



Office of Inspector General
Internal Audit

Report No. AHCA-1617-04-A
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Agency Agreements

EXECUTIVE SUMMARY

As part of the Agency for Health Care Administration (Agency) fiscal year 2016-2017 audit plan, our office conducted an audit of the Contract Administration Unit's (CAU)¹ process for developing, reviewing, approving, tracking, maintaining, and monitoring Agency Agreements (Agreements) within the Division of Operations, Bureau of Support Services, Procurement Section (Procurement).

During our audit, we noted that, in general, applicable laws, rules, and general procedures were being followed. In addition, we observed that staff was committed to pursuing and implementing improvements to their process. However, we also noted areas where improvements could be made to strengthen controls and improve efficiency:

- Policy and Procedure 4028 on Agency Agreements requires updating to reflect current processes; clarify when Agreements should be utilized; distinguish between Contracts and Agreements; define the types of Agreements; and address the amendment process, monitoring, and other recommendations outlined in this report.
- Agreement Managers responsible for Agreements in excess of \$100,000 annually were not all Florida Certified Contract Managers as required by statute.
- The Contract Administration Tracking System (CATS) had inaccurate and incomplete information for some Agreements and discrepancies with some Agreement Documents and Program Office information.
- Some Program Offices did not send all existing Agreements to CAU despite the Agency Agreement Clean-up Project in April 2017, designed to capture unknown Agreements, and did not always route Agreements through CAU for development, review, approval, and execution.
- Some Agreements, which involved the use of Agency-owned Health Insurance Portability and Accountability Act of 1996 (HIPAA) Protected Health Information (PHI), did not include standard language relating to the proper

¹ The terms CAU and Procurement are used interchangeable throughout this report.

- handling and security of PHI and reporting responsibilities for breaches.
- Some Program Offices do not monitor Agreements consistently.

The Findings and Recommendations section provides details of the results of our audit.

OBJECTIVES, SCOPE, AND METHODOLOGY

The scope of our engagement focused on evaluating the process of developing, executing, and monitoring of Agreements during the period of January 2015, through December 2016.

The objectives of our engagement were to:

- Determine compliance with laws, rules, and Agency policies and procedures for administering Agreements.
- Evaluate the Agency's policies and procedures for tracking, reviewing, and approving Agreements and provide recommendations for improvement.
- Determine whether the Agency adequately monitors all tasks and deliverables specified in Agreements.

To accomplish our objectives, we interviewed appropriate Agency staff and reviewed policies, procedures, and applicable laws and rules. We also conducted a survey of Agreement Managers and Program staff and reviewed Agreements and information in CATS and Florida Accountability Contract Tracking System (FACTS).

BACKGROUND

Policy and Procedure 4028 on Agency Agreements dated December 2013, defines an Agreement as *“a document which formally binds the Agency to another party or entity (vendor) that is executed by the Agency Secretary.”* The Policy's purpose is to establish procedures to ensure that all Agreements are properly assigned, tracked, reviewed, and approved.

In addition, the Policy states: *“Agency Agreements shall only be utilized for services when one of the following conditions are met:*

- *The Agreement is with a governmental entity and the Agreement involves Agency expenditures or compensation to the entity for services performed.*
- *The Agreement is with a non-governmental entity and the Agreement does not involve Agency expenditures or compensation to the entity for services being performed.”*

The types of Agreements listed include:

- Standard Service Level Agreement
- Cooperative Agreement

- Data Sharing Agreement
- Professional Services Agreement
- Interagency Agreement
- Coordination of Benefits Agreement
- Memorandum of Agreement
- Memorandum of Understanding

The CAU within the Division of Operations, Bureau of Support Services Procurement Section administers Agreements. CATS, which was acquired in 2016, is a contract administration tracking system database used as a repository and to develop, assign, track, review, approve, and execute all Agency contracts, grants, and agreements. In an effort to track and house all existing Agreements in CATS, CAU began uploading existing Agreements, previously maintained on Procurement's SharePoint site, into CATS in March 2016, including entering data in the CATs data fields. CAU also began to utilize CATS to track, route, and execute new Agreements in June 2016.

The Agreement drafting process starts with the Program Office contacting CAU. CAU works with the Agreement Manager on the details of the Agreement since the Program Office has specific information regarding the program, the nature of the Agreement, and serves as the point of contact with the other party (governmental or non-governmental entity). CAU emails the Agreement template for the Program Office to complete and provides guidance as needed in the drafting of the Agreement. Once the template is completed, the Agreement Manager sends the drafted Agreement to CAU for a review to ensure that it has no missing information and that it meets the current standards for Agreements.

After CAU reviews the draft Agreement, it is sent to the Program Office's Agreement Manager to start the initial routing process using the Agency Agreement Routing Form. The initial routing, also called the *Division/Bureau Routing*, includes the Program Office's management staff, the Bureau Chief, Division Deputy Secretary, the HIPAA Compliance Office, and the Chief Information Officer, if there is an Information Technology (IT) component. The completed routing form and the draft Agreement are sent to CAU by email, although some Program Offices still hand deliver hard copies.

CAU then uploads the documents into CATS and assigns a file number also called the *AHCA Contract Number*. Agreements are numbered using the "AA" prefix and a three-digit number (e.g., AA123). CAU staff will review the Agreement and make changes, if needed. CAU notifies the Program Office of the changes and the Program Office confirms the changes with the other party.

Once all parties agree, the tracking and routing for the final approval is completed electronically utilizing the *CATS Workflow* process. This stage is referred to as *Administrative Routing* and includes the approval of the:

- CAU Lead

- Procurement Contract Administrator
- Procurement Office Director
- Bureau Chief of Support Services
- Chief Financial Officer (if there is a monetary component)
- Deputy General Counsel
- General Counsel
- Deputy Secretary of Operations
- Chief of Staff

The *Administrative Routing* approvers may also recommend changes to the Agreement prior to execution. Once the Agreement is reviewed, updated as needed, and approved, the Agreement is sent to the other party for signature. The other party has the option of signing a hard copy of the Agreement or signing it electronically using DocuSign, a secured electronic signature program that upholds the legality of the signatures. Once the other party signs the document, it is sent to the Agency Secretary or designee for the final signature and execution. Once the Agreement has been fully executed, CAU scans and emails a copy to the other party and maintains the original copy.

Procurement is responsible for ensuring that Agreements with a monetary component are uploaded into the FACTS system. This allows invoices to be paid appropriately by the State of Florida. This upload occurs automatically after the executed Agreement's *AHCA Contract number* is entered into the *FLAIR Contract ID* field in CATS.

Revisions to the terms of an Agreement are done through an amendment to the Agreement, which utilizes the same routing process as the original Agreement. An amendment must stay within the scope of the original agreement and utilize the same number as the original or master Agreement. Entering a specific *AHCA Contract Number* in CATS pulls up the original Agreement and all the amendments to the Agreement. However, each document is distinguished by having its own *Created Date* and *Effective Date*. Unless the amendment changes the *Expiration Date*, the *Current Expiration Date* does not change. This process allows an Agreement's history to be viewed in CATS.

On April 14, 2017, CAU initiated an Agency Agreement clean-up project intended to ensure that CAU had a complete and accurate list of all current agreements and verify whether Agreement information was correct and updated in CATS. Program Offices were emailed a spreadsheet with a list of the 67 active Agreements contained in CATS and instructions on reviewing the following fields and noting any changes on the spreadsheet:

- **Effective Date:** The latest signatory date to the Agreement.
- **Current Expiration Date:** The expiration date of the Agreement.
- **Contract Status:** Whether the Agreement was still active.
- **Contract Group:** The Bureau or Division where the Agreement originated.
- **Contract Manager:** The employee who actively manages the Agreement.

- **Current:** Whether the Agreement was current.
- **Renewed:** If the Agreement has been renewed.
- **Inactive:** Whether the Agreement was inactive and a new Agreement was not executed.

The Agency Agreement clean-up project was completed on August 17, 2017. CAU received no additional Agreements other than the 67 listed on the spreadsheet. One Agreement had to be corrected and replaced. CAU was responsible for updating the CATS data fields based on the results of the clean-up. Procurement expressed concern that not all Agreements may have been collected because some Program Offices may not be aware that certain types of Agreements such as Memoranda of Understanding, Cooperative Agreements, and Data Sharing Agreements should be included, routed through CAU, and housed in CATS. Procurement is in the process of updating Policy and Procedure 4028 to reflect their current processes and to communicate and clarify requirements for Program Offices.

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Finding 1: Policy and Procedures 4028 requires updating	
Finding Statement	Policy and Procedure 4028 on Agency Agreements requires updating to reflect current processes; clarify when Agreements should be utilized; distinguish between Contracts and Agreements; define the types of Agreements; and address the amendment process, monitoring, and other recommendations outlined in this report.
Criteria	<p>Agency Policy and Procedure 4030, defines procedures as <i>"a set of instructions that outlines how an employee is expected to perform a specific task or function."</i></p> <p>Policies and procedures are developed to manage certain risks and provide guidance, direction, and operational consistency. Having written procedures prevents mistakes, saves time, ensures consistency, and improves quality. Clear and detailed written policies and procedures avoids workplace communication problems before they begin. Other advantages of having procedures include a reduced learning curve for training new employees, business continuity, standardized processes, and more efficient time management.</p> <p>When policies, regulations, technology, and processes change, written policies and procedures should be updated and disseminated to all affected staff as soon as possible to be effective.</p> <p>Policy and Procedure 4028 states: <i>"Agency Agreements shall only be utilized for services when one of the following conditions are met:</i></p> <ul style="list-style-type: none"> • <i>The Agreement is with a governmental entity and the Agreement involves Agency expenditures or compensation to the entity for services performed.</i> • <i>The Agreement is with a non-governmental entity and the Agreement does not involve Agency expenditures or compensation to the entity for services being performed."</i>
Condition	Although the Policy lays out the conditions when Agreements should be utilized, the sample of Agreements reviewed were not consistent with Agency policy. It showed that only one out of the ten Agreements fell into either defined category. Nine were Agreements with governmental entities; however, only one out of the nine involved Agency expenditures or compensation. On

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	<p>the other hand, the Agreement with the non-governmental entity had Agency expenditures or associated compensation.</p> <p>Policy and Procedure 4028 instructions contain terminology, which utilizes Agreement and Contract interchangeably throughout the document. The policy is based on a hard copy routing process and does not address the current electronic CATS Workflow process utilized for Administrative routing, review, approval, and execution. The types of Agreements are listed but not defined.</p>
Cause	<p>Competing priorities and staff turnover during the time of our audit may have stretched Procurement's resources and slowed the progress of updating policies, procedures, and internal processes.</p>
Effect	<p>Outdated and incomplete policies and procedures can put the Agency at risk for Agreements that do not comply with laws, rules, and other requirements.</p>
Recommendation	<ol style="list-style-type: none"> 1. We recommend that Procurement continue to update Policy and Procedure 4028 to: <ul style="list-style-type: none"> • Distinguish between Agreements and Contracts which are used interchangeably throughout the Policies and Procedures, clarify when Agreements should be utilized for governmental and non-governmental entities, and define the various types of Agreements; and • Address the current electronic CATS Workflow process utilized for Administrative routing, review, approval, and execution. 2. Address other recommendations made in this report in the update to Policy and Procedure 4028. 3. We also recommend that Procurement train Program Office staff when the Policy and Procedure has been updated.
Management Response	<ol style="list-style-type: none"> 1. We agree with this finding and recommendation. Procurement has started updating Policy and Procedure 4028 to include the recommendations. This will be finalized no later than June 30, 2018. An annual review of the Policy will be implemented beginning July 1, 2019.

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	<ol style="list-style-type: none">2. Procurement has started updating Policy and Procedure 4028 to include the recommendations. This will be finalized no later than June 30, 2018. An annual review of the Policy will begin July 1, 2019.3. Procurement will develop training materials and have them approved by June 30, 2018. Procurement will develop a training schedule and submit it for management approval by July 31, 2018. Procurement anticipates that it will take an average of 6 months to a year to complete the training agency-wide.
Anticipated Completion Date	<ol style="list-style-type: none">1. June 30, 20182. July 1, 20193. July 31, 2018

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Finding 2: Not all Agreement Managers had the required Certification	
Finding Statement	Agreements Managers responsible for Agreements in excess of \$100,000 annually were not all Florida Certified Contract Managers as required by statute.
Criteria	<p>Section 287.057(14)(b), F.S., requires: <i>"Each contract manager who is responsible for contracts in excess of \$100,000 annually must complete training in contract management and become a certified contract manager."</i></p> <p>This provision applies to both Agreement and Contract Managers. Procurement is responsible for verifying that Agreement Managers have the appropriate certification.</p>
Condition	<p>Audit testing showed one Agreement Manager that had not received the required certification, managing 14 Agreements with four in excess of \$100,000 as follows:</p> <ul style="list-style-type: none"> Two had annual payments greater than \$1,000,000; One had an annual payment greater than \$1,000,000 for fiscal year 2015-2016; and One had annual payments greater than \$300,000.
Cause	The failure to periodically verify the certification of Agreement Managers, who are responsible for Agreements in excess of \$100,000, resulted in Agreements that were managed by an Agreement Manager without the required certification.
Effect	Without a process to periodically verify the certification and recertification of Agreement Managers responsible for Agreements in excess of \$100,000, the Agency risks mismanagement of Agency Agreements resulting in financial and legal consequences to the Agency.
Recommendation	<ol style="list-style-type: none"> 1. We recommend that Procurement ensure that all Agreement Managers responsible for Agreements with an annual monetary component in excess of \$100,000 be a Florida Certified Contract Manager. 2. We also recommend that Procurement periodically verify the certification and recertification of Agreement Managers who are responsible for Agreements in excess of \$100,000.

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Management Response	<ol style="list-style-type: none">1. We agree with this finding and the process in Procurement has been updated. Pending management approval, Procurement intends to require, via policy, that <u>all</u> Agreement Managers become Florida Certified Contract Managers. However, how quickly an Agreement Manager can become certified is contingent upon the availability of the DMS-sponsored classes.2. We agree with this recommendation and the Procurement office has taken action to create and develop a process to check certification/recertification of Agreement Managers quarterly. An internal job aid is in development to define the process. The process will be completed February 28, 2018.
Anticipated Completion Date	February 28, 2018

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Finding 3: CATS had incomplete and inaccurate information for some Agreements and discrepancies with Program Office information and Agreement documents

Finding Statement	CATS had inaccurate and incomplete information for some Agreements and discrepancies with some Agreement documents and Program Office information.
Criteria	<p>Policy and Procedure 4028 states that its purpose was to <i>"establish procedures to ensure that all Agreements are properly assigned, tracked, reviewed, and approved" and "the Procurement Office will maintain and keep the official Agreement Files."</i></p> <p>In June 2016, Procurement began using CATS as the contract administration tracking system database to develop and execute Agreements. In an effort to track and house all existing Agreements in CATS, CAU began uploading existing Agreements from Procurement's SharePoint site, where Agreements were previously maintained, into CATS in March 2016, and entering the information into the CATS database.</p> <p>In September 2016, the HIPAA Privacy Officer requested a HIPAA data indicator field be added to CATS for the purpose of creating a report to track all Agreements that involve Agency-owned HIPAA protected information and their Business Associates.</p> <p>Procurement has stated that Agreements with non-fixed costs are indicated in CATS by entering the Agreement number in the <i>FLAIR Contract ID</i> field. The <i>FLAIR Contract ID</i> prompts CATS to upload the Agreement to FACTS automatically.</p> <p>A Procurement internal instruction document, dated August 31, 2015, required that only Agreements with a monetary value should be entered into FACTS. Prior to this, all Agreements regardless of costs were uploaded to FACTS.</p>
Condition	Internal Audit surveyed 16 Agreement Managers in CATS asking them to list the Agreements for which they were responsible and reviewed 26 Agreements within the scope of the audit. The information from the survey was compared to the Agreement documents and CATS data. Fourteen of the 26 Agreements showed discrepancies in certain fields such as the

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name of the Agreement Manager (*Contract Manager*), the name of the other party (*Company Name*), whether the Agreement involved HIPAA data (*HIPAA Data*), the *Effective Date* and the *Current Expiration Date*.

Table 1 summarizes the areas where discrepancies were found between information from the Program Offices, the Agreement documents, and the CATS data fields.

Table 1 CATS Agreement Documents and Program Office Information Discrepancies	
Fields	Information Affected
Company Name	1
Contract Manager	4
Effective Date	5
Expiration Date	1
HIPAA Data Indicator	2

We also selected 60 active Agreements in CATS and identified issues with missing or incorrect information. Table 2 summarizes the results.

Table 2 CATS Missing or Incorrect Information	
Issues	Agreements Affected
No Expiration Date	29
No Contract Manager listed	14
HIPAA Data Indicator is blank	43
Missing Document	1
Agreements with same number	2

We found one Agreement that had several issues. The Agreement in CATS was inactive; the two Amendments linked

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	<p>were active but not related to the Agreement. Further inquiry showed that one Agreement number was assigned to two separate Agreements with the Department of Health. One Agreement was for patient discharge data and the other was related to criminal background screening for healthcare licensees. It appears that one of the original Agreements was not submitted or routed through CAU and may have led to this error. A new Agreement has been executed to correct this error.</p> <p>Another area of confusion is the <i>Contract Value</i> field. Only Agreements with fixed cost amounts specified in the Agreement have amounts entered in this field. Agreements with non-fixed costs, such as “hourly rates,” and “federal matching funds,” list a “0” Contract Value even though non-fixed costs may amount to millions of dollars.</p> <p>We found eight Agreements that had associated costs; however, in CATS the <i>Contract Value</i> field was “0.” One Agreement that did not appear to have any funding or costs indicators in CATS had costs of over 14 million dollars for fiscal year 2016-2017.</p> <p>Prior to the implementation of the August 31, 2015, instruction document, all Agreements regardless of costs were uploaded to FACTS. Since older Agreements may have a <i>FLAIR Contract ID</i> even if costs are not involved, the existence of a <i>FLAIR Contract ID</i> does not necessarily determine if non-fixed costs may be involved.</p>
<p>Cause</p>	<p>The lack of communication on the Agreement process and requirements resulted in the discrepancies found. For example, the responses to our survey showed there was confusion on who the Agreement Manager was:</p> <ul style="list-style-type: none"> • Some older Agreements were not required to list the Agreement Manager in the document; • Program Offices do not appear to know that an amendment is needed when an Agreement Manager changes; and • There also appears to be a lack of consistency in the verbiage used in some Agreements. The terms such as “Contact Person,” “Agreement Manager,” “Contract Manager,” “Administrator,” or “Liaison,” are used interchangeably.

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	<p>CAU staff enter data into the various CATS fields and data entry errors may have led to some of the inaccuracies, discrepancies, and other errors found.</p> <p>Another area in which inaccuracies occurred were in the “effective date” field. Some Agreements specified an effective date within the body of the Agreement after the execution date and thus there was a conflict between the information in CATS and the terms of the Agreement.</p> <p>Since all Agreements regardless of costs were uploaded to FACTS prior to August 31, 2015, older Agreements may have a <i>FLAIR Contract ID</i> even if costs are not involved making it difficult to distinguish contracts with non-fixed costs.</p> <p>Updating information in older Agreements to ensure they comply with current rules and regulations requires time and resources, which may be an issue with competing priorities and limited staff.</p>
<p>Effect</p>	<p>The Agency needs to rely on the information housed in CATS to ensure that all Agreements are properly assigned, tracked, reviewed and approved, as well as maintained and kept in accordance with current laws, rules, and policies to reduce the Agency’s exposure to legal risks and liabilities.</p> <p>Reliance on the accuracy of the reports generated in CATS requires reliable, accurate, and up-to-date information. The report functionality of CATS, such as finding Agreements that involve HIPAA data cannot be relied on until accurate and complete information is entered for all Agreements.</p>
<p>Recommendation</p>	<ol style="list-style-type: none"> 1. For new Agreements that utilize the CATS workflow process, we recommend that CAU implement a quality review process of the information entered and uploaded into CATS including verifying that each amendment belongs to the correct original Agreement. 2. For existing Agreements in CATS, we recommend a review to identify and update inaccurate and missing information, including the following: <ul style="list-style-type: none"> • The correct <i>HIPAA Data indicator</i>, • The current <i>Agreement Manager</i>,

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	<ul style="list-style-type: none"> • The correct <i>Expiration Date</i>; • The correct <i>Effective Date</i>; and • Add a field to CATS for Agreements with costs in excess of \$100,000 to ensure that a Florida Certified Contract Manager manages them. <p>3. We recommend that the Agreement document state explicitly when non-fixed costs are included and that a variable cost field be added to indicate non-fixed costs Agreements.</p> <p>4. We recommend that the routing form include a field that requires the Program office to specify the effective date or state that the Agreement is effective upon execution to minimize guesswork and errors in CATS effective date entries.</p> <p>5. We also recommend that the routing form include an initial determination by the Program Office as to whether HIPAA PHI is involved such as by adding a checkbox indicating “yes,” “no” or “unable to determine”. If the Program Office chooses, “unable to determine” the CAU lead would direct them to work with the HIPAA Privacy Officer to make a determination before signing off and going forward.</p>
<p>Management Response</p>	<p>1. We agree with this recommendation. All Agency Agreements have been added to the Quality Assurance (QA) Process. This QA Process is completed on a monthly basis comparing information in CATS versus FACTS to ensure both systems mirror each other. We began our first monthly QA Process to include newly executed Agency Agreements on January 24, 2018. We will also complete the File Reviews on an annual basis. Anticipated File Review completion for calendar year 2018 is September 30, 2018.</p> <p>2. We agree with this recommendation. Agency Agreements have been added to the monthly QA Process to compare information in CATS versus FACTS, ensuring both systems mirror each other and have accurate information. The Agreements will also be included in the annual File Reviews. Anticipated File Review completion for calendar year 2018 is September 30, 2018.</p>

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	<ol style="list-style-type: none"> 3. Procurement will add a section in the Agency Agreement Template which states explicitly when “costs” or “no costs” are involved. This will also be added to the Description Field of the Contract Profile, as well as, if costs are “open” or have a maximum allowed amount. 4. The routing form will cease as of May 1, 2018, and CATS will be used for the routing and approval of all documents. The Bureau’s Liaison will verify the Beginning Date, if it is different from the Effective (Execution) date. There will also be a monthly QA Process to compare information in CATS versus FACTS to ensure both systems mirror each other and have accurate information, including the Beginning Date and Effective (Execution) Date. This will also be part of the annual File Review Process. The monthly QA Process began on January 24, 2018. 5. Procurement met with the HIPAA Compliance Officer in January 2018 to define a process for HIPAA review of all Agreements and Contracts. It was decided that the Procurement Office would assist in developing a checklist for the Program Office to use when drafting a new agreement, to determine if HIPAA/PHI is a factor in the agreement. This form will be loaded into CATS with the agreement documents and routed to the HIPAA Compliance Office. There the HIPAA Compliance reviewer can review the form and make a formal decision regarding whether the agreement involves HIPAA/PHI to ensure it is marked appropriately.
<p>Anticipated Completion Date</p>	<ol style="list-style-type: none"> 1. September 30, 2018 2. September 30, 2018 3. May 1, 2018 4. May 1, 2018 5. May 1, 2018

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Finding 4: Not all Agreements were sent or routed to CAU

Finding Statement	Some Program Offices did not send all existing Agreements to CAU despite the Agency Agreement Clean-up Project in April 2017, designed to capture unknown Agreements, and did not always route Agreements through CAU for development, review, approval, and execution.
Criteria	<p>Creating a standardized process for Agreements ensures that all Agreements, including Data Sharing Agreements, are compliant with current laws, rules, policies, and procedures.</p> <p>Policy and Procedure 4028, states that its purpose is to: <i>"establish procedures to ensure that all Agreements are properly assigned, tracked, reviewed, and approved."</i> It also states that, <i>"the Procurement Office will maintain and keep the official Agreement Files."</i></p> <p>Since at least 2010, Policy and Procedure 4028 has specified that Data Sharing Agreements be considered Agreements.</p>
Condition	<p>Internal Audit surveyed certain Agreement Managers asking them to list the Agreements for which they were responsible. One Agreement Manager sent a list of 19 Agreements that were all Data Sharing Agreements. However, only five of them were in CATS. It was unclear why the remaining agreements had not been sent to or routed through CAU.</p> <p>Although Policy and Procedure 4028 requires Program Offices to submit their Agreements to Procurement for development and execution, not all Program Offices appeared to comply with this requirement. In addition, the Program Offices did not report some Agreements, mainly data sharing Agreements, despite the effort of CAU to perform a clean-up project to ensure that all Agreements were up to date and accounted for.</p>
Cause	<p>Prior to the revision of Policy and Procedure 4028 on November 2, 2011, Program Offices were able to initiate and execute their own Agreements. The revision was designed to ensure that all Agreements were routed and sent to Procurement.</p> <p>It appears that these updated policies and procedures were not sufficiently communicated to Program Offices, and staff still had been completing and executing Agreements on their own. Many</p>

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	<p>Program Offices do not appear to have been aware that Data Sharing Agreements should be routed and sent to CAU. When CAU conducted a clean-up project in April 2017, designed to capture unknown Agreements, at least 10 Data Sharing Agreements were not sent to CAU.</p>
<p>Effect</p>	<p>Agreements that failed to go through Procurement for development, review, approval, and execution increases the likelihood of not complying with current laws, rules, policies, and procedures. For example, Data Use Agreements where PHI may be legally shared would be in violation of the HIPAA legal requirements, if a Business Associate Agreement (BAA) or similar language is required, but not included in the Agreement.</p>
<p>Recommendation</p>	<ol style="list-style-type: none"> 1. We recommend that Procurement implement another clean-up project to Program Offices and emphasizing that all existing Agreements, including Data Sharing Agreements, be sent to Procurement for inventory and that future Agreements go through Procurement for development, review, approval, and execution. 2. We also recommend that Procurement communicate to Program Offices the requirement to notify Procurement when Agreement Managers change or leave the Agency and amend their Agreements accordingly in a timely manner. 3. We further recommend that Procurement train Program Offices on the roles and responsibilities of creating, developing, reviewing, and approving Agreements for routing and the CATS Workflow.
<p>Management Response</p>	<ol style="list-style-type: none"> 1. Procurement will begin the second Agency Agreement Clean-Up Project after trainings have been completed. This gives all Program Offices who have an agreement that is not in CATS the opportunity to send it to Procurement to be entered into CATS. Anticipated completion date is November 30, 2018. 2. Procurement sent out an updated communication to all Agreement Managers in the CATS Newsletter on February 8, 2018 reminding them that ALL Agency Agreements need to be routed through the Procurement Office. Procurement will also be sending out a second round of emails to all Bureau

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	<p>Chiefs two weeks prior to the trainings that will be held for all Agreement Managers. The trainings will discuss the importance of updating an Agreement when there has been a change of Agreement Manager and other vital information regarding Agency Agreements.</p> <p>3. Procurement will address the roles and responsibilities in the training. We will continue to train individuals in CATS, as needed. Training materials will be available for all staff to reference after the training.</p>
<p>Anticipated Completion Date</p>	<p>November 30, 2018</p>

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Finding 5: HIPAA PHI language	
Finding Statement	Some Agreements, which involved the use of Agency-owned HIPAA PHI, did not include the standard language relating to the proper handling and security of PHI and reporting responsibilities for breaches.
Criteria	<p>According to HIPAA regulations, an organization must have assurances from their business associates to comply with HIPAA as it relates to the proper handling and security of PHI. This assurance is in the form of a signed agreement.</p> <p>A BAA is used when the Agency has another organization provide services using PHI. When the other organization is another governmental entity and they are handling Agency PHI, then the Agency's practice is to include language in the Agreement reflecting terms similar to the Agency BAA as it relates to the proper handling and security of PHI and reporting responsibilities and requirements in the event of a breach.</p>
Condition	<p>Of the 60 active Agreements in CATS in our sample, 17 Agreements were reviewed for accuracy of the PHI indicator, two Agreements which were with other governmental entities did not have the standard HIPAA PHI language.</p> <p>Program Offices may not fully understand who is responsible for the HIPAA PHI information, and whether the Agreement Manager or the HIPAA Compliance Officer is responsible for determining if the Agreement requires HIPAA PHI language and whether the HIPAA Data indicator is needed in CATS.</p> <p>Our testing also compared the accuracy of the information in CATS and whether the Agreement Manager knew if HIPAA PHI information was involved in the Agreements, they managed. Some of the Agreement Manager's survey responses did not agree with the information in the <i>HIPAA Data Indicator</i> field.</p> <p>In addition, although the HIPAA Compliance Officer is expected to verify the Agreement Manager's determination by reviewing the Agreement during the initial routing phase, the initial decision as to whether HIPAA PHI is used on behalf of the Agency is primarily dependent upon the Agreement Manager's Program knowledge.</p>

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Cause	<p>Since HIPAA PHI compliance is a complex topic, some Agreement Managers may be unsure as to whether HIPAA PHI is involved in their Agreements and would therefore require the BAA or appropriate HIPAA terminology. This may be due to a lack of training and understanding as to when Agreements involve PHI and the failure to consult with the HIPAA Privacy Officer in the event the Agreement is unclear.</p>
Effect	<p>Compliance with the HIPAA Privacy Rule is a federally mandated requirement. Agreements with entities that use PHI on behalf of the Agency must include assurances that the PHI will be used and handled in an appropriate manner to prevent the unauthorized distribution of PHI and to clarify how breaches should be handled and reported. The lack of proper handling of PHI and breach reporting can lead to unwanted financial and reputational consequences for the Agency. In addition, even if the Agreement pertains to health care operations, without the required HIPAA language reporting responsibilities in the event of a breach may not be addressed.</p>
Recommendation	<ol style="list-style-type: none"> 1. We recommend that current Agreements be reviewed and those which involve the use of Agency-owned HIPAA PHI be updated as needed with the appropriate BAA or terms relating to the proper handling and security of PHI to meet federal compliance. 2. We also recommend that Procurement work with the HIPAA Privacy Officer to ensure that standard and updated HIPAA-compliant terminology be utilized in the applicable Agreement templates. 3. We recommend that Procurement work with the HIPAA Privacy Officer to provide training to Agreement Managers on when an Agreement indicates the use of HIPAA PHI and therefore requires the appropriate BAA or HIPAA compliant language and to refer Agreements, which may be unclear as to the use of PHI to the HIPAA Privacy Officer for determination.
Management Response	<ol style="list-style-type: none"> 1. Procurement will add this recommendation to the monthly QA Process and create Amendments as necessary. The QA Process will be completed by September 30, 2018. All Amendments shall be processed by October 31, 2018.

FINDINGS AND RECOMMENDATIONS

	<ol style="list-style-type: none">2. HIPAA language will be standard in the new Agency Agreement Template. Procurement will conduct an annual review of this template and make any necessary edits to ensure that standard and updated HIPAA language is included.3. Procurement met with the HIPAA Compliance Officer in January 2018 to define a process for HIPAA review of all Agreements and Contracts. It was decided that the Procurement Office would assist in developing a checklist for the Program Office to use when drafting a new agreement to determine if HIPAA/PHI is a factor in the agreement. This form will be loaded into CATS with the agreement documents and routed to the HIPAA Compliance Office. The HIPAA Compliance reviewer can review the form in CATS and make a formal decision regarding whether the agreement involves HIPAA/PHI to ensure it is marked appropriately.
Anticipated Completion Date	October 31, 2018

FINDINGS AND RECOMMENDATIONS

Finding 6: Some Agreements are not Monitored Consistently

Finding Statement	Some Program Offices do not monitor Agreements consistently.
Criteria	<p>Once an Agreement has been executed, the Agreement Manager is responsible for the management and monitoring of the Agreement.</p> <p>Policy and Procedure 4028 defines an Agreement Manager as: <i>“Individuals within the Agency designated to manage the receipt of contractual services and goods; to enforce performance of the Contract terms and conditions; to serve as liaison with the contractor; to maintain a contract management file; and, to provide written certification that services were performed and completed in accordance with terms and conditions of the contract before requesting payment. Created and required by Section 287.057 (14), F.S., with duties defined by the same.”</i></p> <p>Unlike Agreements, the AHCA Contract Manager Reference Series provides a guide for the day-to-day oversight of contracts and also includes requirements regarding monitoring and documenting contract performance; reviewing and documenting all deliverables for which payment is requested; and maintaining certification as a Florida Certified Contract Manager.</p> <p>The Contract File Protocol requires Contract Managers to maintain contract file documentation including:</p> <ul style="list-style-type: none"> • the original contract (Agreement) and all supporting documents; • amendments, if any; • vendor performance, including a tracking log of deliverables; • monitoring documentation; • performance monitoring tracking log; • monitoring plan; • evaluation tools; • payment records, if applicable; and • correspondence, which includes an action items log. <p>CAU conducts an annual file review of contracts using the File Review Tool. One of the areas reviewed is whether the contract file is readily available for review and is in good order.</p>

FINDINGS AND RECOMMENDATIONS

Condition	<p>A monitoring survey was sent to eight Agreement Managers to inquire into their Agreement monitoring processes. The survey responses showed an inconsistency in the manner in which monitoring was handled. In some cases, monitoring was delegated to other staff or monitored across three different business units.</p> <p>CAU does an annual review of all Contracts to ensure compliance with the contract monitoring protocol. However, Agreements are not part of this annual review. CAU has stated that they plan to include Agreements in future annual reviews.</p>
Cause	There are no standardized procedures for the monitoring of Agreements as there are with contracts.
Effect	The lack of procedures or guidelines for monitoring Agreements has allowed for inconsistencies.
Recommendation	<ol style="list-style-type: none"> 1. We recommend that written procedures for monitoring Agreements be created to help ensure that all Agreements have documentation to show that Agreement Managers are monitoring the terms and conditions of the Agreement. 2. We also recommend that CAU include Agreements in the annual file review process.
Management Response	<ol style="list-style-type: none"> 1. Procurement will distribute a desk reference for monitoring Agreements via email to all Agreement Managers by March 30, 2018. Procurement will also ask each Agreement Manager to complete a Contract Monitoring Plan and send to Procurement by September 30, 2018. 2. Procurement agrees with this recommendation. Agreements will be added to the annual File Review Process. Anticipated File Review completion for calendar year 2018 is September 30, 2018. We will also conduct a monthly QA Process for all Agency Agreements to review information in CATS versus FACTS.
Anticipated Completion Date	<ol style="list-style-type: none"> 1. March 30, 2018 2. September 30, 2018

ADDITIONAL COMMENTS

Internal Audit wants to recognize the Procurement Section and CAU's commitment to improving their processes. Staff are currently working to revise the policy and procedures for Agency Agreements and to include more training for Program Offices. In addition, Procurement has implemented periodic newsletters to CATS users to inform them of answers to frequently asked questions, changes to processes, or where to find certain information.

PROJECT TEAM

The review was conducted by Joann Hartmann, under the supervision of Pilar Zaki, JD, CIGA and Mary Beth Sheffield, Inspector General, CPA, CIA, CFE, CIG.

FINAL COMMENTS

Internal Audit would like to thank the management and staff of the Agency's Bureau of Support Services, and Contract Managers throughout the Agency for their assistance and cooperation extended to us during this engagement.

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 the *International Standards for the Professional Practice of Internal Auditing* as established by the Institute of Internal Auditors. Please address inquiries regarding this report to the AHCA Audit Director at (850) 412-3990.

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