



An Audit Report on

# **Performance Measures at the Office of Public Insurance Counsel**

November 2019

Report No. 20-009



An Audit Report on

# Performance Measures at the Office of Public Insurance Counsel

SAO Report No. 20-009  
November 2019

## Overall Conclusion

The Office of Public Insurance Counsel (OPIC) reported reliable results into the Automated Budget and Evaluation System of Texas (ABEST) for seven of its eight key performance measures tested for fiscal year 2018 and four of the five key performance measures tested for the first three quarters of fiscal year 2019. A performance measure result is considered reliable if it is certified or certified with qualification.

For fiscal year 2018, the following seven key performance measures tested were certified with qualification:

- Percentage of Rate and Rulemaking Proceedings in Which OPIC Participated.
- Percentage of Rate Filings and Rules Changed for the Benefit of Consumers as a Result of OPIC Participation.
- Percentage of Texas Insurance Consumers Reached by OPIC Outreach Efforts.
- Number of Rate Hearings in Which OPIC Participated.
- Number of Rate Filings in Which OPIC Participated.
- Number of Report Cards and Publications Produced and Distributed.
- Total Number of Public Presentations or Communications by OPIC.

The remaining performance measure—Number of Rulemaking Proceedings in Which OPIC Participated—was inaccurate for fiscal year 2018.

In addition, for the first three quarters of fiscal year 2019, the following four key performance measures were certified with qualification:

- Number of Rate Filings in Which OPIC Participated.

### Performance Measures

Agencies report results for their key performance measures to the Legislative Budget Board's budget and evaluation system, which is called the Automated Budget and Evaluation System of Texas, or ABEST. Key performance measures are:

- Budget drivers that are generally externally focused.
- Closely related to the goals identified in the statewide strategic plan.
- Reflective of the characteristics of good performance measures.

Source: *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).

### Background Information

The Texas Legislature established the Office of Public Insurance Counsel (OPIC) as an independent agency in 1991. OPIC represents the interests of Texas consumers in insurance matters.

OPIC reviews and analyzes insurance rates, rules, and policy forms. The agency may also intervene as a party in rate hearings before the commissioner of insurance and the State Office of Administrative Hearings.

OPIC recommends legislation that benefits insurance consumers. OPIC also provides resource testimony and information on insurance issues.

OPIC's duties also include consumer education and outreach to help Texans understand their rights under the law.

Source: OPIC's Web site.

- Number of Rulemaking Proceedings in Which OPIC Participated.
- Number of Report Cards and Publications Produced and Distributed.
- Total Number of Public Presentations or Communications by OPIC.

For one of five key performance measures tested—Number of Rate Hearings in Which OPIC Participated—OPIC accurately reported the results for the first two quarters of fiscal year 2019, and it was certified with qualification. However, it did not report accurate results for the third quarter in fiscal year 2019, which caused this performance measure to be inaccurate for that quarter.

For all eight key performance measures tested, OPIC had written policies and procedures describing the collection, calculation, and reporting of the performance measures. However, OPIC did not have documented procedures to review performance measure data entered into ABEST before that data was submitted into ABEST. Although OPIC asserted that it has a review process in place, it did not consistently retain documentation of such reviews being performed for the entry of performance measures results into ABEST prior to submission.

Table 1 summarizes the certification results for the eight performance measures tested.

Table 1

Performance Measure Results for the Office of Public Insurance Counsel (Agency No. 359)				
Related Objective or Strategy, Classification	Description of Performance Measure	Fiscal Year	Results Reported in ABEST	Certification Results <sup>a</sup>
A.1.2, Outcome	Percentage of Rate and Rulemaking Proceedings in Which OPIC Participated	2018	36.36%	Certified with Qualification
A.1.3, Outcome	Percentage of Rate Filings and Rules Changed for the Benefit of Consumers as a Result of OPIC Participation	2018	80.77%	Certified with Qualification
B.1.1, Outcome	Percentage of Texas Insurance Consumers Reached by OPIC Outreach Efforts	2018	60.15%	Certified with Qualification
A.1.1.1, Output	Number of Rate Hearings in Which OPIC Participated <sup>b</sup>	2018	1	Certified with Qualification
		First Quarter 2019	0	Certified with Qualification
		Second Quarter 2019	0	Certified with Qualification
		Third Quarter 2019	0	Inaccurate
A.1.1.2, Output	Number of Rate Filings in Which OPIC Participated <sup>b</sup>	2018	12	Certified with Qualification
		First, Second, and Third Quarters of 2019	7	Certified with Qualification

Performance Measure Results for the Office of Public Insurance Counsel (Agency No. 359)				
Related Objective or Strategy, Classification	Description of Performance Measure	Fiscal Year	Results Reported in ABEST	Certification Results <sup>a</sup>
A.1.1.3, Output	Number of Rulemaking Proceedings in Which OPIC Participated <sup>b</sup>	2018	16	Inaccurate
		First, Second, and Third Quarters of 2019	13	Certified with Qualification
B.1.1.2, Output	Number of Report Cards and Publications Produced and Distributed <sup>b</sup>	2018	5,726,421	Certified with Qualification
		First, Second, and Third Quarters of 2019	1,662,670	Certified with Qualification
B.1.1.3, Output	Total Number of Public Presentations or Communications by OPIC <sup>b</sup>	2018	1,431	Certified with Qualification
		First, Second, and Third Quarters of 2019	423	Certified with Qualification
<p><sup>a</sup> A measure is <b>certified</b> if reported performance is accurate within plus or minus 5 percent of actual performance and if it appears that controls to ensure accuracy are in place for collecting and reporting performance data.</p> <p>A measure is <b>certified with qualification</b> when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.</p> <p>A measure is <b>inaccurate</b> when the actual performance is not within 5 percent of reported performance, or when there is more than a 5 percent error in the sample of documentation tested. A measure is also inaccurate if the agency's calculation deviated from the measure definition and caused more than a 5 percent difference between the number reported to ABEST and the correct performance measure result.</p> <p>A <b>factors prevented certification</b> designation is used if documentation is unavailable and controls are not adequate to ensure accuracy. This designation also will be used when there is a deviation from the measure definition and the auditor cannot determine the correct performance measure result.</p> <p><sup>b</sup> OPIC reported this performance measure in ABEST on a quarterly basis; therefore, auditors tested this performance measure for fiscal year 2018 and the first, second, and third quarters of fiscal year 2019.</p>				

Auditors communicated other, less significant issues separately in writing to OPIC management.

### ***Summary of Management's Response***

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. OPIC agreed with the recommendations in this report.

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

The objectives of this audit were to determine whether OPIC:

- Is reporting accurate performance measures results to the Automated Budget and Evaluation System of Texas (ABEST).
- Has adequate controls in place over the collection, calculation, and reporting of its performance measures.

The scope of this audit included three key performance measures that OPIC reported for fiscal year 2018 (September 1, 2017, through August 31, 2018), and five key performance measures that OPIC reported for fiscal year 2018 and the first three quarters of fiscal year 2019 (September 1, 2017, through May 31, 2019).

# Contents

## ***Detailed Results***

---

Chapter 1

OPIC Reported Reliable Results for Seven Key Performance Measures Tested; However, It Should Strengthen Its Procedures for Data Entry Reviews .....1

Chapter 2

OPIC Reported Unreliable Results for Fiscal Year 2018 and Reliable Results for the First Three Quarters of Fiscal Year 2019 for One Key Performance Measure Tested.....4

## ***Appendix***

---

Objectives, Scope, and Methodology .....6

# Detailed Results

Chapter 1

## ***OPIC Reported Reliable Results for Seven Key Performance Measures Tested; However, It Should Strengthen Its Procedures for Data Entry Reviews***

---

The Office of Public Insurance Counsel (OPIC) reported reliable results into the Automated Budget and Evaluation System of Texas (ABEST) for seven of the eight<sup>1</sup> key performance measures tested. Specifically, the following annually reported performance measures were certified with qualification (see text box for definition) for fiscal year 2018:

- Percentage of Rate and Rulemaking Proceedings in Which OPIC Participated.
- Percentage of Rate Filings and Rules Changed for the Benefit of Consumers as a Result of OPIC Participation.
- Percentage of Texas Insurance Consumers Reached by OPIC Outreach Efforts.

In addition, the following quarterly reported performance measures were certified with qualification for fiscal year 2018 and the first three quarters of fiscal year 2019:

- Number of Rate Filings in Which OPIC Participated.
- Number of Report Cards and Publications Produced and Distributed.
- Total Number of Public Presentations or Communications by OPIC.

Those measures were certified with qualification because OPIC did not have documented policies and procedures for all review steps in its performance measure process (see the Documented Policies and Procedures section below for further discussion of that issue).

### **Certified with Qualification**

A performance measure is **certified with qualification** when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A performance measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A performance measure is also certified with qualification if the agency calculation of performance deviated from the performance measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

Source: *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).

---

<sup>1</sup> For the remaining measure, Number of Rulemaking Proceedings in Which OPIC Participated, OPIC reported unreliable results for fiscal year 2018 and reliable results for all three quarters in fiscal year 2019. (See Chapter 2 for a discussion of that measure.)

One quarterly reported measure tested—Number of Rate Hearings in Which OPIC Participated—was also certified with qualification for fiscal year 2018 and the first two quarters of fiscal year 2019. The reported results for the third quarter of fiscal year 2019 were inaccurate<sup>2</sup> because OPIC did not report a rate hearing that it had participated in during that quarter. This resulted in a difference of greater than 5 percent between the actual performance and the reported performance. This occurred because OPIC’s process for the performance measure calculation did not match its documented procedures.

### **Documented Policies and Procedures**

**Policies and Procedures for Collecting, Calculating, and Reporting Performance Measures.** OPIC had written policies and procedures for the collecting, calculating, and reporting of all eight key performance measures tested. In addition, it performed and documented the review of all the key performance measure calculations for the audit period. The *Guide to Performance Measure Management* (State Auditor’s Office Report No. 12-333, March 2012) requires that state agencies document steps for collecting, calculating, reviewing, and reporting performance measure data in written policies and procedures.

**Policies and Procedures for Reviews of Data Entered into ABEST.** OPIC did not have documented policies and procedures to review performance measure data entered into ABEST prior to its submission. Those reviews, which are required by the State Auditor’s Office’s *Guide to Performance Measure Management*, should be conducted by an individual who did not enter the data. While OPIC asserted that it conducted those reviews, it did not document those reviews for fiscal year 2018 and the first two quarters of fiscal year 2019. OPIC had documentation showing that it had performed the reviews for the third quarter of fiscal year 2019.

Without adequately documented data review policies and procedures, there is an increased risk that OPIC may report inaccurate results in the future, and therefore, a performance measure cannot receive a rating higher than certified with qualification.

---

<sup>2</sup> A performance measure is inaccurate when the actual performance result is not within 5 percent of the reported performance result.

## Recommendations

OPIC should:

- Strengthen its review process to ensure that the number of rate hearings in which it participates is reported accurately.
- Develop and implement policies and procedures for the independent review of ABEST data entry prior to ABEST submission.
- Ensure that it retains the documented review of the ABEST data entry.

## Management's Response

*OPIC agrees with the recommendations. OPIC will enhance review procedures to ensure project assignments, including rate hearings, are closed consistent with agency performance measure procedures. The agency is already developing policies and procedures for formalizing the review of ABEST data prior to submission, which will fully address documentation of this process.*

*While we agree with the audit finding, OPIC notes this measure is accurate for the full 2019 Fiscal Year (FY). Due to a timing error, a rate hearing was counted in the 4th quarter of FY 2019, when the Commissioner's Order was released, rather than in the 3rd quarter when the hearing was held.*

*Staff Responsible for Procedural Revisions: Deputy Director*

*Timeline for Implementation: December 31, 2019*

## ***OPIC Reported Unreliable Results for Fiscal Year 2018 and Reliable Results for the First Three Quarters of Fiscal Year 2019 for One Key Performance Measure Tested***

---

### **Fiscal Year 2018**

For fiscal year 2018, OPIC reported unreliable results for the Number of Rulemaking Proceedings in Which OPIC Participated key performance measure. OPIC reported that it participated in 16 rulemaking proceedings when it should have reported that it participated in 15 rulemaking proceedings (a 6 percent difference). As a result, this measure was inaccurate (see text box for definition).

According to the ABEST definition and OPIC's policies and procedures, OPIC should report participation in a rulemaking proceeding in the first month when OPIC files an objection or comments on a rule. Rulemaking proceedings include administrative proceedings on proposals by entities such as the Texas Department of Insurance, insurance companies and insurance industry trade groups, individual consumers and consumer groups, and OPIC.

OPIC submitted a comment on a proposed rule in fiscal year 2017; however, it did not report this rulemaking proceeding until fiscal year 2018 when a court denied the petition to review the proposed rule and OPIC closed the case. By not reporting the rulemaking proceeding in fiscal year 2017, OPIC deviated from the ABEST measure definition and OPIC's policies and procedures, which also resulted in a difference of greater than 5 percent difference between the actual performance and the performance reported for fiscal year 2018. In addition, while OPIC performed calculation reviews of that measure, those reviews did not identify the error. It is important to ensure the accuracy of this measure because it is used in the calculation of two key measures, (1) Percentage of Rate and Rulemaking Proceedings in Which OPIC Participated and (2) Percentage of Rate Filings and Rules Changed as a Result of OPIC Participation, which are discussed in Chapter 1.

### **First Three Quarters of Fiscal Year 2019**

For the same performance measure, OPIC reported reliable results for the first three quarters of fiscal year 2019. This performance measure is certified with qualification for the first three quarters of fiscal year 2019, because while OPIC had documented policies and procedures for the collection, calculation, and reporting of the measures, it did not have documented

#### **Inaccurate**

A performance measure is **inaccurate** when the actual performance is not within 5 percent of the reported performance, or when there is a 5 percent or greater error rate in the sample of documentation tested. A performance measure also is inaccurate if the agency's calculation deviated from the performance measure definition and caused a 5 percent or greater difference between the number reported to ABEST and the correct performance measure result.

Source: *Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).

policies and procedures for the independent review of data entry into ABEST prior to submission. Without documented policies and procedures, an agency cannot attain a certification higher than certified with qualification. (See Chapter 1 for more information on policies and procedures requirements.)

### **Recommendations**

OPIC should:

- Strengthen its review process to ensure that rulemaking proceedings are reported in the correct reporting period.
- Develop and implement documented policies and procedures for the independent review of ABEST data entry prior to submission.

### **Management's Response**

*OPIC agrees with the recommendations. OPIC agrees with SAO on the importance of consistent and accurate reporting. Therefore, OPIC will enhance review procedures to ensure project assignments are closed consistent with agency performance measure procedures. The agency is already developing policies and procedures for formalizing the review of ABEST data prior to submission, which will fully address documentation of this process.*

*OPIC notes that the Number of Rulemaking Proceedings in Which OPIC Participated for FY 2018 was not certified because of a timing error in closing a single project file. The result was undercounting that file in FY 2017 and overcounting it in FY 2018.*

*Staff Responsible for Procedural Revisions: Deputy Director*

*Timeline for Implementation: December 31, 2019*

# Appendix

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

---

### **Objectives**

The objectives of this audit were to determine whether the Office of Public Insurance Counsel (OPIC):

- Is reporting accurate performance measures results to the Automated Budget and Evaluation System of Texas (ABEST).
- Has adequate controls over the collection, calculation, and reporting of its performance measures.

### **Scope**

The scope of this audit included three key performance measures that OPIC reported for fiscal year 2018 (September 1, 2017, through August 31, 2018), and five key performance measures that OPIC reported for fiscal year 2018 and the first three quarters of fiscal year 2019 (September 1, 2017, through May 31, 2019).

### **Methodology**

The audit methodology consisted of auditing reported performance measure results for accuracy and adherence to performance measure definitions; evaluating controls over OPIC's performance measure calculation processes; and testing documentation and assessing the reliability of the data obtained from FileMaker Pro, OPIC's internal database system, which supported the reported performance results.

### **Data Reliability and Completeness**

Auditors assessed the reliability and completeness of the data from FileMaker Pro related to all key performance measures.

To do that, auditors (1) determined population completeness and reasonableness, (2) interviewed and obtained information from OPIC staff, (3) reviewed the process for generating the reports that were used to calculate the performance measures, (4) reviewed source documentation for performance measure data, and (5) evaluated user access to the FileMaker Pro database.

The reporting of two measures, (1) Percentage of Texas Insurance Consumers Reached by OPIC Outreach Efforts, and (2) Number of Report Cards and

Publications Produced and Distributed, involved numbers and reports that were noted in the definition of the measures as being either estimates or data provided by a third-party agency or source. Auditors reviewed the numbers provided by third-party agencies and the reports generated by OPIC indicating the number of Web site views and interactions with consumers for reasonableness.

Auditors determined that for fiscal year 2018 and the first three quarters of fiscal year 2019, data from the FileMaker Pro database system was sufficiently reliable for the purposes of this audit. Auditors also determined that the third-party numbers and reports noting the number of Web site views were sufficiently reliable for the purposes of this audit.

### **Sampling Methodology**

For seven of the eight key performance measures tested, auditors selected and reviewed the entire population of hard-copy files for accuracy and to assess whether the controls over the performance measures were operating effectively to ensure that performance measure results were accurate. One of those seven measures tested was composed of both hard-copy files and estimated amounts from another performance measure. Auditors did not test those estimated amounts, which are described below.

For the remaining measure tested, auditors did not test the source documentation for performance measure audits because the measure comprised mostly estimated amounts of Web site and online advertisement views. While auditors noted those values to be estimates, they did perform limited work on the reasonableness of the reported numbers by comparing those figures and sources to the performance measure definition and data source fields in ABEST. In addition, auditors performed limited work on OPIC's method for calculating the performance measure numbers reported in ABEST by reviewing the data included in the reported numbers for reasonableness when compared to the performance measure definition.

Information collected and reviewed included the following:

- Performance measure information reported in ABEST.
- OPIC's policies and procedures for performance measures.
- OPIC's summary and source documents used for calculating the performance measure results tested.
- Reports generated from FileMaker Pro used to calculate the performance measure results tested.
- OPIC's hard-copy files used to support the numbers reported in ABEST.

Procedures and tests conducted included the following:

- Interviewed OPIC staff to gain an understanding of the processes used to calculate the performance measures tested.
- Reviewed OPIC's policies and procedures to determine whether they were adequate to help ensure the correct calculation of the performance measures.
- Reviewed performance measure calculations for accuracy and to determine whether the calculations were consistent with the definitions on which OPIC, the Legislative Budget Board, and the Governor's Budget and Policy Division agreed.
- Tested source and summary documents to verify the accuracy of reported performance and the effectiveness of controls over reporting performance.
- Tested OPIC's hard-copy files to verify the accuracy of the numbers reported into ABEST.
- Performed user access testing.
- Assessed performance data results in one of the four categories: (1) certified, (2) certified with qualification, (3) inaccurate, or (4) factors prevented certification.

Criteria used included the following:

- *The Guide to Performance Measure Management* (State Auditor's Office Report No. 12-333, March 2012).
- ABEST performance measure definitions.
- OPIC's policies and procedures.

## Project Information

Audit fieldwork was conducted from June 2019 through September 2019. We conducted this performance audit in accordance with generally accepted government auditing standards.<sup>3</sup> 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:

- Namita Pai, CPA (Project Manager)
- Jeffrey D. Criminger, CFE (Assistant Project Manager)
- Charlotte Carpenter, CPA
- Joseph Kozak, CPA, CISA
- Eric Ladejo, MPA, CFE
- Ann E. Karnes, CPA (Quality Control Reviewer)
- Michael Simon, MBA, CGAP (Audit Manager)

---

<sup>3</sup> United States Government Accountability Office's *Government Auditing Standards*, 2011 Revision.

Copies of this report have been distributed to the following:

### **Legislative Audit Committee**

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 Dustin Burrows, House Ways and Means Committee

### **Office of the Governor**

The Honorable Greg Abbott, Governor

### **Office of Public Insurance Counsel**

Ms. Melissa Hamilton, Public Counsel



This document is not copyrighted. Readers may make additional copies of this report as needed. In addition, most State Auditor's Office reports may be downloaded from our Web site: [www.sao.texas.gov](http://www.sao.texas.gov).

In compliance with the Americans with Disabilities Act, this document may also be requested in alternative formats. To do so, contact our report request line at (512) 936-9500 (Voice), (512) 936-9400 (FAX), 1-800-RELAY-TX (TDD), or visit the Robert E. Johnson Building, 1501 North Congress Avenue, Suite 4.224, Austin, Texas 78701.

The State Auditor's Office is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

To report waste, fraud, or abuse in state government call the SAO Hotline: 1-800-TX-AUDIT.