



NC DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Office of the Internal Auditor

**LME/MCO Consolidation Review – Eastpointe
(5524-03)**

June 27, 2024

Consulting Engagement Objective, Scope, and Methodology

The objectives of this engagement were to provide an independent review of (1) severance payments made by Eastpointe Health Services (Eastpointe) to executive staff and (2) the financial transactions between Eastpointe and its external general counsel. The scope of the engagement included Eastpointe's activities during and leading up to its consolidation with Trillium Health Resources (Trillium).

As part of this engagement, we gained an understanding of the consolidation of Trillium and Eastpointe, executive employment changes around the period of consolidation, and the professional services provided by Eastpointe's external general counsel. We reviewed the consolidation agreement, relevant communications, applicable employment agreements, contracts, amendments, and payments. We analyzed the invoices and financial transactions between Eastpointe and its general counsel. We conducted interviews with appropriate Trillium/former Eastpointe staff and former Eastpointe Area Board (Board) members. In the performance of these services, OIA maintained objectivity, exercised due professional care, and did not assume management responsibilities. We conducted this consultation in conformance with the *International Standards for the Professional Practice of Internal Auditing* issued by The Institute of Internal Auditors.

Scope Limitations

The Eastpointe CEO and CBO deleted thousands of email records in December 2023 prior to the merger with Trillium. Trillium had difficulty accessing certain email records of the Eastpointe CEO and CBO and was unable to determine if all email records were recovered due to unresolved problems with Eastpointe's primary email archive. In addition, the Chair of the Eastpointe Board at the time of consolidation did not make himself available for an interview. These factors limited the ability of OIA to obtain all sufficient, reliable, relevant, and useful information needed to understand Eastpointe's activities during and leading up to its consolidation with Trillium.

Summary

OIA identified several issues related to Eastpointe's activities during and leading up to consolidation. A summary of the observations requiring management's attention follows:

1. The Eastpointe CEO received payments totaling \$629,459 based upon an amended employment agreement that was not approved by the Board as required by state law.
2. Eastpointe provided benefits to the CEO that were not provided to all employees, contrary to state law.
3. Eastpointe staff made bonus payments to the CEO after being directed to do so by the CEO and the external general counsel.
4. The Eastpointe CEO received an additional \$78,021 bonus; the amount of the CEO's bonus was not set or approved by the Board as required by state law.
5. An employment agreement, the first between the Chief Business Officer and Eastpointe, was created for the Eastpointe Chief Business Officer 26 days prior to consolidation with Trillium and resulted in a severance payment of \$383,110.
6. The Eastpointe CEO authorized contract changes that were favorable to The Charleston Group, Eastpointe's external general counsel, during the consolidation negotiation period.
7. Eastpointe paid The Charleston Group \$3 million in December 2023 for charges dating back to January 2021.
8. Eastpointe paid legal fees of the external general counsel associated with a North Carolina State Bar grievance filed against the external general counsel. The CEO and the Chief Business Officer were unaware of key details of the payment(s).
9. Eastpointe signed several contracts in December 2023 that were backdated.
10. Eastpointe emails that constitute public records were deleted and not properly archived.
11. Eastpointe did not provide notice to the public of certain Board meetings and failed to keep minutes as required by state law.

Recommendations

1. Trillium should seek recoupment of \$707,480 paid to the Eastpointe CEO and \$383,110 paid to the Eastpointe Chief Business Officer.
2. NCDHHS should implement mandatory annual training for all LME/MCO board members.
3. In order to prevent abusive and/or wasteful contracts, during any future period where the NCDHHS Secretary has issued a consolidation directive, relevant parties should be prohibited from modifying or entering into new contractual agreements without receiving written approval from the NCDHHS Secretary.

Background

NCDHHS contracts with Local Management Entities/Managed Care Organizations (LME/MCOs) to manage, coordinate, and monitor the care of NC Medicaid beneficiaries who receive services for mental health, developmental disabilities or substance use disorders. The LME/MCOs are directed by the North Carolina General Assembly in the General Statutes of North Carolina (N.C.G.S.) Chapter 122C to manage and oversee services within specific geographic areas to ensure expected outcomes are achieved with available resources. Operations of the LME/MCOs are primarily funded by Medicaid waivers as well as federal and state funds from the Division of Mental Health, Developmental Disabilities, and Substance Use Services. Each LME/MCO is governed by an area board made up of 11-21 voting members.

On October 3, 2023, the NC General Assembly directed the NCDHHS Secretary to reduce the number of LME/MCOs from six to no more than five, but at least four, to improve access to healthcare and help with the LME/MCOs' transition to Tailored Plans. The Secretary issued a directive on November 1, 2023 to merge Sandhills Center with Eastpointe and to further consolidate Eastpointe and Trillium Health Resources. The Secretary's directive required Eastpointe and Trillium to develop a consolidation agreement for the Department's approval within 30 days.

On December 5, 2023, because an agreement had not been reached, Secretary Kinsley provided proposed terms for the agreement which included Trillium's CEO taking the role of CEO of the consolidated entity, Eastpointe's CEO assuming the role of President, and Eastpointe's CBO assuming the role of Chief of Staff. The consolidation agreement, effective December 15, 2023, included the roles proposed by the Secretary and named Trillium as the surviving entity.

Timeline of Events

- November 1, 2023 – NCDHHS Secretary Kinsley issued a directive for Sandhills and Eastpointe to consolidate, Sandhills to dissolve, and for Eastpointe to further consolidate with Trillium.
- November 13 - 21, 2023 – Ongoing conversations were held between the Trillium CEO, Trillium general counsel, Eastpointe CEO, and Eastpointe external general counsel regarding executive roles managing the merged entity.
- December 5, 2023, at 3:48 p.m. – Secretary Kinsley proposed terms for the consolidation agreement, including Trillium’s CEO taking the role of CEO, Eastpointe’s CEO assuming the role of President, and Eastpointe’s CBO assuming the role of Chief of Staff of the consolidated entity.
- December 5, 2023, at 9:47pm – Eastpointe’s CEO signed an amended employment agreement, which included the addition of two bonuses totaling \$187,550 (50% of her annual salary), an increase in her travel allowance, and modified terms to trigger a severance package equal to her annual salary plus benefits (\$437,109) if her title was reclassified resulting from a merger.
- December 5, 2023, at 9:59 pm – Eastpointe’s CEO signed a newly created employment agreement for the CBO with terms to trigger a severance payment equal to the CBO’s annual salary if her title was reclassified resulting from a merger.
- December 6, 2023 – Eastpointe’s Chairman of the Board signed the CEO’s amended employment agreement.
- December 6, 2023 – Eastpointe’s CBO signed the newly created CBO employment agreement.
- December 6, 2023 – Eastpointe’s CEO, CBO, and external general counsel signed an amendment to The Charleston Group’s contract with Eastpointe that increased hourly billing rates, implemented two new monthly retainer fees, and contained an effective date back to April 1, 2023.
- December 7, 2023 – Eastpointe’s CEO called the Eastpointe Chief of Human Development and, according to the Chief of Human Development, instructed her to pay the two bonuses in her amended employment agreement. Eastpointe’s external general counsel then texted the Chief of Human Development with instructions to “execute the terms of the employee agreement approved by the board for the CEO.”
- December 8, 2023 – Eastpointe paid the two 25% bonuses that had been added to the Eastpointe CEO’s employment agreement, which totaled \$187,550.
- December 8, 2023 – Eastpointe paid The Charleston Group \$3,041,748 for invoices that included retainer fees and service charges dating back to January 2021.
- December 15, 2023 – Effective date of the consolidation agreement, which began the “transition period.” According to the agreement, “no severance payments will be made to any employee who will be employed with the surviving entity at the time of consolidation” and “Further, except as otherwise allowed herein, during the transition period, neither party shall make changes to compensation in effect as of December 1, 2023, for any employee.”
- December 16 & 17, 2023 – Trillium and Eastpointe executives signed the consolidation agreement, which named Trillium’s CEO as CEO of the consolidated entity, Eastpointe’s CEO as President, and Eastpointe’s CBO as Chief of Staff. The actual changes in title of the Eastpointe executives were scheduled to take effect on the consolidation date of January 1, 2024.
- December 18, 2023 – Secretary Kinsley signed the consolidation agreement.
- December 18, 2023 – Eastpointe’s CEO submitted her resignation to Eastpointe’s Chairman of the Board and Eastpointe Human Resources.
- December 18, 2023 – Eastpointe’s CBO submitted her resignation to the CEO, effective December 31, 2023.

- December 22, 2023 – Eastpointe issued the Eastpointe CEO’s and CBO’s December paychecks, including a 20% bonus. The total amount of bonuses for all employees was approved by the Board, but not the structure of the tiered bonus plan.
- December 29, 2023 – Eastpointe issued the Eastpointe CEO’s and CBO’s severance payments of \$437,109 and \$383,110, respectively.
- December 31, 2023 – Eastpointe’s CBO submitted her resignation to Trillium’s CEO.
- December 31, 2023 – Eastpointe’s CEO submitted her resignation to Secretary Kinsley and Trillium’s CEO, with an effective date of December 31, 2023.
- January 1, 2024 – Consolidation date and end of “transition period” which began December 15, 2023.

Results of Work

OIA has identified several issues related to Eastpointe activities during and leading up to the consolidation.

1. The Eastpointe CEO received payments totaling \$629,459 based upon an amended employment agreement that was not approved by the Board as required by state law.

On December 6, 2023, Eastpointe's Chairman of the Board executed an amendment to the Eastpointe CEO's employment agreement without the approval of the full Board. The agreement was drafted by the external general counsel and included:

- The addition of two bonus payments equal to 50% of the CEO's annual salary in total,
- An increase in the CEO's travel allowance from \$1,200 per month to \$2,000 per month, retroactive to July 1, 2023, and
- Terms to trigger a severance package equal to her annual salary plus benefits if the CEO's title were reclassified resulting from a merger. The CEO's previous employment agreement also included a severance payment if the Board discontinued her employment without just cause, including a title change due to a merger. However, the previous agreement explicitly stated, "Without just cause' *shall not include* [emphasis added] the circumstance where the Executive title's [sic] or duties after a merger or other reorganization are consistent with that of Executive Vice President; and provided that Executive's total compensation is not reduced after such merger or reorganization." This sentence was removed from the amended agreement.

The General Statutes of North Carolina (N.C.G.S.) 122C-121 establishes that the area director/CEO is an employee of, and serves at the pleasure of, the area board. The statute requires the board to establish the CEO's salary under Article 3 of Chapter 26 of the N.C.G.S. These statutory requirements are also included in Eastpointe Area Board's bylaws. N.C.G.S. 122C-121 permits the board to offer severance benefits to the area director/CEO as an incentive for the applicant to accept an offer of employment but does not provide any other purpose for which severance may be offered.

OIA reviewed the 2023 Board meeting minutes and records show no mention of, or vote taken on, the CEO's employment agreement. Four of five Board members interviewed by OIA, including two members of the executive committee, did not recall any discussions about the CEO's employment agreement other than when the Board approved an increase in her salary in October 2022. However, one Board and executive committee member interviewed recalled discussions in an unspecified executive committee closed session and indicated consensus was reached. The Board member would not clarify what was meant by consensus was reached. There were no minutes taken during the November 28th, December 6th, or December 16th executive committee meetings. Regardless, N.C.G.S. and Eastpointe bylaws specify the Board, not an executive committee of the Board, shall establish the area director/CEO's salary.

The lack of Board approval of the amended agreement contrasts with the process followed in 2016 when the Board approved an initial employment agreement for the CEO. The March 22, 2016 Eastpointe Board minutes document the vote to approve the CEO's employment agreement, with 21 Board members participating in the motion to approve the agreement, which passed. The CEO, external general counsel, and seven Eastpointe Board members who remained on the Board through December 2023 were all present at this March 2016 Board meeting.

Eastpointe's external general counsel sent the CEO's amended employment agreement to the CEO and the CEO signed it six hours after Secretary Kinsley provided proposed terms for the consolidation agreement that would trigger payment under the new agreement. On December 16, 2023, the CEO signed the consolidation agreement, which named her as President of the consolidated entity, and submitted her letter of resignation two days later on December 18, 2023, the same day the Secretary signed the agreement. In her resignation letter to the Chairman of the Board, the CEO stated that the requirements of the Secretary's directives, which are included in the consolidation agreement, disallow her to receive a severance if she is employed by the surviving entity after December 31, 2023. The Eastpointe Chief of Human Development issued the Eastpointe CEO a severance payment on December 29, 2023.

The execution of the amended employment agreement for the CEO and her subsequent resignation resulted in a severance payment of \$437,109.¹ The amended employment agreement also resulted in the CEO receiving a bonus payment of \$187,550 on December 8, 2023, and an additional \$4,800 in travel allowance in her regular December paycheck. In total, the amended employment agreement resulted in additional payments of \$629,459 to the CEO.

2. Eastpointe provided benefits to the CEO that were not provided to all employees, contrary to state law.

N.C.G.S. 122C-121 and the Eastpointe Board bylaws state that the Board cannot provide the CEO with any benefits that are also not provided to all permanent employees of the LME/MCO. Despite the requirements, Eastpointe's CEO received bonuses and an increased travel allowance that were not provided to all permanent employees.

- Amended employment agreement bonus 1, equal to 25% of the CEO's annual salary, was "for her agreement to continue her employment with Eastpointe beyond December 31, 2022, and to remain employed up to June 30, 2024, unless sooner terminated." The CEO was paid this bonus on December 8, 2023.
- Amended employment agreement bonus 2, equal to 25% of the CEO's annual salary, was an "incentive bonus" to be paid upon approval by NCDHHS of the consolidation of Eastpointe and Sandhills. The CEO was paid this bonus on December 8, 2023.
- The CEO received a \$1,200 monthly travel allowance prior to December 2023. The amended employment agreement increased the CEO's travel allowance to \$2,000 per month, retroactive to July 1, 2023, which resulted in a \$6,000 payment for travel in the CEO's December 2023 paycheck. No other Eastpointe employees received a travel allowance.

3. Eastpointe staff made bonus payments to the CEO after being directed to do so by the CEO and the external general counsel.

According to the Eastpointe Chief of Human Development, the CEO called the Chief of Human Development the day after the amended employment agreement was signed and instructed the Chief of Human Development to pay the bonuses that had been added to the CEO's employment agreement. According to the Chief of Human Development, Eastpointe's external general counsel also texted her the same day, instructing her to "execute the terms of the employment agreement approved by the Board for the CEO."² The Chief of Human Development confirmed that she issued payment for the bonuses without seeing a copy of the amended employment agreement. There was a lack of internal control, which should have required the payroll staff to verify and obtain documentation that the payments were legally authorized. The Chief of Human Development paid the two bonuses which totaled \$187,550 the following day.

4. The Eastpointe CEO received an additional \$78,021 bonus; the amount of the CEO's bonus was not set or approved by the Board as required by state law.

In addition to the two 25% bonuses, the Eastpointe CEO received a 20% bonus in her December 2023 paycheck. The 20% bonus was part of a one-time bonus for Eastpointe employees. An Eastpointe "budget assumptions" document suggests that the Board was aware of and/or approved a total cost of bonuses for the organization's staff of \$2,251,841 as part of the Eastpointe Fiscal Year 2023-24 budget established in June 2023. However, the CEO stated in an email to the CBO and the Chief of Human Development that the structure of the bonuses was not approved by the Board. The bonus percentage varied by staff member and allotted 20% of salary to eleven executives (including the CEO), 15% to directors, 10% to other exempt staff, and 5% to non-exempt staff. The Board, which has sole authority over compensation of the area director/CEO, did not determine the amount of the CEO's bonus.

¹ The same payment also included \$45,102 for unused vacation leave, for a total payment of \$482,211. The amended employment agreement also increased the CEO travel allowance from \$1,200 per month to \$2,000 per month, retroactive to July 1, 2023, resulting in an additional payment of \$4,800 that was included in a separate payment.

² As noted previously, OIA did not find any evidence that the amended employment agreement executed on December 6, 2023 was approved by the Board.

In total, the Eastpointe CEO received the following payments in December 2023:

Type of Payment	Amount
Regular Pay	\$32,509
Longevity Pay	17,555
4% COLA ^A (retroactive to November 1)	1,250
Vacation Payout	45,102
Travel Allowance (retroactive to July 1)	6,000
20% Tiered Bonus ^B	78,021
25% Bonus ^C	93,775
25% Bonus ^C	93,775
Severance Payment	437,109
Total	\$805,096

Notes: ^A COLA stands for cost of living adjustment. The CEO's salary was \$375,100 through November 2023. The COLA was first included in the CEO's regular December 2023 paycheck, increasing her annual salary to \$390,105.

^B The 20%-tiered bonus was calculated based on annual salary after the addition of the 4% COLA. Eastpointe paid this bonus as part of the CEO's regular December paycheck on 12/22/2023.

^C The 25% bonuses were calculated based on annual salary prior to the COLA. Eastpointe paid these bonuses on 12/8/2023.

5. An employment agreement, the first between the Chief Business Officer and Eastpointe, was created for the Eastpointe Chief Business Officer 26 days prior to consolidation with Trillium and resulted in a severance payment of \$383,110.

The CBO and CEO executed the CBO's first employment agreement with Eastpointe on December 6, 2023, nine days prior to the effective date of the consolidation agreement and twelve days before she resigned. The agreement included:

- Terms to trigger a severance payment equal to her annual salary if her title was reclassified resulting from a merger, and
- An increase in her annual salary of more than \$64,000 (25% increase), retroactive to July 1, 2023, which resulted in back pay due and increased the amount of her severance payment and future pension from the Local Government Employees' Retirement System.

Eastpointe's external general counsel sent the CBO's employment agreement to the CEO, and the CEO signed it six hours after Secretary Kinsley provided proposed terms of the consolidation agreement. In the consolidation agreement proposed terms, the CBO's title would change to Chief of Staff of the consolidated entity, thereby triggering a severance payment according to the newly created employment agreement. The CBO signed the employment agreement the following day, December 6, 2023. The new employment agreement also changed her Eastpointe job title to Chief Financial Officer (CFO).

The consolidation agreement was executed on December 16, 2023, which named the CBO as Chief of Staff of the consolidated entity. On December 18, 2023, the CBO resigned, the same day the NCDHHS Secretary signed the consolidation agreement. In her resignation letter to the CEO, the CBO stated that she was invoking the termination clause in her employment agreement because she will no longer be employed as CFO. The Chief of Human Development issued the CBO's severance payment on December 29, 2023.

The execution of the new employment agreement for the CBO and her subsequent resignation resulted in a total severance payment of \$383,110. Because severance payments are not compensation for services rendered, the payment may violate Section 32 of the North Carolina State Constitution, which states that "no person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services."

6. The Eastpointe CEO authorized contract changes that were favorable to The Charleston Group, Eastpointe's external general counsel, during the consolidation negotiation period.

On December 6, 2023, nine days prior to the effective date of the consolidation agreement, Eastpointe's external general counsel, the CEO, and the CBO executed an amendment to The Charleston Group's services agreement, which:

- Was effective retroactive to April 1, 2023,
- Increased hourly billing rates from \$450 to \$550 per hour with very complex matters ranging from \$650 to \$750 per hour,
- Added a retainer fee of \$49,500 per month for routine non-litigation matters,
- Added a retainer fee of \$78,000 per month for LME/MCO consolidation work,
- Extended the contract through June 30, 2027, and
- Added a termination clause to require Eastpointe to pay the firm the total fees paid in the preceding 12 months if Eastpointe terminates the original agreement.

These changes were made during a period of negotiation after Secretary Kinsley's November 1, 2023 directive for Eastpointe and Trillium to develop a consolidation agreement, but prior to the effective date of the consolidation agreement.

The termination clause requiring payment of the total fees paid in the preceding 12 months may have created a large potential liability for Trillium to terminate the contract, particularly in combination with Eastpointe paying The Charleston Group \$3,041,748 on December 8, 2023, two days after the contract amendment was executed.

7. Eastpointe paid The Charleston Group \$3 million in December 2023 for charges dating back to January 2021.

On December 8, 2023, Eastpointe made a payment of \$3,041,748 to The Charleston Group. These charges included a monthly retainer for "MCO Consolidation Work" of \$45,000 per month being billed back to April 2023. These charges also included a general retainer of \$47,850 per month for nine months and a general retainer of \$43,500 per month being billed for an additional 26 months, dating back to January 2021. In addition, the payment included charges of \$1,007,111 for services related to the "Nash Disengagement," with work being billed back to January 2021.³

³ According to records obtained by OIA, The Charleston Group had previously billed \$71,202 on August 12, 2020, for Nash County Disengagement work performed between April 1, 2020, and June 30, 2020. The Charleston Group also billed \$30,256 on December 6, 2022 for disbursements related to Nash County Disengagement work.

Breakdown of Payments to The Charleston Group in December 2023

Matter Description	Time Period	Services Fees Billed (\$)	Disbursements Billed ⁴ (\$)	Total (\$)
General Retainer (26 months at \$43,500/month)	Jan. 2021 - Feb. 2023	\$1,131,000.00	\$48,264.86	\$1,179,264.86
General Retainer (9 months at \$47,850/month)	Mar. - Nov. 2023	430,650.00	0.00	430,650.00
MCO Consolidation Retainer (9 months at \$45,000/month)	Apr. - Dec. 2023	405,000.00	0.00	405,000.00
Nash Disengagement	Jan. 2021 - Nov. 2023	694,927.50 ⁵	312,183.51	1,007,111.01
Various other matters⁶	July 2023 - Nov. 2023	\$19,290.00	\$431.90	\$19,721.90
Total				\$ 3,041,747.77

Eastpointe's initial 2006 contract with The Charleston Group stated that the firm would bill a monthly retainer in a mutually agreed-upon amount for all communication with Eastpointe personnel and that such communications would be billed to the retainer. However, an amendment signed in 2015 removed the retainer language. According to the CBO, prior to December 2023, Eastpointe had not been paying a general services retainer. The December 2023 contract amendment implemented specific amounts for new retainer fees: \$49,500 per month for routine non-litigation matters and \$78,000 per month for non-litigation matters regarding consolidation with another MCO. Although the contract was executed in December 2023, it was made effective back to April 1, 2023.

The initial group of invoices The Charleston Group billed in December 2023 totaled \$3,509,598 because they billed retainer fees at the rates specified in the December 2023 contract. However, The Charleston Group reduced the rates charged after submitting the initial group of invoices. The Eastpointe CBO stated those retainer fees were discounted by The Charleston Group because of the delay in billing them. The CBO approved a \$3,041,748 payment to The Charleston Group on December 8.

The external general counsel billed the retainer for matters regarding consolidation back to the contract effective date of April 1, 2023. However, rather than billing the retainer for routine non-litigation matters back to the effective date of the amended contract, the external general counsel billed the retainer back to January 2021, an additional twenty-seven months prior to the effective date. The external general counsel billed, and the Eastpointe CBO approved paying \$1,178,850 in retainer fees for the time period prior to the April 1, 2023 effective date. Eastpointe had no contractual obligation to pay retainer fees during that time period.

The Charleston Group sent invoices directly to the CBO rather than sending them to the accounts payable mailbox. Eastpointe's cash disbursement policy states that invoices are to be received in accounts payable via the accounts payable email address or via mail. The invoice is then forwarded to the contract owner for review and approval. The CBO stated the invoices were not sent to the accounts payable mailbox due to the detailed invoices containing sensitive information.

⁴ Disbursements billed are to reimburse for costs incurred relating to professional services provided, such as photocopying charges, travel expenses, couriers, filing fees, costs of subpoenas and depositions, professional services, and other costs.

⁵ The Charleston Group refunded \$694,927.50 on December 28, 2023, and indicated the firm was reviewing its work on the matter because some of the fees may not have been allowable and would revise or resubmit the invoice.

⁶ Five other matters with total billings between \$223 and \$15,622 were part of the December 2023 invoices and payments. They are summarized here rather than listed individually.

As shown in the table below, the 12/8/2023 payment was more than three times all of Eastpointe's prior payments to The Charleston Group during 2022 and 2023.

Payment Date	Prior Payments (\$)	December 2023 Payment (\$)
2/18/2022	30,000	
8/12/2022	43,455	
9/2/2022	271,057	
9/29/2022	40,000	
1/27/2023	30,256	
4/14/2023	70,000	
8/30/2023	66,044	
9/22/2023	288,656	
12/8/2023		3,041,748
Total	\$839,468	\$3,041,748

8. Eastpointe paid legal fees of the external general counsel associated with a North Carolina State Bar grievance filed against the external general counsel. The CEO and the Chief Business Officer were unaware of key details of the payment(s).

The external general counsel emailed the CEO and CBO on December 31, 2023, at 9:05 p.m., in connection with the NC State Bar grievance related to Nash County litigation. According to the external general counsel's email, The Charleston Group did not seek or accept payment from Eastpointe for legal costs associated with the grievance "until recently based upon a preliminary opinion of counsel." The external general counsel stated in the email that he had discussed with his ethics counsel the appropriateness of Eastpointe acting as a third-party payee for the legal costs related to the grievance. According to the email, a third-party payment had been deposited into the firm's Interest on Lawyers' Trust Accounts (IOLTA) account and would remain there until Eastpointe indicated to the external general counsel that it does not have any concerns regarding the payment.

The external general counsel stated in the email:

"If Eastpointe does not have any questions or concerns regarding the aforementioned costs, please respond to this email and indicate so. Otherwise, we will continue to hold the funds received in our IOLTA trust account for 7 days after which we will return the funds to Eastpointe."

The email from the external general counsel did not describe the amount that had been deposited or when the money was transferred. The CEO responded to the email that she and the CBO had reviewed the matters addressed in the email and had "no further questions or concerns." During interviews with the CEO and CBO, OIA inquired about the email. Neither the CEO nor CBO knew the amount held in the IOLTA account, when the funds had been invoiced, or when Eastpointe made the payment(s). The CEO and CBO did not know if The Charleston Group kept the funds in the account, withdrew them, or refunded them to Eastpointe. During an interview in June 2024, the external general counsel stated that the funds remain in the IOLTA account.

9. Eastpointe signed several contracts in December 2023 that were backdated.⁷

OIA did not review all contracts executed by Eastpointe in December 2023, but observed four contracts that were backdated:

- The CEO revised employment agreement signed in December 2023, effective July 1, 2023.
- The CBO employment agreement signed in December 2023, effective July 1, 2023.
- The Charleston Group contract, signed in December 2023, effective April 1, 2023.
- A contract with Ayden Investments, LLC, signed in December 2023, effective July 1, 2023.

The CEO and CBO approved and signed a backdated contract with Ayden Investments on December 6, 2023, which was forwarded to them by Eastpointe's external general counsel. The effective date of the contract is July 1, 2023; however, the term of the contract is August 1, 2023, through June 30, 2025. The contract includes a monthly retainer fee of \$7,500 for "strategic and tactical public affairs consulting services." The day following the approval of the contract, the CBO approved a \$45,000 invoice from Ayden Investments for services rendered from July through December 2023.

In addition, at approximately 11:00 p.m. on December 31, 2023, the external general counsel emailed the CEO and CBO two other consulting agreements to execute. One of the two agreements was backdated to July 1, 2023, contained a monthly retainer, and was scheduled to terminate on June 30, 2024. The CEO and CBO indicated they were having technical issues with DocuSign and instructed the external counsel to affix their signatures to the contracts. Although the CEO, CBO, and external general counsel made attempts to execute these contracts, they do not appear to have been executed because time ran out before January 1, 2024. Trillium does not have a record of the contracts or payments to the consultants.

10. Eastpointe emails that constitute public records were deleted and not properly archived.

OIA reviewed Eastpointe Microsoft Outlook audit logs which show that, between October 17, 2023 and December 31, 2023, the CEO and CBO deleted thousands of Microsoft Outlook files from their accounts. During that time period, email records in both accounts were deleted and moved to the recoverable items folder (soft delete). The last working day of both the CEO and CBO was Sunday, December 31, 2023. Audit logs show over 2,000 deletions (soft delete) in the CEO's account on December 31, 2023. Audit logs also show nearly 3,000 deletions in the CBO's account on December 20, 2023; over 7,000 deletions on December 27, 2023; and over 900 deletions on December 30, 2023.

According to a Trillium IT staff member, who is also a former Eastpointe IT staff member, Eastpointe's primary email archive should have stored the email files despite the soft deletions. However, the Trillium IT department was unable to confirm whether all purged emails had been recovered upon OIA request.

The deleted emails are public records; as the CEO's email signature stated, "Public Records Law Statement: Please be advised that any e-mail sent to and from this e-mail account is subject to the NC Public Records Law and may be disclosed to third parties." N.C.G.S. 132-1(a) defines public records as "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government."

⁷ "Backdated" is used in this case to mean making a contract effective from a date earlier than the date by which it was signed.

11. Eastpointe did not provide notice to the public of certain Board meetings and failed to keep minutes as required by state law.

The Board and executive committee of the Board held several meetings in late November and December 2023 without required public notice or having minutes taken.

- November 28, 2023, executive committee meeting – Public notice was posted for the regular Board meeting, but not for the executive committee meeting that took place prior to the Board meeting. The clerk to the Board stated that prior to the start of the in-person executive committee meeting, the Eastpointe CEO said she would ask the external general counsel if he wanted the clerk to take minutes. According to the clerk, she went to set up another meeting room, but the CEO and external general counsel never came to get the clerk to take the minutes.
- December 6, 2023, executive committee meeting – The clerk to the Board stated that public notice was not given for the meeting, which was held via conference call. The clerk also stated that the Eastpointe CEO texted the clerk to tell her that the external counsel would take notes and the clerk could “drop off” once the committee went into closed session. However, the external general counsel told OIA that he had not taken minutes because the clerk was responsible for taking them.
- December 16, 2023, executive committee meeting – The clerk to the Board stated that public notice was not given for the meeting, which was held via conference call. She stated that she asked the CEO and external general counsel if they wanted her to stay on the line to take minutes and the external general counsel responded that he would take the minutes. However, the external general counsel told OIA that he had not taken minutes for the executive committee meeting because the clerk was responsible for taking them.
- December 28, 2023, emergency Board and executive committee meetings – The clerk to the Board stated that she was asked to post notice of the meeting; however, due to staff being out on vacation, notice was not posted. The clerk was asked to attend this meeting and she took minutes at the meetings.

N.C.G.S. 143-318.10 requires every public body to keep full and accurate minutes of all official meetings, including any closed sessions held. The statute states that “when a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired.” Further, N.C.G.S. §143-318.12 requires public bodies to provide public notice of all official meetings.

The Board bylaws require that Eastpointe provide a secretary to attend every meeting and document minutes. The bylaws specify that the staff member serving as secretary/clerk to the Board must keep minutes of the meetings of the Board and of all committees. The bylaws also require that notice is given to the public for all meetings as required by N.C.G.S. 143-318.12.

Recommendations

- 1. Trillium should seek recoupment of \$707,480 paid to the Eastpointe CEO and \$383,110 paid to the Eastpointe Chief Business Officer (CBO).** The amount of recoupment from the CEO is based upon \$629,459 in payments resulting from the amended employment agreement that was not approved by the Eastpointe Board plus a bonus payment of \$78,021, the amount of which also was not approved by the Eastpointe Board. The \$383,110 recoupment from the CBO is based upon N.C.G.S. 122C-121 only permitting severance benefits for the area director/CEO and Section 32 of the NC State Constitution, which states that “no person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.”
- 2. NCDHHS should implement mandatory annual training for all LME/MCO board members.** This training should include instruction on a board’s fiduciary duty, CEO/area director evaluation, and allowable compensation and benefits. Other topics could include proper public notice of meetings and conducting closed sessions.
- 3. In order to prevent abusive and/or wasteful contracts, during any future period where the NCDHHS Secretary has issued a consolidation directive, relevant parties should be prohibited from modifying or entering into new contractual agreements without receiving written approval from the NCDHHS Secretary.** The Secretary would likely need to adopt rules to do so, which could be adopted under the general provisions of N.C.G.S. 122c-112.1 (6) and (7) regarding oversight and monitoring as well as N.C.G.S. 122c-112.1 (12) governing the expenditure of all funds for mental health, developmental disabilities, and substance abuse programs and services.

DISTRIBUTION:

Kody H. Kinsley, Secretary of Health and Human Services, NCDHHS
Mark Benton, Chief Deputy Secretary for Health, NCDHHS
Dr. ClarLynda Williams-Devane, Deputy Secretary for Operational Excellence, NCDHHS
Jonathan Kappler, Deputy Secretary for External Affairs and Chief of Staff, NCDHHS
Jay Ludlam, Deputy Secretary for NC Medicaid, NCDHHS
Julie Cronin, General Counsel, NCDHHS
Lotta Crabtree, Chief Legal Officer, NC Medicaid, NCDHHS
Marjorie Donaldson, Chief Financial Officer, NCDHHS
Kelly Crosbie, Director, Division of Mental Health, Developmental Disabilities, and Substance Use Services, NCDHHS
Melanie Bush, Deputy Medicaid Director, NC Medicaid, NCDHHS
Lisa Allnutt, Senior Manager, Risk Management, Compliance and Consulting, NCDHHS
Joy Futrell, Chief Executive Officer, Trillium Health Resources
Senitria Goodman, General Counsel and Chief Compliance Officer, Trillium Health Resources