A REPORT
TO THE
ARIZONA LEGISLATURE

Special Investigative Unit

Special Investigation

Pinal/Gila Long Term Care

Conflict of Interest and Mishandling of Public Monies

DECEMBER • 2008

Debra K. Davenport
Auditor General

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December 24, 2008

Members of the Arizona Legislature

The Pinal County Board of Supervisors

The Gila County Board of Supervisors

The Honorable Terry Goddard
Attorney General

The Office of the Auditor General has conducted a special investigation of the Pinal/Gila Long Term Care Department for the period July 2005 through January 2006. The investigation determined the amount of public monies misused, if any, and whether there were any conflict-of-interest violations during that period.

The investigation consisted primarily of inquiries and examination of selected financial records and other documentation. Therefore, the investigation was substantially less in scope than an audit conducted in accordance with generally accepted auditing standards. Accordingly, the Office does not express an opinion on the adequacy of the financial records or the internal controls of the Pinal/Gila Long Term Care Department. The Office also does not ensure that all matters involving the County's internal controls, which might be material weaknesses under standards established by the American Institute of Certified Public Accountants or other conditions that may require correction or improvement, have been disclosed.

The accompanying Investigative Report describes the Office's findings and recommendations as a result of this special investigation.

After this report is distributed to the members of the Arizona State Legislature, the Pinal County Board of Supervisors, the Gila County Board of Supervisors, and the Attorney General, it becomes public record.

Debbie Davenport
Auditor General

Enclosure

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SUMMARY

In April 2007, the Office of the Auditor General received an anonymous complaint alleging potential financial misconduct by two Pinal/Gila Long Term Care (P/GLTC) employees: Irma Potter, Director of Network Development, and Donna Anderson, former Contracts Coordinator. During our investigation, we determined that Ms. Potter and Ms. Anderson misused their Pinal County employment status and intentionally violated conflict-of-interest laws. As a result, we submitted our report to the Pinal County Attorney's Office and it has taken criminal action against both employees, which resulted in their indictment on felony charges. See the Conclusion on page 15 of this report.

Our investigation revealed that in December 2005, Ms. Potter and Ms. Anderson violated conflict-of-interest laws by unlawfully accepting a $1,500 ($750 each) cash payment for providing consulting services to a county vendor. Both county employees improperly received a financial benefit from this county vendor, while concurrently being in a position to influence county decisions relating to that vendor's contract. Even after the payment was made, both employees continued to inappropriately participate in monitoring the contract by negotiating, renewing, and recommending pricing increases to the vendor's January 2006 contract.

In addition, preceding the conflict-of-interest violation, from July 2005 to January 2006, Ms. Anderson inappropriately and without authority instigated two rate increases to the same county vendor's contracted rates. As a public official, Ms. Anderson had a responsibility to prudently manage county assets, but because of her inappropriate actions, she mishandled public monies by allowing overpayments to this vendor totaling nearly $34,000.

Finally, the County did not properly oversee the P/GLTC contract administration or the subsequent investigation into these two employees' misconduct. Specifically, county officials failed to implement an adequate system of internal controls over the P/GLTC program services. County officials also failed to solicit advice from its legal counsel relating to Ms. Potter's and Ms. Anderson's misconduct, adequately document its investigation and findings, and review the P/GLTC non-emergency transportation services contract for potential violations.

Investigation Highlights:

- Current and former county employees violated conflict-of-interest statutes
- Former county employee allowed overpayments of county monies totaling nearly $34,000
- County officials failed to properly investigate and document the allegations against the employees

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INTRODUCTION & BACKGROUND

Pinal/Gila Long Term Care (P/GLTC) is responsible for providing comprehensive healthcare to 1,300 residents of Pinal and Gila Counties who are enrolled in the Arizona Long Term Care System (ALTCS) program. The ALTCS program is a state program designed specifically to meet the needs of elderly (age 65 or over), blind, and disabled individuals who need ongoing services at a nursing facility level of care. P/GLTC is responsible for providing a full array of healthcare and healthcare-related services and has been the ALTCS health plan in Pinal County since 1989 and in Gila County since 2001. P/GLTC offers numerous home and community-based services including assisted living, attendant and personal care, and other services such as home-delivered meals, behavioral health, home health nursing, hospitalization, and non-emergency transportation services.

The Arizona Health Care Cost Containment System, Arizona's Medicaid program, funds its ALTCS program, which in turn funds the P/GLTC program. P/GLTC is accountable to ALTCS, Pinal County and its enrollees, Gila County and its enrollees, and the local community for the quality of services provided. P/GLTC is also financially accountable to the Arizona Health Care Cost Containment System for the more than $48 million in revenues it received in fiscal year 2007 to provide these services.

P/GLTC operates under the authority of Pinal County's Health and Human Services Department, which provides administrative oversight, support, and coordination to P/GLTC. Unlike other county divisions, P/GLTC directly procures its own services. The Pinal County Board of Supervisors has ultimate authority and approval over the Health and Human Services Department, including P/GLTC.

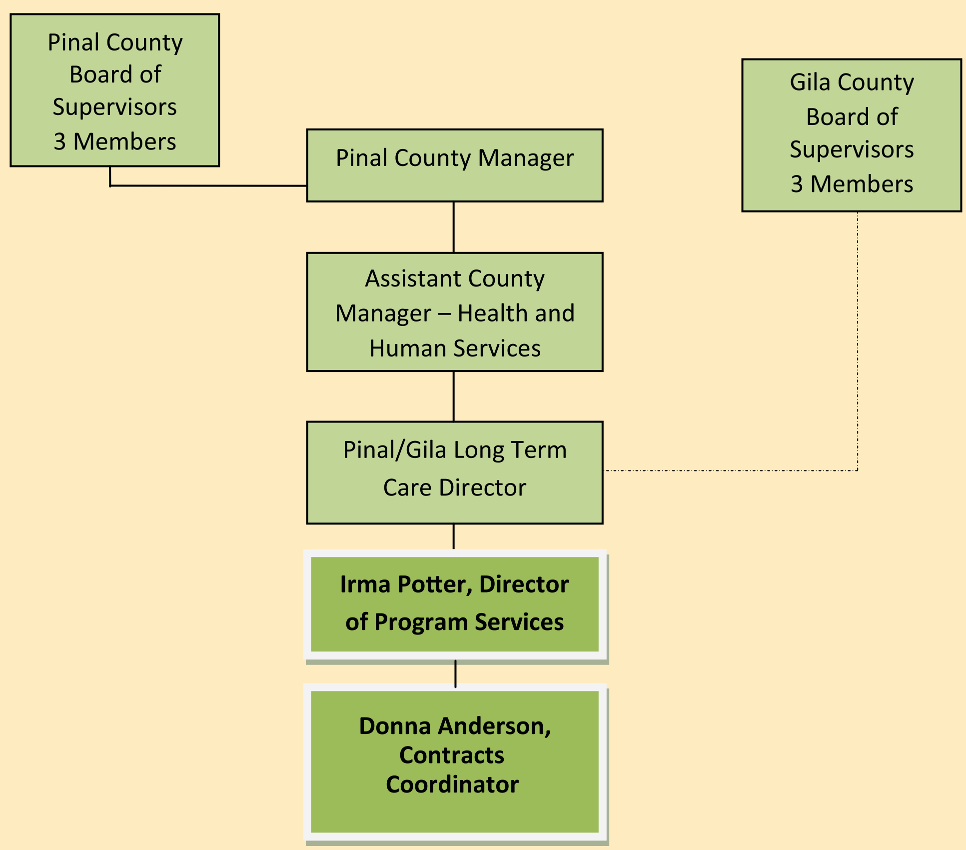
Ms. Irma Potter began her employment with P/GLTC in August 1996 as a case manager. In September 2000, Ms. Potter was promoted to the position of Contracts Supervisor; however, that title has been changed several times, and is now Director of Network Development. Under the general supervision of the P/GLTC Director, Ms. Potter is responsible for developing and maintaining the P/GLTC contracted and non-contracted provider network. As of November 2008, Ms. Potter was still employed with P/GLTC.

Ms. Donna Anderson began her employment with P/GLTC in May 1993 as an account clerk and 3 years later was promoted to case manager. In 2002, Ms. Anderson was assigned to the Contracts Coordinator position, where she worked under the general supervision of Ms. Potter. Ms. Anderson was responsible for reviewing, monitoring, and developing programs and contracts for healthcare and healthcare-related services. Ms. Anderson resigned in June 2007 and immediately began employment with P/GLTC's non-emergency transportation vendor listed in Findings I and II of this report.

Non-Emergency Transportation Services Contract

From at least 1999 to 2004, P/GLTC contracted with multiple vendors to provide non-emergency transportation services to its members, including transporting members to and from medical appointments, transporting wheelchair-bound members, and transporting members with oxygen needs. However, in October 2004, the selection committee (composed of Ms. Potter, Ms. Anderson, and the P/GLTC Director) awarded a 5-year transportation services contract to a single vendor (the vendor identified in Findings 1 and 2), with renewable terms annually. From September 2004 to May 2008, P/GLTC paid this vendor over $4,600,000 to provide non-emergency transportation services to its members.

Exhibit 1: Pinal/Gila Long Term Care Governing Structure



Source: Auditor General staff analysis of Pinal County and Pinal/Gila Long Term Care records.

Pinal County Internal Investigation

In March 2006, the County reviewed allegations of a potential bribery involving Ms. Potter, Ms. Anderson, and the P/GLTC non-emergency transportation vendor. The County conducted an internal investigation and interviewed both employees. As a result of these interviews, the County determined that Ms. Potter and Ms. Anderson participated in employment with this county vendor and received a $1,500 cash payment for their services.

Although the County does not have formal, written policies regarding internal investigations, generally, all Human Resources Department investigations that involve significant employee issues are forwarded to the County Attorney's Office. In fact, if criminal allegations are raised during an internal investigation, the Human Resources Department suspends the investigation pending further direction from the County Attorney's Office. Even though the allegations against Ms. Potter and Ms. Anderson were criminal in nature, the Human Resources Department failed to follow its normal procedures by not forwarding the allegations to the County Attorney's Office. Further, the Human Resources Department compiles a findings report for each completed internal investigation, which is issued to the Assistant County Manager of the related department. Once more, the Human Resources Department failed to follow its normal procedures by not drafting or issuing a findings report for this investigation.

The Human Resources Department concluded that both employees violated county policies regarding outside employment by failing to receive permission for their participation and failing to submit an outside employment form for their consulting work. As a result, the Human Resources Department required that both employees submit outside employment forms. However, no record of the investigation or its findings was placed in the employees' files, although the violation was noted almost 10 months later within Ms. Potter's annual employment evaluation. Even though Ms. Potter was reprimanded for her involvement with Ms. Anderson, she was still allowed to compile Ms. Anderson's annual employment evaluation. Within that evaluation, Ms. Potter disposed of the violations merely as allegations and stated that Ms. Anderson was "exonerated of the charges." Other than these references made in the employees' evaluation, the Human Resources Department failed to properly document in either employee's personnel files the disciplinary actions taken or the corrective action planned.

The P/GLTC Director compiled separate disciplinary recommendations for each employee, which included obtaining approval prior to performing any outside work, refraining from consulting with P/GLTC-contracted vendors, and obtaining training on county policies and procedures. However, the Director kept these recommendations in her personal files and they were never submitted or reported to the County's Human Resources Department, nor were they noted or maintained in the employees' personnel files.

Ms. Anderson was removed from monitoring the vendor's contract immediately following the County's investigation; however, Ms. Potter continued to oversee the vendor's contract until February 2008.

FINDING 1

Employees engaged in conflicts of interest

Public officials are in a fiduciary position to do business on behalf of the citizens they serve. That business should be conducted at arm's length, in an open, above-board manner. For public officials to profit personally from their official business dealings violates public trust and jeopardizes the integrity of the County as a whole. To help ensure that public officials do not improperly use their position to personally profit from their business dealings, Arizona law restricts public officials from participating in any decision related to contracts in which they or their relatives have a monetary interest and requires them to make known such interest in the official records.

In December 2005, Ms. Potter and Ms. Anderson violated conflict-of-interest laws when they unlawfully accepted a $1,500 cash payment from a county vendor whose contract they were responsible for overseeing. Both employees failed to properly disclose their improper relationship to the County's Board of Supervisors or to the Long Term Care Director. Additionally, contrary to what is required by law, both employees failed to refrain from any decisions relating to the vendor's contract subsequent to this payment.

In violating conflict-of-interest rules, Ms. Potter and Ms. Anderson:

- Were employed by Pinal County, a public agency, and were in a position of trust
- Had control over and were in a position to influence a county decision over the vendor's contract
- Received a financial benefit from the vendor ($1,500 cash), while simultaneously representing the County
- Failed to disclose this financial interest or refrain from participating in the administration of the vendor's contract following the payment

From September 2004 to at least March 2006, Ms. Potter and Ms. Anderson were responsible for the overall administration of this vendor's contract with P/GLTC. Specifically, their responsibilities for this vendor included:

- Initially helping to select and award this vendor the County's non-emergency transportation services contract.
- Monitoring day-to-day complaints against the vendor and establishing ongoing communication with the vendor to solve these complaints.

- Assessing the vendor's compliance with contractual obligations, including its quality of service.

- Providing significant input on all pricing changes, including recommending increases, and researching and establishing vendor rates.

- Identifying the need for contract changes, renewals, and amendments, and obtaining these changes through board action.

Ms. Potter and Ms. Anderson stated that from December 3 to December 18, 2005, they assisted this county vendor with its response to Yavapai County's bid for transportation services, the same services Ms. Potter and Ms. Anderson were overseeing for P/GLTC. Specifically, in early December 2005, the vendor's president called Ms. Anderson on her private cell phone and requested her help with his company's response to Yavapai County's bid for transportation services. Soon thereafter, Ms. Anderson approached her direct supervisor, Ms. Potter, asked for permission to participate in this arrangement, and requested Ms. Potter's assistance. Ms. Potter approved of and agreed to equally assist the vendor, knowing she would be compensated for her services. In late December 2005 (on a Sunday), the vendor's president, Ms. Potter, and Ms. Anderson met at the vendor's office in Phoenix to finalize their work on the proposal and to compile the response to send to Yavapai County. Immediately following this meeting, the vendor's president paid Ms. Anderson $1,500 in cash from his own personal funds, half of which Ms. Anderson gave to Ms. Potter.

As public officials, Ms. Potter and Ms. Anderson illegally used their position for their own benefit when receiving $1,500 in cash from a county vendor.

Neither Ms. Potter nor Ms. Anderson could produce documents to quantify or support the services they provided, the number of hours they worked on these services, or the breakdown for the payment they received. In fact, Ms. Anderson and Ms. Potter admitted that they did not receive: service contracts from the vendor for their consulting services; payments from a vendor's business account, as Ms. Anderson admitted that the vendor's president paid her $1,500 in cash from his own personal monies; or timely income tax documents from the vendor. It was only after the County's investigation in March 2006 and at Ms. Anderson's request that the vendor finally issued income tax documents to report the $1,500 payment. The payments originally had not been recorded in the vendor's accounting system and therefore, were not reported in a timely manner to the Internal Revenue Service. The vendor's accountant admitted that this incident was atypical.

Further, on December 19, 2005, Ms. Anderson inappropriately issued a recommendation letter for the vendor, on behalf of P/GLTC, to Yavapai County. This letter was included as part of the bid package that was sent to Yavapai County, which Ms. Potter and Ms. Anderson were paid by the vendor to help compile. By writing this recommendation letter, Ms. Anderson was acting in her official county capacity while at approximately the same time, personally receiving a financial benefit from the vendor to provide this letter, thereby improperly acting in her own interest rather than in the interest of the County.

The P/GLTC Director stated that Ms. Anderson circumvented normal procedures and she did not have the authority to issue recommendation letters. Generally, the P/GLTC Director reviews all recommendation letters and submits them to either the Assistant County Manager or the County Attorney's Office for final approval. Ms. Anderson admitted that the language in her letter was troublesome as it contained gratuitous statements. The County was not aware that Ms. Anderson had issued this letter until after our investigation began.

Exhibit 2: Ms. Anderson's Recommendation Letter

PINAL/GILA LONG TERM CARE
PO BOX 2140
Florence, AZ 85232

December 19, 2005

Yavapai County
Prescott Valley, AZ 86314

Re: Letter of Reference – [Non-emergency transportation provider]

"…Pinal/Gila Long Term Care (P/GLTC) would like to submit this letter of reference for [the vendor] in support of their response to your RFP for Non Emergency Transportation services…[the vendor's] honesty, integrity, organizational structure, experience and high safety standards places them above any transportation company P/GLTC has ever contracted with for Non Emergency Transportation. P/GLTC is extremely satisfied with [the vendor] and their performance and recommends them without reservation..."

Sincerely,
Donna Anderson
Provider Services Coordinator

Source: Auditor General staff analysis of Yavapai County records.

Both Ms. Anderson and Ms. Potter admitted to having initial concerns that this personal services arrangement with the vendor was inappropriate and could potentially violate conflict-of-interest rules; however, neither employee sought approval from nor attempted to disclose this relationship to county officials. Ms. Potter and Ms. Anderson further violated conflict-of-interest laws by failing to divest themselves from all decision-making activities following their consulting work with the vendor. In fact, a few weeks after their improper actions, Ms. Potter and Ms. Anderson helped recommend to the Board for approval a contract extension and a 3 percent increase to the vendor's contract rates. Ms. Anderson continued to monitor and oversee the vendor's contract until March 2006, when she was removed from the contract as a result of the County's investigation. Ms. Potter continued to supervise the vendor's contract until she was finally removed from the contract in February 2008, after the Auditor General's investigation began.

FINDING 2

Former employee mishandled public monies

Public officials with oversight authority have a responsibility to prudently manage money and property entrusted to them. From July 2005 to January 2006, Ms. Anderson mishandled public money when she inappropriately and without authority initiated two rate increases to the non-emergency transportation vendor's contracted rates (the same vendor as in Finding 1). These increases brought about nearly $34,000 in unauthorized payments.

In July 2005, Ms. Anderson initiated an $0.08 per mile increase to the vendor's mileage rates, supposedly to adjust for increased fuel prices, without first obtaining proper approval to amend the contract. Ms. Anderson prepared a rate change form, which directed P/GLTC accounting staff to increase the vendor's mileage rates by $0.08. Although the vendor's contract provides for amendments to adjust for fuel price increases, such amendments must be requested by the vendor, including a 10-month historical market analysis of gasoline prices, approved by P/GLTC, and finally, approved by the County's Board. However, Ms. Anderson did not obtain the required historical analysis from the vendor or any supporting documents to justify the increase, and further, there is no evidence that the vendor even requested the increase. As a result, from July to September 2005, Ms. Anderson allowed the vendor to charge a price greater than the board-authorized price, resulting in overpayments totaling $6,649.

Exhibit 3: Inappropriate Increases to the Vendor's Contract Rates July 2005 to January 2006

Instance	Date	Exceeded Contractual Obligations in some instances by	Amount Overpaid
1	07/20/05 – 09/30/05	5%	$ 6,649
2	10/01/05 – 01/04/06	12%	27,109
		Total Amount Overpaid	$33,758

Source: Auditor General staff analysis of Pinal/Gila Long Term Care records.

Later, in October 2005, Ms. Anderson bypassed the County Board's authority and unilaterally created her own increase to the same vendor's contract rates for all services. Ms. Anderson again circumvented board approval and prepared a rate change form, which directed P/GLTC accounting staff to increase the vendor's rates according to her own modified schedule. Although the vendor's contract provided for a 3 percent rate increase should the vendor's complaints be below a pre-defined amount, such increase must be supported with complaint data, approved by P/GLTC, and finally, approved by the County's Board. However, P/GLTC was unable to provide sufficient documentation to justify the vendor's eligibility for the increase, and further, Ms. Anderson's arbitrary schedule of amounts exceeded the parameters of contract obligations, in some instances by 12 percent. As a result, from October 2005 to January 2006, Ms. Anderson allowed the vendor to charge a price greater than the board-authorized price, resulting in overpayments totaling $27,109.

In January 2006, as part of the annual renewal process and with P/GLTC's recommendation, the County's Board extended the vendor's contract terms and approved a 3 percent rate increase, as stipulated within the contract. Following this action the P/GLTC accounting staff stopped using the schedule prepared by Ms. Anderson and began paying the vendor the new rates specified in the contract extension. The County was not aware that Ms. Anderson had authorized increases to the vendor's rates until after our investigation began.

FINDING 3

County officials failed to maintain adequate controls and follow normal procedures

Public officials with oversight authority have a responsibility to act without prejudice and refrain from acting in their own interests rather than in the interest of the County. Likewise, public officials should prudently manage money and property entrusted to them and ensure that sufficient internal controls are designed and implemented to protect those assets. As such, county officials failed to implement an adequate system of internal controls over the Pinal/Gila Long Term Care's program services, which allowed Ms. Anderson to inappropriately influence increases to a vendor's contract rates. Additionally, county officials failed to follow normal procedures when investigating criminal allegations against Ms. Potter and Ms. Anderson.

Although rate increases should have been possible only after board approval, as the contract administrator, Ms. Anderson was able to instruct her accounting personnel to issue increases to the vendor's rates without any additional supervisory approval and without providing any supporting documentation, such as board approvals or an amended contract. Therefore, because of her contract management position, Ms. Anderson was able to improperly increase a vendor's contracted rates, resulting in overpayments of nearly $34,000.

County officials failed to solicit advice from its legal counsel relating to these individuals' misconduct.

Additionally, even though the allegations initially involved potential bribery, the County did not solicit advice from its legal counsel relating to Ms. Potter's and Ms. Anderson's misconduct. Generally, the Human Resources Director forwards cases involving potential employee criminal misconduct to the County Attorney's Office for further review. In this case, the Human Resources Department failed to follow its normal procedures by not forwarding the allegations against Ms. Potter and Ms. Anderson to the County Attorney's Office. When the County Attorney's Office was provided the results of this investigation, it took criminal action against both employees (see Conclusion on page 15).

County officials failed to document its investigation and findings.

The County also failed to properly document its investigation and findings relating to Ms. Potter's and Ms. Anderson's actions. When asked for documentation relating to the investigation, the Human Resources Director claimed that another department director maintained the documents, despite internal policies requiring personnel-related documentation to be maintained by the Human Resources Department. The County could not locate files relating to interview memoranda, internal findings, disciplinary actions, or files obtained from Ms. Potter or Ms. Anderson during the internal investigation. Further, the Human Resources Department failed to follow its normal procedures and it did not draft or issue a findings report.

Finally, the County failed to review the P/GLTC non-emergency transportation services contract to confirm that no violations occurred due to Ms. Potter's, Ms. Anderson's, and the vendor's inappropriate actions. If it had reviewed the vendor's contract, the County could have detected both of Ms. Anderson's improper pricing increases and taken action to obtain reimbursement for the overpayments. Further, it could have made a determination as to whether it had a remedy under section "L. Termination–Statutory Right of Cancellation for Conflict of Interest" to cancel the vendor's contract.

RECOMMENDATIONS

To help ensure the appearance of objectivity and the proper use of public monies, the County should ensure that the following actions are taken:

1. The County should identify and seek reimbursement for the overpayments made to the P/GLTC vendor. In addition, it should re-evaluate its contract with the P/GLTC non-emergency transportation services vendor (as identified in Findings 1 and 2) to determine compliance with all other contractual obligations and pricing adjustments. The County should also review whether it has a remedy under section "L. Termination–Statutory Right of Cancellation for Conflict of Interest" to cancel the contract if it determines that it is in its best interests to do so.

2. The County must ensure that all changes to contractual arrangements (e.g., pricing adjustments, term extensions, etc.) receive P/GLTC Director and Board of Supervisors approval, and be properly supported with documents such as board minutes, an amended contract, and internal memoranda and notes to justify the change.

3. To ensure that internal complaints are properly investigated and documented, the County should establish written policies and procedures governing internal employee investigations, including managing the initial complaint, maintaining appropriate documentation, conducting interviews, and preparing a final conclusion report.

4. The County's Human Resources Director should follow county policies and ensure that proper personnel documentation including discipline records, written corrective action forms, and memoranda are maintained within the Human Resources Department.

5. The County Board of Supervisors should establish policies and procedures outlining the conditions for which county departments should seek legal guidance for potential employee criminal misconduct.

CONCLUSION

On December 18, 2008, the Pinal County Attorney's Office took evidence of Ms. Potter's and Ms. Anderson's crimes to the Pinal County Grand Jury. This action resulted in the indictment of both individuals on one count each of conflict of interest.