United States General Accounting Office

GAO

Report to Congressional Requesters

April 1999

SOCIAL SERVICE PRIVATIZATION

Ethics and Accountability Challenges in State Contracting

GAO/HEHS-99-41

GAO

United States
General Accounting Office
Washington, D.C. 20548

Health, Education, and
Human Services Division

B-279094

April 5, 1999

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

The Honorable Dennis J. Kucinich
House of Representatives

The magnitude of federal funding in several major social service programs—child support enforcement, Temporary Assistance for Needy Families (TANF), child welfare, and child care—which reached about $20 billion in 1996, has contributed to renewed interest in the states' contracting out of social services and other program activities. Program officials, contracting experts, and others—prompted in part by a rise in the volume of contracting in services not previously privatized—have raised concerns about states' efforts to privatize social services. In addition, some Members of Congress have expressed concern that the movement of state program managers and other employees to take similar jobs with contractors, a process often called the "revolving door," may affect the capacity of state governments to manage public services and may give an unfair advantage to contractors employing former public officials. Members of Congress also have questioned the extent to which states have adopted strategies to hold contractors accountable for program results. Recent changes in social service privatization have prompted a growing need to assess the strength of ethics policies intended to protect open and fair contracting and examine states' capacity to ensure program accountability.

To follow up on our previous report and testimony,[1] you raised several issues about the revolving door and its relationship to competitive social service contracting as well as the capacity of the states to hold contractors accountable for program results. Therefore, you asked us to (1) identify the extent to which government employees have moved to positions at social service contractors and the impact such movement has had on the management of publicly provided social services; (2) determine the relative success in winning contracts by contractors who hired state employees and contractors who did not; (3) examine state ethics laws, policies, and enforcement approaches that address the employment of

[1]See Social Service Privatization: Expansion Poses Challenges in Ensuring Accountability for Program Results (GAO/HEHS-98-6, Oct. 20, 1997) and Child Support Enforcement: Challenges in Ensuring Accountability for Program Results (GAO/T-HEHS-98-22, Nov. 4, 1997).

former state employees and other related issues; and (4) examine state practices for holding contractors accountable for achieving program results through contracted services.

As agreed with your offices, we focused on state-administered child support enforcement and TANF given the significant level of federal funds that support these services, the states' use of new and different types of contracting, and the states' reliance on a mix of for-profit and not-for-profit contractors. To address these issues, among other steps, we performed detailed work in four states with diverse policies and program practices—Arkansas, Maryland, Massachusetts, and Texas. In these states, we examined employee movement into positions with social service contractors, contract awards, ethics laws and enforcement, and practices intended to hold contractors accountable for program results. We did our work between January and December 1998 in accordance with generally accepted government auditing standards. A more detailed discussion of our methodology is in appendix I.

Results in Brief

Since 1993, 11 of 42 state child support enforcement directors who left their government positions accepted a managerial position with a contractor providing child support enforcement services, according to federal and state program officials. Similarly, since 1993, federal and state officials indicated that 10 of the 41 high-level TANF managers who left state service accepted a position with a social service contractor. As may be expected, when the four states we examined lost child support enforcement and TANF managers and other staff, officials indicated that they experienced short-term difficulties because they were required to train staff selected to fill the managerial vacancies. Ultimately, however, these states were able to fill their vacancies with program staff they believed were capable of performing the roles and handling the responsibilities.

Although these 21 directors and managers left the government to accept a position with a social service contractor, our review of 59 contract proposals in four states found that proposals listing former state employees as key personnel did not result in contract awards any more frequently than did proposals not listing such employees. This was the case for both the child support enforcement and TANF-related programs. Our analysis also showed that proposals listing former employees from the same state in which the bidding took place resulted in contracts about as frequently as did proposals not listing such employees.

Most states have established some ethics policies designed to help ensure open and fair contracting by adopting provisions determined by the American Bar Association (ABA) and other organizations to be critical in prohibiting certain postemployment practices and conflicts of interest. However, more than one-third of the states have ethics policies that lack one or more of these provisions. For example, in some states, ethics provisions only apply to a limited range of state employees and officials likely to be involved in the contracting process. Among the four states we examined, enforcement approaches to help ensure compliance with applicable ethics provisions differed widely. For example, the Arkansas Ethics Commission, citing other priorities, has undertaken limited enforcement of the state's competitive bidding process, whereas Maryland has placed representatives from the Attorney General's office in major state agencies to help ensure that the agencies comply with applicable contracting policies. To address these inconsistencies, model laws prepared by ABA and others offer possible frameworks for strengthening state ethics policies. The Medicaid statute also offers a model in that it directs participating states to have requirements applicable to state Medicaid officials that are at least as stringent as those applicable to federal employees.

Once contracts have been awarded, several states have instituted mechanisms aimed at holding contractors accountable for program results. These mechanisms include measures states apply when they assess contractor performance. While these states have established practices to assess contractor progress toward achieving program results, many others generally rely on basic accountability measures that focus on compliance with program rules more than on results.

Background

States have contracted out social services for decades.[2] Federally funded social service programs generally support the financial, employment, and other public assistance needs of children and families. In recent years, the amount of contracting for state-administered social services has increased and the nature of privatization has changed significantly. State

[2]Social service privatization is defined as contracting out program functions or services. To contract out social services, states generally follow five major phases: (1) issuing requests for proposal (RFP), (2) reviewing contractor proposals, (3) awarding contracts, (4) administering contracts, and (5) overseeing contractor performance. Our review focused primarily on state policies and practices for reviewing proposals, awarding contracts, and overseeing contractor performance. When states review proposals, they consider the proposals' relative technical merit, the proposers' organizational and staff experience, and projected contract costs. States implement varying approaches to oversee contractor performance. These approaches include financial and compliance audits and other program assessments.

governments have increased their spending on privatized services, and strong support from state political leaders and high-level program managers has helped prompt new privatization initiatives. Recent changes in social service privatization have also been spurred by changes in federal legislation. As a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), for example, states are now permitted under TANF to privatize eligibility determinations, a function traditionally performed by state governments. To help ensure program accountability in federally funded social service programs, the Department of Health and Human Services (HHS) has responsibility for overseeing state performance. With the fundamental changes in the magnitude and nature of social service privatization, states continue to face new challenges—utilizing competitive markets, developing performance-based contracts, and enhancing program accountability—that program officials, contracting experts, and others believe warrant continued focus.

When contracting for social services, states often seek to achieve fair and open competition among those who submit contract proposals. To protect opportunities for all qualified contractors to compete openly and fairly for government business, states may, among other things, limit certain activities of former government employees seeking employment with private organizations and prohibit financial, programmatic, and other conflicts of interest. Studies have specified that state ethics policies should apply to a broad range of public employees, including legislators, political appointees, program managers, and others involved in the contracting process, while minimizing to the extent possible the limits placed on the discretion of state employees to choose public or private employment.[3]

State governments and social service contractors often work in tandem to provide diverse program services. In response to state RFPs, contractors submit proposals they believe address state needs. Contractors recruit and hire qualified specialists to maximize their competitive positions, while at the same time government employees exercise their prerogatives in an open labor market to pursue private sector careers where they can apply their talents in return for pay and benefits commensurate with their experience and expertise. In this way, social service contractors make use of a flexible labor pool in their attempts to meet state service needs. While these practices may benefit states and social service contractors, from

[3]Public Integrity Annual, ed. James S. Bowman (Lexington, Ky.: Council of State Governments, 1996) and Michael W. J. Cody and Richardson R. Lynn, Honest Government: An Ethics Guide for Public Service (Westport, Conn.: Praeger, 1991).

another perspective, the movement of government employees to work for contractors may also reduce the capacity of states to manage public services and may confer unfair advantages to certain offerors.

States Able to Replace Departing Program Managers, but Loss of Information Technology Staff Was More Troublesome

Although many child support enforcement and TANF senior program managers left their positions from 1993 to 1998, about a quarter of them left to take positions with social service contractors. State employees generally joined contractors to increase their income. The states we examined were able to fill vacancies created by the loss of child support enforcement and TANF program managers and other staff with minimal disruption. However, Texas child support enforcement officials expressed concern over their losses in mid-level information technology (IT) personnel and related impacts on program services.

Senior Program Directors and Other State Employees Moved to For-Profit Contractors, Attracted by Higher Salaries and Benefits

Nationally, many senior program directors in both the child support enforcement and TANF programs left their positions in the last 5 years. About a quarter of these officials took positions with social service contractors. According to federal and state program officials, of the 41 states in which the child support enforcement director left that position, 11 directors went to work for social service contractors. Similarly, of the senior TANF program managers who left their positions in 40 states, 10 joined the staffs of social service contractors.

According to state program officials we interviewed, senior program directors most often leave their jobs to retire, fill other government positions, or respond to changes in a state's administration. Contractors told us that they recruit more from state child support enforcement programs than from TANF-supported programs. According to contractor officials, child support enforcement demands a high degree of technical expertise, particularly with respect to state information systems. Through such hiring practices, contractors believe they are in a better position to meet state program needs.

State officials noted that personnel who leave the government for social service contractors generally do so to improve their salaries and benefits. Benefits such as stock option and profit-sharing plans offered by some companies are appealing and often critical to employees in weighing a decision to leave public service for private sector careers. Although pay and benefit considerations were often cited as the leading reasons state personnel left their positions for the private sector, we also found one

instance in which state law resulted in state employees leaving their government jobs to become private sector employees. In 1995, Maryland's legislature required two locations—Baltimore City and Queen Anne's County—to privatize all child support enforcement services. The legislation also required that the selected contractor offer employment to state employees affected by the privatization. Of the over 300 employees who were affected, 213 accepted employment with the selected contractor, while many of the remaining employees retired or accepted jobs elsewhere.

Loss of Child Support Enforcement and TANF Program Managers Posed Few Problems

Some state officials we interviewed reported that they experienced limited impacts on program management after losing program management staff. We were told that the loss of senior officials in their states caused minimal disruption to the administration of the child support enforcement and TANF programs. These officials also reported that when they lost middle management and staff-level state employees to contractors, such losses did not cause disruption to program administration, as agencies were able to train new employees.

Information Technology Personnel Losses Were More Difficult to Address

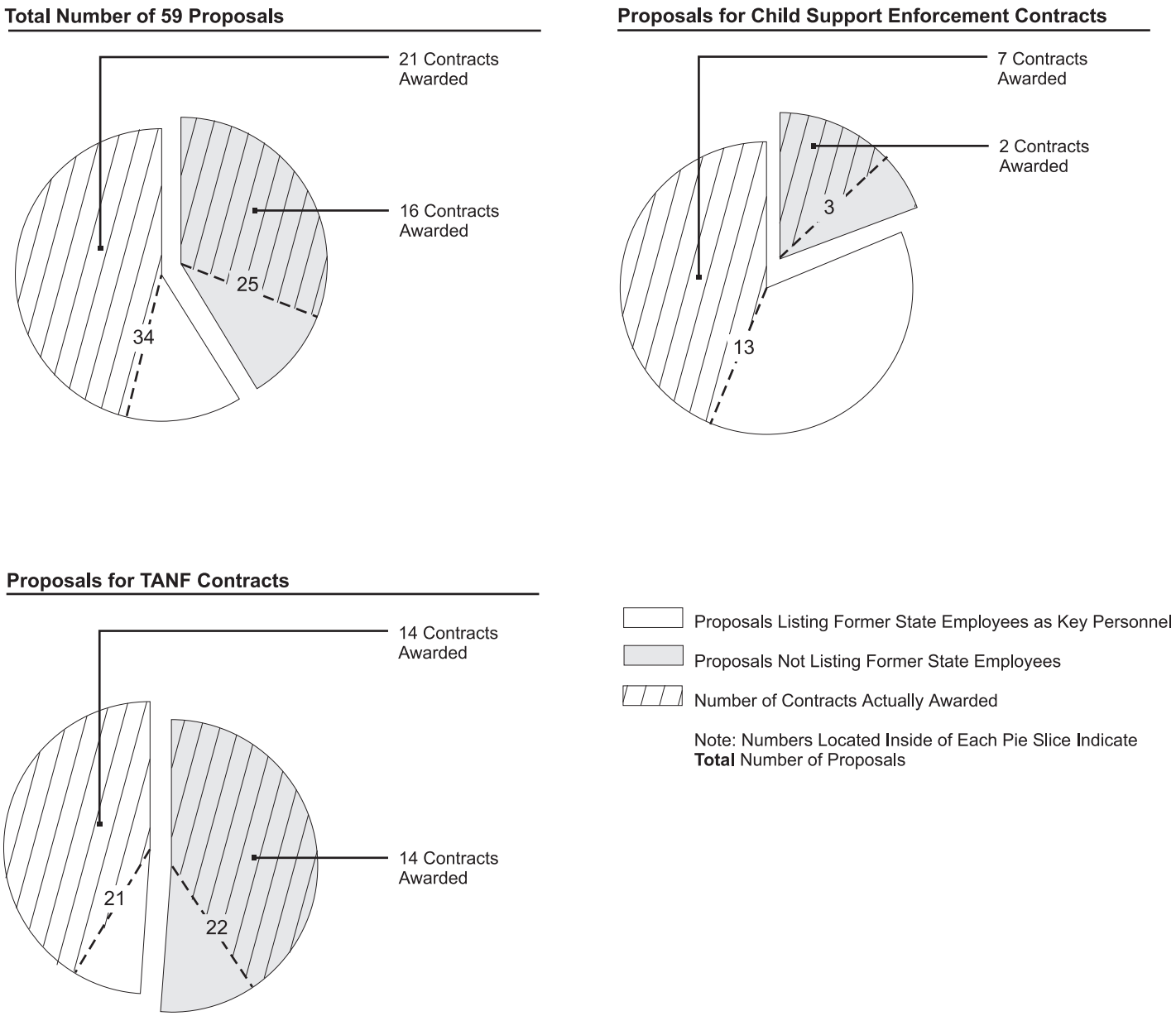
Child support enforcement officials in Texas said that about 80 percent of their IT personnel, such as systems analysts and programmers, left state government jobs to join various firms that contract with the child support enforcement program and other program areas. The director of Texas' child support enforcement program indicated that the movement of IT personnel to the private sector has often been driven by private sector salaries that are up to about 40 percent higher than salaries for comparable government positions. The loss of these employees resulted in longer-term program impacts than did the loss of senior program managers in other states. In those instances when Texas could not replace the IT personnel it had lost, state officials said they had to contract for IT services at a cost higher than would have been incurred if such services had been performed by government employees. According to state child support enforcement program officials, the net loss of IT personnel resulted in poor or reduced service to the public, because without timely upgrades to automated systems, program personnel could not easily access case information, update files, or respond to customer inquiries.

No Relationship Between Contractors' Hiring of State Employees and Contracts Awarded

Among the proposals we reviewed, we found that child support enforcement and TANF-related proposals listing former state employees from any state as key personnel resulted in contract awards about as frequently as did proposals that did not list such employees.[4] Of the 59 child support enforcement and TANF contract proposals submitted in the four states we reviewed, 34 listed at least one former state employee as key contract personnel. Twenty-five of these proposals did not list any former state employees as key contract personnel. Those proposals that did not list former state employees as key personnel were awarded contracts about as often as those proposals that did. Slightly under two-thirds of the proposals from each group, that is, those listing state employees and those not, resulted in contracts being awarded. Thirty-eight percent of the proposals that listed former state employees, and 36 percent of those that did not, did not result in contract awards. When we examined the child support enforcement and TANF programs separately, we still found that, in each program, proposals not listing former state employees resulted in contract awards about as often as proposals listing such employees. These comparisons are summarized in figure 1.

[4]We focused our review of a proposal on the personnel who were listed as key staff designated to perform specific functions in direct support of the contract if it was awarded to the offeror.

Figure 1: Contract Awards for Proposals Listing and Those Not Listing Former State Employees as Key Personnel



Note: None of the differences between the proportion of proposals resulting in contract awards among those listing former state employees and the proportion resulting in contract awards among those not listing state employees was statistically significant at the .05 level.

Source: GAO analysis and interviews with state officials.

Even when contractors listed former state employees as key personnel from the state offering the contract, the difference in the proportion of contracts awarded among these proposals and the proportion awarded among proposals not listing such employees was not statistically significant. Of the 18 proposals that listed employees from the same state that offered the contract, 14 resulted in contract awards. By comparison, of the 41 proposals that did not list such employees, 25 resulted in contract awards.[5]

Some States Lack Recommended Ethics Provisions; Enforcement Approaches Differ Widely

Many states, in an effort to help ensure open and fair competition among contractors, have established ethics policies. However, more than one-third of the states lack one or more of the key ethics provisions, such as those prohibiting certain postemployment activities and conflicts of interest, which ABA and other organizations recommend as critical to state efforts aimed at protecting competitive contracting.[6] In addition, the states we examined also differ widely in their approaches to enforce ethics policies. To address the disparities in state ethics policies, model laws prepared by organizations such as ABA offer frameworks that states can use to strengthen their ethics policies. Also, the Medicaid statute may offer a model in that it requires participating states to have in place conflict-of-interest provisions applicable to those involved in the program equivalent to federal conflict-of-interest requirements.

More Than One-Third of States Lack Recommended Ethics Provisions

Many state ethics policies aimed at helping ensure open and fair contracting have shortcomings relative to the provisions widely recommended for protecting the integrity of the competitive contracting process.[7] In some states, ethics provisions apply only to a limited number of state employees, leaving others who may be involved in the contracting process uncovered by them. In other states, ethics provisions differ as to the type of activity prohibited and the period of time covered by the prohibition. Moreover, more than one-third of the states lack one or more

[5]Although the proportion of proposals resulting in contract awards among those listing former state employees as key personnel from the same state offering the contract is somewhat larger than the proportion resulting in awards that did not list such employees, this difference is not statistically significant at the .05 level.

[6]See ABA, The Model Procurement Code for State and Local Governments (Washington, D.C.: 1979); Common Cause, A Model Ethics Law for State Government (Washington, D.C.: 1989); and Society of Professional Journalists, Open Records Model Law: Revised Guidelines and Recommended Minimum Standards for Statutes Governing Public Access to Government Records and Information (Washington, D.C.: 1993).

[7]For detailed information regarding ethics policies in specific states, see Marilyn Hughes, Ethics Update (Oklahoma City, Okla.: Council of Government Ethics Laws, 1997).

ethics provisions, such as restrictions against certain employment activities by former state employees and prohibitions intended to deter the misuse of public office for private gain. The weaknesses in state ethics policies are demonstrated in the examples summarized here:

- State ethics provisions applicable to a limited number of employees. Oregon has provisions restricting the employment activities of former state employees. However, these restrictions apply only to a limited group of former state employees who held positions specifically listed in the law and not to the full range of positions that may involve contracting. (Or. Rev. Stat. 244.045 (1997))
- State postemployment restrictions have gaps. South Carolina's ethics provisions apply only to former state employees that accept employment from an organization regulated by the state agency where they formerly worked or if this employment involves a matter in which they participated directly and substantially. (S.C. Code Ann. 8-13-755 (1997)) Hawaii's ethics provisions place some employment limitations on former employees and legislators but also expressly provide that those limitations do not prohibit a state agency from contracting with them to act on behalf of the state. (Haw. Rev. Stat. Ann. 84-18 (1998))
- Length of states' postemployment prohibitions varies. Kansas' ethics provisions prohibit former state officers or employees from accepting employment with a person or business if they participated in the making of any contract with that person or business. The prohibition lasts for 2 years from the time the contract is completed or from the time the state employment ended, whichever is sooner. (Kan. Stat. Ann. 46-233 (1997)) In contrast, Kentucky's provisions prohibit for 6 months after termination of state service certain former officials from participating in or benefiting from any contract involving the agency where they were employed. The provisions also prohibit such individuals from accepting employment, compensation, or other economic benefits from any person or business that contracts with the state on a matter in which the former official was directly involved during the past 3 years of state service. (Ky. Rev. Stat. Ann. 11A.040 (1998))

According to a 1996 study completed by the Council of State Governments and the American Society for Public Administration, 17 states lacked one or more of the ethics provisions ABA and other organizations believe are necessary to promote open and fair competitive contracting, as summarized in table 1.[8] Of these 17 states, 9 did not restrict postemployment activities of former state employees with organizations

[8]Public Integrity Annual, ed. James S. Bowman.

that compete for government contracts. For example, Arkansas does not prohibit postemployment activities of former state employees that could have a bearing on social service contracting.[9] Eight states lacked provisions limiting the direct involvement of former public employees in competitive contracting.

Table 1: States Lacking One or More Recommended Ethics Provisions

	State ethics provisions not included in contracting policies					
State	**Acceptance of postgovernment employment with contractors**	**Representation of clients before government agencies**	**Participation in competitive contracting**	**Use of public position for private gain**	**Provision of benefits to influence government actions**	**Use of confidential government information**
Arkansas	X					
California			X			
Georgia	X					
Indiana		X		X		
Iowa						X
Louisiana					X	
Maine	X	X	X	X	X	X
Minnesota	X	X	X	X		X
Mississippi	X	X				
Nebraska	X					
New Hampshire	X	X	X			
New Mexico		X	X			
North Carolina	X	X				X
North Dakota	X					X
Oregon			X			
West Virginia			X			
Wisconsin			X			
Total	**9**	**7**	**8**	**3**	**2**	**5**

Source: Council of State Governments and the American Society for Public Administration.

State Enforcement Approaches Differ Widely

State enforcement approaches to help ensure compliance with ethics provisions differed widely among the four states we reviewed. In these states, enforcement involved a variety of officials and organizations, such as the department or agency that contracted for services, ethics

[9]Through an executive order issued by Arkansas' Governor in February 1998, the state now requires contractors to disclose whether they have hired former state employees.

commissions, legislative and state auditors, inspectors general, and attorneys general. In Maryland, for example, the state placed representatives from the Attorney General's office in major state agencies to provide technical assistance and help ensure that state agencies comply with applicable contracting policies.

Two of the four states lacked enforcement elements that officials in those states believe are necessary to help ensure compliance with applicable ethics policies. In Massachusetts, the state Inspector General believes that social services contracting has a high level of risk, often associated with unfair contractor advantages, conflicts of interest, and personal gain through public office. According to officials from the Attorney General's office, program staff have sometimes been ineffective in enforcing compliance with applicable ethics provisions. As a result, the Attorney General has had to prosecute contractors for violations of state ethics laws that Attorney General representatives believe could have otherwise been prevented.

Arkansas lacks a statewide mechanism to enforce and resolve allegations of unethical activity. Unlike Massachusetts, the Attorney General in Arkansas does not have statewide responsibility to investigate illegal activities associated with state contracting. Instead, prosecuting attorneys in each county may investigate and resolve allegations associated with state contracting. Moreover, the Director of Arkansas' Ethics Commission said the Commission has very narrow enforcement responsibilities as well. The Commission focuses predominantly on campaign finance issues and is not involved with monitoring the contracting process.

Alleged Violations of State Ethics Policies Influenced Contract Award Processes

The lack of some states' ethics provisions may result in conflicts of interest that adversely influence state contract award processes. According to Arkansas and Massachusetts officials we interviewed, these situations have arisen in their states. Arkansas has contracted out the full range of child support enforcement services, including locating absent parents and collecting support payments, in selected counties. Arkansas has contracted with an established network of providers, some employees of whom had formerly worked for the state's child support enforcement program. According to the state's child support enforcement General Counsel, the lack of a comprehensive ethics policy undermined potential contractors' confidence in the fairness of the contracting process. As a result, organizations that had not competed before were discouraged from submitting proposals. This situation, in turn, left the state with no choice

but to contract with organizations with which it had long-standing relationships. At the same time, allegations have surfaced regarding the influence exerted by a state legislator to have a child support enforcement full-service contract awarded to an organization in which the legislator has a financial interest.

In Massachusetts, state employee conflicts of interest had some adverse impact in contracting supported by TANF block grant funds. Officials in the Department of Transitional Assistance who administer TANF-funded programs had to recompete a contract because state employees were found to have a conflict of interest with respect to one of the competing contractors. Under similar circumstances, the state also had to terminate a contract that had previously been awarded. Final resolution of both these ethics issues required the state to award the contract at a time later than originally anticipated.

Model Laws and Federal Provisions Suggest Framework for Reducing Disparities in State Ethics Policies

ABA and Common Cause, a nonpartisan organization that studies government policies, have developed comprehensive model laws that address state ethics policies related to open and fair contracting and include restrictions regarding postemployment activities, conflicts of interest, and other safeguards. States seeking to strengthen their ethics policies may adopt the provisions included in these model laws.

Although states are contracting extensively for child support enforcement and TANF-related services, federal laws for these two programs, as recently amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, do not require that states establish or comply with ethics policies like those in ABA's model law. This is not true, however, with respect to Medicaid. The Congress incorporated conflict-of-interest provisions into state Medicaid plan requirements in 1979, when legislation was enacted authorizing greater use of health maintenance organizations. As a condition of state participation in Medicaid, states must have or enact provisions that require anyone involved in Medicaid-related contracting to be subject to conflict-of-interest requirements similar to, or at least as stringent as, those applicable to federal employees.[10] The federal ethics provisions applicable to Medicaid also include employment restrictions and prohibitions on employees knowingly participating personally and

[10] 42 U.S.C. 1396a(a)(4)(C).

substantially in matters in which they, family members, or certain business associates have a financial interest.[11]

More recently, section 4724(c) of the Balanced Budget Act of 1997 (P.L. 105-33) broadened the Medicaid state plan requirement to include additional conflict-of-interest safeguards.[12] Specifically, it required states to have in place restrictions at least as stringent as those applicable to the federal contracting process related to the disclosure of contractor bid, proposal, and source selection information that might undermine open and fair competition.[13] The Medicaid provisions allow states to tailor their ethics policies to their specific circumstances, relying on model laws and other enforcement approaches as they so choose, and offer some assurance that basic safeguards will be in place when a state is contracting for Medicaid services.

State Strategies to Hold Contractors Accountable Are Focused More on Compliance With Program Rules Than on Results

Several states have established practices to help ensure that contract awardees are held accountable for program results, which provides added assurance that these states will receive the services for which they paid. These practices include performance measures states use when they assess contractor progress toward achieving program results. However, program officials in most states indicated that they rely on traditional accountability strategies, such as audits, that focus more on compliance with program rules than on results. The Government Performance and Results Act of 1993 and results-oriented state initiatives have helped establish frameworks to better focus program management on accountability for results.

State Practices to Hold Contractors Accountable Focused on Compliance With Program Rules

In addition to an integrated network of comprehensive ethics policies and enforcement approaches, contracting experts and program managers believe states need effective approaches for holding contractors accountable for program results. Effective accountability mechanisms, while difficult to develop, can help states ensure that they base contract payments on performance. Our earlier reviews of privatization have

[11] 18 U.S.C. 207 and 208.

[12] 42 U.S.C. 1396a(a)(4)(D).

[13] 41 U.S.C. 423.

concluded that managers need to supplement current practices that assess compliance with program rules with a greater focus on results.[14]

Our earlier work on social service privatization also found that monitoring contractors' performance toward achieving program results was among the most challenging aspects of the privatization process. This examination of program accountability found that assessing compliance with program requirements, while a significant component of accountability, can constrain the available resources state auditors are able to apply toward assessing longer-term program results. Faced with these priorities and related resource constraints, officials in Texas' child support enforcement program, for example, have relied on compliance reviews of administrative processes and other approaches in an effort to monitor performance relative to results specified in applicable contracts. In recent audit cycles, the state's auditors have reviewed compliance with allowable expenditures and reporting requirements.

Assessing program results can play a critical role in reviewing contractor performance. Such assessments could incorporate various techniques, such as monitoring outcomes and reviewing qualitative information. In Maryland's oversight of its TANF-supported welfare-to-work programs, for example, the state has developed a planning process that sets forth long-term goals and objectives for its Department of Human Resources—which administers TANF—and each program it manages and oversees. In addition, program officials, through Strategic Management Assessment Review Teams, periodically assess progress providers have made toward achieving program results, such as program enrollment and completion, employment, and job retention. Generally, contractors are paid on the basis of their performance in each of these program dimensions.

The Results Act and Related Initiatives Provide Frameworks for Assessing State Program Results

Assessing program results enables states to determine whether contractors have in fact achieved intended outcomes. Under the Results Act, HHS developed a framework for establishing performance measures and assessing program results in the child support enforcement program. HHS' Office of Child Support Enforcement (OCSE), in conjunction with the states, established a 5-year strategic plan that included program goals and performance measures for evaluating the magnitude of increases in paternities established, support orders obtained, and collections received.

[14]See GAO/HEHS-98-6, Oct. 20, 1997, and Privatization: Lessons Learned by State and Local Governments (GAO/GGD-97-48, Mar. 14, 1997).

OCSE and the states developed these measures after considering key dimensions indicative of state performance in providing child support enforcement services. Subsequently, these and other measures were included in modifications to the program's incentive funding structure. Such frameworks can enhance state strategies to improve accountability for program results in privatized social service programs supported with federal funds.

Beyond the Results Act requirements applicable to federally administered programs, some states, such as Oregon and Minnesota, established their own strategies for assessing program results. Toward this end, state legislatures or executive branch agencies have developed program goals and measures for assessing performance. Moreover, one recent study concluded that 47 states have established performance-based budgeting systems intended to improve the effectiveness of state programs. These state initiatives, combined with a greater orientation toward program results in HHS, provide additional management tools that can be used to optimize the anticipated benefits from privatizing child support enforcement, welfare-to-work, and other social service programs.

Conclusions

Social service contracting presents many significant challenges to state governments, including the need to achieve competitive contracting and accountability for program results. These challenges, coupled with the magnitude of federal funds that support privatized social service programs, amplify the call for adequate protections against ethics violations that can potentially undermine competition. While our work in selected states suggests that contract awards were not related to the "revolving door," there is room to strengthen state ethics policies and enforcement approaches to help strengthen open and fair competition. Without comprehensive ethics policies and effective enforcement approaches intended to safeguard competitive contracting, states may not benefit as fully from competition when they privatize social services. Similarly, an insufficient capacity to assess progress toward achieving program results weakens state assurances that contractors will provide federally funded services efficiently and effectively.

Faced with these challenges, states can take steps to mitigate threats to competition. By relying on comprehensive models for guidance, states can develop or refine their ethics policies and adopt effective enforcement approaches to strengthen competition in privatized social services. States have been required by statute, in fact, to adopt and apply certain

conflict-of-interest requirements to state officials with regard to Medicaid. While the Results Act provides a framework for reorienting program management toward accountability for results, states could take additional measures to help ensure that they obtain desired results from their contracting efforts. Together, fortified ethics policies, effective enforcement approaches, and accountability strategies focused on program results can optimize the states' capacity to achieve the benefits of social service privatization.

Agency Comments and Our Evaluation

We received comments on a draft of this report from HHS, the four states in which we conducted detailed work, and a recognized expert in social service privatization. The comments generally concurred with our findings and conclusions. We also received a number of technical comments that we incorporated where appropriate.

We are providing copies of this report to the Honorable Donna E. Shalala, the Secretary of HHS; and the Honorable Olivia A. Golden, HHS' Assistant Secretary for Children and Families. We will also send copies to state child support enforcement and TANF directors and to other interested parties on request.

If you or your staffs have any questions about this report, please contact David D. Bellis, Assistant Director, or Mark E. Ward, Senior Evaluator, at (202) 512-7215. Other major contributors are Gregory Curtis, Joel I. Grossman, Craig H. Winslow, and James P. Wright.

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Abbreviations

ABA	American Bar Association
HHS	Department of Health and Human Services
IT	information technology
OCSE	Office of Child Support Enforcement
RFP	request for proposal
TANF	Temporary Assistance for Needy Families

Scope and Methodology

This appendix provides additional details on the methods we used to meet the objectives of our study. To help us understand state ethics laws and their enforcement, we reviewed GAO reports, journal articles, and studies on contracting, as well as state ethics laws and policies. To estimate the extent of national movement by former state employees to positions at social service contractors, we obtained information from federal and state program managers in the child support enforcement and Temporary Assistance for Needy Families (TANF) programs. We supplemented these data by interviewing officials of public employee unions and other organizations. In addition, we interviewed state government officials in four states to determine how their states responded to the loss of personnel and the impact this loss had on state programs.

To aid us in determining the extent to which state employees left government positions for employment with contractors and the effect this movement had on contract awards, we examined the proposals submitted in response to eight recently issued requests for proposal (RFP) in the four selected states. We selected two full-service child support enforcement RFPs—one in Arkansas and one in Maryland—and two child support enforcement RFPs for automated systems—one in Massachusetts and one in Texas. We also chose one TANF welfare-to-work RFP in each of the four states. We reviewed all proposals submitted in response to RFPs for these contracts to identify former government employees who had worked in either state child support enforcement or welfare-to-work programs and were subsequently listed as key personnel designated to perform specific functions in direct support of the contract, pending selection of contract awardees. Sometimes states awarded more than one contract for each RFP. In addition, the projected contract costs among the contracts we reviewed varied widely. To supplement the information we obtained from our review of proposals, we interviewed state officials to obtain their perspectives on how the movement of former state employees to organizations competing for contracts affected contract awards. We did not evaluate the merits of state contract award decisions, nor did we independently assess whether states or contractors complied with applicable ethics policies.

We examined state ethics laws, policies, and enforcement approaches and their federal counterparts to determine the extent to which state ethics laws and policies parallel generally accepted ethics standards, as defined by the American Bar Association, contracting experts, and others. We also interviewed state officials to identify any allegations of state ethics violations and their resolution.

In addition, we examined state and federal policies and practices for holding contractors accountable for program results. We also interviewed state program officials in the four selected states to identify the practices they used to hold contractors accountable for program results. Finally, we interviewed Department of Health and Human Services officials regarding their oversight of state and local social service contracting in the context of applicable federal policies.

We focused on the child support enforcement and TANF programs in four states—Arkansas, Maryland, Massachusetts, and Texas. We selected these two programs because each receives a significant level of federal funds and each makes widespread or long-term use of contracting. We chose these four states because they offered variation in the strength of their respective ethics provisions. In addition, these four states were using contractors to provide child support enforcement services or to design related automated systems. All four states contracted out TANF-funded welfare-to-work services. Table I.1 summarizes the selected states, number of proposals submitted in response to each RFP, and number of contracts awarded.

Table I.1: Selected States, Programs, Proposals, and Contract Awards

	Child support enforcement program		
	Number of full-service proposals and contracts	Number of automated system proposals and contracts	Number of TANF proposals and contracts
Arkansas			
Proposals per RFP	8		1
Contracts awarded per RFP	6		1
Maryland			
Proposals per RFP	3		11
Contracts awarded per RFP	1		7
Massachusetts			
Proposals per RFP		4	24
Contracts awarded per RFP		1	15
Texas			
Proposals per RFP		1	7
Contracts awarded per RFP		1	5

Source: GAO analysis of contract information.

Related GAO Products

Welfare Reform: States Are Restructuring Programs to Reduce Welfare Dependence (GAO/HEHS-98-109, June 18, 1998).

Child Support Enforcement Privatization: Challenges in Ensuring Accountability for Program Results (GAO/T-HEHS-98-22, Nov. 4, 1997).

Social Service Privatization: Expansion Poses Challenges in Ensuring Accountability for Program Results (GAO/HEHS-98-6, Oct. 20, 1997).

Managing for Results: Analytic Challenges in Measuring Performance (GAO/HEHS/GGD-97-138, May 30, 1997).

Welfare Reform: Three States' Approaches Show Promise of Increasing Work Participation (GAO/HEHS-97-80, May 30, 1997).

Privatization: Lessons Learned by State and Local Governments (GAO/GGD-97-48, Mar. 14, 1997).

Child Support Enforcement: Early Results on Comparability of Privatized and Public Offices (GAO/HEHS-97-4, Dec. 16, 1996).

Child Support Enforcement: Reorienting Management Toward Achieving Better Program Results (GAO/HEHS/GGD-97-14, Oct. 25, 1996).

Employment Training: Successful Projects Share Common Strategy (GAO/HEHS-96-108, May 7, 1996).

District of Columbia: City and State Privatization Initiatives and Impediments (GAO/GGD-95-194, June 28, 1995).

Welfare to Work: Measuring Outcomes for JOBS Participants (GAO/HEHS-95-86, Apr. 17, 1995).

Office of Government Ethics: Need for Additional Funding for Regulation Development and Oversight (GAO/T-GGD-92-17, Mar. 4, 1992).

Ethics Enforcement: Process by Which Conflict of Interest Allegations Are Investigated and Resolved (GAO/GGD-87-83BR, May 21, 1987).

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