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Texas Health and Human Services testing Gov. Abbott's patience

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AUSTIN — Days after the Texas State Auditor issued a report critical of its handling of a \$10 million contract, Gov. Greg Abbott assigned his senior fiscal advisor to personally find out what went wrong over at the Department of Health and Human Services.

In the language used in the statement made by spokesman Matt Hirsch, it was clear Abbott wanted the public to know he meant business. The Houston Chronicle punctuated the words by running an accompanying photo of Tommy Williams, then a Republican state senator from The Woodlands, dressed as Darth Vader on the Senate floor.

“History has shown the governor has no patience for mistakes like this,” Hirsch said in a text to state reporters. “The governor believes the current situation at HHSC is unacceptable, and as he’s done in the past, he’s going to take action to make sure changes happen quickly.” Williams was dispatched to “reinforce a sense of urgency to fix the problems and get the agency back on track to focusing on serving the needs of Texans.”

History has shown this will not be the last time Health and Human Services will test his patience. For 20 years and probably much longer, an agency that commands a budget of nearly \$40 billion a year and employs nearly 53,000 full-time employees has been in an almost perpetual state of reform and disrepair.

Far from being a rogue agency, a careful look at state documents by The Texas Monitor shows Health and Human Services is perhaps the most scrutinized agency in Texas government, generating hundreds of reports with tens of thousands of pages.

Weekly, monthly, yearly the agency is being told in very great detail what to do by the governor, the House and Senate and their special committees set up to address crises; the State Auditor; the Texas Sunset Commission; and its own Office of the Inspector General.

In spite of this direction, or in some cases because of it, Health and Human Services, as pointed out in October by the Texas Tribune, is an agency in disarray. A parade of directors have come and gone for political or ethical reasons. There were reports at the time this was being published Wednesday afternoon that Heather Griffith Peterson, the agency’s chief operating officer,

resigned. Senior staff has fled by the dozens and the morale — never too high — may be at an all-time low, according to the Tribune.

And as if the uncertain operation of the agency weren't enough, Health and Human Services continues to bleed billions of taxpayers dollars in waste, fraud and abuse, 15 years after the Legislature created the Office of the Inspector General to solve that problem.

It's a problem that has never been solved, in Texas or any other state, nor at the federal level, Charles Silver, a professor of government at the University of Texas Law School and the author of the forthcoming "Overcharged: Why Americans Pay Too Much for Health Care."

"There are no effective counter-measures to combat fraud in health care programs," Silver told The Texas Monitor. Never have been, never will. Government has very little real interest in policing itself."

Government does, however, have a vested interest in giving the public the impression of commitment to the policing, hence Williams' mission to correct contracting weaknesses within Health and Human Services.

Busy writing his book, Silver was unfamiliar with the latest contracting news. He wondered why Abbott was raising so much dust over a \$10 million contract with a \$40 billion agency. "Overcharged," chronicles the estimated \$70 billion lost by taxpayers to fraud in the federal Medicare and Medicaid programs.

"This is small potatoes," Silver said. "It doesn't seem to rise to the level of an investigation. And from what I can tell it took an outsider to bring the problem to the attention of the agency."

But this particular report — all 37 pages — was published in response to Abbott's fury over botched contracting in the agency's Children's Health Insurance Program. HHS fired three high ranking officials responsible for the contracting, but did not identify them.

House Speaker Joe Straus, R-San Antonio, sent an email blast to supporters doubling down on his criticism of the commission's contracting issues.

"I am especially troubled by problems at the state's Health and Human Services Commission," outgoing House Speaker Joe Straus said in a written statement. "The Commission oversees billions of dollars worth of contracts with private companies that help deliver critical health care services, such as the Medicaid program for children from low-income families. But the Commission's process for awarding contracts, also known as procurement, is broken."

The Texas Monitor tried to contact for comment state Sen. Jane Nelson, R-Flower Mound, who co-chairs the most recent HHS reform committee, the Transition Legislative Oversight Committee.

Traveling, she issued a statement.

"Twice in one week? After an exhaustive Sunset review and major reforms, we are still seeing sloppy contracting that drives up costs and puts services at risk," Nelson wrote. "I am investigating our options to tighten oversight policies. The Legislature will not accept another

systemic breakdown in procurement — especially at an agency serving our most vulnerable Texans.”

Carrie Williams, a spokeswoman for HHSC, admitted procurement errors had been made but denied those errors cost taxpayers money. The sharp criticism and the firings were as much a reaction to HHSC’s biggest recent scandal, still reverberating after more than three years.

Legislators and regulators continue to be haunted by a \$110 million contract HHSC entered into, the first \$20 million of it without competitive bidding, with an obscure Austin technology company, 21CT Inc. in 2014.

Before the investigation was over, Jack Stick, a former legislator who lost in a bid for a second term and yet rose to become HHSC’s deputy inspector general and chief legal counsel, and Kyle Janek, a longtime legislator who was the head of HHSC, had resigned.

The scandal exploded at the end of 2014, as the Sunset Advisory Commission released its voluminous report, which the legislature approved in July 2015, calling for three of the five agencies under the HHSC umbrella to consolidate.

Among other things, it called for establishing a think tank to improve performance, new guiding principles for accountability and communication, better oversight of much needed information technology and more high-level oversight of contracting throughout the system.

The Commission also called for the legislators making up the Transition Legislative Oversight Committee to monitor the massive undertaking.

To further demonstrate the commitment to cleaning house, Gov. Greg Abbott in March of 2015 made what was considered a bold choice, persuading Stuart Bowen Jr., a former George W. Bush aide who made a reputation as inspector general for Iraq reconstruction after the war, to become inspector general of HHSC.

At least one press outlet referred to Bowen as the “new sheriff,” in town to clean up after Doug Wilson, fired by then-Gov. Rick Perry for the OIG’s regulatory failure in the 21CT Inc. mess.

The Legislature created the state’s first inspector general’s office in 2003, in recognition that spending — and waste, fraud and abuse — was particularly acute in the state’s social service programs.

“This was done,” Brian Flood, the state’s first inspector general told the U.S. Senate in 2006, “for better fiscal management, not to create more government. Having a Governor appointed inspector general eliminates the perception of a conflict of interest and enhances credibility and objectivity when the OIG audits or investigates agency programs or staff.”

All in theory. The OIG now employs more than 800 people. Its budget, a biennial \$92 million in 2012-13 fiscal year is \$126.3 for 2018-19, according to the budgets kept by the Legislative Budget Board.

And as for politics, Flood resigned a year later after Perry refused to reappoint him, reportedly angry that Flood was too aggressively finding waste fraud and abuse.

When the Legislature passed SB 1803 in 2013, Flood complained his former office was being limited under pressure by service providers who “supported this measure in response to what they cited as over-zealous and unfair treatment by the HHSC-OIG.”

This supposed aggressiveness was contradicted by the Sunset review which said, contrary to boasts, OIG was recovering millions rather than billions in health services fraud. State Sen. Charles Schwertner, R-Georgetown, chairman of the Senate Health and Human Services Committee, said at the time, “The bottom line is, I think the Legislature, and I personally, have lost confidence in the Medicaid OIG.”

Even with an active inspector general, the US Department of Health and Human Services has been unable to stanch the bleeding that comes with health spending, Michael Cannon, director of Health Policy Studies for free market think tank, the Cato Institute, told The Texas Monitor.

Researchers think 10 percent is a lowball figure for the amount of waste, fraud and abuse in all health service spending. That would mean the OIG, which has never been able to prove it’s been able to recover more than a few million a year on its own, carries on while at least a billion taxpayer dollars are lost.

“Legislators come under pressure to get rid of the fraud and the cronyism, to let people know they’re doing something,” Cannon said. “But keep in mind that every dollar that is spent, whether legitimate or waster fraud and abuse matters to someone. There will always be some lobbyist trying to protect his dedicated revenue stream.”

The last year continues to be tough for HHSC. In May, Sheriff Bowen was forced to step down when it was revealed he was doing consulting work for the Iraq government in addition to his state job.

Two years after it made 274 recommendations for improvements, HHSC had made 56 percent of them, according to a January 2017 Sunset compliance report.

Ken Levine, Sunset director, told The Texas Monitor, HHSC still has a long way to go, as much because of the sheer volume of items that need correcting.

“There are quite a few things they haven’t gotten very far on,” Levine said. “Obviously, there were all sorts of problems.”

And at the same time there is the matter of reorganization outlined in the Transition Committee’s report, issued in November of 2016. The consolidation called for in the report is more than a year behind.

At least in one area — contracting — help is on its way. “Our integrity and credibility is central to our agency mission and cannot be compromised,” Williams said, in a statement after accepting Abbott’s assignment. “We are working in lockstep with auditors and procurement experts and welcome every ounce of scrutiny. We absolutely have to get this right.”