



## REPORT HIGHLIGHTS PERFORMANCE AUDIT

### Our Conclusion

The Arizona Department of Veterans' Services (Department) should consider either phasing out its fiduciary program or increasing fees to cover costs. In addition, the Department needs to address operational deficiencies in its fiduciary program that affect its ability to appropriately manage clients' affairs.



2011

## Department should consider phasing out program or increasing fees

The Department is authorized but not required to accept appointments from state courts and federal agencies to manage the affairs of veterans who can no longer take care of themselves. Such appointments include conservatorships, through which the Department handles veterans' financial affairs, or guardianships, through which personal decisions are made, such as decisions regarding medical care. As of March 2011, the Department had 256 active cases.

**Three factors suggest program could be phased out**—Because this program is not required and has had problems, and there are alternative service providers for veterans, the Department should consider phasing out its fiduciary program. If it chooses to no longer provide such services, the Department could transfer clients to family or other qualified adults, or to private or public fiduciaries, or gradually phase out the current fiduciary appointments through attrition.

State statute does not require the Department to provide fiduciary services, but the Department has chosen to provide this optional service. Further, the Department has had significant operational issues in providing fiduciary services, resulting in penalties imposed by the Maricopa County Superior Court and the Supreme Court's Fiduciary Board. Finally, there are about 50 other entities in the State that are licensed to provide fiduciary services, including public fiduciaries in every county and private fiduciary businesses.

**If Department chooses to continue program, it should increase fees**—Clients pay for about 60 percent of the

cost for fiduciary services, with the State picking up the remaining 40 percent, or about \$508,000 annually.

Some of the Department's fees do not promote cost recovery and differ in structure from the fees charged by other public and private fiduciaries. These fiduciaries have established flat and hourly fees for their services. As an example, the Maricopa public fiduciary charges the following:

- **Guardianship**—\$900 flat fee to set up case; \$55 to \$145 per hour for guardianship services.
- **Conservatorship**—\$55 to \$145 per hour.
- **Personal representative of a decedent's estate**—\$1,200 flat fee to set up case; \$400 final accounting fee; \$95 hourly fee.

In contrast, the Department charges \$750 to set up a guardianship and then charges \$75 to \$100 per month for guardianship services. According to statute, the maximum the Department can charge for a conservatorship is up to 5 percent of the client's income, and according to the Department, it charges 5 percent. Personal representative fees depend on the case.

### Recommendations:

The Department should:

- Consider phasing out the fiduciary services program.
- Consider increasing fees if it does not phase out the program.

# Fiduciary program's operational deficiencies need to be addressed

Two court reviews identified operational concerns with the Department's fiduciary program. The Arizona Supreme Court reviewed 15 client files and, in January 2010, found noncompliance in 14 key areas, including personal property inventory records lacking reasonable detail, inadequate case file documentation, and inaccurate reports. The Maricopa County Superior Court conducted a county-specific review in January 2010 and found that the Department had a consistent pattern of failing to discharge its fiduciary duties. In March 2010, the Superior Court ordered that the Department not take on any more cases for 6 months. An October 2010 review resulted in the Court's continuing the restriction. In January 2011, the Superior Court found improvement and modified its order, limiting the Department to accepting no more than 20 new clients until the next hearing in September 2011.

Additionally, three complaints filed with the Supreme Court's Fiduciary Board resulted in disciplinary actions against the Department. One complaint alleged that the Department failed to monitor the client's living conditions, resulting in losses to the estate; one client received an eviction notice because the Department failed to pay the client's nursing home bills; and the third complaint was because the Department failed to supervise its attorney. As a result of these complaints, the Department incurred attorneys' fees to defend itself and had to pay the Board's attorneys' fees and investigation costs. These costs totaled more than \$65,000.

Although the Department has taken some steps to improve, auditors found continuing problems. The Department should take the following additional steps:

- **Improve inventory and client records**—In all the client cases the Supreme Court reviewed, personal property was not listed in detail and no fair market value was assigned. Client records also need to be improved. For example, one client file had no proof of a home sale and another

had no documents appointing the Department as guardian.

- **Ensure accuracy of court reports**—The accuracy of required court reports is another area needing improvement. One accounting report's ending balance for one year differed from the beginning balance for the next year, and another accounting report failed to show the deposit of a \$46,700 check the Department had credited to the client's account a year earlier.
- **Ensure timely filings**—The Department needs to ensure that filings are timely. Death notices must be filed within 10 days of learning of the death and final accountings must be filed within 90 days of death. In one case, the death notice was a year late and the file was closed 8 years later.
- **Improve bank reconciliations**—The Department can also improve bank reconciliation procedures. The Department pools client money in two accounts—one to pay bills and one for investment. Although reconciling these accounts is crucial to protect clients' money, a department fiduciary official reported they were reconciled in April 2009 after almost 2 years without reconciliation. However, auditors' reconciliation of the November 2009 and January 2010 statements revealed several transactions that were overlooked and variances of \$34 and \$1,589, respectively.

## Recommendations:

The Department should:

- Ensure records are complete and accurate, and assets have market values assigned.
- Ensure court reports are timely and accurate.
- Ensure filings are timely.
- Improve bank reconciliation procedures.