

COLORADO OFFICE OF THE STATE AUDITOR



DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

IMMUNIZATION PROGRAM – USE OF TOBACCO SETTLEMENT FUNDS



JANUARY 2016

PERFORMANCE AUDIT

THE MISSION OF THE OFFICE OF THE STATE AUDITOR
IS TO IMPROVE GOVERNMENT
FOR THE PEOPLE OF COLORADO

LEGISLATIVE AUDIT COMMITTEE

Representative Dan Nordberg – Chair

Representative Su Ryden – Vice-Chair

Senator Morgan Carroll
Senator Chris Holbert
Senator Cheri Jahn

Senator Tim Neville
Representative Dianne Primavera
Representative Lori Saine

OFFICE OF THE STATE AUDITOR

Dianne E. Ray

State Auditor

Monica Bowers

Deputy State Auditor

Nina Frant
Kara Trim
Kathryn Kornacki

Audit Manager
Team Leader
Staff Auditor

AN ELECTRONIC VERSION OF THIS REPORT IS AVAILABLE AT
WWW.STATE.CO.US/AUDITOR

A BOUND REPORT MAY BE OBTAINED BY CALLING THE
OFFICE OF THE STATE AUDITOR
303.869.2800

PLEASE REFER TO REPORT NUMBER 1417P WHEN REQUESTING THIS REPORT



OFFICE OF THE STATE AUDITOR



January 14, 2016

DIANNE E. RAY, CPA
—
STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Immunization Program's use of tobacco settlement funds within the Department of Public Health and Environment. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-3-113(2), C.R.S., which states that it is the duty of the State Auditor to conduct program reviews and evaluations of the performance of each Tobacco Master Settlement Agreement program. The report presents findings, conclusions, and recommendations, and the responses of the Department of Public Health and Environment.

OFFICE OF THE STATE AUDITOR
1525 SHERMAN STREET
7TH FLOOR
DENVER, COLORADO
80203

303.869.2800



CONTENTS



Report Highlights	1
CHAPTER 1	
OVERVIEW OF THE IMMUNIZATION PROGRAM	3
Program Administration	4
Program Funding	6
Audit Purpose, Scope, and Methodology	7
CHAPTER 2	
PROGRAM ADMINISTRATION	11
Conflicts of Interest	14
RECOMMENDATION 1	19
Procurement Practices	20
RECOMMENDATION 2	26
Contract Formation and Monitoring	27
RECOMMENDATION 3	35
Policy Considerations	37



REPORT HIGHLIGHTS



IMMUNIZATION PROGRAM – USE OF TOBACCO SETTLEMENT FUNDS
PERFORMANCE AUDIT, JANUARY 2016

DEPARTMENT OF PUBLIC HEALTH AND
ENVIRONMENT

CONCERN

The Immunization Program within the Department of Public Health and Environment (Department) needs to improve controls over its contracting processes related to the use of tobacco settlement funds to address (1) Immunization Program staff with conflicts of interest, (2) unjustified sole source procurements, and (3) insufficient contract monitoring practices. In addition, there are barriers to the Department's ability to effectively enforce School Entry Immunization requirements.

KEY FACTS AND FINDINGS

- Overall, our audit work related to the Immunization Program's grants indicates that the Department used MSA funds for "immunization and immunization strategies" in accordance with Section 25-4-2301, C.R.S.
- Between 2010 and 2015, three Department staff served on the Board of Directors of a nonprofit immunization coalition (the vendor) with which the Department contracts using MSA funds, creating a conflict of interest.
- The Department's procurement activities related to the vendor did not follow state requirements or Department guidance.
- For the Fiscal Year 2015 contract with the vendor, the Department did not receive all the contract deliverables or include a performance measure in the contract that provided a valid basis for assessing the vendor's performance.
- The Department has limited ability to enforce School Entry Immunization requirements.

BACKGROUND

- The Immunization Program is responsible for administering (1) grants and contracts; (2) federal vaccine distribution programs; (3) the Colorado Immunization Information System, which is a statewide immunization record tracking system; and (4) School Entry Immunization requirements.
- The Immunization Program receives federal funds, state General Funds, Tobacco Master Settlement Agreement (MSA) funds, and tobacco tax funds totaling approximately \$52 million annually, most of which is for the purchase of vaccines for federal programs.
- The Immunization Program has one personal services contract funded with MSA dollars for immunization policy advocacy and public outreach. In Calendar Years 2012 through 2014, more than half of this vendor's total revenue came from Department contracts.
- The Department grants MSA funds to local public health agencies (LPHAs), which resulted in 81 grant contracts with LPHAs in Fiscal Year 2015.
- Statute requires children attending school to be immunized against certain diseases, unless they are exempt, and charges the Department with enforcing these requirements [Section 25-4-901, et seq., C.R.S.].

KEY RECOMMENDATIONS

- Implement stronger conflict of interest policies to help staff identify, disclose, and mitigate conflicts related to contracting for services and hold staff accountable for adhering to the policies by monitoring compliance.
- Implement policies, procedures, or guidance to identify key steps for procurement staff to follow in reviewing sole source justifications and verifying the information included by program staff.
- Improve contract administration by designating one individual as ultimately responsible for ensuring deliverables are received, establishing firm deadlines for receipt of deliverables, and creating valid contract performance measures.

The Department agreed with all recommendations.



CHAPTER 1

OVERVIEW OF THE IMMUNIZATION PROGRAM

In 1998, Colorado entered into a multi-state settlement with tobacco manufacturers to recover health-related costs resulting from smoking, known as the Tobacco Master Settlement Agreement (MSA). According to a November 2015 Joint Budget Committee staff briefing, Colorado's most recent MSA payment was approximately \$88 million. These funds, known as

MSA funds or tobacco settlement funds, are distributed to a number of health-related projects and programs according to a formula established in statute [Section 24-75-1104.5, C.R.S.]. Beginning in 2007, the General Assembly allocated a portion of the MSA funds to the Immunization Program “for the purpose of immunization and immunization strategies” [Section 25-4-2301, C.R.S.]. As discussed in more detail below, the State Auditor is charged with auditing programs that receive MSA funds.

PROGRAM ADMINISTRATION

The Department of Public Health and Environment (Department) administers the Immunization Program, which the Department refers to as the Immunization Branch, within its Disease Control and Environmental Epidemiology Division. According to the Department, the Immunization Program’s goal is to reduce vaccine preventable diseases in Colorado by increasing or maintaining immunization coverage. The Immunization Program is primarily responsible for the following activities:

- **ADMINISTRATION OF GRANTS.** The Immunization Program administers two grant programs for local public health agencies (LPHAs):
 - ▶ **CORE IMMUNIZATION SERVICES GRANTS.** These grants provide funding for LPHAs’ day-to-day operations in carrying out immunization-related work. Each LPHA that wishes to receive core grant funding will receive funds based on a Department created funding formula. In Fiscal Year 2015, the Department distributed core services grant funds to 51 out of 55 LPHAs. These grants are funded by federal funds, tobacco tax funds, and MSA funds.
 - ▶ **COMBINED GRANTS.** These grants provide funding for LPHAs to work on one or more of three immunization projects identified by the Department. The Department solicits applications for these funds from the LPHAs and each LPHA that applies receives

some funding. In the Fiscal Year 2014-2015 grant cycle, 30 out of 55 LPHAs received combined grants, which are funded with MSA dollars.

- **ADMINISTRATION OF PERSONAL SERVICES CONTRACT.** In Fiscal Year 2015, the Immunization Program had one personal services contract funded by MSA money. Under this contract, an immunization coalition (the vendor) was responsible for a variety of immunization-related work on behalf of the Immunization Program. The vendor is a statewide nonprofit organization, established about 20 years ago, that specializes in advancing children's health through immunizations.
- **ADMINISTRATION OF FEDERAL VACCINE PROGRAMS.** The Immunization Program administers the federal Vaccines for Children Program (VFC) and the Section 317 programs that are intended to increase the nation's vaccine coverage. As part of these programs, the federal government allocates a block of funding, approximately \$46.7 million annually, to purchase vaccines for eligible individuals in Colorado. The Immunization Program is responsible for (1) contracting with providers, such as private physicians and LPHAs, to administer the vaccines; (2) distributing the vaccines to the providers at no cost to the providers; and (3) ensuring providers adhere to the standards of the VFC and Section 317 programs. Collectively, these federal programs provide vaccines to Medicaid-eligible children, uninsured children and adults, American Indian and Alaskan Native children, and underinsured children whose health plans do not cover immunizations. The VFC and Section 317 programs are funded entirely with federal funds.
- **ADMINISTRATION OF THE COLORADO IMMUNIZATION INFORMATION SYSTEM (CIIS) DATABASE.** CIIS is a confidential statewide immunization record tracking system. The Department reports that as of January 2016, CIIS contained at least some immunization records for 4.8 million people. Immunization records are placed in CIIS by hospitals, doctors, and other health care providers. Statute allows for citizens to opt out of CIIS, thereby having any data

about them removed from the system [Section 25-4-2403(7), C.R.S.]. The records in CIIS can be accessed by health care providers, schools, and childcare facilities to review the immunization status of students and are used by the Department to evaluate the state's immunization rate and the immunization status of individuals who were exposed to a vaccine preventable disease. MSA funds are not used to support the administration of CIIS; it is supported by federal funds and state General Funds.

- **GUIDANCE FOR SCHOOLS ON IMMUNIZATION REQUIREMENTS.** Statute requires the Department to administer and enforce immunization requirements for school entry [Section 25-4-904(1), C.R.S.]. The Department carries out this responsibility by working with the State Board of Health to promulgate and update rules regarding immunization requirements, including medical and non-medical exemptions from those requirements [Section 25-4-903(2.5), C.R.S.], and providing guidance for schools on how to calculate immunization rates [Section 25-4-910(2), C.R.S.]. Administration of School Entry Immunization requirements is not funded by MSA funds but is supported by state General Funds and federal funds; however, one of the combined grants topics involves providing guidance to schools regarding student immunization records and as stated above, combined grants are funded by MSA dollars.

PROGRAM FUNDING

On average, over the last 3 fiscal years, the Immunization Program was appropriated a total of about \$52 million from all funding sources. Federal sources accounted for the majority of these funds (about 94 percent) and are earmarked almost entirely for the purchase of vaccines. In addition to federal funds, the program receives state General Funds, tobacco taxes, and MSA funds. Because the primary focus of this audit was on MSA funding, EXHIBIT 1.1 provides details about the Department's use of the MSA funds it received in Fiscal Years 2013 through 2015.

EXHIBIT 1.1. EXPENDITURES OF MSA FUNDS BY THE IMMUNIZATION PROGRAM FISCAL YEARS 2013 TO 2015			
	2013	2014	2015
Grants to LPHAs ¹	\$ 619,000	\$ 567,000	\$ 606,000
Personal Services			
Contracts with the vendor	75,000 ²	200,000	200,000
Vaccines & Supplies ³	90,000	101,000	70,000
TOTAL (IN MILLIONS)	\$ 784,000	\$ 868,000	\$ 876,000

SOURCE: Office of the State Auditor analysis of data from the Colorado Financial Reporting System, Fiscal Years 2013 and 2014, and self-reported expenditure data from the Department of Public Health and Environment, Fiscal Year 2015.

¹ Includes grants to local public health agencies for both combined grants and core immunization services grants.

² In Fiscal Year 2013, the Department used about \$100,000 from the General Fund, in addition to these MSA funds, to contract with the vendor.

³ Includes primarily the purchase of vaccines in Fiscal Years 2013 and 2014 and vaccine supplies in Fiscal Year 2015.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-3-113(2), C.R.S., which states that it is the duty of the State Auditor to conduct program reviews and evaluations of the performance of each Tobacco Master Settlement Agreement program.

Audit work was performed from January to December 2015. We appreciate the cooperation and assistance provided by management and staff at the Department of Public Health and Environment.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The primary objectives of this audit were to evaluate whether:

- The Department’s use of MSA funds complied with statutes, rules and applicable guidance. Specifically, whether the Department used the MSA funds appropriated to the Immunization Program for “immunization and immunization strategies,” as required by statute [Section 25-4-2301, C.R.S.] and whether those expenditures complied with procurement statutes, rules, and guidance.
- The Department is fulfilling its responsibilities with regard to requirements of the School Entry Immunization statutes.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed the relevant requirements in the Colorado Constitution, statutes, rules, and guidance related to procurement and the use of MSA funds, and federal statutes related to immunization records maintained by schools.
- Interviewed Immunization Program staff, Department procurement staff, Department of Personnel & Administration staff, and a sample of officials from 21 elementary schools and childcare facilities.
- Reviewed the funding formula developed by the Immunization Program to distribute core immunization services grant funds to LPHAs for the Fiscal Year 2012-2017 grant cycle.
- Reviewed a sample of six LPHAs’ applications for combined grant funds for the Fiscal Year 2014-2015 grant cycle, along with associated grant contracts, progress reports, invoices, and statements of work for the grants awarded to these LPHAs.
- Reviewed Department contracts with the vendor from Fiscal Year 2010 to Fiscal Year 2016, and invoices, progress reports, and other

deliverables submitted by the vendor for the Fiscal Year 2015 contract.

- Reviewed data from CIIS regarding the number of students associated with schools in the system.

We relied on sampling techniques to support our audit work. We designed our samples based on our audit objectives to test whether the Department effectively monitored its contract with the vendor and whether the work performed by LPHAs through combined grants was for immunization and immunization strategies. In addition, we relied on sampling as part of evaluating the challenges in calculating school immunization rates and ensuring compliance with the school immunization requirements. Specifically, we selected and reviewed the following samples:

- A non-statistical, judgmental sample of contract deliverables in six out of 10 categories of deliverables required by the Fiscal Year 2015 contract with the vendor.
- A non-statistical, judgmental sample of six out of 30 LPHAs that received combined grants in the Fiscal Years 2014-2015 grant cycle. The sample was selected to ensure review of (1) at least one LPHA that received funding for each of three specified immunization projects funded by the Department in the Fiscal Year 2014-2015 grant cycle and (2) LPHAs operating in counties with varied rates of immunization.
- A non-statistical, random sample of 13 childcare facilities out of a statewide total of 2,892 childcare facilities based on information from the Department of Human Services, which regulates childcare facilities, and eight elementary schools out of a total number of 1,350 elementary schools based on the list of public elementary schools available on the Department of Education's website as of October 2013, the most recent data available at the time we selected our sample, and a list of private elementary schools provided by the Department.

When samples were chosen, the results of our testing were not intended to be projected to the entire population. Rather, the samples were selected to provide sufficient coverage to test controls of those areas that were significant to the objectives of this audit.

The scope of this audit did NOT include the Department's administration and compliance with the federal Vaccines for Children and Section 317 vaccination programs; these programs are part of the immunization cluster, which is being reviewed as part of the Fiscal Year 2015 Statewide Single Audit. We also did not review the Department's management of CIIS or the accuracy and integrity of the information in CIIS.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions and recommendations, are described in CHAPTER 2 of this report.

CHAPTER 2

PROGRAM ADMINISTRATION

The goal of the Immunization Program within the Department of Public Health and Environment (Department) is to reduce vaccine preventable diseases in Colorado by increasing or maintaining vaccination coverage statewide. The Immunization Program works with the State Board of Health to establish policy on immunizations, including those required for school entry, and administers the State's immunization registry, known as CIIS. However, the Immunization Program does not directly

vaccinate individuals or generally perform public outreach campaigns, although it has an internal media team. Instead, the Immunization Program provides grant and contract funding to local public health agencies (LPHAs) and a nonprofit vendor to provide day to day services such as vaccinating individuals eligible for federal vaccination programs, holding immunization clinics, and developing and conducting immunization related policy advocacy. MSA funds are combined with federal funds, General Funds, and tobacco tax funds to carry out these immunization-related activities.

The primary focus of our audit was on the Department's use of MSA funds within the Immunization Program. Our audit work related to the grant programs indicates that the Department was using MSA funds for immunization and immunization strategies, as required by statute. However, we found that the Department lacks strong controls over its personal services contracts with one vendor using MSA funds. The contracts with this vendor represented, on average, nearly one-quarter of the Department's expenditures of MSA funds over the last 2 fiscal years. The weaknesses in controls that we found, which are described in this chapter, create a risk that MSA funds will not be used by the vendor in accordance with statute, rules, and other applicable guidance.

A secondary objective of our audit was to review the Department's implementation of its responsibilities under School Entry Immunization statutes [Section 25-4-901 et seq., C.R.S.]. We identified barriers to the Department's ability to effectively carry out its responsibilities regarding the School Entry Immunization requirements, which are described in the final section of this chapter.

CONTRACTS WITH ONE VENDOR

The Department has expended MSA funds to contract with a nonprofit organization that specializes in advancing children's health through immunizations (the vendor), since Calendar Year 2008. The Department awarded a total of \$1.8 million in contracts to the vendor from November 2008 through July 2015. During that time various

Department staff have served on the vendor's Board of Directors (Board). According to the vendor's most recent federal tax returns, the Department's contracts with the vendor accounted for more than half of the vendor's total revenue during the 3-year period covering Calendar Years 2012 through 2014. During this period, the vendor's total annual revenue ranged from \$220,000 to \$690,000 with a 3-year total of \$1.3 million. Revenue from the Department's contracts accounted for \$670,000 during the 3-year period.

The Department divides procurement responsibilities among program and procurement staff. Department program staff conduct activities such as identifying the type of procurement (e.g., request for proposal, sole source, or documented quote) and drafting the contract documents. The Department requires program approval on contracts and amendments as a control to ensure that the contract accurately reflects the (1) scope of work needed by the program, (2) contract terms and conditions that are needed to fulfill the intent of the contract, and (3) budget allocated for the contract. Department procurement staff function in an oversight capacity and are responsible for, among other things, reviewing and approving procurement source selections, including sole source justifications, and acting as the State Controller's designee in reviewing, approving and signing Department contracts to ensure procurements comply with law.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We conducted the following audit work: (1) reviewed Article XXIX of the Colorado Constitution, statutes, rules, guidance promulgated by the Department of Personnel & Administration, and Department guidance related to standards of conduct for government employees and procurement practices; (2) reviewed the Department's contracts with the vendor from Fiscal Year 2010 to Fiscal Year 2016, including the sole source justification documentation and the Notice of Proposed Sole Source posted on the State's electronic bid notification

system called BIDS; (3) reviewed publicly available documentation about the vendor including board policies and federal tax returns from 2010 through 2014; (4) interviewed Department staff to understand their relationship with the vendor and procurement practices; and (5) interviewed Department of Personnel & Administration staff in the State Purchasing Office to understand their perspective on risk areas in procurement practices.

The purpose of the audit work was to evaluate whether the Department adhered to applicable standards of conduct and procurement requirements in contracting with the vendor. We identified problems related to both conflicts of interest and procurement practices, which are described in the following two findings.

CONFLICTS OF INTEREST

Article XXIX of the Colorado Constitution states that government employees should carry out their duties for the benefit of the people and avoid conduct that violates the public trust. Statutes, rules, and administrative guidance echo this expectation in both broad and specific ethical standards that state employees are to adhere to in procuring goods or services on behalf of the State. Such ethical standards include avoiding conflicts of interest to ensure that the State obtains maximum value for the public funds spent.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Statute and the State of Colorado Procurement Manual, which includes the Procurement Code of Ethics, both contain prohibitions against (1) conflicts of interest, and (2) the appearance of impropriety. According to these sources, a conflict of interest occurs when an employee:

- Has an interest in any contract made by him or her in his or her official capacity or by any agency of which he or she is an employee [Section 24-18-201(1), C.R.S.].
- Engages in a business transaction or professional activity, or incurs any obligation of any nature that may conflict with the proper discharge of his or her respective duties in the public interest [State of Colorado Procurement Manual, Chapter 1, Section 5].

If a state employee acts despite a conflict of interest, it could result in a breach of fiduciary duty [Section 24-18-108(1), C.R.S.].

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

CONFLICTS OF INTEREST IN CONTRACTING FOR IMMUNIZATION SERVICES. Between 2010 and 2015 three Department staff were members of the vendor’s Board, one of whom was an officer of the Board. These three staff members either played a direct role in approving or monitoring contracts with the vendor, oversaw staff who approved or monitored the contracts, or were involved in approving the procurement. The vendor’s Conflict of Interest Policy, states, “[T]here exists between [the vendor] and its board...a fiduciary duty, which carries with it a broad and unbending duty of loyalty and fidelity. The board [members] have the responsibility of administering the affairs of [the vendor] honestly, and prudently, and exercising their best care, skill, and judgment for the *sole [emphasis added]* benefit of [the vendor].”

EXHIBIT 2.1 provides details about the contracts that were executed with the vendor and the conflicts of interest that existed because of Department staff’s involvement on the vendor’s Board.

EXHIBIT 2.1. CONFLICTS OF INTEREST IN CONTRACTING WITH THE VENDOR CONTRACTS EFFECTIVE MARCH 2010 THROUGH JUNE 2016 ¹					
CONTRACT NUMBER	CONTRACT TERM	SERVICES	PROCUREMENT METHOD	AMOUNT	CONFLICT
1	Mar 2010– Jun 2010	Immunization projects	Request for Applications (RFA)	\$235,000	Department staff person serving as an officer on the vendor’s Board was program approver on the contracts.
2	Jul 2010– Jun 2011	Coordinate VACC ²	Sole Source	\$80,000	
1a	Jul 2010– Jun 2011	Immunization projects	Amendments to Contract 1	\$327,650	
1b	Jul 2011– Jun 2012	Immunization projects	Amendment to Contract 1	\$122,645	
2a	Jul 2011– Jun 2012	Coordinate VACC	Amendment to Contract 2	\$57,500	
1c	Jul 2012– Jun 2013	Immunization projects and coordinate VACC	Amendments to Contract 1	\$232,145	Department staff person serving as an officer on the vendor’s Board oversaw staff who signed as program approver on the contracts.
1d	Jul 2013– Jun 2014	Immunization projects and coordinate VACC	Amendment to Contract 1	\$200,360	Department staff person serving as an officer on the vendor’s Board was involved, as a member of VACC, in approving the vendor as the sole source contractor.
3	Jul 2014– Jun 2015	Conduct outreach, execute policy and coordinate VACC	Sole Source	\$200,360	
3a	Jul 2015 – Jun 2016	Conduct outreach, execute policy and coordinate VACC	Amendment to Contract 3	\$200,360	

SOURCE: Office of the State Auditor’s analysis of the Department of Public Health and Environment’s contracts with the vendor, effective March 2010 through June 2016, publicly available information about the vendor’s Board of Directors, and organizational charts showing supervisory relationships among Department of Public Health and Environment staff.

¹ Analysis of contract executed for Fiscal Year 2016 conducted as of October 2015.

² VACC is the Vaccine Advisory Committee for Colorado, a department-created advisory group.

WHY DID THE PROBLEM OCCUR?

LACK OF POLICIES FOR ALL CONFLICTS OF INTEREST. The Department has a policy related to outside employment, which requires employees

to seek prior approval from the appointing authority and certify that the outside employment will not create a conflict of interest and will not impact the employee's performance. However, the Department does not have any similar policies for identifying, disclosing, and mitigating activities that may create a conflict of interest, but that do not involve outside employment, such as serving as a volunteer member of a nonprofit board. The Department reported that it did not consider employees' involvement on the vendor's Board to be outside employment and had no conflict of interest disclosures or certifications from staff that served on the vendor's Board.

ATTEMPTS TO MITIGATE THE CONFLICT OF INTEREST WERE INSUFFICIENT. In March 2015, the Department employee who had served as an officer on the vendor's Board retired from the Department. The Department reported that it worked with the vendor at that time to create two non-voting, ex-officio board membership positions for other Department staff members. The Department reported that the creation of these non-voting, ex-officio membership positions was to help mitigate the conflict of having Department employees serve as voting board members and that having Department staff serve on boards of organizations with which the Department contracts provides for additional contract monitoring opportunities. However, the ex-officio members, while non-voting and not permitted to serve as officers by the vendor's bylaws, hold all other privileges of board membership and are bound by the vendor's policies to exercise their skill, care, and judgment for the sole benefit of the vendor. In addition, more conventional contract monitoring, such as through progress reporting and review of contract deliverables, could provide for effective oversight of contracts without creating conflicts of interest. The Department agreed that Department employees' involvement on the vendor's Board created conflicts of interest and reports that the Board voted to terminate the two ex-officio board membership positions as of September 2015.

WHY DOES THE PROBLEM MATTER?

Department staff's involvement on the vendor's Board creates a risk of improper actions and breaches of fiduciary duties to the State. Department employees who are involved in procuring contracts with this vendor while they are members of the vendor's Board have a conflict of interest because they owe a duty of loyalty to the vendor, as a Board member, and to the State, as a state employee. These obligations may not always be aligned. For example, in negotiating the scope of work of the contract, an employee's divided loyalty may undermine his or her ability to act in the best interests of the State.

RECOMMENDATION 1

The Department of Public Health and Environment should improve its controls over conflicts of interest in procurement by:

- A Establishing broader conflict of interest policies to help staff identify, disclose, and mitigate all types of conflicts of interest.
- B Holding staff accountable to standards established in PART A of the recommendation, such as by monitoring staff compliance and taking action when conflicts of interest are identified.

RESPONSE

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

- A AGREE. IMPLEMENTATION DATE: MARCH 1, 2016.

The department has a conflict of interest policy regarding outside employment, but did not have a policy specifically relating to employee service on boards and commissions. A broader department policy is in development to cover activities relating to service on boards and commissions that could lead to a potential conflict of interest.

- B AGREE. IMPLEMENTATION DATE: MARCH 1, 2016.

Department staff is informed when new or revised policies are implemented and are held accountable to adhere to the terms of the policies. The policy described in PART A will include a procedure for employees to follow for disclosing their activities that could be a potential conflict of interest, as well as clarifying the process for reviewing and resolving any potential conflicts of interest.

PROCUREMENT PRACTICES

One purpose of the State Procurement Code is to “foster effective broad-based competition within the free enterprise system...” [Section 24-101-102(2)(e), C.R.S.]. The State of Colorado Procurement Code of Ethics endorses competition, stating that state employees, who purchase goods and services, should “provide an environment where all business concerns...are afforded an equal opportunity to compete for State of Colorado business.”

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The State of Colorado Procurement Manual and Department guidance create processes to ensure state agencies use competition to procure services or sufficiently justify the decision to not use competition.

SOLE SOURCE PROCUREMENT. Statute allows state agencies to award a services contract without competition when the agency determines in writing that there is only one source for the needed service [Section 24-103-205, C.R.S.]. Rules and Department guidance contain provisions related to sole source contracting, as follows:

- **MUST BE SUPPORTED BY ADEQUATE RATIONALE.** Rules require state agencies to make a written justification setting out “sufficient facts, circumstances, and reasoning to substantiate” the selected procurement method, including a sole source procurement [Sections R-24-101-201-02, and R-24-103-205-01, 1 C.C.R. 101-9]. The Department’s form to document the justification for a sole source procurement requires the individual seeking the procurement to describe:
 - ▶ Why the services cannot be provided by another vendor.
 - ▶ What research was conducted about the field of vendors.

- ▶ What analysis was performed to determine that the cost is fair and reasonable.
- **POSTING IS INTENDED TO IDENTIFY OTHER POTENTIALLY QUALIFIED VENDORS.** Statute [Section 24-102-205(5)(a), C.R.S.] states “prior to entering into a sole source personal services contract, the governmental body shall attempt to identify competing vendors by placing a notice on the state’s bid notification web site for not less than three business days.” The statute goes on to indicate that “competing vendors” are vendors that are able to meet the specifications identified in the notice. Thus, to accomplish the intent of the posting requirement, it is reasonable to expect that the notices should specify the services sought.

REQUESTS FOR APPLICATIONS. Department guidance indicates that Requests for Applications should “include [the] program’s total funding availability, including total available funding, [and] range of funding or average size of grants/contracts that will be funded....”

MATERIAL OR SUBSTANTIAL CHANGES TO A CONTRACT. The State of Colorado Procurement Manual indicates that material or substantial changes to the scope of work of a contract should undergo a new procurement process. The Procurement Manual describes “substantial changes” as changes in price, deliverables or specifications, quantity or quality of goods or services, or contractual provisions, such as those modifying the scope of services provided [Chapter 5, Section 7(B)(vii)].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

SOLE SOURCE PROCUREMENT. We identified the following problems with the Department’s written justifications prepared for the sole source contracts executed with the vendor and the posting of the Notice of Proposed Sole Source:

- **INACCURATE INFORMATION.** The sole source justification for the 2014 procurement for outreach and policy execution (2014

procurement) stated that the Department needed to contract with the vendor because House Bill 07-1347 established the Vaccine Advisory Committee for Colorado (VACC) and charged it to create and implement a strategic plan and that the Department needed the vendor to implement VACC’s strategic plan. However, neither the cited legislation, nor any other statutes, establishes VACC or charges it to create and implement a strategic plan or carry out any action. The Department created VACC to provide advice on vaccine-related matters. Further, the Department reports that “the work of the VACC is determined by the needs of the Immunization Program at the time.” The procurement staff person responsible for approving the sole source justification reported to us that his decision to approve the sole source contract was primarily based on his understanding of VACC’s status as a statutorily created entity.

- **NO RESEARCH TO ESTABLISH THAT ANOTHER VENDOR COULD NOT PERFORM THE SERVICES.** Instead of describing or providing evidence of any specific steps it took to examine other entities’ qualifications to perform the services, the justification for the 2014 procurement states, “An examination of other member organizations indicates no others meeting all the requirements.” We asked the Department what this meant and were told first that “other member organizations” meant members of VACC and later that it referred to any “immunization related organization with members.”
- **NO COST ANALYSES.** The forms do not include an explanation of why the prices for the proposed procurement were considered fair and reasonable. The justifications for the 2010 procurement to facilitate VACC (2010 procurement) and the 2014 procurement state that the Department did not (1) compare the contract price to the market price or historical prices for similar services, or (2) conduct a cost analysis. The Department reported to us that it knew that the price for the 2014 procurement was fair and reasonable based on previous contracts for services—although this analysis was not referenced on the form or otherwise documented.

- **NOTICE OF PROPOSED SOLE SOURCE FOR THE 2014 PROCUREMENT LACKED IMPORTANT DETAILS.** The Department posted on BIDS a Notice of Proposed Sole Source (Notice). The vendor's contract contained several primary activities that were not mentioned in the Notice, including maintaining a website in support of immunizations, conducting education events, tracking local immunization coalitions, and exploring management of an adult immunization coalition. The Department reports that it did not receive any inquiries in response to the Notice. However, the Department does not know how many inquiries it would have received if the Notice included the full scope of work.

2010 REQUEST FOR APPLICATIONS LACKED BUDGET INFORMATION. The 2010 Request for Applications to fund immunization projects included no information about the amount of funding available or the maximum budget that would be considered for proposed projects. As a result, potential applicants did not know the value of submitting a proposal. However, the vendor's proposal, submitted in January 2010, included a total budget of \$235,000, which was exactly the same amount that the Department had considered awarding the vendor as a sole source contract in December 2009.

AMENDMENTS TO THE FISCAL YEAR 2010 CONTRACT FOR IMMUNIZATION PROJECTS DID NOT COMPLY WITH PROCUREMENT REQUIREMENTS. The Department's procedures require program staff to fill out a contract modification checklist that identifies whether the amendment is (1) a budget modification, which increases or decreases the value of the contract; (2) a renewal, which extends the term of the contract without modifying the scope of work; (3) a scope of work modification, which changes the work; or (4) a no cost modification. The checklists completed by program staff for amendments indicated that only one included a modified scope of work, but the scope of work was actually modified in four of the seven amendments. The amendments collectively extended the contract 4 years beyond the original 5-month term and increased the financial obligation of the State from \$235,000 to \$1.1 million. While not all the contract amendments substantially changed the scope of work, beginning in

2011, the amendments added services to the scope of work which did substantially change the contract scope of work, such as managing content for the “Immunize for Good” website, coordinating VACC, and convening stakeholder groups to determine the level of community support for limiting the personal belief exemption. Thus, these services should have been solicited through a new procurement process.

WHY DID THE PROBLEMS OCCUR?

THE DEPARTMENT’S REVIEW AND APPROVAL PROCESS DID NOT ENSURE PROCUREMENT METHODS WERE JUSTIFIED. The Department does not have any written internal policies, procedures, or guidance to identify key steps for procurement staff to follow in reviewing sole source justifications and verifying the information included by program staff. Department procurement staff reported that they rely on program staff to provide accurate and complete information to justify procurements. While the sole source justification form contains some guidance to aid the program staff completing the form, our findings indicate the need for greater guidance for procurement staff in reviewing and approving procurement information prepared by the program. Specifically, establishing written guidance that describes both the purpose of procurement approval, and the procedures procurement staff should follow, could help ensure that future procurements are based on complete and accurate information. For example, a policy requiring procurement staff to obtain details supporting research on the qualifications of other vendors and the cost analyses for sole source procurements might have prevented the sole source problems we found. Similarly, a written procedure reminding procurement staff to ensure that all portions of required forms are completed might have addressed the problem of the 2010 Request for Applications form containing no budget information.

WHY DO THESE PROBLEMS MATTER?

The purpose of the Procurement Code, as stated in statute, includes providing for increased public confidence in public procurement, providing increased economy and maximizing the value of public funds, and fostering competition [Section 24-101-102, C.R.S.]. When an agency does not follow the Procurement Code and associated guidance in procuring goods and services, there is risk that state funds have not been used in the most efficient and effective way.

The Department executes a large number of sole source personal services contracts compared with other state agencies. According to a June 2014 report prepared by the Department of Personnel & Administration, the Department issued 193 personal services contracts for which the value exceeds \$100,000 each in Calendar Year 2013, for a total value of \$116 million. Of those, 25 were sole source contracts with a total value of \$37 million (32 percent). By comparison, all other state agencies issued a combined total of 1,282 personal services contracts with a value of \$1.8 billion, of which 43 were sole source contracts with a combined value of \$91 million representing 5 percent of all personal services contracts. All other state agencies issued between zero and 10 sole source contracts each in Calendar Year 2013. While the Department indicates that it has unique needs that require the use of sole source contracts, given the concerns we found with procurement of contracts with this vendor, there is a risk that inadequate controls may also exist in the review and approval of other sole source contracts executed by the Department.

Further, by not including sufficient information in Requests for Applications, or using a contract amendment to substantially change a scope of work, the Department did not provide a level playing field for all potential vendors. For instance, vendors that may have been able to manage the content for the “Immunize for Good” website or coordinate VACC were not given the opportunity to respond.

RECOMMENDATION 2

The Department of Public Health and Environment should improve its controls over procurement by developing and implementing written internal policies, procedures, or guidance to identify key steps for procurement staff to follow in reviewing sole source justifications and verifying the information included by program staff.

RESPONSE

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

AGREE. IMPLEMENTATION DATE: JANUARY 2016.

The Department will improve its controls over sole source procurements by developing and implementing more robust internal procedures and guidance for both Department Purchasing and Contracts Unit staff responsible for the approval of sole source requests and education for division staff through the Contract User Group meetings.

Division staff will be required to provide documented research to support their request for a sole source procurement.

Department Purchasing and Contract Unit staff will be required to verify division research and document the actions of each sole source review as performed through a variety of mechanisms, including internet research, other market research and discussions with applicable division staff.

CONTRACT FORMATION AND MONITORING

The Department executed a 1-year contract with the vendor for Fiscal Year 2015 to (1) advocate for better access to vaccines for all children and (2) advance solutions for challenges in Colorado’s vaccine financing, access, and delivery systems. This personal services contract for \$200,360 included the following six primary activities in its statement of work:

- Convene and provide staff support for VACC, a Department-created advisory group.
- Track and report contact information and activities of local immunization coalitions around the state.
- Develop and execute, in conjunction with VACC and the Department, immunization policy priorities.
- Promote the “Immunize for Good” website.
- Host at least six provider education events.
- Explore the opportunity for managing the Colorado Adult Immunization Coalition.

The vendor submitted quarterly progress reports on the status of these activities and was required to produce additional deliverables, such as VACC meeting minutes, policy position statements, and local immunization coalition contact lists, as set forth in the statement of work. The contract included a performance measure to “increase or maintain immunization coverage statewide” as measured by immunization data contained in the State’s immunization registry, known as CIIS.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We conducted the following audit work: (1) reviewed relevant statutes, rules, and other procurement guidance; (2) reviewed the Fiscal Year 2015 contract with the vendor; (3) reviewed the four quarterly progress reports and a sample of the contract deliverables submitted by the vendor for the Fiscal Year 2015 contract to assess the Department’s monitoring process; (4) reviewed the Fiscal Year 2015 invoices and associated payment documentation; (5) interviewed program staff and procurement staff to understand the scope of work development process and monitoring process; and (6) reviewed information published by the U.S. Department of Health and Human Services about activities that are proven to be effective in improving immunization rates. The purpose of this work was to assess the Department’s contract formation and monitoring processes for its Fiscal Year 2015 contract with the vendor.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

For personal services contracts with a value of \$100,000 or more, the Procurement Code requires state agencies to implement procedures to ensure that a contractor performs at a satisfactory level in exchange for payment of the contracted amount. Specifically, the Procurement Code contains the following provisions:

- Contracts must have sections that require the contractor to report regularly on achievement of the contract performance measure and that allows the governmental body to withhold payment until successful completion of all or part of the contract and achievement of the performance standards [Section 24-103.5-101(2)(b), C.R.S.].
- Contracts must have valid performance measures used to evaluate contractor performance [Sections 24-103.5-101(2)(a) and (4), C.R.S.].

- For contracts that are renewed in the subsequent fiscal year, state agencies must annually certify that the contractor complied with the terms of the original contract, including the performance measures [Section 24-103.5-101(5), C.R.S.].
- State agencies are required to monitor the contract to ensure that the results, objectives, and obligations of the contract are met [Section 24-103.5-101(2)(c), C.R.S.].
- Agency staff are required to certify that the contract's performance measure provides a valid basis for assessing performance [Section 24-103.5-101(4), C.R.S.].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

CONTRACT PAYMENT. The Department paid the vendor the full contract amount and renewed the contract without verifying that the vendor had successfully completed the contract activities. The contract required the vendor to perform six primary activities and to demonstrate its progress in carrying out these activities through quarterly progress reports and specified deliverables related to four of the six contract activities. We reviewed both the progress reports and a sample of other deliverables and found that the vendor had reported that it had completed all contract activities. However, the vendor did not produce all of the contract deliverables in our sample in accordance with the contract terms. EXHIBIT 2.2 shows the results of our analysis of a sample of deliverables.

EXHIBIT 2.2. AUDITOR ANALYSIS OF SAMPLE OF CONTRACT DELIVERABLES REQUIRED BY THE FISCAL YEAR 2015 CONTRACT WITH THE VENDOR		
PRIMARY ACTIVITY	DELIVERABLES ¹ AND DUE DATE	AUDIT REVIEW OF DELIVERABLES
Coordinate VACC	1. VACC agendas and meeting minutes, due no later than 5 business days after development of the documents.	1. Department did not have the 3 months of VACC agendas and meeting minutes we requested as of July 22, 2015.
	2. VACC annual report, due no later than 30 days following expiration of the contract.	2. Department received the VACC annual report in accordance with the contract deadline.
Track Local Immunization Coalitions	Contact list for local coalitions, due December 31, 2014, and June 30, 2015.	Department did not have the June 30, 2015 contact list as of July 22, 2015.
Execute Policy Priorities	1. Policy priority position statements, FAQs and fact sheets, due no later than 5 business days after development of the documents.	1. Department did not have any of the policy priority position statements, FAQs, or fact sheets as of July 22, 2015.
	2. Policy Committee agendas and meeting minutes, due no later than 5 business days after development of the documents.	2. Department did not have the 3 months of Policy Committee meeting minutes and agendas we requested as of July 22, 2015.
Colorado Adult Immunization Coalition	Results of the vendor’s Board’s decision to assume the administration of the adult coalition, due March 31, 2015.	Department did not have documentation of the results of the vendor’s Board’s decision on the adult coalition as of July 22, 2015. The Department reported that it received verbal confirmation during the contract term of the Board’s decision not to assume administration of the adult coalition.
SOURCE: Auditor analysis of a sample of contract deliverables required by the Department’s Fiscal Year 2015 personal services contract with the vendor.		
¹ Deliverables include the tangible evidence that primary contract activities were completed, other than the progress reports.		

After we asked for the contract deliverables, the Department obtained the deliverables in our sample from the vendor, with the exception of the Policy Committee meeting minutes.

APPROPRIATE PERFORMANCE MEASURE. The contract’s performance measure, which was to “increase or maintain immunization coverage statewide” as measured by immunization data contained in the State’s immunization registry, may not be a valid measure of the contractor’s performance. We identified two problems with the measure. First, the performance measure does not reflect an outcome that the vendor can entirely control because:

- According to the Department, immunization rates may, even under the best circumstances, remain statistically unchanged over the course of a year. Typically, the Department reports it would only expect to see the immunization rate change over the course of 10 years.
- We compared the contract activities with information published by the U.S. Department of Health and Human Services, and found that many of the activities required in the vendor's contract, such as advocacy and education related to immunizations, need to be combined with other efforts by other organizations, such as home visits by providers or reduced out-of-pocket costs for vaccines, to be effective in improving immunization rates.

Second, the performance measure is too vague for the Department to use in monitoring performance. The contract does not specify the baseline against which the performance standard will be measured. Additionally, the contract does not specify how the Department will evaluate performance based on statistical or non-statistical changes in the statewide immunization rate.

WHY DID THE PROBLEMS OCCUR?

We identified several factors that contributed to the problems discussed above.

LACK OF COORDINATED CONTRACT MONITORING. The Department did not coordinate contract monitoring between the Department staff who were assigned monitoring responsibilities. The employee designated by the Department as the contract monitor was responsible for receiving and reviewing the progress reports and invoices. However, the contract monitor was not the designated person to receive all deliverables. Instead, the contract required some deliverables to be submitted to a second staff person and the contract monitor did not receive or review these deliverables. Because two staff had oversight, no one person had ultimate responsibility for holding the vendor accountable for adhering to the contract.

UNCERTAIN DUE DATES FOR CONTRACT DELIVERABLES. The contract included uncertain due dates for contract deliverables. The Policy Committee agendas and meeting minutes, policy priority statements, fact sheets and FAQs, and VACC agendas and meeting minutes were all due, “No later than 5 business days after the development of the documents.” By not establishing firm deadlines for receiving the documents, the Department could not hold the vendor accountable. Department emails indicate that procurement staff had concerns about the lack of “hard milestones” and deliverables without due dates in the contracts with the vendor, but that program staff felt that “...putting hard dates in the [contract scopes of work] would cause problems with [the vendor].”

PROCEDURES DO NOT ENSURE COMPLIANCE. The Department’s procedures do not ensure compliance with contract monitoring statutes. Specifically, we found:

- The Department’s certification form asks the staff to certify that the “contract *contains* [emphasis added] performance standards and measures...” not that the performance measures provide a valid basis for assessing the contract performance. Program staff acknowledged that the performance measure, which they had selected, did not provide a valid basis for monitoring the vendor’s performance.
- The Department renewed the contract even though program staff did not certify that the vendor was complying with the contract terms in accordance with Section 24-103.5-101(5), C.R.S. In June 2015, program staff signed and submitted to procurement staff a contract modification checklist, which contained a check box for program staff to “certify that the contractor has complied with the terms of the original contract to date.” The program staff did not check the box. However, the Fiscal Year 2016 renewal contract was signed by procurement staff and the Department’s State Controller delegate, and became effective, even though program staff had not received all of the Fiscal Year 2015 deliverables.

WHY DO THESE PROBLEMS MATTER?

FULL VALUE PROVIDED TO THE DEPARTMENT. The Department may not have received the full value of the contract because the vendor may not have performed all contract activities. One purpose of the State Procurement Code is “to maximize to the fullest extent practicable the purchasing value of public funds...” [Section 24-101-102(2)(d), C.R.S.]. While the Department reported that it believes it did eventually receive the deliverables required by the contract, the receipt of late deliverables raises questions about how effectively the vendor carried out required services during the contract term.

The contract required the vendor to determine policy priorities related to immunizations, develop policy priority position statements, and to report on its progress related to policy priorities through quarterly progress reports and submitting policy statements to the Department within 5 business days of creating the statements. The vendor reported to have worked on specific policy issues on each quarterly report, but when the Department received the required policy position statements, which were submitted after the contract term had ended, there were discrepancies between the policy position statements created by the vendor and the policy work the vendor had reported to have done throughout the contract term. For example:

- The Department received policy statements related to legislation involving the disclosure of personal health information to the General Assembly, but this issue was not identified in the progress reports.
- The Department did not receive policy statements relating to changes for childcare facilities’ immunization requirements, which the vendor reported having worked on in its progress reports.

Therefore, it is not clear that the vendor’s policy-related work carried out on behalf of the Department was clearly aligned with policy position statements required by contract. As a result, the Department

may not have gotten full value out of the policy related work that was required by the contract.

HOLDING THE VENDOR ACCOUNTABLE. According to statute, “If the governmental body determines the vendor has not complied with the contract terms, including but not limited to performance standards and measurable outcomes, the state shall be entitled to any remedy available under law in the case of contract nonperformance...” [Section 24-103.5-101(5), C.R.S.]. However, because the contract does not establish (1) a baseline for the performance measure or how performance will be evaluated (i.e., statistically or non-statistically valid) and (2) is not in the vendor’s complete control, the Department cannot determine whether the vendor has complied with the contract’s performance standard.

RECOMMENDATION 3

The Department of Public Health and Environment should improve its contract administration by:

- A Designating one individual as ultimately responsible for ensuring all deliverables are received.
- B Ensuring its contracts include firm deadlines for deliverables that staff can monitor against.
- C Modifying the Immunization Program's contract monitoring procedures to ensure compliance with statute [Section 24-103.5-101 et. seq., C.R.S.] including creating valid performance measures, ensuring vendors achieve performance measures, and certifying contract compliance before renewing contracts.

RESPONSE

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

- A AGREE. IMPLEMENTATION DATE: JANUARY 1, 2016.

In most cases, one contract monitor is responsible for all contract deliverables. In the case of the vendor described in the audit, more than one immunization branch employee was receiving documents. The Immunization Branch has changed this process, and the primary contract monitor for each contract will be responsible for collecting all documents and deliverables before approving each invoice.

B AGREE. IMPLEMENTATION DATE: JANUARY 1, 2016.

Each immunization contract scope of work approved beginning 1/1/16 will be scrutinized by a trained scope of work specialist within the division to ensure firm deadlines and deliverables that can be monitored and approved. The Department has recently implemented standardized training of scope of work specialists to ensure that appropriate scope of work development expertise exists in each division. Application of this standardized work should ensure that all contracts include firm deadlines for deliverables.

C AGREE. IMPLEMENTATION DATE: JULY 1, 2016.

In accordance with the Department's standardized scope of work initiative, valid, enforceable performance measures will be included in all Immunization Branch scopes of work. The Immunization Branch contract monitoring procedures have been reviewed and are being brought into compliance with state laws and Department policies in any case where a discrepancy was identified. Supervisors and contract monitors within the immunization program have attended the first of seven trainings that were developed to train all CDPHE staff on the standardized contract monitoring process, which will include monitoring to the performance measures in the contract as well as certifying contractor compliance. Staff will attend all trainings and implement changes when division procedure diverges from the Department's standardized contract monitoring process.

POLICY CONSIDERATIONS

SCHOOL ENTRY IMMUNIZATION REQUIREMENTS

Statute [Section 25-4-901 et seq., C.R.S.] requires children attending school in Colorado to be immunized against certain diseases, as determined by the Board of Health [Section 25-4-902(1)(a), C.R.S.] and according to the Advisory Committee on Immunization Practices schedule [Section III(A) and (B), 6 C.C.R. 1009-2], unless they are exempted [Section 25-4-903 C.R.S.]. Statute allows three types of exemptions: (1) medical, which requires a physician's certification; (2) religious, which requires a parent or legal guardian's signature; and (3) personal belief, which also requires a parent or legal guardian's signature.

The statutes require schools to:

- Collect proof of immunization status from students before a student can attend school [Section 25-4-902(1)(a), C.R.S.].
- Notify students if they are not up to date [Section 25-4-902(2), C.R.S.].
- If necessary, exclude students from school who fail to comply with School Entry Immunization requirements [Section 25-4-907(1), C.R.S.].
- Report immunization rates publicly upon request [Section 25-4-903(5), C.R.S.].

The School Entry Immunization statutes define "school" as any public, private or parochial daycare or child care facility, head start program, kindergarten, elementary or secondary school, and any college or university [Section 25-4-901(2)(a), C.R.S.].

The statutes require the Department to administer and enforce School Entry Immunization requirements and specifically:

- Allows the Department to examine, audit, and verify immunization records maintained by schools [Section 25-4-906(3), C.R.S.].
- Requires the Department to contact the student (or the parent or guardian) in an effort to secure compliance with immunization requirements if notified that the student has been excluded from school for failure to comply with such requirements [Section 25-4-907(2), C.R.S.].
- Requires the Department to provide assistance to schools with the analysis and interpretation of immunization data [Section 25-4-910(2), C.R.S.].

BARRIERS TO DEPARTMENT ENFORCEMENT OF SCHOOL ENTRY IMMUNIZATION REQUIREMENTS

One objective of our audit was to evaluate whether the Department was fulfilling its responsibilities regarding School Entry Immunization requirements. While the Department is providing assistance to schools with the analysis and interpretation of immunization data, we found that there are barriers to the Department's ability to effectively enforce School Entry Immunization requirements, and a lack of clarity regarding how the specific tasks the Department is assigned or authorized to perform by statute (e.g., auditing immunization records and assisting schools with immunization data) are intended to support the Department's enforcement responsibility.

THE DEPARTMENT DOES NOT HAVE ACCESS TO ALL STUDENT IMMUNIZATION DATA. Although statute allows the Department to examine, audit, and verify school immunization records [Section 25-4-906(3), C.R.S.], it cannot effectively carry out this function because of federal legal limitations. Specifically, the Federal Educational Rights and Privacy Act (FERPA) prohibits the disclosure of personally identifiable information from educational records to any party outside of the school, other than to entities authorized by FERPA, such as the

state or federal education agencies [Sections 20 U.S.C. 1232g(b) and 34 C.F.R. 99.31]. According to U.S. Department of Education guidance, immunization records generally fall within the regulatory definition of “education records” [Section 20 U.S.C. 1232g(a)(4)(A)] because they are maintained by an educational agency or institution and are directly related to a student. FERPA applies to all schools that receive funding through the U.S. Department of Education. In Colorado, K-12 public schools and colleges and universities receive at least some federal funding through the U.S. Department of Education; childcare facilities may be subject to FERPA depending on whether they receive U.S. Department of Education funding and provide educational services.

Further, although the Department could verify student immunization data through CIIS, such verification would be very limited. CIIS enables any school in Colorado that has worked with the Department to get an account to electronically review and track the immunizations a person has received and associate enrolled students with their school. However, not all schools associate their students with their school in CIIS and statute does not require schools to do so. Out of approximately 4,200 child care facilities and K-12 schools in the state, according to Department of Education and Department of Human Services data, only 49 (1 percent) have students associated with them in CIIS and it is unclear whether these associated students represent the schools’ complete rosters or just partial rosters of students. Based on Department data, while several colleges or universities in the state have CIIS accounts, none have associated students.

THE DEPARTMENT LACKS AUTHORITY TO ENFORCE COMPLIANCE WITH SCHOOL ENTRY IMMUNIZATION REQUIREMENTS. Aside from the requirement in Section 25-4-904(1), C.R.S., for the Department to enforce immunization requirements, statute contains no other clear authority or mechanisms by which the Department could require schools to implement the School Entry Immunization requirements. For example, the Department does not have general authority to direct the operations of schools or tools to motivate specific actions by schools.

This lack of authority also affects the value of any assistance the Department may provide to schools with analysis and interpretation of immunization data in accordance with Section 25-4-910(2), C.R.S., because schools are not required to follow any guidance the Department provides. For example, the Department has defined “immunization rate” in guidance for schools on its website as the up to date rate, or the percentage of students that are fully up to date for their age according to the recommended vaccination schedule. Using this definition would help ensure that schools calculate and report immunization rates consistently across the state, but we found indications that schools are not consistent. Specifically, we interviewed staff at 21 schools and found that they report different statistics to comply with Section 25-4-903(5), C.R.S. For example, staff at four schools stated that they report the up to date rate as defined in Department guidance, while at another four schools, staff indicated that they report the compliance rate, which is the percentage of students who (1) are up to date on receiving all recommended vaccinations, *or* (2) have not received all recommended vaccinations but either are in the process of becoming up to date or have a medical, religious or personal belief exemption. Further, staff at eight schools did not know the difference between compliance rate and up to date rate, and thus, it was unclear which rate these schools would report publicly. The remaining five schools had not calculated an immunization rate.

This audit evaluated the actions of the Department regarding School Entry Immunization requirements and identified the barriers described above to the Department’s ability to enforce those requirements. Our work indicates the potential need for statutory clean up to address the mandates in Sections 25-4-906(3) and 25-4-907(2), C.R.S. that the Department is unable to effectively carry out due to conflicting federal laws and/or lack of specific enforcement mechanisms.

However, this audit did not include an evaluation of whether there are other ways in which the School Entry Immunization requirements are being enforced. For example, Colorado law assigns oversight responsibilities for daycare and childcare facilities, K-12 schools, and

public colleges and universities to the Departments of Human Services, Education, and Higher Education, respectively. The scope of this audit did not include evaluating any actions those departments may carry out to implement School Entry Immunization requirements. As a result, statutory changes to address the problems we discuss here would better align state and federal laws but may not have a significant effect on implementation of School Entry Immunization requirements.



