

State of Delaware Office of Auditor of Accounts

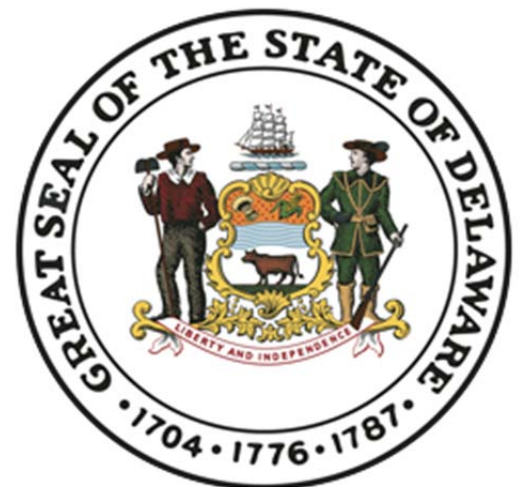
Delaware Department of Health and Social Services Pressured into Unjustified Reinstatement of a Terminated Contract

Special Investigation

Fieldwork End Date: August 31, 2012

Issuance Date: October 2, 2012

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts





State of Delaware
Office of Auditor of Accounts
R. Thomas Wagner, Jr., CFE, CGFM, CICA
At a Glance

Working Hard to Protect YOUR Tax Dollars

Background

Since 2004, DHSS Division of Services for Aging and Adults with Physical Disabilities (Aging) contracted with DECCF, a faith-based not-for-profit organization, to provide volunteer caregiver services. Aging executed the contracts at the direction of the Delaware Health Fund Advisory Committee who provided the funding for the contracts. Annual contract amounts were not to exceed \$178,100.

This investigation was conducted in accordance with the President's Council on Integrity and Efficiency, *Quality Standards for Investigations*.

For further information on this release, please contact:

Kathleen O'Donnell
(302) 857-3919

Why We Did This Review

The Office of Auditor of Accounts (AOA) received an allegation that the Department of Health and Social Services (DHSS) inappropriately continued to contract with the Delaware Ecumenical Council for Children and Families (DECCF) after terminating the Delaware Interfaith Volunteer Caregivers contract for cause in a letter dated May 22, 2009.

What We Found

The Delaware Health Fund Advisory Committee did not properly align itself with those charged with monitoring the State grant and overturned DHSS's decision to cancel the contract; thus making any future monitoring of the program a farce. DECCF did not rectify the contract deficiencies and continued to fail to provide evidence of program accomplishments. The Committee not only did not rely on monitoring reports but selected new reviewers that would deliver the outcome favored by DECCF supporters.

Despite Aging's program monitoring and ongoing communications to the DHSS Secretary and Deputy Secretary regarding issues that supported its decision to end the contract with DECCF, the Delaware Health Fund Advisory Committee, consisting of State Senators, State Representatives, and other designees, recommended funding additional contracts for Fiscal Years 2010, 2011, 2012, and 2013 for \$178,100 each, which allowed the problems to perpetuate.

AOA reviewed support for reimbursements made for the FY 2009 and FY 2010 contracts in the amount of \$346,559 and found Aging's position entirely valid and that vendor non-compliance continued even after the 2009 termination notice. DECCF made no attempt to correct the problems moving forward and there was no incentive for the organization to comply with contract requirements. The organization had learned that a few phone calls would absolve their responsibility to comply with the State contract.

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The conclusion of the allegation is defined as follows:

Substantiated:	The allegation has been verified by competent evidence.
Partially Substantiated:	A portion of the allegation has been verified by competent evidence; however, competent evidence to verify the entire allegation could not be provided by the agency or obtained by AOA.
Unsubstantiated:	Competent evidence was found to dispute the allegation.
Unable to Conclude:	Competent evidence to verify the allegation could not be provided by the agency or obtained by AOA.

Background

Services for Aging and Adults with Physical Disabilities (Aging) is a division within the Delaware Department of Health and Social Services (DHSS) whose objective is to improve or maintain the quality of life for residents of Delaware at least 18 years of age with physical disabilities or who are elderly. Aging administers the CARE Delaware (Caregiver Assistance-Respite-Education) program. CARE Delaware provides a variety of services to support caregivers, including: Caregiver Skills Training, Grandparent or Older Relative Caregiver Programs, Information and Assistance, Respite Care Service, and Statewide Caregiver Resource Centers.

The CARE Delaware program is partially funded by the Delaware Health Fund. The Delaware Health Fund receives approximately \$26 million annually in settlement money resulting from the Tobacco Master Settlement Agreement (MSA)¹. The Delaware Health Fund Advisory Committee (DHFAC), a twelve member committee consisting of State Senators, State Representatives, and other designees and chaired by the Secretary of the Department of Health and Social Services, is responsible for the management of these funds. DHFAC receives and evaluates applications for funding and makes recommendations to the Governor and General Assembly for the use of these funds each fiscal year. Funds appropriated from the Delaware Health Fund are administered as approved in the annual appropriations act or bond bill. The appropriations act is legislation passed by the General Assembly for the state's operating budget. Current members² of DHFAC are: Secretary Rita M. Landgraf, Senator Patricia M. Blevins, Senator David B. McBride, Senator Bethany Hall-Long, Representative Michael A. Barbieri, Representative Valerie J. Longhurst, James Ford, Jr. (deceased), Donald Fulton, Dr. Gregory Bahtiarian, D.O., Bettina Riveros, Charles F. Reinhardt, MD, and one vacancy.

Since Fiscal Year Ended June 30, 2004 (FY 2004), the CARE Delaware program, through the Delaware Health Fund, has funded the "Delaware Interfaith Volunteer Caregivers" contract with the Delaware Ecumenical Council for Children and Families (DECCF), a faith-based not-for-profit organization. This cost reimbursement contract provides volunteer caregiver services including telephone assurance, friendly visiting, shopping, transportation, caregiver respite, and general help with minor home repairs or paperwork.

During the period of our review from FY 2008 through FY 2010, the contract amount for each year was not to exceed \$178,100. Actual amounts paid were \$176,135 for the FY 2008 contract, \$175,338 for the FY 2009 contract, and \$171,221 for the FY 2010 contract.

While these contracts were funded through the Delaware Health Fund and DECCF was selected based on recommendations of the Delaware Health Fund Advisory Committee, Aging is responsible for administering and monitoring the contracts. This includes determining if the funds were spent in accordance with the contracts and if the program goals were met. Aging is not legally required to issue the contract because the appropriations act did not specifically name DECCF; rather, it provided for support of care services funding without naming a vendor. See *Figure 1*.

Figure 1



¹ The MSA is a November 1998 agreement between the four largest U.S. tobacco companies and the attorney generals of 46 states. The MSA provides various annual payments to the states to compensate for some of the medical costs of caring for persons with smoking-related illnesses.

² Current members per <http://dhss.delaware.gov/dhss/healthfund/members.html> last updated October 6, 2010.

Allegation and Conclusion

Allegation

DHSS inappropriately continued to contract with DECCF after terminating the contract for cause in a letter dated May 22, 2009.

Conclusion – Allegation Substantiated

The Delaware Health Fund Advisory Committee did not properly align itself with those charged with monitoring the State grant and overturned DHSS's decision to cancel the contract; thus making any future monitoring of the program a farce. The Committee not only did not rely on monitoring reports but selected new reviewers that would deliver the outcome favored by DECCF supporters.

Despite Aging's program monitoring and ongoing communications to the DHSS Secretary and Deputy Secretary regarding issues that supported its decision to end the contract with DECCF in May 2009, the Delaware Health Fund Advisory Committee recommended funding additional contracts which were executed for Fiscal Years 2010, 2011, 2012, and 2013 for \$178,100 each.

AOA reviewed support for reimbursements made for the FY 2009 and FY 2010 contracts in the amount of \$346,559 and found Aging's position entirely valid and that vendor non-compliance continued even after the 2009 termination notice. DECCF made no attempt to correct the problems moving forward and there was no incentive for the organization to comply with contract requirements. The organization had learned that a few phone calls would absolve their responsibility to comply with the State contract.

The Delaware Health Fund Advisory Committee meeting minutes fail to address any discussion of program applicants, funding requests, or progress with previous funds received, so it is unknown whether the Delaware Health Fund Advisory Committee even considers the results of State monitoring efforts. However, at least three of the twelve committee members were definitely aware of the issues and the severity prior to reinstating the contract for FY 2010.

In February 2009, the Secretary of DHSS, who is also the Chair of the Delaware Health Fund Advisory Committee, was notified of the issues with DECCF and agreed with the action to terminate the FY 2009 contract. The Director of Aging terminated the contract for unsatisfactory performance in a letter dated May 22, 2009 (see Appendix A) stating:

“We have determined that the documentation you have provided to this point remains lacking in terms of its ability to support the assertions made by [DECCF] that the Delaware Ecumenical Council for Children and Families (DECCF) is in compliance with the terms of Contract 35-1400-2009-14 (State Fiscal Year 2009) for the “Delaware Interfaith Volunteer Caregivers Project,” and Contract 35-1400-2008-21 (Federal Fiscal Year 2008) for “Caregiver Skills Training.”

Subsequently, State Senators Patricia Blevins and Bethany Hall-Long, both of whom also serve on the Delaware Health Fund Advisory Committee, spoke with the Executive Director of DECCF upon his receipt of the termination letter. On May 28, 2009, Senator Blevins sent an email to the Secretary of DHSS expressing concern over the cancellation of the DECCF contract. The e-mail made two points: (1) the program “fills an undeniably critical need” that “without funding, these fragile seniors will be the one to pay the price” and (2) the integrity of the Executive Director of DECCF is “unquestioned” and that “any problems with this contract could be straightened out and the program could continue.”

The e-mail further requested “fresh eyes” to look at the problems and a collaborative effort be made to “straighten this out.” The Secretary of DHSS responded that she had been involved with the review and was concerned about the “consistent lack of documentation the agency [DECCF] has refused to present relative to the contract” and that “the agency [DECCF] has not demonstrated appropriate documentation and back up to meet the requirements of the contract from the Division’s audit.”

Despite Aging’s monitoring results that were supported by the Director of Aging, another review was conducted on September 4, 2009, by an employee of the DHSS Division of Public Health solely to clear the way for reinstating a contract with DECCF. This review merely documented DECCF’s excuses for the discrepancies previously identified in the monitoring reports. The procedures performed for this review and the documented results were not sufficient to resolve the questions surrounding appropriate use of the funds. Following this review, DHSS promptly reinstated the contract for FY 2010 on October 1, 2009, at the direction of the DHSS Deputy Secretary.

AOA’s investigation substantiated the problems identified by Aging’s monitoring process and supported the conclusion that ongoing contracts were not in the best interest of the program and potential recipients. In fact, reviews of expenditures that occurred after being put on notice in the termination letter revealed that DECCF failed to take corrective action which indicates a flagrant disregard for complying with their contractual agreement. A few examples of exceptions include the following:

- Documents were in a complete state of disarray and in no way substantiated appropriate use of state funds or any impact on those the program was to serve.
- \$218,775 in salaries claimed for program reimbursements in FY 2009 and FY 2010 were not adequately supported.
- DECCF was unable to support the validity of employees claimed for reimbursement even with a simple W-2 form.
- To the extent DECCF provided payroll support, DECCF duplicated staff hours for two different programs (\$40,180) and requested reimbursement for a vacant position (\$6,000) in FY 2009.
- \$12,817 of telephone reimbursement requests in FY 2009 and FY 2010 frequently included the phone bills of other entities.

In conclusion, the Delaware Health Fund Advisory Committee should communicate more with the agencies administering the funds so the committee members have knowledge of the performance and quality of services they are providing funding for. The legislators and top officials within the State should support enforcement of monitoring results and the decisions made by DHSS until grant recipients comply with program requirements.

AOA's Evaluation of DHSS Secretary's Response

The following is AOA's evaluation of the DHSS Secretary's response, which does not accurately reflect the information presented in our report. AOA feels that it is unfortunate that, instead of working with the results of the investigation in a constructive manner, Secretary Landgraf chose not to be supportive of her staff after AOA validated their concerns. The premise of AOA's report was to encourage the Delaware Health Fund Advisory Committee, as well as other legislative committees awarding funds, to include the results of state monitoring efforts as a part of their evaluation process. These committees should communicate with the state agencies responsible for administering these contracts so that the State receives the services as specified in the contracts. Secretary Landgraf's response is included in its entirety at Appendix B.

Secretary Landgraf contends the termination letter, included at Appendix A, was not a final termination. This statement, which is merely hinged on semantics, does not address DECCF's ongoing lack of effort to comply with contracting requirements. At no point does AOA or DHSS staff insist that if DECCF were to comply with the contract requirements, or even show a good faith effort, that continued funding with ongoing monitoring would not be appropriate. As indicated in the report, DECCF continued to disregard contract requirements even after reinstatement of the program funds.

It is apparent that DHSS staff, including the Secretary, cannot decide what purpose the letter serves. AOA acknowledges the termination letter gave 30 days' notice, as required by the contract, with an effective date of June 22, 2009. However, there was no mention of recourse or methods to rectify the outstanding issues that would nullify the impending termination date. Since the letter did not provide a "final opportunity" to resolve the issues, it serves as a notice of termination. Additionally, Secretary Landgraf's response demonstrates her confusion based on her references that are inaccurate. For example, Secretary Landgraf inaccurately refers to CARE Delaware as the organization in question; rather, CARE Delaware is a State program operated by DHSS Division of Services for Aging and Adults with Physical Disabilities. The Delaware Ecumenical Council on Children and Families (DECCF), a non-profit organization, is the organization which holds the Delaware Interfaith Volunteer Caregivers contract with DHSS.

Secretary Landgraf's response describes three concerns raised by Senators Blevins and Hall-Long. The first was the negative consequences to the clientele served by DECCF as a result of the cessation of services. However, DHSS addressed this in the termination letter which stated the Administrator of the CARE Delaware program would communicate with DECCF "regarding the transition of services for clients currently served under this contract." Further, in an e-mail dated May 14, 2009, in preparation of the termination letter, Secretary Landgraf agreed to terminate the contract with DECCF with 30 days' notice and, in its place, arrange for client services with other providers as needed. Secretary Landgraf's response also cites concern that DHSS was not properly prepared for a smooth transition of services as a reason not to terminate the contract. Although this is a valid concern, it stems from one of the numerous reasons to terminate the contract. Lack of performance was one of the key themes of the investigation. DECCF could not provide a client list to show how many people the program was serving or a volunteer list to show how many people had been trained as a result of the funds provided by the State of Delaware. Further, DECCF's inability to prove program achievements continued as documented in the FY 2010 and 2011 monitoring reports.

The second concern was to ensure that there was no evidence of fraud or intentional misuse of state funds by the contractor. Secretary Landgraf's response states there was none; however, AOA disagrees as there were no assurances the money was being used for the intended purpose. AOA has already cited over \$46,000 of state funds unaccounted for due to double billing of salary for one employee on two state contracts and salary reimbursements received for a vacant position. The monitoring report also documented numerous other billing discrepancies as well as performance deficiencies. This causes AOA to have serious concerns for DHSS's tone at the top regarding fraud.

The third concern was over a possible "strained relationship" between the Executive Director of DECCF and the DHSS contract monitor. Secretary Landgraf should commend the efforts of her employees as the documentation only showed professionalism on the parts of all of Aging's staff despite rude and disrespectful comments from the Executive Director of DECCF. The Director became very defensive because the contract monitor was pointing out deficiencies and raising questions that could not be answered without admitting errors on DECCF's part. Further, although Aging assigned a different contract monitor to DECCF for FY 2010, the Director's behavior continued. Documentation of this behavior included announcing that Aging's hands were tied because "the division does not have final say on what happens with this contract" and that the Director of Aging was angry because DECCF "went over his head". The Executive Director of DECCF made other references in e-mails and other correspondence indicating he was playing a game of politics to get what he wanted. The "lack of objectivity" certainly was not on the part of Aging's staff.

Secretary Landgraf indicated she relied on independent audits performed by an accounting firm which revealed no issues with the organization's financial systems or problems with its financial position. AOA is in receipt of these audit reports which are financial statement audits, not compliance audits. The auditors of financial statements would not examine the program in detail for compliance with contract requirements. Further, in review of these reports, Secretary Landgraf would have noticed that the organization is highly dependent on State funds for survival. As reported, for the year ended December 31, 2009, the Delaware Interfaith Volunteer Caregivers contract alone accounted for 60% of the organization's total revenues. Obviously, DECCF would be in dire financial distress if this contract was lost.

The second review of the outstanding documentation issues referred to in Secretary Landgraf's response indicated the issues were resolved. AOA reviewed the September 4, 2009, memo provided by DHSS and determined the procedures performed failed to adequately address the problems previously identified and appeared to take DECCF's excuses at face value. For example, while trying to clear the issue of one employee paid at 100% on this contract and 30% on another state contract, the memo states, "...the remainder of the hours was captured in the office with personnel who were working on this program but paid from other sources." The memo did not indicate who these personnel were or that any other verification procedures were performed.

Secretary Landgraf's response indicated protocols were put in place to ensure better compliance. One of the protocols included comprehensive monitoring reports to be completed for each contractual year. In addition to our procedures performed for FY 2010, AOA has reviewed the subsequent monitoring reports completed for FY 2010 and 2011 which verified the continuation of contract deficiencies. A monitoring report for FY 2012 has not been completed to date.

Lastly, Secretary Landgraf's response indicates AOA lacked due diligence by not performing interviews. AOA has sufficient and competent evidence to support the facts of the investigation that goes beyond the many interviews performed during the investigation. In conclusion, the Secretary should take more time to review her staff's evidence obtained during their monitoring efforts so fact based decisions can be made that help ensure State funds go to those the program was designed to assist.

Appendix A

**DELAWARE HEALTH
AND SOCIAL SERVICES**DIVISION OF SERVICES FOR AGING AND
ADULTS WITH PHYSICAL DISABILITIES

May 22, 2009

John Holden, President
Delaware Ecumenical Council on Children and Families
240 North James Street, Suite B1B
Wilmington, Delaware 19804

Dear Mr. Holden:

Thank you for your letters dated April 24, 2009 (received May 4, 2009), and May 13, 2009 (faxed to this office that day) in response to our contract monitoring reports and our requests for information that were mailed to you on March 25, 2009.

My staff and I have carefully reviewed the information you submitted and have consulted with the Procurement Office of Delaware Health and Social Services' Division of Management Services, and with the Deputy Attorney General assigned to our agency by the Department of Justice. We have determined that the documentation you have provided to this point remains lacking in terms of its ability to support the assertions made by Mr. Robert Hall and you that the Delaware Ecumenical Council for Children and Families (DECCF) is in compliance with the terms of Contract 35-1400-2009-14 (State Fiscal Year 2009) for the "Delaware Interfaith Volunteer Caregivers Project," and Contract 35-1400-2008-21 (Federal Fiscal Year 2008) for "Caregiver Skills Training." You will recall that the former arrangement has been in effect since prior to State Fiscal Year 2005, while the latter was in effect from February 2004 through September 2008.

This letter will serve as notice that, pursuant to Section B – Administrative Requirements, Paragraph 11(a) of your contract, the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) intends to terminate the current "Delaware Interfaith Volunteer Caregivers Project" contract effective June 22, 2009, for unsatisfactory performance. Gwen Miller-Reilly, Administrator of DSAAPD's Care Delaware Program, will be in touch with Mr. Hall regarding the transition of services for clients currently served under this contract.

DSAAPD will also refer all recent monitoring findings to the Office of State Auditor Thomas R. Wagner, Jr. for comprehensive and formal audit review. Pending the results of that review, DSAAPD is suspending all payments to DECCF effective immediately. Be reminded that per item number five of the Section C -- Financial Requirements of your contract, all contract-related documents are to be retained for a period of five years from the date services were rendered by you, and the Department of

1901 N. DUPONT HWY. • NEW CASTLE • DELAWARE • 19720 • TELEPHONE: (302) 255-9390
256 CHAPMAN RD. • SUITE 200 • NEWARK • DELAWARE • 19702 • TELEPHONE: (302) 453-3820 • 1-800-223-9074 • TDD: (302) 453-3837
18 N. WALNUT ST. • MILFORD • DELAWARE • 19963 • TELEPHONE: (302) 424-7310 • TDD: (302) 422-1415
INTERNET: WWW.DHSS.DE.LAWARE.GOV/DSAAPD E-MAIL: DSAAPDINFO@STATE.DE.US

John Holden
May 22, 2009
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Health and Social Services shall have access to those documents for the purpose of inspection, auditing, and copying.

Finally, note that I am returning herein your check for eight dollars and thirty-five cents, dated April 24, 2009, and payable to the State of Delaware, which was forwarded by your office and received by me on May 4, 2009. An unsigned note accompanying that check stated that "The enclosed is part of the material sent to you by Certified Mail on May 1, 2009." Per item 10 on page five of your April 24, 2009, correspondence, this check was apparently forwarded in an attempt to address one of my staff's monitoring findings regarding erroneously calculated mileage reimbursement charges. As the amount of the check fails to fully address that monitoring finding, and given that your contracts remain under review, I feel it is only proper to return the check.

Sincerely,



Guy Perrotti
Director

cc Robert Hall, Executive Director, DECCF
Rita M. Landgraf, Secretary, DHSS
Valencia L. Beaty, Director, DMS
Ann Woolfolk, Esq., Deputy Attorney General
[REDACTED], Social Services Administrator

Appendix B

**Delaware Health
and Social Services****Office of the Secretary**

1901 N. DUPONT HIGHWAY, NEW CASTLE, DE 19720 * TELEPHONE: 302-255-9040 FAX: 302-255-4429

September 26, 2012

VIA E-MAIL**Hardcopy to Follow**

The Honorable
R. Thomas Wagner, Jr., CRE, CGFM, CICA
Auditor of Accounts
Office of Auditor of Accounts
401 Federal Street
Townsend Building, Suite 1
Dover, Delaware 19901

Re: Special Investigation Report

Dear Mr. Wagner:

This letter is in response to the Special Investigation Report issued by your office (the "Report") regarding the Department of Health and Social Services ("DHSS") and the Caregiver Assistance Education program ("CARE Delaware"). While it is rare for this Department to challenge the findings of the Auditor's office, this three page report contains such unsubstantiated and inflammatory conclusions, I find it necessary to respond.

By way of background, CARE Delaware provides important services for some of our most vulnerable Delawareans. The program recruits and trains volunteers to assist Delawareans who are elderly with disabilities and without family support networks. This includes helping with basic functions, such as attending doctor visits and completing chores in the home. Without this service, many of these Delawareans would lose their independence and/or require much more expensive skilled nursing care.

The contract for these services is administered by DHSS and several years ago concerns with the documentation CARE Delaware was providing arose. Information was exchanged in early 2009 in an effort to resolve the issues but matters escalated. In a letter dated May 22, 2009, the Division of Service for the Aging and Adults with Disabilities notified CARE Delaware of its "intent to terminate" the contract.

While a letter indicating the intent to terminate a contract is a serious matter, the Report mistakenly and consistently equates this with a termination of the contract – it is not. The letter is a final notice before termination and provides a level of due process for those who contract with state *but it is not a final termination*. In some instances, as was the case here, it provides a final opportunity to resolve issues between the contractor and the state, before final termination.

**"TO IMPROVE THE QUALITY OF LIFE FOR DELAWARE'S CITIZENS BY PROMOTING HEALTH AND WELL-BEING,
FOSTERING SELF-SUFFICIENCY, AND PROTECTING VULNERABLE POPULATIONS."**

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As such, the Report's assertion that the contract was terminated is incorrect; as is the assertion the contract was reinstated. The contract was never terminated and therefore it was never reinstated.

After CARE Delaware received the May 22, 2009 letter, I was contacted by Senators Blevins and Hall-Long, both of whom serve, as I do, on the Delaware Health Fund Advisory Committee. This Committee originally recommended funding for this program and those recommendations were adopted by the General Assembly and the Governor. Senators Blevins and Hall-Long raised three concerns.

First, they were very concerned about the vulnerable population that CARE Delaware serves. Their main point was that these vulnerable individuals have come to rely on these services and any abrupt halting thereof could have tragic consequences. Second, they wanted to confirm there was no evidence of fraud or intentional misuse of state funds by the contractor, which there was not. Three, they expressed some concern over what they understood to be a strained relationship between the executive director at CARE Delaware and the contract monitor from the Division of Services to the Aging and Adults with Disabilities.

Importantly, there were no threats, intimidation, suggestions of reprisals or anything that equates to "political pressure," as the Report mistakenly concludes. Simply put, there was no "political pressure" of any kind – rather legitimate concerns raised about the real life consequence of shutting down a program that is important to vulnerable Delawareans. I shared their concerns.

For my part, I had been aware of the documentation concerns regarding CARE Delaware but had also become increasingly concerned that DHSS was not properly prepared for a smooth transition with respect to the population this contractor serves, should DHSS move forward and terminate the contract. Further, while I have tremendous confidence in my team at DHSS, the potential consequences of this decision were significant. It was my view that having a second review from within my Department was warranted, especially in light of the real possibility that the strained relationship between the contract administrator and CARE Delaware may have resulted in a lack of objectivity.

As a result, my team and I reviewed each of the independent audits of Care Delaware from 2007 – 2010, performed by the accounting firm of Sparano, Vincelette & Villano, CPA's. There were no findings and only one issue was identified in 2007, which had been promptly corrected. The reports revealed no issues with the agency's financial systems or problems with its financial position. I also assigned [REDACTED] Esquire and [REDACTED] a Public Health Administrator, to conduct a second review of the outstanding documentation issues. After their careful review and engagement, the remaining issues were resolved and a system to closely monitor the contract, coupled with on-going technical assistance, was put in place. (See enclosed letters dated August 21, 2009 and September 4, 2009). Specifically, protocols to ensure better compliance with contractual standards going forward, include but are not limited to, the following:

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- ✓ CARE Delaware is required to document all expenditures and has provided documentation that verify all expenses billed;
- ✓ Comprehensive monitoring reports are completed for each contractual year and a contract manager continues to make regular visits to CARE Delaware to review documentation and provide technical assistance;
- ✓ Invoices and financial reports must be submitted in a timely fashion, expenditures must be verified with receipts;
- ✓ Payroll records are matched with staff listings in the contracts; timesheets are reviewed with minor discrepancies identified and corrected;
- ✓ All required policies and written procedures are required to be in place;
- ✓ Appropriate staffing is required to be in place; mandatory training is provided and documented;
- ✓ Financial records are required, including compliance with generally accepted accounting standards;
- ✓ CARE Delaware is required to submit monthly program reports on the services provided.

Finally, my senior team and I met with the senior leadership of CARE Delaware and concluded that the leadership at CARE Delaware was earnest, thoughtful and very much interested in making the improvements necessary to continue their mission here in Delaware. For example, in 2010, Marihelen Barrett became Chair of Board for CARE Delaware and her prior experience at Nemours Health and Prevention Services has served this agency well, as it continues to professionalize its operations. In addition, Donald Hobson has an MBA and has agreed to serve as Treasurer, after a successful career in the private sector with Astra Zeneca.,

Given the fact there was no evidence of intentional wrongdoing and the organization was otherwise financially sound, the cooperation the Department received in terms of instituting protocols going forward and the importance of this program to this vulnerable population, I concluded that terminating the contract was not the best course of action at that time. To date, CARE Delaware has continued to provide these important services and we closely monitor their contract and continue to provide technical assistance to minimize any compliance issues.

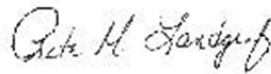
As Secretary of a large agency, I make judgment calls every day and recognize those decisions are open to review and scrutiny. My frustration with the Report's conclusions is they appear to have been reached with very little factual basis. First, the Report concludes that DHSS "inappropriately continued" with a contract after "terminating it for cause" when in fact it was

The Honorable R. Thomas Wagner
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never terminated in the first place. Terminating a contract is a serious matter and one that requires the thoughtful exercise of discretion yet the Report deems my decision not to terminate as "inappropriate," without any discussion about the merits or consequences of a decision to terminate. The Report apparently relies exclusively on the report of one of DHSS's contract monitors, without consideration of subsequent reviews by high-level personnel, the multiple independent audits my team and I reviewed and does not appear to take into consideration the real life consequences to abruptly terminating these important services for this vulnerable population. Finally, the Report alleges that "political pressure resulted in unjustified reinstatement of a state terminated contract", however, no one interviewed me or my senior staff, who are alleged to be the subject of such pressure or Senators Blevins and Hall-Long, who are alleged to have exerted the political pressure.

In closing, I based my conclusion to continue this contract on a review of multiple independent audits, a second high level review of the documentation issues by my senior staff, a personal interview with the leadership at CARE Delaware and solid working knowledge of the needs of this very vulnerable population. While the Report quibbles with that decision 3 years after-the-fact, I stand by it, and suggest it is based on significantly more substance and due diligence than the conclusions encompassed in this Report.

Sincerely,



Rita M. Landgraf
DHSS Secretary

Cc: Delaware Health Fund Advisory Committee Members

Enclosures: DHSS Letter to Care Delaware August 21, 2009
Memorandum Dated September 4, 2009



**DELAWARE HEALTH
AND SOCIAL SERVICES**

OFFICE OF THE SECRETARY

August 21, 2009

Robert P. Hall, Executive Director
Delaware Ecumenical Council on Children and Families
240 North James Street, Suite B1B
Wilmington, DE 19804
Fax: 203-225-1041

By Fax & Regular Mail

Dear Reverend Hall,

As you know, [REDACTED] and I have been asked to review two recent contracts (# 35-1400-2008-21: Caregiver Skills Training – federal funds and # 35-1400-2009-14: Delaware Interfaith Volunteer Caregivers Projects – DE Health Fund dollars) between the Ecumenical Council and the Division of Aging and Adults with Physical Disabilities (DSAAPD). We are doing so, with the goal of ensuring that both contracts are closed out with a final and fair accounting of what payments are due and owed. The Delaware Department of Health and Social Services' contracts are regularly audited. The auditors expect to see that we practice due diligence, such that, documentation and invoice reconciliation support the services received from and monies paid to our contractors. We appreciate the recent invoices and line item budget sheets that you forwarded to us to help ensure proper documentation.

We reviewed the contracts/monitoring reports/invoices/supporting documentation/DSAAPD Contract Policy Manual, and we identified the following as areas of concern that should be resolved. Under each issue, we have explained the concern and suggested items that would satisfy the need for documentation. We are aware of your frustration over repeatedly providing information to DSAAPD. Please understand that we have double checked and simply do not have these items or anything similar in the DSAAPD file. The documentation types listed are suggestions. If you have other documentation that would satisfy the concern, we will be as flexible as we can in considering it. Please keep in mind that though detailed logs, time-sheets, etc. may not need to accompany the invoices, you must maintain them and make them available for monitoring team and auditor reviews.

Delaware Ecumenical Council
August 21, 2009
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First Area of Concern: Caregiver Skills Training Cost Reimbursement.

Your files include documentation that verifies that the caregiver skills trainings classes were held. We understand the trainings were subcontracted. Additional documentation that should be included would be proof of payment to someone for these sessions. We did not see such documentation in the materials that were provided to us for review. Cancelled checks would be the simplest way to prove the payments to the trainers.

Second Area of Concern: Salary for [REDACTED]. Both contracts with DSAAPD contain lines for [REDACTED] salary. The Volunteer Caregivers contract # 35-1400-2009-14 lists her salary as being 100% paid by the grant. The Caregiver Skills Training contract # 35-1400-2008-21 lists her salary as being 30% paid by the grant. Invoices for July, August, and September 2008, request payment for 40 hours/week for staff time under Volunteer Caregivers contract # 35-1400-2009-14, and invoices for the same three months request payment for 12 hours/week for staff time under the Caregiver Skills Training contract # 35-1400-2008-21. We have the W-2 forms that show [REDACTED] was paid for 40 hours a week and the total amount reflected what was requested under the Volunteer Caregivers contract invoices. Assuming that [REDACTED] was paid only from the Volunteer Caregivers contract, we are seeking clarification on who actually was paid during the final quarter (July – September) on the Caregiver Skills Training contract and their responsibilities relevant to the program. Documentation could include specific payroll records for that specific period of time. We understand that there are numerous administrative/supervisory tasks related to the contract, and we are certainly open to reasonable activities in support of the contract deliverables.

Third Area of Concern: Salary for [REDACTED]. Records indicate that [REDACTED] was supposed to start work on July 1, 2008 but that he actually started on January 1, 2009. Invoices were submitted for [REDACTED] salary beginning July 1, 2008 and continued through his actual date of hire. We understand that you told DSAAPD a [REDACTED] was covering this position for these 6 months. We need documentation that she was an employee and how much she was paid. Payroll records or W-2 forms for [REDACTED] should be adequate documentation.

We would like to schedule a time at your convenience to meet with you at your office to resolve these areas of concerns. Please contact [REDACTED] at [REDACTED] or [REDACTED]@state.de.us with dates and times that fit your schedule and allow you time to gather the requested information.

Delaware Ecumenical Council
August 21, 2009
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DSAAPD looks forward to working with you on the FY10 Volunteer Caregivers contract. We anticipate providing additional guidance and tools to ensure both parties clearly understand and adhere to the contract agreement especially surrounding timelines for invoices/reports and thoroughness of supporting documents. We appreciate the work that the Council does for the chronically ill and frail elderly in Delaware and want to ensure that this important service continues.

Thank you again for your cooperation in this process. We look forward to meeting with you soon.

Very truly yours,

[REDACTED]

pc: Guy Perotti
Henry Smith
Rita Landgraf
Terrance Zimmerman

To: Henry Smith, Deputy Director DHSS

From: [REDACTED] Public Health Administrator DPH

Date: September 4, 2009

Subject: Meeting with Rev. Bob Hall, Executive Director Delaware Ecumenical Council on Children and Families

Reverend Bob Hall and I met on September 3, 2009 to review and answer questions surrounding Contract #35-1400-2008-21: Caregiver Skills Training and contract#35-1400-2009-14: Delaware Interfaith Volunteer Caregiver Project. We focused on the areas of concern addressed in the letter to Rev. Hall dated August 21, 2009, as well as questions from DSAAPD based on the Ecumenical Council invoice documents for the final quarter of contract 35-1400-2009-14.

The first area of concern dealt with documentation for the Caregiver Skills Training cost reimbursement. Rev. Hall showed me the cancelled check for \$2,400 for training fees that was issued to [REDACTED]. This payment was for training provided under contract #35-1400-2008-21.

The second area of concern was the assumed payment of 100% of [REDACTED] salary on contract 35-1400-2009-14 and concurrently 30% on contract 35-1400-2008-21 for July – September 2008 when these two contracts overlapped. [REDACTED] continued to be paid from contract #35-1400-2800-21 for the period July – September 2008 at her 30% rate. The remainder of her salary for that time period came from contract #35-1400-2009-14, bringing her up to a full 100%. Since this still left some reimbursable time, the remainder of the hours was captured in the office with personnel who were working on this program but paid from other sources. Rev. Hall verified with W-2 forms and payroll records what [REDACTED] was paid.

The third area of concern where it appeared that [REDACTED] was not hired until January 1, 2009 but had been paid through the contract since July 1, 2008. Rev. Hall mentioned that in his hurry to put the FY09 contract together for the Volunteer Caregiver Project, he cut and pasted from the FY08 contract. As he looked at these documents during our meeting, he realized the source of confusion. The FY08 contract showed the coordinator position as TBA. The FY09 contract should have shown that position to be filled by [REDACTED]. He was paid exclusively from contract #35-1400-2009-14.

In response to the questions on the 4th quarter invoices regarding mileage reimbursement, I viewed a number of the driving logs for staff. The logs captured beginning and ending mileage, dates, and the purpose of each trip. They appeared to reflect the intent of the program and contract. An insurance overcharge was discovered by Rev. Hall. He determined that the Worker's Compensation insurance was inadvertently included in the insurance cost invoiced to DSAAPD. Once that error was recognized the amount was pulled out and resulted in the reduction of the 4th quarter invoice along with the mileage reduction.

I found Rev. Hall to be very cooperative and eager to maintain a cordial working relationship with DSAAPD. To that end he has been working closely with [REDACTED] DSAAPD Contract Manager. [REDACTED] has offered suggestions to enhance the FY10 contract which is currently under development. She has suggested that more detail about program activities, expected outcomes, and evaluation be included, as well as additional detail on time sheets to improve transparency and more accurate budget line allocations within the contract. I offered Rev Hall mileage/telephone log templates that his staff/volunteers could use that capture information uniformly.

Based on my discussion with Rev. Hall and viewing the supporting documentation, I recommend the final invoice for contract 35-1400-2009-14 be paid as submitted and the inquiry into contract# 35-1400-2008-21 should be closed. Open and frequent communication between the Division and the Council will enhance this valuable working relationship.