

**Full Performance Evaluation**

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**Department of Health and  
Human Resources**

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**The Department of Health and Human  
Resources' Grantees Receiving \$15,000  
or More in State Funds Are Not Filing  
Independent Audits As Required in  
§12-4-14(a)**



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John Sylvia  
Director

January 11, 2004

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the Department of Health and Human Resources, which will be presented to the Joint Committee on Government Operations on Sunday, January 11, 2004. The issue covered herein is "The Department of Health and Human Resources' Grantees Receiving \$15,000 or More in State Funds Are Not Filing Independent Audits As Required in §12-4-14(a)."

We transmitted a draft copy of the report to the Department of Health and Human Resources on December 23, 2003. We held an exit conference with DHHR on January 7, 2004. We received the agency response on January 2, 2004.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Department of Health and Human Resources' Grantees Receiving \$15,000 or More in State Funds Are Not Filing Independent Audits As Required in §12-4-14(a).**

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*According to West Virginia Code §12-4-14(a), any organization that receives \$15,000 or more in state funded grants is required to file a financial audit with the Legislative Auditor's Office. Organizations receiving grants from the Department of Health and Human Resources are not in compliance with this requirement.*

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According to West Virginia Code §12-4-14(a), any organization that receives \$15,000 or more in state funded grants is required to file an independent financial audit with the Legislative Auditor's Office within two years of the disbursement of funds. The Legislative Auditor has found that organizations receiving grants from the Department of Health and Human Resources are not in compliance with this requirement. This suggests that either the organizations are not having these audits conducted or that the organizations are not aware of the requirement to submit such audits. There is concern that mismanagement or improper use of state funds may be occurring without notice if audits are not being conducted.

Other state agencies do notify grantees of the reporting requirements in §12-4-14. The Bureau of Senior Services notifies grantees of audit filing requirements in a set of conditions laid out for accepting the approved grant. Evidence shows that the Bureau of Senior Services' grantees are filing audits as required. DHHR should inform grantees of §12-4-14 to help ensure compliance.

West Virginia Code requires all volunteer fire departments to file an audit with the Legislative Auditor's Office. If the volunteer fire department does not file an audit of the disbursement of funds, the state treasurer imposes a financial penalty. Financial penalization of all grantees receiving state funded grants would help to ensure that audits are being submitted.

## **Recommendations**

1. *The Legislative Auditor recommends that the Department of Health and Human Resources notify grantees of the reporting requirements set forth in §12-4-14 to help ensure compliance.*
2. *The Legislative Auditor recommends that the Legislature consider adding a provision to §12-4-14 to require all state agencies administering grants to notify grantees of the reporting requirements.*

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3. *The Legislative Auditor recommends that the Legislature consider amending §12-4-14 to penalize grantees receiving over \$15,000 that do not file an independent audit by a certified public accountant with the Legislative Auditor. The statute could be similar to the penalties incurred on volunteer fire departments in WVC §12-4-14(b).*



# Review Objective, Scope and Methodology

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This Full Performance Review of the Department of Health and Human Resources is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5 of the West Virginia *Code* as amended.

## Objective

The objective of this review is to determine if the Department of Health and Human Resources grantees are in compliance with §12-4-14 of the West Virginia *Code*.

## Scope

The scope of this review covers the period from FY 2000 through December 2003.

## Methodology

The methodology of this review includes interviews and correspondence with DHHR staff, information from other state agencies, and information from Legislative Services. Every aspect of this review complied with Generally Accepted Auditing Standards (GAGAS).



# Issue 1

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## The Department of Health and Human Resources' Grantees Receiving \$15,000 or More in State Funds Are Not Filing Independent Audits As Required in §12-4-14(a).

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### Issue Summary

According to West Virginia Code §12-4-14(a), any organization that receives \$15,000 or more in state funded grants is required to file an audit with the Legislative Auditor's Office within two years of the disbursement of funds. The audit is to be conducted by an independent certified accountant at the expense of the organization, and the audit is to show that funds received were spent for the purposes intended by the grant. The Legislative Auditor finds that organizations that receive grants from the Department of Health and Human Resources (DHHR) are not in compliance with this requirement. This suggests that either the organizations are not having such audits conducted or that the organizations are not aware of their responsibilities to submit the audits to the Legislative Auditor's Office. The Legislative Auditor has received independent audits from organizations that received funds in excess of \$15,000 from the Bureau of Senior Services. This may be occurring because the Bureau of Senior Services informs grantees of their responsibilities to submit an audit to the Legislative Auditor's Office. **DHHR, however, does not inform grantees of the reporting requirement.** DHHR distributed close to \$64 million in state grants in FY 2003. The concern is that if audits are not being conducted or they are not being reported, then mismanagement of state funds could be occurring without notice. The Legislative Auditor recommends that DHHR inform grantees of the reporting requirement in §12-4-14, and that the Legislature consider adding a provision to the Code that would require all state agencies to notify grantees of the requirement and add a penalty for not submitting required audits.

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*The concern is that if audits are not being conducted or they are not being reported, then mismanagement of state funds could be occurring without notice.*

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### The Legislative Auditor Has Not Received Audits From DHHR Grantees

According to §12-4-14(a) of the West Virginia Code:

*Any corporation, association or other organization in West Virginia, whether nonprofit or for profit, which receives state funds or grants in the amount of fifteen thousand dollars or more shall file an audit of the disbursement of funds with the legislative auditor's*

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*office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization and shall show that the funds or grants were spent for the purposes intended when the grant was made.*

The Assistant Secretary for Finance with the Department of Health and Human Resources informed the Legislative Auditor that:

*...to our knowledge there are no DHHR grant recipients that file an audit in regards to §12-4-14 of the State Code with DHHR.*

In addition, the Secretary of the Department of Health and Human Resources states that:

*Grant recipients are not notified by DHHR of the reporting requirements in §12-4-14 of the State Code.*

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*A review of files and databases within the Office of Legislative Services showed that no DHHR grantees receiving more than \$15,000 have filed an audit of the disbursement of funds with Legislative Services or the Legislative Auditor.*

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A review of files and databases within the Office of Legislative Services showed that no DHHR grantees receiving more than \$15,000 have filed an audit of the disbursement of funds with Legislative Services or the Legislative Auditor, and although not required by Code, no grantee has filed an audit with the Department of Health and Human Resources. The Legislative Auditor should have a significant number of audits filed, if DHHR grantees were following Code. For example, in FY 2000, there were 144 grantees receiving \$15,000 or more from DHHR. Of the 144 grantees, no grantee has submitted an independent audit to the Legislative Auditor. In FY 2003, there were 161 grantees receiving \$15,000 or more from DHHR. Thus, within the next two years according to Code, the Legislative Auditor is supposed to receive 161 independent audits from DHHR grantees. The Legislative Auditor is concerned that the failure to report these audits suggests that the independent audits are likely not being done. If these audits are not being conducted and/or are not being reported to the Legislative Auditor, there is concern that any mismanagement or improper use of state funds by grantees will go unnoticed.

### **Other State Agencies Inform Grantees**

Other state agencies do notify grantees of the reporting requirements in §12-4-14 in an effort to ensure compliance. For example, the Bureau of Senior Services notifies grantees of audit filing requirements in a set of conditions laid out for accepting the approved grant in excess of \$15,000. The

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Bureau of Senior Services describes to the grantee the type of audit to be submitted, the procurement requirements, and standards for the audit. Furthermore, the Bureau informs the grantee as to whom and where the audit should be submitted. This is determined by the type of grant. A copy of this form is included in Appendix B. A review of files with the Legislative Auditor's Post Audit Division found that Bureau of Senior Services' grantees were filing audits as required. While not required to inform agencies, DHHR should have some concern that grantees are not having the audits conducted, and that the funds the Division is disbursing have the potential to be mismanaged. **The Legislative Auditor recommends that the Department of Health and Human Resources notify grantees of the reporting requirements set forth in §12-4-14 to help ensure compliance.** In addition, the Legislative Auditor recommends that the Legislature consider **requiring** state agencies to inform grantees of the requirements of §12-4-14.

### **Volunteer Fire Departments are Specifically Required to File Audits or Be Penalized**

West Virginia Code §12-4-14(b) requires volunteer fire departments to file an audit with the Legislative Auditor. If the audit is not received by July 1, the Legislative Auditor:

*...shall notify the state treasurer who shall withhold payment of one thousand dollars from any amount that would otherwise be distributed to the fire department...*

If the volunteer fire department does not file an audit with the Legislative Auditor for three consecutive years, the Legislative Auditor:

*...shall notify the state treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department...*

*The Legislature should consider amending §12-4-14 to financially penalize grantees receiving \$15,000 or more that do not file an independent audit with the Legislative Auditor.*

The Legislative Auditor finds that all grantees receiving over \$15,000 should fall under the same audit reporting requirements as volunteer fire departments. If the grantee does not comply, they will be penalized. **Thus, the Legislative Auditor recommends that the Legislature consider amending §12-4-14 to financially penalize grantees receiving \$15,000 or more that do not file an independent audit with the Legislative Auditor.** The Legislative Auditor finds that this requirement could move grantees to have the independent audit performed if it has not been, and submit it to the Legislative Auditor's Office as required, especially if DHHR informs them of the requirement and the penalties.

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## Conclusion

The Department of Health and Human Resources' grantees are not in compliance with the reporting requirements set forth in §12-4-14 of the West Virginia Code. Compliance with §12-4-14 is necessary to ensure that grant monies are being distributed for the intended purposes. Adherence to this law will also deter the potential for financial mismanagement of funds and/or improper use of the funds by grantees. Evidence from grantees of the Bureau of Senior Services indicates that when grantees are informed of the audit responsibilities, the audits are conducted and reported. The Legislative Auditor recommends that DHHR should inform grantees of the audit and reporting requirements, and that the Legislature should consider adding a provision to §12-4-14 to require all state agencies administering grants to notify grantees of the reporting requirements. In addition, the Legislative Auditor recommends that the Legislature amend §12-4-14 to penalize grantees receiving \$15,000 or more if they do not file an audit report with the Legislative Auditor.

## Recommendations

1. *The Legislative Auditor recommends that the Department of Health and Human Resources notify grantees of the reporting requirements set forth in §12-4-14 to help ensure compliance.*
2. *The Legislative Auditor recommends that the Legislature consider adding a provision to §12-4-14 to require all state agencies administering grants to notify grantees of the reporting requirements.*
3. *The Legislative Auditor recommends that the Legislature consider amending §12-4-14 to penalize grantees receiving over \$15,000 that do not file an independent audit by a certified public accountant with the Legislative Auditor. The statute could be similar to the penalties incurred on volunteer fire departments in WVC §12-4-14(b).*

# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia  
Director

December 22, 2003

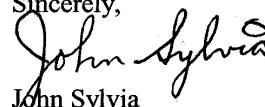
Paul L. Nusbaum, Cabinet Secretary  
Department of Health and Human Resources  
Building 3, Room 206  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Dear Secretary Nusbaum:

This is to transmit a draft copy of the Full Performance Evaluation of the Department of Health and Human Resources. This report is scheduled to be presented during the January 11-13, 2004 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us. We need your written response by noon on January 2, 2004 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, January 8, 2004 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,  
  
John Sylvia

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*Joint Committee on Government and Finance*

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# Appendix B:

BUREAU OF SENIOR SVS 3045580004 12/09 '03 11:22 NO.959 02/08  
 NOTIFICATION OF GRANT AWARD-AREA AGENCY/STATE FUNDS  
 W.VA. BUREAU OF SENIOR SERVICES 3/95  
 STATE CAPITOL NGAISTAT  
 CHARLESTON, WEST VIRGINIA 25305

GRANT #: APPROVED PROGRAM PERIOD:  
 Beginning 7/ 1/03 Ending 6/30/04

TYPE OF GRANT OR ACTION:  
 New or Continuation  
 Revision of earlier grant-  
 Suspended program  
 Terminated program

ACCOUNT NUMBER:  
 5405-2004-0508-200-025  
 0420-2004-0508-203-025

NAME & ADDRESS OF GRANTEE: VENDOR #:

GRANT DESCRIPTION:  
 To provide services under the approved Area Plan for Aging for FY 2004 under the Older Americans Act for Title IIIB services (access, in-home, community & Ombuds/legal), Title IIIC nutrition services, Title IIID preventive health services, Title IIIE caregiver services, and support of other services.

COMPUTATION OF AWARD: TOTAL AWARD

BREAKOUT: ACCOUNT 5405-200(LLOCAL) ACCOUNT 0420-203(AAA)

CHANGE ORDER # CHANGE ORDER #

NET AWARD NET AWARD

REMARKS: The conditions checked below apply to this grant.

1.  Unless revised, the state share indicated above will constitute a ceiling for state participation in the total costs.
2.  This award constitutes an approval of the plan as submitted, or as submitted and modified by the W.Va. Bureau of Senior Services. By accepting this award, the recipient agrees to execute the program in accordance with the plan as approved.
3.  The state share is on a reimbursement basis only for costs already incurred. State funds awarded are conditional upon the continued availability of the funds. Recipients of State Awards of \$15,000 or more must forward a copy of their audit to the WV Legislative Auditor in conformance with S.B. 159(1/92).
4.  In accepting the grant award, the Area Agency agrees to comply with all other applicable regulations, policies, and procedures of the W.Va. Bureau of Senior Services and Dept. of Human Services, Admin. on Aging.
5.  OTHER:

Name & Title of Authorizing Official	Signature	Date of Issuance
Name & Title of Official Authorized to Accept Grant Award and Conditions	Signature	Date of Acceptance



# Appendix C: Agency Response

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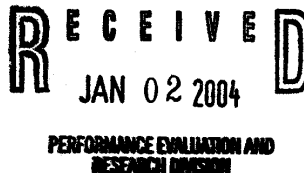
STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise  
Governor

Paul L. Nusbaum  
Secretary

January 2, 2004

Mr. John Sylvia, Director  
Performance Evaluation and Research Division  
West Virginia Legislature  
State Capitol Building, Room W-314  
Charleston, WV 25305



Dear Mr. Sylvia:

Thank you for providing a draft copy for review and response to the Full Performance Evaluation of the Department of Health and Human Resources (DHHR). We wholeheartedly agree with Recommendations #1 and #2 and did propose Recommendation #1 to the Legislative Auditor's Office shortly after passage of the enabling legislation. Furthermore, we would suggest that language be added that a copy of each "audit" also be filed with the state agency issuing the grant. Regarding Recommendation #3, we fully support the insertion of a penalty clause for untimely submission or failure to submit required audits.

To meet the intent of informing grantees of the reporting requirements, we will include appropriate language within the affected future grant agreements. Our experience with DHHR grantees would indicate that these agencies will look to both the Legislative Auditor's Office and DHHR staff for guidance and direction for compliance with the audit reporting requirements. As such, there exists current and anticipated questions/clarifications that need addressed related to this "audit" arena. As the designated recipient of these audits, we are requesting and seeking guidance from the Legislative Auditor's Office concerning the following points:

- Is the meaning of "state funds or grants" as stated in the Code specifically referring to "state only" (general revenue funds)? The words "state funds" could entail a variety of payments.
- What standards and/or pronouncements are independent auditors required to follow when performing their audits: Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Standards (GAGAS)? Is the independent auditor required to justify departures from GAGAS?
- What type of audit is required: a financial audit, performance audit, an attestation engagement or other? If a performance audit is required, should the audit be conducted as an economy and efficiency audit, or a program audit? If an attestation engagement is required, who is to develop the assertion(s) to be tested?
- What is the scope of the audit? Should the audit cover the entire operations of the organization or only specific units, departments or agencies that expended the state funds or grants?

- 
- How would the scope of the audit be affected if the organization were required to have an audit performed in accordance with OMB Circular A-133? Circular A-133 does not require state-funded grants be tested as major programs. Would the grantee be required to have separate “audits” or would an A-133 audit meet the WV Code requirements?
  - Where instances of “findings” are noted on an audit report, whose responsibility is it to initiate a resolution process, the Agency administering the grant; the Legislative Auditor’s Office; or both?
  - If the Legislative Auditor’s Office reviews the audits and deems them unacceptable, are they returned to the audited organization or to the audit firm that conducted the audit? By what criteria are the audits reviewed?
  - If a grantee or an independent certified public accountant has specific questions related to §12-4-14(a), to whom should those questions be addressed, to DHHR; or to the Legislative Auditor’s Office; or both?

We will provide a representative to be present during the 2004 interim meeting of the Joint Committee on Government Operations as you have requested to orally respond to the report and answer any questions.

If you have any questions or need further clarification or information, please let me know. You have my address and I can be reached by phone at 558-1184.

Sincerely,



Danny Franco

Deputy Secretary for Administration

cc: Paul Nusbaum  
Shana Phares  
John Law  
Fred Boothe