

## ANALYSIS

### Item 7: Public Defense Commission Quality Management Plan

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**Analyst:** John Borden

**Request:** Acknowledge receipt of a report on a quality management plan.

**Analysis:** The budget report for SB 5532 (2023), the primary budget measure for the Public Defense Commission (PDC), included the following budget note:

The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

The genesis of the budget note is the Legislature's interest to improve public defense outcomes through a robust monitoring of the quality-of-service delivery at all levels of public defense. A similar budget note was originally adopted by the 2021 Legislature (HB 5030). After reporting to the 2024 Legislature, PDC was instructed to return to the Emergency Board, as the agency's report did not outline a well-defined plan or specific indicators for measuring and improving the quality-of-service delivery in public defense.

#### Background

The establishment of the Compliance, Audit and Performance (CAP) Division in the 2021 legislative session was designed to bring a heightened level of accountability to Oregon's public defense system through the monitoring of the quality-of-service delivery, its performance, and the expenditure of funds. The CAP Division's purpose is to provide for the following services: (a) vendor contract compliance; (b) auditing of vendors/contractors; (c) internal auditing of agency expenditures; (d) research and analysis; and (e) development and maintenance of performance measures, including Key Performance Measures and supporting internal Key Performance Indicators.

CAP and its various sections are intended to operate autonomously from all other legal and administrative divisions within PDC and exercises no managerial, supervisory, programmatic, or operational control over any other division or program. This structure allows for independent assessment and reporting directly to the Commission of the agency's performance. The importance of CAP is underscored by the new requirements placed on PDC by SB 337 (2023).

The Legislature has undertaken a concerted effort to fund CAP, which has a 2023-25 legislatively approved budget of \$7.1 million General Fund and 18 positions (17.80 FTE). The division's budget includes the Chief Trial Criminal Defender and Deputy Defender and the Chief Juvenile Defender and Deputy Defenders, who are responsible for direct program administration and to establish policy, procedure, and guidelines for each division as well as provide training and other assistance to providers. The Legislative Fiscal Office notes that these positions may be more appropriately budgeted in their respective programs.

## Report

PDC's plan is to define performance objectives (February 2024 to April 2025), develop performance measures for qualifications and performance (February 2024 to August 2024), identify metrics for evaluating performance measures (September 2024 to January 2025), and then develop training standards (January to April 2025). The plan appears largely limited to the performance of individual providers performing specific job duties (e.g., attorneys, paralegals, investigators, mitigation specialist, social workers, case managers, interpreters, and technical support staff, etc). The report states that "OPDC has gathered and reviewed industry standards and is launching a series of provider and system-partner workgroups to review standards and codify a robust set of qualification standards..." for various non-attorney position categories.

The report further states that "OPDC has gathered quality indicators from various state and national sources to inform the development of key performance metrics specific to practice in Oregon. As those KPMs are developed, OPDC identifies data sources to analyze those metrics.... OPDC also identifies data points that will be gathered from providers directly and incorporates those data points into the FCMS [Financial Case Management System information technology project]."

## Analysis

The Quality Management Plan does not outline specific indicators for measuring and improving the quality-of-service delivery in public defense. Rather the report outlines objectives, identification of standards and best practices, and a plan and timeline for the development of performance measures for most core staff roles. PDC focuses on performance standards for public defense services providers but does not mention of measuring defendant/person outcomes, or measuring the performance of state employees, including those recently hired to undertake trial-level public defense activities as well as those serving in the Appellate Division. Based on PDC's timeline for development of measures and metrics, it is also unclear when updates to the agency's KPMs would be proposed for consideration by the Legislature.

In previous reporting to the Legislature and the Emergency Board, Legislative Fiscal Office analyses have noted that PDC demonstrated a strong conceptual understanding and commitment related to the importance of CAP, but that further planning work was necessary. PDC states, however, that the agency's ability to build the CAP division has been hindered by significant leadership transitions, the unrepresented persons crisis, and a misalignment of staffing resources for ground up development of a new division and that as the agency better understands the operational needs to build a successful oversight division, it will need to work closely to align staffing with legislative direction and budget. Of further concern is that the CAP Division Chief has remained vacant for almost one year with no immediate plans for recruitment.

PDC's establishment of meaningful performance measures and standards of quality for public defense are essential to the functioning and funding of the public defense system by ensuring that eligible defendants/persons are being adequately represented and approved resources are used effectively and efficiently to achieve the desired outcome(s) for financially eligible defendants/persons.

**Recommendation:** The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report.

07  
Oregon Public Defense Commission  
Gehringer

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**Request:** Report on the Oregon Public Defense Commission’s Quality Management Plan per a budget note included in the budget report for Senate Bill 5532 (2023).

**Recommendation:** The Public Defense Services Commission is not under Executive Branch budgetary authority.

**Discussion:** The Oregon Public Defense Commission (OPDC) has developed a Quality Management Plan (QMP) in response to a budget note in the Senate Bill 5532 (2023) budget report.

Budget Note:

“The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.”

The agency’s QMP includes the development of Key Performance Measures (KPMs) and indicators for public defense services in Oregon. OPDC submitted a report on the QMP in January 2024 and was directed to report to the Emergency Board in May 2024 on the plan and proposed KPMs. The QMP aims to restore credibility in the Commission and ensure constitutionally competent and effective legal representation for eligible individuals. The QMP has been approved by the agency’s Commission and outlines the progress made towards implementing the plan.

OPDC’s first step was to develop the Compliance, Audit, and Performance Division (CAP) to strengthen program management, performance, and oversight. CAP provides services such as vendor contract compliance, auditing of expenditures, internal auditing, research and analysis, and development of performance measures. The CAP division is organized into sections including Administration, Trial Criminal Compliance, Juvenile/Parent-Child Representation Program Compliance, Research, and Internal Audit. Similarly, internal audit of agency expenditures is being conducted by the OPDC Audit Committee and Internal Auditor.

The agency reports the development of performance measures must ensure all recipients of public defense services in Oregon receive constitutionally competent and effective legal representation. Current work includes the development of qualification and performance standards for core roles, coordination with courts and public defense providers, and updating policies and procedures. Performance standards are being revised for agency staff and attorneys, with a focus on matching skills to case types and introducing recertification requirements. Metrics for evaluating performance and system functioning are being developed, and reporting mechanisms will be incorporated into the Financial Case Management System.

Key performance measures and supporting indicators are being developed, with a focus on addressing current issues in public defense delivery in Oregon. The QMP and related quality programs are in varying degrees of establishment, and specific details regarding key performance measures are not provided in the document.



# Oregon

## Oregon Public Defense Commission

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April 29, 2024

Senator Rob Wagner, Co-Chair  
Representative Julie Fahey, Co-Chair  
State Emergency Board  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301

Dear Co-Chairs:

### Nature of the Request

The Oregon Public Defense Commission (OPDC) requests that the committee accept the attached Quality Management Plan report. The budget report for HB 5532 (2023) includes the following budget note:

**Quality Management Plan:** The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

### Agency Action

OPDC submitted a report pursuant to the above budget note in January of 2024. During the 2024 Legislative Session, OPDC was directed to report to the Emergency Board in May of 2024 on a quality management plan and proposed key performance measures.

This report outlines the work and progress made by the OPDC towards building and implementing a quality management plan. The success of this plan will help the agency work towards a unified goal to restore credibility in the Commission as an efficient and effective administrator of Oregon's public defense system by stabilizing agency administration to fulfill the OPDC's mission to ensure constitutionally competent and effective legal representation for persons eligible for a public defender.

This report was approved at the OPDC meeting on April 17, 2024. **Action Requested**

The Oregon Public Defense Commission requests acknowledgment and receipt of the attached report.

### Legislation Affected

No legislation is affected.

Sincerely,

A handwritten signature in cursive script, appearing to read "JK", is positioned below the word "Sincerely,".

Jessica Kampfe  
Executive Director

Cc:

Amanda Beitel, Legislative Fiscal Officer  
John Borden, Principal Legislative Analyst, LFO  
Kate Nass, Chief Financial Officer  
Zack Gehringer, Policy and Budget Analyst, CFO

# Oregon Public Defense Commission

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QUALITY MANAGEMENT PLAN

April 23, 2024

## NATURE OF THE REPORT

The budget report for HB 5532 (2023) includes the following budget note:

**Quality Management Plan:** The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

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## EXECUTIVE SUMMARY

HB 5030 (2021) established the Compliance, Audit, and Performance Division (CAP) to help strengthen the OPDC's program management, performance, and oversight. CAP provides the following mutually inclusive services:

- a. vendor contract compliance;
- b. auditing of expenditures related to vendor contracts;
- c. internal auditing of agency expenditures;
- d. research and analysis, and
- e. development and maintenance of performance measures, including key performance measures and supporting key indicators.

Objectives include defining qualification and performance standards for core roles, establishing metrics for evaluation, developing training standards, and conducting ongoing reviews. OPDC aims to ensure vendor contract compliance, audit expenditures related to contracts, and conduct internal audits of agency expenditures to maintain quality control.

OPDC prioritizes data-informed decision-making, investing in the data and research team to improve data quality, analysis, and reporting. The focus is enhancing data infrastructure and accuracy and utilizing data for policy improvements.

OPDC has developed the following quality management plan to implement CAP. This report details the steps taken towards the directives above and OPDC's implementation timeline.

## QUALITY MANAGEMENT TO DATE

The CAP division is organized into the following sections:

- (1) Administration;
- (2) Trial Criminal Compliance;
- (3) Juvenile/Parent-Child Representation Program (PCRCP) Compliance;
- (4) Research; and
- (5) Internal Audit, which reports directly to the Commission.

These sections work together to build and carry out the functions of CAP. These include policy writers in Administration, trial resource counsel within Criminal and Juvenile/PCRCP Compliance, data analysts within Research, and internal auditors within the Internal Audit. Additionally, four program analysts from the Administrative Division of OPDC work with the Adult and Juvenile/PCRCP resource counsel to support providers in their contracts. The Trial Support and Development (TS&D) team comprises these resource counsel and program analysts and along with the Data Team (Research) and the Policy Team (Administration), they are all dedicated to ensuring the success of CAP.

## RESOURCE EVALUATION

In October 2023, the CAP team began to evaluate the work of the resource attorneys and program analysts. CAP then worked with human resources (HR) to identify appropriate classification levels and gaps within the CAP workflow. This review found that resource counsel and program analysts were overburdened by near-constant contract management. Contracts were regularly amended as attorneys upqualified or changed their maximum attorney caseload (MAC). This is compounded by the fact that resource counsel and program analysts are not trained in procurement. It became clear that the quality and quantity of work being asked of this team had substantially changed as OPDC moved from a basic pay-per-case model to a more complex (and more constitutional) system. This work and the prioritization of the unrepresented cases have prevented resource counsel from focusing on the CAP work they were initially assigned.

To remedy this, OPDC has taken the following action:

- Moved the contract amendment process for upqualification to a quarterly schedule, which reduces contract changes, lessens the administrative burden, and helps stabilize budgeting and forecasting.
- Requested procurement staff to perform the contract management duties.

## CURRENT WORK

Resource counsel focuses on developing standards, a vital component of the agency's programmatic function. Those standards include qualification standards, performance standards, and training standards for attorneys and non-attorney professionals, such as interpreters, investigators, social workers, case managers, and paralegals. Ultimately, these standards will require Commission adoption.

The program analysts lead the OPDC's procurement of public defense services and the management of those contracts. They coordinate with courts and public defense providers to assess each jurisdiction's public defense needs, work with the data analysts to determine contract compliance and jurisdictional needs, and are also the primary line of communication between public defense contract administrators and OPDC.

The policy team is reviewing and updating existing policies and procedures. Significantly, the policy team recently updated the agency's preauthorized expense and routine expense policies for commission approval. At the same time, the data team is working on data integrity by creating policies, establishing workflows, creating quality assurance processes, and coordinating database enhancements with information technology (IT).

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## SPECIAL PROJECTS – UNREPRESENTED CASES

Combining data, policy, and subject matter experts has already proven successful. For instance, in December 2023, the CAP manager assigned a data and research team member to collaborate with the TS&D team to increase the efficiencies of Temporary Hourly Increase Program (THIP) case assignments. THIP cases are unrepresented in-custody cases where OPDC is responsible for assigning counsel.

Since THIP's inception in August 2022, court staff, lawyers, and unrepresented persons have called or emailed OPDC staff seeking appointments for in-custody unrepresented cases. As the unrepresented crisis has grown, the assignment process has not been consistent. The vast amounts of communication take away from the program's goal of swiftly connecting unrepresented persons (on eligible cases) to qualified attorneys.

A pilot project is underway with Douglas, Coos, Linn, and Curry counties. With feedback from stakeholders, a form has been developed and distributed to court staff who can provide simple details on unrepresented cases (case number, location, custody status). This new form allows for streamlining communication, collecting beneficial data, and more expediently assigning attorneys to unrepresented persons. This pilot will wrap up in May and, if successful, will be expanded to other jurisdictions.

In addition, TS&D staff developed a flier for unrepresented clients, providing information to unrepresented persons regarding their status, including that OPDC is not their attorney but has been "appointed" as a placeholder to help facilitate the assignment of an attorney when one is

available. The flier has been translated into Chinese, French, Korean, Russian, Somali, Spanish, and Vietnamese and provided to unrepresented clients during plea hearings.

OPDC looks forward to more collaborative work like this coming from the CAP division.

## DEVELOPMENT AND MAINTENANCE OF PERFORMANCE MEASURES

OPDC's objective is to establish a comprehensive plan for developing and maintaining performance measures that ensure all recipients of public defense services in Oregon receive constitutionally competent and effective legal representation. Establishing these measures follows this basic logic:

- What is OPDC measuring? (Standards)
- How are those standards measured? (Metrics)
- What happens when standards are not met? (Training).

## OBJECTIVES

The following objectives have been identified as goals of the performance measures:

1. Qualification and performance standards for core roles in Oregon's public defense system for which OPDC provides funding, including:
  - Attorneys, law graduates, and law students.
  - Paralegals, legal assistants, and office support staff.
  - Investigators and mitigation specialists.
  - Social workers and case managers.
  - Interpreters.
  - Technical support staff.
2. Metrics for evaluating the performance of individuals in these core roles and the overall system's functioning statewide and in each jurisdiction.
3. Develop training standards and programs to support public defense providers in meeting qualification and performance standards applicable to their area(s) of practice.
4. Ongoing, regular review of all qualification and performance standards, metrics systems, and structures to identify areas needing improvement and updates.

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## QUALIFICATION STANDARDS

### CORE STAFF

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OPDC processes need robust qualification standards for critical public defense service roles. For all roles other than Attorney, the sole source of qualification requirements exists within the Preauthorized Expense policy, which does not apply to all public defense services providers.

OPDC has gathered and reviewed industry standards and is launching a series of provider and system-partner workgroups to review standards and codify a robust set of qualification standards for the following roles:

- Paralegals and Legal Assistants
- Investigators
- Interpreters
- Case Managers
- Social Workers
- Mitigation Specialists
- Technical Support

OPDC is reviewing standards and best practices developed in other jurisdictions or by national organizations for adoption in Oregon. For those roles without available standards, OPDC will draw on the experience of paraprofessionals to form practice standards.

## ATTORNEYS

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OPDC maintains qualification standards for the attorney role, revised in 2019. OPDC is revising the qualification standards with two overarching goals:

- More appropriately matching standards to the skills required for given case types.
- Increase opportunities for applicants to demonstrate capacity in those skills.

Updated qualification standards will introduce OPDC-certified training courses as an additional pathway to demonstrate competency at lowercase type levels. OPDC will introduce recertification requirements for higher case-type levels, including demonstrating continued practice assignments and further training courses or work product reviews. Qualification standards will be broken into four categories:

- Criminal - covering most case types under the current criminal qualification standards, except for punitive contempt, civil commitment, post-conviction relief, and habeas matters, which will be moved to the new civil qualification set. A new criminal qualification tier covering crimes under ORS 137.700 (“Measure 11” crimes) will be created to reflect additional skills and experience needed to manage cases.
- Juvenile - covering two practice areas: delinquency, including waiver motions, and dependency, including termination of parental rights. Delinquency qualifications will mirror the new criminal qualification set but require additional skill certifications around adolescent brain development, ongoing representation of post-disposition youth, and relationship management with juvenile system partners. Dependency qualifications will require a more substantial demonstration of skills in out-of-court negotiations and advocacy.
- Civil - will add a new certification track encompassing practice areas under the rules of civil procedure. The civil certification track will include punitive contempt, habeas corpus, post-conviction relief, civil commitment, and adoption defense.

- Appellate qualifications will cover direct appeals and post-conviction relief appeals.

## PERFORMANCE STANDARDS

OPDC has historically managed attorney performance standards via contracts with public defense services providers. Over the last two years, the share of attorney work performed outside of an annual or biannual contract with OPDC (hourly work) has increased. OPDC has continued to require hourly attorneys to agree to the same performance standards as contracted attorneys. Moving the performance standards to a formal policy outside contract terms will help ensure transparency and equity.

OPDC has gathered national standards for most core staff roles and is working with provider and system partner workgroups to develop qualification standards. Performance standards not developed by OPDC are limited in their applicability and force.

Task	Start	End
<b>Objectives</b>		
Qualification and performance standards for all core roles in Oregon’s public defense system for which OPDC provides funding.	02/01/24	8/31/24
Metrics for evaluating the performance of individuals in core roles and overall system functioning statewide and in each jurisdiction.	09/01/24	1/1/25
Development of training standards and programs designed to support public defense providers in meeting qualification and performance standards applicable to a particular area(s) of practice.	01/01/25	4/30/25
We conduct ongoing, regular reviews of all qualification and performance standards, metrics systems, and structures to identify areas for improvement and updates.	Ongoing	
<b>Performance Measures</b>		
<u>Core Staff Qualification and Performance Measures</u>		
Define objectives for performance measures, review existing performance measures, identify best practices, and identify key stakeholders.	02/01/24	3/30/24
Hold stakeholder engagement work sessions	04/01/24	4/30/24
Develop standards	04/01/24	5/30/24
Commission approves core staff performance measures.		6/13/24
<u>Attorney Qualification and Performance Measures (Criminal, Juvenile, Civil Commitment)</u>		
Define objectives for performance measures, review existing performance measures, identify best practices, and identify key stakeholders.	05/01/24	5/31/24
Identify stakeholder groups (Juvenile Del., Juvenile Dep., Criminal, Civ. Com.).	5/1/24	5/31/24
Hold stakeholder engagement work sessions.	06/01/24	7/31/24
Develop standards.	08/01/24	8/31/24
<b>Performance Measure Evaluation Metrics</b>		
Develop metrics for evaluating performance measures.	09/01/24	9/31/24

Develop reporting mechanisms with the data team to incorporate metrics into the Financial Case Management System (FCMS).	09/01/24	12/30/24
Stakeholder feedback and revisions of performance measures and metrics.	10/01/24	10/31/24
Finalize performance measures and metrics.	11/01/24	11/22/24
Commission review of performance measures and metrics.	11/22/24	12/6/24
Commission approves non-training performance measures and metrics.		12/6/24
Implement data collection methods.		1/1/25
<b>Training Standards</b>		
Develop training standards	01/01/25	1/31/25
Hold stakeholder engagement work sessions	02/01/25	3/15/25
Finalize training standards	03/15/25	3/30/25
Commission approves training standards	04/01/25	4/30/25

## AUDITS AND QUALITY CONTROL

To implement quality control and expenditure audits, OPDC must first establish performance metrics. With metrics, CAP will know what to control or audit. OPDC fully recognizes the importance of vendor compliance through quality control and expenditure audits of vendor contracts and agency expenses. Below is a summary of the goals of these areas.

### VENDOR CONTRACT COMPLIANCE

Ensure vendors adhere to their contracts by developing a quality control system that monitors vendor compliance. OPDC can implement vendor contract compliance measures through this quality control system to ensure accountability, transparency, and effective service delivery.

Once performance metrics are in place, CAP will ensure compliance with standards and opportunities for improvement when needed.

### AUDITING OF EXPENDITURES

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#### AUDITING OF EXPENDITURES RELATED TO VENDOR CONTRACTS

Create a system to audit vendor contract expenditures through policies and processes to review vendor contracts consistently and transparently. OPDC will create a risk analysis measure for vendor contracts and work with budget, program, and compliance staff to ensure conformity.

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#### INTERNAL AUDITING OF AGENCY EXPENDITURES

The OPDC audit committee approved a three-year audit plan on April 1, 2024, which includes a review of agency expenditures. The plan will be reviewed annually. OPDC will create internal auditing of agency expenditures by working with the existing internal auditor and the OPDC audit committee.





## RESEARCH AND ANALYSIS

OPDC aims to become a commission led by data-informed decision-making with robust quality control and performance metrics. Investing in the data and research team is integral to OPDC's CAP build-out. Data provided externally or used internally for forecasting, procurement, budgeting, quality control, and performance management is obtained through data and research. Data is managed through internal databases and a client management system. Through partnerships, OPDC is increasing avenues for incorporating additional data. The data team reviews and analyzes caseload reports with OJD data to provide quality control and quality assurance reviews of the monthly submitted caseload reports. Ongoing work supporting data integrity will reflect the correct case types reported. The data and research team are also looking for other opportunities to use data to inform decisions, provide feedback, and research policy and process improvements.

In late 2022 and early 2023, OPDC revised the data submission process for contractors, significantly improving the data quality. The data and research team has consistently built the data infrastructure to utilize data and provide more regular and consistent reports on provider work products. This work has reduced the personnel time required to analyze the Parent-Child Representation Program (PCRP) client communication KPM. OPDC will continue to provide support and training to ensure data accuracy.

As data collection expands, OPDC's data and research team will grow. This has already been shown with the data the team was able to put together for the HB 4002 fiscal during the 2024 legislative session. OPDC hopes to replicate that process for future legislation. OPDC plans to move further into research and analysis as the division matures rather than just data collection.

## KEY PERFORMANCE MEASURES AND SUPPORTING KEY PERFORMANCE INDICATORS

Over the last several years, OPDC has experienced multiple leadership changes, which has led to a loss of focus on KPMs. With the passage of SB 337 (2023) and the Legislature's direction to restructure the agency, there is an opportunity to develop KPMs that address current issues impacting public defense delivery in Oregon. The development of a new strategic plan will assist in identifying new KPMs.

OPDC has gathered quality indicators from various state and national sources to inform the development of key performance metrics specific to practice in Oregon. As those KPMs are developed, OPDC identifies data sources to analyze those metrics. The OPDC data and research team has been coordinating with OJD to access their data warehouse, which already contains a substantial portion of the necessary data points for KPM analysis. OPDC also identifies data points that will be gathered from providers directly and incorporates those data points into the FCMS.