

**Performance Audit of the
Nursing Services Contracts for
Kentucky's Mental Health/Mental Retardation
Hospitals and Facilities**



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CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

April 14, 2009

Janie Miller, Secretary
Cabinet for Health and Family Services
Office of the Secretary
275 East Main Street, 5W-A
Frankfort, Kentucky 40621

RE: Performance Audit of the Nursing Services Contracts for Kentucky's Mental Health/Mental Retardation Hospitals and Facilities

Dear Secretary Miller:

The enclosed report, *Performance Audit of the Nursing Services Contracts for Kentucky's Mental Health/Mental Retardation Hospitals and Facilities*, was requested by the Government Contract Review Committee. This audit identified nine findings and offers specific recommendations to strengthen the monitoring and oversight process of contract services, expedite the state hiring process, and consider changes to the state's nursing series. The audit process included determining: vendor contract requirements, the Cabinet's contract oversight procedures, percent of contract payments used to compensate contract staff, the current hiring processes and alternatives, and the cost and methodology employed by other states.

We will distribute this report in accordance with the mandates of Kentucky Revised Statute 43.090. Additionally, we also distribute the report to members of the General Assembly committees with oversight authority, as well as other interested parties.

In accordance with Kentucky Revised Statute 43.090(1), the Cabinet for Health and Family Services must notify the Legislative Research Commission and the Auditor of Public Accounts of the audit recommendations it has implemented and of the recommendations it has not implemented, and reasons therefore, within sixty (60) days of the completion of the final audit.

Our Performance and Examination Audits Branch evaluates the effectiveness and efficiency of government programs as well as performs risk assessments and benchmarking of state operations. We will be glad to discuss with you at any time this audit or the services offered by our office. If you have any questions, please contact Brian Lykins, Executive Director of the Office of Technology and Special Audits, or me.



Secretary Miller
April 14, 2009
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We greatly appreciate the courtesies and cooperation extended to our staff during the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Crit Luallen". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Crit Luallen
Auditor of Public Accounts



Performance Audit of the Nursing Services Contracts for Kentucky’s Mental Health/Mental Retardation Hospitals and Facilities

Audit Objective

This audit was conducted in response to a July 2008 letter from the Government Contract Review Committee requesting an audit of personal service contracts initiated by the Department for Mental Health, Developmental Disabilities and Addiction Services (Department) with five medical staffing companies to provide nursing staff. The audit objective was to determine whether personal service contracts are the most cost effective and appropriate method of obtaining nursing staff for the Department’s hospitals and facilities.

Background

Prior to FY 2000, nursing contracts were typically price contracts that all state government facilities could use when additional nursing staff were needed. From FY 2000 to FY 2005, each Department hospital and facility initiated individual contracts with vendors to supply various nursing staff positions based on the facility’s specific needs. Some of the facilities contracted with only one vendor, while other facilities had multiple vendors.

In May 2006, the Cabinet for Health and Family Services (Cabinet) posted a RFP soliciting vendors to provide nursing services for the Department’s state-owned and operated hospitals and facilities. This RFP was the result of the Cabinet’s decision to centralize and consolidate the nurse staffing contracts making the Cabinet, not the Department or the facilities, responsible for the RFP process. The following hospitals and facilities were included in this RFP:

- Hazelwood Center, Louisville, KY;
- Del Maria, Louisville, KY – [Operated by Hazelwood];
- Windsong, Crestwood, KY – [Operated by Hazelwood];
- Meadows, Mount Washington, KY – [Operated by Hazelwood];
- Kentucky Correctional Psychiatric Center (KCPC), LaGrange, KY;
- Glasgow State Nursing Facility, Glasgow, KY;
- Western State Hospital, Hopkinsville, KY;
- Western State Nursing Facility, Hopkinsville, KY;

- Central State Hospital, Louisville, KY; and,
- Central State ICF/MR, Louisville, KY.

The purpose of these contracts is to provide adequate nursing staff to the Department’s facilities as required by federal and state regulatory agencies. Although the contracts can differ in the charge per hour for each type of service provided, the contract requirements are basically the same for each vendor.

The contract amounts for all vendors to provide nursing services totaled \$199.4 million for FY 2007 and FY 2008, but only 21 percent of the contracted amounts were actually expended. The Department never anticipated that the total dollar amount of the contracts would be expended because the contract for each vendor is designed to cover the anticipated needs of all facilities for a two-year period in case only one contract is actually used.

The following table illustrates the vendors that received contracts to provide nursing services, as well as the modified contract amounts and contract expenditures, for FY 2007 and FY 2008:

Nursing Contract Vendors and Expenditures

Vendor	Modified Contract Totals	Expenditures for FY 2007 and FY 2008
AMS	\$26,010,563	\$6,223,156
Crown	\$41,320,879	\$21,027,757
Guardian Angel	\$43,944,557	\$375,130
Guardian Healthcare	\$59,556,569	\$10,413,350
Kforce	\$28,641,696	\$3,811,534
Totals	\$199,474,264	\$41,850,927

Source: Auditor of Public Accounts, based on information obtained from the state’s accounting system

Findings and Recommendations

Finding 1: Kentucky paid an estimated \$10.9 million in addition to the salaries paid to contract nursing staff.

Kentucky paid the contract vendors a total of approximately \$42 million, with an estimated \$10.9 million for contract administration, which was 26 percent of the total contract expenditures in FY 2007 and 2008. Instead of using these funds to establish a stable workforce, Kentucky expends millions of dollars to vendors in excess of labor costs for the opportunity to fill nursing positions through contracts.

Recommendations: The Cabinet should establish procedures and benchmarks as to the use of these contracts to control contract costs and the administrative fees paid to vendors. If no restrictions or benchmarks are put in place, millions of dollars will continue to be spent regardless of the cost effectiveness to employ necessary staff.

Finding 2: State Government is in competition with its contractors for nursing employees.

While the contracted rates paid by Kentucky are significantly higher than the state salary rates, the average rates actually paid to contract employees are competitive with the state rates for certain positions. The difference between the contract rate and the rate paid to employees allows the vendors more flexibility to recruit staff. If the state were to increase its salary rates to attract more state employees, the vendors could possibly raise their rates to discourage state employment.

Recommendations: The Cabinet should make additional efforts to hire nursing staff within Kentucky's personnel system. The Cabinet should evaluate which positions' state salaries are the most competitive and focus recruitment on those positions in an effort to reduce the vendor contract hours for specific positions.

Finding 3: The number of full-time equivalents acquired through the nursing services contracts was unknown, but was manually calculated to be an average of 468 positions.

Using the vendor payment information maintained in Kentucky's accounting system, a manual calculation was performed to determine that an average of 468 full-time equivalents (FTEs) were provided by the contract vendors for the two-year period. The Cabinet did not provide this information because FTEs are not tracked for nursing services contracts. If these FTEs were hired at the state salary pay rates plus fringe, these services would have cost \$9 million less than the amount paid to vendors. The cost difference is attributable to high contract hourly rates.

Recommendation: We recommend the Cabinet develop a manageable, comprehensive system to identify personnel costs for both state and contract employees to accurately report the total personnel costs to perform nursing services.

Finding 4: The Cabinet has privatized the Department's nursing staff without providing oversight or monitoring.

For the larger Department facilities, the Cabinet has essentially privatized the nursing staff. These facilities have significantly higher numbers of contract employees than state employees. As a whole, facility staff were comprised of 64 percent and 65 percent contract employees, respectively for FY 2007 and FY 2008. In contrast, another state agency, the Kentucky Department of Veterans Affairs, is operating three long-term care facilities without any contracts for nursing services.

Recommendations: The Cabinet should expedite the state hiring process for nursing positions. Nursing services are being obtained through more expensive contracts without any Cabinet approval. Increased autonomy for state hiring at the facility level may reduce the need for contract staff.

The Cabinet, along with the Personnel Cabinet, should consider removing the nursing series or selected nursing positions from the state's merit employment system to remove obstacles for hiring and terminations. This would be especially financially beneficial for the Patient Aide and the Nurse Aide State Registered positions within the nursing series. This could expedite the hiring process for positions contracted for the most and alleviate any concerns related to the dismissal of employees due to performance issues.

Finding 5: The Department is not tracking and reporting the number of employees used by the hospitals and facilities under these contracts.

No reports are generated by the Department or the Cabinet to document the number of employees hired under these contracts or any other management information, such as contract employee turnover ratios, amounts expended by position, or the amount of overtime paid to contract employees. Monitoring this information would provide beneficial information regarding the facilities' use of the contracts, as well as the vendors' performance in providing nursing services. Without this information, informed oversight of these contracts cannot occur.

Recommendations: The Cabinet should require monthly and annual reports from each facility as well as the monthly reports required of the contract vendors. These reports should provide the necessary information to allow for a thorough evaluation and tracking the

number of contract employees reporting for work, the turnover rates, and the overtime rates associated with each vendor during the reporting period. The Cabinet should assign monitoring responsibilities to a specific staff person that can dedicate the time needed to ensure adequate oversight is achieved.

The Cabinet should consider selecting specific vendors for each facility to assist with staffing needs when state employees cannot be hired. This would reduce the complexity of monitoring five vendors with five different rates at each facility. The Cabinet may also consider a contract to provide only temporary (PRN) staffing needs.

Finding 6: Other contracts and agreements are being used to obtain nursing staff/services without any tracking of the cost to provide nursing.

Through discussions with facility staff, it was determined that the contracts specified in the Committee's audit request are not the only contracts for nursing services. Kentucky's Community Mental Health Centers have a memorandum of agreement with the Department's facilities to provide medical staffing. According to the information request sent to each facility, all of the facilities have nursing staff on contract through Community Mental Health Centers. Six of the seven facilities were able to provide an estimate of their FY 2008 Community Mental Health Center expenditures that totaled \$1.8 million. One facility was not able to provide a cost for nursing services through Community Mental Health Centers due to the lack of tracking by position type.

Recommendations: The Cabinet should require each facility provide a report each month listing the individuals, position type, and amount of expenditures incurred under each contract agreement. The Cabinet should also establish approval and use guidelines for using the memorandum of agreements to secure staffing from Community Mental Health Centers.

Finding 7: Kentucky appears to be using contracted nursing staff more extensively than other surrounding states.

A comparison of contract nursing information provided by other states to the same information received from Kentucky identified that the cost incurred to contract for nursing staff was higher in Kentucky. In addition, Kentucky appears to have a higher percentage of contract staff.

Recommendation: The Cabinet should consider implementing a progressive recruitment plan using efforts employed by other states as a guideline and take steps to limit the use of contract employees to be more cost effective and provide a stable workforce.

Finding 8: There were expenditures and credits that did not reference an assigned contract number.

When reviewing vendor data, there were expenditures and credits that did not reference a specific contract number. This means that the contract number was left blank in the state's accounting system when the payment was made. If an expenditure report is compiled using only the contract number, the unreferenced expenses would not be included. The unreferenced payments and credits were found by extracting payment information by vendor number instead of the contract number.

Recommendations: The Cabinet should generate a monthly vendor report to reconcile contract and vendor payments and credits to ensure that contract information is accurately reflected in the state's accounting system. When errors are found, documentation of the payment should be verified and corrected in the accounting system. Any reoccurring data entry errors should be addressed with facility staff as needed.

Finding 9: Guardian Angel filed two lawsuits against the Commonwealth.

The Cabinet elected to contract with the four contractors attaining the highest scores under its rating system. Guardian Angel had the fifth highest score and filed suit regarding the contracting process. The litigation was settled when the Cabinet agreed to award Guardian Angel a staffing contract under a Settlement Agreement. Guardian Angel now has a second suit against the Cabinet based on claims that the Cabinet did not ensure that facilities were contacting the lowest cost vendor as required by the Settlement Agreement.

Recommendations: The Cabinet should ensure that the contracting process is clearly outlined and all requirements are included and understood prior to the awarding of contracts. Any contract requirements should be monitored to ensure compliance to avoid litigation. Further, contracts should be thoroughly reviewed to ensure Cabinet officials are knowledgeable of the requirements stipulated in the contract.

Introduction and Background

Introduction

The Kentucky Government Contract Review Committee (Committee) requested the Auditor of Public Accounts to conduct a performance audit of personal service contracts initiated by the Department for Mental Health, Developmental Disabilities and Addiction Services (Department) with certain medical staffing companies that provide nurses and other health care services to Department hospitals and facilities. The contract period audited was Fiscal Year (FY) 2007 and FY 2008.

The audit objective was to determine whether personal service contracts are the most cost effective and appropriate method of obtaining nurse and other health care staffing for Department hospitals and facilities. Audit procedures performed to achieve this objective included but were not limited to the following:

- Determine the vendors that provided nursing services to Department hospitals and facilities and identify specific vendor contract requirements and deliverables;
- Determine the individual and aggregate cost of contract services provided to the Department and perform an analysis to determine the percent of contract payments used to compensate staff;
- Determine through surveying states the cost and methodology employed by other states to acquire nursing and other health care services for medical facilities;
- Determine through contact with officials in the Department, Personnel Cabinet, and others actions that may be taken by the Department to hire and retain sufficient nursing and other staff as an alternative to relying extensively on personal service contracts to meet this staffing need; and,
- Determine other policy related issues that must be considered when evaluating a cost effective approach to ensure sufficient nursing and other resources are available at Department facilities.

History of Nursing Contracts Used by the Department's Hospitals and Facilities

Contract nursing services began to be used in Department facilities through price contracts, which are agreements with a vendor to provide goods or services at a specific unit price. Prior to FY 2000, nursing contracts were typically price contracts that all the facilities could use when additional nursing staff were needed.

From FY 2000 to FY 2005, each Department hospital and facility initiated individual contracts with vendors to supply various nursing staff positions. Each facility, upon Department approval, posted a Request for Proposals (RFP) for nursing staff based on the facility's specific needs. Some of the facilities contracted with only one vendor, while other facilities had multiple vendors. Facilities used nursing contracts to obtain both permanent and temporary staff. Temporary staff is also referred to as PRN staff, which means "as needed," and are used to provide nursing services on very short notice to fill unexpected personnel shortages.

Introduction and Background

In May 2006, the Cabinet for Health and Family Services (Cabinet) posted a RFP soliciting vendors to provide nursing services for the Department's state-owned and operated hospitals and facilities. This RFP was the result of the Cabinet's decision to centralize and consolidate the nurse staffing contracts making the Cabinet, not the Department or the facilities, responsible for the RFP process.

The following hospitals and facilities were included in this RFP:

- Hazelwood Center, Louisville, KY;
- Del Maria, Louisville, KY – [Operated by Hazelwood];
- Windsong, Crestwood, KY – [Operated by Hazelwood];
- Meadows, Mount Washington, KY – [Operated by Hazelwood];
- Kentucky Correctional Psychiatric Center (KCPC), LaGrange, KY;
- Glasgow State Nursing Facility, Glasgow, KY;
- Western State Hospital, Hopkinsville, KY;
- Western State Nursing Facility, Hopkinsville, KY;
- Central State Hospital, Louisville, KY; and,
- Central State ICF/MR, Louisville, KY.

These facilities, according to the RFP, are required by federal and state regulatory agencies, as well as various clinical and professional organizations, to provide an adequate number of registered nurses, licensed practical nurses, certified nursing aides, certified medication technician, patient support associate, patient aides, sitters, ward clerks and residential service workers. The RFP references 42 CFR 483 and 902 KAR Chapter 20 as the criteria for adequate staffing.

To determine the nursing hours included in the RFP, the Department requested its facilities to estimate the number of hours needed for each type of nursing position for the next biennium. The Department reviewed these estimates and subsequently made adjustments as deemed appropriate. The estimated number of hours were inflated to ensure that nursing services would be available if needed.

The intent of the RFP was to obtain both PRN and permanent staffing in nursing and other positions. The RFP stated that multiple personal service contracts may be awarded in order to ensure adequate service is available. The RFP made no guarantee that any specific vendor would receive a minimum or maximum number of hours for any contract. The contracts were awarded through the RFP for FY 2007 and 2008.

A RFP Evaluation Committee was established to review, evaluate, and verify information submitted by the bidder. The committee included financial officers from each of the Department facilities except KCPC, because KCPC only used a few contract employees. Each proposal was scored based on vendor experience, staff roster, location, and rate per hour.

Introduction and Background

The following vendors received contracts to provide nursing services for FY 2007 and FY 2008:

- AMS Temporaries, Inc. (AMS);
- Crown Services, Inc. (Crown);
- Guardian Angel Staffing Agency, Inc. (Guardian Angel);
- Guardian Healthcare Providers, Inc. (Guardian Healthcare); and,
- Kforce, Inc. (Kforce).

Applicable Laws and Regulations Regarding Nurse Staffing and State Employment

Kentucky law does not specify a nursing staff to patient ratio for Department hospitals and facilities. However, state law has several provisions concerning adequate nurse staffing.

Key regulations include 902 KAR 20:016. This regulation requires there be a registered nurse on duty in hospitals at all times. It also requires that there be sufficient nursing personnel to provide nursing care that does not require the service of a registered nurse. A registered nurse shall assign staff and evaluate the nursing care of each resident in accordance with the resident's need and nursing staff available.

A regulation concerning psychiatric hospitals, 902 KAR 20:180, also requires a registered nurse to be on duty at all times. The KAR also requires an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each resident's active treatment plan.

The Department's State Operations Manual includes steps and questions for facility surveyors to determine whether a facility has sufficient nursing staff though no staff to patient ratio is specified. Federal regulations including 42 CFR 483 also require adequate nurse staffing without specifying a staff to patient ratio.

The question of paying signing bonuses to recruit nursing staff was raised during the course of this audit. To address that question applicable laws and regulations were researched. Section 3 of the Kentucky Constitution is commonly cited as the reason nurses cannot be paid signing bonuses. Section 3 of the Kentucky Constitution declares, "no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services." Private Kentucky facilities and some other states' facilities pay signing bonuses to bolster recruiting efforts.

Introduction and Background

Several Attorney General opinions OAG 62-1, OAG 73-110, and OAG 78-206 cite Section 3 of the Kentucky Constitution as a basis for not granting bonuses to city employees, tuition assistance to teachers, or to a police officer on unpaid vacation leave or on disability. In addition to Section 3 of the Constitution, two of these cited Attorney General opinions also reference KRS 64.410 (2)(c), which prohibits payment of “(a)ny fee for services not actually rendered” to a public official as a reason bonuses cannot be paid.

Description of the Facilities Under Review

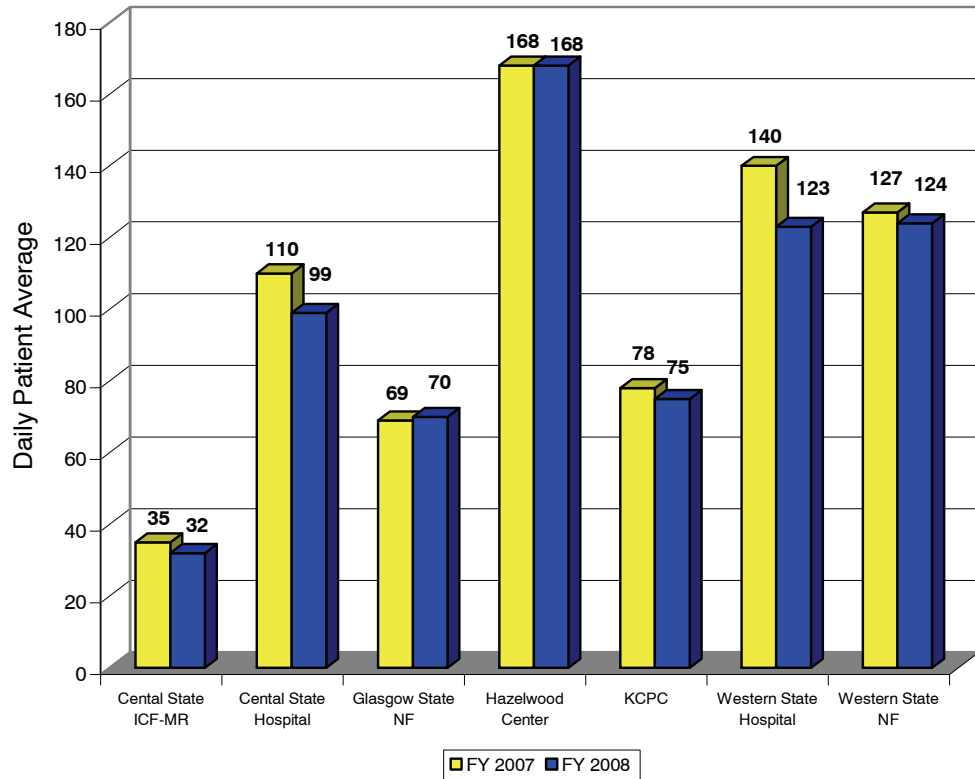
The Committee’s audit request involved contracts impacting seven very different facilities. Each facility provides specific, yet different services to residents and their families. The facilities reviewed during this audit include the following:

- Two psychiatric hospitals, Central State Hospital and Western State Hospital, provide acute, inpatient psychiatric care for adults who are mentally ill. Many residents are referred to the facility through the Community Mental Health Center when it is determined that community services/facilities are not appropriate to care for the resident.
- Two Immediate Care Facilities for persons with Mental Retardation (ICF/MR), Central State ICF/MR and Hazelwood Center, which includes the three community ICF/MR facilities Del Maria, Meadows, and Windsong. ICF/MR programs are designed to provide specialized, intensive resident training to reduce the debilitating effects of mental retardation through skill training and behavior management.
- Two nursing facilities, Glasgow State Nursing Facility and Western State Nursing Facility, provide long-term medical care for mentally ill persons who also require treatment or supervision for the mental illness. For admission to a nursing facility, an individual must be referred from one of the Cabinet’s psychiatric hospitals, University of Louisville psychiatric units, other state-operated Cabinet health facility, or be approved by the Department’s Commissioner.
- One forensic psychiatric hospital, KCPC, is a maximum security facility that provides pre-trial forensic evaluations to determine a mentally ill individuals' competency to stand trial. This type of facility provides inpatient treatment for individuals convicted of felony offenses who are transferred from other institutions within the Corrections cabinet.

In FY 2007, these state operated facilities had a daily average of 727 residents. In FY 2008, the daily average of residents decreased by 36, or five percent, to 691 residents. The following chart reflects the average daily resident totals at each of the state’s facilities for FY 2007 and FY 2008.

Introduction and Background

Graph 1: Department Facilities' Daily Patient Average



Source: Auditor of Public Accounts based on information from the Department for Mental Health, Developmental Disabilities and Addiction Services

Each facility specializes in treatments for different diagnoses and tracks up to seven diagnoses for each resident. In FY 2007, the most frequent diagnosis of Central State Hospital patients was schizophrenia related disorders, but in FY 2008, residents with affective disorders became the most frequent. In both fiscal years, the most common diagnosis treated by Western State Hospital was affective disorders, which relates to manic and/or depressive episodes. The ICF/MR facilities provided services to residents with mental retardation. In FY 2007, residents at Glasgow State Nursing Facility were treated primarily for organic disorders/dementia and schizophrenia related disorders, but in FY 2008, the primary diagnosis of its residents was schizophrenia related disorders. In both fiscal years, the most common diagnoses treated by the Western State Nursing Facility were affective disorders and schizophrenia related disorders. KCPC, the maximum security facility, generally treated residents with unspecified disorders in both fiscal years.

Details of the Vendors Contracts Examined

AMS, a Kentucky corporation, was established in 1981 with its principal office in Louisville. It provides medical services staffing to establishments within a 50-mile radius of Louisville. AMS is a 24-hour service provider that employs 187 medical staff, including registered nurses, licensed practical nurses, certified nursing assistants, and nurse aides.

Introduction and Background

Crown, an out-of-state corporation, was established in 1968, with its principal office in Columbus, Ohio. It has been active in Kentucky since 2003 with offices in Louisville, Lexington, Hopkinsville, and Florence. In addition to Kentucky and Ohio, Crown has offices in Iowa, Illinois, Indiana, Minnesota, Missouri, Nebraska, Pennsylvania, Tennessee, and Wisconsin. Other services provided include staffing services in light industrial work, equipment operation, truck driving, welding, and clerical services.

Guardian Angel, a Kentucky corporation, was established in 2000 with its principal office in Louisville. It is a 24-hour service provider of nurse staffing, including registered nurses, licensed practical nurses, and certified nursing assistants. Guardian Angel was not one of the original four vendors selected at the end of the RFP evaluation process. This vendor's evaluation score was close to the third and fourth place vendors, leading Guardian Angel to sue the Cabinet claiming it too should have been awarded a contract. Guardian Angel was awarded a contract as part of the settlement of that suit. Therefore, this vendor did not begin providing services until FY 2008. Guardian Angel then sued the state a second time to enforce the settlement agreement, contending the state is not awarding work to the lowest bidder in each contracted job category. This litigation is still pending.

Guardian Healthcare, an out-of-state corporation, was established almost 20 years ago. It has been active in Kentucky since 1999 and has its principal office in Brentwood, Tennessee. It has an office in Louisville with five offices in Tennessee. It provides nursing services, including registered nurses, licensed practical nurses, and advanced registered nurse practitioners, and a variety of other medical professional services, including physicians.

Kforce sold its nursing service component in 2008 to Day Group KY, LLC (Day Group). This report will refer to the vendor as Kforce. Day Group affiliate Nurse Staffing of Louisville will handle nursing contract work. Day Group's principal office is in Winter Park, Florida, while the principal office for the Kentucky branch of Nurse Staffing is in Louisville. Nurse Staffing is a national health care staffing agency that has offices in California, Colorado, Illinois, Ohio and Texas. It has a Government Contracts Division that provides services to federal, state, and local health care facilities. Nurse Staffing reports more than 28 years in this field and maintains four regional support centers that provide services on a 24-hour basis.

Summary of Contract Terms and Conditions

The purpose of these contracts is to provide adequate nursing staff to the Department's facilities as required by federal and state regulatory agencies. Although the contracts can differ in the charge per hour for each type of service provided, the contract requirements are basically the same for each vendor.

Introduction and Background

As mentioned earlier, the intent of the RFP was to obtain both PRN and permanent staffing. However, a specific term of the contract regarding orientation conflicts with the idea of temporary staffing. According to the contract, “Failure of the employee to work a minimum of 3 months following the orientation period will result in forfeiture of payment for the orientation period.” This conflict may possibly be the reason that separate staffing contracts were used in the past. One to provide for permanent, and one to provide temporary staff on an as needed or PRN basis.

Summary of Contract Changes or Modifications

Contracts can be changed or modified when mutually agreed to in writing by the vendor and the Cabinet. Most vendor contracts during the 2006 - 2008 biennium had at least one if not multiple modifications. Most of the modifications were made due to information and dollar amounts converting incorrectly when the state changed accounting systems.

When a facility requires a contract modification, Department staff must individually contact each of the facilities to ask whether any other additional modifications are needed. After the Department’s approval, the Cabinet’s Contract Oversight Office, as well as the Cabinet’s Office of Legal Services, must also approve all contract modifications. Approximately eight weeks from the time the facility initiates the contract modification request, the Cabinet receives approval from the Finance and Administration Cabinet. Prior to the centralization of nursing contracts, the contract modification process was not as complicated because the facility itself entered the needed modification within the state’s accounting system and only Department level approval was required.

During FY 2007 and FY 2008, AMS, Guardian Angel, and Kforce each had one nursing services contract with Department expenditures associated with the contract. Whereas Crown and Guardian Healthcare each had one nursing services contract, they both had multiple professional medical contracts with associated Department expenditures. The impact of contract modifications for each vendor is detailed below:

- The AMS contract amount was originally for \$24,316,899 but ultimately modified to a contract total of \$26,010,563 due to contract conversion issues in the state’s new accounting system and commodity lines that were inadvertently closed. These modifications caused the contract total for AMS to increase by \$1,693,664.

Introduction and Background

- Of Guardian Healthcare’s four contracts, the primary contract amount was originally for \$33,580,397, but four modifications resulted in an increase to \$36,502,755. These modifications were necessary due to accounting system conversion issues, the addition of commodity lines closed inadvertently, and the redistribution of funding among commodity lines. The second highest Guardian Healthcare contract originally totaling \$15,592,780 was increased to \$15,920,616 due to conversion issues and to increase the hours for commodity lines over-expended. A third contract originally for \$6,916,650 was increased to \$6,998,160 and a fourth contract for \$134,550 was increased to \$135,038, due to conversion issues. Overall, Guardian Healthcare’s contracts saw an increase of \$3,332,192.
- The Kforce contract was originally for \$28,111,186, but three modifications later, the contract increased to \$28,641,696 due to conversion issues, redistribution of funding, staff shift differentials, and typographical errors. These modifications increased the Kforce contract amount by \$530,510.
- Crown’s primary contract amount was originally for \$27,485,855, but after eight modifications, it was decreased by \$1,229,426 for a new contract amount totaling \$26,256,429. A second Crown contract’s original total of \$14,881,210 was increased by \$75,600 to \$14,956,810, due to conversion issues. Crown’s third and final contract amount was originally \$107,250 but was modified to \$107,640 also due to conversion issues. Overall, Crown contracts experienced a decrease of \$1,153,436.
- Guardian Angel’s contract, having no monetary modifications, remained at its original amount of \$43,944,557.

**Department
Facilities Budget
Process,
Expenditures, and
Fund Sources**

The Department’s facilities are given a total budget amount that is communicated to the facility’s fiscal officer. Expenditures that must be included in the budget, such as workers’ compensation and provider taxes, are supplied to the fiscal officer to ensure that the budget includes these amounts. Facility management then makes the decision as to how the facility’s total budget should be allocated.

Introduction and Background

As actual monthly expenditures are realized, Department staff project annual expenditure amounts and compare these amounts to the established budget. If projected annual expenditures are significantly over or under the budgeted amounts, Department staff contact the facility to determine if a situation should be addressed or monitored.

The nursing contract expenditures are typically coded to accounts such as Medical/Dental Services, Miscellaneous Services, or Temporary Manpower Support. However, these account codes are not dedicated solely to nursing staff expenditures and contain other types of expenditures. Therefore, an examination of these account totals by facility or year, will not provide the information needed to perform an analysis of only nursing expenditures.

For FY 2008, Department staff provided a budget analysis document to illustrate the facilities' expenditures as compared to their annual budgets. The following table provides a summary of this information for each facility under review.

Table 1: Budget to Actual Expenditures for FY 2008

Facility	Budgeted Expenditures	Actual Expenditures	Variance
Central State Hospital	\$34,224,500	\$32,656,486	\$1,568,014
Central State ICF/MR	\$9,107,200	\$9,583,658	(\$476,458)
Glasgow Nursing Facility	\$7,916,700	\$7,613,809	\$302,891
Hazelwood ICF/MR	\$41,044,700	\$41,078,531	(\$33,831)
KCPC	\$12,865,800	\$12,284,310	\$581,490
Western State Hospital	\$35,124,700	\$35,207,297	(\$82,597)
Western State Nursing Facility	\$6,669,700	\$6,421,989	\$247,711

Source: Auditor of Public Accounts based on information provided by the Department of Mental Health, Developmental Disabilities, and Addiction Services

This analysis also provided information regarding the funding source of expenditures as payments were processed. State general funds accounted for 37 percent of the Department facilities' total funding, while agency funds accounted for 63 percent. Agency funds are collected for services provided by the facilities, which could be paid by Medicare, Medicaid, and, to a lesser degree, individual residents. These expenditure sources will vary from year to year based on the availability of funds.

Introduction and Background

Table 2: Facilities' Funding Sources for Expenditures in FY 2008

Facility	General Fund	Agency Fund	Total Expenditures
KCPC	\$12,284,310	\$0	\$12,284,310
Glasgow Nursing Facility	\$3,327,500	\$4,286,309	\$7,613,809
Hazelwood ICF/MR	\$0	\$41,078,531	\$41,078,531
Central State Hospital	\$25,955,700	\$6,700,786	\$32,656,486
Central State ICF/MR	\$0	\$9,583,658	\$9,583,658
Western State Hospital	\$12,197,700	\$23,009,597	\$35,207,297
Western State Nursing Facility	\$0	\$6,421,989	\$6,421,989
Totals	\$53,765,210	\$91,080,870	\$144,846,080

Source: Auditor of Public Accounts based on information provided by the Department of Mental Health, Developmental Disabilities, and Addiction Services

Nursing contract expenditures for FY 2007 and FY 2008

Although the contract amounts for all vendors to provide nursing services totaled \$199.4 million for FY 2007 and FY 2008, only 21 percent of the contracted amounts were actually expended. Crown, who had three contracts, received the largest amount of contract expenditures totaling \$21,027,757, or 51 percent of the total amount expended for the two-year period. AMS, with one contract, came in a distant second by using 24 percent of its contract.

The Department never anticipated that the total dollar amount of the contracts would be expended because the contract for each vendor is designed to cover the anticipated needs of all facilities for a two-year period in case only one contract is actually used. However, the Department does not report monthly or quarterly contract nursing expenditures to the legislature to provide information regarding the use of these contracts. Such information could be extracted from the state's accounting system.

The following table illustrates the original contract amounts, the modified contract amounts, the total expenditures for each vendor, and the percentage of the contracts expended.

Table 3: Percent of Contracts Expended for All Vendors

Vendor	Original Contract Amounts	Modified Contract Amounts	Expenditures for FY 2007 and FY 2008	Percent of Contracts Expended
AMS	\$24,316,899	\$26,010,563	\$6,223,156	24%
Crown	\$42,474,315	\$41,320,879	\$21,027,757	51%
Guardian Angel	\$43,944,557	\$43,944,557	\$375,130	1%
Guardian Healthcare	\$56,224,377	\$59,556,569	\$10,413,350	17%
Kforce	\$28,111,186	\$28,641,696	\$3,811,534	13%
Totals	\$195,071,334	\$199,474,264	\$41,850,927	21%

Source: Auditor of Public Accounts, based on information obtained from the state's accounting system

Introduction and Background

The following table provides a breakdown of contract expenditures incurred by each facility for FY 2007 and FY 2008.

Table 4: Nursing Staff Expenditures by Facility for FY 2007 and FY 2008

By Facility:	Amount for FY 2007	Amount for FY 2008	Totals
Central ICF/MR	\$3,895,324	\$4,339,154	\$8,234,478
Central State Hospital	\$1,747,888	\$936,160	\$2,684,048
Glasgow State Nursing Facility	\$297,207	\$301,808	\$599,015
Hazelwood Center	\$10,122,565	\$9,367,523	\$19,490,088
KCPC	\$44,608	\$32,130	\$76,738
Western State Nursing Facility	\$447,393	\$793,485	\$1,240,878
Western State Hospital	\$4,590,596	\$4,935,086	\$9,525,682
Totals	\$21,145,581	\$20,705,346	\$41,850,927

Source: Auditor of Public Accounts, based on information obtained from the state's accounting system

All of the vendor contracts were used to provide services for the state-operated facilities in the positions of Registered Nurse (RN), Licensed Practical Nurse (LPN), Registered Nurse Aide (RNA), Residential Service Worker I (RSW I), Residential Service Worker II (RSW II), Patient Aide (PA), Certified Nursing Assistants (CNA), Certified Medication Technician (CMT), and Certified Medication Aide (CMA). The Ward Clerk and Sitter Aide positions were not used by any vendor and are now consolidated into the PA position. The following table illustrates the breakdown of expenditures for each nursing position during FY 2007 and FY 2008.

Table 5: Nursing Staff Expenditures by Vendor and Position

Nursing Positions Used by Vendors	AMS Expenses for FY07/08	Crown Expenses for FY07/08	Guardian Angel Expenses for FY07/08	Guardian Healthcare Expenses for FY07/08	Kforce Expenses for FY07/08	Totals
RN	\$1,086,585	\$6,153,408	\$228,983	\$4,084,817	\$103,228	\$11,657,021
LPN	\$1,249,561	\$2,545,167	\$17,104	\$3,346,774	\$412,441	\$7,571,047
RNA	\$2,615	\$0	\$0	\$98,645	\$0	\$101,260
RSW I	\$625,235	\$4,502,161	\$42,321	\$156,686	\$779,961	\$6,106,364
RSW II	\$1,111,769	\$2,366,480	\$1,806	\$101,847	\$1,018,707	\$4,600,609
PA	\$2,146,348	\$4,040,300	\$84,916	\$2,589,335	\$1,475,614	\$10,336,513
CNA	\$0	\$1,366,949	\$0	\$11,245	\$0	\$1,378,194
Ward Clerk	\$0	\$0	\$0	\$0	\$0	\$0
Sitter	\$0	\$0	\$0	\$0	\$0	\$0
CMT/CMA	\$0	\$67,046	\$0	\$13,091	\$0	\$80,137
Unknown	\$1,043	(\$13,754)	\$0	\$10,910	\$21,583	\$19,782
Totals	\$6,223,156	\$21,027,757	\$375,130	\$10,413,350	\$3,811,534	\$41,850,927

Source: Auditor of Public Accounts, based on information obtained from the state's accounting system

Introduction and Background

The amounts listed as unknown, \$19,782, in the previous table relate to expenditures that were not referenced to a specific contract, only to the vendor. With assistance from Department staff, we were able to determine if the expenses were nursing staff related, but unable to verify which nursing positions were filled.

Findings and Recommendations

Finding 1:
Kentucky paid an estimated \$10.9 million in addition to the salaries paid to contract nursing staff.

Kentucky paid these contract vendors a total of approximately \$42 million, with an estimated \$10.9 million for contract administration, which was 26 percent of the total contract expenditures in FY 2007 and 2008. This means that the vendors received almost \$11 million over and above the salaries paid to contract staff. It is not known how much of this money was used for administrative or employee-related costs, such as unemployment insurance, workers' compensation, recruitment, and other costs.

Kentucky's contract vendors are accruing a significant amount of administrative revenue. Instead of using these funds to establish a stable workforce, Kentucky expends millions of dollars to vendors in excess of labor costs for the opportunity to fill nursing positions through contracts.

To determine the amount paid to each vendor for contract administration, the contract vendors were requested to provide the average hourly rates paid to staff for each nursing position. These rates were then compared to the contracted hourly rates paid to the vendor. While the vendors cooperated fully in providing this information, the calculated administration costs are considered estimates based on average salaries paid and other conservative estimates applied to the information provided. Due to a vendor request, specific vendor information will not be identified in Findings 1 and 2.

The hourly rates actually paid to each type of nursing position were then compared to the contracts' hourly rates to calculate the estimated percentage of contract costs retained by the vendor and not paid to the employee. This percentage was then applied to each vendor's total expenditures for each nursing position. In addition, the Federal Insurance Contributions Act (FICA) tax of 7.65 percent was subtracted from the calculation of administration expense because this is a required expense regardless of any additional benefits that may have been provided to the employee by the vendor. The following table illustrates these calculations for each vendor and how the total of \$10.9 million in contract administration was determined.

Findings and Recommendations

Table 6: Estimated Percentage of Contract Administration Costs by Vendor

Vendor	Estimated Percentage by Vendor*
A	21%
B	29%
C	29%
D	24%
E	28%
Overall Percentage	26%
Total Contract Expenditures	**\$41,831,145
Estimated Contract Administration Costs	\$10,893,212

Source: The Auditor of Public Accounts based on information provided through the state’s accounting system and the specified vendors

*This represents the amount of vendors’ contract revenue that was not paid in direct salaries or FICA for contract staff. Other administrative costs could include unemployment insurance, workers’ compensation, recruitment, and other costs.

**This expenditure number does not include payments, in the amount of \$19,782, not referenced to specific nursing positions.

Due to the financial constraints that Kentucky is facing, costs should be controlled at every level of service. Due to the high cost of contracting, contract employees should only be used to fill positions until an employee can be hired through Kentucky’s personnel system. However, these are direct care facilities required to provide an adequate number of nursing staff based on the resident’s plan of care. Therefore, contract use may be needed to ensure that Kentucky is providing proper care, but efforts should also be made to contain costs whenever possible to ensure the most cost effective approach is followed.

Recommendations

The Cabinet should establish procedures and benchmarks as to the use of these contracts to control contract costs and the administrative fees paid to vendors. If no restrictions or benchmarks are put in place, millions of dollars will continue to be spent regardless of the cost effectiveness to employ necessary staff.

Finding 2: State Government is in competition with its contractors for nursing employees.

While the contracted rates paid by Kentucky are significantly higher than the state salary rates, the average rates actually paid to contract employees are competitive with the state rates for certain positions. The difference between the contract rate and the rate paid to employees allows the vendors more flexibility to recruit staff. If the state were to increase its salary rates to attract more state employees, the vendors could possibly raise their rates to discourage state employment.

Findings and Recommendations

If fringe benefits are included, Kentucky’s salary rate for patient aides is higher than the rates paid by contract vendors. Without fringe benefits included in the compensation comparison, Kentucky’s patient aide rates are closely aligned with Vendor B and Vendor D average hourly rates. LPN rates were also competitive with certain vendors’ rates after fringe benefits were added to the state salary rate. RN rates were the least competitive.

These conclusions were determined by comparing Kentucky’s midpoint salary rates, both with and without fringe benefits, with those paid by the contract vendors. The following tables illustrate how Kentucky’s midpoint salary rates compare to the hourly rates paid by each vendor.

Table 7: Comparison of Vendor A Rates to Kentucky’s Salary Rates

Nursing Position Type	Highest Contract Rate	Hourly Rate Paid to Employee	State's Hourly Rate w/o Fringe	Amount State Rate is More/(Less) than Vendors	State's Hourly Rate with Fringe	Amount State Rate is More/(Less) than Vendors
RN	\$44.00	\$34.00	\$21.88	(\$12.12)	\$28.44	(\$5.56)
LPN	\$29.00	\$21.50	\$16.36	(\$5.14)	\$21.26	(\$0.24)
PA	\$18.50	\$13.25	\$11.17	(\$2.08)	\$14.53	\$1.28

Source: Auditor of Public Accounts based on information provided by the Personnel Cabinet and contract vendors

Table 8: Comparison of Vendor B Rates to Kentucky’s Salary Rates

Nursing Position Type	Highest Contract Rate	Hourly Rate Paid to Employee	State's Hourly Rate w/o Fringe	Amount State Rate is More/(Less) than Vendors	State's Hourly Rate with Fringe	Amount State Rate is More/(Less) than Vendors
RN	\$37.95	\$26.00	\$21.88	(\$4.12)	\$28.44	\$2.44
LPN	\$29.95	\$19.50	\$16.36	(\$3.14)	\$21.26	\$1.76
PA	\$17.75	\$11.60	\$11.17	(\$0.43)	\$14.53	\$2.93

Source: Auditor of Public Accounts based on information provided by the Personnel Cabinet and contract vendors

Table 9: Comparison of Vendor C Rates to Kentucky’s Salary Rates

Nursing Position Type	Highest Contract Rate	Hourly Rate Paid to Employee	State's Hourly Rate w/o Fringe	Amount State Rate is More/(Less) than Vendors	State's Hourly Rate with Fringe	Amount State Rate is More/(Less) than Vendors
RN	\$46.00	\$34.00	\$21.88	(\$12.12)	\$28.44	(\$5.56)
LPN	\$33.00	\$24.00	\$16.36	(\$7.64)	\$21.26	(\$2.74)
PA	\$22.00	\$14.08	\$11.17	(\$2.91)	\$14.53	\$0.45

Source: Auditor of Public Accounts based on information provided by the Personnel Cabinet and contract vendors

Findings and Recommendations

Table 10: Comparison of Vendor D Rates to Kentucky’s Salary Rates

Nursing Position Type	Highest Contract Rate	Hourly Rate Paid to Employee	State's Hourly Rate w/o Fringe	Amount State Rate is More/(Less) than Vendors	State's Hourly Rate with Fringe	Amount State Rate is More/(Less) than Vendors
RN	\$44.50	\$33.95	\$21.88	(\$12.07)	\$28.44	(\$5.51)
LPN	\$28.00	\$21.50	\$16.36	(\$5.14)	\$21.26	(\$0.24)
PA	\$17.50	\$11.65	\$11.17	(\$0.48)	\$14.53	\$2.88

Source: Auditor of Public Accounts based on information provided by the Personnel Cabinet and contract vendors

Table 11: Comparison of Vendor E Rates to Kentucky’s Salary Rates

Nursing Position Type	Highest Contract Rate	Hourly Rate Paid to Employee	State's Hourly Rate w/o Fringe	Amount State Rate is More/(Less) than Vendors	State's Hourly Rate with Fringe	Amount State Rate is More/(Less) than Vendors
RN	\$47.75	\$27.98	\$21.88	(\$6.10)	\$28.44	\$0.46
LPN	\$36.15	\$23.13	\$16.36	(\$6.77)	\$21.26	(\$1.87)
PA	\$22.15	\$13.87	\$11.17	(\$2.70)	\$14.53	\$0.66

Source: Auditor of Public Accounts based on information provided by the Personnel Cabinet and contract vendors

Compared to the average hourly nursing rates provided by the Kentucky Hospital Association (KHA), Kentucky’s salary rates appear competitive. The 2007 KHA average hourly rate for an RN was \$23.87. The LPN rate for that same year was \$16.36, while the Nursing Assistant rate was \$10.42.

According to the 2008 *Southeastern States Salary Survey*, compiled by the state of Mississippi and provided by Kentucky’s Personnel Cabinet, Kentucky’s nursing midpoint salaries were not the lowest among the 14 states in the survey. Kentucky salaries ranked tenth or eleventh out of fourteen states for the different nursing positions. The LPN salary was Kentucky’s most competitive with the seventh highest midpoint salary. This survey included the salaries from the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia.

Based on interviews with Department and facility personnel, the vendors are making attempts to attract employees to counteract the state’s recruiting efforts. A facility employee said that some contract employees have a “no compete” agreement with the vendor to ensure that the employee will not take a job with a client. Some vendors pay benefits and leave time after an individual has been employed with the vendor for a specific amount of time. Because of the different pay rates and benefits provided by the vendors, patient aides will shop around to get the best employment package. According to Department staff, the Department has made efforts to increase the approved starting salary of a position but the vendors will raise their salary rates accordingly to ensure its rates remain higher.

Findings and Recommendations

Some Kentucky facilities have stopped advertising and recruiting efforts because the vendors are basically doing the recruiting for the facilities. In fact, only Glasgow State Nursing Facility has an actual website that could be used to recruit staff.

In general, state government is in competition with not only the vendors, but the private sector as well. This competition is more evident in the urban areas of the state than the rural areas. In the Louisville metro area, there is intense competition for qualified nursing personnel due to the large number of private health facilities that are able to pay large signing bonuses and provide tuition assistance. Rural areas have less competition from the private sector, which allows healthcare facilities to recruit and maintain nursing staff at a lower cost.

Recommendations

The Cabinet should make additional efforts to hire nursing staff within Kentucky's personnel system. The Cabinet should evaluate which positions' state salaries are the most competitive and focus recruitment on those positions in an effort to reduce the vendor contract hours for specific positions.

Finding 3: The number of full-time equivalents acquired through the nursing services contracts was unknown, but was manually calculated to be an average of 468 positions.

Using the vendor payment information maintained in Kentucky's accounting system, a manual calculation was performed to determine that an average of 468 full-time equivalents (FTEs) were provided by the contract vendors for the two-year period. The Cabinet did not provide this information because FTEs are not tracked for nursing services contracts. If these FTEs were hired at the state salary pay rates plus fringe, these services would have cost \$9 million less than the amount paid to vendors. The cost difference is attributable to high contract hourly rates.

As discussed in the Auditor of Public Accounts' report titled, *State Contracts: Kentucky's Administration and Management of Contracting for Service Workers*, it was reported that the number of contract workers is not tracked in the state's accounting system. The true size of the state's workforce cannot be determined without knowing the number of state employees and the number of workers under contract. Until the Cabinet develops a comprehensive system to identify personnel costs for both state and contract employees, the true personnel costs to operate state government cannot be known or accurately reported.

According to the Personnel Cabinet, the new Kentucky Human Resource Information System (KHRIS) will be able to track contract employees if the contract is with specific individuals. However, these contracts are with a staffing vendor and the individual employees will not be known or tracked.

Findings and Recommendations

The number of hours paid through contracts is not tracked through the state’s accounting system and had to be calculated by this office using the amount paid to the contractors. The total average hours within each nursing staff position had to be calculated by dividing the total expenditure per position by the contracted hourly rate. To determine the average FTEs, the total average hours for each position was divided by 3,900 hours, which is a 37.5 workweek for the two-year period.

Patient aides had the highest number of FTEs with nearly 155 positions being acquired. The following table illustrates the number of nursing staff FTE positions used by the state from each vendor during FY 2007 and FY 2008.

Table 12: Average FTEs Purchased From Nursing Services Contracts by Position

Nursing Staff Positions	AMS	Crown	Guardian Angel	Guardian Healthcare	Kforce	Total Average FTEs
RN	6.38	34.21	1.30	23.60	0.72	66.21
LPN	9.80	24.42	0.15	23.97	3.70	62.04
RSW I	9.50	68.53	0.65	2.32	12.09	93.09
RSW II	14.13	34.03	0.02	1.28	14.79	64.25
PA	23.84	80.84	1.13	28.87	19.87	154.55
RNA	0.02	-	-	1.35	-	1.37
CNA	-	25.03	-	0.16	-	25.19
CMT	-	-	-	0.13	-	0.13
CMA	-	0.97	-	-	-	0.97
Totals	63.67	268.03	3.25	81.68	51.17	467.80

Source: Auditor of Public Accounts, based on information obtained from the state’s accounting system

In order to determine the salary costs of state employees as opposed to contract employees, the midpoint salary rate for the corresponding state position with fringe benefits was used to calculate a two-year salary. This salary was multiplied by the average FTE for that position to determine a two-year cost of state employment. After comparing the cost of state employment to the amounts paid to the vendors for these positions, the state paid \$9,048,010 more to contract for these positions during the two-year period. The following table illustrates these calculations and the additional cost paid to vendors to fill these positions.

Findings and Recommendations

Table 13: Analysis of State Salary Cost for FTEs Versus the Contract Costs

Vendor Position per Contract	Average FTE Acquired Through Contract	Actual Expenses Paid to Vendors in FY 2007 and FY 2008*	Corresponding State Positions	State's Mid-Point Hourly Rate Including Fringe	Estimated State Salary for the Two-Year Period	Difference
RN	66.21	\$11,657,021	RN	\$28.44	\$7,343,748	\$4,313,273
LPN	62.04	\$7,571,047	LPN	\$21.26	\$5,143,985	\$2,427,062
RSW I	93.09	\$6,106,364	PA II	\$15.98	\$5,801,555	\$304,809
RSW II	64.25	\$4,600,609	Nurse Aide State Registered I	\$15.98	\$4,004,189	\$596,420
PA	154.55	\$10,336,513	PA I	\$14.53	\$8,757,885	\$1,578,628
RNA	1.37	\$101,260	Nurse Aide State Registered I	\$15.98	\$85,381	\$15,879
CNA	25.19	\$1,378,194	Nurse Aide State Registered I	\$15.98	\$1,569,891	(\$191,697)
CMT	0.13	\$13,091	Medical Technologist	\$19.79	\$10,034	\$3,057
CMA	0.97	\$67,046	Medication Aide	\$17.57	\$66,467	\$579
Totals	467.80	\$41,831,145			\$32,783,135	\$9,048,010

Source: Auditor of Public Accounts based on information obtained from the state's accounting system and the Personnel Cabinet

*The amount of \$19,782, which is total of the unreferenced nursing expenses, was not included in this table because the expenditures could not be associated with a nursing position.

Recommendation

We recommend the Cabinet develop a manageable comprehensive system to identify personnel costs for both state and contract employees to accurately report the total personnel costs to perform nursing services.

Finding 4: The Cabinet has privatized the Department's nursing staff without providing oversight or monitoring.

For the larger Department facilities, the Cabinet has essentially privatized their nursing staff. These facilities have significantly higher numbers of contract employees than state employees. As a whole, facility staff were comprised of 64 percent and 65 percent contract employees, respectively for FY 2007 and FY 2008. These contracts are not only supplementing their state workforce, but for some facilities the vast majority of the nursing staff are contract employees. In contrast, another state agency, the Kentucky Department of Veterans Affairs, is operating three long-term care facilities without any contracts for nursing services.

The following table provides the number of state and contract employees for each facility, as well as the percentage of contract employees for both fiscal years. Appendix I contains additional detail regarding each of the nursing positions per facility.

Findings and Recommendations

**Table 14: Breakdown of State Nursing Personnel Versus Contract Nursing Staff
By Facility and Fiscal Year**

Facility	FY 2007		FY 2008		Percent of Contract Employees	
	State Employees	Contract Employees	State Employees	Contract Employees	FY 2007	FY 2008
Central State Hospital	18	171	19	163	90%	90%
Central State ICF/MR	6	161	7	186	96%	96%
Glasgow Nursing Facility	90	14	91	18	13%	17%
Hazelwood ICF/MR	52	286	43	285	85%	87%
Hazelwood Homes	17	46	17	46	73%	73%
KCPC	34	0	34	1	0%	3%
Western State Hospital	159	124	155	115	44%	43%
Western State Nursing Facility	91	21	82	26	19%	24%
Totals	467	823	448	840	64%	65%

Source: Auditor of Public Accounts, based on information provided by the specified facility

The privatization of nursing services has taken place without sufficient oversight or monitoring efforts by the Cabinet. As discussed in the Auditor of Public Accounts’ report titled, *Assessment of Kentucky’s Privatization Efforts*, Kentucky’s laws related to the governance of privatizing services (KRS 45A.550 to 45A.534) are not effective. The definitions of “privatization contract” contain so many exemptions that no contract would meet the privatization criteria, which means that the recommended oversight and cost-benefit analysis would not be applicable. These exemptions contradict the statutes’ objectives to assure that:

- Services are privatized only when the action is fully justified;
- Protections are put in place for affected state employees; and,
- Contracts are properly monitored once they are put in place.

Cabinet’s Hiring Process

Kentucky’s nursing position series (4300) maintained by the Personnel Cabinet was designated as Immediate Fill positions to facilitate the hiring process. For an Immediate Fill position, an agency does not have to wait 10 days for a register of applicants to be certified by the Personnel Cabinet or to begin the interview process. However, each appointing agency determines the hiring process to be followed to fill these positions.

Findings and Recommendations

The Department facilities do not have direct hiring authority for state employees due to the Cabinet's desire to ensure compliance with state personnel laws. The Cabinet's hiring process requires the approval of the Cabinet's Office of Human Resources Management in order to obtain a position's register of applicants. This Office must also approve the hiring of any recommended candidate. According to Cabinet officials, the hiring process for Immediate Fill positions is as follows:

- After internal approval has been given within the Department facility, the request for a position register is sent to the Department's Facility Personnel Request mailbox, the Commissioner reviews and then sends the internal request form to the Cabinet's Office of Human Resources Management (HR), Division of Personnel Administration.
- The request form is reviewed/approved and entered into the Personnel Cabinet's Career Opportunities System (COS). The Personnel Cabinet responds by emailing the electronic register to the requisition creator. This process takes two to five days from the time the action is entered into COS. The Cabinet's HR staff then forwards the register to the facility.
- The facility reviews the register and conducts interviews. Once a recommended candidate(s) have been selected, the facility completes a "Selection Process Worksheet" that documents the names of the persons interviewed and includes the application for their selected candidate with the completed HRM-7 form.
- The facilities' recommendation and the Selection Process Worksheet is then sent to the Cabinet's HR office where it is reviewed to ensure that the interview and selection process was conducted properly and that the information is correct.
- The Cabinet's HR office gives contingency hiring approval and asks, but does not require, the facility to give them 10 days to process the information with Personnel, i.e. the new hire's start date must be at least 10 days after the receipt of the facility's recommendation for hiring.

Personnel Cabinet officials stated that, on average, it takes 33 days to fill a position once the register of applicants has been provided to an agency. When asked how long it takes to fill state nursing positions, Department facility contacts simply said "too long" or "months." Several facility contacts stated that potential nursing applicants will not wait long for a job offer when Kentucky's contract vendors and other private sector hospitals are able to offer employment much quicker. Though the Personnel Cabinet has allowed nursing positions to be Immediate Fill, the Cabinet's process to fill a state employee nursing position does not expedite the hiring process.

Findings and Recommendations

The Kentucky Department of Veterans Affairs does not use contract nursing staff

While these facilities operated by the Kentucky Department of Veterans Affairs (KDVA) may not be comparable to the majority of Department facilities, the KDVA is an example of a state agency that does not have any contracts for nursing services in their three facilities. It is difficult to compare caring for elderly veterans to caring for mentally ill persons, persons having mental retardation, or inmates in a maximum security prison.

KDVA is opposed to contract labor for nursing positions because their clients want the stability of the same employees taking care of them every day. According to a KDVA official, contract workers were used in the past for emergency services but there was friction because the state employees knew that contract workers were being paid at a higher rate.

According to the same KDVA official, KDVA is constantly hiring for nursing positions because their workforce is never at 100 percent. The workforces at its eastern facility in Hazard and its western facility in Hanson are relatively stable, but staffing the central Kentucky facility in Wilmore is much more difficult. The official thought that a nursing services contract for the Central Kentucky facility would be beneficial because of its daily struggle to maintain a full work force. In addition, these facilities incur a significant amount of mandatory overtime that may reduce their costs savings from not using contract workers.

To maintain a workforce of state employees, KDVA has adopted the following procedures:

- Each facility has an administrator with direct hiring authority for all immediate fill positions. The administrator contacts Kentucky's Personnel Cabinet directly for a register of applicants and additional approval is not needed to hire an individual selected after the interview process.
- KDVA typically pays 39 to 40 percent higher than the minimum state salary rate.
- KDVA pays a shift differential for second and third shifts due to the difficulty in filling positions for these shifts. Second and third shift staff receive an additional 15 percent of their base pay.
- Each KDVA facility has human resource staff to assist individuals in completing the state application for employment at a computer in the facility, as well as advertising regularly.

KDVA would also like to implement the following incentives to allow for a more competitive recruiting process:

Findings and Recommendations

- Internship program allowing nursing staff to work while in school and KDVA assists with tuition;
- Loan forgiveness program to assist nurses in paying off student loans. For example, after a nurse has worked six months, KDVA could pay off a specific amount of student loan debt; and,
- Signing bonuses.

The primary reasons cited for contracting for nursing services are that state salary rates for nursing staff are not competitive and the hiring process takes too long. Instead of seeking opportunities to recruit nurses as state employees or expediting the hiring process, the Cabinet has allowed the facilities to use these contracts to meet their staffing needs. Kentucky is paying private vendors to recruit staff instead of working to obtain state employees for these positions.

Recommendations

The Cabinet should expedite the state hiring process for nursing positions. Nursing services are being obtained through more expensive contracts without any Cabinet approval. Increased autonomy for state hiring at the facility level may reduce the need for contract staff.

The Cabinet, along with the Personnel Cabinet, should consider removing the nursing series or selected nursing positions from the state's merit employment system to remove obstacles for hiring and terminations. This would be especially financially beneficial for the Patient Aide and the Nurse Aide State Registered positions within the nursing series. This could expedite the hiring process for positions contracted for the most and alleviate any concerns related to the dismissal of employees due to performance issues.

Finding 5: The Department is not tracking and reporting the number of employees used by the hospitals and facilities under these contracts.

No reports are generated by the Department or the Cabinet to document the number of employees hired under these contracts or any other management information, such as contract employee turnover ratios, amounts expended by position, or the amount of overtime paid to contract employees. Monitoring this information would provide beneficial information regarding the facilities' use of the contracts, as well as the vendors' performance in providing nursing services. Without this information, informed oversight of these contracts cannot occur. These contracts were designed to provide services to all of the Department's facilities, which means that proper oversight is even more important. Even though these contracts were consolidated and centralized, no additional monitoring has occurred.

According to the RFP, the contractors shall provide the Contract Officer with a report of hours used, cost by skill level, and by facility by the 10th of each month. The contractor shall be evaluated annually on how well they provide staffing services, including proper invoicing, staffing, recruiting, and responding to facility requests.

Findings and Recommendations

The contractors have not provided these required reports, nor have Cabinet officials requested this information for review. Furthermore, the responsibility of this review has not been assigned to a specific staff person either in the Cabinet or the Department.

In general, the Cabinet has not provided any procedures or established any benchmarks to monitor these contracts at any level. When the Department provided a report on contract expenditures, we asked if these reports were generated on a regular basis. Department staff stated that this report was only compiled at our request.

An information request had to be sent to each facility during the audit in order to determine the number of contract workers and the contract employee turnover rates. The number of contract workers was discussed in Finding 4 of this report and the following table provides the turnover ratios for each facility.

Table 15: Turnover Ratios for State and Contract Employees By Facility and Fiscal Year

Facility	Employee Type	FY 2007	FY 2008
Central State Hospital	State Employees	27.27%	34.84%
	Contract Employees	54.75%	69.92%
Central State ICF/MR	State Employees	25%	66%
	Contract Employees	52.79%	105%
Glasgow Nursing Facility	State Employees	0.16%	0.18%
	Contract Employees	1.66%	1.7%
Hazelwood Center	State Employees	Did not have sufficient data to respond.	
	Contract Employees	Did not have sufficient data to respond.	
Hazelwood Homes	State Employees	0%	6%
	Contract Employees	46%	50%
KCPC	State Employees	2.66%	2.72%
	Contract Employees	Contract employees not used for full-time positions.	
Western State Hospital	State Employees	24.5%	21.3%
	Contract Employees	112.9%	133.9%
Western State Nursing Facility	State Employees	16.57%	24.19%
	Contract Employees	170.73%	205.52%

Source: Auditor of Public Accounts, based on information provided by the specified facility

The contractor’s performance was not evaluated to ensure that services are being provided adequately and that staffing and recruiting issues are meeting the facilities’ needs. All information related to the employees used under these contracts or any other agreement is only maintained at the facility level. The Cabinet is not aware of how many individuals or how often the contract is being used.

Findings and Recommendations

Recommendations The Cabinet should require monthly and annual reports from each facility as well as the monthly reports required of the contract vendors. These reports should provide the necessary information to allow for a thorough evaluation and tracking the number of contract employees reporting for work, the turnover rates, and the overtime rates associated with each vendor during the reporting period. The Cabinet should assign monitoring responsibilities to a specific staff person that can dedicate the time needed to ensure adequate oversight is achieved.

The Cabinet should consider selecting specific vendors for each facility to assist with staffing needs when state employees cannot be hired. This would reduce the complexity of monitoring five vendors with five different rates at each facility. The Cabinet may also consider a contract to provide for only temporary (PRN) staffing needs.

Finding 6: Other contracts and agreements are being used to obtain nursing staff/services without any tracking of the cost to provide nursing.

Through discussions with facility staff, it was determined that the contracts specified in the Committee's audit request are not the only contracts for nursing services. Kentucky's Community Mental Health Centers have a memorandum of agreement with the Department's facilities to provide medical staffing. According to the information request sent to each facility, all of the facilities have nursing staff on contract through Community Mental Health Centers. Six of the seven facilities were able to provide an estimate of their cost of nursing services through Community Mental Health Centers that totaled \$1.8 million in FY 2008. One facility was not able to provide this cost due to the lack of tracking by position type.

Employees obtained through a contract with Community Mental Health Centers receive the same benefits as state employees. The facilities pay for the salary costs and fringe benefits, as well as an administrative fee based on the cost of the employee's salary. Each facility negotiates the administrative fee with the Community Mental Health Center instead of collectively negotiating this fee. Therefore, these individuals receive a higher salary than a state employee and receive state fringe benefits as well. Facility staff stated that these contracts assist in attracting skilled workers and administrators that would not work in the facility at the state salary rate and may not meet the position qualifications for the comparable state position. Therefore, in some instances a contract employee is hired to fill a position though the person does not meet the minimum requirements for the positions as stated in the Personnel Cabinet Position Classification Specification. Further, though this person does not meet the position minimum requirements, they are paid at a higher rate than a state employee and receive state benefits.

Findings and Recommendations

According to facility staff, the facility sends a request to the Community Mental Health Center to fill a position. When approval is received, the position is posted on the Community Mental Health Center's recruiting website. The responses are sent to the facility and interviews are conducted. Once a candidate is selected, the individual's information is sent to the Community Mental Health Center for hiring approval. Once approved, the individual is an employee of the Community Mental Health Center, while the Department facility is responsible for the associated costs.

Community Mental Health Centers are considered a quasi-state agency because they receive state funding through the Department's budget. Therefore, the memorandum of agreement to provide health care employees to the specified facilities are filed with the Committee.

Recommendations

The Cabinet should require each facility provide a report each month listing the individuals, position type, and amount of expenditures incurred under each contract agreement. The Cabinet should also establish approval and use guidelines for using the memorandum of agreements to secure staffing from the Community Mental Health Centers.

Finding 7: Kentucky appears to be using contracted nursing staff more extensively than other surrounding states.

A comparison of contract nursing information provided by other states to the same information received from Kentucky identified that the cost incurred to contract for nursing staff was higher in Kentucky. In addition, Kentucky appears to have a higher percentage of contract staff.

Of the six states that provided nursing contract expenditures, Kentucky had the highest reported nursing contract expenditures for FY 2007 and FY 2008. After Kentucky, Georgia, with \$5,313,312, had the highest amount of nursing contract expenditures for the same period. The state with the lowest nursing staff expenditure was a facility in North Carolina that spent \$178,474.

A comparison of all states' mental health and developmental disabilities facilities is complicated. As in Kentucky, other states have multiple types and sizes of facilities, such as psychiatric hospitals, nursing homes, and intermediate care facilities for persons with mental retardation. The size of state facilities varies depending on the need and type of services provided. For example, one of Florida's facilities for mental illness has a bed count of 633, while one of South Carolina's residential facilities for the mentally retarded had a bed count of 84.

Findings and Recommendations

Most of the 10 nearby states surveyed do contract for some nursing services in mental health and developmental disabilities facilities. Only two states surveyed, Ohio and West Virginia, do not use nursing services contracts. Ohio's state nursing positions are employed through the Ohio Civil Service hiring system under the Health Care and Social Service Union (SEIU/District 1199) contract. The union contract features raises and cost of living increases. West Virginia reported that contracting is cost prohibitive and causes morale problems related to salary issues with non-contract staff.

The percentage of contract nursing staff that works in state facilities varied widely among the states. North Carolina had the lowest percentage of nursing staff at five percent and Kentucky had the highest at 65 percent.

In Florida and North Carolina, most personnel decisions, including contracting, are made at the facility level, not the state agency central level. Both states had facilities that contracted for nursing staff, but not every facility used nursing contracts.

One Florida facility reports that it is canceling its nursing contracts and will attempt to hire its contract nurses as state employees. Florida officials report that contracting is often cost prohibitive because private vendors pay their workers more than the state pays its employees. Most vendors that provide contract nursing services in Florida facilities charge a flat rate of 18 percent above what the state pays for these services. Furthermore, the facility reported that vendors did not always fulfill their contractual obligations, so the decision was made to discontinue the contract.

Most states reported difficulty filling vacant nursing positions. Comments about possible explanations included mention of a national nursing shortage, noncompetitive state salaries for nurses, and nursing staff shortages caused by turnover and retirements. Kentucky mentioned the "lengthy and time-consuming" nature of the hiring process as a reason to use contract nursing staff. The South Carolina Department of Mental Health complained it took six weeks to hire someone and many nurses had already taken another job. One facility in Florida also referred to "time-consuming hiring processes."

The following table summarizes the information for each state surveyed that contracts for nursing services.

Findings and Recommendations

Table 16: Summary of Kentucky and Other States Contract Nursing Services

State	Number of Facilities Using Contracted Nursing Staff	Estimated Percentage of Nursing Staff	Nursing Contract Expenditures	
			FY 2007	FY 2008
Alabama	5 of 7	No Answer Provided	No Answer Provided	No Answer Provided
Florida	3 of 7	Facility A: 12%	\$1,363,257	\$2,030,773
		Facility B: 5.3% RNs and 46.2% LPNs	\$667,116	\$788,674
		Facility C: Less than 10%	No Answer Provided	\$305,275
Georgia	5 of 7	2%, 6%, 20%, 20%, 46%	\$1,946,998	\$3,366,314
Indiana	4 of 6	Average of 40%	No Answer Provided	No Answer Provided
Kentucky	7 of 7	65%	\$21,145,581	\$20,705,346
North Carolina	3 of 4 (Based on Responses)	Facility A: 9%	No Answer Provided	No Answer Provided
		Facility B: 24%	\$1,295,451	\$1,610,775
		Facility C: 5%	\$85,913	\$92,561
South Carolina - Developmental Disabilities Agency	5 of 5	11%	\$695,000	\$950,000
South Carolina - Mental Health Agency	8 of 8	10%	No Answer Provided	No Answer Provided
Tennessee	5 of 5	15%	\$2,382,254	\$2,853,438
Virginia	7 of 16	9%	\$2,098,862	\$2,098,862

Source: Auditor of Public Accounts based on information received by contacts from each state

In other survey responses, some states commented “contract staff only used when state staff is not available.” Some stated that their “budget does not allow for the high price of contract nurses.” In Kentucky, however, there are no guidelines or controls in place to monitor the use of nursing contracts.

Other State Nursing Recruitment Efforts

Other states in our survey appeared to have extensive recruitment procedures for nursing staff. Some of the more progressive recruitment methods include:

- Paying sign-on bonuses: Virginia and South Carolina;
- Tuition reimbursement, education leave or other incentives for current workers pursuing nursing degrees: Indiana, Georgia, West Virginia, Tennessee, South Carolina, and Florida;

Findings and Recommendations

- Paying referral bonuses to current employee nurses who refer others to work: South Carolina;
- Increased compensation for nurses: Indiana, Georgia, West Virginia, Tennessee, and Florida;
- Expediting the hiring process: Indiana and Georgia;
- Hiring veteran or retired nurses: Tennessee and South Carolina; and,
- Advertising in statewide nursing publications: South Carolina.

In Kentucky, facility staff attributed the use of contract workers at least in part to the amount of time it takes to hire nurses through Kentucky's personnel system. Besides obtaining higher pay from vendors, nurses know they can find work faster through the vendors than they could through Kentucky's Personnel system. One facility contact stated that contracting is used as a recruiting tool, encouraging contract nurses to apply for state employment after they have worked at the facility for six months. Other facility staff said that hiring additional state employees would be more cost effective and provide a more stable workforce, but hiring more state employees is not feasible if the hiring process is not improved.

Most other states have extensive recruitment efforts for nurses as discussed above, but Kentucky appears to be confined to modest recruitment efforts implemented at the facility level. One facility manager reported that recruitment efforts by his facility were stopped in the 1990s because it was decided that the efforts were not successful and were not a good use of funds since the vendors were already conducting recruiting on their behalf.

Furthermore, Kentucky state government cannot pay signing bonuses as done by the private sector and in a few other states. This is due to language in Section 3 of the Kentucky Constitution that prohibits the granting of emoluments except in consideration for public services.

Recommendation

The Cabinet should consider implementing a progressive recruitment plan using efforts employed by other states as a guideline and take steps to limit the use of contract employees to be more cost effective and provide a stable workforce.

Finding 8: There were expenditures and credits that did not reference an assigned contract number.

When reviewing vendor data, there were expenditures and credits that did not reference a specific contract number. This means that the contract number was left blank in the state's accounting system when the payment was made. If an expenditure report is compiled using only the contract number, the unreferenced expenses would not be included. The unreferenced payments and credits were found by extracting payment information by vendor number instead of the contract number. The following table illustrates the percentage and amount of unreferenced documents for each vendor during FY 2007 and FY 2008.

Findings and Recommendations

Table 17: Percentage and Amount of Unreferenced Documents

Vendor	Number of Expenditure Documents Reviewed	Number of Unreferenced Documents	Percent of Unreferenced Documents	Amount of Unreferenced Documents
AMS	2,430	100	4%	\$266,370
Crown	4,469	265	6%	\$173,896
Guardian Angel	207	1	0%	\$319
Guardian Healthcare	2,827	102	4%	\$421,944
Kforce	1,994	39	2%	\$65,958
Totals	11,927	507	4%	\$928,487

Source: Auditor of Public Accounts, based on information obtained from the state's accounting system

Besides not being included in the total expenditures for a contract, unreferenced payments or credits are not linked to any contract commodity line. This means that the nursing staff position, hourly rate, and maximum amount to be paid for this position are not known. Furthermore, any spending limits or other controls established for those commodity lines will be circumvented because the expenditures will not be applied to a particular contract amount.

The unreferenced expenditures were extracted by the auditor from the state's accounting system and were provided to the Department for review to determine if they should be included in our contract expenditure calculations. Using the information provided by this office, the Department was able to match the unreferenced expenditures to a contract. The following are the results for each contract vendor:

- AMS' 100 unreferenced expenditures totaled \$266,370 and \$203,110 was attributed to the FY 2007 and FY 2008 nursing contract. The balance was for the FY 2005 and FY 2006 contract, service fees, and educational training.
- Crown had the largest number of unreferenced expenditures at 265 for a total amount of \$173,896. Most of these expenditures, \$187,650, were related to other Crown contracts not related to nursing staff contracts. There is a negative balance of (\$13,754), which was due to stand-alone credits posted to the FY 2007 and FY 2008 contract.
- Guardian Angel had one unreferenced expenditure, which was in the amount of \$319. This expense did not relate to the nursing staff contracts under review.
- Guardian Healthcare's 102 unreferenced expenditures totaled \$421,944. Of those expenditures, \$10,910 related to the FY 2007 and FY 2008 nursing contract and the remaining \$411,034 was for their FY 2005 and FY 2006 contract.

Findings and Recommendations

- Kforce's 39 unreferenced expenditures totaled \$65,958 and of those, \$21,583 related to the FY 2007 and FY 2008 contract for nursing staff. The balance of \$44,375 was for FY 2005 and FY 2006 contract.

There are a variety of reasons for the unreferenced expenditures but ultimately the contract number was not entered into the state accounting system when the expenditure is made. The reasons this occurs, per the Cabinet, are paraphrased below:

- Payments were made while waiting for the modification to add funding for closed lines.
- Contract conversion issues resulting from moving information to a new state accounting system.
- Payments against the Finance Master Agreements (MA) established for All State or All Department Facilities do not have accounting lines established within the agreements. An accounting line has to be added for each of the commodities when paying against this type of agreement. This allows multiple departments and/or our facilities to enter funding for their Cabinet, Department, and Unit. Also, none of the MA documents will be for nursing services. They are only for clerical, non-professional temporary positions.
- Instances of stand alone payments not referenced to the contract occurred mostly between July and September 2006, when commodity lines were accidentally closed and the Cabinet had to wait for the contracts to be modified.

Due to the contract number not being associated with the payment or credit, any expenditure report produced by contract number would be incomplete. An expenditure report generated by vendor number and then associating the payments to contracts is the only way to obtain complete contract expenditure information.

After reviewing the reports generated by APA auditors, the Department requested training on generating vendor payment reports from the state's accounting system. This training was provided on November 25, 2008, to Department and Cabinet staff. The main focus of the training was to explain how vendor payment information can be used to determine if payments to vendors are appropriately attributed to the contract. Generating these reports will improve the Cabinet's monitoring of contract expenditures.

Recommendations

The Cabinet should generate a monthly vendor report to reconcile contract and vendor payments and credits to ensure that contract information is accurately reflected in the state's accounting system. When errors are found, documentation of the payment should be verified and corrected in the accounting system. Any reoccurring data entry errors should be addressed with facility staff as needed.

Findings and Recommendations

**Finding 9:
Guardian Angel
filed two lawsuits
against the
Commonwealth.**

The Cabinet elected to contract with the four contractors attaining the highest scores under its rating system. Guardian Angel had the fifth highest score and filed suit regarding the contracting process. The litigation was settled when the Cabinet agreed to award Guardian Angel a staffing contract under a Settlement Agreement. Guardian Angel now has a second suit against the Cabinet based on claims that the Cabinet did not ensure that facilities were contacting the lowest cost vendor as required by the Settlement Agreement.

In seeking bids from contractors offering nursing services to state mental health and developmental disabilities facilities, the Cabinet advertised a RFP for nursing contracts. Fifteen vendors submitted bids in response to the RFP. In awarding contracts, the Cabinet used a scoring system that assigned point values to various aspects of each proposal. The Cabinet elected to contract with the four contractors attaining the highest scores under the rating system. A Cabinet official opined that for staffing contracts, it is a good idea to work with more than one vendor to ensure that a vacancy can be filled.

Guardian Angel had the fifth highest score that was just a few points lower than the fourth highest vendor and narrowly missed receiving a contract. This led to the original litigation under which Guardian Angel sued the Cabinet claiming it should have received a higher score and been awarded one of the four contracts. This litigation was settled when the Cabinet agreed to award Guardian Angel a staffing contract.

The Settlement Agreement between the state and Guardian Angel stated that the Cabinet would enforce the contract requirement that each facility request staffing from the lowest cost vendor. All vendors may be contacted to determine whether they could provide the service, but the facility should request staffing from the lowest cost vendor available to fulfill the needs of the facility. If the lowest cost vendor is unavailable or unable to provide staffing, the facility may request staffing from the next lowest cost vendor until the position is filled.

Guardian Angel's second lawsuit claims that the Cabinet was not ensuring the contract terms of contacting the lowest cost vendor were followed. The vendor also claims to have been underutilized by the facilities not following the contract requirements. Guardian Angel submitted an open records request to the Cabinet for information relating to the use of nursing contracts. This lawsuit was in the discovery phase at the time of this report.

Recommendations

The Cabinet should ensure that the contracting process is clearly outlined and all requirements are included and understood prior to the awarding of contracts. Any contract requirements should be monitored to ensure compliance to avoid litigation. Further, contracts should be thoroughly reviewed to ensure Cabinet officials are knowledgeable of the requirements stipulated in the contract.

Detail of State Versus Contract Employees By Facility and Fiscal Year

Appendix I

Source: Auditor of Public Accounts, based on information provided by the specified facility

Facility/Staff Type	Aides		LPNs		RNs		Nursing Supervisors		Totals		% of Employees	
	FY 2007	FY 2008	FY 2007	FY 2008	FY 2007	FY 2008	FY 2007	FY 2008	FY 2007	FY 2008	FY 2007	FY 2008
Central State Hospital												
State Employees	8	9	3	4	2	1	5	5	18	19	10%	10%
Contract Employees	104	100	24	21	32	31	11	11	171	163	90%	90%
Central State ICF/MR												
State Employees	5	6	0	0	0	0	1	1	6	7	4%	4%
Contract Employees	152	177	7	9	2	0	0	0	161	186	96%	96%
Glasgow Nursing Facility												
State Employees	54	56	22	22	0	0	14	13	90	91	87%	83%
Contract Employees	12	13	2	3	0	1	0	1	14	18	13%	17%
Hazelwood ICF/MR												
State Employees	41	33	2	1	1	1	8	8	52	43	15%	13%
Contract Employees	234	235	33	28	10	11	9	11	286	285	85%	87%
Hazelwood Homes												
State Employees	12	12	5	5	0	0	0	0	17	17	27%	27%
Contract Employees	30	30	13	13	0	0	3	3	46	46	73%	73%
KCPC												
State Employees	0	0	1	2	22	22	11	10	34	34	100%	97%
Contract Employees	0	0	0	0	0	0	0	1	0	1	0%	3%
Western State Hospital												
State Employees	96	98	31	28	25	19	7	10	159	155	56%	57%
Contract Employees	82	67	11	12	29	34	2	2	124	115	44%	43%
Western State Nursing Facility												
State Employees	65	62	15	12	6	2	5	6	91	82	81%	76%
Contract Employees	20	21	0	2	0	2	1	1	21	26	19%	24%
Total State Employees	281	276	79	74	56	45	51	53	467	448	36%	35%
Total Contract Employees	634	643	90	88	73	79	26	30	823	840	64%	65%
% State Employees	31%	30%	47%	46%	43%	36%	66%	64%	36%	35%	36%	35%
% Contract Employees	69%	70%	53%	54%	57%	64%	34%	36%	64%	65%	64%	65%



**CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF POLICY AND BUDGET**

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Janie Miller
Secretary

March 6, 2009

Mr. Brian Lykins
Executive Director
Office of Technology and Special Audits
Auditor of Public Accounts
105 Sea Hero, Suite 2
Frankfort, KY 40601-5404

Dear Mr. Lykins:

Attached you will find the Cabinet's comments regarding the APA's draft Performance Audit of the Nursing Services Contracts for Kentucky's Mental Health/Mental Retardation Hospitals and Facilities. We appreciate the time and discussion with your office.

If you require additional information or assistance, please feel free to contact the Cabinet.

Sincerely,

A handwritten signature in cursive script that reads "Beth Jurek".

Beth Jurek
Executive Director

Cc: Secretary Janie Miller
Eric Friedlander

CHFS Comments Related to the Draft Performance Audit of Nursing Contracts for Kentucky's Mental Health/Mental Retardation Facilities

Below please find the Department and Cabinet comments to the draft report. The Cabinet appreciates the opportunity to comment on the report. The findings and content have already stimulated considerable discussion within CHFS regarding how practices might change in the future. The Cabinet views this as an opportunity for process improvement. Certainly, the ability to recruit and retain qualified staff is of great interest to CHFS.

Findings & Recommendations

Finding 1: Kentucky paid an estimated \$10.9 million in addition to the salaries paid to contract nursing staff.

While 26% of total contract expenditures are for "administration", the Cabinet would note that "administration" could include, but not be limited to the following: unemployment insurance, workers compensation, health insurance premiums to the extent provided, other insurance premiums, signing bonuses, educational assistance, cost of background checks, advertising, recruitment and other costs. Should the Commonwealth reduce or eliminate its reliance on nursing contracts, the Commonwealth would incur some of the additional associated costs.

In future contracts, the Cabinet will impose procedures and benchmarks as recommended to include limits on administrative costs and requirements that administrative and employee-related costs be delineated.

Finding 2: State government is in competition with its contractors for nursing employees.

State government is not only in competition with these particular nursing contractors, but with other health care providers in the private sector, particularly in the large urban areas where there is considerable competition for health personnel. The Louisville metro area is one of the most difficult areas to recruit due to intense competition for scarce nursing personnel, and which is the focus of much of the audit. Private entities have the ability to offer incentives the state cannot offer. This would include signing and referral bonuses. The inability to make use of these incentives may significantly impact the state's ability to compete with contractors and/or other health providers in the private sector.

A recent Courier Journal article (February 22, 2009) stated that according to Kentuckiana Works, the Louisville area's median salary for registered nurses is about \$55,000 per year but that salaries can be \$75,000 or more. Entry level salary for an RN (grade 13) in state government is \$32,042 annually, and the mid range salary is \$42,656.

The Cabinet does believe there are opportunities for reducing the number of contract personnel, particularly in the "aide" (i.e., residential service worker, patient aide) categories where state salary and fringe benefits are more competitive with those of the private sector. Any financial projections regarding savings would need to adjust for future pension and benefit costs as the unfunded liability costs of the retirement system

is likely to result in significant state increases to pension contributions in future years. Additionally, a significant increase in the Department's personnel cap would be required.

Finding 3: The number of full time equivalents acquired through nursing services contracts was unknown but was manually calculated to be an average of 468 positions.

The report examines two very different types of nursing personnel: professional staff (RNs, LPNs) and aides (residential services workers, patient aides). FTE's at a point in time will not necessarily accurately reflect staffing needs of a facility due to the 24/7 coverage required and fluctuating patient census levels. The report states that if these FTEs had been hired at the state salary plus fringe, the services would have cost \$9 million less due to the high contract hourly rates. For state facilities seeking to hire professional nursing staff in the Louisville area, hiring staff at state salaries has proven to be a challenge. A recent Courier Journal article (February 22, 2009) stated that according to Kentuckiana Works, the Louisville area's median salary for registered nurses is about \$55,000 per year but that salaries can be \$75,000 or more. Entry level salary for an RN (grade 13) in state government is \$32,042 annually, and the mid range salary is \$42,656.

As is recommended, the Cabinet and the Department will work to develop comprehensive and specific tracking and reporting requirements for facilities to enable tracking of personnel costs for both state and contract nursing personnel and other contract staff.

Finding 4: The Cabinet has privatized the Department's nursing staff without providing oversight or monitoring.

The cabinet disagrees with the statement that the "larger" Department facilities have essentially privatized the nursing staff. The use of contract staff is related primarily to competition in the Louisville labor market for health manpower, not facility size.

The Cabinet agrees that monitoring and oversight should be improved and will undertake to improve both.

Respectfully, the Cabinet does not believe the facilities operated by Veteran's Affairs are comparable to the majority of the Department's facilities reviewed. Caring for elderly veterans cannot be compared to providing care to mentally ill persons, persons having mental retardation or inmates of a maximum security facility that provides forensic evaluations and mental health treatment for convicted felons.

Two of the Veteran's facilities referenced in the report are located in more rural areas where jobs are at a premium. With respect to the third Veteran's facility at Wilmore, it is of note that according to the report, a Veteran's facility official indicated that a nursing contract would be beneficial. The Wilmore facility is in competition with the Lexington private health care market, and, as stated in the report (page 21), staffing is a "daily struggle". The Department for Veteran's Affairs recently contacted the cabinet regarding sample of nursing contracts as they are exploring developing a contract for nursing services.

As recommended, the Cabinet is examining ways in which to expedite hiring processes. The report recommendation to consider removing all or some of these nursing related categories from the merit system would have implications far beyond this Department and Cabinet.

Finding 5: The Department is not tracking and reporting the number of employees used by the hospitals and facilities under these contracts.

The Department will develop a consolidated method for tracking and reporting contract employees. The Department currently maintains no combined report at the central level which is compiled for the purpose of tracking and reporting this information, although each facility is charged with submitting such information on a monthly basis. Enforcement of this requirement at the central level has been an issue in recent months due, in part, to decreased central office staff as part of budget reductions. The Department's central office is relatively small, historically having around 100 staff. As of 1/1/2009, there were 85 filled positions in central office; 25 fewer than 1/1/2008 and 21 fewer than 1/1/2007.

At the facility level, when monthly invoices for payment are submitted by the contractor, the invoice details the name, position, dates and corresponding number of hours worked by the contract employee.

The Cabinet is considering creating a database or requiring each contractor to use a standardized database to report this information to the Department.

Finding 6: Other contracts and agreements are being used to obtain nursing staff/services without any tracking of the cost to provide nursing.

The Cabinet will require facilities to submit information to central office monthly, by position, including the amount paid and hours worked. Compilation into a single department report will require a significant body of work and will take some time to develop, particularly in light of staffing capacity issues resulting from budget reductions and the subsequent downsizing of Department central office staff as mentioned above. For the future, it is our understanding from the Personnel Cabinet that the new state system (KHRIS) will eventually include tracking contract personnel.

Finding 7: Kentucky appears to be using contracted nursing staff more extensively than other surrounding states.

The Cabinet does not believe the information available in the report is sufficiently complete to make a determination as to this issue. For example, Indiana was estimated to use 40% contract nursing, but expenditures for FY 2007 and 2008 were not provided. Georgia was cited as the second highest user of contract staffing, although the percentages varied greatly between five facilities (2%, 6%, 20%, 20%, and 46%). More state-specific information may allow Kentucky to implement strategies that have proven successful for other states. The Cabinet intends to seek additional information from other states and is considering a more aggressive recruitment strategy as recommended.

Finding 8: There were expenditures and credits that did not reference an assigned contract number.

Agree; however, these issues related primarily to problems experienced in conversion from the state's MARS accounting system to the E-MARS accounting system. An individual could inadvertently close a commodity line when a payment was made against a contract by selecting "final" rather than "partial" when completing the "Reference Type" field on the payment document. If the individual making the payment used the scroll bar on the mouse rather than clicking from field to field after entering their selection in the "Reference Type" field their selection would change without the user's knowledge. When "final" is selected the commodity line is closed and cannot be used for future payments regardless of the amount remaining in the commodity line. This error resulted in numerous contract modifications to add commodity lines to reestablish contract amounts. This action artificially inflated the amount of the contract.

Now that the system issues have been addressed, this issue has been largely resolved.

Finding 9: Guardian Angel filed two lawsuits against the Commonwealth.

Agree. The Cabinet intends to revise contract requirements as recommended at the next rebidding and incorporate limits on administrative expense as well as requiring that all administrative and employee-related costs be delineated. Due to the risk of additional litigation and associated costs, the Cabinet would recommend delaying implementation until the current contracts expire. Thus, the rebid process would begin early in FY 2010.

Page 7, paragraph 2.

The problem relating to multiple modifications resulting from accounting system conversion has largely been resolved.

Page 13, paragraph 2.

See comments under Finding 1.

Page 14, Table 6.

See comments under Finding 1.

Contributors To This Report

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General Questions

General questions should be directed to Terry Sebastian, Director of Communication, at (502) 573-0050 or the address above.