



An Audit Report on

# **The Texas Peer Assistance Program for Nurses**

June 2019  
Report No. 19-036



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## Overall Conclusion

The Texas Board of Nursing (Board) complied with most applicable contract formation requirements and performed monitoring processes for its contract with the Texas Nurses Foundation (Foundation) for the Texas Peer Assistance Program for Nurses (Program). However, significant weaknesses in the Board's processes could affect its ability to effectively monitor the contract to ensure that the Program is providing the necessary services to participants at an appropriate funding level required to operate the Program.

The Foundation had processes in place to ensure that its financial transactions were supported, approved, and Program related.

### Contract Monitoring

The Board performed monitoring processes for its contract with the Foundation, including participating in meetings with the Foundation; ensuring receipt of certain deliverables; approving payments to the Foundation; and reviewing revenue received to fund the Program. However, the Board should address significant weaknesses in its contract monitoring processes to ensure that it adequately monitors the Foundation's performance and analyzes the reports that the Foundation submits for the Program. The Board did not have documentation that it used those reports to inform its decisions related to the contract as required, and the Board did not have a process in place to verify the accuracy or completeness of the information that the Foundation submitted. Additionally, the Board's monitoring of the contract was decentralized and not always sufficiently documented.

### Contract Formation

The Board included all required clauses for the contract with the Foundation. However, the Board should strengthen its contract formation processes to ensure that it (1) includes specific, defined measures for program success in its contracts and (2) requires contractors to determine employment eligibility.

### Background Information

The Texas Peer Assistance Program for Nurses (Program) identifies, monitors, and assists nurses whose practice may be impaired due to chemical dependency, mental illness, or diminished mental capacity so that they may return to practicing safe nursing.

The Texas Board of Nursing (Board) contracts with the Texas Nurses Foundation (Foundation), a nonprofit organization within the Texas Nurses Association, to operate and provide services through the Program. The Board asserted that it has contracted with the Foundation to operate the Program for approximately 30 years. The contract in place for the 2018-2019 biennium limits the Board's payments to the Foundation to the amount allocated for the Program in the General Appropriations Act (85th Legislature). That amount was \$1,005,458 each fiscal year.

Eligible nurses enter the Program through self-referral, third-party referral (including employer, healthcare provider, or coworker), and/or Board order or referral. Participation in the Program is voluntary and may be an alternative to Board discipline.

Sources: The Board, the Foundation, and the General Appropriations Act (85th Legislature).

This audit was conducted in accordance with Texas Government Code, Section 321.0132.

For more information regarding this report, please contact James Timberlake, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

## The Foundation’s Financial Transactions

The Foundation’s financial transactions tested, totaling \$86,173, were supported, approved, and related to the Program. In addition, the fiscal year 2018 Program financial data that the Foundation provided to the Board was accurate.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating <sup>a</sup>
1-A	The Board Performed Monitoring Processes for Its Contract With the Foundation	Low
1-B	Significant Weaknesses in the Board’s Monitoring Processes Could Affect Its Ability to Effectively Monitor the Contract	High
2	The Board Formed the Contract With the Foundation in Accordance with Most Applicable Requirements; However, It Should Strengthen Formation Processes	Medium
3	The Foundation’s Financial Transactions Were Supported, Approved, and Program Related	Low

<sup>a</sup> A subchapter is rated **Priority** if the issues identified present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

A subchapter is rated **High** if the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A subchapter is rated **Medium** if the issues identified present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A subchapter is rated **Low** if the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.

Auditors communicated other, less significant issues separately in writing to Board and Foundation management.

## Summary of Management’s Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Board agreed with the recommendations in this report. The Board’s detailed management responses are presented immediately following the recommendations in each chapter.

The Board disagrees with a number of audit findings. Although the Board had multiple opportunities to address those issues during the audit, it was unable to provide sufficient documentation to resolve the findings. The Board also attempts to diminish the significance of certain findings identified in this report.

After review and consideration of the Board's management responses, the State Auditor's Office stands by its conclusions and ratings based on evidence presented and compiled during this audit.

## ***Audit Objectives and Scope***

The objectives of this audit were to determine whether:

- The Board administers certain contract management functions for the Program in accordance with applicable requirements.
- The financial transactions of the Program operator (the Foundation) are supported, authorized, and comply with contract terms and other applicable requirements.

The scope of this audit covered contract formation for the Board's contract with the Foundation that was effective September 1, 2017, and monitoring processes through January 31, 2019. Auditors also reviewed the Foundation's contract-related financial transactions from July 1, 2017, through January 31, 2019.

In addition, auditors performed select data analysis procedures for contract-related financial transactions that occurred from fiscal year 2014 through fiscal year 2018.

# Contents

## ***Detailed Results***

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Chapter 1

Although the Board Performed Monitoring Processes for Its Contract With the Foundation, Significant Weaknesses in the Board’s Monitoring Processes Could Affect Its Ability to Effectively Monitor the Contract..... 1

Chapter 2

The Board Formed the Contract with the Foundation in Accordance with Most Applicable Requirements; However, It Should Strengthen Formation Processes ..... 13

Chapter 3

The Foundation’s Financial Transactions Were Supported, Approved, and Program Related ..... 17

## ***Appendices***

---

Appendix 1

Objectives, Scope, and Methodology ..... 20

Appendix 2

Issue Rating Classifications and Descriptions ..... 23

# Detailed Results

Chapter 1

## ***Although the Board Performed Monitoring Processes for Its Contract With the Foundation, Significant Weaknesses in the Board’s Monitoring Processes Could Affect Its Ability to Effectively Monitor the Contract***

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The Texas Board of Nursing (Board) performed monitoring processes for its Texas Peer Assistance Program for Nurses (Program) contract, including participating in meetings with the Texas Nurses Foundation (Foundation), ensuring receipt of certain deliverables, approving payments to the Foundation, and reviewing revenue received to fund the Program.

However, the Board should address significant weaknesses in its contract monitoring processes to ensure that it adequately monitors the Foundation’s performance and analyzes the reports that the Foundation submits for the Program. The Board did not have documentation that it used those reports to inform its decisions related to the contract, and the Board did not have a process in place to verify the accuracy or completeness of the information that the Foundation submitted. Additionally, the Board’s monitoring of the contract was decentralized and not always sufficiently documented.

Chapter 1-A

**Chapter 1-A  
Rating:  
Low <sup>1</sup>**

### **The Board Performed Monitoring Processes for Its Contract With the Foundation**

The Board performed monitoring processes for its contract with the Foundation, such as meeting regularly with Foundation staff, ensuring receipt of Program reports, reviewing and approving contract payments, and reviewing revenue received to fund the Program.

**Meetings with the Foundation.** During fiscal year 2018 and the first two quarters of fiscal year 2019, Board staff members met with Foundation staff on a regular basis.

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<sup>1</sup> The risk related to the issues discussed in Chapter 1-A is rated as Low because the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.

- **Weekly meetings.** A Board staff member met weekly with Foundation staff to discuss how to process certain Program referrals and other Program-specific questions or concerns.
- **Monthly meetings.** The Board’s Executive Director met with the Foundation’s Chief Executive Officer monthly to discuss the Program. The Board asserted that funding for the Program was discussed in those meetings; however, the significant items discussed in those meetings were not documented, as required.
- **Quarterly Program Advisory Committee meetings.** A Board staff member attended the quarterly Program Advisory Committee meetings. Topics discussed at those meetings included community outreach related to the Program and updates such as staffing and Program changes.

**Quarterly reports.** The contract required the Foundation to report specific programmatic and financial information to the Board each quarter during the Board’s fiscal year. While the Board had a process in place to ensure that it received quarterly reports from the Foundation, it could not provide documentation to support that it had a process to analyze the information in those reports to inform its contract-related decisions.

**Payments to the Foundation.** The Board had an adequate payment review process for its contract with the Foundation. All 17 payments tested were supported and accurately recorded in its financial accounting system. The Board also ensured that the total payments for fiscal year 2018 did not exceed the contract amount of \$1,005,458.

**Revenue received to fund the Program.** The Board had a process in place to monitor the surcharge fee revenue that it received from nursing licenses to determine whether it would generate sufficient fee revenue to fund the contract with the Foundation (see text box for additional information on surcharge fee revenue). As a result of this process, the Board transferred \$55,896 from its general revenue fund to the Program fund in fiscal year 2018 to cover an anticipated shortage in the surcharge fee revenue it was to collect for that year.

**Surcharge Fee Revenue**

The Board’s contract with the Foundation is funded through surcharge fees that are included in the cost of all nursing licenses. The contract states that Program funding could be less than the amount stated in the contract if the Board does not collect sufficient surcharge fee revenue.

Source: The Program contract.

See Chapter 1-B for further details on the weaknesses identified with some of the monitoring processes discussed in this chapter.

## Management's Response

### Chapter 1

*Management does not have any objection or concern regarding SAO recommendations for improving the Board's contract monitoring practices. However, Board Staff believes that the agency's past monitoring practices developed during a thirty-year contractual relationship with the Texas Nurses Foundation and TPAPN would better characterized as "low" risk, or lower. Particularly, because there was never any indications or evidence that TPAPN ever presented any significant contractual noncompliance issue in its history. Board Staff believes that SAO may have improperly characterized monitoring practices as weak merely because of a lack of compliance documentation rather than the visible evidence of compliance.*

1A

*SAO properly summarizes the Board's historic contract monitoring activities related to TPAPN. Board staff members have always engaged in wide-ranging and frequent interactions regarding the TPAPN program. These interactions included the Board's Enforcement Director weekly meetings with TPAPN related to program referrals, the Board Executive Director's monthly meetings with the Foundations Executive Officer, and Staff attendance at TPAPN's quarterly advisory committee meetings. Additionally, the Board would receive a quarterly reports developed by the Foundation regarding programmatic and financial information and those reports developed by Board staff concerning interactions with the program. These reports are published on the Board's website and the public is provided statutory notice of these reports in the Texas Register as standard agenda items to be presented to the Board at each regular scheduled quarterly Board meeting. TPAPN staff, and the involved Board Staff, were routinely in attendance and available at the Board's regular meetings to make the presentations or answer any questions regarding concerns with the program.*

*SAO has stated that "[w]hile the Board had a process in place to ensure it received quarterly reports from the Foundation, it could not provide documentation to support that it had a process to analyze the information in those reports to inform its contract-related decisions." Staff takes issue with this observation. The information and documentation that Staff provided that demonstrated the monitoring activities outlined above and conducted by Board Staff with intimate knowledge of TPAPN operations would support the alternative conclusion that Board did maintain a process which informed its contract decisions.*



## Significant Weaknesses in the Board's Monitoring Processes Could Affect Its Ability to Effectively Monitor the Contract

Chapter 1-B  
Rating:  
High <sup>2</sup>

The Board did not have support that it used the information submitted by the Foundation in the quarterly reports to inform its decisions related to the contract, including funding for the Program.

**Financial information.** The contract requires the Foundation to submit financial information to the Board with the quarterly reports. As discussed in Chapter 1-A, the Board ensured receipt of those reports from the Foundation; however, there was no documentation to support that it used the information provided in those reports to inform its contract-related decisions. Based on the financial information submitted, the Program's cash balances increased from \$492,490 in fiscal year 2014 to \$766,750 at the end of fiscal year 2018. However, the Board did not have documentation that it analyzed that information and discussed the results of that analysis with the Foundation to determine the appropriate amount of funding required to operate the Program.

**Statistical information.** In addition, Title 22, Texas Administrative Code, Section 217.13, requires statistical information on the Program to be submitted quarterly to the Board for the purpose of evaluating Program success. While the Foundation submitted statistical information, the Board did not document whether it considered that information, such as participant totals, when determining Program success and the amount of Program funding. For example, for the fourth quarter of fiscal year 2018, the Foundation reported a total of 551 participants, which was 21 percent less than the 697 total participants reported for the fourth quarter of fiscal year 2017 (see Figure 1 in Chapter 3). However, the Board did not document whether it considered those participant totals when determining the amount of funding to provide to the Program. According to the contract, the Board could adjust the amount of funding it provides to the Foundation based on the total of Program participants.

Not having a process to analyze and consider the information the Foundation submits increases the risk that the Board may not (1) determine the appropriate amount of funding to meet Program needs; (2) comprehensively evaluate Program success and make informed contract-related decisions; and (3) identify noncompliance with the contract.

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<sup>2</sup> The risk related to the issues discussed in Chapter 1-B is rated as High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

**The Board did not perform a risk assessment or develop a monitoring plan to ensure compliance with key contract requirements.**

A risk assessment and a monitoring plan should be completed to identify the contract requirements to be monitored, the monitoring methods, and those responsible for performing the monitoring. Both a risk assessment and a monitoring plan are required by the *State of Texas Procurement and Contract Management Guide*<sup>3</sup>; however, the Board did not perform a risk assessment or develop a monitoring plan for the contract with the Foundation. In addition, the Board did not develop an enhanced monitoring plan for that contract as required by Board policies (see text box for more information on enhanced monitoring).

<b>Enhanced Monitoring Plan</b>
<p>The Board's <i>Contract Procurement and Management Handbook</i> requires an enhanced monitoring plan for contracts with a value of \$1 million or more.</p> <p>Enhanced monitoring is an increased level of monitoring over the typical amount performed, according to the <i>State of Texas Procurement and Contract Management Guide</i>. Enhanced contract monitoring activities may include:</p> <ul style="list-style-type: none"><li>▪ Additional site visits.</li><li>▪ Submission of contractor reports or status of progress toward meeting identified goals.</li><li>▪ Meetings with the contractor.</li></ul> <p>Sources: The Board's <i>Contract Procurement and Management Handbook</i> and the <i>State of Texas Procurement and Contract Management Guide</i>.</p>

While the Board performed monitoring activities as discussed in Chapter 1-A, developing and implementing an appropriate monitoring plan would help ensure that the Foundation is complying with key contract requirements. It also would help the Board identify and address potential issues.

**The Board did not have specific, detailed contract management procedures to ensure that it consistently performed required contract management activities.**

The Board developed a contract management handbook, as required by Texas Government Code, Section 2261.256(b). While the Board's *Contract Procurement and Management Handbook* provides overall principles for contract formation and monitoring, it does not include specific procedures for the Board's contract formation and monitoring processes. Documenting specific procedures for those processes is important to ensure that the Board's contracts are formed consistently and in compliance with all requirements and that contract monitoring is performed consistently throughout the duration of the contract. Additionally, the Board's *Contract Procurement and Management Handbook* does not include procedures to assess the risk of fraud, waste, and abuse, as required by Texas Government Code, Section 2261.256(a)(1).

Not documenting specific, detailed contract formation and monitoring procedures increases the risk that the Board may not (1) adequately develop

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<sup>3</sup> This manual was in effect as of June 2018 and was last updated in August 2018. Prior to that, the applicable manual for contract monitoring was the *State of Texas Contract Management Guide, version 1.16*.

or monitor its contracts and (2) comply with statutes, rules, and other applicable requirements.

**The Board did not have a process in place to verify the accuracy or completeness of the information submitted quarterly by the Foundation.**

The contract requires the Foundation to include specific information, including the number of Program participants, in its quarterly reports to the Board.

**Accuracy.** The Board did not verify the accuracy of the information that the Foundation submitted in the quarterly reports, as required by Texas Government Code, Section 2261.254. For example, the Board did not verify the accuracy of the reported numbers of participants, which the Foundation is required to report by nurse type (Registered Nurse or Licensed Vocational Nurse). For four of the five quarters tested, auditors identified errors in the new Program participant totals for the quarter that the Foundation reported to the Board. For all four of those quarters, the Foundation underreported participants for one or both nurse types (Registered Nurses and Licensed Vocational Nurses). Those underreporting errors were between 10 percent and 35 percent. In addition, for one of those quarters, the Foundation overreported the number of Registered Nurse participants by 4 percent.

Not verifying the accuracy of the information provided by the Foundation increases the risk that the Board could make contract-related decisions based on inaccurate information. Additionally, ensuring participant totals are accurate is important because that information is a performance measure reported to the Legislative Budget Board.

**Completeness.** The Board did not ensure that the quarterly reports included all information required by the contract (see text box for report requirements). Specifically, for all quarterly reports submitted during fiscal year 2018 and the first quarter of fiscal year 2019, the Foundation did not submit 3 of the 20 required items to the Board. Those 3 items were:

- The number of self-referred cases closed and the reason(s) for closure.
- Progress on meeting short- and long-range goals.

#### Quarterly Report Requirements

The contract requires the Foundation to include specific information in its quarterly reports to the Board. That information includes:

- The progress/status of projects.
- Progress on meeting short- and long-range objectives.
- Minutes from the Program Advisory Committee meetings.
- Delays or problems encountered.
- Activities and accomplishments.
- Changes in key personnel.
- Changes in Program design.
- Specific statistical information about Program activities.
- Historically underutilized business (HUB) usage and, if applicable, reasons for not meeting HUB goals.

Source: The Program contract.

- Historically underutilized business (HUB) usage and, if applicable, reasons for not meeting HUB usage goals.

Not verifying the completeness of the information that the Foundation submits prevents the Board from ensuring that it has all necessary information to adequately monitor the Foundation’s performance.

**The monitoring activities for the contract with the Foundation were decentralized.**

While the Board completed contract monitoring activities, those monitoring activities were decentralized. As discussed in Chapter 1-A, multiple individuals at the Board performed monitoring activities for the contract with the Foundation. However, the Board did not have support that the results of those monitoring activities were documented. In addition, although a contract manager was assigned in January 2018, the Board did not have support that those results were communicated to that contract manager (see text box for contract manager responsibilities). The effective date for the contract audited is September 1, 2017.<sup>4</sup>

**Responsibilities of the Contract Manager**

According to the *State of Texas Procurement and Contract Management Guide*, the primary responsibilities of the contract manager include:

- Serving as the primary point of contact for agency communication with the contractor regarding all matters pertaining to the contract.
- Implementing a quality control and contract monitoring process.
- Monitoring the contractor’s progress and performance to ensure that goods and services procured conform to the contract requirements.
- Keeping timely records of findings.

Source: *The State of Texas Procurement and Contract Management Guide*.

In addition, the Board did not have a master contract file for the contract with the Foundation. According to the *State of Texas Procurement and Contract Management Guide*, the contract manager is responsible for maintaining a master contract file of records produced for the duration of the contract. The guide also requires contract-related meetings to be substantiated in writing and maintained as part of the contract file, and the documentation should include the meeting date, time, and a summary of topics discussed including pending action items and decisions made. Maintaining contract documentation in a master contract file would decrease the risk of required documentation being lost, misplaced, or inadvertently deleted/removed.

Because there was a decentralized monitoring process and the results of monitoring activities were not documented and communicated to the assigned contract manager, there is an increased risk that the Board may not identify and/or resolve contract performance issues or noncompliance. For

<sup>4</sup> The Board asserted that it has contracted with the Foundation for this Program for approximately 30 years.

example, auditors identified instances in which the Foundation did not fully comply with contract requirements. Specifically, the Foundation did not:

- Submit an annual report to the Board.
- Include 2 of the 11 required items in its policies and procedures.
- Provide documentation to the Board to support that it had an ongoing plan for program evaluation.

The Board had not previously identified those instances of noncompliance with contract requirements.

**Auditors identified enforcement weaknesses in the Board’s monitoring of its contract with the Foundation.**

The Board did not have a documented process to develop a corrective action plan for the Foundation to address any potential contract noncompliance. Not having a process in place to develop a corrective action plan increases the risk that the Board may not adequately enforce contract terms.

**Recommendations**

The Board should:

- Ensure that it sufficiently documents its analysis of the information that the Foundation submits and how it uses that information in its decisions related to the contract, including for Program funding.
- Perform a risk assessment to determine which contract requirements to monitor and develop an appropriate monitoring plan.
- Develop an enhanced monitoring plan when required.
- Develop specific contract formation and monitoring procedures, including, as required by Texas Government Code, Section 2261.256(a)(1), procedures for assessing the risk of fraud, waste, and abuse.
- Implement a documented process to verify the completion and accuracy of the information that the Foundation submits.
- Ensure that the results of all monitoring activities are documented and communicated to the assigned contract manager.

- Ensure that it maintains a master contract file with sufficient documentation to support the monitoring activities performed for its contract with the Foundation.
- Develop a process to enable the Board to implement a corrective action plan for any identified contract performance or noncompliance issues.

## Management's Response

### 1B

*SAO has concluded that there are "significant weaknesses" in Board's monitoring process. As outlined above, every aspect of the TPAPN program generally involved significant or routine interaction with a Board staff member. The Staff possessed subject matter expertise regarding the matter at issue and had a direct line to the Board's Executive Director. Further, the reports generated by TPAPN, the Foundation and Staff were presented to the Board quarterly. Staff would submit that the absence of any documentation or discussion of those informative reports, particularly when there are no significant contractual violations noted does not evidence an absence of process for analyzing information.*

*Financial information was analyzed in determining appropriate funding for the program. Prior to fiscal year 2018, the Board provided up to \$873,558 per fiscal year to support a peer assistance program. There has been incremental increases and decreases in the appropriations but the pre-fiscal year 2018 spending cap had been in place since September 1, 2013. The Board started requiring the peer assistance program to add an additional year of monitoring to LVN and RN licenses and 3 additional years to APRNs in accordance with best practices for nursing peer assistance programs. The program increased the staffing by 1.5 FTEs to continue to monitor the additional years for VNs/RNs and APRNs. Staff monitored the number of participants in the peer assistance program, but this decision focused on the quality of the program and national standards related to the increased monitoring.*

*SAO finds that "the Board did not perform a risk assessment or develop a monitoring plan to ensure compliance with key contract requirements" and that the "Board did not have specific, detailed contract management procedures to consistently perform required contract management activities." Board Staff did perform significant monitoring activities previously described in the response and outlined in Chapter 1-A of the SAO report, and has developed and implemented Contract and Performance Monitoring Report that will document the effective management and ensure compliance*

*with specific contract terms. This report will also serve as the Board's enhanced contract monitoring plan for this contract. The quarterly and annual reports obtained from this monitoring tool will be used to help inform Board staff's decisions as they relate to the contract and any payments related to the contract.*

*Although the Board's Contract Procurement and Management Handbook includes a section on Risk Assessment and Management, Board staff will revisit its Handbook to include specific procedures to assess the risk of fraud, waste, and abuse. Additionally, while Board staff carefully ensures that each contract complies with statutes, rules, and other applicable requirements, Board staff will revisit its Handbook to provide more specific procedures for the Board's contract formation and monitoring processes. However, Board staff asserts that it has been complying with contract procurement laws and the State of Texas.*

*SAO states that the "monitoring activities for the contract with the Foundation were decentralized." The implication would be that the monitoring activities of the Board were ineffective. SAO concludes "there is an increased risk for being able to identify and/or resolve contract performance issues." This implication and conclusion mischaracterizes and ignores the intimate involvement with the program by informed Board Staff. As outlined in Chapter 1-B, Board Staff is actively involved with managing and overseeing the program, such as requiring the program to cooperate with performance and financial audits and to develop new flexible guidelines. Board Staff also participates in weekly meetings with the program and quarterly meetings with the Advisory Committee. These Staff make quarterly reports to the full Board and the Board's Executive Director also meets regularly with the Executive Director of the Texas Nurses Foundation.*

*The assigned Contract Manager was hired and assigned January 2018 and has developed and implemented Contract and Performance Monitoring Report that will document the effective management and ensure compliance with specific contract terms. This report will augment the Board's enhanced contract monitoring plan for this contract. The quarterly and annual reports obtained from this monitoring tool will be used to help inform Board staff's decisions as they relate to the contract and any payments related to the contract. Currently, the Contract Manager serves as the point of contact for communications related to the contract and is custodian of the master contract file.*

*SAO has stated that "the Board did not have a documented process to develop a corrective action plan for the Foundation to address potential contract noncompliance." Staff would agree that no formal documentation exists for develop of a corrective action plan but not with the SAO's*

*conclusion that there is an increased risk that the Board may not adequately enforce contract terms. Although Staff has agreed with the recommendation, the Board does not agree that any breach of contract terms cannot be effectively enforced without one.*

*In summary, Staff would reiterate their opinion that the matters identified in Chapter 1-B would not rise to the rating of “high” risk at this time. Staff does not object with the recommendations of SAO as outlined in Chapter 1.*

<b>RECOMMENDATION</b>	<b>ANTICIPATED DATE OF IMPLEMENTATION</b>	<b>STAFF MEMBER ASSIGNED</b>
<b>Chapter One</b>		
<i>Ensure that it sufficiently documents its analysis of the information that the Foundation submits and how it uses that information in its decisions related to the contract, including for Program funding</i>	<i>January 2020</i>	<i>Mark Majek, Director of Operations Anthony Diggs, Director of Enforcement April Liwanag, TPAPN Contract Manager</i>
<i>Perform a risk assessment to determine which contract requirements to monitor and develop an appropriate monitoring plan</i>	<i>Spring 2020</i>	<i>April Liwanag, TPAPN Contract Manager Jena Abel, Deputy General Counsel</i>
<i>Develop an enhanced monitoring plan when required</i>	<i>January 2020</i>	<i>April Liwanag, TPAPN Contract Manager Dusty Johnston, General Counsel Jena Abel, Deputy General Counsel</i>
<i>Develop specific contract formation and monitoring procedures, including, as required by Texas Government Code, Section 2261.256(a)(1), procedures for assessing the risk of fraud, waste and abuse</i>	<i>January 2020</i>	<i>April Liwanag, TPAPN Contract Manager Dusty Johnston, General Counsel Jena Abel, Deputy General Counsel</i>
<i>Implement a documented process to verify the completion and accuracy of the information that the Foundation submits</i>	<i>Spring 2020</i>	<i>Katherine Thomas, Executive Director TNF Foundation CEO</i>
<i>Ensure that the results of all monitoring activities are documented and communicated to the assigned contract manager</i>	<i>October 2019</i>	<i>Katherine Thomas, Executive Director April Liwanag, TPAPN Contract Manager</i>
<i>Ensure that it maintains a master contract file with sufficient documentation to support the monitoring activities performed for its contract with the Foundation</i>	<i>October 2019</i>	<i>Dusty Johnston, General Counsel April Liwanag, TPAPN Contract Manager</i>
<i>Develop a process to enable the Board to implement a corrective action plan for any identified contract performance or noncompliance issues</i>	<i>January 2020</i>	<i>April Liwanag, TPAPN Contract Manager Dusty Johnston, General Counsel Jena Abel, Deputy General Counsel</i>



### **Auditor Follow-up Comment**

The Board attempts to diminish the significance of the findings related to weaknesses in its contract monitoring processes. The State Auditor's Office acknowledged in this report the monitoring activities the Board performed for its contract with the Texas Nurses Foundation. However, the weaknesses identified during the audit are significant and should be promptly addressed as they could impact the Board's ability to effectively monitor the contract to ensure that the Program is providing the necessary services to participants at an appropriate funding level required to operate the Program.

Although the Board had multiple opportunities to address the issues during the audit, it was unable to provide sufficient documentation to support that it had a process in place to analyze and consider information submitted by the Foundation in the quarterly reports to inform its decisions related to the contract, including funding for the Program. For example, the Program's total expenditures for fiscal year 2018 were \$937,736. As of August 31, 2018, the Program's cash balances totaled \$766,750. Those cash balances were equivalent to 82 percent of the Program's total expenditures for its fiscal year 2018.

The Board disagrees with the impact of the finding related to its decentralized monitoring activities for the contract with the Foundation. While the State Auditor's Office reported that multiple Board staff met regularly with the Foundation, the Board was unable to provide support that it documented or communicated the results of those meetings to the assigned contract manager.

## ***The Board Formed the Contract with the Foundation in Accordance with Most Applicable Requirements; However, It Should Strengthen Formation Processes***

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**Chapter 2  
Rating:  
Medium<sup>5</sup>**

The Board formed the contract with the Foundation in accordance with most applicable requirements. However, it should strengthen its contract formation processes to ensure that it (1) includes specific, defined measures for program success in its contracts and (2) requires contractors to determine employment eligibility.

**The Board formed the contract with the Foundation in accordance with most applicable requirements.**

The Board included all essential clauses required by the *State of Texas Contract Management Guide, version 1.16*<sup>6</sup>. In addition, the contract was appropriately approved by the Board's executive director and Board members.

While the Board asserted that its legal team reviewed the contract prior to its execution, as required by Board policies and procedures, it was unable to provide documentation to support that assertion. Ensuring that there is a documented legal review before it executes contracts, and enhancing that review to include verification that all contract requirements are included, would help the Board demonstrate its compliance with the legal review requirement.

**The Board did not develop and include specific, defined measures for Program success in its contract with the Foundation.**

The scope of work for the contract with the Foundation did not include clearly defined measures of successful contract performance, such as the required amount of Program outreach activities or time frames for processing new participants. Including those would have helped the Board to develop an adequate monitoring plan to determine whether the Foundation was providing the expected quality of services to Program participants (see Chapter 1-B for the monitoring plan issues identified for the Board's contract with the Foundation). In addition, a lack of defined measures of successful performance increases the risk that the State's interests may not be protected.

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<sup>5</sup> The risk related to the issues discussed in Chapter 2 is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

<sup>6</sup> This guide was in effect during the formation of the contract with the Foundation. In June 2018, this guide was updated and released as the *State of Texas Procurement and Contract Management Guide*; it was last updated in August 2018.

The Board did not ensure that certain terms, such as verifying employment eligibility and Program administration requirements, were included in the contract and accurate.

**Employment eligibility.** The Board did not include in its contract with the Foundation a term requiring contractors to use the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of all individuals employed during the contract term, as required by the Governor’s Executive Order No. RP-80 (see text box for more information on the E-Verify requirement). Not requiring the Foundation to verify the work eligibility of its employees and subcontractors increases the risk that ineligible individuals could be employed under the contract.

**E-Verify**

Effective December 3, 2014, Executive Order RP-80 requires all state agencies under the governor’s direction to include, as a condition of all state contracts for services, a requirement that contractors use the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of:

(1) All individuals employed during the contract term to perform duties in Texas.

(2) All persons (including subcontractors) assigned by the contractor to perform work pursuant to the contract.

Source: Executive Order RP-80.

**Inaccurate and omitted contract requirements.** The contract with the Foundation included inaccurate and outdated references to Texas Administrative Code and Texas Government Code requirements. Additionally, the Board did not ensure that Title 22, Texas Administrative Code, Chapter 217, which details Program administration requirements, was included in the contract. Not ensuring that its contract formation process includes verifying the accuracy and inclusion of all applicable requirements for which a contractor is responsible decreases the Board’s ability (1) to identify contract noncompliance and (2) to enforce contract terms.

## Recommendations

The Board should:

- Ensure that it maintains documentation to support that its legal team has reviewed contracts prior to execution, as required by Board policies and procedures.
- Develop and implement a process to ensure that its contracts include specific, defined measures for program success.
- Ensure that all of its contracts include a requirement to verify work eligibility for all individuals involved, including using the E-verify system as required.

- Ensure that contract formation procedures include a review to ensure that all contract requirements are accurate and included.

## **Management's Response**

### **Chapter 2**

*SAO has concluded that the Board formed the contract in accordance with most applicable requirements, but it should strengthen the formation process. Staff does not object to any SAO recommendation in this regard. Board Staff, however, does object to SAO's statement that the Board was not able to document support for legal review of the contract prior to its execution.*

*It is quite evident from the materials supplied by the Board, that before the contract was approved by the Board and executed by the Executive Director, the Board's Legal Department was responsible for the development of the Request for Proposals and evaluation of responses. Further, the proposed contract and the Board report recommending its approval was prepared by the Legal Department and presented to the Board members by the General Counsel and staff Attorney before its execution with recommendation that the contract be approved. The omitted provisions or inaccurate citations identified by SAO do not indicate lack of legal review or, more importantly do not effect the enforceability of the contract or its substantive terms. The contract terms are enforceable as written, and it is clear as to which requirements the citations refer. Moreover, the contractor requirements delineated in the contract encompasses 22 Texas Administrative Code Chapter 217, as well as other requirements are specifically tailored to this contract and to the Board's needs.*

*In summary, Staff agrees with the recommendations of SAO outlined in Chapter 2.*

<b>RECOMMENDATION</b>	<b>ANTICIPATED DATE OF IMPLEMENTATION</b>	<b>STAFF MEMBER ASSIGNED</b>
<b>Chapter Two</b>		
<i>Ensure that it maintains documentation to support that its Legal team has reviewed contracts prior to execution, as required by Board policies and procedures</i>	<i>October 2019</i>	<i>Dusty Johnston, General Counsel</i>
<i>Develop and implement a process to ensure that its contracts include specific, defined measures for program success</i>	<i>October 2019</i>	<i>Dusty Johnston, General Counsel Jena Abel, Deputy General Counsel April Liwanag, TPAPN Contract Manager</i>
<i>Ensure that all of its contracts include a requirement to verify work eligibility for all individuals involved, including using the E-verify system as required</i>	<i>October 2019</i>	<i>Dusty Johnston, General Counsel Jena Abel, Deputy General Counsel April Liwanag, TPAPN Contract Manager</i>
<i>Ensure that contract formation procedures include a review to ensure that all contract requirements are accurate and included</i>	<i>October 2019</i>	<i>Dusty Johnston, General Counsel Jena Abel, Deputy General Counsel April Liwanag, TPAPN Contract Manager</i>

### **Auditor Follow-up Comment**

The Board disagrees with the finding that it was not able to provide documentation to support that its legal team reviewed the contract prior to execution. After a review of the documentation submitted by the Board, the State Auditor's Office stands by its conclusion that the Board was not able to provide documentation to support that its legal team reviewed the contract prior to execution.

The Board stated that the contractor requirements delineated in the contract encompass Title 22, Texas Administrative Code, Chapter 217. After a review of the contract, the State Auditor's Office stands by its conclusion that the Board did not ensure that Title 22, Texas Administrative Code, Chapter 217, which details Program administration requirements, was included in the contract.

## ***The Foundation's Financial Transactions Were Supported, Approved, and Program Related***

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**Chapter 3  
Rating:  
Low <sup>7</sup>**

The Foundation had processes in place to ensure that its financial transactions were supported, approved, and Program related. Auditors determined that the financial transactions tested, totaling \$86,173, were supported, approved, and related to the Program.

Auditors also determined that the fiscal year 2018 Program financial data that the Foundation provided to the Board was accurate. According to that financial data, State funding was the Program's primary funding source, accounting for 88 percent of the total for fiscal year 2018<sup>8</sup>. The Foundation also received funding from additional sources, such as Program participant fees, when applicable, and donations.

Auditors performed data analysis of the Program's funding, expenditures, and participant totals for fiscal years 2014 through 2018.<sup>9</sup> Figure 1 on the next page presents the Program expenditures, funding, and total of participants enrolled in the Program for each fiscal year 2014 through 2018. That analysis showed that the participant totals increased by approximately 7 percent from fiscal year 2014 to fiscal year 2016 and decreased by approximately 17 percent from fiscal year 2017 to fiscal year 2018 (see text box for additional information on calculation of those totals). From 2014 to 2018, overall Program expenditures increased by approximately 3 percent and funding provided by the Board increased by approximately 11 percent. Additionally for that time period, total Program funding (from all funding sources) decreased by 2 percent; however, that funding exceeded total Program expenditures by an average of \$101,046<sup>10</sup> per year. Figure 2

### **Participant Calculations**

The participant totals analyzed are a required Legislative Budget Board performance measure reported by the Foundation. The Foundation asserted that the participant totals reported to the Board prior to fiscal year 2017 included all nurses referred to the Program, including nurses who had not signed a participation agreement. As of fiscal year 2017, the Foundation includes only nurses who have signed a participation agreement in its calculation of participant totals that are reported to the Board.

Source: The Foundation.

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<sup>7</sup> The risk related to the issues discussed in Chapter 3 is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

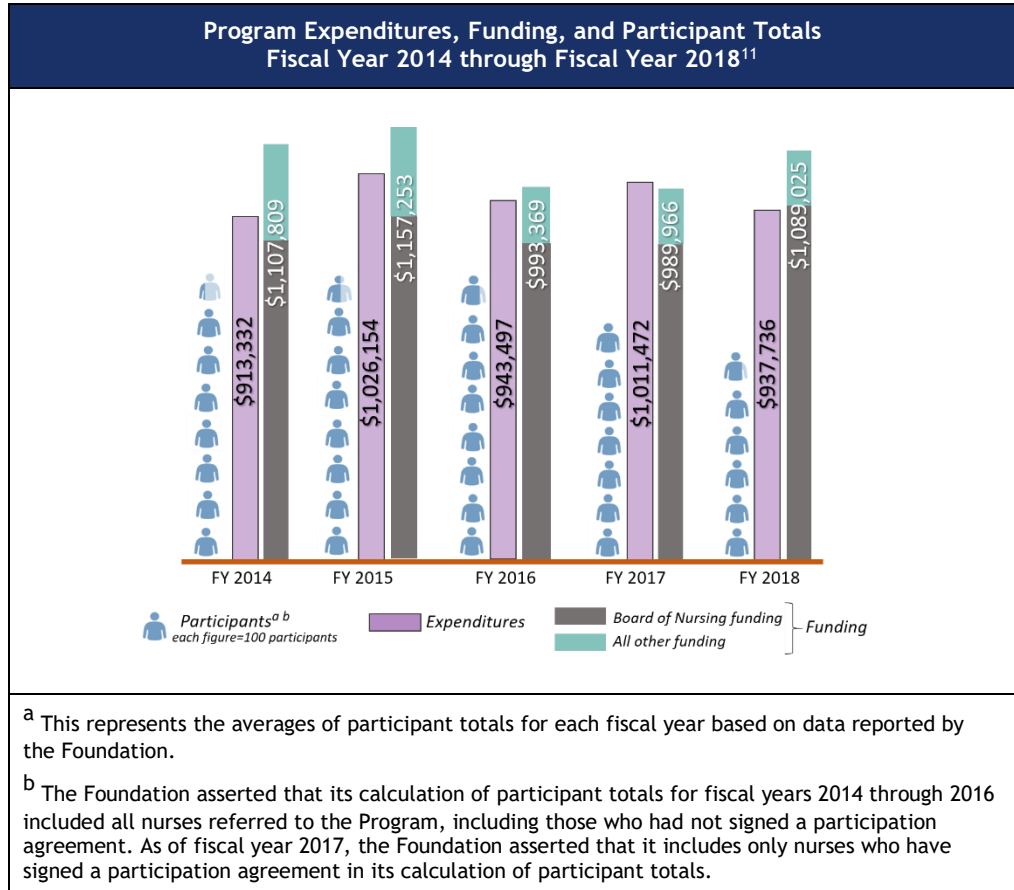
<sup>8</sup> The Foundation's fiscal year is July 1 to June 30.

<sup>9</sup> The Program expenditures and funding are based on the Foundation's fiscal year, which is July 1 to June 30. The participant totals are based on the state fiscal year, which is September 1 to August 31.

<sup>10</sup> In fiscal year 2017, the total Program expenditures exceeded the total Program funding by \$21,505.

presents the Program expenditures by category for each fiscal year 2014 through 2018.

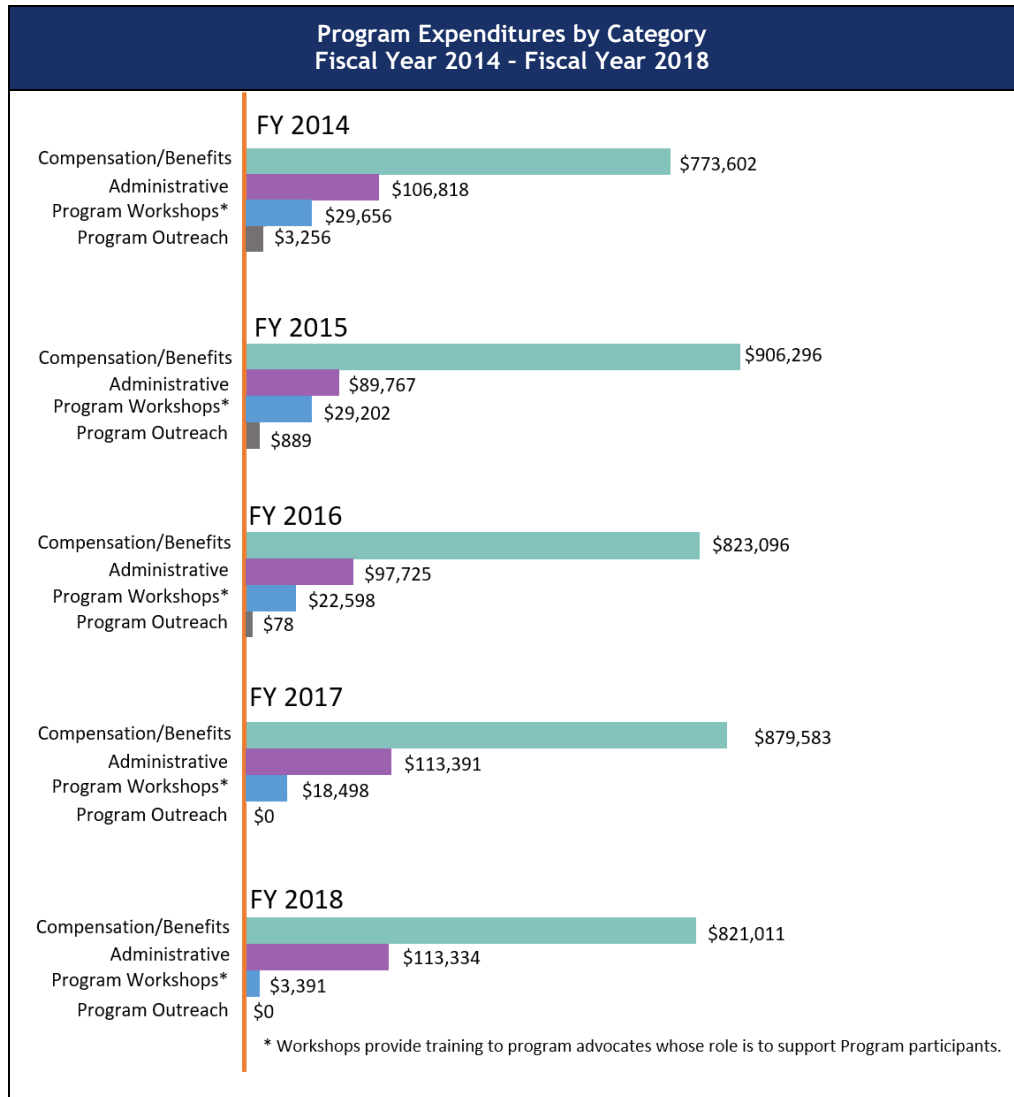
Figure 1



Source: The State Auditor’s Office created this figure based on information from the Foundation.

<sup>11</sup> The Program expenditures and funding are based on the Foundation’s fiscal year, which is July 1 to June 30. The participant totals are based on the state fiscal year, which is September 1 to August 31.

Figure 2



Source: The State Auditor's Office created this figure based on information from the Foundation.



# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### **Objectives**

The objectives of this audit were to determine whether:

- The Texas Board of Nursing (Board) administers certain contract management functions for the Texas Peer Assistance Program for Nurses (Program) in accordance with applicable requirements.
- The financial transactions of the Program operator, Texas Nurses Foundation (Foundation), are supported, authorized, and comply with contract terms and other applicable requirements.

### **Scope**

The scope of this audit covered contract formation for the Board's contract with the Foundation that was effective September 1, 2017<sup>12</sup>, and monitoring processes through January 31, 2019. Auditors also reviewed the Foundation's contract-related financial transactions from July 1, 2017<sup>13</sup> through January 31, 2019.

In addition, auditors performed select data analysis procedures for contract-related financial transactions that occurred from fiscal year 2014 through fiscal year 2018.

### **Methodology**

The audit methodology consisted of collecting and reviewing contract formation and oversight documentation; conducting interviews with Board and Foundation staff; performing tests and other procedures against applicable criteria; and conducting data analysis.

### **Data Reliability and Completeness**

The Board uses the Uniform Statewide Accounting System (USAS) to perform accounting functions. Auditors reviewed USAS revenue and vendor payment data from fiscal year 2018 through January 31, 2019. To determine reliability and completeness, auditors (1) compared the USAS data to secondary sources; (2) tested user access reviews performed by the Board; and (3)

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<sup>12</sup> The contract effective September 1, 2017, was the first two-year extension for the contract executed in 2015.

<sup>13</sup> The Foundation's fiscal year is July 1 to June 30.

relied on prior State Auditor's Office audit work on USAS. Auditors determined that the USAS data was complete and sufficiently reliable for the purposes of this audit.

Additionally, auditors reviewed financial data from the Foundation's accounting system, Sage. To determine reliability and completeness, auditors (1) compared the Sage data to secondary sources; (2) tested Sage's user access; and (3) compared financial data in Sage for fiscal year 2018 to the information in the Foundation's fiscal year 2018 audited financial statements. Auditors determined that the Sage data was complete and sufficiently reliable for the purposes of this audit.

#### **Sampling Methodology**

Auditors selected a risk-based sample of the Foundation's financial transactions. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- The Board's contract with the Foundation and all supporting documentation for contract formation and contract monitoring.
- Board and Foundation policies and procedures.
- Financial data from USAS and Sage.
- Supporting documentation for the selected financial transactions of the Foundation from July 1, 2017 through January 31, 2019.

Procedures and tests conducted included the following:

- Conducted interviews with Board and Foundation management and staff.
- Reviewed the Board's contract with the Foundation and supporting documentation to verify compliance with applicable requirements for contract formation and oversight.
- Conducted data analysis of the Foundation's financial transactions for fiscal years 2014 through 2018.
- Tested a sample of the Foundation's financial transactions.
- Reviewed documentation to determine whether the Foundation complied with selected, measurable contract deliverables.
- Reviewed user access controls for USAS and Sage.

Criteria used included the following:

- The General Appropriations Act (85th Legislature).
- Texas Government Code, Chapters 403, 552, 669, 2155, 2156, 2157, 2161, 2251, 2252, 2260, 2261, and 2262.
- Texas Health and Safety Code, Chapter 467.
- Title 22, Texas Administrative Code, Chapter 217.
- Title 25, Texas Administrative Code, Chapter 451.
- Title 34, Texas Administrative Code, Chapter 20.
- The Board's contract with the Foundation.
- *State of Texas Procurement and Contract Management Guide*, versions 1.0 and 1.1.
- *State of Texas Contract Management Guide*, version 1.16.
- Board policies and procedures.
- Foundation policies and procedures.

### **Project Information**

Audit fieldwork was conducted from December 2018 through May 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Tammie Wells, MBA, CIA, CFE (Project Manager)
- Michelle Rodriguez, CFE (Assistant Project Manager)
- Sterling Pape
- Melissa M. Prompuntagorn, CFE
- George D. Eure, CPA (Quality Control Reviewer)
- James Timberlake, CIA, CFE (Audit Manager)

## Issue Rating Classifications and Descriptions

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Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 2 provides a description of the issue ratings presented in this report.

Table 2

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Copies of this report have been distributed to the following:

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The Honorable Dan Patrick, Lieutenant Governor, Joint Chair  
The Honorable Dennis Bonnen, Speaker of the House, Joint Chair  
The Honorable Jane Nelson, Senate Finance Committee  
The Honorable Robert Nichols, Member, Texas Senate  
The Honorable John Zerwas, House Appropriations Committee  
The Honorable Dustin Burrows, House Ways and Means Committee

### **Office of the Governor**

The Honorable Greg Abbott, Governor

### **Texas Board of Nursing**

Members of the Texas Board of Nursing

Ms. Kathy Shipp, President  
Mr. David Saucedo II, Vice President  
Ms. Nina Almasy  
Ms. Patricia Clapp  
Ms. Laura Disque  
Ms. Diana Flores  
Ms. Doris Jackson  
Ms. Mazie Jamison  
Ms. Kathy Leader-Horn  
Ms. Allison Porter-Edwards  
Ms. Melissa Schat  
Mr. Francis Stokes  
Ms. Kim Wright

Ms. Katherine A. Thomas, Executive Director

### **Texas Nurses Foundation**

Members of the Texas Nurses Foundation Board of Directors

Ms. Tamara Eades, President  
Mr. Jeff Watson, Vice President  
Ms. Kleanthe Caruso, Secretary  
Ms. Gayle Dasher, Treasurer  
Ms. Melinda Hester  
Ms. Cindy Zolnierrek, Executive Director



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