



March 18, 2024

REVISED 04-08-2024

The Honorable Gregg Hart
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Dear Chair Hart and Members:

I respectfully request your approval of a comprehensive staffing audit at the California Department of State Hospitals (DSH), the California Department of Corrections and Rehabilitation (CDCR), and the California Department of Developmental Services (DDS).

This audit is imperative to evaluate the outsourcing of medical and mental healthcare services. Currently, the state incurs costs up to three times higher for outsourced physicians, nurses, licensed clinical social workers, psychologists, and psychiatric technicians compared to utilizing state staff. Outsourcing state jobs blocks the recruitment of efficient state personnel, undermining the provision of a superior continuum of care to patients under state care at a higher cost to taxpayers. Your approval for this audit will enable us to address these concerns and optimize the efficiency and cost-effectiveness of healthcare services in our state facilities.

BACKGROUND

In 1995, a federal court ruled that the CDCR failed to provide adequate mental health care, commonly referred to as the Coleman lawsuit. The court concluded that the department's mental health staff were "stretched dangerously thin," resulting in a decline in the quality of treatment and the number of inmates who were treated, as well as an alarming number of in-custody suicides. CDCR, in 2009, submitted a detailed plan to the court to guide an overhaul of its mental health care system, and the court appointed a special master to monitor compliance. But nearly 15 years later, the federal court has found that the state has been unable to meet its targets and the maximum 10% job vacancy rate required by a court order. The state has only met the court-imposed staffing mandates for certain classifications at various points in time.

As a result, the federal court started tallying potential fines in April of 2023 based on how much money the corrections department had saved by not filling vacant, but budgeted mental health positions. The largest vacancy rates, incurring the highest

total amount of fines, are for clinical psychologists and social workers represented by AFSCME Local 2620 (Bargaining Unit 19). Under the ongoing lawsuit, the state has also faced fines for delays in transferring inmates to state mental hospitals and for failing to complete court-ordered suicide prevention measures. In October of 2023, the federal courts ruled that the state had failed to correct the ongoing staffing shortages and levied \$50 million in fines on the state.

Similarly, In 2001, a class-action lawsuit, later renamed *Plata v. Newsom*, was filed in federal court contending the state violated the Eighth Amendment of the U.S. Constitution prohibiting cruel and unusual punishment by providing inadequate medical care in the state's prisons. The state agreed in 2002 to take a series of actions to address the deficiencies in order to settle the case. These actions included hiring additional medical staff, auditing prison medical records, and staffing emergency clinics in prisons 24 hours a day year-round. An estimated \$194 million was added to the state budget from 2002-03 through 2006-07 to address the problems identified in prison medical care. However, upon further review of the state's performance, the federal court found that the state had failed to comply with its orders. Specifically, the court found, among other problems, that the CDCR prison medical system was poorly managed; provided inadequate access to medical care; had deteriorating facilities and disorganized medical record systems; and lacked sufficient qualified physicians, nurses, and administrators to deliver medical services. The court concluded that, on average, one person died every week in state prisons and that many more had been injured by the lack of reliable access to quality medical care.

In order to fill gaps in vacancies, the state has relied on contracting out the work traditionally done by staff to outside contractors at three times the amount of the rate it pays its civil service employees. This pervasive outsourcing has continued for so long that the size and the true costs of this hidden workforce are now unknown and have mushroomed beyond any intent of the Legislature.

For example, just one three-year contract with just one CDCR medical registry vendor called "Management Solutions" is worth \$425 million. For other medical registry contract listings found in the State Contract & Procurement Registration System (SCPRS), the cost of the contract does not appear to be disclosed for reasons unknown. It appears that contracts for medical registry services with Management Solutions since 2014 may have amounted to nearly \$1.2 billion. That would be approximately \$120 million per year on average for services provided to CDCR by just one company for each of the past ten years.

VACANCY CHALLENGES AND WORKING CONDITIONS

The medical and mental health workforce who provide critical and humane medical and mental health care to the justice-involved in our state provides exceptional service to some of the state's most vulnerable and challenging patients. Six

bargaining units make up this workforce including: SEIU (Engineering and Scientific Technicians, Units 11; Registered Nurses, Unit 17; Medical and Social Services, Unit 20); AFSCME (Unit 16 Physicians, Dentists and Podiatrists; Health and Social Services/Professional); CAPT (Psychiatric Technicians, Unit 18); and AFSCME Local 2620 (Unit 19 Psychologists/Licensed Clinical Social Workers. According to the Legislative Analysts Office (LAO), “A decade or so ago, the average state vacancy rate hovered between 10 percent and 15 percent. While there is a significant range of vacancy rates across the bargaining units, the share of vacant positions has grown significantly for all bargaining units.” This presents many challenges for these employees who often times are forced to work mandatory overtime, or take on more caseloads, or shift their job duties to perform work that these employees do not traditionally do.

SEIU Local 1000, which is California’s largest union of state employees, represents thousands of workers in state institutions including those working as registered nurses, licensed vocational nurses, certified nursing assistants, dental assistants, pharmacy technicians, physical therapists, laboratory assistants and many other classifications in healthcare.

The California Association of Psychiatric Technicians (CAPT) represents the direct-level care providers within the Department of State Hospitals, with 3,000 filled positions out of 4,300 budgeted leaving a 30% vacancy rate department-wide. At some CDCR facilities, the vacancy rate jumps as high as 45%. Psychiatric Technicians shoulder significant responsibilities, including the implementation of prescribed treatment plans, distribution of medications, facilitation of group therapy sessions, one-on-one supervision of patients posing a threat to themselves or others, and the challenging task of managing combative patients, who, at times, are maybe twice their size.

The Union of American Physicians and Dentists (UAPD) (Bargaining Unit 16) consists of 1,500 physicians and other medical staff responsible for the diagnosis, evaluation, and treatment of patients within state institutions. As of August 31, 2023, the vacancy rate among this bargaining unit is about 32 percent. This is substantially higher than the statewide average vacancy rate of about 20 percent. The vacancy rate varies by department. CDCR, DSH, and the California Department of Social Services (DSS) employ the most UAPD members and have vacancy rates of 26 percent, 39 percent, and 43 percent, respectively.

AFSCME Local 2620 (Bargaining Unit 19) consists of roughly 5,600 full-time equivalent (FTE) state employees who provide evaluations and assessments of client counseling and consultation or client follow-up service of a health, social, or employment nature. Nearly 60 percent of Local 2620 members work for either CDCR or DSH. Vacancy rates for these positions vary on job classification and by facility. Notably, at numerous state hospitals and prisons, psychiatrists and social workers grapple with vacancy rates reaching as high as 80%-90%.

The medical and mental health workforce at CDCR, DSH, and DDS are burdened by the unsafe staffing shortages in state facilities across the board. These staffing shortages have increasingly led to the state's dependence and reliance upon private contractors to fulfill the minimum court-ordered care.

WHY IS THE AUDIT NEEDED

The state's reliance on outsourced medical and mental health contractors has reached an alarming point of abuse. While the state has always utilized private contractors, its reliance spiked to an all-time high during the COVID-19 pandemic. Regrettably, even after the state of emergency concluded, the utilization of private physicians, psychiatrists, nurses, licensed clinical social workers, and psychiatric technicians persisted, indicating a sustained trend that necessitates immediate attention and rectification.

Furthermore, the state employee unions operating within CDCR, DSH, and DDS have encountered challenges in obtaining accurate information concerning the use of private sector medical and mental health staff. This includes data on the cost comparison between outsourced staff and their state employee counterparts and the quality-of-care metrics employed to evaluate the effectiveness of contracted employees. Drawing an analogy, despite high vacancies in the correctional officer classification at some facilities, CDCR does not resort to outsourcing security functions to private contractors. The need for transparency and comprehensive data is crucial to informed decision-making and optimizing the effectiveness of our healthcare services.

SCOPE OF AUDIT

I request an audit be conducted to thoroughly examine the medical and mental healthcare staffing contracts employed by CDCR, DSH, and DDS for job classifications under SEIU (Engineering and Scientific Technicians, Units 11; Registered Nurses, Unit 17; Medical and Social Services, Unit 20); AFSCME (Unit 16 Physicians, Dentists and Podiatrists; Health and Social Services/Professional); CAPT (Psychiatric Technicians, Unit 18); and AFSCME Local 2620 (Unit 19 Psychologists/Licensed Clinical Social Workers) at the following facilities: Atascadero State Hospital, the Porterville Developmental Center, and Salinas Valley State Prison. The audit should encompass the past five years (2019-2024), offering a comprehensive view of the reliance on outsourced staff during the year preceding the onset of COVID-19, throughout the pandemic, and after the conclusion of the declared state of emergency.

I ask that the audit consider, but not necessarily be limited to, the following questions:

Funding and Positions

- What is the budgeted amount for salaries for mental health care and medical workers in each facility listed above, broken down by classification?
- How many positions were budgeted for mental health workers and medical workers in each facility?
- What is the number of open (vacant) state employee mental health and medical workforce by classification for each facility? Please separate positions filled by contractors, categorized by classification.
- What is the total amount paid as salaries and total compensation for filled mental health care and medical worker positions, broken down by classifications? What is the total paid to the contracted workforce by classifications? This should also be broken down to a dollar-per-hour ratio.
- Identify scheduling differences between state employees and outsourced staff.
- Identify how much would be saved by hiring state employees vs. outsourced staff.
- Please review the difference in recruiting efforts by the state vs. outsourced staffing agencies.
- Please identify if the outsourcing staffing agencies are using different classifications to fill positions identified and traditionally filled by other classifications. For example, are staffing agencies using Licensed Vocational Nurses to fill Psychiatric Technician vacancies? If so, how frequently is this happening, and which classifications are used by outsourced staffing agencies to fill vacancies of state-budgeted positions?
- What happened to the "excess funds" budgeted for mental health care worker salaries, precisely the amount not paid due to vacancies in each job classification? Provide details on expenditure and any funds remanded to the General Fund as unspent. To comply with this request, "excess funds" is defined as the amount budgeted for physician salaries but not paid because of medical and mental healthcare staff vacancies.

Patient Care

- How many hours are mental health contracted staff working, categorized by classification at each facility listed by department?
- How many patients does each mental health contracted staff member see? Please compare this number to the state employee of the same or similar classifications.

- What is the length of service for mental health contracted positions versus FTE (Full-Time Equivalent)?
- Please review the number of instances staffing minimums were not met, excluding outsourced staff.

Service Contracts

- Provide a list of contracted services for the past five years, including the contractor's name, type of service, service location, cost, and contract duration.
- Assess notable trends in vacancy rates, staff recruitment and hiring, compensation, and the use of outsourcing services at each of the audited entity.
- To the extent possible, provide a list of current and upcoming requests for proposals for contracted services in the current and next budget year and what is the requested duration of the contract?
- What process or means do the agencies use to determine the efficiency of each contract? Please provide any documentation that is used to record this information.
- Who tracks and ensures contracted staff possess proper licenses, certifications, and Continuing Education Units (CEUs)? Who tracks whether staff previously worked for the state and left due to an adverse action?

Thank you for your consideration of this audit request. If you have any questions, please contact Brady McCarthy in my office at Brady.McCarthy@asm.ca.gov or (916) 319-2069.

Sincerely,

JOSH LOWENTHAL
Assemblymember, 69th District