

**Colorado HIV and AIDS Prevention  
Grant Program  
Department of Public Health and  
Environment**

**Performance Audit  
July 2013**



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July 29, 2013

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Colorado HIV and AIDS Prevention Grant Program within the Department of Public Health and Environment. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-3-113(2), C.R.S., which states that it is the duty of the State Auditor to conduct program reviews and evaluations of the performance of each tobacco settlement program to determine whether the program is effectively and efficiently meeting its stated goals. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Public Health and Environment.



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## *Glossary of Abbreviations*

**Advisory Committee** – HIV and AIDS Prevention Grant Program Advisory Committee

**AIDS** – Acquired Immune Deficiency Syndrome

**CDC** – Centers for Disease Control and Prevention

**CMS** – Contract Management System

**Department** – Department of Public Health and Environment

**HIV** – Human Immunodeficiency Virus

**nPEP** – non-occupational HIV post-exposure prophylaxis

**OLLS** – Office of Legislative Legal Services

**Program** – Colorado HIV and AIDS Prevention Grant Program

**RFA** – Request for Applications

**STI** – Sexually Transmitted Infection



# COLORADO HIV AND AIDS PREVENTION GRANT PROGRAM

## Performance Audit, July 2013 Report Highlights



Dianne E. Ray, CPA  
State Auditor

Department of Public Health and Environment

### PURPOSE

- Determine whether the grant award and renewal process ensures that grant funding addresses the State's HIV and AIDS prevention and education needs.
- Determine whether the monitoring process is sufficient to ensure that grantees are meeting established project goals and deliverables.

### BACKGROUND

- The Program was created in 2006 to address local community needs in the areas of HIV and AIDS prevention and education.
- The Program is administered by the Department and is funded with revenue from the Tobacco Master Settlement Agreement.
- A seven-member Advisory Committee reviews grant applications and makes grant funding recommendations.

### OUR RECOMMENDATIONS

The Department should:

- Improve the grant solicitation process to better provide targeted coverage of rural areas and respond to emerging needs.
- Improve monitoring activities and take corrective action when appropriate to ensure the timely identification and resolution of grantee performance issues.
- Strengthen the Program's conflict-of-interest policies, procedures, and practices.
- Ensure compliance with Colorado's open meetings law and improve other aspects of Advisory Committee activities.
- Clarify in Program rules and bylaws that the scope of the Advisory Committee's authority and responsibility with respect to the Program is advisory.

The Department agreed with all of our recommendations.

### AUDIT CONCERN

**The Program's effectiveness is undermined by problems with allocating grant awards, poor monitoring of grantee performance, gaps in managing conflicts of interest, noncompliance with Colorado's open meetings law, and a lack of clarity and common understanding about responsibilities and authority for Program administration and oversight.**

### KEY FACTS AND FINDINGS

- As of December 31, 2012, approximately 11,700 people were reported to be living in Colorado with HIV or AIDS.
- Approximately \$11.4 million in funding has been awarded for 160 grant projects since the Program's inception.
- Overall priority setting for Program funding appears reasonable based on state epidemiological profiles and state and national HIV/AIDS needs assessments and prevention strategies.
- The Program is not actively using the grant solicitation process to ensure that funded grants address the needs of both urban and rural residents, that the Program is responding to emerging needs, or that Program funding is being maximized for new projects while holding some resources in reserve for unexpected costs and contingencies.
- Grant project performance thresholds established by the Department were not met for 31 (23 percent) of the 136 performance goals for the 10 sampled projects we reviewed. Problems with grantee performance were not identified in a timely manner for four sampled projects.
- Conflict-of-interest forms for 22 grant applications were not on file for one Advisory Committee member. Additionally, in nine cases an Advisory Committee member reviewed and scored a grant application despite the member's having disclosed some type of personal or professional relationship, affiliation, or interest with the applicant.
- Minutes for five Advisory Committee meetings were not kept, and minutes for four Advisory Committee meetings have not been made publicly available. Not all Advisory Committee meetings receive advance public notice, and meeting notices lack specific agenda information.
- The scope of the Advisory Committee's statutory responsibility and authority have been misunderstood and interpreted too broadly. As a result, the Advisory Committee's role with respect to the Program has grown beyond the General Assembly's intent that the Advisory Committee serve in an advisory, rather than a controlling, capacity.

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## RECOMMENDATION LOCATOR

**Agency Addressed: Department of Public Health and Environment**

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Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	26	Ensure that the State's HIV and AIDS prevention and education needs and other priorities are being fully addressed by: (a) using the RFA to solicit grant applications that provide more targeted coverage of rural areas, (b) issuing out-of-cycle RFAs in response to emerging needs that cannot be incorporated as part of the routine 3-year grant cycle, (c) budgeting and setting aside an amount from each year's Program revenue as a reserve for unexpected costs and contingencies, and (d) specifying in the RFA the maximum amount of funding that will be made available for new grant awards.	Agree	a. December 2013 b. January 2014 c. October 2013 d. October 2013
2	35	Ensure the timely identification of grantee performance issues by: (a) leveraging data from grantees' monthly progress reports on individual project goals to measure and report on project-wide performance; (b) formally establishing a performance threshold in monitoring policies and procedures and in grant contracts; (c) establishing a risk-based monitoring approach that includes conducting a programmatic site visit to all grantees within the first year of the grant; and (d) utilizing standard monitoring tools, forms, and logs to guide and document routine monitoring activities.	Agree	December 2013

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**RECOMMENDATION LOCATOR**

**Agency Addressed: Department of Public Health and Environment**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Response</b>	<b>Implementation Date</b>
3	36	Ensure grantee performance by: (a) taking corrective action when the results of monitoring activities show substantial underperformance with respect to project goals established in the grant contract, (b) amending Program rules and revising the grant application scoring sheet to include prior grant performance as a factor that must be considered by the Advisory Committee when reviewing grant renewal applications and making funding recommendations, and (c) establishing a formal process by which the results of the Department's monitoring activities and assessment of grantee performance will be communicated to the Advisory Committee when reviewing and scoring grant renewal applications.	Agree	a. August 2013 b. November 2013 c. November 2013
4	44	Strengthen the overall conflict-of-interest framework established for the Program by: (a) clarifying and simplifying the standard conflict-of-interest disclosure form used by Advisory Committee members when reviewing grant applications, (b) providing training or orientation on an annual basis to Advisory Committee members about conflict-of-interest policies and procedures and the standard conflict-of-interest disclosure form, (c) improving monitoring for compliance with established conflict-of-interest policies and procedures, and (d) formally adhering to Robert's Rules of Order during those Advisory Committee meetings in which grant applications and renewals are reviewed and discussed.	Agree	a. October 2013 b. November 2013 c. December 2013 d. December 2013

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**RECOMMENDATION LOCATOR**

**Agency Addressed: Department of Public Health and Environment**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Response</b>	<b>Implementation Date</b>
5	53	Ensure compliance with Colorado's open meetings law by: (a) taking and publicly posting minutes for all Advisory Committee activities that constitute a public meeting, (b) ensuring that proper meeting notices and agenda details are publicly posted in advance of any Advisory Committee activities that meet the definition of a public meeting, (c) utilizing conference calls instead of email correspondence whenever two or more Advisory Committee members are discussing public business or any formal action may be taken and an in-person meeting cannot be held, and (d) amending the Advisory Committee's bylaws to include specific procedural guidance about the requirements of Colorado's open meetings law.	Agree	September 2013
6	54	Ensure the Advisory Committee's ability to effectively carry out its statutory responsibilities with respect to the competitive grant process by: (a) holding Advisory Committee members accountable for attending scheduled meetings and completing advance review and scoring of assigned grant applications, (b) amending the Advisory Committee's bylaws to adjust the length and/or staggering of members' terms to align better with the overall 3-year grant cycle and eliminate the requirement that sitting members rotate off the Advisory Committee for 1 year before being reappointed, and (c) increasing efforts to recruit candidates to serve on the Advisory Committee when vacancies occur.	Agree	November 2013
7	61	Clarify that the scope of the Advisory Committee's authority and responsibility with respect to the Program is advisory in nature, and work with the Board of Health and the Advisory Committee to revise Program rules and Advisory Committee bylaws accordingly.	Agree	April 2014

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# Overview of the Colorado HIV and AIDS Prevention Grant Program

## Chapter 1

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It has been more than 30 years since the first cases of Acquired Immune Deficiency Syndrome (AIDS) were reported in 1981. AIDS is caused by the Human Immunodeficiency Virus (HIV). The virus lives in the blood and other bodily fluids and causes severe damage to the body's immune system, which makes it difficult for the body to fight otherwise harmless infections. It is the body's inability to fight infections that can be deadly. HIV is most commonly diagnosed by testing the blood or saliva for the presence of antibodies to the virus. A person infected with HIV can feel and look fine for many years; however, on average, individuals will start showing symptoms of a weakened immune system within 10 years of being infected. HIV-positive individuals are diagnosed with AIDS when they have certain signs or symptoms defined by the federal Centers for Disease Control and Prevention (CDC).

The CDC estimates that in 2012 approximately 1.2 million people were living with HIV in the United States. The CDC also estimates that approximately 20 percent of Americans with HIV infection are unaware of their status and are therefore at considerable risk for developing AIDS or unknowingly transmitting HIV.

## HIV and AIDS in Colorado

Health care providers, laboratories, and local health departments are required by state law [Sections 25-4-1402(1) and (2), C.R.S.] to report certain information to the Department of Public Health and Environment (the Department) about known cases of HIV infection, HIV-related illness, AIDS diagnosis, and death from HIV infection. Reporting requirements help state and local health departments develop programs that reduce the spread of HIV. Case reporting also helps ensure that people living with HIV and AIDS receive treatment as early as possible and that partners who have been exposed to the virus receive HIV testing.

According to the Department's fourth quarter 2012 HIV surveillance report, as of December 31, 2012, approximately 17,300 people have been diagnosed with HIV infection in Colorado since tracking of diagnoses began; of those, more than 5,600 people have died as a result of the disease. Approximately 11,700 people were reported to be living in Colorado with HIV or AIDS. The number of new

HIV cases in Colorado has remained steady at about 407 new cases per year on average. Overall, among all those diagnosed with HIV, 44 percent also have a documented AIDS diagnosis. Geographically, the highest concentration of HIV and AIDS cases is in the Denver Metropolitan Area (Adams, Arapahoe, Denver, Douglas, and Jefferson Counties). However, people living with HIV or AIDS reside in all areas of the state.

According to the *Colorado 2012 Statewide Coordinated Statement of Need*, which is a planning document developed by the Department in cooperation with providers and other stakeholders, males make up 89 percent of all people in Colorado living with HIV/AIDS, and females make up the remaining 11 percent. However, the proportion of female cases outside of the Denver Metropolitan Area is somewhat higher (15 percent). The proportion of female cases inside the Denver Metropolitan Area is 10 percent. The majority of all HIV/AIDS cases (65 percent) are among people over the age of 44, reflecting the current trend of people living with HIV/AIDS living longer. African Americans are disproportionately represented among Colorado HIV/AIDS cases, accounting for 14 percent of the cases and only 4 percent of the state's population. Whites are somewhat underrepresented among Colorado HIV/AIDS cases, accounting for 64 percent of the cases and 70 percent of the state's population. Latino cases are more proportionate to the Latino population numbers, accounting for 19 percent of Colorado HIV/AIDS cases and 21 percent of the state's population.

## **Colorado HIV and AIDS Prevention Grant Program**

Established in 2006 by House Bill 06-1054, the Colorado HIV and AIDS Prevention Grant Program (the Program) is a statewide competitive grant program created to address local community needs in the areas of medically accurate HIV and AIDS prevention and education. The Program's enabling statutes (Sections 25-4-1413 through 1415, C.R.S.) outline a number of parameters and requirements to help target the grant funding:

- Preference is given to those applicants that have HIV and AIDS prevention and education as one of their primary purposes.
- Grants are only given for medically accurate HIV and AIDS prevention and education programs that are based in behavioral and social science theory and research.
- Grants are not subject to the same restrictions as grants provided with federal monies for HIV and AIDS prevention, although the distribution of federal funds in the areas of HIV and AIDS prevention, education, and treatment should be considered.

- Grants should be distributed statewide and address the needs of both urban and rural residents of Colorado.

Prior to Fiscal Year 2010, grants were awarded on a variable schedule and with different grant performance periods. Starting in Fiscal Year 2010, the Program moved to a standard 3-year grant cycle, with initial grant awards made in the first year and then renewed annually for the second and third years. Also, all grants now have a 1-year performance period.

As shown in the following table, a total of approximately \$11.4 million in funding has been awarded for 160 grant projects since the Program's inception. Examples of services funded by Program grants include outreach events; peer-to-peer counseling and education, including counseling and education about safer sex and injection drug use practices; HIV testing, counseling, and referral services; condom distribution; syringe exchange services; and hepatitis C virus testing.

<b>Colorado HIV and AIDS Prevention Grant Program Grant Projects and Funding by Fiscal Year Fiscal Years 2007–2013</b>		
<b>Fiscal Year</b>	<b>Number of Grants</b>	<b>Total Grant Funding<sup>1</sup></b>
2007	14	\$ 87,400
2008	24	\$ 1,683,500
2009	34	\$ 2,049,100
2010	22	\$ 2,477,200
2011	22	\$ 1,875,700
2012	23	\$ 1,525,600
2013	21	\$ 1,693,700
<b>Total, All Grants</b>	<b>160</b>	<b>\$11,392,200</b>
<b>Source:</b> Office of the State Auditor's analysis of data provided by the Department of Public Health and Environment.		
<sup>1</sup> Rounded to the nearest hundred dollars. This amount represents the total funding encumbered by the grant contract and includes the initial grant award amount plus additional supplemental awards and funding adjustments made during the course of the fiscal year.		

## Program Funding

The Program is funded as part of Colorado's portion of the Tobacco Master Settlement Agreement. The Tobacco Master Settlement Agreement is the product of a 1998 settlement between tobacco manufacturers and states, which sued tobacco manufacturers in the mid-1990s to recover Medicaid and other health-related costs incurred as a result of smoking. The Tobacco Master Settlement Agreement provides Colorado with an annual revenue stream that is directed through statutory formulas to a wide variety of programs, primarily in the area of public health. In accordance with these statutory formulas [Section 24-75-1104.5, C.R.S., and Section 25-4-1415(3), C.R.S.], the Program receives 2 percent of the

revenue from the Tobacco Master Settlement Agreement up to a maximum of \$2 million each fiscal year, which gets credited to the AIDS and HIV Prevention Fund. In Fiscal Year 2013, the Department was appropriated \$2.1 million from the AIDS and HIV Prevention Fund for the Program.

## Program Administration

There are a number of different entities that have roles and responsibilities with respect to the Program:

- **The Department of Public Health and Environment.** State statute [Section 25-4-1413(1), C.R.S.] assigns the Department responsibility and authority for administering the Program. Organizationally, the Program is located within the Department's STI/HIV/Viral Hepatitis Section, the purpose of which is to reduce sexually transmitted infections (STI), HIV infections, and viral hepatitis infections and provide quality STI, HIV, and viral hepatitis care and treatment services for all persons in Colorado. The Program is appropriated 1.2 full-time-equivalent positions. However, approximately six STI/HIV/Viral Hepatitis Section staff have responsibilities related to the Program, including the HIV prevention program coordinator, two program consultants, two fiscal monitors, and a contract specialist. State statute [Section 25-4-1415(3), C.R.S.] specifies that the Department may receive up to 5 percent of the total monies annually appropriated from the AIDS and HIV Prevention Fund for the actual costs incurred in administering the Program. For example, in Fiscal Year 2013, the 5-percent administrative cost allowance totaled approximately \$106,870, of which about \$75,650 was for personal services and the remaining \$31,220 was for operating expenses. The Department uses other resources to pay for the Program's administrative costs in excess of those that can be reimbursed through the AIDS and HIV Prevention Fund.
- **The HIV and AIDS Prevention Grant Program Advisory Committee (the Advisory Committee).** The seven-member Advisory Committee reviews and scores grant applications and makes recommendations on grant awards, award amounts, and the duration of the awards to the Board of Health and the Department's Executive Director. The Advisory Committee also recommends rules to be adopted by the Board of Health regarding matters such as grant application contents, procedures, and timelines; grantee reporting requirements; and criteria for reviewing and selecting grant applications. State statute [Section 25-4-1414(1)(a), C.R.S.] establishes the Advisory Committee membership as follows:
  - One member recommended by the Department's health equity commission.



- Four members recommended by the Colorado HIV and AIDS Care and Prevention Coalition, which assists the Department in its comprehensive plan for HIV and AIDS prevention.
- One member who has expertise in HIV and AIDS prevention and education.
- One member who represents a clinic that receives monies under the federal Ryan White CARE Act of 1990.
- **The Board of Health.** The Board of Health makes the final decision for awarding grants, including the amount and duration of each grant award, based on recommendations made by the Advisory Committee and the Department's Executive Director. The Board of Health also has rulemaking authority with respect to the Program.
- **Grantees.** In accordance with state statute [Section 25-4-1413(2), C.R.S.], entities eligible to receive grant funding are limited to nonprofit organizations or local public health agencies. Grantees, also referred to as contractors by the Department, are responsible for delivering the prevention and education interventions and outreach agreed upon in their approved grant contracts. Other requirements for grantees include submitting monthly progress reports and requests for reimbursement to the Department, attending trainings and meetings as needed, and submitting a final evaluation report at the end of the grant period.

## Audit Purpose, Scope, and Methodology

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-3-113, C.R.S., which states that it is the duty of the State Auditor to conduct program reviews and evaluations of the performance of each Tobacco Settlement program. Audit work was performed from October 2012 through July 2013. We acknowledge the cooperation and assistance provided by management and staff at the Department of Public Health and Environment and by members of the HIV and AIDS Prevention Grant Program Advisory Committee.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The overall objectives of this audit were to (1) determine whether the grant award and renewal process ensures that grant funding addresses the State's identified HIV and AIDS prevention and education needs, including that award decisions take grantees' past performance into consideration, and (2) determine whether the Department's monitoring process for identifying and resolving concerns about grantee performance is sufficient to ensure that grantees are complying with applicable statutes, rules, and contract requirements, including meeting established project goals and deliverables.

To accomplish our audit objectives, we:

- Researched state laws and rules, Advisory Committee bylaws, and other policies and procedures pertaining to the Colorado HIV and AIDS Prevention Program.
- Interviewed Department management and staff and members of the Advisory Committee.
- Gathered and analyzed documentation and data on grant awards, monthly progress reports, grant monitoring activities, Advisory Committee membership, and Advisory Committee members' completed conflict-of-interest forms.
- Reviewed and analyzed information on Advisory Committee activities, including reviewing all available meeting minutes, listening to audio recordings of four meetings, and observing two meetings.
- Compared and contrasted the Advisory Committee's statutory responsibilities and authority with the statutes for several other statewide competitive grant programs that have committees, commissions, or boards involved in reviewing grant applications and making funding recommendations.

We relied on sampling techniques to support our audit work in one area. Specifically, we selected a nonstatistical sample of 10 of the 22 projects awarded grant funding during the Fiscal Year 2010–2012 grant cycle. We designed our sample to help provide sufficient, appropriate evidence for the purpose of evaluating the Department's process for monitoring grantee performance.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in the body of the report.

The scope of our audit did not include HIV and AIDS prevention, education, and treatment activities funded with federal funds; the AIDS Drug Assistance Program, which is another Tobacco Settlement program administered by the Department; or the Department's HIV and AIDS surveillance and reporting activities.

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# Program Effectiveness

## Chapter 2

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In 2006, the General Assembly created the Colorado HIV and AIDS Prevention Grant Program (the Program) to address local community needs in the areas of medically accurate HIV and AIDS prevention and education. Funding for the Program comes from revenue the State receives as part of the Tobacco Master Settlement Agreement between states and tobacco manufacturers. To date, approximately \$11.4 million in total funding has been awarded through the Program for 160 grant projects.

The Department of Public Health and Environment (the Department) administers the Program. The seven-member HIV and AIDS Prevention Grant Program Advisory Committee (the Advisory Committee) reviews and scores grant applications and makes recommendations on grant awards, award amounts, and the duration of the awards to the Board of Health and the Department's Executive Director. The Advisory Committee also recommends rules to be adopted by the Board of Health regarding matters such as grant application contents, procedures, and timelines; grantee reporting requirements; and criteria for reviewing and selecting grant applications.

The Program was created to help address the HIV and AIDS education and prevention needs of both urban and rural residents of Colorado and to provide state funding for HIV and AIDS education and prevention efforts in areas where federal monies may be unavailable or restricted. However, as described in the remainder of this chapter, we identified problems in several key areas that undermine the Program's overall effectiveness.

Specifically, we found that (1) the grant solicitation process is not used to provide targeted coverage of rural areas of the state or respond to emerging needs; (2) problems with grantee performance are not identified in a timely manner; (3) grantees are not held accountable when project goals established in the grant contract are not met; (4) gaps exist in the process for managing Advisory Committee members' conflicts of interest; (5) the Advisory Committee is not complying with Colorado's open meetings law; (6) turnover, vacancies, and members' lack of attendance at and preparedness for meetings make it difficult for the Advisory Committee to accomplish its core business activities; and (7) there is a lack of clarity and common understanding about the division of responsibilities and authority between the Department and the Advisory Committee with respect to Program administration and oversight.

## Grant Award Allocations

The Program runs on an overall 3-year grant cycle. The first step in the grant-making process is to develop funding priorities for each grant cycle, which are included in a Request for Applications (RFA). The Department develops the RFA in consultation with the Advisory Committee. The RFA is the official solicitation for grant applications and outlines the risk areas and funding priorities for each grant cycle to guide applicants when designing the scope of their proposed projects. The RFA also outlines a number of different requirements that must be addressed in the grant application, including: how the proposed project meets at least one of five evidence-based criteria, how the proposed project aligns with the priorities or emphasis areas established for the grant cycle, and how the proposed project's effectiveness will be monitored with an evaluation plan that includes both process and outcome measures. Applicants must also include information about the community or population that will be served or targeted, the geographical area that will be served, the activities that will be implemented to meet program goals and objectives, the implementation steps and timelines, the roles and responsibilities of staff funded through the grant, and a detailed operating budget and budget narrative.

Grant applications are reviewed and approved through a multistep process. First, Department staff perform a technical review to evaluate each application for completeness and compliance with the requirements outlined in the RFA. Only complete grant applications are assigned to the Advisory Committee for review.

Second, Advisory Committee members independently review their assigned applications. The Advisory Committee has the statutory responsibility for reviewing applications and making funding recommendations [Section 25-4-1414(2), C.R.S.]. Typically, each application is reviewed and scored by at least three Advisory Committee members who note the strengths and weaknesses of each section of the application, score the application based on a list of specific criteria, and assign an overall score.

Third, the Advisory Committee meets to discuss each application; based on the discussion, Advisory Committee members may revise their scoring. Final scores are averaged and only applications with average scores of 65 points or more on a 100-point scale receive further consideration for funding. The projects are ranked by average score, and the Advisory Committee discusses and then votes on these projects to make its final funding recommendations. The discussion and votes take into consideration various factors such as the need for and significance of the project, the target population/community to be served, the type of project, geographic distribution, and the distribution of federal funds.

Finally, the Advisory Committee's recommendations about which projects to award and at what funding levels are forwarded to the Board of Health and the Department's Executive Director. The Department's Executive Director also provides separate grant award recommendations to the Board of Health; however, in practice the Executive Director's recommendations correspond with those of the Advisory Committee. In accordance with state statute [Section 25-4-1414(2), C.R.S.], the Board of Health has the final approval authority on project awards and funding.

### **What audit work was performed and what was the purpose?**

We reviewed state statutes and rules to gain an understanding of the funding requirements and priorities for the Program. We interviewed Department staff and Advisory Committee members and reviewed Advisory Committee meeting minutes and RFAs to gain an understanding of the process for setting funding priorities for the Fiscal Year 2010–2012 and Fiscal Year 2013–2015 grant cycles. We reviewed state and national HIV/AIDS needs assessments and prevention strategies and various other documents reporting on epidemiological data related to HIV and AIDS cases in Colorado. Finally, we compiled and analyzed data from the 21 grant applications that were approved for \$1.7 million in total funding for the current grant cycle (Fiscal Years 2013–2015).

The purpose of our audit work was to determine whether the Program is effective at ensuring that funded grant projects address the State's HIV and AIDS prevention and education needs and other established priorities.

### **How were results of the audit work measured?**

As discussed previously, the Program is intended to address local community needs in the areas of medically accurate HIV and AIDS prevention and education. The overall need for HIV/AIDS prevention and education efforts is well established by state and national needs assessments and strategies and various other epidemiological and surveillance data. For example, as of June 30, 2012, approximately 11,500 individuals in 61 of Colorado's 64 counties were living with HIV or AIDS. The June 30, 2012, data were the most recent data available to the Department and the Advisory Committee at the time final grant funding decisions were made for the current grant cycle (Fiscal Years 2013–2015). Approximately 200 new HIV/AIDS cases were diagnosed between June 30, 2012, and December 31, 2012.

State statute provides little direction for how grant funds available through the Program should be allocated. However, one requirement that is specified in statute is coverage of both urban and rural areas. Section 25-4-1414(2), C.R.S., states:

In reviewing and approving grant applications, the Advisory Committee and the State Board [of Health] shall ensure that grants are distributed statewide and address the needs of both urban and rural residents of Colorado.

Although the need for services is extensive in Colorado, funding for the Program is limited. The Program receives 2 percent of the total amount of Tobacco Settlement monies, not to exceed \$2 million in any fiscal year. Although HIV-related services and supports are also funded through the federal Ryan White CARE Act of 1990, the Program is an important part of providing state funding for HIV and AIDS education and prevention efforts in areas where federal monies may be unavailable or restricted.

Given the extensive need and limited resources, the Department, Board of Health, and Advisory Committee must be strategic in the targeting of grant solicitations and the allocation of grant funding through the Program. The Program must successfully balance the fact that there is a need for HIV/AIDS education and prevention efforts in virtually all areas of the state with the fact that certain areas and populations may have more needs and different types of needs than others. Additionally, the Program must be able to remain responsive to changing and emerging needs while weathering variability in funding levels.

### **What problem did the audit work identify?**

Overall, we found that the process for developing the RFA for each grant cycle provides reasonable assurance that the Program's funding priorities take into consideration relevant risks, trends, and gaps identified in state epidemiological profiles and state and national HIV/AIDS needs assessments and prevention strategies. For example, the RFA for the current grant cycle (Fiscal Years 2013–2015) outlined the priority populations listed below. These priorities are consistent with some of the state's high-risk populations as well as specific behaviors that are associated with increased risk of HIV transmission:

- High-Risk Women of Color
- Injection Drug Users
- Men Who Have Sex with Men (those residing outside the Denver Metropolitan Area)
- Persons Transitioning from Incarceration or Recently Paroled



- High-Risk Youths (especially homeless youths, those involved in survival sex, adjudicated youths, and youths with a history of sexually transmitted infections)

The RFA for the current grant cycle also appeared to be responsive to how changes in the National HIV/AIDS Strategy and federal funding might affect the use of Program funds to address gaps in prevention. State statute [Section 25-4-1414(2), C.R.S.] requires the Advisory Committee to consider the distribution of federal funds in the areas of HIV and AIDS prevention, education, and treatment when making recommendations for grant awards. Funds available through the federal Centers for Disease Control and Prevention (CDC) are now being targeted to the five-county Denver Metropolitan Area (Adams, Arapahoe, Denver, Douglas, and Jefferson Counties). The RFA for the current grant cycle lists men who have sex with men as a priority population, but only for those residing outside the Denver Metropolitan Area. The RFA also allows HIV testing to be included in proposed grant projects, but a project that consists solely of HIV testing can only provide coverage of areas outside the Denver Metropolitan Area.

Although the overall priority setting for Program funding appears reasonable based on state epidemiological profiles and state and national HIV/AIDS needs assessments and prevention strategies, we identified three areas where a more active management of grant award allocations is needed to ensure that grant funds are targeted and used effectively.

### **Urban/Rural Coverage**

According to surveillance and epidemiological data maintained by the Department, urban counties contain a larger portion of people diagnosed with HIV and AIDS relative to rural counties. However, these data also show a need for HIV and AIDS prevention and education efforts in rural areas of the state. Additionally, the Program's enabling statute requires a statewide distribution of grants to address the needs of both urban and rural residents. We analyzed the geographical coverage provided by grant projects funded under the Program and found that rural counties in Colorado receive less coverage relative to the urban counties.

In accordance with Program rules, eight counties in Colorado (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson Counties) are designated as "urban" because they have one or more population centers of 50,000 persons or more *and* 250 or more reported HIV/AIDS cases. Colorado's remaining 56 counties are designated as "rural" under Program rules. Some counties with larger population centers (e.g., Larimer, Mesa, Pueblo, and Weld Counties) are classified as rural because the number of reported HIV/AIDS cases in those counties is fewer than 250 cases.

We compiled and analyzed the project coverage areas on a county-by-county basis for each of the 21 grants that were approved for funding in the current grant cycle (Fiscal Years 2013–2015). We also used HIV surveillance data reported by the Department in which the counties are rank ordered based on HIV case rate data. The HIV case rate is the number of newly diagnosed HIV cases diagnosed between January 1, 2008, and June 30, 2012 per 100,000 population. The table in the Appendix provides the county-level detail for the following results:

- **Urban Coverage.** All eight urban counties were covered by funded grant projects. On a county-specific basis, each urban county was covered by an average of eight different funded grant projects (a minimum of three projects covered Broomfield County and maximum of 16 projects covered Denver County).
- **Rural Coverage.** Five of the state's 56 rural counties were not covered by any funded grant projects, despite the fact that two of these rural counties (Morgan and Phillips Counties) had an HIV case rate that was higher than the case rate for two urban counties (Broomfield and Douglas Counties). Each of the 51 remaining rural counties was covered by an average of three different funded grant projects (a minimum of one project covered Clear Creek, Gilpin, and Logan Counties, and a maximum of seven projects covered Larimer County). When the individual counties are rank ordered based on their HIV case rates, seven of the top 10 counties are rural.

Additionally, although funding is not awarded on a county-by-county basis, it is clear that Program funding overall remains more concentrated in urban areas. We estimated that projects covering urban counties account for approximately \$1.1 million (65 percent) of the total \$1.7 million awarded in the current grant cycle (Fiscal Years 2013–2015). Projects covering rural counties account for the remaining \$0.6 million (35 percent). The concentration of funding in urban counties is also evident on a project-specific basis. For example, we identified a grant project with a budget of \$100,000 (the maximum allowable grant award amount) that provides coverage of only one urban county, whereas another grant project with a budget of \$100,000 provides coverage of 48 rural counties and one urban county.

Our analysis provides a high-level overview of the distribution of grants covering urban and rural areas of the state. However, the results of our analysis must be interpreted carefully. Although state statute requires grants to be distributed to address the needs of both urban and rural residents, there is no statutory requirement that this distribution or the associated funding amounts be equal. Our analysis also is not intended to account for differences in the types of interventions that are offered in urban versus rural areas of the state. Finally, three counties (Boulder, Broomfield, and El Paso Counties) classified as “urban” under

the Program rules are not within the five-county Denver Metropolitan Area targeted for federal funding. Therefore, grants providing coverage of these urban counties help to fill a gap in the distribution of federal funding, which is another consideration that the Program's enabling statute requires.

### **Emerging Needs**

The way the Program's competitive grant process currently operates does not provide sufficient flexibility to address newly identified needs for HIV and AIDS prevention and education or changes in other programs that provide services to Colorado residents living with HIV or AIDS. The Department routinely keeps the Advisory Committee apprised of new HIV and AIDS prevention needs that emerge or changes in federal funding that may occur in between the grant cycles. However, we identified one recent failed attempt to use the Program to help address emerging needs related to HIV and AIDS prevention.

Specifically, federal HIV prevention funding initiatives changed recently, focusing funding on those locations in Colorado with the highest concentration of HIV/AIDS cases (i.e., the five-county Denver Metropolitan Area.) This change in the federal funding strategy created a gap in HIV prevention services within the state because federal funds were no longer available for certain activities, such as statewide condom distribution. The Department also had identified a statewide need for non-occupational HIV post-exposure prophylaxis (nPEP), whereby an individual exposed to HIV has 72 hours to receive treatment to try and eliminate the likelihood of developing HIV. The Department first approached the Advisory Committee with these emerging needs in July and October 2012 and was encouraged by the Advisory Committee to put together proposals for the projects. The Department identified two eligible grantees and in December 2012 brought forward formal proposals to the Advisory Committee requesting that Program funding be set aside for two focused interventions: (1) condom distribution and associated risk-reduction materials for areas outside the federally funded five-county Denver Metropolitan Area and (2) nPEP treatment. The Advisory Committee members acknowledged the importance of building infrastructure in the state to promote various HIV prevention strategies and interventions. However, members also expressed concerns that the proposals were being considered outside of a competitive grant process, that setting aside funding part-way into the grant cycle might negatively affect funding for currently approved grantees, and that the proposed interventions may not fit within the Program's overall intent.

The Advisory Committee ultimately did not recommend funding for the proposals. Neither the Department nor the Advisory Committee took any other action to address these needs, such as issuing an out-of-cycle RFA. As a result, projects to distribute condoms outside the five-county Denver Metropolitan Area

or to offer nPEP treatment will not be considered for funding by the Program until the Fiscal Year 2016–2018 grant cycle.

### **Fund Management**

The Department and the Advisory Committee do not manage the Program's funding to ensure that resources are maximized for new projects while holding some resources in reserve for unexpected costs and contingencies, such as emerging needs or lower-than-anticipated revenues.

Total Program funding ranged between \$1.8 and \$2 million per year for Fiscal Years 2010 through 2013. Program funds are credited to the AIDS and HIV Prevention Fund. The amount of annual funding is variable because the State's Tobacco Settlement payment is based, in part, on annual tobacco product sales. Additionally, the State does not receive the Tobacco Settlement monies until the last quarter of each fiscal year. Therefore, each year, the Office of the State Treasurer provides the Department with an estimate of the total funding that will be available for the Program. The Department provides this estimate to the Advisory Committee to assist with making funding recommendations for initial grant awards and grant renewals.

We compared the estimated and actual amounts of Program funding available for Fiscal Years 2010 through 2013 and found the difference between the estimated and actual amounts was minimal, ranging between 0 and 1.7 percent. Therefore, the estimate of the Program's annual Tobacco Settlement funding appears to be sufficiently reliable for the Department and Advisory Committee to use as a basis for grant award purposes.

We also compared the total dollar amount of grant awards recommended by the Advisory Committee and subsequently approved by the Board of Health with the amount of new Tobacco Settlement funding available for Fiscal Years 2010 through 2013. As shown in the following table, the Program has consistently awarded grant funds exceeding the total amount of new Tobacco Settlement funds available. Overages total nearly \$1 million over this 4-year period and range from \$39,200 (2.2 percent) in Fiscal Year 2012 to \$457,800 (24.3 percent) in Fiscal Year 2011.

<b>Colorado HIV and AIDS Prevention Grant Program                      Program Funding and Grant Awards                      Fiscal Years 2010–2013</b>				
<b>Fiscal Year</b>	<b>Total New Funding Available<sup>1</sup></b>	<b>Total Grant Awards</b>	<b>Difference</b>	<b>Difference as a Percentage of New Funding Available</b>
2010	\$1,996,300	\$2,390,100	(\$393,800)	19.7%
2011	\$1,887,700	\$2,345,500	(\$457,800)	24.3%
2012	\$1,781,200	\$1,820,400	(\$39,200)	2.2%
2013	\$1,786,000	\$1,893,200	(\$107,200)	6%

**Source:** Office of the State Auditor’s analysis of grant award data provided by the Department of Public Health and Environment (the Department) and data from the Colorado Financial Reporting System. Dollar amounts are rounded to the nearest hundred dollars.

<sup>1</sup> Amount of new Tobacco Settlement funds available, as estimated by the Office of the State Treasurer and provided to the Department on an annual basis. Does not include existing uncommitted reserves in the AIDS and HIV Prevention Fund.

These overages do not mean the Department overspent its appropriation. The differences shown in the table were covered by an existing fund balance in the AIDS and HIV Prevention Fund. Section 25-4-1415(1), C.R.S., allows any funds not spent by the Program in a given fiscal year to be retained in the AIDS and HIV Prevention Fund and used for grant awards in future years. The year-end fund balance was \$1.4 million in Fiscal Year 2009. By recommending grant funding in excess of new Program revenues, the Advisory Committee effectively spent down the existing fund balance.

Spending down the fund balance is an important part of ensuring that Program resources are being utilized for projects. However, the pattern of grant awards over the past several years has left the Program without any reserves. As shown in the table below, the year-end fund balance fell by 88 percent, from \$1.4 million in Fiscal Year 2009 to \$170,700 in Fiscal Year 2012. Total program revenues decreased by 14 percent over the same period.

<b>Colorado HIV and AIDS Prevention Grant Program                      AIDS and HIV Prevention Fund                      Revenues, Expenditures, and Fund Balance as of June 30                      Fiscal Years 2009–2012</b>					
	Fiscal Year				Percentage Change 2009–2012
	2009	2010	2011	2012	
<b>Revenues</b>	\$2,076,541	\$2,044,599	\$1,889,898	\$1,785,086	-14%
<b>Expenditures</b>	\$2,273,815	\$2,958,074	\$2,357,636	\$1,659,576	-27%
<b>Fund Balance</b>	\$1,426,381	\$ 512,906	\$ 45,168	\$ 170,678	-88%

**Source:** Colorado Financial Reporting System.

Even with this minimal fund balance, the Advisory Committee recommended and the Board of Health funded awards for the first year of the current grant cycle (Fiscal Year 2013) totaling approximately \$1.9 million, which was about \$107,200 (6 percent) more than the estimated new Program funding available. The Program did not end up with a shortfall because of some reversions of funds from grantees who did not fully expend their awards. However, without sufficient reserves to renew grants and sustain the same funding levels for the second year of the current grant cycle (Fiscal Year 2014), in April 2013 the Advisory Committee recommended cutting by 4.5 percent the second-year funding for all grantees.

## **Why did the problem occur?**

### **Request for Applications**

Similar to other grant programs, the pool of grant projects funded through the Program is ultimately dependent upon the Program's receiving viable and competitive applications that meet the criteria outlined in the RFA. Although the RFA identifies specific high-risk populations and behaviors and outlines overall funding priorities (including rural areas of the state), the RFA nonetheless remains a broad call for applications that occurs only once every 3 years.

First, the Department and the Advisory Committee are not using the RFA to solicit applications for grant projects that provide more targeted coverage of rural areas of the state. There are several avenues available for achieving a more targeted RFA. For example, the Department and the Advisory Committee could create a separate RFA with a separate funding allocation that runs concurrently with the overall 3-year grant cycle but limits the eligible applicant pool to those projects that provide coverage and interventions in rural areas. Alternatively, the Department and the Advisory Committee could continue to issue a single RFA but create a carve-out of funding specifically for interventions targeted to rural areas. Neither of these options has been pursued. During its September 2011 meeting, the Advisory Committee was working with the Department to develop the RFA for the current grant cycle (Fiscal Years 2013–2015). We noted through our review of meeting minutes that Advisory Committee members discussed instituting a clear breakdown for how Program funds would be allocated (e.g., 60 percent rural and 40 percent urban), yet the final RFA did not include a set allocation of funds between urban and rural locations. The Advisory Committee could also give more points to those grant applications that provide coverage of rural areas; however, having a well-targeted RFA is the most direct way to increase the likelihood of receiving viable and competitive applications that provide the desired coverage.

Second, the Department and the Advisory Committee are not using out-of-cycle RFAs as a way to respond to emerging needs that cannot be incorporated and prioritized as part of the routine 3-year grant cycle. As discussed previously, the Department identified needs related to condom distribution outside the Denver Metropolitan Area and nPEP treatment. However, the Advisory Committee was not supportive of the projects, in part, because they were not solicited as part of a competitive grant cycle. Program rules allow for the release of up to two RFAs in any given year, which offers some additional flexibility to the Program. However, the Department and the Advisory Committee have not pursued this option. Responding effectively to emerging needs through a grant-making process requires the ability to have several different funding initiatives running concurrently when warranted.

### **Reserve Amounts**

Although the Program receives a reliable estimate of new funding on an annual basis, the Department and the Advisory Committee do not budget and set aside a specific amount of the annual Program revenue as a reserve for unexpected costs and contingencies, such as emerging needs or lower-than-anticipated funding levels. Based on our review of Advisory Committee meeting minutes and interviews with Department staff and Advisory Committee members, there was some effort to maintain a reserve amount in the past. However, there has also been disagreement between the Department and the Advisory Committee as to how available funds should be utilized. The Advisory Committee has expressed a desire to award as much funding as possible to grantees. The Department has expressed a desire to see some reserves maintained, but it has warned that any uncommitted funds are at risk of being targeted for use on other programs. For example, in Fiscal Year 2010, the General Assembly transferred \$187,300 in Program funding to other programs. Establishing an appropriate reserve will require consideration of annual Program revenues, existing grant obligations, and planned allocations for new awards, out-of-cycle awards, and other unexpected costs and contingencies. If there is no need to utilize the reserve during a grant cycle, those funds could be used to augment funding for existing projects or rolled into the next grant cycle.

The Department and the Advisory Committee also do not allocate a specific amount of funding for new awards when developing the RFA. For example, the RFA for the current grant cycle (Fiscal Years 2013–2015) only states “Between \$1.2–2 million is available to support multiple projects.” Setting a specific amount of funding available for new awards in the RFA provides a definitive upper limit to guard against the over-awarding of grant funds and is a key control for successfully maintaining a reserve amount from each year’s Program revenues. Potential grant applicants would also benefit from having more-specific information about the amount of funds available for awards.

### **Why does this problem matter?**

Without funded grant projects that provide statewide coverage of both urban and rural areas, or a grant-making process that can be responsive to emerging needs, there is a risk that the Program is not using its limited funding to address the State's HIV and AIDS prevention and education priorities. Moreover, cutting grant budgets in the second or third year of the grant cycle because of poor management of Program funding means that project targets and deliverables must be reduced, and the public loses out on interventions that were deemed important for addressing the State's HIV and AIDS prevention and education needs and other established priorities.

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### **Recommendation No. 1:**

The Department of Public Health and Environment (the Department) should work with the HIV and AIDS Prevention Grant Program Advisory Committee to ensure that the State's HIV and AIDS prevention and education needs and other established priorities are being fully addressed by:

- a. Using the formal request for applications (RFA) to solicit applications for grant projects that provide more targeted coverage of rural areas of the state.
- b. Issuing out-of-cycle RFAs in response to emerging needs that cannot be incorporated and prioritized as part of the routine 3-year grant cycle.
- c. Budgeting and setting aside an amount from each year's Program revenue as a reserve for unexpected costs and contingencies, such as emerging needs or lower-than-anticipated funding levels.
- d. Specifying in the RFA the maximum amount of funding that has been allocated and will be made available for new grant awards.

### **Department of Public Health and Environment Response:**

- a. Agree. Implementation date: December 2013.

The Department will develop an HIV prevention plan for rural counties, addressing the special considerations of rural settings, compatible with the current Colorado STI/HIV Epidemiologic profile. To address the needs in the rural areas, the Department will issue an



out-of-cycle RFA to fund evidence-based HIV and AIDS prevention and education programs through a competitive grant process.

- b. Agree. Implementation date: January 2014.

The Department will issue out-of-cycle RFAs to fund targeted HIV prevention interventions if emerging needs arise that are not incorporated or prioritized as part of the routine 3-year grant.

- c. Agree. Implementation date: October 2013.

The Department will develop a process that establishes a minimum year-end uncommitted cash balance for the HIV and AIDS Prevention Fund as a reserve for unexpected costs and contingencies including emergent needs or funding cuts.

- d. Agree. Implementation date: October 2013.

The Department will create a Colorado HIV and AIDS Prevention Grant Program (CHAPP) Grant Planning Operating Procedure that will outline a formula to specify the maximum funding amount to be allocated in new RFAs and grant awards. This maximum funding amount will be included in the RFA announcement.

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## Grant Contract Monitoring

Once grant awards and funding are approved, the Department works with the grant recipients to finalize the grant contract, which outlines the project scope of work, goals, and key deliverables. For example, a grant contract may indicate the total number of individuals the grantee will contact through outreach activities or enroll in specific group- or individual-level educational presentations or prevention activities such as HIV testing. Grant contracts are written and renewed on an annual basis, and each grant contract includes the scope of work and project goals specific to that performance year.

Two groups of Department staff share responsibility for monitoring grant contracts: program consultants and fiscal monitors. The Department's program consultants provide programmatic monitoring and focus on the quality of the interventions and service delivery. They examine monthly reports submitted by grantees that show progress toward meeting year-end project goals (e.g., number of sessions given, number of persons reached). The monthly reports also provide an opportunity for the grantees to report on any barriers or challenges with project

implementation. The program consultants are also responsible for performing site visits. The program consultants completed 21 site visits for the 10 projects in our sample during the Fiscal Year 2010–2012 grant cycle.

The Department’s fiscal monitors focus on reviewing monthly reimbursement invoices and supporting expenditure documentation submitted by grantees to ensure that costs being claimed for reimbursement are allowable under the grant. Fiscal monitors also perform site visits based on a fiscal risk assessment tool developed by the Department. The fiscal monitors completed site visits to five grantees responsible for seven of the 10 projects in our sample during the Fiscal Year 2010–2012 grant cycle.

### **What audit work was performed and what was the purpose?**

We reviewed Department policies and procedures and interviewed Department staff to gain an understanding of the processes for monitoring grantee performance and resolving issues that are identified. We reviewed grant contracts, contract amendments, monthly progress reports, and other available monitoring files and documentation for a judgmental sample of 10 of the 22 projects funded through the Fiscal Year 2010–2012 grant cycle. Finally, we observed the Advisory Committee’s February 2013 meeting during which grant renewals were being considered for the second year (Fiscal Year 2014) of the current grant cycle (Fiscal Years 2013–2015).

The purpose of our audit work was to determine whether the Department’s monitoring processes are sufficient to identify and resolve issues with grantee performance, including whether poor grantee performance has any bearing on the renewal of grant contracts.

### **How were results of the audit work measured?**

Monitoring is an essential part of the system of internal control for any grant program. Monitoring generally includes some combination of reporting by grantees and review by the granting agency to provide assurance that grant funds are used for authorized and intended purposes and to keep grantees on course toward meeting project goals. The Department’s *Contract Management Guide* states that “monitoring activities are designed to ensure that services and goods are delivered in accordance with the contract requirements, at the agreed upon price and budget, and that the contractor meets specified performance standards as established in the contract.” The Department’s *Contract Management Guide* establishes best practices and requirements for programs to use when developing a comprehensive monitoring process. Topics covered include monitoring methodologies, performance evaluation, performance improvement plans, documentation, and technical assistance.

The monitoring processes established for the Program must be sufficient to identify problems with grantee performance in a timely manner and ensure that the Department and Advisory Committee take appropriate corrective action when grantees are not adhering to the project scope of work, achieving the project goals established in the grant contract, or spending grant funds properly.

According to the State Procurement Manual, the State is only obligated to issue payment on a contract, including grant contracts, when “substantial” performance is achieved.

## **What problem did the audit work identify?**

### **Established Performance Goals Are Not Being Met**

In November 2011, the Department’s program consultants established an expectation that, at a minimum, projects should be performing within 10 percent of their year-end contract goals, or a 90-percent performance threshold. For example, a project might have a goal of providing HIV testing to 50 individuals. If at least 45 individuals receive HIV testing, then the 90-percent performance threshold would be met (i.e.,  $50 \text{ individuals} \times 0.90 = 45 \text{ individuals}$ ).

Using the Department’s 90-percent performance threshold, we reviewed project goals and compiled and analyzed data from monthly progress reports submitted by grantees for a sample of 10 projects funded through the Fiscal Year 2010–2012 grant cycle. In total, these 10 projects had 136 performance goals over a 3-year period, ranging from a low of eight goals on one project to a high of 24 goals on another project. Overall, we found that the 90-percent performance threshold was not met for 31 (23 percent) of the 136 performance goals for our 10 sampled projects. Examples of project goals for which the 90-percent performance threshold was not met include:

- **Goal:** Provide HIV tests to 200 individuals  
**Results:** 127 HIV tests provided  
**Performance:** 64 percent of goal
- **Goal:** 45 individuals attend a group intervention meeting  
**Results:** 29 attendees  
**Performance:** 64 percent of goal
- **Goal:** Train 50 individuals in community mobilization  
**Results:** 36 individuals trained  
**Performance:** 72 percent of goal

As discussed previously, the 90-percent performance threshold is applied on a goal-by-goal basis. However, performance goals are specific to each project and have different metrics, making direct comparison of goals across projects problematic. Therefore, to arrive at an overall summary measure of performance on a project-wide basis and to facilitate comparison across projects, we converted the performance data for each project to a percentage as follows:

$$\frac{\text{Number of Project Goals for Which the 90-Percent Performance Threshold Was Met}}{\text{Total Number of Project Goals}} = \frac{\text{Percentage of Project Goals for Which the 90-Percent Performance Threshold Was Met}}{\text{Total Number of Project Goals}}$$

The following table and associated bullet points describe the results of our analysis of grantees' performance on a project-specific basis for each year of the 3-year grant cycle and for all 3 years combined.

<b>Colorado HIV and AIDS Prevention Grant Program            Percentage of Project Goals for Which the 90-Percent Performance Threshold Was Met            Fiscal Year 2010–2012 Grant Cycle            10 Sampled Projects</b>				
<b>Sampled Project</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>All Years Combined</b>
Project #4	67%	100%	100%	92%
Project #9	50%	100%	100%	86%
Project #6	100%	75%	83%	85%
Project #8	100%	60%	100%	85%
Project #3	100%	67%	75%	80%
Project #5	25%	100%	100%	77%
Project #2	100%	50%	75%	75%
Project #7	40%	60%	88%	67%
Project #10	83%	63%	50%	65%
Project #1	67%	33%	75%	60%

**Source:** Office of the State Auditor's analysis of documentation and data provided by the Department of Public Health and Environment.

- Overall Performance.** We analyzed performance data for all 3 years of the grant cycle combined to assess grantees' performance overall and found that none of the sampled projects met the 90-percent performance threshold for all of the project goals over the entire 3-year grant cycle. Project #4 had the best overall performance, meeting the 90-percent performance threshold for 92 percent of the project goals. Project #1 had the worst overall performance, meeting the 90-percent performance threshold for only 60 percent of the project goals. We recognize that not

every grant project will achieve 100 percent performance on all project goals over a 3-year period. However, during this period, six of the 10 projects in our sample missed the 90-percent performance threshold for 20 percent or more of the project goals established in grant contracts.

- **Year-to-Year Performance.** We analyzed performance data for each year of the 3-year grant cycle and found there is considerable variation in grantees' performance from one year to the next. Some grantees' performance declined over time. For example, Project #10 met the 90-percent performance threshold for 83 percent of the project goals in the first year, 63 percent of the project goals in the second year, and 50 percent of the project goals in the third year. Conversely, some grantees' performance improved over time. For example, Project #7 met the 90-percent performance threshold for 40 percent of the project goals in the first year, 60 percent of the project goals in the second year, and 88 percent of the project goals in the third year. Despite the varying performance by grantees, the Advisory Committee recommended that all 10 of the grant projects in our sample be renewed for the second and third years of the Fiscal Year 2010–2012 grant cycle. The Board of Health approved the Advisory Committee's recommendations for renewal.

### **Untimely Identification of Performance Issues**

We found that problems with grantee performance were not identified in a timely manner for four of our sampled grant projects, as follows:

- For one project, it was nearly 1¾ years into the project before the program consultant determined that the grantee was using a different intervention approach than had been approved in the grant application. Specifically, the grantee was encouraging risk-reduction and health-promoting behaviors by distributing promotional materials even though the approved intervention was to provide outreach by having a conversation with individuals about their perception of HIV risk and using information about those individuals to target additional supports. Upon realizing there was a problem with project implementation, a portion of the project had to be postponed until the grantee's staff could be re-trained.
- For a second project, the program consultant did not identify a lack of monthly reporting on four of six project goals outlined in the grant contract until approximately 10 months into the first year of the project. Consequently, the Department was not receiving information about the grantee's progress toward conducting 60 outreach events, contacting at least 600 individuals through outreach efforts, having at least 22 injecting

drug users graduate from a course, and having at least six individuals complete a promotional training.

- For a third project, the program consultant did not identify a lack of monthly reporting on two of five project goals outlined in the grant contract for 23 months and 12 months, respectively. Consequently, the Department was not receiving information about the grantee's progress toward reaching 5,000 gay men and members of their social networks with health promotion marketing materials or demonstrating that a minimum of 200 gay or bisexual men would identify the project as a resource for those struggling with drug use or addictions.
- For a fourth project, the program consultant did not identify concerns with the project's low progress until 16 months into the project. Specifically, attendance at rural group meetings sponsored by the project was meeting only 84 percent of the established project goal.

## **Why did the problem occur?**

### **Lack of Corrective Action**

The Department and the Advisory Committee do not take corrective action against grantees when the results of the Department's monitoring activities demonstrate that project goals established in the grant contract are not being met.

First, the Department did not withhold payments from grantees. In the case of our sampled grant projects, the Department continued to approve monthly reimbursement requests and issue payments despite the fact that many grantees were substantially underperforming in terms of meeting the project goals established in the grant contract. We recognize that Department staff respond to problems with grantee performance by providing follow-up technical assistance and direction through phone calls, site visits, and written correspondence. This is an important first step toward improving grantee performance. However, approval of grant payments is the Department's primary means for holding grantees accountable when project goals and deliverables that were the basis for the grant award are not being met. Grantees that are underperforming on project goals have little incentive to improve if they continue to receive full payments.

Second, poor performance has no bearing on grantees' future funding requests. Department staff did not give negative ratings in the State's Contract Management System (CMS), which is a centralized contract database intended to improve the State's ability to track and manage contracts. All 10 of our sampled projects were assigned a "standard" rating in CMS at the end of the project. A "below standard" rating would signal problems with grantee performance and

would be important information to consider on future contract work. CMS ratings are also reported publicly. Notwithstanding the CMS rating, currently, there is no formal mechanism that allows grantees' performance on current grants to feed into the review and scoring of applications for future grant funding. Specifically, the Program rules do not require the Advisory Committee to consider prior performance when making funding recommendations, and the scoring sheet used by the Advisory Committee to review grant applications does not include prior performance as a scoring criterion. There is also a lack of formal communication between the Department and the Advisory Committee about grantee performance. Department staff reported that they do not have an established procedure for sharing performance information with the Advisory Committee. Some Advisory Committee members also reported during our interviews that they do not receive information about grantee performance, which the members stated could be beneficial for grant decisions. As the entity responsible for reviewing grant applications and making funding recommendations, the Advisory Committee should be privy to information on grantee performance, especially when the results of the Department's monitoring activities indicate that project goals and deliverables are not being achieved. The Advisory Committee's ability to recommend against awarding or renewing grants, or even to terminate a grant in progress, is an important part of the accountability structure for the Program. Grantees have no incentive to improve and maintain project performance if they know that poor performance has no bearing on their future funding requests.

In February 2013, the Department provided information on project performance to assist the Advisory Committee with its renewal decisions for the current grant cycle (Fiscal Years 2013–2015). This was an important first step. However, communication about grantee performance has not been formally established as part of the grant application review process, nor have the Department and the Advisory Committee determined what information should be communicated, in what format, or how it will be used.

### **Gaps in Monitoring Activities**

As discussed earlier, the Department's program consultants perform several different activities as part of the Program's overall monitoring process. However, problems with grantee performance are not being identified in a timely manner as a result of gaps in monitoring activities in several areas.

First, grantees' monthly progress reports contain quantitative data on each individual project goal for the month being reported and for the year to date. However, program consultants do not compile and use these data to measure and report on performance on a project-wide basis. For example, in our analysis discussed earlier, we used the percentage of project goals for which the 90-percent performance threshold was met. The Department could use this or a similar measure to quickly identify underperforming projects as well as changes

in project performance from one grant year to the next. By better leveraging data that are already available to gauge performance on a project-wide basis, the program consultants can more effectively and timely determine which projects are in need of follow-up and, if appropriate, further corrective action.

Second, the expectation that projects should be meeting a 90-percent performance threshold has not been formally established in the Program's monitoring policies and procedures or in the grant contracts. Thus, the threshold lacks any real consequence for grantees or Department staff. For example, we identified a number of individual goals on a project that were each between 83 and 88 percent of target. During our audit, Department staff reported that no follow-up action was needed with the grantee because the goals fell just under the 90-percent performance threshold. However, the 90-percent performance threshold already provides grantees reasonable room for slippage with respect to meeting project goals outlined in the grant contract. By not following up and allowing further slippage to occur, program consultants risk missing and failing to address underlying performance issues.

Third, the program consultants do not always conduct a site visit in the first year of the grant. The program consultants set a goal of one site visit per quarter with a minimum of one site visit per year. However, for the 10 projects in our sample, we found that the program consultants only performed one site visit for one project during the first year of the grant; for the remaining nine projects, the program consultants conducted no site visits in the first year. Based on our review of available monitoring documentation, it appears that one project in our sample faced numerous challenges in the first year of the grant, including changes in key staff necessary for implementing the intervention. However, the Department's program consultant did not perform a site visit until the last month of the second year of the project. The lack of a site visit early in the project likely delayed identification of developing performance issues. Site visits can be resource intensive, and we encourage the Department's program consultants to adopt a risk-based approach to monitoring grantees (similar to what is done by the Department's fiscal monitors) as a way to target the Program's limited administrative resources. For example, the first year of a grant project generally would be higher risk because the project is just starting to be implemented. However, once the project is up and running, site visits may only be necessary if the results of other monitoring activities, such as review of monthly progress reports, reveal problems meeting project goals and deliverables.

Finally, program consultants do not use standard tools and forms to guide and document their routine monitoring activities, as required by the Department's *Contract Management Guide*. The program consultants receive and review progress reports from grantees on a monthly basis. However, as discussed previously, it was several months before program consultants identified gaps in reporting on project goals for two of our sampled projects. Use of a standardized



review tool or form may have helped the program consultant more quickly identify and address this issue with the grantees' monthly progress reports. The Department has developed review tools for use on site visits. However, there were no completed review tools for the 21 site visits conducted by the program consultants for the 10 projects in our sample. Use of standardized tools, forms, and logs is an important part of documenting monitoring activities, identifying trends in the results, and coordinating follow-up efforts.

### **Why does this problem matter?**

Ultimately, when grantees do not adhere to the project scope of work or achieve the project goals established in the grant contract, there is a risk that grant funds awarded through the Program will not help address the State's HIV and AIDS prevention and education needs.

It is wasteful for the Program to continue making grant payments and renewing grant contracts for projects that are not performing well, particularly for projects that are falling far short of their contract goals. The Department and the Advisory Committee also expose themselves to criticism about the integrity and equity of the competitive grant process from those applicants whose projects did not receive funding. Untimely identification of problems with grantee performance and a lack of corrective action in response to the results of grant monitoring activities only allow poor performance to continue. Moreover, without adequate documentation of monitoring activities, the Department and the Advisory Committee lack a solid basis for taking more aggressive corrective action such as withholding grant payments or not renewing grant funding.

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### **Recommendation No. 2:**

The Department of Public Health and Environment (the Department) should ensure the timely identification of grantee performance issues by:

- a. Using available data from grantees' monthly progress reports on individual project goals to measure and report on performance on a project-wide basis.
- b. Formally establishing a performance threshold in monitoring policies and procedures and in grant contracts.
- c. Establishing a risk-based monitoring approach that includes conducting a programmatic site visit to all grantees within the first year of the grant.

- d. Utilizing standard review tools, forms, and logs to guide and document routine monitoring activities.

### **Department of Public Health and Environment Response:**

- a. Agree. Implementation date: December 2013.

The Department will ensure the timely identification of grantee fiscal and/or performance issues using the newly drafted HIV Prevention Grant Management Manual (the Manual). The Manual will provide the necessary steps for performance evaluation and continuing quality improvement, including: established standards for monitoring activities; the process to establish performance goals; forms, logs, and programmatic data to document grantee activities; a schedule of program monitoring for timely identification of performance issues; and the process for corrective actions.

- b. Agree. Implementation date: December 2013.

The Department will formally establish a standard performance threshold in monitoring policies and procedures, documented in the Manual and in grant contracts.

- c. Agree. Implementation date: December 2013.

Any first-time grantee will receive a site visit within the first year of the grant. Thereafter, site visits will be conducted using a risk-based schedule.

- d. Agree. Implementation date: December 2013.

The Department will develop standardized review tools, forms, and logs to assist in the analysis and documentation of reviews conducted on a routine basis.

### **Recommendation No. 3:**

The Department of Public Health and Environment (the Department) should work with the HIV and AIDS Prevention Grant Program Advisory Committee (the Advisory Committee) to ensure grantee performance by:

- a. Taking corrective action when the results of monitoring activities show substantial underperformance with respect to project goals established in

the grant contract. Corrective action should include withholding payment, assigning a “below standard” rating in the State’s Contract Management System, not renewing the grant contract for subsequent years, and/or discontinuing the grant in progress, as appropriate.

- b. Amending Program rules and revising the grant application scoring sheet to include prior grant performance as a factor that must be considered by the Advisory Committee when reviewing grant applications and making funding recommendations.
- c. Establishing a formal process by which the results of the Department’s monitoring activities and assessment of grantee performance will be communicated to the Advisory Committee when reviewing and scoring grant applications. This process should include determining the content and format of the communication.

## **Department of Public Health and Environment Response:**

- a. Agree. Implementation date: August 2013.

The Department will take corrective action as outlined in the HIV Prevention Grant Management Manual when the results of monitoring activities show substantial underperformance with respect to project goals established in grantees’ contracts. The Department’s monitoring activities and assessment of the Colorado HIV and AIDS Prevention Grant Program (CHAPP) grantee performance will be reported to the Advisory Committee in advance of scheduled quarterly meetings.

- b. Agree. Implementation date: November 2013.

The Department will amend program rules and revise the current grant application scoring sheet to include grantee performance and fiscal risk factors. The revised scoring sheet must be considered by the Advisory Committee when reviewing grant renewal applications and making funding recommendations. The Department will provide pertinent training and guidance to Advisory Committee members.

- c. Agree. Implementation date: November 2013.

The Department will establish a formal process by which the results of the Department’s monitoring activities and assessment of grantee performance will be communicated to the Advisory Committee when reviewing and scoring grant applications. A staff communication

specialist will provide guidance in the process to assure that the communication content and format is understandable and applicable to application review and funding recommendations.

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## Conflicts of Interest

By specifying the makeup of the Advisory Committee in statute, the General Assembly intended that certain constituencies would be represented in the grant review process and have input into how grant funds are allocated. However, it is also the case that the Advisory Committee consists of members who often work for organizations that are grant recipients or have various connections with grant recipients in the HIV and AIDS prevention community, thereby creating the potential for real or perceived conflicts of interest to exist.

### What audit work was performed and what was the purpose?

We reviewed state statutes, Program rules, and Advisory Committee bylaws to gain an understanding of applicable requirements pertaining to conflicts of interest. We interviewed Department staff and Advisory Committee members to gain an understanding of how conflicts of interest are identified, handled, and documented. We reviewed Advisory Committee members' conflict-of-interest disclosures, grant review assignments, and other related documentation for initial awards and renewals for the current grant cycle (Fiscal Years 2013–2015). We also observed the Advisory Committee's February 2013 meeting during which grant renewals were considered.

The purpose of our audit work was to determine whether there are effective controls in place to identify and address conflicts of interest that may arise for Advisory Committee members when reviewing grant applications and renewals and making funding recommendations.

### How were the results of the audit work measured?

Having effective controls in place to identify and address conflicts of interest is important for protecting the integrity of competitive grant programs. There are a number of conflict-of-interest requirements that apply to Advisory Committee members, as follows:

- **State Statutes.** Section 24-18-108.5, C.R.S., specifies that members of boards, commissions, councils, and committees shall not perform an official act that may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial

interest. Additionally, statutes governing the Program [Section 25-4-1414 (3), C.R.S.] state “if a member of the Advisory Committee has an immediate personal, private, or financial interest in any matter pending before the Advisory Committee, the member must disclose that fact and not vote on the matter.”

- **Program Rules.** Program rules (6 CCR 1009-10) further define the applicability of the conflict-of-interest requirements, what constitutes a conflict of interest, disclosure requirements, and required actions. For example, the conflict-of-interest requirements apply to any person who reviews submitted applications or makes recommendations regarding which applicants receive grants and the amounts of such grants. Examples of conflicts of interest outlined in Program rules include those circumstances in which an Advisory Committee member:
  - Has an immediate personal, private, or financial interest in any matter pending before the Advisory Committee.
  - Has been, within the past 12 months, an employee, consultant, officer, board member, advisor, grant writer, client, or volunteer for any of the agencies whose grant applications are to be reviewed by the Advisory Committee.
  - Has any other reason that would prevent him or her from being an unbiased reviewer.
- **Bylaws.** Advisory Committee bylaws provide further definition of what constitutes a conflict of interest as well as guidance regarding what actions will be taken when evaluating conflicts of interest. For example, Advisory Committee members are expected to disclose any actual or perceived conflicts of interest before the discussion of a grant application begins or as soon thereafter as the conflict is known. In accordance with the bylaws, once a disclosure is made, the individual member can disqualify him or herself from any further participation or voting on the matter at hand, or the Advisory Committee will vote on whether a conflict of interest exists and the resulting restrictions on the member’s activity.
- **Conflict-of-Interest Disclosure Form.** Advisory Committee members complete a standard conflict-of-interest disclosure form for each initial grant application and renewal application. The conflict-of-interest form has a series of checkboxes that Advisory Committee members use to indicate and provide details about personal or professional relationships, affiliations, or interests in the grant applicant or project that may exist. The conflict-of-interest form also specifies whether the member will be

disqualified from further review and scoring, discussion, or voting on the grant application depending on which checkboxes are selected. Department staff review the completed conflict-of-interest forms and assign Advisory Committee members a set of grant applications to review and score based on the disclosures made and the restrictions outlined on the form. Not all members review and score all grant applications. During the grant review meetings, the Advisory Committee's practice is for members with conflicts that prevent them from discussing the grant application or voting on the funding recommendation to excuse themselves from the room while that application is being considered.

### **What problem did the audit work identify?**

The standard conflict-of-interest disclosure form that Advisory Committee members complete for each grant application is the primary mechanism by which the Program's conflict-of-interest policies and procedures are implemented. However, as described in the following bullet points, we identified several issues related to the conflict-of-interest form that undermine its effectiveness as a key control for identifying and helping to address conflicts of interest during the grant application review process.

- **Missing Forms.** Completed conflict-of-interest forms were not on file for one Advisory Committee member who was involved in the review of the initial grant applications and funding recommendations for the current grant cycle (Fiscal Years 2013–2015). Specifically, the Advisory Committee member's completed conflict-of-interest forms were missing for 22 project applications.
- **Incorrect Assignments.** We identified nine cases in which the Advisory Committee member marked a combination of checkboxes on the conflict-of-interest form to disclose some type of personal or professional relationship, affiliation, or interest with a grant applicant. However, in every case, Department staff assigned the Advisory Committee member the grant application for review and scoring. Details about the disclosures made for these nine cases are as follows:
  - In one case, the member marked the following checkboxes on the conflict-of-interest form:
    - “I have no personal interest that will affect my recommendation.”
    - “I have no professional interest that will affect my recommendation.”

- “Affiliated with the organization and did not materially assist in project development and/or grant application.”

In accordance with Program statutes and rules, as well as instructions on the conflict-of-interest form, the member’s affiliation with the organization applying for the grant should have prevented the member from reviewing and scoring the grant application.

- In a second case, the member marked the following checkboxes on the conflict-of-interest form:

- “I have no personal interest that will affect my recommendation.”

- “I have no professional interest that will affect my recommendation.”

- “No organizational affiliation, but have a prior or existing personal or professional relationship or interest.”

The member also included narrative on the conflict-of-interest form disclosing that his agency, which was also a grant recipient, made client referrals to and received client referrals from the agency applying for a grant. Given the direct business relationship that exists between the Advisory Committee member’s agency and the agency applying for a grant, we concluded that this conflict should have prevented the member from reviewing and scoring the grant application. Based on the narrative disclosure, the Advisory Committee member also should have marked a different set of checkboxes.

- In seven cases, the Advisory Committee member marked the following checkboxes on the conflict-of-interest form:

- “I do have a personal, professional, or direct interest.”

- “No organizational affiliation, but have a prior or existing personal or professional relationship or interest.”

There was no further narrative explanation or detail provided on any of these conflict-of-interest forms. However, we concluded that the disclosure of a personal, professional, or direct interest in the grant applicant, as denoted by the first checkbox, should have prevented the member from reviewing and scoring the grant application.

- **Incomplete Information.** One checkbox on the conflict-of-interest form is used to indicate when Advisory Committee members have “no organizational affiliation, but have a prior or existing personal or professional relationship or interest” with the applicant. Thus, members marking this checkbox could have a conflict of interest and further explanation or detail is needed as the basis for making such a determination. We reviewed the 252 conflict-of-interest forms for all initial award and renewal applications in the current grant cycle (Fiscal Years 2013–2015) and found that this checkbox was marked for 39 (15 percent) of the conflict-of-interest forms we reviewed. However, in 18 (46 percent) of the 39 cases, the Advisory Committee member did not provide any additional information about the nature of the conflict. In another four (10 percent) cases, the member provided some information about the nature of the conflict but did not include information about the relevant time frame. Program rules specify that a conflict exists if an Advisory Committee member has been an employee, consultant, officer, board member, advisor, grant writer, client, or volunteer for the grantee within the past 12 months.

### **Why did the problem occur?**

First, the conflict-of-interest form is complex and lacks clear written instructions on how to interpret the different checkboxes on the form or how members’ grant review activities will be restricted depending on the different checkboxes marked. For example, language associated with checkboxes on the form can be interpreted in substantively different ways. An Advisory Committee member could interpret the statement “I have no professional interest that will affect my recommendation” to mean (1) that he or she has no professional interest or (2) that he or she has a professional interest but that it will not affect his or her recommendation. Additionally, the conflict-of-interest form includes a checkbox to denote that the Advisory Committee member has “no organizational affiliation, but has a prior or existing personal or professional relationship or interest” with the grant applicant. However, according to the instructions on the conflict-of-interest form, Advisory Committee members marking this checkbox are not necessarily restricted from reviewing and scoring, discussing, and voting on the grant application. During our interviews, Advisory Committee members reported that the conflict-of-interest form is complicated, onerous, and it is not always clear how the form should be filled out or how marking different checkboxes will affect their grant review activities.

Second, the Department does not provide Advisory Committee members with training or other orientation on how the conflict-of-interest form should be filled out and used to restrict members’ grant review activities under different circumstances. For example, some type of training or orientation could be



provided to the Advisory Committee on an annual basis just prior to the grant application review process. Training should be used to reinforce written policies and procedures and is an essential part of providing clarity to users and ensuring a consistent implementation.

Third, the fact that we identified problems with missing conflict-of-interest forms, incomplete information, and incorrect review assignments indicates a lack of adequate monitoring by the Advisory Committee and the Department. Monitoring for compliance with conflict-of-interest policies and procedures is a joint responsibility. Advisory Committee members must monitor themselves and one another to ensure that conflict-of-interest forms are completed, that relevant conflicts of interest are properly disclosed, and that their grant review assignments and other activities are restricted appropriately. Because Department staff make grant review assignments based on completed conflict-of-interest forms, staff must also monitor the process and follow up with Advisory Committee members when conflict-of-interest forms are not completed or relevant details about disclosed conflicts are missing.

Finally, the Advisory Committee's meetings are run too informally when reviewing grant applications and renewals. Under the Advisory Committee's bylaws, the Chairperson and Department staff are responsible for planning the meetings and developing agendas. The bylaws also state that the meetings should generally follow Robert's Rules of Order but shall be as informal as circumstances permit. We observed the Advisory Committee's February 2013 meeting during which members discussed and voted on funding recommendations for grant renewal applications. Based on our observations, we concluded that running the meeting in an informal manner increases the risk that restrictions on members' activities due to conflicts of interest may not be handled in accordance with established policies and procedures. Specifically, at the beginning of the February 2013 meeting, the Advisory Committee members started discussing different applications out of order. Throughout the meeting, Department staff had to repeatedly redirect Advisory Committee members to focus their review and discussion on one grant application at a time. We observed members leaving the room during the discussion, presumably because they had a conflict of interest. However, due to the lack of a systematic discussion of grant applications, we were unable to conclusively determine that all members' activities were properly restricted. Additionally, we were unable to rely on meeting minutes to review how Advisory Committee members' activities were restricted during any prior meetings because, as we discuss in Recommendation No. 5, minutes were not taken for those meetings in which the Advisory Committee reviewed grant applications and renewals and made funding recommendations.

### **Why does this problem matter?**

Without a consistent and clear understanding of established conflict-of-interest policies and procedures, including the meaning of each of the statements on the conflict-of-interest form, the Department and the Advisory Committee are unable to provide reasonable assurance that conflicts of interest are properly disclosed, consistently evaluated, and that Advisory Committee members' activities are restricted appropriately. This increases the risk that Advisory Committee members could have undue influence in the grant-making process.

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### **Recommendation No. 4:**

The Department of Public Health and Environment (the Department) should work with the HIV and AIDS Prevention Grant Program Advisory Committee (the Advisory Committee) to strengthen the overall conflict-of-interest framework established for the Colorado HIV and AIDS Prevention Grant Program by:

- a. Clarifying and simplifying the standard conflict-of-interest disclosure form used by Advisory Committee members when reviewing grant applications. The conflict-of-interest form should contain specific written instructions for the individual completing the form as well as the individual responsible for reviewing the disclosures made.
- b. Providing training or orientation on an annual basis to Advisory Committee members about conflict-of-interest policies and procedures and the standard conflict-of-interest disclosure form.
- c. Improving monitoring for compliance with established conflict-of-interest policies and procedures to ensure that all conflict-of-interest forms are completed, details about disclosed conflicts are obtained, and Advisory Committee members' grant review assignments and other activities are restricted appropriately.
- d. Formally adhering to Robert's Rules of Order during those Advisory Committee meetings in which grant applications and renewals are reviewed and discussed.

## **Department of Public Health and Environment Response:**

- a. Agree. Implementation date: October 2013.

The Department will create a standard, simplified conflict-of-interest policy and corresponding procedures that provide a framework to address conflict-of-interest disclosures by Advisory Committee members. The policy and procedures will outline the process to complete and interpret the conflict-of-interest form.

- b. Agree. Implementation date: November 2013.

The Department will conduct annual training on the standard conflict-of-interest disclosure process based on the policy and procedures. The training will address the accurate completion of the conflict-of-interest form by Advisory Committee members.

- c. Agree. Implementation date: December 2013.

The Department will monitor the Advisory Committee with respect to the adherence to the conflict-of-interest policy and procedures as related to recommendations for funding.

- d. Agree. Implementation date: December 2013.

The Department will sponsor periodic webinars to familiarize new and existing Advisory Committee members with the Robert's Rules of Order. The Advisory Committee will be supported in implementing Robert's Rules of Order as a guide to running meetings effectively and fairly.

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## **Advisory Committee Activities and Membership**

The seven-member Advisory Committee accomplishes its business by holding meetings at least quarterly or more frequently, as needed, at the call of the Chairperson or majority of the Advisory Committee members. In accordance with the Advisory Committee's bylaws, members are limited to a 2-year term. Members serve without compensation but are reimbursed for expenses (e.g., mileage) incurred in the performance of their duties.

### **What audit work was performed and what was the purpose?**

We reviewed state statutes, Program rules, and Advisory Committee bylaws to gain an understanding of the Advisory Committee's core responsibilities and activities, as well as applicable requirements under Colorado's open meetings law. We interviewed Department staff and all current Advisory Committee members to gain an understanding of how the Advisory Committee generally operates and the types of matters covered during Advisory Committee meetings. We reviewed available meeting minutes for all of the Advisory Committee's meetings between September 2006 (the Advisory Committee's first meeting) and April 2013. We also observed the Advisory Committee's February and April 2013 meetings and listened to audio recordings of the July 2009, October 2009, October 2012, and December 2012 meetings.

The purpose of our audit work was to determine whether the Advisory Committee is operating in accordance with applicable open meetings requirements and that it is able to accomplish its core business activities effectively.

### **How were the results of the audit work measured?**

The purpose of Colorado's open meetings law (Section 24-6-401, et seq., C.R.S.) is to ensure that all meetings of state public bodies are open to the public and that records of these meetings are publicly available. In accordance with the open meetings law:

- "state public body" means any board, committee, commission, or other advisory, policy-making, rulemaking, decision-making, or formally constituted body of any state agency.
- "meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.
- all meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

The Advisory Committee is a state public body and its activities and meetings are subject to the requirements of Colorado's open meetings law.

The Advisory Committee's bylaws further define other operational matters, such as members' responsibilities, election of officers, meetings, rules of order, and Department staff support.

## What problem did the audit work identify?

Overall, we found two problems that undermine the Advisory Committee's ability to operate effectively and ensure that information is publicly available about the Advisory Committee's discussions and actions affecting the Program and the resulting grant award recommendations. First, the Advisory Committee and Department are not fully complying with Colorado's open meetings law. Second, the Advisory Committee has difficulties with turnover and vacancies, as well as members' attendance at and preparedness for meetings.

### Open Meetings Requirements

Section 24-6-402(2)(d)(I), C.R.S., requires that minutes of any meeting of a state public body be taken and promptly recorded and that such records be publicly available. The Advisory Committee's bylaws state that Department staff will provide administrative support to the Advisory Committee, including providing public notice of meetings and recording, maintaining, and distributing meeting minutes. However, we found that minutes are not always kept for Advisory Committee meetings, nor are the minutes made available to the public.

- **Minutes have not been consistently kept for Advisory Committee meetings.** Based on our review of available documentation, we determined that there were at least 33 Advisory Committee meetings held between September 2006 and April 2013. However, minutes for seven Advisory Committee meetings were not kept.

Additionally, Advisory Committee members hold discussions and conduct official business via email correspondence; however, minutes of these "electronic meetings" between Advisory Committee members are not kept. For example, we learned that the Advisory Committee used email correspondence to make decisions about how to adjust Fiscal Year 2014 grant budgets to deal with the funding shortfall in Tobacco Settlement funds. Discussions about grant applications for the current grant cycle (Fiscal Years 2013–2015) also occurred via email correspondence. Recently, the Advisory Committee members used email correspondence to facilitate the nomination of a new Chairperson. Under Colorado's open meetings law, electronic exchanges between two or more members of the Advisory Committee for the purpose of discussing public business or taking formal action constitute a public meeting and, therefore, meeting minutes must be kept.

- **Not all meeting minutes are publicly available or accessible.** Of the 28 Advisory Committee meetings between September 2006 and April 2013 for which minutes were kept, the minutes for four meetings have not been

publicly posted to the Department's website. Minutes for the remaining 24 Advisory Committee meetings are posted to the Department's website. However, the hyperlinks for 17 of these 24 meetings do not lead to a document and instead take the public user to a restricted webpage requiring a username and password login. We do not believe the Department intended to restrict access to meeting minutes. Rather, the Department reported that a recent reconfiguration of its website created problems with broken links.

Section 24-6-402(2)(c), C.R.S., requires full and timely notice of any meetings at which "the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance." State statute also requires the public notice of meetings to include specific agenda information where possible. However, we found that not all Advisory Committee meetings receive proper or complete public notice.

- **Advance notice of certain meetings is lacking.** Advance notice of the Advisory Committee's routine, in-person meetings is posted to the Department's website. As discussed previously, the Advisory Committee also holds ad hoc meetings, and members have discussions and conduct business via email correspondence. However, no advance public notice of these ad hoc meetings or electronic meetings is made even though both situations constitute a public meeting under Colorado's open meetings law.
- **Meeting notices lack agenda information.** When advance notice of the Advisory Committee's meetings is posted to the Department's website, the notice only includes information about the date, time, and location of the meeting. Agenda items are not included in the public notice. It is not an unreasonable expectation or burden that the public notice for an Advisory Committee meeting should include specific agenda information. During our interviews, some Advisory Committee members expressed disappointment that there was not more public engagement in the Program. The Advisory Committee and Department could potentially draw more public interest in the Advisory Committee's business by including specific agenda items in the meeting notices.

### **Advisory Committee Membership**

In order to effectively carry out its responsibilities with respect to the competitive grant process, the Advisory Committee must have a full complement of members, and, consistent with the Advisory Committee's bylaws, members must accept individual responsibility for attending and participating in meetings. However, we found that the Advisory Committee has had difficulties with turnover and

vacancies in its membership as well as members' lack of attendance at and preparedness for meetings.

- **Turnover and Vacancies.** A common concern expressed during our interviews with Advisory Committee members is the frequent turnover of membership and vacancies on the Advisory Committee. Historically, as many as five of the Advisory Committee's seven members have rotated off the Advisory Committee in a single year. There was at least one vacant seat on the Advisory Committee during eight of the 28 meetings held between September 2006 and April 2013 for which attendance information was available. As of the end of our fieldwork in July 2013, the Advisory Committee had two vacancies—one position had been vacant since December 2012, and one vacancy occurred more recently in April 2013. Frequent turnover and vacancies on the Advisory Committee contribute to a lack of institutional knowledge and continuity for the Program. For example, some members will be involved in reviewing applications for initial grant funding but will not necessarily review the second round of renewal applications. Other members will be involved in reviewing both rounds of renewal applications but will not necessarily have reviewed the applications for initial grant funding. Additionally, too many vacancies make it difficult to have a quorum of members for conducting business. Advisory Committee bylaws state that a quorum of five members is required for all Advisory Committee actions and that, in the absence of a quorum, any business transacted is null and void. Currently, with only five sitting members, all members of the Advisory Committee must be able to attend the meeting in order for the Advisory Committee to conduct any business.
- **Absenteeism.** At least one member was absent from 13 of the 28 Advisory Committee meetings held between September 2006 and April 2013. There was not a quorum of members present for two of these 13 meetings, thereby limiting the Advisory Committee's ability to conduct its business. For example, at the April 2013 meeting we observed, the Advisory Committee was supposed to elect a new Chairperson and needed to consider changes to grant awards as a result of Tobacco Settlement funding for the Program being less than expected. However, only three Advisory Committee members were present at the meeting and no quorum was established. As a result, the Advisory Committee was unable to address any of the issues on its agenda and these matters were instead discussed via email correspondence outside the context of the public meeting. In addition to absences, Department staff reported recent difficulties receiving responses from Advisory Committee members when contacted by the Department to schedule meetings and take care of other administrative matters.

- **Preparedness.** Advisory Committee members do not always come to the meetings prepared to conduct the Advisory Committee's business. We observed two Advisory Committee meetings in February and April 2013 during which problems were caused by members' lack of preparedness. For example, at the February 2013 meeting, grant renewals were being considered for the second year (Fiscal Year 2014) of the current grant cycle (Fiscal Years 2013–2015). However, one member had not completed the advance review and scoring of her assigned renewal applications. As a result, the agenda was shuffled around and the meeting became disorganized. This disruption to the agenda had a number of ramifications. First, as mentioned in more detail in Recommendation No. 4, we had concerns about whether members with conflicts of interest recused themselves from the discussion at the appropriate times. Second, the meeting ran long, and one member had to leave before the meeting was finished. Finally, one Advisory Committee member reported to us that the discussion of the grant renewals was not as thorough as it should have been.

### **Why did the problem occur?**

There are a number of factors that contribute to the problems we identified. First, Department staff reported that although all of the Advisory Committee's meetings were open to the public, minutes were not taken or made publicly available for those meetings in which the Advisory Committee reviewed grant applications and renewals because, historically, members have not felt comfortable discussing the merits of grant applications or poor grantee performance in a public forum. The Advisory Committee is statutorily charged with reviewing grant applications and renewals and making recommendations on grant funding. Although such review and decision making can be difficult or sensitive at times, statute requires that minutes of such meetings be kept and made available to the public. Failing to comply with the requirements of Colorado's open meetings law creates a lack of transparency around the Advisory Committee's core statutory responsibility under the Program.

Second, due to difficulties convening Advisory Committee members for in-person meetings, the Advisory Committee has turned to conducting some business via email correspondence. Although email is convenient, it holds inherent challenges for complying with the requirements of Colorado's open meetings law. Conference calls would alleviate some difficulties of holding in-person meetings and would be easier than email to allow for things such as providing proper public notice of the meeting date, time, and agenda and facilitating public participation in the meeting.



Third, the Advisory Committee's bylaws provide limited procedural guidance on the specific requirements of Colorado's open meetings laws. The bylaws do not include discussion of what activity constitutes a public meeting or the requirements for providing advance public notice of the meeting and agenda items and the taking and public posting of meeting minutes. For example, the bylaws permit Advisory Committee members to vote on issues via email or fax. However, the bylaws do not state that such electronic exchanges constitute a public meeting and, therefore, should have advance notice and minutes kept and made public.

Fourth, the Advisory Committee does not sanction members who do not uphold their commitments. The Advisory Committee's bylaws outline the expectation that members' regular attendance and participation in meetings is vital to achieving the Advisory Committee's purpose. However, the Advisory Committee does not limit or prevent participation in the grant review process (e.g., discussion and voting on grant applications) when a member does not complete his or her advance review and scoring of grant applications. Additionally, the bylaws allow the Advisory Committee to terminate a member's appointment, including for repeat unexcused absences; however, the Advisory Committee has never pursued this option as a means of addressing absenteeism. Termination of a member's appointment may seem to be an extreme option, especially when filling vacancies on the Advisory Committee is difficult. However, the seat is effectively vacant when a member is repeatedly absent from Advisory Committee meetings.

Fifth, the length and staggering of Advisory Committee members' terms does not align well with the overall 3-year grant cycle. As mentioned previously, Advisory Committee bylaws limit members to a 2-year term. A member can be reappointed to another 2-year term, but only after having rotated off the Advisory Committee for 1 year. Term limit restrictions are not set in statute or Program rules. Therefore, the Advisory Committee is free to amend its bylaws to adjust the length and/or the staggering of members' terms as the Program needs dictate. Minutes from the Advisory Committee's October 2012 meeting state that the term limit issue was corrected by asking one member to serve an additional 2-year term without the 1-year break such that no more than four of the seven members would rotate off the Advisory Committee this year. The course of action taken by the Advisory Committee provided a stop-gap solution; however, it does not address the underlying problem that the current length and staggering of members' terms outlined in the Advisory Committee's bylaws does not provide continuity of membership across the entire 3-year grant cycle. Also, having a member serve an additional term without a 1-year break requires a formal change in the bylaws, which did not occur at the October 2012 meeting.

Finally, efforts to recruit and build a pool of candidates who are willing and able to serve on the Advisory Committee appear limited. As evidenced by meeting minutes, the Department periodically asks sitting Advisory Committee members

to recommend potential candidates for upcoming vacancies. However, only two Advisory Committee seats may be appointed at the sole discretion of the Department's Executive Director. The remaining five Advisory Committee seats are determined by other groups. Specifically, four members are recommended by a statewide collaborative group that assists in developing the Department's comprehensive plan for HIV and AIDS prevention and one member is recommended by the Department's Health Equity Commission. During our interviews, Advisory Committee members also reported that attending meetings and reviewing and scoring grant applications requires a certain time commitment that must be balanced with work and home responsibilities. However, no information about the time commitment required to serve on the Advisory Committee is provided to interested candidates. The Department's website already provides information about the Advisory Committee meetings, members, and bylaws. The website content could easily be updated as a means of advertising vacancies on the Advisory Committee when they occur and providing more information about serving on the Advisory Committee and the time commitment required.

### **Why does this problem matter?**

Colorado's open meetings law is in place to help ensure that the public be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved. The lack of proper advance notice of meetings and complete information about the agenda items means that the public and interested parties, such as grant applicants, have less opportunity to observe and have input into the Advisory Committee's deliberations and actions affecting the distribution and use of grant funds. Moreover, failing to promptly take meeting minutes and make them publicly available—especially for those meetings in which grant applications or renewals are discussed and voted upon—does not provide the Advisory Committee members, Department staff, and other interested parties who were unable to observe the meeting with a formal record of the Advisory Committee's business and the basis for funding recommendations to the Board of Health. Lack of a formal record of the meetings also makes it difficult to ensure that Advisory Committee members' activity (e.g., review and scoring, discussion, or voting) is properly restricted based on any conflicts of interest that exist.

Lack of attendance at and preparedness for meetings compromises the Advisory Committee's ability to effectively accomplish its business, thereby delaying decision making and affecting those agencies applying for grant funding. Additionally, by specifying the makeup of the Advisory Committee in statute, the General Assembly intended that certain constituencies would have representation in the grant review process. Advisory Committee vacancies, absences, and lack of

preparedness for meetings effectively mean that some constituencies are going unrepresented.

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### **Recommendation No. 5:**

The Department of Public Health and Environment (the Department) should work with the HIV and AIDS Prevention Grant Program Advisory Committee (the Advisory Committee) to ensure compliance with Colorado's open meetings law by:

- a. Taking and publicly posting minutes for all Advisory Committee activities that constitute a public meeting, including ad hoc meetings, conference calls, electronic meetings via email correspondence, and regular meetings during which review of grant applications and renewals occurs and grant funding recommendations are made and voted upon.
- b. Ensuring that proper notice of the meeting and details about the meeting agenda are publicly posted in advance of any Advisory Committee activities that meet the definition of a public meeting.
- c. Utilizing conference calls instead of email correspondence whenever possible in those circumstances in which two or more Advisory Committee members are discussing public business or any formal action may be taken and an in-person meeting cannot be held.
- d. Amending the Advisory Committee's bylaws to include specific procedural guidance about the requirements of Colorado's open meetings law.

### **Department of Public Health and Environment Response:**

- a. Agree. Implementation date: September 2013.

The Department will create a single location on the Advisory Committee website to post minutes for all Advisory Committee activities that constitute a public meeting. Minutes from all Advisory Committee meetings will be taken and posted for public review.

- b. Agree. Implementation date: September 2013.

The Department will post proper notice of the meetings and details about the meeting agenda on the Advisory Committee website in advance of any Advisory Committee activities that meet the definition of a public meeting.

- c. Agree. Implementation date: September 2013.

The Department will arrange for either in-person meetings or conference calls when two or more members of the Advisory Committee are conducting public business or taking formal action, and will discourage the use of email correspondence.

- d. Agree. Implementation date: September 2013.

The Department will conduct a working forum with the Advisory Committee members to amend the Advisory Committee bylaws to comply with Colorado's open meetings law. The Department will monitor the Advisory Committee with respect to adherence to state statute and the Advisory Committee bylaws regarding open meetings.

## **Recommendation No. 6:**

The Department of Public Health and Environment (the Department) should work with the HIV and AIDS Prevention Grant Program Advisory Committee (the Advisory Committee) to ensure the Advisory Committee's ability to effectively carry out its statutory responsibilities with respect to the competitive grant process by:

- a. Holding Advisory Committee members accountable for attending scheduled meetings and completing advance review and scoring of assigned grant applications. Members should not be allowed to participate in grant award recommendations when they have not completed their assigned advance review and scoring, and members should be removed from the Advisory Committee for excessive absences.
- b. Amending the Advisory Committee's bylaws to adjust the length and/or staggering of members' terms to align better with the overall 3-year grant cycle and eliminate the requirement that sitting members rotate off the Advisory Committee for 1 year before being reappointed.
- c. Increasing efforts to recruit and build a pool of candidates who are willing and able to serve on the Advisory Committee when vacancies occur,

including making more use of the Department's website to advertise vacancies on the Advisory Committee and provide more information to interested candidates about serving on the Advisory Committee and the time commitment required.

## **Department of Public Health and Environment Response:**

- a. Agree. Implementation date: November 2013.

The Department will create an Advisory Committee Operations Manual that provides policy and procedures for optimal observance of bylaws relative to scheduled meetings and the completion of advance review and scoring of assigned grant applications.

- b. Agree. Implementation date: November 2013.

The Department will provide technical assistance to the Advisory Committee in an effort to revise the Committee's bylaws to adjust the length and/or staggering of members' terms to better align with the overall 3-year grant cycle, and to eliminate the requirement that sitting members rotate off the Advisory Committee for 1 year before being reappointed.

- c. Agree. Implementation date: November 2013.

The Department will devise a strategy to recruit and build a pool of candidates to serve on the Advisory Committee when vacancies occur. This strategy may include the use of the Advisory Committee website and creation of press releases to advertise vacancies and to provide targeted information to interested candidates about serving on the Advisory Committee and the time commitment required.

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## **Program Administration and Oversight**

Government programs exist to serve the needs of the public. Ultimately, the system of governance established for government programs should help ensure that the public's needs are addressed effectively by providing clear structures, processes, responsibilities, and lines of authority and decision making. Management and other officials responsible for administering and overseeing government programs must operate within these established boundaries.

## **What audit work was performed and what was the purpose?**

We reviewed state statutes, Program rules, and Advisory Committee bylaws to gain an understanding of the overall governance structure for the Program, including how responsibilities and authority are divided between the Department and the Advisory Committee. We interviewed Department staff and Advisory Committee members to gain an understanding of the processes utilized to carry out their respective responsibilities. We reviewed all available Advisory Committee meeting minutes; listened to audio recordings of the Advisory Committee's July 2009, October 2009, October 2012, and December 2012 meetings; and observed the Advisory Committee's February and April 2013 meetings to gain an understanding of how the Advisory Committee generally operates and the types of matters covered during meetings. For comparison purposes, we also analyzed the enabling statutes for several other statewide competitive grant programs that have committees, commissions, or boards involved in reviewing grant applications and making funding recommendations. In addition, we relied on our audit work related to the review and award of grant funding, monitoring of grantee performance, managing conflicts of interest, and the Advisory Committee's meeting activities and membership to inform our conclusions.

The purpose of our audit work was to determine whether the Program is being overseen and administered in an effective manner.

## **How were the results of the audit work measured?**

In accordance with state statute, both the Department and the Advisory Committee have responsibilities with respect to the Program:

- Section 25-4-1413(1), C.R.S., states that the Department is responsible for administering the Program.
- Section 25-4-1414(1)(a), C.R.S., states that the Advisory Committee is responsible for overseeing the competitive grant process used to award Program funds available for HIV and AIDS prevention and education activities. Statute specifies that the Advisory Committee:
  - May make recommendations on rules to be adopted by the Board of Health regarding matters such as grant application contents, procedures, and timelines; grantee reporting requirements; and criteria for reviewing and selecting grant applications [Section 25-4-1414(1)(c), C.R.S.].

- Shall review grant applications and make recommendations on grant awards, award amounts, and the duration of the awards to the Board of Health and the Department's Executive Director [Section 25-4-1414(2), C.R.S.].

Program rules and the Advisory Committee's bylaws further define the respective duties and responsibilities of the Department, the Board of Health, and the Advisory Committee.

### **What problem did the audit work identify?**

Overall, we found that the effectiveness of the Program is being undermined by a lack of clarity and common understanding about the division of responsibilities and authority between the Department and the Advisory Committee. Each of our earlier findings highlighted problems with Program administration and oversight that are only exacerbated by this lack of clarity and common understanding of responsibilities and authority. Specifically:

- In Recommendation No. 1, we discussed grant award allocations and how disagreement between the Department and the Advisory Committee led to an inability to address emerging needs and reserve some Program revenues for unexpected costs and contingencies.
- In Recommendation Nos. 2 and 3, we discussed the fact that grantees are not being held accountable when project goals established in the grant contract are not met. The Department is not communicating the results of monitoring activities to the Advisory Committee, and there is no formal mechanism by which the Advisory Committee considers past performance when renewing grant awards or recommending new grants.
- In Recommendation No. 4, we discussed conflicts of interest and the fact that the Department and the Advisory Committee are unable to provide reasonable assurance that conflicts of interest are properly disclosed, consistently evaluated, and that Advisory Committee members' activities are restricted appropriately.
- In Recommendation Nos. 5 and 6, we discussed that the Department and the Advisory Committee are not fully complying with Colorado's open meetings law, and issues such as turnover and vacancies on the Advisory Committee make it difficult for the Advisory Committee to accomplish its business of reviewing grant applications and making funding recommendations.

Further, during our interviews, Department staff and Advisory Committee members characterized the relationship between the Department and the Advisory Committee as being adversarial. Some Advisory Committee members expressed concerns to us that they do not receive sufficient information and updates from the Department about matters concerning the overall Program, such as funding, budgets, and the general status of the grants. In contrast, Department staff expressed concerns to us that, although the Advisory Committee is an important and valuable stakeholder group, the Advisory Committee is not in a position of authority or responsibility to ensure that the Program fits into the Department's broader strategic goals with respect to statewide HIV prevention, care, treatment, and education needs. As we discussed in Recommendation No. 1, this apparent conflict between the Advisory Committee and the Department presented itself during a discussion in December 2012 about emerging statewide needs for non-occupational HIV post-exposure prophylaxis treatment and the distribution of condoms and associated risk-reduction materials for areas outside the federally funded five-county Denver Metropolitan Area.

The lack of clarity and common understanding about the division of responsibilities and authority also appears to exist at the grantee level. Specifically, we identified one project for which the Advisory Committee recommended and the Board of Health approved funding in February 2012. However, there were extensive delays negotiating a grant contract because the grant recipient would not provide the Department with additional information that was required to finalize the project scope of work. In May 2012, the grant recipient requested that the grant contract move forward without the required information. Department staff denied this request. In June 2012, the Department sent a letter to the grant recipient stating that further delays in the contract negotiations may require revisions to the project budget to account for a reduced project period. The letter also stated that the Department would recommend that the Advisory Committee consider alternative options for these funds, which could include re-awarding the funds to another grantee. The grant recipient subsequently complained to members of the Advisory Committee about the Department's actions, at which point the Advisory Committee intervened and requested that the Department report on actions taken with respect to the grant contract and on the Department's policies and procedures for contract negotiations. The grant contract for the project was fully executed in September 2012.

### **Why did the problem occur?**

The Advisory Committee represents a group of stakeholders and other constituencies whose involvement was specifically prescribed by the General Assembly. The Advisory Committee's knowledge and input is fundamentally important to the grant-making process to ensure that the overall purpose of the



Program is achieved. However, the historical problems between the Department and the Advisory Committee are due to the fact that the Advisory Committee's responsibility and authority with respect to the Program are misunderstood and being interpreted too broadly.

Section 25-4-1414(1)(a), C.R.S., states: "The Program shall fund medically accurate HIV and AIDS prevention and education programs through a competitive grant process that shall be **overseen** by the [Advisory Committee]" [emphasis added]. We found that both the Advisory Committee and the Department, by virtue of their historical practices, have essentially interpreted this provision to mean that the Advisory Committee has control or governing authority over the Program. Over time, the Department has deferred to the Advisory Committee, and the Advisory Committee has been assertive, with respect to how the Program should be run and grant funds should be used. However, there are several indicators in the Program's enabling statutes that the General Assembly did not intend for the Advisory Committee to have control over the operation of the Program.

First, Section 25-4-1413(1), C.R.S., states: "The Department shall **administer** the Program" [emphasis added]. We sought guidance from the Office of Legislative Legal Services (OLLS) on how to interpret the terms "oversee" and "administer" within the context of the Program's enabling statutes. According to OLLS, the term "administer" is commonly used to establish a broad umbrella of authority that the General Assembly vests in the executive branch departments responsible for implementing state programs and functions. Therefore, absent any provision to the contrary, the Department's administrative authority over the Program would generally supersede that of the Advisory Committee's.

Second, Sections 25-4-1414(1)(c) and (2), C.R.S., define the scope of the Advisory Committee's responsibilities only to include making recommendations on Program rules and grant awards to the Board of Health. The Advisory Committee is not the decision maker on grant awards, nor is the Advisory Committee the sole source of recommendations on grant funding or Program rules. The Department's Executive Director also has the authority to make recommendations on grant funding and Program rules to the Board of Health. Moreover, although the Advisory Committee historically has asserted itself and provided direction and advice to the Department about the overall Program (e.g., target populations and funding priorities), the Program's enabling statute does not include specific authority for the Advisory Committee to advise the Department on other programmatic matters. To provide counterpoint examples, we examined the statutes for the advisory bodies for two other statewide competitive grant programs:

- The Energy and Mineral Impact Assistance Program within the Department of Local Affairs provides grant funding to political subdivisions that are socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels. The 12-member Energy Impact Assistance Advisory Committee (see Section 34-63-102(5)(b), C.R.S.) reviews grant applications and makes funding recommendations to the Executive Director of the Department of Local Affairs, who makes the final funding decisions. Statute also specifically grants the Energy Impact Assistance Advisory Committee the authority to advise the Department of Local Affairs on programmatic matters, such as the problems local governments are experiencing providing governmental services as a result of the development, processing, or energy conversion of mineral and fuel resources in various areas of the state.
- The Health Disparities Grant Program within the Department provides grant funding for statewide initiatives that address prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases in underrepresented populations. The 13-member Health Equity Commission (see Section 25-4-2206, C.R.S.) appoints a committee to review grant applications and finalizes recommendations for funding to the Board of Health, which makes the final funding decisions. Statute also specifically grants the Health Equity Commission the authority to advise the Department on programmatic matters, such as determining innovative data collection and dissemination strategies, aligning the Department's health equity efforts and the Health Disparities Grant Program, and strengthening collaborative partnerships with communities impacted by health disparities.

The Department, as the administrator of the Program, at its discretion may request advice from the Advisory Committee about various aspects of the Program; however, the Advisory Committee cannot assume that the scope of its authority over the competitive grant process extends beyond the two responsibilities enumerated in statute.

Third, the Program's enabling statutes do not designate the Advisory Committee as a "Type 1" agency. A Type 1 committee, board, or commission operates independently from the executive branch department it is associated with in terms of carrying out any powers or duties that are specifically prescribed in statute. It is common for the General Assembly to designate a board or committee as a Type 1 agency when it intends for that body to have control or governing authority over certain aspects of state agencies and programs. For example, the Building Excellent Schools Today Program within the Department of Education provides grant funding for public school capital construction needs. The nine-member Public School Capital Construction Assistance Board (see Section 22-43.7-106,

C.R.S.) reviews grant applications and makes funding recommendations to the State Board of Education, which makes the final funding decisions. However, unlike the Advisory Committee, statute establishes the Public School Capital Construction Assistance Board as a Type 1 agency. Statute also assigns the Public School Capital Construction Assistance Board an extensive list of powers, duties, and functions, including rulemaking authority.

Finally, we listened to audio recordings of the House and Senate committee of reference hearings for House Bill 06-1054, which created the Program. No testimony or discussion was offered during either the House or Senate hearings to support a conclusion that the General Assembly's intent was for the Advisory Committee's role to be anything other than advisory.

The guidance from OLLS, our analysis of the Program's enabling statutes, and our comparisons with other statewide competitive grant programs indicate that the Advisory Committee is intended to serve in an advisory, rather than a controlling, capacity. However, the Department has not asserted its authority over the Program as a means of providing better direction and guidance to the Advisory Committee on its role and responsibilities. As a result, the scope of the Advisory Committee's role and responsibilities has grown beyond what was intended and has become institutionalized in Program rules, Advisory Committee bylaws, and historical practices.

### **Why does this problem matter?**

Accountability for government programs suffers without a governance structure that establishes clear responsibilities and lines of authority. Without a clear and common understanding of their respective responsibilities and authority, neither the Department nor the Advisory Committee can provide for effective administration and oversight of the competitive grant process or ensure that the Program's core purpose is being achieved.

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### **Recommendation No. 7:**

The Department of Public Health and Environment (the Department) should clarify that the scope of the HIV and AIDS Prevention Grant Program Advisory Committee's (the Advisory Committee) authority and responsibility with respect to the Colorado HIV and AIDS Prevention Grant Program is advisory in nature. The Department should work with the Board of Health and the Advisory Committee to revise Program rules and Advisory Committee bylaws accordingly.

## **Department of Public Health and Environment Response:**

Agree. Implementation date: April 2014.

The Department will clarify that the scope of the Advisory Committee's authority is advisory in nature. The Department will provide technical assistance to the Advisory Committee in an effort to revise the Advisory Committee bylaws to accurately reflect its authority and responsibility.

The Department will review and propose any necessary modifications to the Board of Health rules for the Colorado HIV and AIDS Prevention Grant Program.

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# **Appendix**

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## Appendix

**Colorado HIV and AIDS Prevention Grant Program  
Analysis of HIV Case Rates and Grant Project Coverage by County  
Fiscal Year 2013–2015 Grant Cycle**

<b>County</b>	<b>Urban/Rural Designation<sup>1</sup></b>	<b>Statewide Ranking Based on HIV Case Rate<sup>2</sup></b>	<b>HIV Case Rate<sup>3</sup></b>	<b>Total Number of Newly Diagnosed HIV Cases<sup>4</sup></b>	<b>Number of Funded Grant Projects Covering the County</b>
Denver	Urban	1	24.6	731	16
Adams	Urban	2	11.4	248	10
Costilla	Rural	3	11.1	2	2
Bent	Rural	4	9.7	3	4
Conejos	Rural	5	9.6	4	2
Arapahoe	Urban	6	9.2	259	9
Clear Creek	Rural	7	8.7	4	1
Crowley	Rural	8	6.9	2	2
Fremont	Rural	9	6.8	16	5
Yuma	Rural	10	6	3	0
Summit	Rural	11	5.8	8	6
Eagle	Rural	12	5.5	14	4
Lake	Rural	12	5.5	2	3
Alamosa	Rural	14	5.2	4	2
Elbert	Rural	14	5.2	6	2
Boulder	Urban	16	4.7	69	5
El Paso	Urban	17	4.6	142	6
Ouray	Rural	17	4.6	1	3
Phillips	Rural	19	4.5	1	0
Pueblo	Rural	20	4.2	33	5
Mesa	Rural	21	4	29	6
Garfield	Rural	22	3.6	10	6
Lincoln	Rural	22	3.6	1	2
Jefferson	Urban	24	3.5	92	8
Routt	Rural	24	3.5	4	4
Chaffee	Rural	26	3.4	3	3
Rio Grande	Rural	27	3.3	2	2
Saguache	Rural	28	3.2	1	3
Rio Blanco	Rural	29	3.1	1	3
Larimer	Rural	30	2.9	43	7
Morgan	Rural	30	2.9	4	0
Huerfano	Rural	32	2.8	1	2
Las Animas	Rural	33	2.6	2	2
Weld	Rural	33	2.6	32	6
Broomfield	Urban	35	2.5	7	3
Kit Carson	Rural	35	2.5	1	2

**Colorado HIV and AIDS Prevention Grant Program  
Analysis of HIV Case Rates and Grant Project Coverage by County  
Fiscal Year 2013–2015 Grant Cycle**

<b>County</b>	<b>Urban/Rural Designation<sup>1</sup></b>	<b>Statewide Ranking Based on HIV Case Rate<sup>2</sup></b>	<b>HIV Case Rate<sup>3</sup></b>	<b>Total Number of Newly Diagnosed HIV Cases<sup>4</sup></b>	<b>Number of Funded Grant Projects Covering the County</b>
Park	Rural	35	2.5	2	2
Pitkin	Rural	38	2.4	2	6
Douglas	Urban	39	2	28	5
La Plata	Rural	39	2	5	5
Archuleta	Rural	41	1.7	1	3
Teller	Rural	41	1.7	2	2
Montezuma	Rural	43	1.6	2	5
Moffat	Rural	44	1.5	1	3
Grand	Rural	45	1.4	1	3
Delta	Rural	46	1.3	2	5
Gunnison	Rural	46	1.3	1	5
Otero	Rural	48	1.1	1	4
Montrose	Rural	49	1	2	5
Baca	Rural	--	0	0	2
Cheyenne	Rural	--	0	0	2
Custer	Rural	--	0	0	2
Dolores	Rural	--	0	0	4
Gilpin	Rural	--	0	0	1
Hinsdale	Rural	--	0	0	3
Jackson	Rural	--	0	0	3
Kiowa	Rural	--	0	0	2
Logan	Rural	--	0	0	1
Mineral	Rural	--	0	0	2
Prowers	Rural	--	0	0	3
San Juan	Rural	--	0	0	3
San Miguel	Rural	--	0	0	5
Sedgwick	Rural	--	0	0	0
Washington	Rural	--	0	0	0
<b>Urban Counties</b>			<b>9.4</b>	<b>1,576</b>	<b>8</b>
<b>Rural Counties</b>			<b>3.2</b>	<b>259</b>	<b>3</b>
<b>Statewide</b>			<b>7.4</b>	<b>1,835</b>	<b>21</b>

**Source:** Office of the State Auditor’s analysis of grant project data for the Colorado HIV and AIDS Prevention Grant Program (the Program) and HIV/AIDS surveillance data reported by the Colorado Department of Public Health and Environment as of June 30, 2012.

<sup>1</sup>In accordance with Program rules, “urban” counties have one or more population centers of 50,000 persons or more *and* 250 or more reported HIV/AIDS cases. “Rural” counties do not have one or more population centers of 50,000 persons *or* have fewer than 250 reported HIV/AIDS cases.

<sup>2</sup>Counties with no newly diagnosed HIV cases are not ranked.

<sup>3</sup>Number of newly diagnosed HIV cases between January 1, 2008 and June 30, 2012, per 100,000 population.

<sup>4</sup>Number of newly diagnosed HIV cases between January 1, 2008 and June 30, 2012.



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