

September 24, 2009

Hon. Hector De La Torre
Assembly Member, 50th District
Room 4016, State Capitol
Sacramento, California 95814

Dear Assembly Member De La Torre:

Earlier this summer, you informed us of a request of the Assembly Committee on Accountability and Administrative Review that our office conduct an analysis and present our recommendations regarding the creation of an Inspector General for the Department of Developmental Services (DDS) and the regional center (RC) system. Specifically, we were asked to: (1) address the advantages and disadvantages of having an Office of Inspector General (OIG) located within DDS and (2) identify options for assigning this responsibility to other existing auditing or investigative agencies. This letter is our response to the committee's request.

In this analysis we examine the advantages and disadvantages of establishing an OIG within one of three different agencies – the DDS, the Office of State Audits and Evaluations (OSAE) in the Department of Finance (DOF), and in the Bureau of State Audits (BSA). We identified OSAE and BSA as options for assignment of the OIG responsibilities because both of these agencies currently perform similar audit and review functions. We also identified the advantages and disadvantages of structuring an OIG within the state Health and Human Services Agency (HHS) or as a stand-alone entity, similar to the arrangement for the OIG that currently exists for oversight of operations of the California Department of Corrections and Rehabilitation (CDCR).

Summary of Our Findings. We do not recommend the creation of an OIG at this time, but indicate that, if creation of such an agency is a legislative priority, the best option appears to be creating a stand-alone entity. We also note that the Legislature may wish to await the outcome of a BSA audit of RC programs before reaching a decision on this matter.

BACKGROUND

Below, we provide information on DDS programs that would be subject to oversight by an OIG and the existing oversight activities conducted by the department. We describe the functions an OIG typically performs and provide information about the OIG

for CDCR. We also provide information on OSAE, BSA, and HHSA in order to inform our analysis of the advantages and disadvantages of having an OIG located within each of these entities.

DDS Programs

Community Services Program. The DDS provides community-based services to developmentally disabled persons through 21 nonprofit corporations known as RCs that are located throughout the state. The RCs are responsible for eligibility determinations and individual assessment, the development of an individual program plan for each consumer, and case management. They generally pay for services only if an individual does not have private insurance, or in cases where so-called “generic” services provided at the local level by counties, cities, school districts, and other agencies are not available. The RCs purchase services such as transportation, health care, day programs, and residential care provided by community care facilities. The DDS contracts with RCs to provide services to more than 240,000 individuals each year.

Developmental Centers (DCs) Program. The DDS operates four DCs and two smaller leased facilities which provide 24-hour care and supervision to approximately 2,200 clients. All of the facilities provide residential and day programs, assistance with daily activities, training, education, and employment services. A combined total of about 6,900 permanent and temporary staff work at these six facilities. We note that Agnews DC recently closed and that one of the smaller leased facilities is now scheduled to be closed during 2009-10.

Some Oversight and Accountability Measures Are Already in Place. Some measures are already in place to facilitate DDS’s oversight of its programs and ensure the transparency of its operations. These measures include: (1) the RC audit program, under which every RC is required to undergo a comprehensive fiscal and compliance review every two to three years, (2) regular audits of RC vendors, and (3) the conduct of investigations by DC staff of alleged violation of “personal rights” of DC clients. We note that some of the functions that DDS performs are also functions typically performed by an OIG. (We describe the functions of an OIG in more detail below.)

General Functions of an OIG

An OIG safeguards the public’s interests by providing oversight and ongoing monitoring of a specified government agency or program. Its mission is typically to detect and deter waste, fraud, abuse, and misconduct, and to promote integrity, economy, efficiency, and effectiveness in an agency or program. This is usually accomplished by conducting independent investigations, audits, inspections, and special reviews of personnel and programs. To be effective, an OIG must have the authority and autonomy to initiate and complete investigations, audits, and reviews without interference from other entities.

Although there are numerous examples of OIGs in federal government, the state has only used OIGs on a limited basis to address particular situations, such as problems in the prison system and deficiencies in the Department of Veterans Affairs (DVA). We note that the OIG for DVA was eliminated a few years ago. The Governor also recently appointed an Inspector General to review California's federal stimulus act receipts.

CDCR OIG

Budget and Operations. The OIG for CDCR, which was created in statute, has a 2009-10 budget of about \$26 million from all fund sources and about 148 authorized positions. The office hires investigators with a variety of backgrounds. Some of the positions have peace officer status, which is required to conduct certain types of investigations. The OIG is subject to the same budgetary constraints as other state agencies, with funding for the OIG appropriated by the Legislature and approved by the Governor through the annual budget process. The OIG is appointed to a six-year term and may not be removed from office during that term except for good cause.

The OIG reports to: (1) the public, (2) the Governor, (3) the Legislature, and (4) CDCR. Some OIG reports are specifically required under statute, such as an audit that must be conducted at least once every four years of every state prison. However, none of the four entities to whom the OIG reports directly controls whether the OIG initiates investigations, and under current state law none of the four can direct the OIG to stop an investigation once it has begun one. Thus, the OIG has broad discretion to allocate the office's resources to a particular inquiry without having to seek the approval from any other government entity. According to OIG for CDCR, this level of autonomy is critical in order to achieve the office's mission.

CDCR OIG's Mission. The mission of the OIG is to safeguard the integrity of the state's correctional system. The OIG carries out this mission by inspecting, investigating, and auditing CDCR to uncover criminal conduct, administrative wrongdoing, poor management practices, waste, fraud, and other abuses by staff, supervisors, or management. The OIG provides analysis and policy recommendations to the Governor, Legislature, correctional administrators, and the public based upon its findings in these types of inquiries.

The OIG posts the findings of every audit and special report on its Web site, along with quarterly summary reports describing the number of audits and special reviews completed, the types of misconduct uncovered, and the discipline meted out. The OIG believes the public posting of its work products is critical because it provides a powerful incentive for CDCR to remedy the problems afflicting the state's correctional departments and institutions.

OSAE and BSA

The OSAE and the BSA both currently perform functions such as audits that are also performed by OIGs. However, OIGs also typically perform some functions that are not performed, or only performed on a limited basis, by OSAE. We describe OSAE's and BSA's functions in more detail below to clarify these distinctions.

OSAE. The chief of OSAE is under the Director of DOF within the executive branch of state government. The purpose of the OSAE is to support DOF in supervising the state's financial and business policies and in conserving the state's rights, interests, and resources. The office has about 100 positions, with most positions having an accounting background. The OSAE conducts independent audits, program evaluations, and other related services for this purpose. The OSAE's scope of work includes:

- Review of systems established to ensure compliance with those policies, plans, procedures, laws, and regulations that could significantly affect state operations and output.
- Testing of the reliability and integrity of financial and operating information, and the means used to identify, measure, classify, and report such information.
- Follow-up on the corrective actions taken by agency officials in response to previous audit findings.

Generally, OSAE's audits and evaluations are performed because they are required by statute or because OSAE has entered into an interagency agreement with another state agency to look at a specific area. The OSAE consults with state agencies to define the scope of the audit or evaluation and to prepare an estimate of their project-related costs. The OSAE is reimbursed for most of its audit and review work by the party being audited or reviewed. Unlike an OIG, OSAE does not independently initiate investigations.

BSA. The BSA was established to promote the efficient and effective management of public funds and programs. The bureau has about 150 positions, most of whom have strong backgrounds in accounting. The agency's audits cover a wide variety of objectives but focus on assessments of internal financial and management controls and compliance with legal or other requirements.

The BSA conducts audits that are either mandated by statute or requested by the Legislature. The BSA also administers the California State Whistleblower Protection Act, which authorizes BSA to investigate complaints of improper governmental activities potentially involving inefficiency and waste, gross misconduct, or incompetence.

HHSA

The HHSA oversees the state's health, social services, and rehabilitation programs. The mission of HHSA is to provide policy leadership to the departments, board, and

programs it oversees; reduce duplication and fragmentation among HHSA departments in policy development and implementation; improve coordination among departments on common programs; ensure programmatic integrity; and advance the Governor's priorities on health and human services issues. The agency secretary is a member of the Governor's cabinet and oversees the management of ten departments, including DDS.

ADVANTAGES/DISADVANTAGES OF OIG PLACEMENT OPTIONS

Below we discuss the advantages and disadvantages of various organizational placements for a DDS OIG and also evaluate the option for creating a DDS OIG as a stand-alone agency (similar in its structure to the CDCR OIG).

Creating an OIG Within DDS

Advantages. Some advantages of placing the OIG within DDS and having the OIG report directly to the director of the department include:

- *Existing Program Knowledge and Relationships.* The DDS director has expertise in the community services program and well-established relationships with the vendors who provide services as well as the advocates and stakeholders involved with both the DC and RC systems. The DDS director could rely on this expertise and established lines of communication to inform the OIG's decisions to ensure that the audits, reviews, and investigations are productive and effective.
- *Experience Overseeing Audit and Investigation Personnel.* The DDS director already has experience managing staff who do work similar to the type of work that would be done by an OIG. Thus, the director should be able to efficiently incorporate the oversight functions of an OIG into her existing workload.

Disadvantage. A key disadvantage to placing the OIG within DDS and having the OIG report directly to the director of the department is:

- *An Inherent Conflict of Interest for DDS Director.* The director would face an inherent conflict of interest in supervising an OIG. The director is responsible for managing public relations and promoting a positive image of the department on behalf of the administration. That role would conflict with an obligation to pursue and publicize findings of OIG inquiries that were critical of DDS' management practices and programs. This basic conflict would likely undermine the autonomy and effectiveness of an OIG.

Creating an OIG Within OSAE

Advantages. Some advantages to placing the OIG within OSAE include:

- ***OSAE's Mission Similar to an OIG's.*** The OSAE's current mission, described above, is similar to that of an OIG—safeguard the public's interests by providing oversight and ongoing monitoring of government agencies and programs.
- ***OSAE's Staff and Management Already Perform Similar Functions.*** The OSAE's staff and management already have expertise performing audits and objective evaluations of agencies and programs—some of the core functions of an OIG.

Disadvantages. Some disadvantages to placing the OIG within OSAE include:

- ***OSAE Does Not Operate as an Independent Agency.*** The OSAE provides services that are intended to complement ones provided by other DOF units. For example, OSAE performs audits while other DOF units provide other types of fiscal oversight. The OSAE is not an autonomous agency. It is unclear how much autonomy an OIG would have if such an office were placed under the control of the Director of DOF.
- ***OSAE Not an Investigative Agency.*** The OSAE does not currently perform investigations. If it were to incorporate an OIG function, OSAE would have to develop expertise in identifying cases for investigation and in managing investigative workload.

Creating an OIG Within BSA

Advantages. Some advantages to placing the OIG within BSA include:

- ***BSA's Mission Similar to an OIG's.*** The BSA's current mission, discussed above, is similar to that of an OIG—safeguard the public's interests by providing oversight and ongoing monitoring of government agencies and programs.
- ***BSA's Staff and Management Already Performs Some OIG Functions.*** The BSA's staff and management already have significant expertise performing audits and investigations—both core functions of an OIG.

Disadvantage: A key disadvantage of placing the OIG within the BSA is:

- ***BSA Has a Somewhat Different Orientation.*** The BSA's staff are mainly generalists that typically complete one audit and then move on to undertake another in a different area of government. In contrast, an OIG is typically narrowly focused on one government agency or program that it continually monitors. The bureau would also have to hire more investigative staff as opposed to hiring personnel solely with accounting backgrounds. Thus, BSA would need to reorient its work practices in order to perform the work of an OIG.

An OIG That Reports to the Secretary of HHS

Advantages. Some advantages of having the OIG report to the secretary of HHS include:

- *Reports Would Go to Highest Levels.* Under this proposed approach, the OIG would report directly to the highest level of the executive branch that exercises oversight of health programs. This could mean that critical findings from OIG audits and investigations would receive more attention from key decision makers, who could ensure that lower-level state agencies correct any problems that have been identified.
- *Resources for Scrutiny of DDS Operations Would Be Secure.* Under this proposed approach, the OIG for DDS would have a separate budget and operate as an independent entity. This arrangement would ensure that the OIG's resources were not redirected to other priorities. This would be a risk if the OIG were established within a larger agency, such as DDS.

Disadvantage: A key disadvantage of having the OIG report to the Secretary of HHS is:

- *An Inherent Conflict of Interest for the HHS Secretary.* The Secretary would face an inherent conflict of interest in having an OIG report to her. This would be for the same reasons described in regard to having an OIG report to the DDS director.

A Stand-Alone OIG

Advantages. Some advantages of having a stand-alone OIG include:

- *Would Ensure OIG's Independence.* Establishing the OIG as a stand-alone entity would be the best arrangement to ensure the office's autonomy.
- *Resources for Scrutiny of DDS Operations Would Be Secure.* Under this proposed approach, the OIG for DDS would have a separate budget, thereby ensuring that the OIG's resources could not be redirected.

Disadvantages. We have not identified any noteworthy disadvantages to establishing a stand-alone OIG.

Conclusion

In our analysis, we have identified a number of advantages and disadvantages to establishing an OIG for DDS within various government agencies or as a stand-alone entity. Due to the state's fiscal condition, we cannot recommend an expansion of state government, such as a new OIG, at this time. However, if the Legislature does decide there is a critical need for an OIG for DDS, we believe the most sensible arrangement

would be for the OIG to be established as a stand-alone agency. We believe this arrangement would give the OIG the autonomy critical to its success. We would further recommend that, if the Legislature does decide to create such a new office, that any new OIG be funded via an offsetting reduction to DDS or related programs to ensure this effort does not increase state costs.

As it considers its options for the creation of a new OIG, we note that the Joint Legislative Audit Committee recently directed the BSA to conduct an audit of the DDS community services program. The Legislature may wish to await the outcome of this audit before reaching a final decision about the creation of an OIG for DDS. We believe that the findings from this audit would likely inform any discussion of what type and level of ongoing oversight the RC program may need and the workload implications for an OIG to perform these functions.

Please contact Shawn Martin of my office at (916) 319-8362 if you have any questions regarding this analysis.

Sincerely,

Mac Taylor
Legislative Analyst