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DEPARTMENT OF HUMAN SERVICES

CHILD PROTECTION OMBUDSMAN PROGRAM



JUNE 2014

PERFORMANCE AUDIT

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June 13, 2014

DIANNE E. RAY, CPA
—
STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Child Protection Ombudsman Program within the Department of Human Services. The audit was conducted pursuant to Section 19-3.3-109, C.R.S., which requires the State Auditor to conduct a performance and fiscal audit of the Ombudsman Program at the beginning of the Program's third year of operation. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Human Services.

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REPORT HIGHLIGHTS



CHILD PROTECTION OMBUDSMAN PROGRAM
PERFORMANCE AUDIT, JUNE 2014

DEPARTMENT OF HUMAN SERVICES

CONCERN

Under the current structure, the Department of Human Services (Department) has not implemented sufficient rules, contract provisions, and contract management practices to ensure that the Child Protection Ombudsman Program (Program) conducts effective reviews, produces timely and complete reports and recommendations, and performs other statutorily required duties that generate positive change for the state's child welfare system.

KEY FACTS AND FINDINGS

- The current organizational structure of the Program may not be ideal to achieve the optimal level of independence.
- The Program has not implemented adequate processes to ensure that reviews and investigations comply with contract requirements, are conducted based on consistent criteria, and result in supportable conclusions. For example, the Program did not document how staff reached conclusions for 5 of the 17 case reviews in our sample (29 percent).
- The Program lacks adequate controls for reporting the results of reviews and investigations. Specifically, of the 20 files in our sample:
 - ▶ 6 contained no evidence that the complainant was informed of the outcome.
 - ▶ 3 contained no evidence that the county under review was informed of the outcome.
 - ▶ 13 contained no evidence that the Department was informed of the outcome.
- The Program is not always timely in finalizing reviews. 29 of the 163 reviews (18 percent) open in Fiscal Year 2014 took more than 30 days to finalize, and seven reviews had been open between 198 and 497 days without being finalized.
- The Program has not formally concluded on the need for a statewide grievance process, as required by statute.
- Criminal background checks were not conducted on either the current or former Ombudsman or Program staff, and Trails-based background screening did not occur for three of the four current Program staff.
- Program staff have not received data security training or signed acknowledgements of their awareness of state data security policies.
- In selecting the current vendor for the contract, the Department did not evaluate responses to the RFP based on the scoring criteria set forth within the RFP.

BACKGROUND

- The purpose of the Program is to improve accountability and transparency in Colorado's child protection system and promote better outcomes for children and families.
- The Program began in 2011 and is operated by a non-profit organization through a contract managed by the Department.
- The Program is staffed by 3.5 FTE and received an appropriation of \$370,000 for Fiscal Years 2012 through 2014 and \$504,000 for Fiscal Year 2015.
- The Program is statutorily tasked with making recommendations to improve the State's child welfare system based on the results of its reviews and investigations.
- The Program has completed 490 reviews and five investigations since it began operations.

KEY RECOMMENDATIONS

The Department should:

- Develop rules, policies, and procedures that detail expectations for the Program's intake and case review processes.
- Develop rules, policies, and procedures that improve the Program's review and investigation reporting and recommendation tracking.
- Implement measureable contract deliverables and monitor performance to ensure that the Program meets all of its statutory obligations.
- Implement policies, procedures, and contract provisions to ensure that Program staff and sub-contractors meet the state's data security requirements.
- Implement appropriate controls over the vendor selection process.

The Department agreed with all of these recommendations.



RECOMMENDATION LOCATOR

AGENCY ADDRESSED: DEPARTMENT OF HUMAN SERVICES

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
1	38	(a) Develop written policies, procedures, and rules related to reviews and investigations that require the Program to maintain comprehensive documentation to show that it thoroughly and consistently addressed each complaint, establish a system of supervisory or peer review, maintain a complete complaint database, and begin reviews within established timelines. The policies, procedures, and rules should define the elements of the contractor's files that must be made available to the Department without impeding Program independence. (b) Incorporate the written policies, procedures, and rules into the Program contract. (c) Require the Program contractor to establish internal policies and procedures that specifically align with the Department's policies, procedures, and rules.	AGREE	APRIL 2015

AGENCY ADDRESSED: DEPARTMENT OF HUMAN SERVICES

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
2	54	Ensure that the Program has adequate controls over reporting and tracking activities by (a) incorporating requirements into written policies and procedures, rules, and contract requirements specifying that the Program consistently communicate findings and recommendations to all appropriate parties, demonstrate that it has considered and addressed input from appropriate parties on findings and recommendations, include responses in the published report, track and report complaint data, and finalize reviews and investigations in a timely manner; and (b) incorporating requirements into the Program contract that the Program's internal policies, procedures, and practices must align with the Department's.	AGREE	APRIL 2015
3	64	Strengthen management of the Program contract by (a) ensuring that the contract includes provisions to address all statutory requirements and that all contract requirements include sufficient, measurable deliverables; (b) monitoring Program performance against established deliverables; (c) developing a process to routinely conduct a risk assessment of the contract to determine the level of review needed for fiscal management and programmatic requirements; and (d) providing contact information for the Program on the Department's website.	AGREE	A. JANUARY 2015 B. JANUARY 2015 C. JANUARY 2015 D. JUNE 2014

AGENCY ADDRESSED: DEPARTMENT OF HUMAN SERVICES

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
4	74	<p>Ensure that the Program is in compliance with all requirements for accessing and handling confidential data by (a) ensuring that all background screenings for Program staff have been conducted prior to providing access to confidential information; (b) including a contract requirement that all Program staff given access to confidential, sensitive data receive data security training and verifying that the vendor maintains records to show that all staff have completed training; (c) including a contract requirement that all Program staff read and sign confidentiality agreements and verifying that the contractor retains copies of the agreements; and (d) establishing in rule and/or contract that the Program include data security provisions in sub-contracts that require all sub-contractors to comply with all confidentiality requirements.</p>	AGREE	<p>A. JANUARY 2015 B. JANUARY 2015 C. JANUARY 2015 D. APRIL 2015</p>
5	80	<p>Implement necessary controls over the process for soliciting, evaluating, and selecting the contractor for the Program by revising the evaluation tool to accurately reflect the criteria and their relative weights, as described in the Request for Proposal.</p>	AGREE	MAY 2015



CHAPTER 1

OVERVIEW OF THE CHILD PROTECTION OMBUDSMAN PROGRAM

An ombudsman is an individual who oversees a program or entity in order to provide better service to the public. He or she provides an independent check on government activity in the interests of the citizen, intervenes with public authorities, and oversees the investigation of complaints of improper government activity. An ombudsman makes recommendations to relevant authorities to improve program performance based on the results of his or her investigations.

The Child Protection Ombudsman Program (Ombudsman Program or Program) is operated under a contract managed by the Department of Human Services (Department). The Ombudsman Program was created through Senate Bill 10-171, which was signed into law in May 2010. The Ombudsman Program was instituted to provide a high level of confidence in the child protection system, improve outcomes, enhance accountability, and foster best practices within the system. Statute (Section 19-3.3-105, C.R.S.) created a work group made up of individuals appointed by the Governor, the President of the Senate, and the Minority Leader in the House, that was tasked with drafting a detailed, written work plan for establishing the Ombudsman Program; setting expectations; and providing other specific guidance for operating the Program. The work plan was completed in September 2010. The Program has been operating for three years, having started in June 2011.

PROGRAM ORGANIZATION

According to statute (Section 19-3.3-102, C.R.S.), the Executive Director of the Department of Human Services shall establish and administer the Ombudsman Program under the Department through a contract with a public agency or private non-profit organization. The administration of the Ombudsman Program is to be independent of the divisions within the Department that are responsible for child welfare, youth corrections, and child care. In order to comply with statute, the Department has administered the contract under its Enterprise Partnerships section, which is operated separately from the Department's child welfare, youth corrections, and child care programs. The Department is also statutorily responsible for the following duties related to the Ombudsman Program:

- Developing policies and procedures and promulgating any rules necessary for the implementation, operation, and administration of the Ombudsman Program.

- Distributing the Ombudsman Program’s annual report to the Governor and the Health and Human Services committees of the House and the Senate, and posting it on the Department’s website.
- Issuing, in accordance with the Procurement Code, a Request for Proposal for the administration of the Ombudsman Program.
- Providing training and other technical assistance to Program staff to ensure the Program complies with state and federal laws related to the child protection system, contract provisions, and other child protection system requirements.
- Determining that sufficient funds are available or have been committed for the operation of the Program prior to awarding the Program contract. This includes Department authority to seek, accept, and expend gifts, grants, or donations for operating the Program.
- Providing availability of legal counsel for the Ombudsman Program, subject to the availability of Program appropriations.

Statute [Section 19-3.3-105(1), C.R.S.] also required the Department to convene and consult with a “work group” prior to the Ombudsman Program’s implementation to develop a “detailed plan” for establishing and operating the Program. The Department incorporates this detailed plan into the annual Ombudsman Program contract as part of the Program requirements.

The Department’s contract for the Ombudsman Program also requires the Department to meet regularly with the contractor. Currently, the Department and the Ombudsman Program conduct three types of meetings: a monthly meeting to discuss contract and fiscal issues; a monthly meeting to discuss, clarify, and track the progress of implementation of Ombudsman recommendations; and a quarterly meeting between the Ombudsman and Department Executive Director to discuss broad child protection policies and systemic issues.

CHILD PROTECTION OMBUDSMAN PROGRAM

Overall, the Ombudsman Program's core statutory responsibility is to, "facilitate a process for independent, impartial review of family and community concerns; request independent, accurate information; and, if appropriate, conduct case reviews to help resolve child protection issues." [Section 19-3.3-102(2)(b), C.R.S.] Since the Ombudsman Program's inception, the contract to operate it has been held by the National Association of Counsel for Children (NACC), a national organization of attorneys and other professionals who provide legal counsel for children that is headquartered in Aurora, Colorado. Since being awarded the Program contract, NACC has stopped providing any legal services for children in Colorado to comply with statutory and contract provisions prohibiting these activities. The contractor is responsible for hiring the Ombudsman and any staff necessary to perform the duties of the Program. The Program contract details the recommended qualifications of the Ombudsman, which include a familiarity with the Colorado child protection system, experience in running an organization, and a working knowledge in the safety and well-being of children.

The contractor has currently staffed the Ombudsman Program with 3.5 full-time equivalent (FTE) employees, including the Ombudsman, an associate ombudsman, a part-time quality assurance specialist, and an intake specialist. The intake specialist is the individual who receives complaints and is generally the first point of contact with the Ombudsman Program. The associate ombudsman and quality assurance specialist both review complaints, as needed, to determine if any of the issues raised in the complaints are valid. The Ombudsman generally assists with the more complicated cases and with reviews that require a full investigation. In addition, the Ombudsman conducts outreach efforts for the Ombudsman Program by attending community events and engaging with policy makers.

According to its contract, the Ombudsman Program is also responsible for assembling the Child Protection Ombudsman Council (Council). The Council is a group of volunteers consisting of one appointee from the Department, one appointee from the county commissioners, and additional appointees selected by the Ombudsman. The Council works to ensure that the Ombudsman is fulfilling his or her duties and assists in the community outreach efforts of the Program. There are currently 20 members on the Council, including county human services professionals, state human services professionals, members of law enforcement, a judge, the Executive Director of NACC, Ombudsman Program staff, and others.

CHILD PROTECTION OMBUDSMAN PROGRAM RESPONSIBILITIES

The purpose of the Ombudsman Program is to improve accountability and transparency in Colorado's child protection system and promote better outcomes for children and families involved in the system. This is to be achieved through a well publicized, easily accessible, and transparent grievance process. Statute (Section 19-3.3-103, C.R.S.) provides a list of duties to be carried out within the Program. The Program is required to:

- Receive complaints about the child protection system, request accurate information, and independently investigate and seek resolution to those complaints in a timely manner.
- Make recommendations to the Department or other appropriate agency for action to resolve a complaint.

- Educate the public concerning child maltreatment and the role of the various participants and agencies involved in the child protection system.
- Review, evaluate, and make recommendations on the effectiveness and efficiency of the existing grievance mechanisms within the child protection system.
- Report at least annually to the Department Executive Director, the public, and the General Assembly concerning the actions or inactions taken by the Ombudsman regarding the goals of the Program, the complaints received and reviewed, and any identified weaknesses in the system.

One of the primary functions of the Ombudsman Program is to receive complaints and review cases to determine if the complaints have merit and if so, whether action should be taken on the specific case that is the subject of the complaint or if overall changes are needed in the child protection system. Some of the calls or contacts the Ombudsman Program receives are merely informational or concern matters the Program does not oversee. The Program categorizes these types of calls as inquiries. If an incoming contact involves a matter the Program has oversight over, Program staff will conduct a review that involves examining entries in the Department's child welfare case management system—Colorado Trails (Trails), interviewing individuals, and perhaps examining police records. Depending on the findings of the review, the Ombudsman Program may recommend to the Department or other appropriate agency that a change be made in the case. The results of a review are typically communicated to the Department, county, and complainant.

If a review identifies serious concerns, the Ombudsman Program may decide to elevate it to the level of an investigation. Investigations require more extensive research and generally result in written reports that are made available to the public. The chart below shows the

number of inquiries, reviews, and investigations completed by the Program since it began operating in June 2011.

CHILD PROTECTION OMBUDSMAN PROGRAM COMPLETED INQUIRIES, REVIEWS, AND INVESTIGATIONS FISCAL YEARS 2012 THROUGH 2014				
	2012 ¹	2013	2014 ²	PERCENT CHANGE 2012- 2014
Inquiries	44	60	185	320%
Reviews	89	232	169	90%
Investigations	1	3	1	0%
Total	134	295	355	165%

SOURCE: Office of the State Auditor analysis of Child Protection Ombudsman Program complaint data.

¹Fiscal Year 2012 includes June 2011 data (which is in Fiscal Year 2011), the first month the Ombudsman Program was in operation.

²Fiscal Year 2014 data is through May 12, 2014.

FUNDING

The Ombudsman Program is funded by an annual General Fund appropriation, which is managed by the Department in the Child Protection Ombudsman Program Fund created in statute (Section 19-3.3-107, C.R.S.). The Department is also authorized to seek and accept gifts, grants, or donations, which are to be put into the Child Protection Ombudsman Program Fund. The Department operates the Ombudsman Program through a cost-reimbursement contract. The Program contractor, NACC, submits monthly invoices to the Department to recover the costs it incurs operating the Program. In Fiscal Year 2011, the General Assembly appropriated \$175,000 for the first year of the Program. From Fiscal Years 2012 through 2014, the General Assembly has appropriated approximately \$370,000 annually for the Ombudsman Program. The Department has reimbursed NACC the full appropriated amount every year. For Fiscal Year 2015, the General Assembly increased the Department's appropriation for the Ombudsman Program to approximately \$504,000—a 36 percent increase.

SENATE BILL 14-201

In the 2014 Legislative Session, the General Assembly passed Senate Bill 14-201, which created an advisory work group that is tasked with assisting the General Assembly and the Governor with reviewing the current structure of the Ombudsman Program and developing a plan for the autonomy and accountability of the Program. The advisory work group is to convene no later than August 1, 2014 and will include up to 15 members who are appointed by the General Assembly, the Chief Justice of the Colorado Supreme Court, and the Governor. The current acting Ombudsman will also be included in the work group as a non-voting member. The advisory work group's duties include the following:

- Reconcile the recommendations made in the detailed plan by the original Ombudsman Program work group in 2010 with the way the Ombudsman Program is currently structured and functions.
- Identify concrete steps and make new recommendations, as appropriate, for the autonomy and accountability of the Ombudsman Program.
- Make recommendations concerning the most effective utilization of the Ombudsman Program to further child protection efforts in Colorado.

The Bill requires the advisory work group to present its recommendations by December 1, 2014, in a written plan given to the appropriate committees of the General Assembly, the Governor, and the Executive Director of the Department. The Executive Director is required to then post the plan on the Department's website. The expectation is that any statutory changes the advisory work group might recommend would be considered during the General Assembly's 2015 Legislative Session. We discuss the Ombudsman Program's independence in more detail in Chapter 2.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

Section 19-3.3-109, C.R.S., requires that the State Auditor, “conduct or cause to be conducted a performance and fiscal audit of the [P]rogram at the beginning of the third year of operation of the [P]rogram.” Audit work was performed from November 2013 through June 2014. We acknowledge the cooperation and assistance provided by Department and Ombudsman Program staff.

The overall objectives of our audit were to analyze and evaluate (1) the operations of the Ombudsman Program; (2) the contract procurement and management processes used within the Department to ensure that the Ombudsman Program operates functionally and financially as intended by statute; and (3) whether the current organizational structure of the Ombudsman Program provides the optimum level of independence for the Program. Specifically, we evaluated:

- Whether the Department and Ombudsman Program contractor have established and implemented internal policies, practices, and controls that are adequate to ensure each entity is effective in fulfilling its core statutory obligations.
- Whether the Department has established and implemented contract planning and procurement practices, controls, and outcome measures for the Ombudsman Program contract that are adequate to ensure that the selected contractor is held accountable for fulfilling its core statutory obligations and the Department is monitoring the contractor’s performance and managing contract funds appropriately.
- Whether the current statutory provisions creating the Ombudsman Program allow the Program contractor to operate with the optimum

level of independence when conducting case reviews and investigations of Department and county operations.

We assessed the effectiveness of those internal controls that are significant to the audit objectives described above. Our conclusions on the effectiveness of those controls are described in the audit findings and recommendations.

To accomplish our audit objectives, we:

- Reviewed relevant state statute, laws, and rules, as well as Ombudsman Program contract provisions, Department and Ombudsman Program policies and procedures, and national ombudsman expert guidance regarding program administration.
- Interviewed Department, Ombudsman Program, and NACC staff and other states' ombudsman programs with similar missions, including Indiana, Maine, and Utah.
- Evaluated the Ombudsman Program's intake and case review and investigation policies, procedures, and processes and reviewed a sample of complaints that were opened during the audit review period.
- Reviewed statutes and Office of Information Technology (OIT) policies related to state requirements regarding background clearance checks, confidentiality of sensitive data, and access to Department and Ombudsman Program files.
- Evaluated the available documentation against statutory requirements related to soliciting, evaluating, and selecting a vendor, and reviewed the criteria applied by the Department to evaluate bidders for the 2011 Ombudsman Program contract.
- Assessed the Department's contract management processes, which included evaluating the activities the Ombudsman Program is required to perform per statute, evaluating the performance measures included

in the contract, and testing a sample of reimbursements made to the contractor.

- Evaluated the organizational structure of the Ombudsman Program, considering issues identified during the audit and their impact on the Program's independence.

We relied on sampling techniques to support our audit work as follows:

- We selected a nonstatistical, judgmental sample of 20 complaints received by the Ombudsman Program between June 2011 and November 2013 that were classified for review or investigation. This sample included 17 complaints classified as Ombudsman Program reviews and three complaints that were classified as investigations. We selected our sample items to assess the Ombudsman Program's complaint intake and case review and investigation practices conducted throughout the audit period. We designed our sample to help provide sufficient, appropriate evidence for our evaluation of the Ombudsman Program's complaint intake and case review and investigation process based on our audit objective.
- We selected a nonstatistical, judgmental sample of 13 invoices submitted by the Ombudsman Program to the Department between November 2011 and December 2013. We selected our sample items to provide representation of invoices submitted throughout the audit period. We designed our sample to help provide sufficient, appropriate evidence for our evaluation of the Department's process for reviewing and authorizing payments to the Ombudsman Program based on our audit objectives.

When samples were chosen, the results of our testing were not intended to be projected to the entire population. Rather, samples were selected to provide sufficient coverage of those areas, such as Ombudsman Program complaint intake and review process and the

Department's invoice review and reimbursement process, that were significant to the objectives of this audit. Additional details about audit work supporting our findings, conclusions, and recommendations are described in the remainder of the report.

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 audit objectives.

CHAPTER 2

THE OMBUDSMAN PROGRAM AND CONTRACT

The Child Protection Ombudsman Program (Ombudsman Program or Program) is operated under a contract managed by the Department of Human Services (Department). The contractor selected to operate the Ombudsman Program is responsible for the day-to-day management of all of the Program functions and responsibilities that are outlined in the contract, such as receiving, responding to, and reporting on complaints about Colorado's child protection system. The Department is responsible for ensuring that (1) the Program contract provisions require the contractor to meet all applicable statutory and other state requirements, (2) the contractor complies with contract provisions, and (3) the Ombudsman Program is successful in meeting the legislative goals of the Program.

The Ombudsman Program is relatively new, having been in operation for just under 3 years. The Program has been operated by the National Association of Counsel for Children (NACC) under an annual contract since June 2011. The NACC is responsible for hiring the individual who serves as the State's Ombudsman. The NACC hired the first Ombudsman in May 2011; she served through May 2013. The current Ombudsman has been in the position since June 2013.

We reviewed the core day-to-day operations of the Ombudsman Program, including how the Program contractor addresses complaints, works with the Department to report findings and recommendations, and ensures the security of confidential data. Additionally, we reviewed the Department's oversight of the Ombudsman Program contract, including the procurement process used to select the contract vendor and the Department's contract monitoring activities.

PROGRAM EFFECTIVENESS

Through our audit work, we considered the extent to which the purpose of the Program has been effectively accomplished. The legislative declaration for the Program indicates that the General Assembly had two main purposes in mind when creating the Program. Specifically Section 19-3.3-101(2)(a) and (b), C.R.S., states that the establishment of the Child Protection Ombudsman Program will:

- Improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system.
- Allow families, concerned citizens, mandatory reporters, employees of the state department and county departments, and other professionals who work with children and families to voice their concerns, without fear of reprisal, about the response by the child protection system to children experiencing, or at risk of experiencing, maltreatment.

Just by the nature of the Program, it improves transparency in the child protection system because the Program publicly reports on its activities, the issues raised in complaints, and the results of its work. The Program publishes an annual report that includes summary information about the results and recommendations from the reviews and investigations that are completed within the year. In addition, the Program is required to notify complainants of the results of its reviews and investigations. The Program also has an inherent ability to improve accountability because it is intended to be independent of the child protection system. Just as an external audit function provides value in addition to an organization's internal audit or quality assurance processes, the ombudsman function in general provides an intrinsic value because it is supposed to operate without influence by the entities it investigates.

We also found there are data indicating that the Program provides an avenue that families, citizens, and others working with children and families can and do use to voice concerns about the child protection system. The number of contacts received by the Program has been growing over the 3 years the Program has existed, from 134 in Fiscal Year 2012 to 355 in Fiscal Year 2014—a 165 percent increase. However, as we note in the report, the amount of outreach conducted by the Program decreased significantly during the last 2 years. Neither the Department nor the Program has established goals or measures related to outreach to determine whether Program outreach is sufficient.

We identified a number of issues, however, that impede a comprehensive assessment of the extent to which the Program is improving accountability and promoting better outcomes for children and families. First, the Department reports that there have been a number of changes to the child protection system in recent years and it is difficult to assess the degree to which these changes can be attributed to the Ombudsman Program. Second, a number of the findings in the report identify areas that need to be improved to

facilitate a comprehensive evaluation of the Program's effectiveness. These findings include:

- The Ombudsman Program does not have good documentation practices and the Department has not required such. As a result, we found there is a lack of written evidence to demonstrate that the Program's complaint intake, review, and investigation procedures are effective to improve the system.
- The Ombudsman Program does not have good practices related to communicating the results of its reviews and investigations and working in cooperation with investigated entities to ensure that its results, conclusions, and recommendations are complete, accurate, and relevant. As a result, we found the Department's Office of Children Youth and Families has disagreed with multiple Program recommendations, factual statements, and conclusions and the counties have raised questions and concerns about Program findings that have not been addressed.
- The Department lacks some controls to hold the contractor accountable for carrying out all its duties and effectively accomplishing the statutory purpose of the Program. This creates a risk that the Program is not fulfilling its legislative mandate.

INDEPENDENCE OF PROGRAM STRUCTURE

Our audit work included a review of the organizational structure of the Program to determine if Colorado's structure provides the Program with an optimum level of independence to conduct reviews and investigations. A governmental ombudsman is defined by the United States Ombudsman Association as an independent, impartial public official with authority and responsibility to receive, investigate, or informally address complaints about governmental actions, and,

when appropriate, make findings and recommendations, and publish reports. An ombudsman's fundamental responsibility is to serve as an unbiased entity that investigates concerns regarding the operation of a program to improve the operations, accountability, and transparency of the program and allow stakeholders to voice their concerns about the program without fear of reprisal. To effectively carry out this responsibility, an ombudsman must be free from control, limitation, or retaliation from any person or organization who may be the subject of a complaint or inquiry.

An actual or perceived lack of independence can hinder the Program's operation and diminish public trust in it. We identified concerns with the independence of the Program structure at the beginning of the audit. Through the work completed during the audit, including a review of statutes, the detailed work plan, and the Program contract, as well as interviews with Department and Program staff, we concluded that the current organizational structure of the Ombudsman Program may not be ideal to achieve the optimum level of independence necessary to fulfill the legislative goal of the Program.

There are two key areas inherent in the current organizational structure of the Program that may raise a question about the independence of the Program, either in fact or in appearance and make it difficult for the Program to operate optimally. First, the Ombudsman Program is authorized to review and investigate the Department as well as the counties that the Department oversees with respect to child protection services. At the same time, the Department has control of the Program contract and is the decision-maker as to whether the contract will be renewed and Program staff will have a job. This can affect the Program's investigative function and may make staff hesitant to conduct investigations and issue reports that reflect negatively upon the Department. We did not find evidence that that Department had infringed upon the Program's independence; however, Program staff indicated their unease when conducting a

Department-level investigation that the contract would not be renewed depending upon the results of the investigation.

Second, Department staff informed us that their attempts to provide assistance in the creation of policies and procedures and in drafting the Program rules, both of which are part of the Department's statutory duties [Section 19-3.3-102 (4), C.R.S.], were met with pushback from the Ombudsman Program on the grounds that including provisions for reviews and investigations infringed upon the Program's independence. According to Department and Program staff, during the 3 years that the Program has been operating, the working relationship between the two agencies has been strained and establishing and refining rules, policies, and procedures has proven difficult. However, as the contract manager for the Program, the Department is responsible for providing sufficient oversight of the Program, which includes promulgating rules as directed by statute, to help ensure that the Program is meeting its statutory purpose.

We recognize that the Department has been placed in a unique and challenging position given the current organizational structure of the Ombudsman Program. The Department is tasked with overseeing the Program, and at the same time, providing the Program a level of independence that allows it to conduct thorough and credible reviews of the child protection system, including the Department's role in that system. The decision of whether the organizational structure of the Program is appropriate is a matter of public policy and outside the scope of our audit. The issue of the Program's autonomy was also raised by the General Assembly during the 2014 Legislative Session. Senate Bill 14-201 established a work group which is tasked with examining the autonomy and accountability of the Ombudsman Program under the current structure and making recommendations for any necessary changes.

While the current organizational structure of the Ombudsman Program may not be ideal to achieve the optimal level of independence

for the Program, unless statutory changes are made, the Program will continue to operate under this structure. As discussed throughout this report, we identified concerns with how the Program is currently operating and with the Department's management of the Program contract. Specifically, the audit identified concerns with the Program's processes for conducting case reviews and investigations and reporting their results, the Department's monitoring of the Program contract, the security of confidential data, and the Department's processes for selecting the vendor to operate the Program. These findings and recommendations are consistent with best practices for ombudsman programs and are relevant regardless of how the Program is structured.

COMPLAINT INTAKE AND CASE REVIEW AND INVESTIGATION PROCESS

Anyone may submit a complaint to the Ombudsman Program at any time through its website, by phone, or through e-mail or paper mail. The Ombudsman Program conducts an initial intake assessment of the actions or inactions that are the subject of the complaint, and determines whether further work to address the complaint should be conducted. The Ombudsman Program classifies all complaints into one of the following three categories.

- **INQUIRIES** are complaints that cannot be reviewed by the Ombudsman Program. For example, general questions or requests for information are classified as inquiries because they do not include an actual complaint. Additionally, complaints that cannot be reviewed due to a lack of information or cooperation from the complainant are classified as inquiries, as well as complaints that are outside of the Program's authority and are referred to another resource. For example, statute [Section 19-3.3-103(1)(a)(III), C.R.S.] requires the Program to refer all complaints relating to the Judicial Department and judicial proceedings to the appropriate entity within the Judicial Department.

- **REVIEWS** are complaints that fall within the Ombudsman Program’s authority and include enough information to initiate research. The intake specialist or other staff member who receives the complaint assigns a staff reviewer to the case. During a review, the staff reviewer will research the issue(s) raised by the complainant by analyzing the documents in the Department’s child welfare case management system, Colorado Trails (Trails), that are related to the child’s or family’s case, and other information as needed, such as documents from third parties and interviews with county department staff. The staff reviewer then uses his or her professional judgment to determine whether the available evidence confirms the complainant’s concerns; raises other issues that should be addressed, such as instances where best practices were not followed or laws are unclear; or, shows the complaint is not supported by the available evidence.

Reviews may be conducted at the Department or county level, and at the end of a review the staff reviewer concludes on whether the actions taken or not taken by members of the child protection system were appropriate. After a review is finalized, the Ombudsman Program provides the overall outcome of the review to the complainant and detailed results of the review, which may or may not include written recommendations, to the Department or county being reviewed through an internal process that is not shared with the public. A review may be escalated to an investigation at any point.

- **INVESTIGATIONS** are complaint reviews that have been escalated by the Ombudsman Program based on the staff reviewer’s professional judgment, expertise on child protection laws and requirements, and conclusions made about the information gathered and analyzed during a review. For example, the Ombudsman Program may determine that a review should be escalated to the investigation level when, during the review process, any one of the following conclusions is reached:
 - ▶ The complainant’s concerns are corroborated

- ▶ Multiple violations of law are identified
- ▶ Multiple documentation inaccuracies that compromise credibility are identified
- ▶ Egregious employee or agency actions or inactions are identified, may be recurring, and/or could seriously harm a child, parent, and/or caregiver
- ▶ Issues identified appear to be occurring across multiple cases

Complaints that reach the investigation level differ from complaints that remain at the review level in that all investigations culminate in a stand-alone written, public report of the Ombudsman Program's findings, conclusions, and recommendations.

In addition to reviews and investigations related to specific cases, the Program is authorized by statute to conduct systemic reviews and investigations to provide Department- and county-level recommendations regarding changes in policy that are needed to improve the child protection system.

The Ombudsman Program conducts complaint intake, review, and investigation activities for each case internally and does not provide the Department with case review details that would identify a complainant. The Program is required to maintain information about complainants and its complaint-related activities in a complaint database. The database is used to compile monthly reports that summarize the types and nature of complaints made, and number of reviews and investigations conducted to submit to the Department, as well as annual reports that are shared with the General Assembly and the public.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed statutes and the Ombudsman Program contract provisions related to its complaint intake and case review and investigation functions. In addition, we reviewed the Program's intake and case review and investigation policies, procedures, and processes. This included reviewing the Program's electronic complaint database records for June 2011 through November 2013, paper intake assessment forms for complaints received during this same time period that were classified as inquiries and did not result in further review or investigation, and a nonstatistical, judgmental sample of 20 complaints that were classified as a review or investigation. Of the 20 complaints in our sample, 17 were classified as Program reviews and three were classified as investigations. We also interviewed Department and Ombudsman Program staff, the NACC Executive Director, and other states' ombudsman programs with similar missions, including Indiana, Maine, and Utah.

The purpose of our audit work was to determine whether the Ombudsman Program's complaint intake and case review and investigation processes are effective in ensuring that complaint reviews and investigations are consistent with statute, contract requirements, and ombudsman best practices, and are conducted on the basis of consistent criteria and result in supportable conclusions and recommendations to the Department and county departments.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The Department's contract for the Ombudsman Program includes provisions that address statutory requirements related to the complaint intake and case review and investigation processes. Prior to the Program's implementation, statute [Section 19-3.3-105(1), C.R.S.]

required the Department to convene a “work group” to determine the appropriate plan for establishing and operating the Program. The work group recommendations are incorporated into the annual Ombudsman Program contract as Program requirements, along with additional performance measures on responding to complaints that are updated annually. The contract requirements on complaint intake and case reviews and investigations have evolved over the 3 years the Program has been operating, but include, in part, the following deliverables and parameters for addressing complaints.

- **MAINTAIN A COMPLETE FILE** of all records, documents, communications, and other materials that pertain to the operation of the Ombudsman Program or the delivery of services under the contract.
- **DEVELOP INTERNAL POLICIES AND PROCEDURES** that are based on national research about ombudsman complaint intake and case review and investigation processes, and that include:
 - ▶ A complaint intake system with standard intake procedures and protocols, including intake forms and materials. Complaint information should be maintained in writing at intake.
 - ▶ A complaint review system with standard procedures for conducting case reviews and investigations that requires that the Ombudsman Program “shall not issue recommendations that are not grounded in documented, factual evidence or in established principles of best practice.”
 - ▶ A complaint review system that provides timely reviews and complainants with the feeling that their concerns were heard. This includes requirements that Ombudsman Program staff make first contact with the complainant within 5 working days, and finalize reviews and investigations within 30 working days for any routine (i.e., non-emergency) complaint.

- DEVELOP AND MANAGE A DATABASE that gives the Ombudsman Program the ability to:
 - ▶ Track, sort, and analyze complaint data.
 - ▶ Compile reports, responses, trends, and outcomes.
 - ▶ Deliver monthly reports to the Department that summarize all of the calls received, information about the complaints and complainants, actions taken, outcomes of complaint reviews and investigations, and any other relevant data.

In addition to complying with contract requirements, the Ombudsman Program has a responsibility to conduct itself in a manner that maintains the integrity of the ombudsman function. In its response to the Request for Proposals (RFP) for the Program, which is included in each year's contract, the NACC indicated that it would create policies and procedures based on a national literature search and input from the work group, both of which would provide information on best practices. Although there is no requirement for the Department to hold the Program accountable for complying with best practices, best practices serve as a good model for how to conduct business efficiently and effectively. The U.S. Ombudsman Association's (USOA) Governmental Ombudsman Standards state that a "credible review process" is one of four cornerstones of the ombudsman function and entails performing complaint reviews and investigations, "in a manner that engenders respect and confidence and [is] accessible to all potential complainants...[which] is necessary for the work of the Ombudsman to have value and to be accepted by all parties to a complaint." Program staff all attend a 2-day training provided by the USOA, which includes guidance on gathering and storing information to cover the "who, what, when, why, and where" for the complaint, planning investigations and preserving evidence collected, writing and

maintaining case notes, and allowing for supervisory or peer review of complaint determinations.

Multiple Ombudsman Program staff evaluate complaints and use professional judgment and expertise to draw conclusions about the merit of each complaint and the issues in the child protection system that should be addressed. It is important that the Program maintains adequate documentation on the decision-making processes used to address each complaint as well as accurate case and database files. This will help ensure that the Program operates consistently and the Department maintains continuity over Program operations across contract periods and potential changes in contractors. Additionally, it is important that the Ombudsman Program initiate its review and investigative work in a timely manner. This will help assure complainants and stakeholders that their concerns are taken seriously and any problems identified in the child protection system are addressed in a timely manner.

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

We found that the Ombudsman Program has not established and implemented adequate processes to ensure that complaint reviews and investigations comply with contract requirements, and are conducted on the basis of consistent criteria and result in supportable conclusions and recommendations. The concerns we identified are:

- **INCOMPLETE COMPLAINT FILES.** During our case file review, we identified the following gaps in the Ombudsman Program's documentation of its complaint intake and case review and investigation activities.
 - ▶ All 20 of the case files we reviewed were missing key information about the intake activities conducted for each complaint. For example,

none of the intake forms for the 20 case files included the name of the staff member who completed the intake with the complainant. For four cases, the name of the person assigned to review the complaints was not included anywhere in the case files, and for one case, the file did not include any information on the concerns or issues the complainant raised. Without information about which staff assessed whether a complaint should be reviewed, which staff conducted the review and concluded on the complaint's merit, and what concerns or issues were raised by the complainant, the Ombudsman cannot monitor the decisions made by staff and ensure that overall, the Program is addressing all complaints consistently and appropriately.

- ▶ For five of the 17 case files (29 percent) classified as a “review,” there was no documentation in the files to show the basis on which the assigned staff reviewer reached his or her conclusions about the merit of the complaint or the need for recommendations to address issues identified during the review. Specifically, the five files did not include any documentation showing what the reviewers included and considered during the reviews, such as the questions or concerns researched to address the complaints or the reviewers' rationale for concluding that recommendations for improvement were or were not needed. Due to a lack of documentation, we were unable to determine the criteria that staff reviewers used to reach conclusions about the merits of complaints or the need for recommendations. We were also unable to determine whether staff reviewers conducted complaint reviews consistently.
- ▶ None of the 20 case files we reviewed contained evidence of supervisory or peer review. Specifically, two files contained no evidence of the Ombudsman's or other staff involvement during any aspect of the complaint intake and case review and investigation processes. The other 18 case files did include at least some documentation to support that the Ombudsman had been aware of some aspects of the case—for example, he or she was copied on an email request for information—but did not include documentation to

support that the Ombudsman, or another staff member, had vetted the reviewer's work.

- **INCORRECT COMPLAINT DATABASE RECORDS.** Of the 20 case files that we reviewed, six (30 percent) had incorrect information in the Ombudsman Program's complaint database. These included instances where case milestone dates (e.g., date a complaint was received and date the case was closed) were entered incorrectly, as well as cases that were classified incorrectly—for example, cases that were classified as routine cases rather than emergency cases or non-systemic instead of systemic. The Program uses information in the complaint database to compile its monthly and quarterly reports for the Department and its annual report for the public.
- **UNTIMELY CASE REVIEW.** For one of the 20 case files (5 percent) that we reviewed that was opened in January 2012, the Ombudsman Program did not begin work on the case until 2 months after the complainant contacted the Program.

WHY DID THE PROBLEM OCCUR?

The issues we identified occurred because of a lack of comprehensive, written guidance and requirements for operating the Ombudsman Program. Specifically:

- **DEPARTMENT POLICIES, PROCEDURES, AND RULES.** The Department has not developed written guidance for the Ombudsman Program that specifies the documentation and verification needed to support the Program's complaint intake and case review and investigation processes, which would help to demonstrate the credibility of the Program. For example, the Department has not established policies, procedures, or rules directing the Program to maintain comprehensive documentation on who has conducted each review and investigation and on the concerns, conclusions, and findings resulting from them. Additionally, the Department has not established any requirements for

the Program to implement a documented system of supervisory or peer review of intake assessments and complaint determinations. Overall, both Department and Program staff expressed concerns as to whether the Program could maintain sufficient independence in its review activities if the Department prescribed specific requirements on how complaint reviews must be documented and shared with Department staff for contract monitoring purposes. However, statute [Section 19-3.3-102(4), C.R.S.] requires the Department to develop policies and procedures, and rules as necessary, for the implementation, operation, and administration of the Program. As of April 2014, the Department had not established any written policies or procedures for the Program. The Department initiated the rule-making process and began drafting Program rules in September 2013, but discontinued the process with the introduction of Senate Bill 14-201 in April 2014.

Going forward, it will be important for the Department to establish some general requirements around the Program related to documentation and supervisory or peer review. However, the Department should not create requirements that limit the Program contractor's authority to prescribe how complaints are received, which complaints are reviewed or investigated, or how those reviews and investigations are conducted in order to safeguard the Program's independence.

- **CONTRACT PROVISIONS.** The Department's contract with the Ombudsman Program does not provide sufficient direction to the contractor on Program operations. Although the contract requires the Program to maintain a complete file of all information relating to the operation of the Program, the contract does not include direction on how this should be practically applied to the complaint intake and case review and investigation processes. For example, the contract does not include any requirements specifying the minimal documentation that is needed to support case review and investigation activities, nor does it require the Ombudsman Program to conduct any

supervisory or peer review activities of complaint determinations made by staff reviewers.

Additionally, the contract contains a provision that creates an impediment to the contractor's ability to conduct its complaint review work independently of the Department. The contract includes a standard state provision requiring the contractor to maintain all files related to the contract deliverables as property of the State that must be made available to the State—including Department staff—if requested. The Department has not required the Program to turn over any case files to Department staff, but could under this contract provision. Some information in Program files, such as the names of complainants, should remain confidential and not be accessible to the Department in order to meet the Program's legislative intent of providing a grievance process for voicing concerns about the child protection system without fear of reprisal.

- **OMBUDSMAN PROGRAM POLICIES AND PROCEDURES.** Although the Ombudsman Program has developed some policies and procedures related to the complaint intake and case review and investigation processes, these policies and procedures do not address documentation standards or supervisory or peer review. They also do not establish standard timeframes for responding to complaints and initiating case reviews and investigations to ensure timely completion. Instead, contrary to the contract's requirements, the Program's policies and procedures state that the Program will determine the timeframes for assigning complaints for review and initiating work on a "case-by-case basis."

The Ombudsman Program reported that staff discuss intake assessments and case reviews and investigations verbally as a group on a regular basis, and have tried to be more consistent in documenting aspects of each case review and investigation, such as when Trails is accessed or who is questioned during a review. However, the Program acknowledged it has not considered the need for setting

documentation requirements, in addition to verbal discussions, regarding the concerns, associated conclusions and findings or lack thereof, or the need for conducting supervisory or peer reviews to confirm whether the documentation for each case review and investigation appears complete and supports the reviewer's conclusions.

WHY DOES THE PROBLEM MATTER?

The Department, stakeholders, and the public must be able to depend upon the Ombudsman Program's complaint intake and case review and investigation processes for the Program to remain a valuable resource for improving Colorado's child protection system. Without adequate internal controls over the practices for documenting case reviews and investigations and ensuring that the intake, review, and investigation processes are credible, the Ombudsman Program's findings and recommendations could be, or appear to be, unsupported, and thus be called into question. The Department, as the contract manager for the Program, is ultimately responsible for ensuring that complaints about the State's child protection system are handled in a manner consistent with the legislation creating the Program and that reviews and investigations and resulting recommendations are supported and credible.

Additionally, without clear and comprehensive Department rules and contract requirements for complete documentation on the complaint reviews and investigations conducted, the Department cannot ensure consistency of work in instances where the vendor that is awarded the Program contract changes. The Department has contracted for one additional year with the current contractor. However, after Fiscal Year 2015, it is possible that the current contractor will no longer operate the Ombudsman Program.

Finally, it is difficult for the Department, the Ombudsman Program, and policy makers to draw conclusions on whether the Program has

been effective or how future practices and operations could be improved if the complaint database and case files are not accurate and complete. In particular, as the Program's caseload continues to grow, if the data and file keeping methods for individual cases are not standardized, reliable, and complete, it will affect the Program's ability to assess whether those cases are indicators of larger systemic concerns at the Department or county level. The General Assembly tasked the Program with identifying and investigating, as needed, systemic issues in the child protection system that extend beyond an individual child's or family's case. As of March 2014, the Program had completed two state-level and four county-level systemic reviews. The Program has not opened any systemic cases at the investigation level.

RECOMMENDATION 1

The Department of Human Services (Department) should ensure that the Child Protection Ombudsman Program's (Program) complaint intake and case review and investigation processes are effective, consistent with ombudsman best practices, and demonstrative of supportable conclusions and recommendations by:

- A Developing written policies, procedures, and rules that allow the Program contractor to maintain the appropriate level of independence to determine how reviews and investigations will be conducted, but that also require the Program contractor to (1) maintain comprehensive documentation on every case review and investigation that is sufficient to demonstrate the Program thoroughly and consistently addressed each complaint, (2) establish and utilize a documented system of supervisory or peer review, (3) maintain a complaint database that is consistent with supporting case files, and (4) begin reviews within established timelines. The Department's written policies, procedures, and rules should also define the elements of the contractor's files that must be made available to the Department in order to conduct contract monitoring activities without impeding Program independence—this should include explicitly identifying what information will remain confidential to the contractor, including but not limited to the names of complainants.
- B Incorporating the Department's written policies, procedures, and rules developed in response to part (a) into the Program contract as requirements that must be met in order to maintain the contract and operate the Program.
- C Requiring that the Program contractor establish internal written policies and procedures for Program staff that align with Department requirements and specify the methods the contractor will follow to

meet documentation standards, supervisory or peer review and timeliness requirements, and systemic analysis practices.

RESPONSE

DEPARTMENT OF HUMAN SERVICES

A AGREE. IMPLEMENTATION DATE: APRIL 2015.

The Department plans a two-pronged approach for compliance with these recommendations. The Department will work with the Ombudsman Program to establish, via a contract amendment (January 2015) and then in rule (April 2015), more direction over the complaint intake and case review and investigation process. The Department will require the Program contractor to (1) maintain comprehensive documentation on every case review and investigation that is sufficient to demonstrate the Program thoroughly and consistently addressed each complaint, (2) establish and utilize a documented system of supervisory or peer review, (3) maintain a complaint database that is consistent with supporting case files, and (4) begin and end reviews within established timelines. The Department will also define the elements of the contractor's files that must be made available to the Department in order to conduct contract monitoring activities. These actions will not inappropriately impede on the Program's independence, but will require the contractor to identify what information will remain confidential to the contractor, including but not limited to the names of complainants.

B AGREE. IMPLEMENTATION DATE: APRIL 2015.

The contract contains a provision requiring the contractor to conform with "all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be

amended.” This provision of the contract means the contractor must comply with any rules currently in force or promulgated in the future.

As stated above, the Department will include all aspects of the recommendation in “1a” in rule by April 2015.

C AGREE. IMPLEMENTATION DATE: APRIL 2015.

The Department will add language to the contract via a contract amendment that all Ombudsman policies and procedures must align with department policies and procedures. As stated in item “1a”, the Department will work with the Ombudsman Program to establish the requirements from “1a” in contract via a contract amendment by January 2015. By April 2015, the Department will include the recommendations from “1a” in rule for the Ombudsman Program. The contract currently contains a provision requiring the contractor to comply with any rules currently in force or promulgated in the future.

REPORTING AND RECOMMENDATION TRACKING

When the Ombudsman Program completes a review or investigation, it finalizes the results of the staff reviewer's work and concludes on whether any issues should be addressed. When a review or investigation is finalized and issues are found, the Ombudsman Program may identify recommendations for improvements that it is required to share with the appropriate entities [Section 19-3.3-103(2)(e), C.R.S], such as recommendations for changes to county administrative activities, or statewide systemic changes. After the Program determines whether recommendations for improvements in the child protection system are warranted, the Program shares the final complaint review results and recommendations using the following methods:

- **INVESTIGATION REPORTS.** The Ombudsman Program publishes a stand-alone report when an investigation is completed. Investigation reports are made public on the Program's website and detail the actions taken by the Program as part of the investigation; the reasons behind those actions; and any recommendations for change or affirmations of practices that the Program identified. We refer to recommendations resulting from investigations as "investigation level" recommendations.
- **REVIEWS.** The Ombudsman Program does not issue a stand-alone, public report on the results of each review that is completed, but rather, it provides written findings, concerns, and any recommendations identified to the entity being reviewed. The Program will also notify the complainant of the general review results. We refer to recommendations resulting from reviews as "review level" recommendations. The Ombudsman decides on a case-by-case basis whether to share review results and recommendations with the Department.

- **ANNUAL REPORTS.** The Ombudsman Program publishes an annual report that includes summary information about the results and recommendations from the reviews and investigations that are completed within the fiscal year.

The Ombudsman Program is also responsible for tracking the results of complaint reviews and investigations and any recommendations made in order to discuss with the Department and county departments, on an ongoing basis, the actions they have taken to address the issues the Program has identified.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed statutes and the Ombudsman Program contract provisions related to the Program's reporting and recommendation tracking responsibilities. We also reviewed the Program's policies, procedures, and processes for reporting the results of its reviews and investigations, and tracking the recommendations it has made to the Department or county departments. Additionally, we reviewed the Program's electronic complaint database records for June 2011 through November 2013, which include fields for recording the results and any recommendations from complaint reviews and investigations. We also reviewed a nonstatistical, judgmental sample of 20 complaint case files and the four investigation reports and two annual reports that the Ombudsman Program had published, as of March 2014. Finally, we interviewed Department and Program staff, the Executive Director of the NACC, and other states' ombudsman programs with similar missions, including Indiana, Maine, and Utah.

The purpose of our audit work was to determine whether the Ombudsman Program has implemented adequate controls to ensure that (1) complaint review results and recommendations are effectively communicated to all of the appropriate parties; (2) responses to review

results and recommendations are consistently requested, considered and addressed, as appropriate, and reported; (3) complaint data are reported and tracked appropriately; and (4) reviews and investigations are finalized in a timely manner.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Statute [Section 19-3.3-103(2)(d) and (e), C.R.S.] states that the Ombudsman Program is responsible for promoting best practices, working collaboratively with county departments to foster improvements, and making recommendations “to the executive director and any appropriate agency or entity” to address statutory, budgetary, regulatory, administrative, or systemic issues identified to improve the safety of and promote better outcomes for children and families in the child protection system.

The Department’s work group recommendations, which were developed under Section 19-3.3-105(4), C.R.S., and have been incorporated into the annual Ombudsman Program contract, include requirements that address statutory provisions regarding reporting and tracking activities for complaint review and investigation results and recommendations. Additionally, the Ombudsman Program has developed some internal policies and procedures that address complaint review and investigation results and recommendations, and the USOA Governmental Ombudsman Standards provide best practices in these areas. A summary of these requirements and guidance is included below.

- **PROVIDE NOTICE OF COMPLAINT REVIEW RESULTS AND RECOMMENDATIONS.** The Ombudsman Program is required to share the results of complaint reviews and investigations with multiple parties, as follows:

- ▶ The Ombudsman Program contract states that the Program should respond to every complainant in writing once the complaint review is finalized. The Program’s internal policies and procedures state that a letter will be sent or a phone call will be made to advise the complainant of the outcome of the review. Additionally, best practices in the Governmental Ombudsman Standards state that the complainant should be informed of the closing and results of any complaint made.
- ▶ The Ombudsman Program contract states that the Program should advise the county reviewed of, “[T]he outcome of any case which has been accepted for investigation or other resolution.” The Program’s internal policies and procedures state that the entity under review will be notified of the outcome of the review—regardless of whether an investigation is opened or the complaint remains classified as a review. The Governmental Ombudsman Standards also state that the entity reviewed should be informed of the closing of any complaint and the results.
- ▶ The Ombudsman Program contract states that the Program should advise the Department of case review outcomes. The Program’s internal policies and procedures state that the Department will be notified of the results of all investigations, but are silent as to whether it will be notified of the results of each individual review. The Program’s policies state that information about all complaint dispositions and both investigation level and review level recommendations will be summarized and provided to the Department in the Program’s annual report.
- **REQUEST, CONSIDER, AND REPORT RESPONSES TO OMBUDSMAN PROGRAM RECOMMENDATIONS.** The Ombudsman Program contract states that the Program shall not release a report of findings that does not include an addendum from the Department or entity under review in response, challenge, or acceptance of the Program’s findings. Additionally, the contract specifies that the Program contractor is

required to meet monthly with Department staff and discuss updates on child protection programs, including, “written responses to recommendations in a manner that is consistent with how other formal audit responses are addressed.” The Program’s policies and procedures state that for investigations, the Program will provide the investigated entity (e.g., the Department, county departments) a draft report for review and response and the Program retains the discretion to make changes to the report prior to publication. The Program’s policies and procedures also state that the final investigation report will then be provided to the investigated entity and will include “any comment or response” provided to the Program at that time. Further, the Governmental Ombudsman Standards state that prior to issuing a public report, the ombudsman should give the agency or entity that was investigated an opportunity to respond to the findings and recommendations, and has a responsibility to review the response.

- **TRACK AND REPORT RESULTS AND RECOMMENDATIONS.** The Fiscal Year 2012 contract for the Ombudsman Program states that the contractor is required to develop and manage a database that gives the Program the ability to track and analyze complaint data and compile reports, responses, trends, and outcomes that document, in part, the actions taken to address complaints and the outcomes of complaints. The Program’s internal policies also state that the Program will document any findings in the complaint database.

Additionally, the Ombudsman Program contract states that, in accordance with statute [Section 19-3.3-108, C.R.S.], the Program’s annual report should include a summary of the Program’s findings for the year, including any Program recommendations made in the preceding fiscal year concerning statutory, regulatory, budgetary, advisory, or administrative changes relating to child protection to the Department, county departments or other entities, systemic issues identified, and areas for improvement.

- **COMPLETE REVIEWS IN A TIMELY MANNER.** The Ombudsman Program contract states that complainants should experience a timely review and feel that their concerns were heard, and that they were treated professionally. According to the contract, routine reviews and investigations should be finalized within 30 working days, while urgent reviews should be finalized within 7 days.

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Ombudsman Program has not established and implemented adequate controls over the complaint review and investigation processes to ensure that results and recommendations are consistently and appropriately communicated to all relevant parties; responses are considered and reported; complaint data are tracked, analyzed, and reported; and reviews and investigations are finalized in a timely manner. The concerns we identified are described below.

- **LACK OF NOTICE TO RELEVANT PARTIES OF REVIEW AND INVESTIGATION RESULTS.** We found that the Ombudsman Program has not consistently notified and documented its notifications to relevant parties of the complaint review results. Specifically:
 - ▶ For six of the 20 case review and investigation files we examined (30 percent), there was no evidence that the Ombudsman Program informed the complainant of the outcome of the complaint review.
 - ▶ For three of the 20 case review and investigation files we examined (15 percent), there was no evidence that the Ombudsman Program informed the county being reviewed of the outcome of the complaint review.

- ▶ For 13 of the 17 case review files we examined (76 percent), there was no evidence that the Ombudsman Program informed the Department of the outcome of the complaint review.
- **LACK OF EVIDENCE OF INTERACTION WITH REVIEWED ENTITY ON INVESTIGATION RESULTS AND RECOMMENDATIONS.** We found that the Ombudsman Program has not maintained adequate documentation to show it consistently and appropriately communicated with and considered input from the entity under investigation about its findings and recommendations prior to finalizing its work and publishing investigation reports. We also found that the Program did not consistently include responses to Program findings and recommendations in the reports. Specifically:
 - ▶ There was no evidence that the Ombudsman Program considered and addressed, as appropriate, county questions and concerns on the report findings and recommendations for two of the three county-level investigation reports published as of March 2014. For all three reports, the Program requested county input and responses to drafts of the Program's reports prior to finalizing the investigations, and received responses that included questions and noted areas where each county disagreed with the Program's facts and conclusions. However, for two of the three cases there was no documentation in the case files to show that the Ombudsman Program considered and addressed, as appropriate, the questions and areas of disagreement raised by the county. In the third case, the Program replied to the county's questions but it was unclear from the case file whether the county still maintained any concerns or disagreement with the Program's findings. In all three cases, the Program did not include county responses in the final public report, nor did it acknowledge in the reports whether the county maintained disagreement with the Program's findings and recommendations.
 - ▶ For the one state-level investigation report, published in April 2013, we found that although the Department's responses were included in

the final report, it is not clear that the Ombudsman Program considered the Department's input before finalizing the report. Specifically, the Program requested and received input and responses from the Department to a draft of its investigation report. The input and responses contained multiple instances where the Department questioned and disagreed with the Program's factual information, findings, and recommendations. For example, the final report contains multiple Department responses stating that the Program, "[F]ailed to consider information available," and, "ignores information," and that the Department, "is not entirely clear what is actually being recommended," by the Program. The Program's cover letter, in turn, states that the Department, "[R]esponded with little, if any, serious consideration of the [Program] findings and recommendations," and that the Department's responses, "argue semantics and often fail to address the actual problem identified." However, the Ombudsman Program's case file does not include documentation to indicate whether the Program and Department attempted to discuss the items of disagreement or concern at any point in order to come to a common understanding of the case facts, findings, and recommendations.

- **GAPS IN RECOMMENDATION TRACKING, ANALYSIS, AND REPORTING.** We found that the Ombudsman Program has not consistently tracked, analyzed, or reported the complaint review results and recommendations it has made. Specifically:
 - ▶ For five of the 20 case files we reviewed (25 percent), the Ombudsman Program did not update the complaint database with the recommendations made. The Program stated that while the complaint database was developed when the Program was first implemented and is used to track and analyze intake information for complaints, it has not been used to track and analyze information about the complaint review and investigation results and recommendations, or about actions taken by the Department or county departments to address Program recommendations.

- ▶ In the two annual reports we reviewed, the Ombudsman Program did not include information on the review level recommendations it had made. In the Program's first annual report, which summarizes the Program's activities from June 2011 through June 2012, the Program did not report information about any of the review level recommendations it had made to county departments. For the second annual report, for Fiscal Year 2013, the Program stated that 2 percent of the complaints reviewed resulted in recommendations to counties but did not provide any information on the type of review level recommendations made, or the counties that received the recommendations.

- **COMPLAINT REVIEWS MAY NOT BE COMPLETED IN A TIMELY MANNER.** We found that although the Ombudsman Program has made significant improvement in the timeliness of finalizing its complaint reviews, some reviews are still not completed within the 30-day period specified in the Program contract. As shown in the table below, as of March 2014, the Program had taken between 31 and 253 days to finalize 18 percent of the reviews that were open in Fiscal Year 2014. In addition, the Program had seven open reviews that had not yet been finalized as of April 2014 that had been open between 198 and 497 days.

CHILD PROTECTION OMBUDSMAN PROGRAM FINALIZED COMPLAINT REVIEWS JUNE 2011 THROUGH MARCH 2014			
FINALIZED COMPLAINT REVIEWS	FISCAL YEAR 2012 ¹	FISCAL YEAR 2013	FISCAL YEAR 2014 ²
Total Open	89	232	163
Total over 30 days to finalize	52 (58%)	86 (37%)	29 (18%)
Total over 90 days to finalize ³	22 (25%)	35 (15%)	6 (4%)
Range	0-356 days	0-323 days	0-253 days
Average Number of Days to Finalize	72 days	43 days	19 days

SOURCE: Office of the State Auditor analysis of Child Protection Ombudsman Program complaint data.

¹Fiscal Year 2012 includes complaint database information for June 2011.

²Fiscal Year 2014 includes complaint database information through March 2014.

³Total over 90 days to finalize are also included in the Total over 30 days to finalize line.

WHY DID THE PROBLEM OCCUR?

The issues we identified occurred because of a lack of comprehensive, written guidance and requirements for operating the Ombudsman Program. Specifically:

- **LACK OF DEPARTMENT POLICIES, PROCEDURES, RULES, OR CONTRACT REQUIREMENTS.** The Department has not developed written guidance for the Ombudsman Program, either through policies, procedures, rules, or contract requirements, that specifies when and how the Program should communicate its review or investigation findings and recommendations with the entity under review, and address the entity's input and responses. For all Program results and recommendations that are reported, under both investigations that result in stand-alone public reports and reviews that result in internal findings and summarized public reports, the Department has not established any guidance to require that:
 - ▶ the Program provides its complaint review or investigation findings and recommendations to the appropriate parties and requests input and a written response prior to finalizing and publishing its reports.
 - ▶ the parties communicate any questions and/or concerns to the Program in a timely manner.
 - ▶ the Program demonstrates that it has taken this input into account before finalizing its findings and recommendations.
 - ▶ the Program publishes the written responses to the Program's findings and recommendations, or acknowledges no responses were submitted.
 - ▶ the parties provide updates to the Program on the implementation status after recommendations and responses have been established.

- ▶ the Program maintains a record of all recommendations made, responses received, and actions taken, and reports the data at least annually in the Program's annual report.
- ▶ the Program finalizes reviews and investigations in a timely manner or maintains appropriate documentation and approvals in instances when it cannot finalize a review due to extenuating circumstances, such as when judicial proceedings are opened and it cannot publicize its findings.

Statute [Section 19-3.3-102(4), C.R.S.] requires the Department to develop policies and procedures, and rules as necessary, for the implementation, operation, and administration of the Program. As of April 2014, the Department had not finalized any policies, procedures, or rules for the Ombudsman Program. The Department initiated the rule-making process and began drafting Program rules in September 2013, but discontinued the process with the introduction of Senate Bill 14-201 in April 2014. The Department has also not addressed these issues in the Program contract.

- **GAPS IN OMBUDSMAN PROGRAM POLICIES, PROCEDURES, AND PRACTICES.** Although the Ombudsman Program has developed some general internal policies and procedures related to complaint review reporting and tracking for investigation level findings and recommendations, these policies and procedures do not specify how Program staff should conduct and document ongoing communication efforts to address the reviewed entity's input and responses, for either investigation level or review level recommendations. The Ombudsman and staff reviewers use personal discretion to decide, on a case-by-case basis, when and how to inform the entity under review of Program findings and recommendations, and when and how to respond to any questions, concerns, or other input received.

Additionally, the Ombudsman Program stated that in practice, it began using an Excel spreadsheet in June 2013 to track investigation

level recommendations, and paper files in November 2013 to track review level recommendations. The Program stated that although its own written policies and contract requirements state that the complaint database will be used to track, analyze, and report complaint results and recommendations, when the database was developed it was not designed to include reporting capabilities for these information areas. As a result, the Program began using the spreadsheet and paper files to track this information. However, when we reviewed the Program's files, we found that the review level recommendations for five of the eight reviews with recommendations in our sample (63 percent) were not included in the Program's paper files. Further, we saw no evidence to indicate that either the spreadsheet or the paper files included analysis to inform what the Program will report to the Department or public about its findings.

Finally, the Program's policies and procedures do not address timeliness of review and investigation initiation or completion. The policies state that the timeframe for initiating a review or investigation will be determined on a case-by-case basis, and do not give any timeframe for completing work once it is initiated.

WHY DOES THE PROBLEM MATTER?

The Ombudsman Program's complaint review and investigation reports and recommendations are a core component for making changes to the child protection system, which is ultimately the legislative intent for establishing the Program. Without good processes for ongoing communication with the persons and entities responsible for implementing changes to improve the system, including processes for all parties to come to a common understanding on the issues identified, the value of the Program's findings and recommendations is diminished. Without a common understanding on the issues identified and the recommendations that come from them, the Department cannot gauge whether the Program's response to complaints effectively improves the child protection system.

It is important for the Ombudsman Program, the Department, and county departments to establish avenues for ongoing communication about the Program's findings and recommendations, and the reviewed entity's responses and actions taken, in a manner that promotes collaboration on improving the child protection system. Part of this collaborative process includes getting input and responses, and demonstrating consideration taken of that input, to help ensure that the Program's process for reporting and making recommendations is fair, credible, and based on accurate information. The Program contract specifies that written responses to recommendations should be handled in a manner that is consistent with how other formal audit responses are addressed. Although the Program does not conduct complaint reviews under the same standards that performance audits follow, it does issue recommendations in the spirit of performance audit recommendations. Audit standards (Generally Accepted Government Auditing Standards 7.33) state that getting responses to the results and recommendations of work done, "[H]elps the auditors develop a report that is fair, complete, and objective," and that, "[i]ncluding the views of responsible officials...presents not only the auditors' findings, conclusions, and recommendations, but also the perspectives of the responsible officials of the audited entity and the corrective actions they plan to take."

In addition to ensuring that the reporting process is fair and accurate, it is important that the Program maintains an accurate record of the recommendations it has made that can be used to identify trends and larger systemic issues within the child protection system, and continues to improve the timeliness of finalizing complaint reviews and investigations so that complainants feel that their concerns were heard, addressed in a timely manner, and that they were treated professionally.

RECOMMENDATION 2

The Department of Human Services (Department) should ensure that the Child Protection Ombudsman Program (Program) has adequate controls over complaint review and investigation reporting and tracking activities by:

- A Incorporating requirements into the written policies and procedures, rules, and contract requirements that are established by the Department specifying that the Program consistently communicate complaint review and investigation findings and recommendations to all appropriate parties, demonstrate that it has requested, considered, and addressed as needed, input from appropriate parties on findings and recommendations, include responses in the published report, track and report complaint data appropriately, and finalize reviews and investigations in a timely manner.
- B Incorporating requirements into the Program contract specifying that the Program's internal policies, procedures, and practices must align with established Department policies, procedures, and rules for communicating complaint review and investigation reporting and analysis, data tracking, and timeliness requirements.

RESPONSE

DEPARTMENT OF HUMAN SERVICES

A AGREE. IMPLEMENTATION DATE: APRIL 2015.

By April 2015, the Department will promulgate rules for the Ombudsman Program that will require that the Ombudsman Program consistently: 1) communicate complaint review and investigation findings and recommendations to all appropriate parties; 2) demonstrate that it has requested, considered, and addressed as needed, input from appropriate parties on findings and recommendations and included responses in the published report; 3) track and report complaint data appropriately; and 4) finalize reviews and investigations in a timely manner.

As a precursor to establishing rules, by January 2015 the Department will work with the Ombudsman Program to establish these requirements in contract via a contract amendment.

B AGREE. IMPLEMENTATION DATE: APRIL 2015.

The Department will add language to the contract via a contract amendment that all policies and procedures must align with department policies, procedures and rules per recommendation “2a.” As stated in item “1a”, by January 2015 the Department will work with the Ombudsman Program to establish the recommendations from the audit in contract via a contract amendment. By April 2015, the Department will promulgate rules for the Ombudsman Program that include all relevant audit recommendations.

CONTRACT MONITORING

According to statute (Section 109-3.3-102, C.R.S.), the Department is responsible for overseeing the contract for the Ombudsman Program and ensuring that the Program operates in compliance with statute and the contract. The Ombudsman Program contract with the Department is based on an annual appropriation of \$370,000. This includes an annual contract that is not to exceed \$350,000 and \$20,000 designated for the Program's legal service expenses. The contract is classified as a reimbursement contract, which means that the Program is reimbursed for expenses relating to Program services only after submitting invoices and supporting documentation to the Department for review and approval. As part of its oversight, the Department meets with Program staff on a monthly and quarterly basis. During the monthly meetings, the Department and Program staff discuss contract administration, such as the invoice payment process, current investigations, program statistics and data, contractual deliverables, and any follow up items. At the quarterly meetings, the Ombudsman and the Executive Director of the NACC provide an overview of program operations and issues to the Department Executive Director.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed the Ombudsman Program contract, state statutes, and governmental standards for contract management. We also interviewed Program staff and Department staff responsible for managing and providing oversight of the contract. We evaluated the activities the Program is required to perform per statute, and the performance measures included in the contract to hold the Program accountable for effectively achieving its statutory purpose. We also reviewed the State Fiscal Rules and the Ombudsman Program contract requirements related to payments made under a reimbursement

contract and the documentation required to support payments. Further, we reviewed and analyzed general best practice information from the USOA and the American Bar Association (ABA).

The purpose of our audit work was to determine if the Department has sufficient contract management practices in place to hold the Ombudsman Program accountable for meeting all of its statutory and contractual requirements and to ensure that the Program is accomplishing its purpose as outlined in statute.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Statute [Section 19-3.3-102(5), C.R.S.] requires the Executive Director of the Department to provide oversight of the Ombudsman Program's contract, and ensure that the Program is in compliance with statutes and with the terms, performance measures, and accountability requirements in the contract. This is accomplished in large part through the establishment of expected deliverables within the contract.

Statute specifically requires the Ombudsman Program to, among other things:

- Identify and assess the current grievance mechanisms available in the state for child protection complaints, and conclude on whether a Statewide Grievance Policy is needed.
- Provide outreach and education to the community regarding child protection services in the state as well as the purpose of the Ombudsman Program.

Statute [Section 19-3.3-107(2), C.R.S.] also authorizes the Department to seek, accept, and expend gifts, grants, or donations from private or public sources, to help fund the Ombudsman Program's statutory

obligations. According to the Program contract, the Program is responsible for assessing the need and potential for additional fundraising, including gifts, grants, and donations, and for developing a strategy for seeking grants and donor supports.

Additionally, the General Assembly declares in statute (Section 19-3.3-101 et. seq., C.R.S.) that for the public to have confidence in the child protection system, the public, “[M]ust have a well-publicized, easily accessible, and transparent grievance process.” Statute does not specifically task the Department with outreach or publicizing the Program. However, it is reasonable to expect there to be information on the Department’s website related to the Program since the Department’s website serves as a primary source of key information and links to a wide variety of child protection issues and agencies for the public.

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Department lacks some controls to hold the Ombudsman Program accountable for meeting all statutory and contract requirements. In addition, we found that the Department has not provided exposure to the Program through its website to help ensure that the Program is well-publicized and easily accessible to the public.

We identified the following concerns related to the Ombudsman Program’s compliance with statutory and/or contractual requirements and the Department’s efforts to hold the Program accountable:

- **THE OMBUDSMAN PROGRAM HAS NOT FORMALLY REACHED A CONCLUSION ON THE NEED FOR A STATEWIDE GRIEVANCE POLICY.** According to the Ombudsman Program, although it has compiled information on the current mechanisms for filing grievances regarding

the child protection system, the Program has not provided the Department or other policymakers with a formal conclusion about the adequacy of those mechanisms or whether there is a need for a statewide grievance policy.

- **THE OMBUDSMAN PROGRAM HAS NOT ASSESSED THE NEED FOR OR DEVELOPED A STRATEGY FOR SEEKING GRANTS AND DONOR SUPPORT.** The Ombudsman Program has not sought grants or gifts to assist the Program with funding, as is required by the Program contract. According to the former Ombudsman, the Program received one grant since it began. However, this was a one-time occurrence.

- **IT IS NOT CLEAR IF THE AMOUNT OF OUTREACH CONDUCTED BY THE OMBUDSMAN PROGRAM IS SUFFICIENT TO MEET STATUTORY REQUIREMENTS.** The amount of outreach conducted by the Program has decreased significantly over the past 2 fiscal years. In Fiscal Year 2012, the first year of the contract, the Ombudsman Program reported that it conducted or participated in 104 outreach-oriented activities. In comparison, in Fiscal Year 2013, the Program reported that it conducted or participated in 20 outreach-oriented activities, and had participated in 16 activities in Fiscal Year 2014, as of April 2014.

According to the Ombudsman Program, it reduced the amount of outreach conducted during the second and third years of the Program because it had to use these funds to obtain more staffing resources to handle the increased workload. In Fiscal Year 2012, the first year of the contract, the Program budgeted \$19,500 for outreach efforts, using a marketing and public relations sub-contract with Ground Floor Media. However, in Fiscal Year 2013, the Program eliminated its marketing and public relations budget altogether and instead used these funds to hire additional staff to handle the increase in complaints received by the Program. In Fiscal Year 2014, the Program earmarked \$1,500 for marketing and advertising, which allowed the Program to continue limited marketing and outreach via website, information releases, and communications with the media. Neither the Department

nor the Program has established goals or measures to determine the appropriate type and amount of outreach and the expected results.

Additionally, we found that the Department has not provided exposure to the Ombudsman Program through its website. Although the Department has provided links to the Program's annual reports, it does not provide other information about the Ombudsman Program on its website. Specifically, neither the Department's page for the Office of Children, Youth, and Families; the pages for the Divisions of Child Welfare and Youth Correction; nor the page that provides information for filing a complaint about the child protection system has a hyperlink directly to the Program's webpage or basic contact information for the Program.

WHY DID THE PROBLEM OCCUR?

The issues we identified occurred because of the following:

- **THE DEPARTMENT HAS NOT HELD THE OMBUDSMAN PROGRAM FULLY ACCOUNTABLE FOR COMPLYING WITH SOME STATUTORY AND CONTRACTUAL REQUIREMENTS.** Specifically:
 - ▶ A conclusion as to the need for a Statewide Grievance Policy is not included as a contract deliverable. Although the Ombudsman Program is directed by statute to conclude on the need for a statewide grievance policy and the requirement is included in the Program contract, the Department has not established specific deliverables in the contract to address this requirement.
 - ▶ Fundraising strategies are not measured as a deliverable. While assessing the need for and developing a strategy for fundraising efforts is included in the contract, the Department has not measured the Program's efforts or required the Program to develop goals in this area. Given the resource constraints of the Ombudsman Program, seeking funding from private sources outside of the State could

provide it with the funding needed to meet all of the statutory and contractual requirements.

- ▶ Outreach benchmarks are not explicitly stated in the contract. Although conducting outreach is required by statute and is included as a deliverable within the Ombudsman Program contract, the Department has not clearly defined its expectations for the amount and type of outreach that should be conducted, nor has it developed benchmarks for measuring compliance. The decrease in the number of outreach engagements performed over the past 3 years may or may not be appropriate, but currently, there is no basis for making this determination because the contract does not indicate how much or what type of outreach is sufficient to fulfill statutory and contractual obligations and achieve intended results.

- **THE DEPARTMENT HAD NOT CONSIDERED THE NEED TO PROVIDE CONTACT INFORMATION FOR THE OMBUDSMAN PROGRAM ON ITS WEBSITE.** Although the Department provides links to other resources on its website, such as the Judicial Branch website for individuals who have complaints about the courts or judicial system, and the Office of the Child's Representative website for individuals who have complaints about guardians ad litem, the Department has not included information related to the Ombudsman Program on its website. The Department's website states that complaints regarding the child protection system should be submitted to the Department. After bringing this issue to the Department's attention during the audit, we verified that as of May 28, 2014, the Department had added a link to the Program's website on the Division of Child Welfare homepage.

Another concern we noted that may contribute to the lack of some controls over Program outcomes is that the Department has primarily focused its monitoring efforts on fiscal management, rather than operational management, of the contract since the Program began. As part of our audit work, we looked at a sample of invoices submitted by the Program and reviewed by the Department. In reviewing the

invoice submittal, review, and reimbursement process, it appeared that the Department had strong controls over the process. The Department reports that it has focused on fiscal management and limited its contract monitoring activities related to more programmatic issues for several reasons. One is the need for the Program to operate independently and the Department believes that monitoring Program operations could impede independence. Another is that the Program is new and data on costs were limited when the Program was created and the budget established. A third is that Program staff have submitted some reimbursement requests that the Department did not consider appropriate and reimbursable under State Fiscal Rules. However, by focusing monitoring efforts primarily on the fiscal side of the contract, the Department has not held the Program accountable for complying with all programmatic requirements.

According to the State of Colorado Procurement Manual, state agencies should make the best use of state resources by conducting a risk assessment to determine the level of monitoring required for a contract and how those monitoring efforts should be focused. The Procurement Manual states that risk assessments are dynamic and should be conducted frequently to reflect the results of monitoring efforts. The risk assessment process includes identifying the risk factors that indicate the likelihood of contractual obligations not being achieved. Risk factors include vendor past performance, the dollar amount of the contract, and significant problems with payments, among others. After working with the Program to obtain sufficient documentation, the Department has typically reimbursed the Program for the full amount requested, and the amount disallowed has been minimal. This could indicate that the contract risk related to fiscal management is lower now than it was when the Program started. As such, it may be an appropriate time for the Department to reassess the risk and refocus its monitoring to help ensure that the Program complies with all programmatic requirements established in statute; the contract; or Department policies, procedures, and rules, while keeping in mind the need for the Program to operate independently.

WHY DOES THIS PROBLEM MATTER?

The Ombudsman Program was established to provide families, concerned citizens, state employees and others involved in the State's child protective services, a method for having complaints heard and investigated independently of the child protection system, to establish a statewide system for filing grievances, and to improve accountability and transparency in the child protection system. The contract and the Department's monitoring of the contract are the only mechanisms in place to ensure that the Program delivers the services it was created to deliver and accomplishes its statutory purpose. If the Department does not hold the Program accountable for complying with statutory and contract provisions, then there is no assurance that the Program is satisfactorily fulfilling the purpose for which it was created.

Not holding the Ombudsman Program accountable for conducting the outreach efforts it is statutorily and contractually required to perform, results in the Program not being as visible and easily accessible as it might be. This is compounded by the fact that until recently, the Department's website did not contain readily available information on the Program and how to contact it. Individuals with concerns related to the State's child protection system, would most likely look to the Department's website for information on who to contact about their concerns and how to file a complaint.

RECOMMENDATION 3

The Department of Human Services (Department) should strengthen its management of the Child Protection Ombudsman Program (Program) contract by:

- A Ensuring that the Program contract includes provisions to address all statutory requirements for the Program and that all contract requirements include sufficient, measurable deliverables.
- B Monitoring Program performance against established deliverables to hold the Program accountable for meeting all contract requirements.
- C Developing a process to routinely conduct a risk assessment of the Program contract to determine the level of review needed for all aspects of the contract, including fiscal management and programmatic requirements.
- D Providing contact information for the Program, including a hyperlink to the Program's website, on the Department's website.

RESPONSE

DEPARTMENT OF HUMAN SERVICES

A AGREE. IMPLEMENTATION DATE: JANUARY 2015.

The Department will work with the Ombudsman Program to establish measurable (i.e., quantifiable) deliverables for each of the Ombudsman Program's statutory requirements (e.g., outreach), via a contract amendment in January 2015 and in all future contracts.

B AGREE. IMPLEMENTATION DATE: JANUARY 2015.

The Department will follow its standard monitoring protocol through Fiscal Year 2014-15 and monitor Ombudsman performance against all established deliverables as part of regular monthly and quarterly meetings. The Department will include all 'new' requirements derived from audit recommendations into its monitoring protocol in January 2015.

C AGREE. IMPLEMENTATION DATE: JANUARY 2015.

The Department will establish a process to periodically assess the risk associated with all aspects of the Ombudsman Program contract (e.g., programmatic and fiscal). The Department will document how the risk assessment will be conducted and how the resulting conclusions will be communicated to the contractor.

D AGREE. IMPLEMENTATION DATE: JUNE 2014.

Links to the Ombudsman website have been established on the Department's, the Division of Child Welfare's, and the Division of Youth Corrections' websites.

CONFIDENTIAL DATA SECURITY

In order to receive complaints and conduct reviews of cases and issues within the child protection system, statute [Section 19-3.3-103(1)(a)(II)(A), C.R.S.] provides the Ombudsman Program with access to any information, records, or documents, including records of third parties, that the Ombudsman deems necessary to conduct a thorough review, so long as the Department or a county department would be entitled to receive such information, records, or documents. In practice, when the Program receives a complaint, the staff member assigned to review the complaint typically conducts, at a minimum, an initial search of the Department's child welfare case management system—Colorado Trails (Trails)—and the State Judicial Court Docket System (Court System). The Department facilitates access to Trails and the Court System for all Program staff, including the Ombudsman, associate ombudsman, intake specialist, and quality assurance research specialist. As the complaint review progresses, the reviewer may also request additional confidential records from other third parties, such as local law enforcement or health agencies. Additionally, at the complaint intake and throughout the case review, the complainant may provide Program staff with personal information related to concerns with the case.

In order to receive, review, and track complaints, the Ombudsman Program subcontracts with private companies for its information technology needs, including the creation and maintenance of a complaint database and the Program's website. The complaint database includes confidential information gathered by Program staff from the complainant and other sources about a child's involvement in the child protection system. The Program's website allows complainants to submit complaints electronically, which contain confidential information related to a child's or family's case. The Program also contracted with a consultant in Fiscal Year 2012 for assistance in gathering and analyzing data about complaints for reporting purposes. To conduct the analysis, the consultant was given

access to personal identifying information about the complainants and children and families involved in the casework.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We conducted interviews with Department and Ombudsman Program staff, and reviewed statutes and Office of Information Technology (OIT) policies related to state requirements regarding background clearance checks, confidentiality of sensitive data, and related Department and Program files. We also reviewed the sections of the Department's contract for the Program related to the confidentiality of Program information, as well as the four sub-contracts the Program has executed that provided sub-contractors with access to confidential data.

The purpose of our audit work was to determine whether the Department and Ombudsman Program have enacted sufficient controls to ensure that the Program is compliant with all of the state requirements for accessing confidential data. Specifically, we sought to determine whether and to what extent the Department has ensured that (1) all Program staff undergo the appropriate background clearance checks and are aware of all confidentiality requirements prior to accessing sensitive data, and (2) all Program vendors that have access to confidential data through Program sub-contracts are aware of and agree to the State's requirements.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Persons that handle sensitive, confidential data must meet multiple state and Department security standards. These standards include:

- **BACKGROUND CLEARANCE CHECKS ARE REQUIRED FOR STATE CONTRACTORS**, including the Ombudsman Program contractor, as follows:
 - ▶ **CRIMINAL BACKGROUND CHECKS.** The Department is required, under OIT policies P-CISP-005 and P-CISP-012, to perform an initial background check, and ongoing checks at least every 3 years, of all contractors appointed to “positions of trust.” Although the Department has not specifically designated Ombudsman Program staff as being in a position of trust, their access to confidential information and personal identifying information of complainants would indicate that they are in a position of trust. The background checks must include local and national criminal checks, and drug testing where applicable. The Department is also required to maintain the results of the background checks in the files kept in support of the state contract, and include provisions in the state contract that require the contractor to meet the State’s personnel security standards, including (1) requiring all applicable employees to undergo criminal background checks, and (2) maintaining the security of sensitive data.

Additionally, the Department’s contract for the Ombudsman Program includes the requirement that the Ombudsman pass a background clearance process that includes checks through the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI), and drug testing.

- ▶ **TRAILS-BASED BACKGROUND CHECKS.** The Ombudsman Program contract includes provisions stating that the contractor must require all Program staff to undergo a background screening against the Trails database prior to undertaking any Program work. The Trails background screening is not a criminal background check, but is conducted to identify whether a person has been determined responsible for an incident of child abuse or neglect, and thus is not eligible, per the contract, to work for the Program. The Program is required by the contract to obtain a signed “Background Inquiry

Form” for its staff that the Department then uses to perform the Trails check and clear Program staff access to Trails and the Court System.

- **CYBER SECURITY TRAINING IS REQUIRED**, under OIT policies P-CISP-005 and P-CISP-012, for state contractors that meet the definition of a person in a position of trust who are given access to sensitive data.
- **STATE CONFIDENTIALITY AGREEMENTS MUST BE EXECUTED** by all persons given access to sensitive, confidential data. [OIT policies P-CISP-005]
- **STATE CONFIDENTIALITY LAWS MUST BE FOLLOWED** by Ombudsman Program staff and subcontractors. The Program statutes [Section 19-3.3-103(3), C.R.S.] state, “An agency or organization that is awarded the contract for the operation of the program, the ombudsman, employees of the program, and any persons acting on behalf of the program shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records.” This provision would apply to Program sub-contractors, as they act on behalf of the Program.

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Department has not implemented appropriate controls to ensure that the Ombudsman Program complies with state requirements for accessing and controlling confidential data. Specifically:

- **THE DEPARTMENT HAD NOT ENSURED THAT ALL BACKGROUND CLEARANCE CHECKS ARE CONDUCTED ON OMBUDSMAN PROGRAM STAFF.** Specifically, as of March 2014:

- ▶ The Department had not conducted, nor had it ensured the Ombudsman Program had conducted, any criminal background checks (CBI, FBI, drug testing) for the current or former Ombudsman or for any Program staff who receive and review complaints about child protection cases and access confidential information.
- ▶ The Department had not conducted a Trails-based background screening for three of the four current Ombudsman Program staff, including the current Ombudsman, prior to granting staff access to confidential data. Specifically, the Department could not provide documentation to confirm that three of the four current Program staff passed the Trails screening prior to the Department providing each person with access to Trails and the Court System. The Ombudsman Program confirmed that it submitted completed, signed copies of the Department's "Background Inquiry Form" to the Department for the four current staff members when each person was hired, and believed the Department had completed all required background checks on each person prior to their accessing the state data systems. When we raised the issue with the Department during the audit, the Department completed the Trails screening and provided documentation to confirm that all current Program staff have now passed the Trails check, as of March 2014—more than 9 months after the three current staff were first provided access to confidential data to review complaints related to child protection cases.
- **THE DEPARTMENT HAS NOT ENSURED THAT DATA SECURITY TRAINING IS PROVIDED TO OMBUDSMAN PROGRAM STAFF.** The Department did not ensure that Ombudsman Program staff had received training on the state requirements for data security and confidentiality prior to granting staff access to confidential data. At the time of the audit, the Department could not provide documentation indicating that any of the current or former Program staff had been trained on state data security and confidentiality requirements, nor could Program staff provide documentation indicating that they had received such training.

- **THE DEPARTMENT HAS NOT ENSURED THAT OMBUDSMAN PROGRAM STAFF HAVE COMPLETED CONFIDENTIALITY AGREEMENTS.** The Department did not provide a confidentiality acknowledgement form that outlines the State’s data security and confidentiality requirements to any current or former Ombudsman Program staff to read and sign at hire. Internally, the Ombudsman Program has provided staff members with its own form to read and sign, however, the Department did not collect or record that the Ombudsman staff had signed the Ombudsman-created document, nor did it ensure the document sufficiently outlined state requirements.

- **OMBUDSMAN PROGRAM SUB-CONTRACTS DO NOT INCLUDE PROVISIONS RELATED TO STATE CONFIDENTIALITY REQUIREMENTS.** For two of the four vendors that have been given access to confidential data, the Department did not approve the sub-contract, as allowed by the Ombudsman Program contract, to ensure that the Program included the appropriate confidentiality provisions requiring the vendors to adhere to all state requirements, nor did the Department obtain confidentiality agreements from the vendors or require the Program to obtain these agreements. These vendors have been performing services for the Program since it began in 2011 and during that time, vendor staff have had access to confidential data related to children in the child protection system.

WHY DID THE PROBLEM OCCUR?

The Ombudsman Program contract does not clearly define responsibilities with respect to who will conduct and who is subject to criminal background checks. The Department stated that it did not conduct any criminal background checks for the Ombudsman or Program staff because it believed the Program contractor was conducting the checks. According to the Department, it directed the Ombudsman Program to maintain supporting records for the criminal checks but neither the Department nor the Program were able to

provide documentation to show where or when the Department communicated either the requirement to conduct the checks or the requirement to maintain the results; the requirements have not been included in the Program contract. According to the Ombudsman Program, it believed the Department was conducting the criminal background checks for Program staff in unison with the Trails screenings.

Additionally, the Ombudsman Program contract does not address whether Program staff other than the Ombudsman should undergo criminal checks, through CBI and FBI, and drug testing, and if so, who is responsible for completing the checks. However, all Program staff have access to the same confidential and sensitive data that the Ombudsman may access. This omission in the contract as to whether Program staff who access the same confidential data should be held to the same standard as the Ombudsman creates a gap in the Department's requirements for the Program.

The Department stated that the non-criminal, Trails-based background screening should have occurred for all Program staff that were granted access to state data systems, and that the Department should have maintained documentation to confirm the checks were completed with passing results. The Department did maintain this documentation for the former Program staff, but states that there was staff turnover at the Department and as such, the Department was not aware that the three Program staff members who were hired after June 2013 were missing the Trails background checks. When we brought this to the Department's attention in March 2014, the Department completed the checks and confirmed that those three staff members passed the check.

Additionally, the Department has not included Ombudsman Program staff in the cyber security training it has provided to Department staff on handling confidential information, nor has the Department required as part of the contract requirements that the Program provide

documentation of staff's completion of cyber security training received through other means along with the signed acknowledgement of the state's confidentiality policies.

Finally, the Department has not implemented requirements, either through rules or contract provisions, to mandate that the Ombudsman Program include provisions regarding state confidentiality requirements in its agreements with sub-contractors who are granted access to the same confidential data that Program staff may access.

WHY DOES THE PROBLEM MATTER?

In fulfilling its responsibilities as the State's Child Protection Ombudsman, the Ombudsman Program has access to highly sensitive and confidential data related to vulnerable children who are protected by the state's confidentiality requirements. These data include the names, addresses, and social security numbers of the children and families involved in child protection cases as well as the names of those lodging complaints. Disclosure of this information could result in harm to the individuals whose information is compromised; it could be used to steal identities or provide protected health information to those with no right to the data. It is therefore vital that it be protected.

RECOMMENDATION 4

The Department of Human Services (Department) should ensure that the Child Protection Ombudsman Program (Program) is in compliance with all state requirements for accessing and handling confidential data by:

- A Ensuring that all appropriate background clearance screenings for each Program staff member have been conducted prior to providing the person access to confidential information and allowing the person to receive and review complaints about cases within the child protection system. This should include developing written policies and procedures that specify which types of background screenings (i.e., criminal or Trails-based) the Department will conduct, which it will hold the Program responsible for, and how the Department will verify that all contract staff have passed the screenings.
- B Including a contract requirement that all Program staff who are given access to confidential, sensitive data receive data security training, and verifying through the contract monitoring process that the vendor maintains records to show that all staff have completed data security training.
- C Including a contract requirement that all Program staff read and sign confidentiality agreements upon hire and verifying through the contract monitoring process that the contractor retains copies of the agreements on file.
- D Establishing in rule and/or contract that the Program must include data security provisions in its sub-contracts that require all sub-contractors who are given access to sensitive data to comply with all state confidentiality requirements.

RESPONSE

DEPARTMENT OF HUMAN SERVICES

A AGREE. IMPLEMENTATION DATE: JANUARY 2015.

The Department will ensure that all appropriate background screenings have been conducted as part of the normal contract monitoring effective July 2014.

By January 2015, the Department will require that the contractor develop appropriate policies and procedures specifying which types and at what frequency background screenings (including Trails-based screening) must be conducted by the contractor for all Ombudsman staff.

B AGREE. IMPLEMENTATION DATE: JANUARY 2015.

The State contract currently requires that each contractor be responsible to provide appropriate safeguards for all staff handling sensitive information. This provision is included in the Health Insurance Portability and Accountability (HIPAA) Business Associate Agreement included in each contract as an exhibit (Exhibit E in the Child Protection Ombudsman contract). The Department will add language to clearly state the requirement of Cyber Security Training in the body of the Fiscal Year 2014-15 contract via a contract amendment in January 2015, and in all future contracts. The Department will include additional provisions in the January contract amendment for documenting the training and make explicit the process of verifying completion of the training through contract monitoring.

C AGREE. IMPLEMENTATION DATE: JANUARY 2015.

Confidentiality agreements have been signed upon the hiring of all Ombudsman staff. The Department received copies of these documents as of May 2014.

The Department will make the following requirements explicit in the Fiscal Year 2014-15 contract via a contract amendment (January 2015) and all future contracts: 1) that staff read and sign confidentiality agreements upon hire; 2) that the Contractor retain signed confidentiality agreements in employee files; and 3) that the Department will verify that the Contractor has complied with these requirements through its usual contract monitoring process (monthly and quarterly meetings with the Contractor).

D AGREE. IMPLEMENTATION DATE: APRIL 2015.

The Department will reiterate the data security provisions for all Ombudsman sub-contracts by January 2015 and include this provision in rule in April 2015.

RFP AND VENDOR SELECTION PROCESS

Statute requires that the Ombudsman Program be operated by a contractor outside of the Department, which is responsible for the state's child protection programs. In October 2010, the Department developed and issued an RFP to find and select the vendor who would operate the Program. The Department did not receive any responses to the initial RFP, so the Department issued a second RFP in February 2011. The Department received three proposals for the second RFP. A committee comprising four individuals evaluated the proposals and selected the NACC as the vendor for the Program. The contract for the Program included a series of three, 1-year contracts, the last of which is set to end in June 2014. In March 2014, the Department issued a new RFP for the Program, however with the passage of Senate Bill 14-201, the RFP was withdrawn and the contract with the NACC was extended for another year, pending the recommendations of the advisory work group created under that legislation.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We interviewed Department staff involved in the 2010 and 2011 procurement activities, collected available documentation used to support the 2010 and 2011 RFP development and 2011 bid selection, and evaluated the available documentation against statutory requirements related to soliciting, evaluating, and selecting a vendor. We also reviewed the criteria applied by the Department to evaluate bidders for the 2011 RFP.

The purpose of our audit work was to assess whether the Department's procurement processes were reasonable and complied with applicable state laws, rules, and procedures, all of which are in place to ensure that the process is fair for all potential bidders and that

the State selects the vendor that will provide the best value—that is the best product at the lowest cost.

HOW WERE RESULTS OF THE AUDIT WORK MEASURED?

The State Procurement Manual (Manual) governs the State’s bid solicitation and evaluation processes. The Manual [Chapter III, Section 4.G] states that the purpose of RFPs is to solicit vendor responses and to allow discussions for clarification between central procurement officers and vendors prior to award in order to obtain a best and final offer.

Per the Manual, the Department’s responsibilities related to procuring a contractor include, but are not limited to:

- Including a “narrative description of evaluation factors (including price) and their relative weights” in the RFP to indicate how the proposals will be evaluated. [Chapter III, Section 4.G (iv)]
- Evaluating bids based upon the requirements indicated within the RFP. [Chapter III, Section 4.G (v)]

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

We found that the Department’s RFP and vendor selection process for the Ombudsman Program contract did not meet state contract requirements for evaluating proposals based on the requirements set forth in the RFP. The RFP’s General Criteria stated that proposals would be rated using the following categories and weights: Business Proposal (30 percent), Experience and Capabilities (45 percent), and Cost (25 percent). However, we found:

- None of the proposal evaluations considered cost when scoring the proposals. Instead, the evaluations focused on the Business Proposal and Experience and Capabilities of the respondents.
- None of the evaluation score sheets used the weighting system indicated in the RFP. Instead, the evaluation sheets listed the scoring criteria, with each criteria assigned a grade of A, B, or C and a final grade, without providing weights to any of the elements.

WHY DID THE PROBLEM OCCUR?

The problem of not evaluating the proposals using the criteria set forth in the RFP occurred because the evaluation tool used by the Department Procurement Team did not include cost as an evaluation criterion, even though it was named in the RFP, nor did the tool provide the functionality to weight the scores as designed and communicated in the RFP.

WHY DOES THE PROBLEM MATTER?

It is important that the Department use the criteria documented in the RFP when evaluating bid proposals because applying different criteria can result in the selection of a vendor that does not meet the requirements the drafters of the RFP desired. Additionally, using criteria or methodologies other than what is stated in the RFP calls into question the integrity of the contracting process because bidders are not informed of the actual criteria their proposals are assessed against.

RECOMMENDATION 5

The Department of Human Services (Department) should ensure that it implements the necessary controls over the process for soliciting, evaluating, and selecting the contractor for the Child Protection Ombudsman Program by revising the evaluation tool (scoring forms) to accurately reflect the evaluation criteria and their relative weights, as described in the Request for Proposal.

RESPONSE

DEPARTMENT OF HUMAN SERVICES

AGREE. IMPLEMENTATION DATE: MAY 2015.

Each procurement requires a unique evaluation tool. The Department will ensure the evaluation tool for the Ombudsman RFP to be issued in Spring of 2015 contains the appropriate evaluation criteria with the appropriate weighting of the criteria as indicated in the RFP.

GLOSSARY



TERMS

Council

Child Protection Ombudsman Council.

Court System

State Judicial Court Docket System.

Department

The Department of Human Services.

Manual

State Procurement Manual.

Ombudsman Program or Program

The Child Protection Ombudsman Program.

Trails

Colorado Trails—the Department’s child welfare case management system.

ABBREVIATIONS

ABA

American Bar Association.

CBI

Colorado Bureau of Investigation.

FBI

Federal Bureau of Investigation.

FTE

Full-Time Equivalent.

NACC

National Association of Counsel for Children.

OIT

Office of Information Technology.

RFP

Request for Proposal.

USOA

United States Ombudsman Association.

