHBE. The Inventory Manager, who reports to the Director of Administrative Services, is responsible for documenting and tagging, or ensuring that “Accountable Parties” designated by the vendors document and tag all equipment purchased. Using the Maryland Inventory Tracking System (MITS), the Inventory Manager will be able to inventory all new, lost or discarded equipment and periodically reconcile logs to control accounts once established. MHBE targets reconciliation of its baseline control account to be completed by June 30, 2016.

Recommendation 5b.

MHBE concurs with the recommendation to establish complete detail records reflecting all of MHBE’s equipment, including individual items’ cost and unique identifying information. After adoption of the Capital Inventory Program policy, MHBE purchased the MITS in September 2014, which complies with Maryland Department of General Services and Inventory Standards and Support Services Division’s standards for an electronic inventory system. The system contains fields to capture detailed record information for each asset, including but not limited to inventory number, description, manufacturer, vendor, sensitive item indicator and acquisition cost. In September 2014, MHBE initiated the process of converting MHBE inventory into the system and currently uses the system for new goods purchased.

Recommendation 5c.

MHBE concurs with the recommendation that all purchased items are to be received prior to payment and properly recorded in MHBE’s inventory records when practicable. For those instances in which purchased items are included in a contract or seed money is provided in advance for capital items to be purchased, MHBE will follow its Capital Inventory Control policy and protocol to ensure that accurate and appropriate documentation and inventory control practices are followed.

Auditor's Comment: The steps described as being initiated late 2013 and early 2014 are not a part of an internal control structure to properly establish and maintain accountability over equipment. Nevertheless, MHBE's intended corrective actions will address our recommendations.

Board of Trustees of the Exchange Meetings

Finding 6

The MHBE Board was found to have violated the Open Meetings Act by the State Open Meetings Law Compliance Board.

Recommendation 6

We recommend that the MHBE Board implement the recommendations of the Compliance Board to ensure future compliance with the Open Meetings Act.

MHBE Response to Finding 6

MHBE concurs with the finding and recommendation. In response to the Compliance Board's decisions, MHBE has taken the following steps: 1) MHBE staff reviews Board meeting agendas well in advance to determine whether items will need to be discussed in Closed Session; 2) MHBE staff provides notice of closed sessions and agendas on MHBE's website in advance of the meeting; 3) MHBE's Board Chair reads the closing statement at each meeting; and 4) a closed session report is made in open session at the conclusion of the closed session. MHBE implemented these improvement practices in April 2014. In addition, MHBE's Board member orientation provides guidance and information about the Open Meetings Act.

Information Systems Security and Control

Finding 7

MHBE inappropriately stored sensitive personally identifiable information and federal tax information in clear text.

Recommendation 7

We recommend that MHBE

- a. perform an inventory of its systems and identify all sensitive PII and FTI,**
- b. determine if this sensitive information is properly protected by encryption or other substantial mitigating controls, and**
- c. use approved encryption methods to protect all sensitive PII and FTI that are not otherwise properly protected.**

Response to Finding 7:

The Agency concurs with the finding only to the extent that encryption was not among the security controls implemented initially in the system, but it does not concur that sensitive personally identifiable information (PII) and federal tax information (FTI) was therefore inappropriately stored. Rather, MHBE protected all confidential data with substantial and effective mitigating controls, in full compliance with Maryland's Department of Information Technology's (DoIT) *Information Security Policy*, cited by OLA.

DoIT's policy, recognizing that time and cost constraints necessarily affect which types of mitigating controls may be the most feasible and effective for an agency, provides that agencies should protect confidential data with encryption technologies *and/or* other substantial mitigating controls. Accordingly, MHBE, unable initially to implement an encryption solution because of time constraints, obtained federal approval and selected instead to put in place numerous other significant mitigating security controls, like firewalls, management zones and access monitoring. These controls effectively protected and prevented any PII or FTI from disclosure to unauthorized persons.

Response to Recommendation a:

The Agency concurs with the recommendation and has completed the inventory of its systems effective 3/30/2015.

Response to Recommendation b:

The Agency concurs with this recommendation. By 7/1/2015, MHBE had confirmed that all PII and FTI is effectively and properly protected by encryption or other substantial mitigating controls.

Response to Recommendation c:

The Agency concurs with this recommendation. After initial development and deployment of the system for the 2014/2015 Open Enrollment period, MHBE implemented its plan in June, 2015 to augment its existing security controls through encryption of the main data base in the application. As of 9/21/2015, MHBE has also completed implementation of additional mitigating controls for other parts of the system.

Auditor's Comment: The controls MHBE has identified as adequately protecting sensitive PII and FTI (firewalls, management zones and access monitoring) provide a certain level of protection for this data, which is also necessary for protecting its network, computer systems and other types of data. However, extra precautions are needed to properly safeguard sensitive PII and FTI, which generally include encryption, data truncation, or data loss prevention controls. These protections were not implemented at MHBE. Nevertheless, MHBE's intended corrective actions will address our recommendations.

Finding 8

Administrative access to the MHBE network was excessive and access to critical replacement Exchange System files was not properly restricted.

Recommendation 8

We recommend that

- a. domain administrator and local server administrator privileges only be assigned to users requiring such privileges,**
- b. modification access to critical application and web server files and directories be limited to only those users who require such access, and**
- c. access to enrollment and report files be restricted to only those users who require such access.**

Response to Finding 8:

MHBE concurs with the finding to the extent that IT Administrators in some instances were given more access than strictly necessary to complete their specific job duties. This access never extended to any unauthorized individuals, however; all IT administrators were MHBE authorized contractors or employees whose jobs involved system development or maintenance.

Response to Recommendation 8a:

The Agency concurs and has completed implementation of this recommendation effective 9/1/2015.

Response to Recommendation 8b:

The Agency concurs with this recommendation. MHBE has completed a role-based access control for agency administrators, which is a prerequisite to completing implementation of this recommendation, and will achieve full implementation after the upcoming open enrollment in order to mitigate impact to critical systems.

Response to Recommendation 8c:

The Agency concurs and has completed implementation of this recommendation effective 9/1/2015.

Finding 9

MHBE lacked assurance as to the security over critical data on servers hosted by contractors.

Recommendation 9

We recommend that MHBE

- a. obtain SOC reports for periods during which MHBE enrollment data are hosted by the parent company of the primary contractor responsible for the original Exchange System,**

- b. review all SOC reports and take appropriate action to ensure that any critical operational and security-related concerns are properly addressed, and**
- c. attempt to amend the existing contract between MHBE and the primary hosting contractor for the replacement Exchange System to mandate that comprehensive SOC 2 Type 2 reviews be performed at least annually for MHBE's hosted operations and when material services are provided by subcontractors.**

Response to Finding 9:

MHBE concurs with this finding security requirements for State-Based Exchanges.

Response to Recommendation 9a:

MHBE concurs with the recommendation. MHBE has entered into a contract with the parent company of the aforementioned contractor that will ensure that MHBE will receive the requested information.

Response to Recommendation 9b:

MHBE concurs with the recommendation. As noted by OLA, the January, 2015 SOC report already provided by the parent company does not find "any significant operational or security-related concerns." MHBE will continue to receive and review these reports.

Response to Recommendation 9c:

MHBE concurs with the recommendation. MHBE is reviewing the feasibility of amending the contract with the current hosting vendor in order to receive the SOC 2 Type 2 reports of the hosting contractor and relevant subcontractors annually instead of bi-annually. MHBE expects to determine by 11/1/15 whether the hosting vendor will agree to enter into the proposed contract modification. In the meantime, MHBE will continue to monitor the security controls and assure their continued effectiveness as required by CMS.

Finding 10

The MHBE network was not properly secured at the hosting datacenter.

Recommendation 10

We recommend that MHBE

- a. identify how IDPS coverage should be best applied to encrypted network traffic to these datacenter servers and subsequently implement such coverage; and**
- b. restrict, to the extent possible, network-level access by DHR and DHMH personnel to the worker portal to only those individuals requiring such access.**

Response to Finding 10:

MHBE concurs with the finding only to the extent that, as with most systems, MHBE's hosting data center network could be enhanced, and OLA recommended two areas of improvement.

MHBE does not, however, concur that the MHBE network therefore was not properly secured. On the contrary, MHBE uses a layered approach to network security, as required by CMS, and significant layers of compensating controls were present and effectively securing the network.

Response to Recommendation 10a:

MHBE concurs with the recommendation and is evaluating the feasibility of options to implement it. If feasible, MHBE will develop an implementation plan by 11/1/2015 with a targeted completion date of 3/1/2016.

Response to Recommendation 10b:

MHBE concurs with the recommendation. During the third quarter of 2015, MHBE IT Security initiated a validation process to assess DHR and DHMH levels of access to the system in anticipation of completing the build phase of an enterprise network which will provide MHBE more control over the network. After completion of this enterprise network, MHBE will seek to restrict DHR and DHMH network access to the worker portal to only those locations that require such access. The Agency enterprise network is targeted for completion by 10/2/2015.

Auditor's Comment: Although MHBE uses a layered approach to network security, an important component of such an approach is the implementation of an intrusion detection prevention system, which MHBE lacked. The Department of Information Technology's *Information Security Policy* requires all State agencies to use an intrusion detection prevention system to inspect network traffic and protect agency networks. Nevertheless, MHBE's intended corrective actions will address our recommendations.

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