



Office of Inspector General  
*Internal Audit*

**AHCA-2324-00012-A**  
**February 2025**

## **Agency Audit of Data Use Agreements**

### **EXECUTIVE SUMMARY**

As part of the Agency for Health Care Administration (Agency) Office of Inspector General's (Office) Audit Plan, Internal Audit Plan for FY 2023-24, Internal Audit conducted an Audit of Agency Data Use Agreements.

During the audit, we noted where improvements could strengthen controls in the following area:

- Data Use Agreements (DUA) do not contain consistent language across all Agency divisions.

Our Office identified the following opportunity for improvement:

- There is inconsistent use of the Florida Accountability and Contract Tracking System (FACTS) when uploading non-monetary agreements.<sup>1</sup>

Additionally, we noted satisfactory performance in ensuring the proper approval of Agency agreements within the Contract Administration Tracking System (CATS).

The Findings and Recommendations section provides details of the audit results. The opportunity for improvement is discussed in a separate section following the Findings and Recommendations.

Management responses are included in the Management Response Table on pages six through seven.

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<sup>1</sup> In the context of this Opportunity for Improvement, the generic term of "agreement" refers to a DUA or an AA.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objectives of our audit included:

1. To determine if the Bureau of Purchasing and Contract Administration (BPCA) had an effective process in place to ensure all information exchange agreements are completed in accordance with laws, rules, and regulations; and
2. To determine if information exchange agreements had the necessary language to protect data in accordance with laws, rules, and regulations.

The scope of this audit included any active Agency information exchange agreements from January 1, 2023, through December 31, 2023.

The methodology for this audit included the following:

- Review of relevant laws, rules, policies, and procedures; and
- Interviews of staff in BPCA and the Division of Information Technology.

## **BACKGROUND**

DUAs are used for ad-hoc, one-time data sharing events when critical and sensitive health information is obtained, processed, stored, and distributed by the Agency. DUAs are primarily used by the Division of Health Care Policy and Oversight, Bureau of Florida Center for Health information and Transparency (Florida Center)<sup>2</sup> and the Division of Medicaid, Bureau of Medicaid Quality.<sup>3</sup>

The Purchasing Unit, within the Bureau of Purchasing and Contract Administration (BPCA), administers all Agency contracts and purchases, including contract development, purchase order issuance, and contract manager monitoring and training. The Contract Administration Unit is responsible for developing, reviewing, and processing contract documents and ensures compliance with Florida statutes and contract laws, rules, and regulations.

We identified three different DUA templates being utilized throughout the Agency:

- Agreement for Use of Confidential Information;
- Limited Data Set Data Use Agreement; and
- Florida Medicaid Data Use Agreement.

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<sup>2</sup> The Florida Center coordinates, receives, analyzes, and publishes data and information from more than 50,000 different health care facility types for a variety of purposes including data-driven policy development, increasing transparency for consumers and stakeholders, and improving health care quality.

<sup>3</sup> The Bureau of Medicaid Quality provides data-driven, focused, and systematic feedback on the quality of Florida's Medicaid Program to Federal and State agencies, Medicaid recipients, Medicaid managed care plans, and providers.

## **FINDINGS AND RECOMMENDATIONS**

### **Finding – Data Use Agreements do not contain consistent language across all Agency divisions.**

We reviewed 24 active DUAs. We noted three different templates being used. The templates used were developed by the individual program areas rather than the BPCA.

We used the Health and Human Services (HHS) *Policy for the Common DUA Structure and Repository* as guidance to review the language within the Agency DUAs in our audit. HHS guidance aligns with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Rule 60GG-2, Florida Administrative Code (F.A.C.). There are 39 language elements identified in this HHS policy for developing comprehensive DUAs.

We noted missing or inconsistent language in the DUAs. All DUAs were missing three of the 39 elements.<sup>4</sup> We also identified inconsistent use of three of the 39 elements.<sup>5</sup>

The process for developing DUA templates was not centralized. Program areas created and used different DUA templates. DUAs lacking the necessary language components may prevent the Agency from safeguarding data in accordance with laws, rules, and regulations.

### ***Recommendations***

We recommend BPCA collaborate with the divisions (HCPO and the Division of Medicaid) and the Information Security Manager/HIPAA Privacy Officer to develop and implement a standardized Agency DUA template to ensure the HIPAA and Information Technology data elements are included to address concerns regarding missing language.

We recommend BPCA enhance their verification process to validate all Agency DUAs have the necessary language in accordance with HIPAA, Rule 60GG-2, F.A.C., Information Technology Standards, and all Agency information technology security policies.

## **OPPORTUNITY FOR IMPROVEMENT**

### **Opportunity for Improvement – There is inconsistent use of FACTS when uploading non-monetary agreements.**

Section 215.985(14)(a), Florida Statute (F.S.), states within “30 calendar days after executing a contract, each State entity shall post the following information relating to the

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<sup>4</sup> Missing language from three elements to include Service Level, Data Quality, and Data Deidentification (Organization Level).

<sup>5</sup> Inconsistent language regarding three elements to include Data Ownership, Data Deidentification (Person level), and Data Sharing.

contract on the contract tracking system: names of contracting entities, procurement method, contract beginning/ending dates, nature/type of commodities or services purchased, applicable contract unit prices/deliverables, total compensation to be paid/received under contract, all payments made to the contract to date, applicable contract performance measures, and if a competitive solicitation was not used to procure the goods/services, the justification of such action, including the citation to a statutory exemption/exception from competitive solicitation, if any.” Section 215.985(14)(a), F.S., implies agreements<sup>6</sup> with monetary value are required to be entered into FACTS. However, the statute does not specifically address agreements with non-monetary value. FACTS is an online tool developed by the Florida Department of Financial Services (DFS) which provides a means to track contracts and grants; and provides the public with access to contract and grant information.

Per DFS “all agreements as prescribed in Section 287, F.S., should be entered into FACTS. The statute should be reviewed for the Agency’s authorization to exempt agreements from FACTS. When a data exchange agreement and other Memorandum of Understanding without financial exchanges or impact is entered into FACTS, then the agreement is without financial exchange or impact can be selected as the non-price justification for the deliverable(s).” If the agreement is non-monetary, FACTS contains an option for a non-monetary agreement when uploading the agreement.

Our review of 43 applicable agreements found they were all documented in CATS. Thirty-one of the 43 applicable agreements were non-monetary and were not in FACTS; however, 12 were in FACTS. According to BPCA, non-monetary agreements are not required to be in FACTS and the 31 agreements were exempt from FACTS. The 12 found in FACTS should not have been, in accordance with Agency Policy and practice.

Agency Policy 4028 specifies that the Procurement Office ensures all agreements that include monetary value are entered into FACTS. Agency Agreement Job Aid specifies that “the Procurement Office ensures *all* agreements are entered into FACTS.” The policy implies agreements with a non-monetary value are not required to be entered into FACTS. Conflicts between the job aid and Agency Policy 4028 create inconsistent use of FACTS for non-monetary agreements. This increases the opportunity for errors; Agency policies and corresponding job aids should reflect actual practices.

### ***Recommendations***

We recommend Agency Policy 4028 and the Agency Agreement Job Aids include consistent language specifying which types of agreements are exempt from entering into FACTS.

We recommend BPCA document in policy allowable exemptions, with justification, for agreements which are not uploaded into FACTS.

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<sup>6</sup> In the context of this Opportunity for Improvement, the generic term of “agreement” refers to a DUA or an AA.

## **ACKNOWLEDGEMENT**

The Office of Inspector General Internal Audit staff would like to thank management and staff of the Agency's Division of Medicaid and Procurements, Bureau of Purchasing and Contract Administration; Division of Information Technology; Division of Health Care Policy and Oversight; and the Division of Medicaid Policy, Quality, and Operations for their assistance and cooperation extended to our Office during this engagement.

## **PROJECT TEAM**

Angel Perez, CIGA, Senior Management Analyst II conducted the audit under the supervision of Melissa Del Rosario, CIGA, Senior Management Analyst Supervisor; Karen Preacher, CIA, CFE, CIGA, CIG, Audit Director; and Brian Langston, CIG, CIGA, CIGI, Inspector General.

The Agency for Health Care Administration's mission is  
Better Health Care for All Floridians.

The Inspector General's Office conducts audits and reviews of Agency programs to assist the  
Secretary and other Agency management in fulfilling this mission.

This engagement was conducted pursuant to Section 20.055, Florida Statutes, and in accordance with  
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mail at Agency for Health Care Administration, 2727 Mahan Drive,  
Mail Stop #5, Tallahassee, FL 32308.

No.	Finding Statements	Recommendations	Management Responses	Anticipated Completion Date and Contacts
1	Data Use Agreements do not contain consistent language across all Agency divisions.	1. We recommend BPCA collaborate with the divisions (HCPO and the Division of Medicaid) and the Information Security Manager/HIPAA Privacy Officer to develop and implement a standardized Agency DUA template to ensure the HIPAA and Information Technology data elements are included to address concerns regarding missing language.	<p><i>Responsible Party:</i>  <i>Bureau of Purchasing and Contract Administration</i></p> <p>Response: BPCA accepts the recommendation but must defer to IT and HIPAA to write the IT language, as BPCA does not possess the subject matter expertise to write contractual provisions for HIPAA and IT data elements. BPCA recommends IT and HIPAA write the compliant language, in collaboration with General Counsel, and BPCA will incorporate the language into a standard DUA template. Additionally, BPCA will collaborate with the divisions to develop a standardized DUA template.</p>	<p><u>Anticipated Completion Date:</u>            August 29, 2025</p> <p><u>Contact(s):</u> Trey Collins and Michelle Factor</p>

No.	Finding Statements	Recommendations	Management Responses	Anticipated Completion Date and Contacts
		2. We recommend BPCA develop and implement a verification process to validate all Agency Data Use Agreements have the necessary safeguards, in accordance with Florida Administrative Code (F.A.C.), including Chapter 60GG-2 Information Technology Standards, and all Agency information technology security policies.	<p><i>Responsible Party:</i> <i>Bureau of Purchasing and Contract Administration</i></p> <p>Response: Once a standardized DUA template is developed in collaboration with the divisions, IT, HIPAA and General Counsel, BPCA will review existing Agency DUAs to ensure that required language is incorporated by amendment.</p>	<p><u>Anticipated Completion Date:</u> November 30, 2025</p> <p><u>Contact(s):</u> Trey Collins and Michelle Factor</p>