
Follow-Up Report on a Study of the Memorandum of Agreement for Coordinating Mental Health Services to Children

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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Submitted by

THE AUDITOR
STATE OF HAWAII

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State Auditor

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Introduction

The Office of the Auditor issues a wide variety of reports and studies recommending improvements in government operations. In response to growing interest in the impact of our audits, we have expanded our follow-up program to include a systematic review of selected findings and recommendations of previous audit reports. We revisit the subject agencies to verify and assess any progress made in addressing prior audit findings and recommendations. Government auditing standards require an audit follow-up process to determine whether an auditee has taken timely and appropriate corrective actions on findings and recommendations from previous audits.

The purpose of this report is to describe actions taken by the Department of Education (DOE) and Department of Health (DOH) with respect to certain recommendations in our January 1993 report, *A Study of the Memorandum of Agreement for Coordinating Mental Health Services to Children*, Report No. 93-1. We hope that the information provided in this report will assist policy makers in ensuring effective, efficient, and accountable programs.

Background

Adequate mental health services for public school children have been a continuing legislative concern. Our 1993 report focused on Section 321-174, Hawaii Revised Statutes. This law requires the children's mental health services teams in DOH to cooperate with the schools located in their geographic region to identify children and youths in need of mental health services and refer them for treatment. Since 1980, the law has also required DOE and DOH in conjunction with the children's teams to develop a memorandum of agreement for sharing responsibilities for mental health services for children.

The two departments issued a memorandum of agreement in 1985. However, our January 1993 report found that the departments had no collaborative process to keep the agreement up to date and resolve operational issues. Also, the departments had not defined their respective responsibilities to children with mental health needs. We recommended strengthening collaboration and clarifying the departments' responsibilities.

Approach to Follow-Up

As a follow-up of our January 1993 report, we reviewed DOE's letter to the Auditor of November 15, 1993 and DOH's letter to the Auditor of November 24, 1993, which provided information concerning actions taken on our recommendations. We then conducted fieldwork at both departments to gather additional information necessary for this report.

The following is our overall assessment of progress by DOE and DOH, followed by a description of each of our previous recommendations, actions reported by the departments in their 1993 letters to us, and the results of our recent fieldwork. Our work was performed from November 1994 through February 1995.

Summary of Follow-Up

Our overall assessment is that DOE and DOH have made some progress toward implementing our previous recommendations. Since our report was issued, DOE and DOH have begun the process of improving collaboration, working on the memorandum of agreement, and clarifying their respective responsibilities.

However, the memorandum of agreement has not yet been updated. A recent consent decree concerning mental health services for special education students has stimulated interagency collaboration and helped clarify the departments' respective responsibilities. But questions about collaboration and clarification remain.

Recommendation from 1993 Report

In our 1993 report, we recommended that DOE and DOH strengthen their commitment to collaboration by developing a mechanism such as an interagency task force to implement, monitor, and update the memorandum of agreement.

Implementation as reported in the departments' letters

In its November 1993 letter to the Auditor, DOE said that it had formed a task force with DOH in October 1992, prior to our 1993 report, to strengthen and revise the delivery of mental health services to children. DOE said that the task force had met on a regular basis and was making progress in providing appropriate services. The DOE also said that the state attorney general had asked the departments to suspend revision of the memorandum of agreement pending resolution of *Felix v. Waihee*, a lawsuit filed in federal court in May 1993 (Civil No. 93-00367-DAE).

Felix v. Waihee was a class action lawsuit by parents on behalf of their children with disabilities. Focusing on children with emotional disturbances, the lawsuit charged the governor, director of health, and

superintendent of education with failure to provide required and necessary educational and mental health services in violation of the federal Individuals with Disabilities Education Act and the Rehabilitation Act of 1973. These "special education" laws entitle students with disabilities that interfere with their education to receive the services necessary for a "free appropriate public education."

DOH's November 1993 letter to the Auditor stated that its Child and Adolescent Mental Health Division (in which the children's teams are located) and DOE had been collaborating on ways to most effectively address the mental health needs of Hawaii's children. For example, monthly interagency meetings had been taking place among DOE and the head of the Child and Adolescent Mental Health Division, the heads of the DOH children's teams, DOE district representatives, principals, and other key staff. DOH stated that because of planning efforts in progress and the pending lawsuit, the two departments had put on hold the updating of the memorandum of agreement.

Results of our fieldwork

Our follow-up fieldwork confirmed that a DOE-DOH task force met regularly in 1992 and 1993 and began working to update the memorandum of agreement. However, the agreement has not yet been updated and a recent consent decree has complicated the picture.

The task force was initially formed in 1992 to discuss mental health services in general. Due to our report, a primary focus of the task force became updating the memorandum of agreement under Section 321-174, HRS. Drafts of a revised agreement were being circulated even after *Felix v. Waihee* was filed.

On May 24, 1994 the U.S. District Court for Hawaii found in *Felix v. Waihee* that DOE and DOH had systematically failed to provide necessary educational and mental health services, and on October 25, 1994 the court approved a settlement of the case. The consent decree was designed to ensure that children have the "free appropriate public education" required by federal law. The decree required an Implementation Plan for a system of care including a continuum of services, placements, and programs following the principles of the Hawaii Child and Adolescent Service System Program (CASSP). The National Institute for Mental Health initiated CASSP in 1984 to provide funding for the development of community-based services for children and youths with emotional problems. The Implementation Plan must be completed within seven months and the system of care must be fully operational within six years. The consent decree also required a collaborative effort between the DOE and DOH and other state and private agencies and individuals that provide related services.

The consent decree has provided new impetus for collaboration. A "state team" has been formed to implement the decree, and a new memorandum of agreement is being drafted as part of this effort. However, efforts to comply with the decree could also complicate the development of a memorandum of agreement satisfying Section 321-174, HRS.

Section 321-174 calls for a memorandum of agreement between DOE and DOH that provides for:

- accepting referrals for evaluation and direct treatment;
- consulting with teachers and other school personnel to aid in the identification and screening of children in need of professional mental health services;
- providing training and education about emotional disturbances of children and other related services to teachers, school counselors, and parents;
- assisting DOE with mental health services for handicapped children;
- developing an ongoing mechanism to assess, document and report to the Legislature and the governor unmet needs for mental health services for students in each geographic region; and
- performing other related services for school personnel, children, and parents.

However, the most recent draft of the memorandum of agreement, dated November 1, 1994, departs significantly from Section 321-174. First, unlike the 1985 memorandum of agreement and other draft revisions, the most recent draft makes no reference to Section 321-174. Instead it cites Section 301-27, HRS, which requires DOH, within the funds available, to provide "related services," including mental health services, to special education students, and Section 348-7, HRS, which authorizes the Department of Human Services to cooperate with state agencies involved in vocational rehabilitation.

Second, the November 1 draft of the agreement includes not only DOE and DOH, but also the Department of Human Services, the Office of Youth Services, and the Judiciary (Family Court). Apparently this was done because the consent decree requires a systems approach involving collaboration with all relevant agencies. This broader, multi-agency approach is understandable under the circumstances and our 1993 report noted the value of multi-agency agreements. However, we cannot yet

determine whether this new approach to the memorandum of agreement will give sufficient and specific attention to the sharing of responsibilities between DOE and DOH in the six areas covered by Section 321-174.

Third, the November 1 draft of the agreement departs from Section 321-174 in its emphasis on services for special education students, who were the subject of the consent decree. However, as our 1993 report pointed out, Section 321-174 covers *all* students needing mental health services—not just those for whom DOE must provide special education. Again, we cannot yet determine whether the new agreement will be broad enough to include all the children covered by Section 321-174.

Officials of both departments believe that implementing the consent decree will improve mental health services for *all* students. Some officials informed us that they see Section 321-174, HRS, as outdated. One official said the law possibly should be repealed.

Recommendation from 1993 Report

Our 1993 report recommended that before pursuing the memorandum of agreement, DOE and DOH should clearly define their respective responsibilities.

Specifically, we said that DOE should ensure predictable mental health services for special education students, and may wish to contract with DOH for some of these services and seek Medicaid support to increase funding.

We said that DOH should define its primary mission and establish priorities for mental health services to children. The director of health should clarify the role of the children's mental health teams and issue rules to formalize the mission and priorities of the children's mental health program.

Implementation as reported in the departments' letters

DOE's November 1993 letter to the Auditor did not specifically address this recommendation. However, DOH's letter indicated that DOH had developed a clear definition of the target population, mission, and priorities of the Child and Adolescent Mental Health Division. DOH also stated that interagency planning was occurring on programs needed to support the mental health needs of "high-end" youths (those who are seriously emotionally disturbed), as was interagency planning for a needs assessment survey.

Results of our fieldwork

Our follow-up fieldwork indicated that some progress has been made to clarify DOE and DOH's respective responsibilities. The *Felix v. Waihee* consent decree mandated that, at a minimum, DOE must provide all educational services required by special education students and DOH must provide all mental health services these students require to benefit from the educational services. The November 1 draft of the memorandum of agreement incorporates this requirement.

DOE has not itself pursued Medicaid support to increase funding for mental health services for special education students. A DOE official noted that Medicaid reimbursement cannot be claimed for educational services. It was also noted that DOE does not "contract" with DOH, but must see if DOH can provide services before contracting with a private provider.

DOE points out that efforts for Medicaid reimbursement have been pursued by DOH. For example, the Child and Adolescent Mental Health Division has obtained Medicaid support through the Department of Human Services for mental health services for one segment of special education students: severely emotionally disabled children. Approval by the federal Health Care Financing Administration to include these children in the State's new Quest health program is pending. DOH is also trying to determine how disabled children who do not qualify under QUEST can qualify for federal Supplemental Security Income (SSI).

DOH has not formalized the mission and priorities of its children's mental health program in the form of rules. However, rules are needed. As our 1993 report pointed out, it is unlikely that DOH can treat all children who might benefit from mental health services, and our recent fieldwork indicates that the program's mission and priorities are still unclear. Most of the memos and task force minutes we reviewed stated that the priority of the Child and Adolescent Mental Health Division is severely emotionally disturbed "high-end" youths. However, other documents describe a responsibility to serve all children who are in need of mental health services. It appears that the consent decree will require DOH to serve all special education students in need of mental health services, regardless of the nature of the emotional disturbance. A DOH official informed us that eligibility policies and procedures for this group will soon be complete. However, DOH will need to decide whom it can serve among other students with mental health problems.

The role of the children's mental health teams remains vague. In response to our request for information on this issue, the Child and Adolescent Mental Health Division sent us a memo discussing general responsibilities for one of the children's teams. Although the division stated that the responsibilities applied to all teams, the memo simply listed tasks each team head was expected to accomplish.

The division chief has informed us that the new memorandum of agreement in conjunction with a procedural manual will develop procedures for the children's teams. The division also noted that both the proposed reorganization of the division and the memorandum of agreement should assist in the completion of formalized rules.

Conclusion

We believe that the Department of Education and the Department of Health are making progress but still have not given sufficient attention to their memorandum of agreement for coordinating mental health services for children under Section 321-174, HRS.

The Legislature has been concerned about collaboration between the departments for at least 20 years. Finding children's mental health services badly neglected, the 1974 Legislature passed Act 211, which included Section 321-174 requiring the children's mental health teams to collaborate with the schools. In 1976, a special subcommittee of the House Committee on Health reported that neither DOE nor DOH had shown much leadership in working out parameters of responsibility and that coordination policies at the highest level were overdue. In 1980, because of continuing concerns, the Legislature amended Section 321-174 to *require* a memorandum of agreement describing how the departments would share responsibilities.

Since our 1993 report, the departments *have* tried to improve collaboration, clarify their respective responsibilities, and update their initial, 1985 memorandum of agreement. However, the memorandum itself has still not been updated to resolve current issues between the departments.

The departments are currently focused on implementing a recent federal court decree involving multi-agency efforts on behalf of special education students with mental health needs. Officials of both departments believe these implementation efforts will improve mental health services to *all* students. However, we are concerned that the efforts may not focus sufficiently on Section 321-174, with its requirement of a memorandum of agreement between DOE and DOH concerning mental health services for *all* students.

In 1993, according to mental health experts, about 33,600 of Hawaii's children required mental health treatment, and from 8,400 to 22,400 of them were severely disturbed. How they will be served by DOE and DOH will remain unresolved as long as a new memorandum of agreement continues to exist only in draft form.

We urge that the superintendent of education and the director of health make the memorandum of agreement a top priority, taking into consideration our assessment of the departments' efforts.

