

**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

REVIEW REPORT  
OF  
INDIANA DEPARTMENT OF INSURANCE  
STATE OF INDIANA  
February 1, 2012 to December 31, 2013



**FILED**  
07/18/2014



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AGENCY OFFICIAL

Office

Official

Term

Commissioner

Stephen W. Robertson

10-12-10 to 01-08-17



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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE INDIANA DEPARTMENT OF INSURANCE

We have reviewed the activities related to the receipts, disbursements, and assets of the Indiana Department of Insurance for the period of February 1, 2012 to December 31, 2013. The Indiana Department of Insurance's management is responsible for the receipts, disbursements, and assets.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the receipts, disbursements, and assets. Accordingly, we do not express such an opinion.

Financial transactions of this office are included in the scope of our audits of the State of Indiana as reflected in the Indiana Comprehensive Annual Financial Reports. Federal programs are included in the scope of our statewide single audits as reflected in the Statewide Single Audit Reports.

Based on our review, nothing came to our attention that caused us to believe that the activities related to the receipts, disbursements, and assets of the Indiana Department of Insurance are not in all material respects in conformity with the criteria set forth in the Accounting and Uniform Compliance Guidelines Manual for State and Quasi Agencies, and applicable laws and regulations, except as stated in the review comments.

The Indiana Department of Insurance's response to the Review Comments identified in our review is described in the accompanying section of the report entitled Official Response. We did not review the Indiana Department of Insurance's response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the Indiana Department of Insurance's management and others within the entity, and is not intended to be and should not be used by anyone other than these specified parties. In accordance with Indiana Code 5-11-5-1, this report is a part of the public records of the Indiana State Board of Accounts and of the office reviewed.

STATE BOARD OF ACCOUNTS

June 23, 2014

INDIANA DEPARTMENT OF INSURANCE  
REVIEW COMMENTS  
December 31, 2013

***DAILY DEPOSITS***

The Indiana Department of Insurance did not consistently deposit receipts from lockbox accounts to the Treasurer of State within the following business day.

In the current review period, 9 of 20 deposits tested were shown to have been deposited from two to ten business days after notification from the lockbox banks of amounts received.

Indiana Code 5-13-6-1(b) states in part: ". . . all public funds . . . shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state not later than the business day following the receipt of the funds."

***FORM CONTRACT AND APPROVAL***

As stated in the prior report, our testing identified professional service contracts entered into by the Indiana Department of Insurance (IDOI) without the review or approval by the Department of Administration, the State Budget Agency, or the Attorney General's Office. Many of these contracts consist of letters of agreement which lack substantial portions of required State contract language. In one instance, the IDOI appointed an administrator of the Indiana Residual Malpractice Insurance Authority (IRMIA) under a letter of agreement dated July 1, 1975, which contains an automatic renewal clause.

Certain types of contracts are entered into routinely by IDOI using standard forms which have not been approved by the Attorney General's Office. The IDOI has indicated that its public function would be severely restricted if each such contract was subjected to the standard approval process; however, it has not filed written delegations of authority to approve such contracts with the Department of Administration. These types of contracts include:

1. Reinsurance agreements for insurance companies who participate in the Mine Subsidence Fund.
2. Insurance policies issued by the Political Subdivision Risk Management Fund.
3. Joint custodial agreements for custodial deposits maintained at banks by insurance companies on behalf of policy holders.
4. Attorney's contract for the Patient's Compensation Fund.

We also identified that IDOI had no contracts for firms retained by the Commissioner to perform financial examinations of the insurance companies.

IDOI should consider requesting contract form approvals from the Office of the Attorney General. Such approvals are available to agencies with considerable number of contracts for the same types of services and can speed up the contract approval process.

Indiana Codes 4-13-2-14.1 and 14.2 require that a contract to which a state agency is a party must be properly approved by the Department of Administration, the State Budget Agency, and the Attorney General's Office.

INDIANA DEPARTMENT OF INSURANCE  
REVIEW COMMENTS  
December 31, 2013  
(Continued)

***COLLECTION OF EXAMINATION FEES***

As stated in the prior report, every insurance company that conducts business within the State of Indiana is subject to an examination at least once every three to five years. IDOI uses independent examination firms, other professionals, and agency staff to conduct examinations of insurance companies. For audit services performed by independent examination firms or other professionals, these firms invoice IDOI for all audit costs. The invoices are "approved" by IDOI, and forwarded to the examined insurance company which makes payment directly to the retained firm. For audit services conducted by agency staff, IDOI bills the insurance company for all audit costs of the state employee.

To ensure proper internal controls and accountability over public funds, IDOI should collect payment from the examined companies for the costs of required audits, and deposit the funds into state accounts. The expenses related to the audits, whether the audits are performed by state employees or performed by IDOI retained firms or professionals, should be paid directly from IDOI funds.

According to Indiana Code 27-1-3.1-9(d), the Commissioner of Indiana Department of Insurance (IDOI) is empowered to retain Independent CPAs, other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

In an Attorney General opinion issued to the State Board of Account's State Examiner on January 16, 2002, and subsequently forwarded to the Commissioner of the Department of Insurance, the Office of the Attorney General stated: "Although it may be expedient to have the company pay individuals directly, the statute does not contemplate such a process." The Attorney General also indicated that, because outside consultants function as agents of the IDOI: "Consultants retained by the department should be compensated by the department even though it is the ultimate responsibility of the companies that are being examined to reimburse the department for those costs."

Each agency is responsible for compliance with applicable statutes, regulations, contract provisions, and state policies. Compliance is required, as applicable, with generally accepted accounting principles, and standards issued by the Governing Accounting Standards Board, Financial Accounting Standards Board, and other standard setting bodies and also with various accounting guides, manuals, and other publications. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Overview - General Guidelines)

INDIANA DEPARTMENT OF INSURANCE  
EXIT CONFERENCE

The contents of this report were discussed on June 23, 2014, with Stephen W. Robertson, Commissioner; Barbara Lohman, Controller; and Tina Kory, General Counsel. The Official Response has been made a part of this report and may be found on pages 7 through 11.





# STATE OF INDIANA

MICHAEL R. PENCE, Governor

# IDOI

## INDIANA DEPARTMENT OF INSURANCE

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Stephen W. Robertson, Commissioner

June 24, 2014

Paul Joyce, State Examiner  
Indiana State Board of Accounts  
302 West Washington Street, Room E418  
Indianapolis, Indiana 46204-2765

Re: Indiana Department of Insurance ("IDOI") Official Response to State Board of Accounts ("SBOA")  
Review Report for the Period February 1, 2012, to December 31, 2013

Dear Mr. Joyce:

This letter contains the Indiana Department of Insurance's Official Response to the State Board of Accounts Audit Results and Comments as presented to the Indiana Department of Insurance on June 23, 2014. We are happy to see that your examiners found our activities to be in all material respects in conformity with applicable requirements, except for those few findings noted below. IDOA's findings and comments appear in bold, with IDOI's responses following in plain text.

### DAILY DEPOSITS

The Indiana Department of Insurance did not consistently deposit receipts from lockbox accounts to the Treasurer of State within the following business day.

In the current review period, nine of twenty deposits tested were shown to have been deposited from 2 to 10 business days after notification from the lockbox banks of amounts received.

Indiana Code 5-13-6-1(b) states in part: "... all public funds ... shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state not later than the business day following the receipt of the funds."

The deposits noted arrived at the IDOI "lockbox" bank account immediately following an unexpected medical emergency that put our accounts receivable clerk in the hospital. Our CFO stepped in and deposited the funds on the second business day following receipt. We have new personnel in place, and we believe this situation will not be repeated in the future.

ACCREDITED BY THE  
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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### **FORM CONTRACT AND APPROVAL**

As stated in the prior report, our testing identified professional service contracts entered into by the Indiana Department of Insurance (IDOI) without the review or approval by the Department of Administration, the State Budget Agency, or the Attorney General's office. Many of these contracts consist of letters of agreement which lack substantial portions of required State contract language. In one instance, the Department of Insurance appointed an administrator of the Indiana Residual Malpractice Insurance Authority (IRMIA) under a letter of agreement dated July 1, 1975, which contains an automatic renewal clause.

Certain types of contracts are entered into routinely by IDOI using standard forms which have not been approved by the Attorney General's office. The IDOI has indicated that its public function would be severely restricted if each such contract was subjected to the standard approval process; however, it has not filed written delegations of authority to approve such contracts with the Department of Administration. These types of contracts include:

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4. Attorney's contract for the Patient's Compensation Fund.

We also identified that IDOI had no contracts for firms retained by the Commissioner to perform financial examinations of the insurance companies.

IDOI should consider requesting contract form approvals from the Office of the Attorney General. Such approvals are available to agencies with considerable number of contracts for the same types of services and can speed up the contract approval process.

Indiana Codes 4-13-2-14.1 and 14.2 require that a contract to which a state agency is a party must be properly approved by the Department of Administration, the Budget Agency, and the Attorney General's office.

Implementing the numbered suggestions, which appeared in the prior audit report, have taken longer than anticipated by IDOI. However, we have received form approval for the Patient's Compensation Fund (PCF) attorney contracts and are in the process of getting contracts executed with PCF counsel. We will then seek form approval for the other items noted in numbers one through three above.

The one new suggestion is that IDOI establish contracts with firms retained to perform financial examinations of insurance companies. The IDOI will begin the contracting process for the firms that conduct financial examinations.



### COLLECTION OF EXAMINATION FEES

As stated in the prior report, every insurance company that conducts business within the State of Indiana is subject to an examination at least once every three to five years. IDOI uses independent examination firms, other professionals and agency staff to conduct examinations of insurance companies. For audit services performed by independent examination firms or other professionals, these firms invoice IDOI for all audit costs. The invoices are "approved" by IDOI, and forwarded to the examined insurance company which makes payment directly to the retained firm. For audit services conducted by agency staff, IDOI bills the insurance company for all audit costs of the state employee.

To ensure proper internal controls and accountability over public funds, IDOI should collect payment from the examined companies for the costs of required audits, and deposit the funds into state accounts. The expenses related to the audits, whether the audits are performed by state employees or performed by IDOI retained firms or professionals, should be paid directly from IDOI funds.

According to Indiana Code 27-1-3.1-9(d), the Commissioner of Indiana Department of Insurance (IDOI) is empowered to retain Independent CPAs, other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

In an Attorney General opinion issued to the State Board of Account's State Examiner on January 16, 2002, and subsequently forwarded to the Commissioner of the Department of Insurance, the Office of the Attorney General stated: "Although it may be expedient to have the company pay individuals directly, the statute does not contemplate such a process." The Attorney General also indicated that, because outside consultants function as agents of the IDOI, "Consultants retained by the department should be compensated by the department even though it is the ultimate responsibility of the companies that are being examined to reimburse the department for those costs."

Each agency is responsible for compliance with applicable statutes, regulations, contract provisions, and state policies. Compliance is required, as applicable, with generally accepted accounting principles, and standards issued by the Governing Accounting Standards Board, Financial Accounting Standards Board, and other standard setting bodies and also with various accounting guides, manuals, and other publications. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Overview - General Guidelines)

Our position has not changed since our last audit. For ease of review, our previous response is copied here:

Domestic insurance companies are subject to a financial examination on a regular or emergency basis every three to five years. market conduct examinations are on an as needed basis to verify the behavior of the company in the marketplace as to unfair claims and unfair trade practices, and include domestic, foreign, and alien insurers doing business in the state. Both exams are accomplished pursuant to Ind. Code § 27-1-3.1 *et. seq.* (the "Exam Statute") and conducted in accordance with National Association of Insurance Commissioners (NAIC) Handbooks, as required by Ind. Code § 27-1-3.1 -9(a) ("In conducting the examination, the Commissioner shall observe those guidelines and procedures set forth in the NAIC examiner's handbook.").

The examinations statute was developed via IDOI's participation with the NAIC (see Ind. Code § 27-1-1-2) as a model law similarly adopted by the legislators of many states. The development of this model and its eventual adoption by the Indiana legislature reflects the unique role of IDOI as a member of the NAIC and the public policy associated with the

unfettered gathering of information via the use of an executed examination warrant. Insurance is a significant thread in the fabric of our economy and must be able to provide the protection contracted for when a peril arises. So, the Commissioner's authority to **appoint** examiners must be preserved to facilitate the protection of Indiana citizens, even at times when internal budget restrictions may otherwise inhibit IDOI's ability to confirm the solvency of an insurer or verify compliance with statutes designed to protect the industry and insuring public from harm. Those who designed the model and wisely adopted the model recognized three things when they crafted the following language:

*"The cost of retaining these examiners shall be borne by the company that is the subject of the examination"* Ind. Code § 27-1-3.1-9(d).

1) The appointment of examiners and others pursuant to an exam must be distinct from the other budgetary operations of IDOI so as not to adversely impact IDOI's operations. A 'subject' company's inability or chosen reluctance to pay an examination related bill would put a financial burden on IDOI and have an impact never anticipated by the legislature in its adoption of this model law.

2) The 'subject' company must not be able to impair IDOI's review or scrutiny, by delaying or withholding payment to examiners and adversely impacting IDOI's investigative authority or decision making. The use of the word '*shall*' by the legislature left no room for variation on the issue of costs.

3) The Commissioner must have the flexibility to act in an expedient manner.

The use of the appointment mechanism was purposeful and allows for an extension of the Commissioner's authority and flexibility of assignment of an examiner relative to a unique specialty or purpose.

Therefore, should IDOI, at any time pay an examiner directly, even anticipating next day reimbursement from the subject company IDOI has "borne the cost of the exam" and **done so in contravention of the statute.**

Implementing SBA's suggested interpretation of Ind. Code § 27-1-3.1 would put IDOI in violation of Indiana law and would make IDOI responsible for payment of the examiners' expenses. In the event of a slow payment or default on payment by the insurer, the suggested interpretation would result in IDOI being financially liable for payment, and then IDOI would need to seek repayment by the examined entity. Slow or no reimbursement would significantly inhibit IDOI's ability to perform its statutory audit and examination functions. A circumstance of slow payment is not unusual, especially with financially troubled companies. Under our current budget IDOI is unable to make payments to the examiner until receiving payment from the company. Our budget would need to be increased to allow for the possibility of default or delays. Under the current system, IDOI does not believe that it is responsible to the examiner if the insurer fails to pay. The examiner's remedy is with the company rather than IDOI. IDOI takes steps to ensure the examiner is aware of this fact and the examiner, in the engagement letter, acknowledges that IDOI is not responsible for payment of the expenses. All examination expenses are reviewed by IDOI and approved before being sent to the company for payment.

Outside examiners now conduct more than 95% of IDOI's financial and market conduct examinations. IDOI's ability to perform examinations could be severely limited by the recommended change. The potential consequences are significant, including but not limited to the loss of accreditation with the NAIC. Loss of accreditation results in IDOI's inability to fulfill its statutory obligations and potential loss of Indiana businesses to an accredited state.

Furthermore, the 2002 Attorney General "Opinion" cited above is not an Official Advisory Opinion, but rather an Advisory Letter. This letter fails to analyze or even mention Ind. Code § 27-1-3.1 -9(a) and (d), both quoted above. It is a well-established tenant of Indiana law that when two statutes conflict, the more specific provision controls over the more general one. See, e.g., *Grether v. Indiana State Board of Dental Examiners*, 159 N.E.2d 131 (Ind. 1959); *Lockard v. Miles*, 882 N.E.2d 288 (Ind. Ct. App. 2008) The Exam Statute is the more specific; therefore, it controls over other more general statutes, administrative rules, and guidebooks.

We would like to thank the State Board of Accounts for the professionalism and courtesy shown during this audit. Examiners Kelson Moran and Chase Lenon performed their duties with minimal interruption to the regular work of the IDOI, and they were respectful when our opinions differed. We understand the importance of regular audits and applaud these public servants.

A handwritten signature in dark ink, reading "Stephen W. Robertson". The signature is fluid and cursive, with a large, stylized "S" at the beginning and a long, sweeping underline.

Stephen W. Robertson, Commissioner  
Indiana Department of Insurance