



# OKLAHOMA STATE DEPARTMENT OF HEALTH

Investigative Audit

September 2019 through February 2021

**Cindy Byrd, CPA**  
State Auditor & Inspector

**Investigative Audit Report of the  
Oklahoma State Department of Health**

**For the Period  
September 2019 through February 2021**

## EXECUTIVE SUMMARY



## Oklahoma State Department of Health

September 2019 through February 2021

## ENGAGEMENT & OBJECTIVES

We were engaged at the request of Oklahoma State Attorney General, in accordance with 74 O.S. § 18(f), to address concerns of improper uses of state funds.

Per the Attorney General's request, we made inquiries and reviewed records regarding concerns at the Oklahoma State Health Department. The following objectives were developed as a result of the issues noted:

1. Determine if Personal Protective Equipment (PPE) paid by wire transfer from OSDH clearing account was received.
2. Determine if administrative expenditures and contracts were properly procured according to the Central Purchasing Act.
3. Determine if salaries were reasonable based on the position.

## IMPACT ON THE STATE & OSDH

During this time of unforeseen challenges, it is imperative that financial accountability, management, and oversight of state funds is exercised appropriately while protecting the public. We acknowledge the exceptional circumstances the pandemic has presented. However, the state did not have a comprehensive emergency procurement policy or procedure in place prior to the COVID-19 emergency, greatly increasing the state's risk for fraud, waste, and loss of funds. As a result, prepayments were made in violation of the Oklahoma Constitution and goods have still not been received for over \$5.4 million paid by the state.

OSDH should continue to reconcile all payment records with inventory records and receiving documentation to ensure all PPE was received and COVID related services have been provided. OSDH should continue to work with the Attorney General's Office, to ensure vendors have reimbursed the agency for the goods not received.

It is imperative that emergency financial policies and procedures be developed to help provide clear guidance should our state ever face another pandemic such as COVID-19. The state needs to ensure that all agencies have emergency procurement policies and procedures as part of their overall Continuity of Operations Plan (COOP)<sup>1</sup>.

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<sup>1</sup> [Continuity Guidance Circular](#) - February 2018 (oklahoma.gov)

February 8, 2022

**TO THE CITIZENS OF OKLAHOMA**

We present the audit report of the Oklahoma State Department of Health for the period September 1, 2019 through February 28, 2021. The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.) and shall be open to any person for inspection and copying.

Sincerely,



CINDY BYRD, CPA  
OKLAHOMA STATE AUDITOR & INSPECTOR



## Contents

Background .....	5
Objective 1 .....	7
Objective 2 .....	16
Objective 3 .....	21

## Background

In September of 2019, Gary Cox was appointed as the interim commissioner of the Oklahoma State Department of Health (OSDH). During his seven months of employment, several management changes were made with some individuals receiving significant salary increases. In addition, a few changes were also made to the organizational chart. These changes led to some questionable purchases that may not have been made in compliance with the Central Purchasing Act.

As in any time of change, a stressful environment can be created when information is not clearly communicated. Without clear communication, individuals may not understand why the changes are occurring or how the changes may affect them. With an already strained environment, the staff of OSDH were about to experience the unimaginable.

In March 2020, the United States Centers for Disease Control and Prevention identified the potential public health threat by the novel coronavirus (COVID-19) as “high” both globally and in the United States. While impact in Oklahoma in March had been minimal to date, it was important for Oklahoma to be ready for this threat. Oklahoma Executive Order 2020-06 was issued on March 12, 2020 by J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power of Section 2 of Article VI of the Oklahoma Constitution to declare and directs in part, “.....State agencies, in responding to this threat, may make necessary purchases to fully prepare for a potential outbreak within the State”. Multiple executive orders<sup>2</sup> followed, amending the original order and adding additional orders. All powers granted to the governor during a health emergency are identified in 63 O.S § 6403.<sup>3</sup>

Subsequently, Personal Protective Equipment (PPE) purchases for the emergency response were made through the OSDH Finance Division. Gino DeMarco<sup>4</sup> was deemed the PPE supply chain leader by Governor Stitt and was responsible for finding vendors to procure gowns, gloves, and N95 masks.

As the Governor’s executive orders provided, normal purchasing procedures were relaxed in an effort to purchase PPE supplies as quickly as possible. Due to the supply and demand of PPE, the normal purchasing procedure of issuing payment by warrant was not acceptable

At a news conference on April 28, 2020, Gov. Kevin Stitt said he directed his team, including DeMarco, to quickly get PPE equipment and other supplies. The federal government, under the CARES Act, has told states it would reimburse them for “necessary expenditures” related to COVID-19

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<sup>2</sup> [Executive Orders](#) 2020-06 through 2020-13

<sup>3</sup> [Catastrophic Health Emergency Powers Act](#) (CHEPA)

<sup>4</sup> Gino DeMarco served as the state deputy tourism director prior to the pandemic

for some vendors. Instead, they required electronic wire deposits or pre-payment for supplies at the time the order was placed, or that supplies be paid for by electronic wire transfer once they were shipped from the warehouse, or in some instances when the supplies were received by OSDH.

With assistance from the Office of the State Treasurer and Oklahoma Management Enterprise Services - Central Accounting Reporting, OSDH was able to execute the wire transfer payments using funds from their clearing accounts. OSDH wired \$54,328,042 to vendors for PPE with the expectation of being reimbursed with COVID Relief Funds (CRF)<sup>5</sup>.

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<sup>5</sup>[US Department of Treasury](#) - Coronavirus Relief Fund



*Objective 1* – Determine if PPE Paid for by  
Wire Transfer Was Received



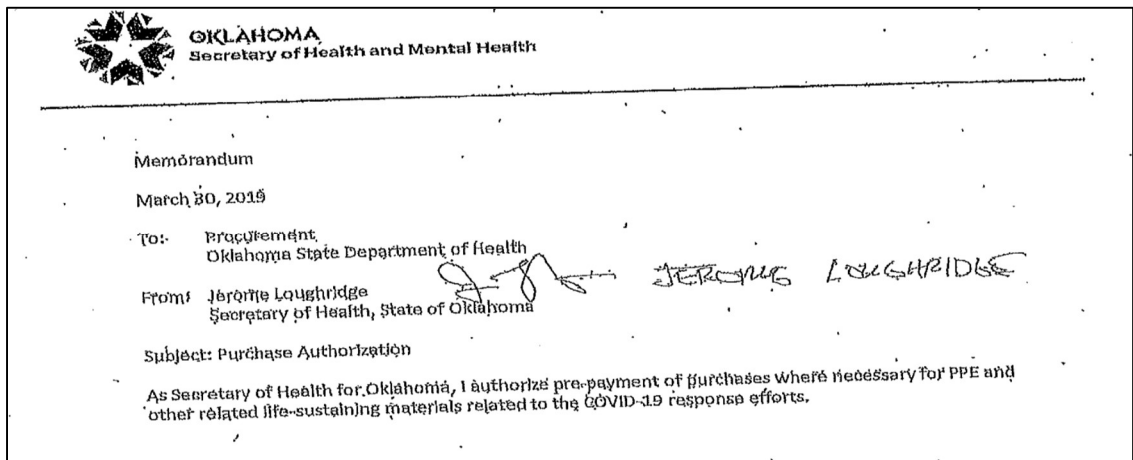
**Objective 1** Determine if Personal Protective Equipment (PPE) paid by wire transfer from OSDH clearing account was received.

**Details**

OSDH did not have a comprehensive emergency procurement policy or procedure in place prior to the COVID-19 emergency, greatly increasing the state's risk for fraud, waste, and loss of funds. As a result, prepayments were made in violation of the Oklahoma Constitution and goods have still not been received for over \$5.4 million paid by the state.

As cases grew quickly during the onset of the COVID-19 pandemic, the national demand for PPE exceeded the supply. As a result, the global purchasing environment for PPE changed, and OSDH was unable to follow its normal purchasing procedures. Many vendors required wire transfer payments prior to the delivery of goods, preventing the use of standard payment methods. OSDH Financial Services created the COVID Response Purchasing Procedures in an effort to formalize the emergency purchases.

The following memo from Jerome Loughridge, Secretary of Health was sent to OSDH procurement providing authorization for pre-payment of purchases for PPE when necessary.



OSDH made the first PPE purchase via wire transfer from the agency's clearing account on March 30, 2020. During the time period of March 30, 2020 through December 31, 2020 OSDH made a total of 86 wire transfers to 28 different vendors totaling \$70,718,374. Nine transactions totaling \$16,390,332 were credited back or returned because goods could not be provided. Therefore, the amount of PPE purchased by wire transfer totaled \$54,328,042.

SAI requested supporting documentation for all 77 wire transfer payments made between March 30, 2020 and December 31, 2020. We reviewed and reconciled each of the wire transfers to supporting documentation provided by OSDH to verify that PPE had been received or COVID related services had been provided. During the review process, we expected to see invoices with detailed information

about the goods, purchase orders, and receiving documentation including bills of lading, receipts of goods, or emails from warehouse personnel indicating that goods had been received.

SAI received hundreds of pages of supporting documentation in disarray. At the time we requested the information, OSDH Finance was in the process of trying to organize the information and reconcile back to the wire transfers made.

We noted inconsistency in how the purchasing documentation was maintained. For most of the purchases made via wire transfers, there was no standardized process of obtaining and organizing the supporting purchasing and receiving documentation. It became apparent during our review of documentation, that because purchases were being directed by Gino DeMarco, who was not an OSDH employee, OSDH Finance staff were not always aware of the details about the purchases. Even though the Finance staff was responsible for preparing the wire transfer payments, they had to rely on personnel at the warehouse to provide the supporting documentation indicating that PPE goods were received to support the wire transfers made.

Furthermore, the length of time it took OSDH to provide supporting documentation and the difficulties noted when attempting to reconcile the receipt of the PPE purchased by wire transfers, accentuated the disconnect between the purchasing and finance process. While we recognize the challenges associated with the pandemic, it is also critical to have a robust process in place.

#### Warehouse Inventory

Because there was limited documentation that Finance was able to provide, SAI met with the warehouse staff to gain an understanding of the receiving and inventory process and requested additional supporting documentation for receipt of PPE that the Finance staff was unable to provide. SAI also obtained a download of the inventory records to help identify that goods were received which could not be verified otherwise.

Our review of the inventory process identified that inventory controls were not operating effectively. The inventory system used by OSDH prior to the COVID-19 pandemic was a Centers for Disease Control (CDC) program called Inventory Management Asset Tracking System (IMATS) that was designed to track strategic national stockpile assets and to manage situations like anthrax attack or some other biological threat.

When OSDH began ordering PPE in March 2020, orders were tracked in the warehouse using a spreadsheet and paper copies of receiving documentation were maintained in boxes. This process was in place from March until the new inventory system<sup>6</sup> was put in place in late April. The new system went live on April 26, 2020, and previously purchased PPE inventory was not added to the

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<sup>6</sup> Bit Commerce system (ecommerce platform - off the shelf solution) is used to place and fulfill orders track orders shipped to vendors. PPETS (Personal Protective Equipment Tracking System - OMES solution) web-based system is used to track the inventory

**Oklahoma State Department of Health  
Special Investigative Audit**

system. Also, multiple individuals had access to make changes to the system. Without adequate controls in place, records may not be reliable.

OMMA Funds

In addition to funds being wired from the OSDH operating fund clearing account, SAI also noted during our review of the Office of the Oklahoma State Treasurer - Treasurer's Activity Statement that two wire transfer payments totaling \$2,198,751 were made from the OSDH clearing account that is dedicated to the Oklahoma Medical Marijuana Authority (OMMA). However, it was later noted that as of May 20, 2020 a credit in the amount of \$2,198,750 was made back to the OMMA clearing account replenishing all but \$1.25 of the funds. We will consider the difference to be an immaterial amount.

Report ID: OCP0643		Office of the Oklahoma State Treasurer		Page No. 245			
Bus Unit: 34000 Department of Health		Treasurer's Activity Statement		Run Date 08/11/2020			
Class Funding: 79902 Medical Marijuana Clearing		From 09/01/2019 To 06/30/2020		Run Time 11:34:02			
Transaction Type	Reference	From Affiliate	Payee	Transaction Amount	Trans Type Subtotal	Transaction Date	Issue Date
Credit Card Chargeback	00132930			-100.00		06/19/2020	06/19/2020
Credit Card Chargeback	00132999			-200.00		06/26/2020	06/26/2020
<b>Deposit Correction</b>	<b>CR00017445</b>			<b>2,198,750.00</b>	<b>-11,698.90</b>	<b>05/20/2020</b>	<b>05/20/2020</b>
					<b>2,198,750.00</b>		
Warrant	0000020001		CHEYENNE PHILLIPS	-1,558.30		01/28/2020	01/21/2020
Warrant	0000020002		DANNY LINDSEY	-22.50		01/31/2020	01/21/2020
Warrant	0000020003		SHERRI HAMILTON	-2,500.00		01/28/2020	01/21/2020
Warrant	0000020004		TIFFANY LIPPERT	-100.00		03/27/2020	02/21/2020
Warrant	0000200004		AARON HARRISON	-100.00		04/02/2020	01/29/2020
					<b>-5,280.80</b>		
<b>Wire Transfer</b>	<b>0000001111</b>	<b>99999</b>	<b>PPE SUPPLIES LLC</b>	<b>-2,125,000.00</b>		<b>03/30/2020</b>	<b>03/30/2020</b>
<b>Wire Transfer</b>	<b>0000001112</b>	<b>99999</b>	<b>PLUG CHARGERS LLC</b>	<b>-73,751.25</b>		<b>03/31/2020</b>	<b>03/31/2020</b>
					<b>-2,198,751.25</b>		
Ending Balance:	2,908,936.00						

Though transfers and disbursements from the agency's clearing accounts are restricted per 62 O.S. 34.57. E.17, the Governor's Executive Order 2020-07 states in part:

...the State Emergency Operations Plan has been activated, and *resources of all State departments and agencies* available to meet this emergency are hereby committed to the reasonable extent necessary to prepare for and respond to COVID-19 and to protect the health and safety of the public. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivision of the State.

It appears based on the language in the executive order, using the OMMA funds, and funds from the agency's primary clearing account to prepare and respond to COVID-19 by purchasing PPE is acceptable.

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7. E. 1. Except as provided in paragraph 2 of this subsection, at least once each month each state agency shall transfer monies deposited in agency clearing accounts to the various funds or accounts, subdivisions of the state, or functions as may be provided by statute and no money shall ever be disbursed from the agency clearing account for any other purpose, except in refund of erroneous or excessive collections and credits.

*CRF Reimbursement*

As of January 13, 2021, OSDH had received CRF<sup>8</sup> reimbursement of \$41,184,116 to replenish the clearing accounts.

**Finding #1 Supporting documentation could not be provided to indicate that PPE was received.**

- 17 electronic wire transfers made from the agency clearing account totaling \$9,534,793 could not be supported by documentation indicating receipt of goods. However, we were able to identify a total of \$4,119,811 of those goods had been recorded in the PPETS inventory system indicating receipt.

For the \$4,119,811, we are adding a disclaimer to the reliability of the information in the inventory system. We have placed low level of assurance that the information in the inventory system is accurate due to the internal control deficiencies noted. It does appear though that individuals had enough information about the PPE to enter details in the system. However, as noted with the disarray of purchasing and receiving paper documentation, it is possible documents have been misplaced or lost.

- \$5,414,982 of goods purchased by wire transfer could not be confirmed as having been received. Of that amount:
  - \$2,125,000 was paid to PPE Supplies LLC for N95 masks. The Attorney General has filed a petition<sup>9</sup> in district court, requesting over \$1.8 million be returned to OSDH. The state alleges Casey Bradford, who is co-manager and an owner of PPE Supplies LLC, misrepresented facts to the state that if he were paid up front for half the cost of one purchase order, he could expedite the shipment of protective masks for delivery to the state within two weeks. After OSDH cancelled all four orders, officials asked for the \$2.125 million deposit back. Bradford has only refunded a partial payment of \$300,000.
  - \$890,417 was paid to A&K Distributors for respirators. The Attorney General filed a lawsuit<sup>10</sup> against A&K Distributors for failing to deliver an order of ventilators to OSDH at the onset of the Coronavirus pandemic. Despite the state having canceled the order in October, the company had 38 ventilators delivered in December. OSDH returned the wrongfully delivered ventilators but has not received a refund. In addition, SAI noted an additional \$133,166 paid to A&K Distributors where supporting

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<sup>8</sup> [Coronavirus Relief Fund](#) - Through the Coronavirus Relief Fund, the CARES Act provides for payments to State, Local, and Tribal governments navigating the impact of the COVID-19 outbreak.

<sup>9</sup> [Case NO. CS-2021-366](#) Oklahoma State Department of Health vs. PPE Supplies LLC, and Casey Bradford

<sup>10</sup> [Case NO CI-2021-1577](#) Oklahoma State Department of Health vs. A&K Distributors PR, LLC and A&K Distributors, LLC

**Oklahoma State Department of Health  
Special Investigative Audit**

documentation could not be provided to indicate that PPE was received.

- o The remaining \$2,266,399 was various types of services and supplies paid to 7 vendors.

See yellow highlights in the chart on following page:

Vendor	Total Wires	Credits/Returns	Total Wires less Credits/Returns	No Paper Documentation indicating Receipt of Goods	Goods Recorded in the Inventory System	No Evidence Goods were Received indicating overpayment	Wires Reimbursed by CRF
A & K DISTRIBUTORS PR LLC	\$ 5,644,960	\$ (1,140,000)	\$ 4,504,960	\$ 3,296,543	\$ 2,272,960	\$ 1,023,583	\$ 3,358,280
AEGIS SCIENCES CORPORATION *	2,120,100		2,120,100	80,500		80,500	1,443,900
ALREADY LLC	6,845,800		6,845,800			0	6,845,800
ANTHONY TODD CATANIA	2,668,900	(240,000)	2,428,900	1,716,501	1,701,651	14,850	2,054,650
BAY MEDICAL	142,500	(142,500)	0			0	0
BLK INTERNATIONAL INC	2,498,763	(295,000)	2,203,763			0	2,923,763
CEROS INC	107,140		107,140			0	107,140
CLEAN SAFETY INC	1,863,800	(770,000)	1,093,800			0	1,093,800
CLEARPOINT POLYMERS LLC	4,558,400		4,558,400			0	4,558,400
CONCIERGE TESTING SOLUTIONS LLC *	346,993		346,993	346,993		346,993	
COVERCRAFT PARENT III INC	263,030		263,030	102,790		102,790	244,302
DURGEE CONSULTING LLC	400,300	(200,150)	200,150	145,200	145,200	0	214,120
FIRST AMERICAN TITLE & TRUST CO INC *	7,013,990		7,013,990			0	0
GREEN ROCK HEMP HOLDINGS LLC	9,255,000		9,255,000	1,718,187	0	1,718,187	7,305,000
IMMYLABS LLC *	201,860		201,860			0	164,500
JENNIFER LYNN DILLEY *	7,140		7,140			0	6,510
LUCAS HOLDINGS LLC	285,000		285,000			0	285,000
MEDFORMANCE	44,950	(44,950)	0			0	0
MILLENNIUM PRODUCTION GROUP LLC	3,028,158		3,028,158			0	3,015,597
NAGAMORI TRADE LLC	1,456,552		1,456,552	1,552		1,552	450,000
PLUG CHARGERS LLC	73,751		73,751			0	73,751
PPE SUPPLIES LLC	2,125,000		2,125,000	2,125,000		2,125,000	2,147,750
SOUTHSTAR FIN & AMERICAN FIRE	224,000		224,000			0	0
STANDARD HEALTHCARE SUPPLY LLC	2,768,231		2,768,231	1,526		1,526	2,768,231
UNIVERSAL BROTHERS EXPORT IMPORT LLC	2,861,480		2,861,480			0	1,801,000
VECTOR GLOBAL LOGISTICS LLC	290,400		290,400			0	290,400
WORLD JET INC	13,525,500	(13,525,500)	0			0	0
XENA VENTURES LLC	96,677	(32,232)	64,444			0	32,222
<b>Total</b>	<b>\$ 70,718,374</b>	<b>\$ (16,390,332)</b>	<b>\$ 54,328,042</b>	<b>\$ 9,534,793</b>	<b>\$ 4,119,811</b>	<b>\$ 5,414,982</b>	<b>\$ 41,184,116</b>

\* Vendors provided COVID related services other than PPE.

**Finding #2 Pre-payment for PPE: Advancing payments violates Article 10 of the Oklahoma Constitution**

As previously mentioned, the national demand for PPE exceeded the supply which caused many vendors to require wire transfer payments prior to the delivery of goods. In a normal situation, we would consider 74 O.S. §85.44B(A), to be violated because it provides that state agencies pay only after products have been provided or services have been accepted as satisfactory.

Certain legal requirements of the Central Purchasing Act were lifted based on executive orders, as noted in previous sections, but they do not specifically allow for pre-payment when goods are purchased.

Therefore, it appears that advancing payments for PPE violates Article 10 § 15 of the Oklahoma Constitution which prohibits the credit of the State from being “given, pledged, or loaned to any individual, company, corporation, or association”.

In addition, several AG Opinions<sup>11</sup> consider advanced payments to be unconstitutional and violate the referenced Constitution.

There is also nothing noted in the Oklahoma Emergency Management Act (OEMA)<sup>12</sup> or Catastrophic Health Emergency Powers Act (CHEPA)<sup>13</sup> that allowed the Governor to waive this constitutional limitation.

**Finding #3 One-time purchases in excess of the allowable \$250,000**

- 42 wire transactions exceeded the one-time purchase capped at \$250,000, authorized by Executive Order 2020-07.

Gov. Stitt's initial executive order and all others through the March 12, 2021 Executive Order, issued pursuant to his powers under the Constitution, CHEPA, or OEMA, allowed state agencies to make emergency procurements irrespective of P-card limitations and bidding requirements, up to \$250,000.00 per transaction.<sup>14</sup>

The Governor's executive orders state the following:

State agencies, in responding to this emergency, may make necessary emergency acquisitions to fulfill the purposes of this declaration without regard to limitations or bidding requirements on such acquisitions to include the use of the state purchase card. Such necessary emergency purchases shall be capped at \$250,000.00 per transaction. All such purchases must be readily identifiable as such, as following the conclusion of this threat, all such necessary emergency acquisitions will be audited to determine if they were made for emergency purposes.

**Finding #4 The Cabinet Secretary for Health did not have had the authority to delegate purchasing authority.**

The following memo is from Jerome Loughridge, Secretary of Health, delegating purchasing authority to Gino DeMarco for PPE at a limit of \$3 million per order.

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<sup>11</sup> [1981 OK AG 323](#) Question Submitted by: The Honorable Frank Harbin, Oklahoma House of Representatives (oscn.net); [1982 OK AG 51](#) Question Submitted by: Abe L. Hesser, Executive Director, Oklahoma Department of Tourism & Recreation (oscn.net); [1983 OK AG 120](#) Question Submitted by: Henry Bellmon, Director, Department of Human Services (oscn.net)

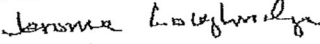
<sup>12</sup> [63 O.S. § 683.8](#) - Oklahoma Emergency Management Act of 2003 - Powers and Duties of Governor

<sup>13</sup> [63 O.S. § 6403](#) - Catastrophic Health Emergency Powers Act

<sup>14</sup> Furthermore, per 63 O.S.2011, §6403(B)(1), the OEMA allows the Governor to "procure supplies and equipment in accordance with such plans and programs . . . ." 63 O.S.2011, §683.8(D)(3) and 63 O.S. §683.9(1) also allow the Governor to assume regulatory control over all essential resources and allow him or her "to determine priorities of such resources and allocate such resources as the Governor may deem necessary in cooperation with the political subdivisions of this state, the federal government, or other states."

Memorandum  
March 26, 2019

To: Procurement  
Oklahoma State Department of Health

From: Jerome Loughridge   
Secretary of Health, State of Oklahoma

Subject: Delegation of Authority

As Secretary of Health for Oklahoma, I delegate authority to Gino DeMarco to initiate and approve the purchase of Personal Protective Equipment through OSDH procurement. This is intended to address the strategic statewide supply of this critical equipment.

This delegation is good for 30 days from this memo, and is limited at \$8M per order.

In our review of the Executive Orders issued by the Governor, there was no authority for the Secretary of Health to be the designated purchaser nor did the orders give the Secretary the authority to approve purchases.

Executive Order 2020-12 filed with the Secretary of State on April 02, 2020, states in part:

Therefore, I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, and 63 O.S. §§ 6101-6900 of the Oklahoma Statutes, specifically 63 O.S. § 6401, do hereby declare and order the following: . . .

6. The primary public health authority responding to the health emergency shall be the Oklahoma State Commissioner of Health.

It is also stated in 74 O.S. § 10.3, that the Cabinet Secretary position does not provide the authority to grant or delegate purchasing within an agency.

... cabinet secretaries have the following express duties:

1. Advise the Governor of any policy changes or problems within the area they represent;
2. Advise the entities represented of any policy changes or problems as directed by the Governor; and
3. Coordinate information gathering for the Legislature as requested.

In addition, A.G. Opinion 2002 OK AG 29<sup>15</sup> further states:

The duties of the cabinet secretaries are set forth in the Act: They shall

1. Advise the Governor of any policy changes or problems within the area they represent;
2. Advise the entities represented of any policy changes or problems as directed by the Governor; and

<sup>15</sup> [Opinion No. 02-29](#), Opinion No. 02-29 (2002) (Ops.Okla.Atty.Gen. Jul. 11, 2002)

3. Coordinate information gathering for the Legislature as requested.

The A.G. Opinion further provides that:

Based on these duties, we have previously concluded that the Act "does not create independent administrative or other authority in cabinet secretaries except such implied powers as are necessary to effectuate their advisory and information coordinating functions." A.G. Opin. 88-3, 7. See also A.G. Opin. 00-54, 279, which suggests the functions of cabinet secretaries "are no more than giving opinions and performing clerical work."

Therefore, as the cabinet secretaries under the plain language of the statute generally<sup>16</sup> are not authorized to adjudicate rights or possess other powers associated with an agency, they are not agencies ....

It appears overall purchasing and decision-making responsibilities should have remained with to the Commissioner of Health.

**Finding #5 Inadequate controls regarding the PPE inventory system**

OSDH did not have adequate inventory controls in place that would provide reasonable assurance that goods received are accurately recorded in the system.

The GAO *Standards for Internal Control* emphasize the following.

- Assets should be periodically counted and compared to control records.
- Management must design an internal control system to provide reasonable assurance of prevention or detection of unauthorized acquisition, use, or disposition of assets.

In addition, the OMES Statewide Accounting Manual states, "Internal controls should ensure individuals responsible for monitoring inventories should not have the authority to authorize withdrawals of items maintained in inventory, and individuals performing physical inventory counts should not be involved in maintaining inventory records."

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<sup>16</sup> There are instances where individual cabinet secretaries exercise some authority. For instance, the Secretary of Commerce is a member of the Native American Cultural and Educational Authority. [74 O.S. 2001, § 1226.2\(B\)\(2\)](#). The Secretary of Education operates the Office of Accountability and has responsibilities for implementing education reform as provided by the Legislature. [70 O.S. 2001, § 3-118\(1\), \(6\)](#). The Secretary of Safety and Security works with the State Finance Director to disburse funds from the Firearms Laboratory Improvement Fund, [74 O.S. 2001, § 150.32\(A\)](#), and also serves as an active member of the Oklahoma Hazardous Materials Emergency Response Commission. [27A O.S. 2001, § 4-2-102\(B\)](#). The Secretary of Science and Technology participates in the selection of members for the Virtual Internet School Pilot Program Coordinating Committee. [70 O.S. 2001, § 1210.725\(A\)](#). The Secretary of the Environment distributes money for the federal Water Pollution Control Act and Clean Water Act, [27A O.S. 2001, §§ 1-2-101\(A\)\(2\), 1-3-101\(C\)\(8\)](#); and serves as a trustee on the Oklahoma Landfill Closure Authority. [27A O.S. 2001, § 2-10-701.1\(C\)\(4\)](#). However, this does not mean that the secretaries themselves are "agencies." Rather, they are acting in the capacity of officers, often in connection with established bona fide agencies.





*Objective 2* - Determine Purchases  
Complied with the  
Central Purchasing Act

**Oklahoma State Department of Health  
Special Investigative Audit**

**Objective 2** Determine if administrative purchases and contracts were properly procured to comply with the Central Purchasing Act.

**Expenditure Details** OSDH experienced numerous personnel changes within the administrative and finance divisions during the audit period. In addition to the two Interim Commissioners, the agency also had three different Chief Financial Officers during the audit period and a new Chief of Staff. With these significant changes, it is possible some of these individuals may have been unfamiliar with state purchasing laws. Purchases specifically in question were related to furniture, communication support, and OU Health Science Center Contracts, Saxum and Shyft Partners LLC.

We performed an analysis of the agency’s miscellaneous expenditures for FY 18, FY 19, and FY 20 using the combining trial balance. For accounts with total expenditures exceeding \$3 million and a 50% or more increase (see blue highlights below), we analyzed the details of account and followed up on outlying activities from year to year.

Expenditures	Dollar Amounts				% of Change		
	FY 2018	FY 2019	FY 2020	Total	(2018 vs. 2019)	(2018 vs. 2020)	(2019 vs. 2020)
511000 Salary Expense	\$ 92,124,083.34	\$ 82,939,942.42	\$ 97,571,039.37	\$ 272,635,065.13	-9.97%	5.91%	17.64%
512000 Insur.Prem-Hlth-Life,etc	24,120,697.76	21,170,462.57	22,315,139.99	67,606,300.32	-12.23%	-7.49%	5.41%
513000 FICA-Retirement Contributions	21,594,611.22	19,863,757.40	22,894,418.09	64,352,786.71	-8.02%	6.02%	15.26%
519000 Inter/Intra Agy Pmt-Pers Svcs	192,736.23	161,856.15	180,166.19	534,758.57	-16.02%	-6.52%	11.31%
<i>Personnel Expenses Subtotal</i>	<i>\$ 138,032,128.55</i>	<i>\$ 124,136,018.54</i>	<i>\$ 142,960,763.64</i>	<i>\$ 405,128,910.73</i>	<i>-10.07%</i>	<i>3.57%</i>	<i>15.16%</i>
515000 Professional Services	\$ 43,179,011.86	\$ 37,831,562.88	\$ 44,861,394.88	125,871,969.62	-12.38%	3.90%	18.58%
521000 Travel - Reimbursements	1,426,922.24	1,088,480.72	1,333,429.46	3,848,832.42	-23.72%	-6.55%	22.50%
522000 Travel - Agency Direct Pmts	279,681.82	487,605.70	435,345.70	1,202,633.22	74.34%	55.66%	-10.72%
531000 Misc. Administrative Exp	4,416,977.71	4,084,513.12	6,128,762.60	14,630,253.43	-7.53%	38.75%	50.05%
532000 Rent Expense	3,207,454.86	3,999,486.86	5,054,715.13	12,261,656.85	24.69%	57.59%	26.38%
533000 Maintenance & Repair Exp	2,491,738.52	2,040,806.13	2,781,081.64	7,313,626.29	-18.10%	11.61%	36.27%
534000 Specialized Sup & Mat. Expense	8,263,825.39	8,606,149.95	21,838,242.21	38,708,217.55	4.14%	164.26%	153.75%
535000 Production, Safety, Security Expense	49,883.34	123,894.76	7,803,375.85	7,977,153.95	148.37%	15543.25%	6198.39%
536000 General Operating Expenses	572,347.40	607,986.24	1,052,873.27	2,233,206.91	6.23%	83.96%	73.17%
537000 Shop Expense	3,244,812.39	3,152,333.91	15,320,505.11	21,717,651.41	-2.85%	372.15%	386.01%
541000 Office Furniture & Equipment	924,727.53	889,909.30	2,926,628.47	4,741,265.30	-3.77%	216.49%	228.87%
542000 Library Equipment-Resources	23,020.40	8,141.57	4,034.39	35,196.36	-64.63%	-82.47%	-50.45%
543000 Lease Purchases	2,501.68	(2,501.68)	43,138,622.38	43,138,622.38	-200.00%	1724286.11%	-1724486.11%
544000 Livestock-Poultry	594.90	(594.90)	-	-	-200.00%	-100.00%	-100.00%
546000 Buildings-Purchase, Construction, Renovation	3,011.28	3,059.51	77,528.00	83,598.79	1.60%	2474.59%	2434.00%
551000 Social Services - Assistance Grants	65,090,202.94	54,847,264.68	49,091,235.79	169,028,703.41	-15.74%	-24.58%	-10.49%
552000 Scholarships, Tuition, Incentive Payments	27,463.33	48,139.40	50,765.22	126,367.95	75.29%	84.85%	5.45%
553000 Refunds, Indemnities, Restitution	1,572,399.76	1,914,597.70	542,221.53	4,029,218.99	21.76%	-65.52%	-71.68%
554000 Program Reimbursement, Litigation Costs	36,489,062.70	34,529,484.30	37,992,676.65	109,011,223.65	-5.37%	4.12%	10.03%
555000 Payments-Local Government - Non-Profits	12,788,156.18	13,134,632.41	17,356,060.94	43,278,849.53	2.71%	35.72%	32.14%
<i>Non-Personnel Expenditure Subtotal</i>	<i>\$ 184,053,796.23</i>	<i>\$ 167,394,952.56</i>	<i>\$ 257,789,499.22</i>	<i>\$ 609,238,248.01</i>	<i>-9.05%</i>	<i>40.06%</i>	<i>54.00%</i>
<i>Total Expenditures</i>	<i>\$ 322,085,924.78</i>	<i>\$ 291,530,971.10</i>	<i>\$ 400,750,262.86</i>	<i>\$ 1,014,367,158.74</i>	<i>-9.49%</i>	<i>24.42%</i>	<i>37.46%</i>

Our review of the outlying activities indicated that the increase in expenses were for the agency’s general operations and COVID-related expenditures. The agency incurred additional operating expenses during the pandemic due to shifting the majority of staff to a teleworking status and purchasing PPE.

In addition, we judgmentally selected 10 expenditures for review to determine if the purchases were made in accordance with the state purchasing procedures.

Two payments for \$56,000 and \$24,000 were paid to one vendor as a “finder’s fee.” It appears that there is no legal authority under the Public Health Code in Title 63 for OSDH to pay for a finder’s fee. Furthermore, there is also nothing in the same code or Title 74 in the Central Purchasing Act that would prohibit such a payment either.

**Contract  
Details**

Contracts with OU Health Science Center

Contracts were made with the **University of Oklahoma Health Science Center** on behalf of the College of Public Health for different roles, such as “Consulting Epidemiologists,” “Public Health Consultant,” and “Research Registered Nurse.” OSDH had contracts with OUHSC for similar services. However, due to the pandemic, additional contractors were retained.

These contracts were for professional services from another state institution. Per 74 O.S. § 85.7. 1.3.1 Competitive Bid or Proposal Procedures, professional services shall be exempt from competitive bidding procedures. Also, Purchases were made under the Governor’s Emergency Executive Order (2020-07).

All OUHSC contracts reviewed were properly approved and executed.

Contracts with OSU Medical Center and Integris Baptist Medical Center

Contracts were made with the **Oklahoma State University Medical Center** and **Integris Baptist Medical Center, Inc.** for COVID-19 “surge” patient care. The initial contracts were signed 4/20/2020 and 4/17/2020, respectively.

These contracts were made for COVID related patient care. Purchases were made under the Governor’s Emergency Executive Order 2020-012, which made the Oklahoma State Commissioner of Health the primary public health authority responding to the health emergency.

Both contracts reviewed were properly approved and executed.

Contracts with Saxum Strategic Communications

Contracts were made with **Saxum Strategic Communications LLC** for COVID related media and social media strategy and support.

Purchases were made under the Governor’s Emergency Executive Order (2020-07) and were properly approved and executed.

Contract with Shyft Partners, LLC

OSDH entered into a contract with **Shyft Partners, LLC**, beginning February 1, 2021 and extending through December 31, 2021. The contract was approved as a Sole Source Acquisition for \$750,000.

I hereby affirm that pursuant to the provisions of the attached requisition or contract that (name of supplier) Shyft Partners is the only person or business entity singularly qualified to provide the acquisition, and if a product is the only brand or product which is unique, for the following reasons:

Shyft Partners is uniquely qualified to provide project management and strategic transformation to the OSDH as they have previously provided the service through the OMES contract that will end after January. The Shyft Partner team has an established rapport with the leadership team, is familiar with the agency processes, and has established tracking tools for managing the COVID-19 Relief Bill funding. The prior knowledge and experience will be critical to ensuring continuity through the end of the response.

The following is a brief description of all efforts which were made to verify that the services or products to be purchased pursuant to the provisions of the attached requisition or contract qualify as a sole source or sole brand acquisition:

The OSDH worked with OMES to identify the best mechanism for moving the response projects forward with the change of funds being directly provided to the OSDH. The Shyft Partners is the only project management team that has worked with the state of Oklahoma to manage the COVID-19 Relief Funds. The Shyft Partners is the only entity with the experience necessary to assure proper oversight and identify areas for improvement within the agency.

As identified above, the contract was specifically for strategic planning and roadmap development, program management, process improvement, and leveraging technology.

Although Shyft Partners LLC provided project management and strategic transformation to Office of Management Enterprise Services (OMES) and established tracking tools for managing COVID-19 Relief Bill funding, it may seem questionable for OSDH to rely on that as their justification for sole source. Based on the contract language, deliverables to be provided do not appear to be unique. The uniqueness of the contactor appears to be that they had established rapport with the leadership team.

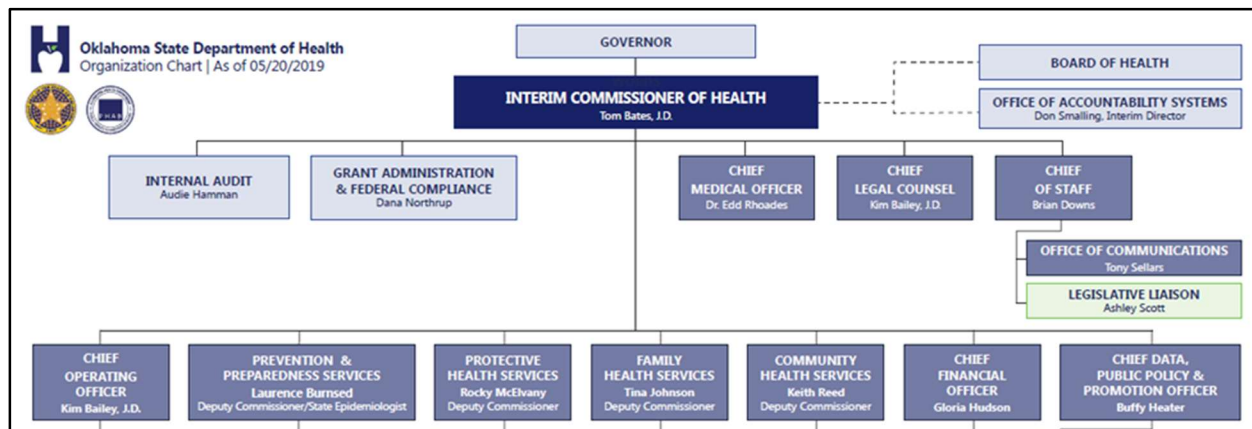
***Finding***      **The Sole Source justification may be questionable.**



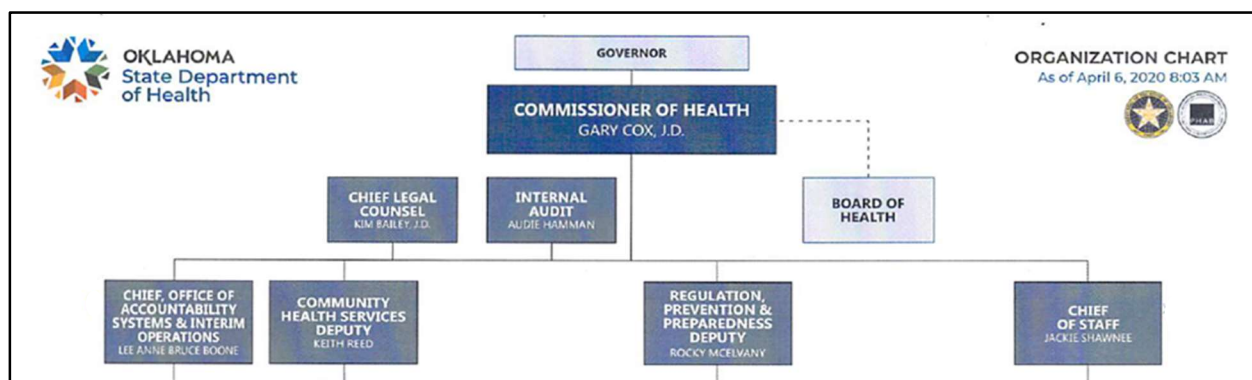
*Objective 3* - Determine if Salaries Are  
Reasonable Based on  
Position

**Objective 3** Determine if salaries were reasonable based on the position.

**Details** When Gary Cox became the Interim Commissioner of OSDH in September 2019, he had 16 direct reports (directors), which he felt was hard to manage effectively.



So, as illustrated in the organizational chart below, he restructured the number of individuals who reported directly to him to four. As part of the restructuring, some position duties were combined, and salary increases were given. Moreover, some new management hires received significant salary increases from the previous person in the position.



Several concerns were brought to our attention regarding significant salary increases for individuals in management positions.

We reviewed the salaries of individuals who were new hires in management positions or had significant salary increases during the audit period. Using payroll reports from the statewide accounting system, we compared the previous position's salary to the current position's salary. Because the positions in question are all unclassified, the Commissioner of Health has the authority to set the salary.<sup>17</sup> Therefore, to determine the reasonableness of the salaries, we

<sup>17</sup> [74 O.S. 840-2.17\(B\) – Salary Raise](#)

**Oklahoma State Department of Health  
Special Investigative Audit**

performed a comparative analysis to the same or similar positions at Oklahoma Health Care Authority (OHCA) and Department of Human Services (DHS)<sup>18</sup>.

Title	Comments	OSDH Pay for Former Employee	OSDH Annual Pay Rate for Position	Difference between Current and Former Rate	OHCA Annual Comp Rate	OKDHS Annual Comp Rate
<b>Interim Commissioner of Health</b>	<b>Statute 74 O.S. § 3601.2 OMES Salary Schedule (oklahoma.gov) Minimum \$142,800; Maximum \$214,200</b>	\$ 189,000.00	\$ 196,000.00	\$ 7,000.00	\$ 173,316.00	\$ 185,600.00
<b>Chief Medical Officer</b>		\$ 175,600.00	\$ 143,000.00	\$ (32,600.00)	\$ 176,710.00	
<b>Chief of Staff</b>		\$ 120,600.00	\$ 146,350.00	\$ 25,750.00	\$ 144,900.00	\$ 148,100.00
<b>Deputy Chief of Staff</b>	<b>New Position</b>		\$ 80,000.00	\$ 80,000.00		\$ 125,000.00
<b>Office of Communications</b>		\$ 81,894.10	\$ 118,827.00	\$ 36,932.90		\$ 125,000.00
<b>Chief Operating Officer</b>	<b>Position was made an interim position and combined with Chief, Office of Accountability and assigned to incoming individual</b>	\$ 150,000.00	\$ 125,000.00	\$ (25,000.00)	\$ 140,000.00	\$ 148,100.00
<b>Chief Financial Officer</b>	<b>Retired</b>	\$ 115,600.00	\$ 135,000.00	\$ 19,400.00	\$ 113,279.00	\$ 148,100.00
<b>Budget</b>	<b>Position combined with Grants Management; Individual moved to A/P &amp; Payroll</b>	\$ 91,501.92	\$ 91,501.92	\$ -	\$ 101,233.00	\$ 105,000.00
<b>Procurement</b>		\$ 92,896.62	\$ 93,000.00	\$ 103.38	\$ 67,401.00	\$ 92,896.62
<b>A/P &amp; Payroll</b>		\$ 81,894.00	\$ 91,501.92	\$ 9,607.92	\$ 97,623.00	\$ 75,600.00
<b>Assitant General Counsel</b>			\$ 80,000.00	\$ 80,000.00	\$ 110,000.00	\$ 130,273.93
					\$ 93,723.00	\$ 118,436.28
<b>Position was previously vacant.</b>						
<b>Changes between April 2020 and July 2020</b>						
Title	Comments	OSDH Pay for Former Employee	OSDH Annual Pay Rate for Position	Difference between Current and Former Rate	OHCA Annual Comp Rate	OKDHS Annual Comp Rate
<b>Interim Commissioner of Health</b>	<b>Statute 74 O.S. § 3601.2 OMES Salary Schedule (oklahoma.gov) Minimum \$215,188; Maximum \$322,782</b>	\$ 196,000.00	\$ 215,188.00	\$ 19,188.00	\$ 173,316.00	\$ 185,600.00
<b>Chief Operating Officer</b>		\$ 125,000.00	\$ 146,350.00	\$ 21,350.00		

The Commissioners salary increased several times during the audit period. On July 1, 2020 his annual salary was \$215,188 and then increased to \$335,160 on January 1, 2021.

As stated in 74 O.S. § 3601.2<sup>19</sup> states in part,

A. Beginning July 1, 2013, each agency, board, commission, department or program in the executive branch of state government shall establish the salary of each of the chief executive officers for which they have

<sup>18</sup> These agencies were used in the comparison because they are comparable in size and nature.

<sup>19</sup> [74 O.S. § 3601.2](#) - Salaries of Chief Executive Officers

appointing authority. Such salary shall be set between the minimum and maximum of the range specified in the annual compensation reports required by paragraph 5 of Section 840-1.6A of this title, for full-time employees only.

The Agency Director Pay Structure on OMES's website<sup>20</sup> identifies the minimum, midpoint and maximum salary for the Commission of Health as the following:

340	Health Department	ED17	\$215,188	\$268,985	\$322,782
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According to the OMES Human Capital Management Administrator, the Commissioner's salary range was updated on June 4, 2020. See email below to OSDH HR Director.

**From:** Jacob Smith  
**Sent:** Tuesday, May 18, 2021 4:32 PM  
**To:** Rosangela Miguel  
**Subject:** Re: Commissioner's Salary


Hey Ro,

On June 4th it was increased to a maximum of \$322,782 and then increased to a maximum of \$335,160 on December 9th, 2020

I hope this helps.

Thanks,

**Jake M. Smith | Administrator**  
 Human Capital Management | Office of Management and Enterprise Services  
 p. 405-521-6327 | c. 405-213-4276  
[Oklahoma.gov](http://Oklahoma.gov) | [omes.ok.gov](http://omes.ok.gov)



On December 28, 2020 Governor Stitt gave the Secretary of Health authority to set the salary of the Commissioner of Health.

Secretary of Health and Mental Health, Kevin Corbett then directed OSDH to adjust the annual salary of the State Commissioner of Health to \$335,160. See email on the following page.

<sup>20</sup> [OMES](#) – Salary Schedule



From: Kevin Corbett  
Sent: Wednesday, December 30, 2020 8:50:39 AM  
To: Kim Bailey  
Cc: Lance Frye; Bond Payne  
Subject: Compensation Adjustment

Kim,

As set forth in the attached, the Governor has delegated to me, as Secretary of Health and Mental Health, the authority to adjust the annual salary of the State Commissioner of Health.

With the authority delegated to me, please adjust the annual salary of Dr. Lance Frye, State Commissioner of Health to the amount of \$335,160, effective January 1, 2021.

Such amount falls within the pay range as determined by the Office of Management & Enterprise Services.

If you have any questions, please contact me.

Regards,

Kevin



KEVIN CORBETT  
Chief Executive Officer  
Oklahoma Health Care Authority  
4345 N. Lincoln Blvd. | Oklahoma City, OK 73105  
P: (405) 522-7417 | E: [kevin.corbett@okhca.org](mailto:kevin.corbett@okhca.org)

With the exception of the Commissioner's salary, which is significantly higher than the Director's at OHCA and DHS, all salary increases were justified based on the position, and the salaries appeared reasonable based on the comparative analysis to the same position at OHCA and DHS.

#### Employees Working for Other State Agencies

There were also concerns about employees working for OSDH and other state agencies at the same time. For the individuals specifically identified, we reviewed their work history and salaries in the Statewide Accounting System and determined one individual was receiving wages from two agencies at the same time.

We inquired with the OSDH HR Director and it was determined that the individual was a previous employee that worked at OSDH but had left the agency in February of 2020 and started working at DHS. At the onset of the pandemic, her expertise was needed in the procurement division so OSDH contracted with her to work outside her normal working hours at DHS. The total hours worked by this individual equated a payment of less than \$800.

We were informed that one employee was possibly an employee of Oklahoma County Health Department at the same time he worked for OSDH. This individual was employed by OSDH for less than a month receiving approximately \$1,500.

We considered both of these instances immaterial and did not pursue any further investigation.

**No findings were noted as a result of our procedures.**

O·K·L·A·H·O·M·A  
S·A·I  
STATE AUDITOR & INSPECTOR



**Cindy Byrd, CPA | State Auditor & Inspector**

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