

Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

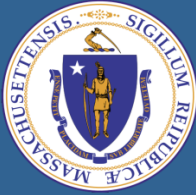
Making government work better

Official Audit Report – Issued February 28, 2018

Committee for Public Counsel Services

For the period July 1, 2014 through December 31, 2016





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

February 28, 2018

Ralph J. Cinquegrana, Esq., Chair
Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108

Dear Mr. Cinquegrana:

I am pleased to provide this performance audit of the Committee for Public Counsel Services. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2014 through December 31, 2016. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Committee for Public Counsel Services for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

cc: Mr. Edward Dolan, Commissioner, Office of the Commission of Probation
Mr. Anthony J. Benedetti, Chief Counsel, Committee for Public Counsel Services

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LIST OF ABBREVIATIONS

A&O	audit and oversight
CPCS	Committee for Public Counsel Services
CPO	Chief Probation Officer
DCF	Department of Children and Families
MPS	Massachusetts Probation Services
NAC	Notice of Assignment of Counsel
OCP	Office of the Commissioner of Probation
OSA	Office of the State Auditor

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Committee for Public Counsel Services (CPCS) for the period July 1, 2014 through December 31, 2016. This audit was initiated to determine whether (1) CPCS had established an effective Audit and Oversight Department in accordance with Section 12 of Chapter 211D of the General Laws, (2) CPCS management verified work performed and approved vendor billings in compliance with established policies and procedures, and (3) the Office of the Commissioner of Probation (OCP) had established policies and procedures to ensure that the process of determining and reassessing indigency complied with Section 2A of Chapter 211D of the General Laws.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 10	CPCS improperly processed a vendor payment of \$7,205.
Recommendations Page 10	<ol style="list-style-type: none">1. CPCS should inform all vendors, at the time services are performed, of the proper procedures for processing V-Bills.2. CPCS should not allow a vendor to be paid for services if s/he does not provide required supporting documentation.
Finding 2 Page 11	Required documentation was missing from some case files.
Recommendation Page 13	OCP should establish monitoring controls over the indigency determination process to ensure that the required documentation is maintained in case files.

OVERVIEW OF AUDITED ENTITY

The Committee for Public Counsel Services (CPCS) is responsible for providing criminal and certain non-criminal legal services to indigent persons entitled by law to representation by legal counsel. CPCS's website defines indigent persons as "those unable to afford an attorney in all matters in which the law requires the appointment of counsel" and states that the legal representation in question "includes representation in criminal, delinquency, youthful offender, child welfare, mental health, sexually dangerous person and sex offender registry cases, as well as related appeals and post-conviction matters."

According to CPCS's website, "Representation is provided by a combination of approximately 500 staff attorneys and 3,000 private attorneys trained and certified to accept appointments." When a private attorney is assigned a case, a Notice of Assignment of Counsel (NAC) is generated.

NAC

Only private attorneys are given a NAC, which is a number unique to a particular case or assignment. A private attorney will receive a NAC each time s/he is assigned to a criminal case. If a case is transferred from one attorney to another, the court or CPCS must issue a new NAC to the new attorney. If an attorney withdraws from a case, it is his/her responsibility to notify the court or CPCS of the withdrawal so that a new NAC can be issued to the succeeding attorney.

Private Counsel Division

The Private Counsel Division of CPCS represents indigent individuals by assigning private attorneys for criminal defense trials, including appealed cases. It also represents indigent individuals convicted of sex offenses in commitment and registration cases.

Public Defender Division

The Public Defender Division of CPCS is dedicated to meeting the needs of indigent clients in Massachusetts. Like those in the Private Counsel Division, attorneys in the Public Defender Division are assigned to indigent clients for criminal defense and post-conviction cases, as well as commitment and registration cases for persons convicted of sex offenses. However, unlike the Private Counsel Division, the Public Defender Division consists solely of state employees.

Youth Advocacy Division

The Youth Advocacy Division provides trial and appellate representation to indigent youths in delinquency, youthful offender, murder, appeal, and parole release and revocation hearings. Lawyers appear before the juvenile, district, superior, and appellate courts, as well as in administrative proceedings before the Department of Youth Services and the Parole Board.

Mental Health Litigation Division

The Mental Health Litigation Division provides counsel for individuals facing civil commitments to mental hospitals, guardianships, and extraordinary medical treatment, including the administration of antipsychotic medications. Counsel is provided through four staffed offices and private attorneys trained, certified, and monitored by the division.

Children and Family Law Program

The Children and Family Law Program provides trial and appellate representation to indigent parents and children in care and protection proceedings, Child in Need of Services cases, actions to terminate parents' rights, state agency sponsored guardianship cases, and any other proceedings regarding child custody to which the Department of Children and Families (DCF) is a party or in which the court is considering granting custody to DCF.

Audit and Oversight Department

According to Section 12 of Chapter 211D of the Massachusetts General Laws, the CPCS Audit and Oversight (A&O) Department is responsible for monitoring the billings of private attorneys who accept cases for indigent clients as well as vendors who provide expert services to CPCS attorneys. These vendor services are related to matters that include, but are not limited to, medical, psychiatric, criminal, and investigative matters. A&O performs audits and reviews bills to identify any overbillings or unusual billing activity, verifying the reasonableness of hours and dollar amounts billed.

E-Bill System

The E-Bill system is a Web-based billing system developed by CPCS for private attorneys to use to submit bills. Private attorneys are not required to provide supporting documentation for each bill submitted unless selected for audit by A&O.

A&O uses the E-Bill system to select private attorney bills for audit. The system selects every 650th bill for review. When a bill is selected, the E-Bill system informs the attorney and requests the following information: (1) a copy of the E-Bill notice, (2) a copy of the bill selected for audit, (3) a copy of the contemporaneous time records¹ that support the bill, and (4) proof of professional liability insurance.² A&O audit staff members review the attorney's time records and compare them to the corresponding time entered in the E-Bill system. If, during the review, any amount of billed time is not supported by the attorney's time records or any other required supporting documentation, the attorney's payment from CPCS is reduced. When the audit is complete, A&O informs the attorney of any adjustments.

V-Bill System

V-Bill is a Web-based billing system developed by CPCS that is accessible to expert vendors who, through a motion approved by a judge, are allowed to bill for services. These vendors assist attorneys by providing medical, psychiatric, criminal, and investigative expertise. A vendor's bill is reviewed and approved in the V-Bill system by the private attorney assigned to the case on which the vendor assisted. If a bill is approved by the attorney, it is then reviewed by the CPCS Accounts Payable Department for final approval. A&O conducts a review of all expert witness bills in excess of \$5,000 to ensure that the bills have sufficient supporting documentation. During the audit period, CPCS paid 1,025 expert vendors a total of \$49,879,867 for work performed during the audit period. Payments ranged from \$21 to \$2,227,717, with an average of \$21,518.

Office of the Commissioner of Probation

According to Sections 2A(a), (b), and (c) of Chapter 211D of the General Laws, and Supreme Judicial Court Rule 3:10, the Chief Probation Officer (CPO) assigned to a court is responsible for ensuring that a person claiming to be indigent meets the definition of indigency when court determinations are made. In addition, after a person is appointed counsel, s/he is at all times subject to verification of indigency by the CPO. The CPO, within seven days of appointment of counsel, completes an Indigency Verification Results Form using information obtained electronically from the Massachusetts Department of Revenue, Department of Transitional Assistance, and Registry of Motor Vehicles to verify wage, tax, and asset information provided by the indigent party. This report is filed with the case files of the court's

1. Contemporaneous records are recorded by a vendor while the vendor is completing the task.
2. According to the staff counsel of A&O, the E-Bill notice requests proof of insurance for the first random audit in a calendar year. If a later bill is selected randomly for audit for the same attorney within the same calendar year, the E-Bill notice does not request proof of insurance.

Probation Department. Under Section 2A(c) of Chapter 211D of the General Laws, the CPO is required to perform a reassessment of a person six months after s/he is assigned counsel. The reassessment process reoccurs every six months thereafter until the case is resolved. The reassessment process involves the completion of a new Indigency Verification Results Form by the CPO or his/her designee to verify the person's financial status.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Committee for Public Counsel Services (CPCS) for the period July 1, 2014 through December 31, 2016.

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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Has CPCS established an effective audit and oversight (A&O) process in accordance with Section 12 of Chapter 211D of the General Laws?	Yes; see <u>Other Matters</u>
2. Does CPCS management verify work performed and approve vendor billings in compliance with established policies and procedures?	No; see <u>Finding 1</u>
3. Has the Office of the Commissioner of Probation (OCP) established policies and procedures to ensure that indigency eligibility and reassessment comply with Chapter 211D of the General Laws?	Partially; see <u>Finding 2</u>

To achieve our audit objectives, we gained an understanding of CPCS and its environment, evaluated the design of internal controls, and tested the effectiveness of internal controls over (1) processes related to A&O and (2) approval of vendor billings. We conducted further audit testing as described below.

A&O Department

Under Section 12 of Chapter 211D of the General Laws, CPCS's A&O Department is responsible for monitoring the billings of private attorneys who accept cases from indigent clients through CPCS and vendors who provide expert services to CPCS attorneys.

We selected a statistical sample of 47 out of 1,731 E-Bill audits performed by attorneys during our audit period to determine, with a 90% confidence level, whether CPCS had established an effective A&O process. We reviewed E-Bill notices, bills submitted by attorneys, documentation of time records, proofs of insurance, copies of correspondence from A&O to attorneys, Notice of Assignment of Counsel (NAC) information reports, caseload reports, client reports, and processed bill reports for each E-Bill audit.

We selected a random nonstatistical sample of 25 expert vendor billings out of 295 that were audited by A&O during the audit period to verify compliance with A&O's policies and procedures. We reviewed the selected vendor billings, supporting documentation, and court motions. In addition, we verified that vendors had completed and submitted V-Bill Access Rights Agreement Forms before submitting their first electronic bills as required by CPCS's Court Cost Vendor Manual.

We reviewed CPCS's billing data by performing statistical analysis using Microsoft Excel and applying data analytics using Audit Command Language to identify possible outliers within the data. We performed this analysis to determine whether alternative analytical approaches to analyzing this billing information could effectively be applied. In conducting this analysis, it was necessary to establish a norm (an expected or typical measurement value) and then identify outliers from this norm estimate. We defined "outlier" as any value outside the expected range of the other data points in our set of data using standard statistical sampling methods. We computed the norm based on observations from large samples of CPCS billing data.

We obtained CPCS attorney and vendor data from the Commonwealth Information Warehouse.³ We reviewed amounts paid to vendors for each fiscal year and performed an overall analysis of billing patterns for private attorneys during the audit period.

OCP

In a prior audit (No. 2011-1104-3C), we noted significant deficiencies with the process of verifying indigency and provided recommendations to OCP as well as the Administrative Office of the Trial Court on how to improve this process. During our current audit, to determine what measures, if any, had been taken to address these deficiencies, we performed the work described below.

3. According to the website of the Executive Office of Technology Services and Security, the Commonwealth Information Warehouse is a repository of "financial, budgetary, human resource, payroll, and time reporting information."

We reviewed Section 2A of Chapter 211D of the General Laws and Supreme Judicial Court Rule 3:10 to gain an understanding of the requirements of the Chief Probation Officers (CPOs) at individual courts.

There are 109 criminal courts in the Commonwealth, including 27 juvenile courts, 70 district courts, and 12 superior courts. During our audit period, defendants were deemed indigent by the court and assigned counsel by CPCS in 336,461 cases. Because indigency records are located throughout the Commonwealth, we selected a judgmental sample of eight court locations (two juvenile courts, four district courts, and two superior courts) to test for compliance with the Massachusetts Probation Services' (MPS's) Indigency Verification Protocols. We randomly selected five NACs from each court for the period September 1, 2014 through December 31, 2016. We then obtained the docket numbers associated with these NACs. We met with each of the eight CPOs and determined who performed the verifications of indigency and reassessments. We reviewed the supporting documentation, including the required MPS forms, authorizations, and corroborating evidence of indigency.

In addition, because of an update in the indigency verification process with the release of the MPS Indigency Verification Policy dated November 1, 2016, we judgmentally selected eight additional courts (two juvenile courts, four district courts, and two superior courts). We selected five NACs from each court for the period December 12, 2016 through December 31, 2016 to test the indigency verification process under the new policy. This review required MPS to provide case files and supporting information to the audit team without our conducting site visits.

Data Reliability

We obtained data from CPCS's AccuTerm database, which maintains information on private attorneys' billable time and expenses by service date. In addition, we obtained three spreadsheets listing the overall number of billings, including the total dollar amount paid by CPCS for each service type. We reviewed controls for access to programs and data, program changes, and computer operations. We also performed a data reliability assessment by performing additional validity and integrity testing, including (1) testing for missing data, (2) scanning for duplicate records, (3) tracing a sample of cases queried to source documents, and (4) reviewing spreadsheets for hidden or erroneous content. Our data reliability assessment of CPCS data included completeness and accuracy testing. We determined that the data were sufficiently reliable for the purposes of our audit testing.

Except where noted, we used nonstatistical sampling to help us achieve our audit objectives and therefore did not project our results to the various populations.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Committee for Public Counsel Services improperly processed a vendor payment of \$7,205.

Of the 25 bills we reviewed that were submitted by vendors, reviewed by the Committee for Public Counsel Services' (CPCS's) Audit and Oversight (A&O) Department, and paid by CPCS, one bill, for \$7,205, was submitted 885 days after the date of service and was paid even though there was no documentation of extraordinary circumstances that prevented the vendor from submitting the bill on time. There was also no documentation that this late bill had received the required approval from CPCS's chief counsel; rather, it was reviewed and approved for payment by the chief auditor of A&O. By not ensuring that all vendor bills are properly processed in accordance with CPCS policies and procedures, the agency risks paying an incorrect amount for services.

Authoritative Guidance

Section 12(b) of Chapter 211D of the Massachusetts General Laws addresses the exception to the policies regarding late bills, which spur reduction and suspension of payments:

For all bills not submitted to the committee within 90 days after the last date of service or, if the case is pending at the end of the fiscal year, within 60 days after the end of the fiscal year, those bills so submitted after such date shall not be processed for payment; provided, however, that the chief counsel may authorize the payment of such bills either in whole or in part upon a determination that the delay was due to extraordinary circumstances beyond the control of the vendor.

Reasons for Noncompliance

According to CPCS's director of A&O, this particular vendor was involved in an "extraordinary circumstance." However, the vendor had not performed services for CPCS previously, did not follow established procedures, and sent the invoice to the private attorney instead of processing it through the V-Bill system. The private attorney kept the vendor invoice for an extended period before sending it to CPCS, without explanation. CPCS officials could not explain why the payment was processed without the required formal approval of the chief counsel.

Recommendations

1. CPCS should inform all vendors, at the time services are performed, of the proper procedures for processing V-Bills.

2. CPCS should not allow a vendor to be paid for services if s/he does not provide required supporting documentation.

Auditee's Response

The \$7,205 bill was paid in accordance with c. 211D s. 12B and all CPCS billing policies. First, the Chief Counsel examined the reasons for the extraordinary delay in receipt of the bill and found sufficient justification existed to meet the statutory threshold as provided by s. 12B of c. 211D. Among other things, the vendor billed the attorney directly, delays thereafter were beyond the vendor's control and the vendor could not have submitted a bill to CPCS until they were established with the Comptroller and CPCS which did not occur until December, 2015. This action by the Chief Counsel made the bill eligible for payment in the usual course. . . . Because the bill was over \$5,000 it was sent from the accounts payable department to A&O where it was reviewed and approved for payment by the Chief Auditor of CPCS in compliance with CPCS billing policy.

Auditor's Reply

Although CPCS asserts that its chief counsel examined the bill in question and approved its payment, there is inadequate documentation to substantiate this. It should be noted that in addition to its written comments, CPCS gave us other documentation after the end of our audit fieldwork to support its assertion. This documentation included a copy of an email regarding the bill with an "Approved" stamp and an internal electronic spreadsheet that, according to CPCS, indicated that the chief counsel had approved the expense in question. However, the "Approved" stamp did not indicate who actually stamped the document and did not include a date; additionally, it did not contain the chief counsel's initials or signature indicating that he had actually reviewed the bill and approved its payment. Further, although the electronic spreadsheet appears to track bill approvals by the chief counsel, there was no documentation to indicate who generated and maintained the spreadsheet.

In its response, CPCS cites extraordinary circumstances surrounding the processing of this bill; however, as stated above, there was no documentation of these circumstances on file at CPCS during the audit.

Finally, although the chief auditor of CPCS approved the payment of this bill, under the circumstances the chief counsel was required to authorize its payment, and there is inadequate documentation that this process was followed, as noted above.

2. Required documentation was missing from some case files.

Not all the case files of the Office of the Commissioner of Probation (OCP) had required documentation related to the determination of indigency. We reviewed a total of 80 case files in eight district courts,

four juvenile courts, and four superior courts and found that 5 case files did not have the required intake forms (called Intake Indigency Reports), 3 case files did not have Consent Forms, and 15 case files did not have Indigency Verification Results Forms. Without the proper supporting documentation, the Commonwealth cannot be certain that those claiming to be indigent are in fact indigent and therefore eligible for appointed counsel.

Our prior audit of CPCS (No. 2011-1104-3C) noted that OCP had not established a statewide standard practice in district courts to determine indigency. OCP also did not have a system in place to monitor each court for compliance with indigency verification requirements. The prior audit reviewed 27 district courts and found that for the period July 1, 2007 through June 30, 2011, 98% of the courts reviewed were not compliant with indigency verification laws, regulations, and rules because they did not have supporting documentation on file. We recommended that OCP develop and implement standard policies and procedures, including verification measures and monitoring activities to be used by the Probation Departments of all courts to determine whether defendants met the established definition of indigency.

During our current audit, we found that OCP has established standard policies and procedures in this area at all courts. In addition, OCP has established a system-wide process to be used by Chief Probation Officers (CPOs) and their staff members to determine effectively whether a person seeking state-sponsored legal counsel meets the definition of indigency. However, as discussed above, problems remain in courts' maintenance of adequate documentation regarding the indigency determination process.

Authoritative Guidance

The CPO assigned to each court is responsible for ensuring that a person claiming to be indigent meets the definition of indigency by complying with Section 2A of Chapter 211D of the General Laws, which states,

(a) A person claiming indigency under section 2 shall execute a waiver [Consent Form] authorizing the court's chief probation officer, or the officer's designee, to obtain the person's wage, tax and asset information from the department of revenue, department of transitional assistance and the registry of motor vehicles that the court may find useful in verifying the person's claim of indigency. . . .

(b) It shall be the responsibility of the chief probation officer assigned to each court to ensure that a person claiming to be indigent meets the definition of indigency under section 2. A person seeking the appointment of counsel shall be interviewed by the chief probation officer or the officer's designee prior to the appointment of counsel. . . .

(c) . . . The chief probation officer or the officer's designee shall sign the final report [Indigency Verification Results Form], certifying that the person for whom counsel was appointed either continues to meet or no longer meets the definition of indigency.

Further, the Massachusetts Probation Services (MPS) Records Retention Schedule requires that these forms be retained for a minimum of seven years.

Additionally, Section II(A)(1) of MPS's Indigency Verification Protocols states,

Just prior to arraignment of a defendant claiming indigency, Probation Officers (PO's) or Associate Probation Officers (APO's) shall collect financial information on a standard statewide [Intake Indigency Report]. If Intake is not possible just prior to the arraignment, PO's or APO's shall complete it as soon as practicable.

Reasons for Noncompliance

OCP officials offered explanations of why documentation might sometimes be missing from files. However, there was no way to determine whether any of these explanations applied to the files we reviewed. Further, we found that OCP did not have monitoring controls in place to ensure that CPOs and/or their designees properly conduct and document indigency determinations.

Recommendation

OCP should establish monitoring controls over the indigency determination process to ensure that the required documentation is maintained in case files.

Auditee's Response

Probation was pleased to welcome the 2017 auditors to see if there has been improvement since the 2011 audit findings. The 2017 audit noted significant improvement in Probation's indigency verification practice, and statewide uniform policies and forms. The auditors found only 5 files without an intake form and only 3 files without a signed consent form. Probation offers information in addition to the audit findings because the indigency verification process is surprisingly complex when executed. Below is a non-exhaustive summary of the reasons for variation in the availability of records for the auditors and any variations in indigency verification practice. Probation shared this information with the auditors during the audit.

In some cases, Probation was unable or not required to conduct an intake and make an indigency recommendation to the arraignment judge because the defendant was in custody and automatically deemed indigent under [Supreme Judicial Court] Rule 3:10 during the audit period.

Also, defendants in lock up are not allowed to have a writing implement for safety reasons and cannot complete or sign an intake form or consent form. Some defendants are not sober, are detoxing, or not mentally stable preventing Probation from completing an intake or consent form. Some defendants refuse to provide any information. The defendant may not be a native English speaker and an interpreter may not be available at the time of the intake. Other times, there are so many defendants on the daily list that the judge does not wait for Probation to finish the intakes to make an indigency determination. If a defendant is in custody in another location, e.g. a house of correction, the defendant is not available for Probation to conduct an intake and get a signed consent.

In some cases, MPS completed an intake and consent form, and made an indigency recommendation to the judge via the paper intake form or orally but Probation did not retain the documents long enough for the 2017 audit. In these cases, the arraignment judge was fully informed of the financial information required to make an accurate indigency status finding and determination about indigent counsel appointments. Probation has been addressing the records retention issue by providing its staff with a policy and training. Nevertheless, Probation still faces an extreme shortage of space in many locations. A historic records overload means that staff may have had the requested records on site but been unable to retrieve them for the auditors. The records retention initiative is a long term effort.

With respect to Probation not being able to produce 15 of its Indigency Verification Results forms, the technology available to Probation from [the Department of Revenue and Department of Transitional Assistance] cannot be used without a social security number [SSN]. A not insignificant percentage of defendants who request appointed counsel do not have an SSN. Without the SSN, Probation cannot conduct a verification of a claim of indigency and there is no need for a consent form. Further, if a defendant has private counsel, no public monies will be expended and there is no indigency for Probation to verify.

Other situations do not require an intake, consent or verification. These situations include but are not limited to, (a) the court's substitution of one appointed counsel for another, (b) the court's assignment of stand-by counsel, and (c) the court's assignment of counsel for a witness.

For all the above reasons, the lack of documentation in a few cases does not by itself support the auditor's conclusion that, in each of these cases, the Commonwealth was not well served. There is insufficient evidence to reach that conclusion. Further, Probation has devoted and continues to devote resources to increase indigency verification and records retention training and compliance efforts.

Auditor's Reply

CPCS is correct in stating that we found significant improvements in its indigency determination process since our last audit. Additionally, although we acknowledge that the instances described by CPCS in its

response provide some reasonable explanations of why some documentation may be missing, we believe that, in these instances, case files should clearly indicate the reasons for any missing records. Moreover, as noted above, we found that OCP did not have monitoring controls in place to ensure that CPOs and/or their designees properly conduct and document indigency determinations. Finally, although the total number of problems we identified is low, this number was based on a judgmental sample of 80 case files. Therefore, although our sample can be used to determine whether a problem exists, it cannot be used to reasonably conclude that the problem is minor. In any instance, without the proper supporting documentation, the Commonwealth cannot be certain that those claiming to be indigent are in fact indigent and therefore eligible for appointed counsel.

OTHER MATTERS

The Committee for Public Counsel Services could make its process for reviewing billings more effective.

Each fiscal year, the Committee for Public Counsel Services (CPCS) receives and compiles data for more than 220,000 cases, generating more than 1.9 million transactions submitted by more than 3,000 private attorneys who are assigned cases through Notices of Assignment of Counsel (NACs). Section 12 of Chapter 211D of the Massachusetts General Laws established an Audit and Oversight (A&O) Department within CPCS to monitor the submitted bills. Currently, CPCS has a staff of four attorneys performing audits on submitted bills associated with NACs. The audit process is initiated by CPCS's computer system, which selects every 650th submitted bill for review. A&O reviews the selected bills and supporting documentation and, if necessary, makes modifications to the amounts billed by the attorneys.

Although this CPCS audit process is an important control to ensure that submitted bills are accurate and proper, the Office of the State Auditor (OSA) believes that rather than selecting bills for review based on random selection, CPCS should consider developing a more effective, targeted risk-based approach such as analyzing its billing data to identify outliers among the billings in the group.

For example, we analyzed attorneys' bills using CPCS data and identified all the outliers, i.e., NACs whose hours billed exceeded a statistically determined expected number of hours per NAC for each billing type, as illustrated in the table below. We calculated the expected number of hours per NAC using a statistically valid method.

Outliers and Amounts Billed

Case Type	Fiscal Year	Total Number of NACs	Norm for All NAC Hours Billed	Number of NACs Above the Norm	Approximate Dollar Amount of Outliers Billed
District Court	2015	148,061	22.9	9,223	\$ 17,008,890
District Court	2016	146,631	23.2	9,207	17,629,990
Superior Court	2015	9,606	76.0	596	4,775,012
Superior Court	2016	9,940	75.8	551	4,676,688
Juvenile Court	2015	10,001	24.1	641	1,306,255
Juvenile Court	2016	10,432	25.1	660	1,449,070
Total		<u>334,671</u>		<u>20,878</u>	<u>\$ 46,845,905</u>

Although this information is not shown in the table above, for district, superior, and juvenile courts combined, the percentage of NACs determined to be outliers was 6.24% for both fiscal year 2015 and fiscal year 2016. In fiscal year 2015, the percentage of outliers with at least three times the norm of billable hours was 5.17%. In fiscal year 2016, the percentage was 5.90%.

OSA believes that by using a risk-based approach like this, CPCS will be able to identify NACs that pose a higher risk and focus its limited resources on reviewing those.

Fiscal Year 2015 Outlier and Non-Outlier Cases and Amounts Paid

Court Type	Percentage of Non-Outlier NACs	Percentage of Total Paid That Was for Non-Outlier NACs	Percentage of Outlier NACs	Percentage of Total Paid That Was for Outlier NACs
District	93.77%	72.23%	6.23%	27.77%
Superior	93.80%	62.40%	6.20%	37.60%
Juvenile	93.59%	69.11%	6.41%	30.89%

Fiscal Year 2016 Outlier and Non-Outlier Cases and Amounts Paid

Court Type	Percentage of Non-Outlier NACs	Percentage of Total Paid That Was for Non-Outlier NACs	Percentage of Outlier NACs	Percentage of Total Paid That Was for Outlier NACs
District	93.72%	71.51%	6.28%	28.49%
Superior	94.46%	63.51%	5.54%	36.49%
Juvenile	93.67%	68.24%	6.33%	31.76%

As noted in the tables above, a relatively small percentage of the total billings was associated with more than a quarter of the money paid in fiscal years 2015 and 2016.