



Department of Human Services: Outstanding Provider Debt in Minnesota's Medicaid Program

Performance Audit

December 2024

Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

Financial Audit Division

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December 10, 2024

Members
Legislative Audit Commission

Jodi Harpstead, Commissioner
Department of Human Services

This report presents the results of our performance audit of the Department of Human Services' (DHS's) outstanding provider debt in Minnesota's Medicaid program for the period of October 2006 through June 2023. The objectives of this audit were to determine if DHS had adequate internal controls over selected financial activities and complied with significant finance-related legal requirements.

DHS only partially agrees with Finding 1, detailed on page 18, which states that the department "has not attempted to recover over \$40 million in outstanding overpayments...." While the department states that it has made collection efforts on some of the overpayments, DHS did not begin recovery of the majority of these overpayments—an amount we conservatively estimate as \$40 million—until after the Office of the Legislative Auditor initiated this audit.

Further, DHS does not agree with Finding 2, detailed on page 19, which states that the department is "planning to forgo recovery of outstanding provider debt that may still be recoverable." While many factors support this finding, the clearest one is DHS's decision to write off outstanding provider balances less than \$1,000, despite its policy requiring it to recover overpayments greater than \$25.

In summary, we have considered all information presented by DHS and believe the evidence we obtained and the testing we performed during the course of the audit support our conclusions.

This audit was conducted by Lisa Makinen, CPA (Auditor in Charge), and auditor Erick Olsen.

We received the full cooperation of DHS staff while performing this audit.

Sincerely,



Judy Randall
Legislative Auditor



Lori Leysen, CPA
Deputy Legislative Auditor



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Report Summary

Conclusion

The Department of Human Services did not comply with the significant finance-related legal requirements we tested and generally had inadequate internal controls. The more significant instances of noncompliance and internal control weakness were in the areas of recovering outstanding provider debt and accurately reporting the accounts receivable amount on the state's financial statements.

The list of findings below and the full report provide more information about these concerns.

Findings and Recommendations

Finding 1. The Department of Human Services has not attempted to recover over \$40 million in outstanding overpayments to Medical Assistance providers' accounts. (p. 7)

Recommendations

- The Department of Human Services should recover outstanding overpayments from Medical Assistance providers.
 - The Department of Human Services should improve internal controls to ensure that it regularly pursues collection of provider overpayments.
-

Finding 2. The Department of Human Services is planning to forgo recovery of outstanding provider debt that may still be recoverable. (p. 9)

Recommendations

- The Department of Human Services should recover outstanding provider debt in accordance with state law and its own policy.
 - The Department of Human Services should work with the Legislature to clarify its authority to recover outstanding provider debt.
-

Finding 3. The Department of Human Services has not accurately reported its accounts receivable balance to Minnesota Management and Budget for inclusion in the state's financial statements since 2019. (p. 11)

Recommendations

- The Department of Human Services should accurately report its accounts receivable balance in the state's financial statements.
 - The Department of Human Services should improve internal controls to ensure it accurately reports accounts receivable in the state's financial statements.
-

Finding 4. The Department of Human Services was unable to provide adequate data to enable us to confirm the outstanding provider balances. (p. 12)

Recommendations

- The Department of Human Services should ensure that it maintains adequate documentation to support the outstanding provider balances.
 - The Department of Human Services should ensure that the outstanding provider debt recorded in the Medicaid Management Information System is accurate.
-

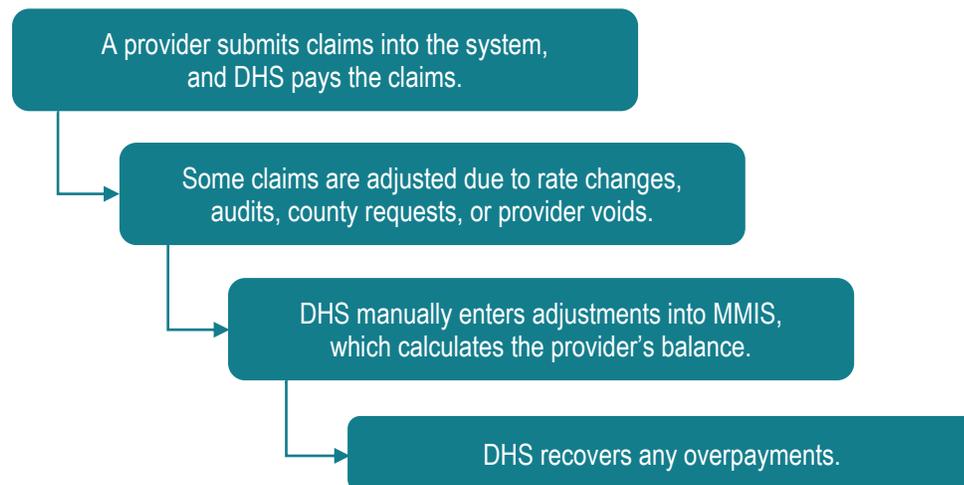
Background

The Department of Human Services (DHS) oversees the Minnesota Health Care Programs (MHCP), which include Medical Assistance, MinnesotaCare, and the Minnesota Family Planning Program. These programs work with medical providers in health care clinics, hospitals, nursing homes, and other settings to provide health care coverage to eligible adults, families with children, people with disabilities, and seniors. DHS receives federal, state, and county funds to administer and manage these programs.

For services provided through Medical Assistance, providers are compensated through managed care organizations or on a fee-for-service basis.¹ Providers that are reimbursed on a fee-for-service basis submit claims through the Medicaid Management Information System (MMIS), and DHS reimburses the providers directly for those claims.² Adjustments to these fee-for-service claims, such as retroactive rate changes or discovery of errors, can result in overpayments. These overpayments are referred to by DHS as “provider credits.” Because these provider credits are actually debts owed by the providers to DHS, we refer to these overpayments as “provider debt” and “outstanding provider balance(s)” throughout the report.

Exhibit 1 outlines the process from when a provider initially submits claims into MMIS to when DHS recovers any overpayments.

Exhibit 1 Provider Claims Process



Source: Office of the Legislative Auditor, based on interviews with Department of Human Services staff.

¹ Fee-for-service requires DHS to directly reimburse the provider based on the services provided to a patient.

² MMIS is a system that does not interface with the state's accounting system.

Audit Scope, Objectives, Methodology, and Criteria

We conducted this audit to determine whether DHS had adequate internal controls and complied with significant finance-related legal requirements. The audit scope included overpayments due from providers as a result of claims adjustments. The period under examination included all outstanding Medical Assistance, fee-for-service provider debt, from October 2006 through June 2023. For Fiscal Year 2023, DHS certified to Minnesota Management and Budget (MMB) a provider debt balance of \$51.7 million, across a total of 2,557 providers.³

As reflected in MMIS, providers of all types have debt balances. Our audit primarily focused on long-term care facilities with outstanding balances, which collectively accounted for \$32.3 million from 214 providers. We also reviewed the nine largest outstanding provider balances, which consisted of six long-term care facilities, a hospital facility, an intermediate care facility for persons with developmental disabilities (ICF/DD), and a consolidated provider.⁴

Of the 214 long-term care facility providers, we tested a random sample of 50 providers, which accounted for a total of \$2.2 million in DHS overpayments. We also tested six judgmentally selected long-term care facility providers, each with balances ranging from \$2.2 million to \$5.4 million, and three additional providers, each with balances over \$1.4 million.

Exhibit 2 outlines information about the provider types that we tested.

Exhibit 2 Provider Types with Outstanding Balances (in Millions)

Provider Type	Providers Tested	Outstanding Provider Debt Tested	Total Providers	Total Outstanding Provider Debt
Long-Term Care Facility	56 ^a	\$23.6	214	\$32.3
Hospital Facility	1	1.8	146	3.2
Intermediate Care Facility/ Developmental Disabilities	1	1.7	19	2.0
Consolidated Provider	<u>1</u>	<u>1.4</u>	<u>118</u>	<u>2.9</u>
Total	59	\$28.5	497	\$40.4

^a The long-term care facility provider type includes 50 randomly selected providers and 6 judgmentally selected providers. The outstanding balance of the 6 judgmentally selected providers totaled \$21.4 million.

Source: Office of the Legislative Auditor, based on data from the Department of Human Services.

³ *Minnesota Statutes* 2024, 16D.03, subd. 2, requires agencies to report/certify these balances quarterly. The quarterly certification template from MMB requires the financial manager, in this case the Financial Operations Division director, to attest that they have reviewed the balances and related information—including collectability and fair presentation, no material omissions, inclusion of all applicable receivables, and retention of supporting documentation for write-offs.

⁴ A consolidated provider is a provider type that is created by DHS staff to tie multiple records together when the owners and tax IDs are the same and they share the same National Provider Identifier (NPI). For example, a consolidated provider could include a long-term care facility, occupational therapists, and a residential treatment center.

We designed our work to address the following questions:

- Did the Department of Human Services comply with legal requirements for recovering outstanding debt from providers, and did it have adequate internal controls to ensure compliance with these legal requirements?
- Did the Department of Human Services comply with legal requirements related to financial reporting, and did it have adequate internal controls to ensure compliance with these legal requirements?

To gain an understanding of DHS's internal controls and compliance, we interviewed staff from DHS, and we reviewed related policies and procedures. To answer the questions listed above, we tested a sample of 59 providers to determine the accuracy of their reported balances. We also reviewed the past eight years of certifications to MMB, and we surveyed the nine other DHS programs that also do not use the state's accounting system to track their receivables.

We conducted this performance audit in accordance with generally accepted government auditing standards.⁵ 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. When sampling was used, we used a sampling method that complies with generally accepted government auditing standards and that supports our findings and conclusions. That method does not, however, allow us to project the results we obtained to the populations from which the samples were selected.

We assessed internal controls against the most recent edition of the internal control standards, published by the U.S. Government Accountability Office.⁶ To identify legal compliance criteria for the activity we reviewed, we examined state and federal laws, and policies and procedures established by DHS and MMB.

⁵ Comptroller General of the United States, Government Accountability Office, *Government Auditing Standards, 2018 Revision* (Washington, DC, Technical Update April 2021).

⁶ Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government* (Washington, DC, September 2014). In September 2014, the State of Minnesota adopted these standards as its internal control framework for the executive branch.



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Outstanding Provider Debt

When the Department of Human Services (DHS) pays a Medical Assistance (MA) provider for services, it can sometimes result in an overpayment due to subsequent adjustments to the claim. When an MA provider has a balance from such an overpayment, the Medicaid Management Information System (MMIS)—the system DHS uses to manage these payments—prioritizes reducing that outstanding balance before paying any additional claims submitted by the provider. If there are no subsequent claims submitted by the provider, DHS has a procedure to mail a notice to the provider regarding the outstanding balance.⁷

DHS has two divisions responsible for identifying and collecting outstanding provider debt from MA providers: Health Care Administration (HCA) and the Financial Operations Division (FOD). HCA staff run a report every two weeks to identify any outstanding provider balances. HCA has a procedure with instructions on how to send letters to providers to notify them of their outstanding balances.⁸ Additionally, DHS policy states that FOD is to manage the accounts receivable billing function for DHS once the program area, in this case HCA, identifies the debt and notifies the providers. This policy also assigns responsibility to FOD to manage debt-collection activities.⁹

Minnesota Management and Budget policy states that state agencies are responsible for maintaining internal policies to ensure debt collection. That same policy also requires agencies to refer debt that is over 120 days past due to the Minnesota Department of Revenue (DOR).¹⁰

FINDING 1

The Department of Human Services has not attempted to recover over \$40 million in outstanding overpayments to Medical Assistance providers' accounts.

DHS has not made any attempt to recoup outstanding MA-provider debt since 2019, when it sent a collection notice to one provider, nor has it referred the outstanding debt to DOR.¹¹ The last date for which DHS has documentation that it mailed collection notices to numerous MA providers is February 11, 2015.

⁷ In addition to collecting outstanding debt from providers with current claim activity through its normal procedures, DHS recovers some outstanding debt from identified providers that are reviewed by a Medicaid Recovery Audit Contractor.

⁸ Department of Human Services, Health Care Administration Procedure, *CB Report - Quarterly and Overdue Report*.

⁹ Minnesota Department of Human Services, Accounts Receivable Policy Manual, revised January 2024, secs. 3.0 and 6.0.

¹⁰ Minnesota Management and Budget, Statewide Operating Policy 0504-01, *Debt Collection Process and Actions*, revised March 9, 2021.

¹¹ The most recent documented instance of DHS sending a collection notice to a provider occurred on March 5, 2019, when it sent a collection notice to one provider.

Although the department's policies and procedures indicate that both HCA and FOD have a role in MA-provider debt collection, staff in both divisions told us that they do not take actions to recover outstanding provider debt. Despite HCA's procedure requiring staff to send notification letters to providers with outstanding balances, HCA staff told us that they were not aware that this was their responsibility. Similarly, despite DHS's policy directing FOD to manage debt collections, FOD staff told us that because the MA-provider debt information is in a system with which they are not familiar, they do not assist with the collection of outstanding MA-provider debt.¹² DHS did not have any controls in place to ensure that the department notified MA providers of their outstanding balances.

By not attempting to recoup the outstanding MA-provider debt, DHS has not collected—and potentially lost—money that the State of Minnesota is owed.

RECOMMENDATIONS

- **The Department of Human Services should recover outstanding overpayments from Medical Assistance providers.**
 - **The Department of Human Services should improve internal controls to ensure that it regularly pursues collection of provider overpayments.**
-

In response to our questions and to resolve the outstanding MA-provider debt, DHS plans to review provider accounts with large balances and changes in ownership. According to DHS, there are more than 340 providers with changes in ownership it plans to review to ensure it correctly transferred the outstanding balances, totaling almost \$20 million, to the new owners. DHS also plans to pursue collections on approximately \$6 million in provider debt for around 120 providers with balances that are between three and six years old.¹³

On the other hand, DHS has identified three groups of providers from whom it does not plan to pursue collections, as outlined below. DHS plans to remove the outstanding balances associated with these providers from the Medicaid system, essentially “writing off” these balances.¹⁴

- Providers with outstanding balances, totaling approximately \$11.3 million, that are more than six years old.

¹² FOD staff stated that they only process billing and collections from the state's accounting system. For any other system DHS uses to manage these activities, FOD staff told us that the applicable program handles all billings and collections. DHS has nine systems that manage their accounts receivable activity outside of the state's accounting system. We reached out to these program areas, four of which told us that they receive billing and collection assistance from FOD.

¹³ DHS told us it started reviewing long-term care facilities with the largest outstanding balances and a change in ownership. According to DHS, it was able to resolve \$14 million of the provider debt in this review. We have not audited this work.

¹⁴ We have not audited these amounts.

- Providers with outstanding balances, totaling approximately \$22,000, who have filed for bankruptcy or are deceased.
- Providers with outstanding balances, totaling approximately \$160,000, that are under \$1,000.

According to DHS policy, outstanding balances below \$25 can be written off after 120 days from when DHS issues a notification letter to the provider.¹⁵

FINDING 2

The Department of Human Services is planning to forgo recovery of outstanding provider debt that may still be recoverable.

DHS's plan not to pursue collections on outstanding provider balances that are under \$1,000 (but more than \$25) is not in accordance with its own accounts receivable policy. Nonetheless, DHS leadership gave approval to not collect outstanding provider balances up to \$1,000 for this specific situation because of the administrative burden they believe it would pose.

Further, DHS indicated to us that it did not plan to pursue recovery of outstanding provider balances that are more than six years old because of the six-year statute of limitations set out in *Minnesota Statutes* 541.05, subd. 1. However, case law indicates this statute does not apply to administrative actions to recoup overpayments.¹⁶

In response to our draft report, DHS told us that it could only administratively recover overpaid funds through recoupment from future payments; as a result, it could not recover overpayments from former providers who no longer provided services. We disagree and do not believe that this interpretation reflects state law.¹⁷ As the Minnesota Supreme Court recognized nearly 40 years ago, such an "interpretation of the statute and regulations would enable any provider who commits fraud or abuse in

¹⁵ Minnesota Department of Human Services, Accounts Receivable Policy Manual, revised January 2024, sec. 6.4.

¹⁶ *In re Wage & Hour Violations of Holly Inn, Inc.*, 386 N.W.2d 305, 308 (Minn. Ct. App. 1986); and *In re PERA Salary Determinations Affecting Retired & Active Emps. of City of Duluth*, 820 N.W.2d 563, 575 (Minn. Ct. App. 2012). The Minnesota Court of Appeals has also held that equitable defenses related to a delay in pursuing recovery of an overpayment are not applicable in the MA context. See *Leisure Hills of Grand Rapids, Inc. v. Minnesota Dep't of Hum. Servs.*, 480 N.W.2d 149, 151 (Minn. Ct. App. 1992). In one recent case, the Office of Administrative Hearings held that neither the statute of limitations nor equitable defenses precluded DHS administrative action to recover MA overpayments. See *In re SIRS Appeal by Caring Nurses, LLC*, No. 60-1800-38446, 2023 WL 4548253, at *6 (Minn. Office Admin. Hearings, July 11, 2023), available at https://mn.gov/oah/assets/1800-38446-caring-nurses-dhs-sirs-order-denying-motion-amend_tcm19-584359.pdf.

¹⁷ *Minnesota Statutes* 2024, 256B.064, subd. 1c(b), authorizes DHS to "obtain monetary recovery using methods including *but not limited to* the following: assessing and recovering money improperly paid and debiting from future payments any money improperly paid" [emphasis added]. *Minnesota Rules* 9505.0465, subp. 2, authorizes DHS to "[demand] that the provider refund amounts" that were erroneously paid, <https://www.revisor.mn.gov/rules/9505.0465/>, accessed December 2, 2024. *Minnesota Rules* 9505.2215, subp. 2, identifies deductions from future payments as one of four potential means of recovery, <https://www.revisor.mn.gov/rules/9505.2215/>, accessed December 2, 2024.

submitting claims to insulate himself from recovery by terminating his provider status.”¹⁸ The Minnesota Supreme Court therefore concluded that the department could “recover funds already paid,” rather than being “limited to debiting future payments” to recover an overpayment.¹⁹

Finally, DHS and OLA disagree as to whether the six-year statute of limitations set out in *Minnesota Statutes* 541.05, subd. 1, prevents the department from pursuing recovery of overpayments through judicial action in addition to administrative actions. While there do not appear to be any definitive answers to this question in an MA context, case law related to other state agencies indicates that the department may be able to begin judicial action to enforce an administrative order within six years after completing the administrative process.²⁰

By choosing not to recover these balances, DHS may be forgoing money that is owed to the state.

RECOMMENDATIONS

- **The Department of Human Services should recover outstanding provider debt in accordance with state law and its own policy.**
 - **The Department of Human Services should work with the Legislature to clarify its authority to recover outstanding provider debt.**
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¹⁸ *Brown v. Minnesota Dep't of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985).

¹⁹ *Brown* cited *Minnesota Statutes* 1984, 256B.064, subd. 1c, for this authority. The language regarding recovery options in that provision at the time is nearly identical now, in that it authorized the department to “obtain monetary recovery” using methods that included “assessing and recovering moneys erroneously paid and debiting from future payments any moneys erroneously paid.” *Brown* also cited administrative regulations that are substantially similar to the language of current regulations.

²⁰ *In re Wage & Hour Violations of Holly Inn, Inc.*, 386 N.W.2d 305, 308 (Minn. Ct. App. 1986).

Financial Reporting of Outstanding Provider Debt

For purposes of reporting an accurate accounts receivable balance in the state's financial statements, Minnesota Management and Budget (MMB) policy requires state agencies to analyze their accounts receivable activity annually and estimate the portion of debt they do not expect to recoup.²¹ DHS policy outlines the conditions in which a debt is considered uncollectible.²²

To generate the financial reporting information for accounts receivable related to provider debt, Health Care Administrative (HCA) staff first pull the outstanding provider balances from the Medicaid Management Information System (MMIS). HCA staff run a preprogrammed report and verify the accuracy of the accounts receivable amounts. This report includes the percentage of the outstanding provider balance that DHS does not expect to recoup, which is calculated using a preset formula.

HCA staff then send the report to Financial Operations Division (FOD) staff, who review this information and certify the accounts receivable balance to MMB on a quarterly basis.²³ FOD's review includes identifying whether the accounts receivable amount for provider debt deviates more than 10 percent from the previous quarter and determining whether there is a reasonable explanation for the deviation.

FINDING 3

The Department of Human Services has not accurately reported its accounts receivable balance to Minnesota Management and Budget for inclusion in the state's financial statements since 2019.

DHS has not updated or reassessed its calculation to determine the portion of debt it does not expect to recoup from providers since Fiscal Year 2019. At that time, DHS reduced its percentage of the portion of debt it did not expect to recoup from 6 percent to 5 percent.²⁴ The percentage has remained the same since then. However, because DHS has neither tried to collect outstanding provider balances nor written off any uncollectible balances, the total accounts receivable balance has been increasing since Fiscal Year 2016. The longer a debt is outstanding, the less likely it is for DHS to

²¹ Minnesota Management and Budget, Statewide Operating Procedure 0501-01.1, *Managing & Reporting of Accounts Receivable*, revised March 9, 2021.

²² Minnesota Department of Human Services, Accounts Receivable Policy Manual, revised January 2024, sec. 5.2. Examples of conditions under which a debt is considered uncollectible include inability to locate the debtor, cost of collection exceeding the amount recovered, or debt having been discharged in bankruptcy.

²³ MMB is responsible for creating the state's financial statements. In order to ensure the accuracy of balances reported in the statements, state law requires agencies to report their debts owed to MMB on a quarterly basis. *Minnesota Statutes* 2024, 16D.03, subd. 2.

²⁴ In 2016, DHS estimated it would not be able to recover 58 percent of the outstanding provider debt. DHS decreased this percentage to 6 percent in 2017 and 2018 before dropping it to 5 percent in 2019.

recoup the money. This, in turn, increases the likelihood that these debts will become uncollectible and will need to be written off.

FOD staff told us it is the responsibility of HCA to determine the percentage of the outstanding provider debt that DHS does not expect to recoup. HCA staff told us they were unaware that this was their responsibility.

As a result of DHS not pursuing outstanding provider debts, as discussed in Finding 1, DHS has not identified the uncollectible amounts that it should have written off. In addition, when FOD staff reviewed the quarterly reports from HCA, they did not examine why the outstanding balance continued to grow, why the percentage of the portion of debt it did not expect to recoup had not changed, or why older balances had not been written off.

By not writing off uncollectible balances and not updating the percentage of outstanding provider balances that DHS does not expect to recoup, the accounts receivable balance is overstated in the state's financial statements.

RECOMMENDATIONS

- **The Department of Human Services should accurately report its accounts receivable balance in the state's financial statements.**
 - **The Department of Human Services should improve internal controls to ensure it accurately reports accounts receivable in the state's financial statements.**
-

DHS pays medical providers based on the claims these medical providers submit. As discussed earlier, sometimes an adjustment may be needed if there is a retroactive rate change or if the provider discovers an error. When DHS staff enter an adjustment into MMIS, they add a note to explain why the adjustment was made.

MMB policy requires agencies to have adequate controls "in both policy and practice" over their accounts receivable; the policy also requires that the accounts receivable must be reconciled at least quarterly.²⁵ Furthermore, state statutes require DHS to retain the documentation of these reconciliations.²⁶

FINDING 4

The Department of Human Services was unable to provide adequate data to enable us to confirm the outstanding provider balances.

Based on the documentation DHS provided, we could not confirm the provider balances for 20 of the 59 providers we tested, resulting in variances ranging from \$43 to

²⁵ Minnesota Management and Budget, Statewide Operating Policy 0501-01, *Managing & Reporting of Accounts Receivable*, revised March 9, 2021.

²⁶ *Minnesota Statutes* 2024, 15.17, subd. 1.

\$151,985.²⁷ In other words, when we reviewed the data provided by DHS, we were not able to recalculate the reported balances for over 33 percent of our sample. A DHS staff member adjusted the outstanding provider balances for 16 of these 20 samples on the same date in 2018. However, DHS was not able to explain why the staff member made those adjustments. In addition, over 65 percent of the providers we tested had incorrect dates associated with their outstanding balances. These dates are used to determine the age of the outstanding balances for collection purposes. These dates also help determine the percentage of the outstanding provider debt that DHS does not expect to recoup, as discussed in Finding 3.

The provider claims data is kept in MMIS for approximately three years. After three years, DHS only retains summary level claims data in MMIS; notes, such as those describing reasons for adjustments, are no longer available. Because DHS did not retain supporting information to explain the variances for the 20 outstanding provider balances, it was not possible for us to verify these balances with confidence.

The balances we used for testing came from the same preprogrammed report that DHS uses to identify outstanding provider balances. However, DHS does not verify or review this report for accuracy, and the staff person that developed the criteria for the report is no longer with DHS. Further complicating the accuracy of the report, DHS staff told us that in 2017 they stopped transferring the provider balance when there was a change in ownership for a provider's business. Instead, DHS kept the balance with the original provider and also added it to the new provider's account. As such, DHS told us that it duplicated some of the outstanding balances. We could not confirm these claims.²⁸

Because DHS could not provide reliable records or sufficient support for the provider balances, we have no confidence in the accuracy of the outstanding provider debt DHS is reporting.

RECOMMENDATIONS

- **The Department of Human Services should ensure that it maintains adequate documentation to support the outstanding provider balances.**
 - **The Department of Human Services should ensure that the outstanding provider debt recorded in the Medicaid Management Information System is accurate.**
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²⁷ The values reported here are absolute values.

²⁸ Just over one-half of the providers we tested have had at least one change in ownership, some with as many as four changes.



OLA



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December 6, 2024

Judy Randall, Legislative Auditor
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Dear Ms. Randall:

Thank you for the opportunity to review and comment on the report issued by your office, titled *Department of Human Services: Outstanding Provider Debt in Minnesota's Medicaid Program*. The Department of Human Services (Department) recognizes the importance of internal controls to manage taxpayer dollars from the beginning of the payment process to the end.

The complexities in collecting the provider credit balances are substantial. The majority of these balances represent organizations no longer doing business and we have had a very low return on any recovery work.

From 2018 to the present, the Department has worked with its contracted Medicaid Recovery Audit Contractor (RAC)¹ to recover provider credits from hospitals and nursing homes, which are the provider groups with the largest amounts of outstanding balances. The RAC has been successful in recovering some outstanding provider credit balances.

However, the RAC, which is paid on a contingency basis based on a percentage of what it recovers, was only able to recover \$125,000, from 2018 to 2022, so RAC elected to stop those efforts. More recently, the RAC started a project in late 2023 to recover provider credits from nursing homes and has thus far recovered approximately \$74,000. This demonstrates the challenges of attempting to recover from providers who are no longer billing Medicaid and are often no longer in business.

¹ [Section 6411 of the Affordable Care Act](#), which amended [Section 1902\(a\)\(42\)\(B\)\(i\) of the Social Security Act](#), and is subject to the requirements of [42 CFR, Part 455, Subpart F](#), requires States and territories to establish Medicaid Recovery Audit Contractor (RAC) programs to identify and correct improper Medicaid payments, on a post-payment basis, for health care services provided to Medicaid beneficiaries. RAC contractors are paid on a contingency basis from the amounts actually recovered and directly related to the RAC's review of Medicaid claims. In Minnesota, current contract language states, the RAC contractor is paid 12.5% for all Medicaid overpayments recovered from provider types other than Durable Medical Equipment (DME).

The Department agrees with most of your findings and all of your recommendations and is already implementing improvements to our processes.

However, the Department respectfully disagrees with the conclusions of the OLA report that it is not handling outstanding provider debt in accordance with state law. As discussed below, the report elides key legal issues, misconstrues the few authorities on which it relies, and faults the Department for not taking actions not authorized by the Legislature.

First, the report does not clearly explain what administrative action OLA finds the Department could have or should have taken. While the Department agrees that state law and regulations authorize the Department to “assess” funds improperly paid and “demand” that providers refund such amounts, these authorities are silent as to any means of enforcing such demands or assessments apart from debiting improperly paid funds from future payments.² Absent clear statutory authority rendering the Commissioner’s orders directly enforceable in district court, the remedies offer little hope of recovery for debts incurred outside the statute of limitations.

The cases relied upon in OLA’s report do not lead to a different conclusion. In *In re Wage & Hour Violations of Holly Inn, Inc.*, for example, the Minnesota Court of Appeals held that the statute of limitations does not bar a state agency from seeking administrative remedies.³ But Holly Inn is readily distinguishable, as it involved a statute that expressly gave the labor commissioner authority to enforce its orders by bringing an action in district court:

The commissioner may bring an action in the district court where an employer resides or where the commissioner maintains an office to enforce or require compliance with orders issued under subdivision 4.⁴

And indeed, the Court of Appeals expressly relied on this fact, stating that “[r]egardless of when a claim is made, however, the general two-year statute would not begin to run until there has been an order issued by the commissioner, *since the court action would be solely to enforce that order.*”⁵

² Minn. Stat. § 256B.064, subd. 1c(b) (providing that “[t]he commissioner may obtain monetary recovery using methods including but not limited to the following: assessing and recovering money improperly paid and debiting from future payments any money improperly paid”); Minn. R. 9505.0465, subp. 2 (“The monetary recovery may be made by withholding current payments due the provider, by demanding that the provider refund amounts so received as provided in part 9505.1950, or by any other legally authorized means.”).

³ See 386 N.W.2d 305, 308 (Minn. Ct. App. 1986).

⁴ *Id.* at 311 (citing Minn. Stat. § 177.27, subs. 5–6 (Supp. 1985)).

⁵ *Id.* at 308 (emphasis added). *In re PERA Salary Determinations Affecting Retired & Active Emps. of City of Duluth*, 820 N.W.2d 563 (Minn. Ct. App. 2012), *Leisure Hills of Grand Rapids, Inc. v. Minnesota Dep’t of Hum. Servs.*, 480 N.W.2d 149 (Minn. Ct. App. 1992), and *In re SIRS Appeal by Caring Nurses, LLC*, No. 60-1800-38446, 2023 WL 4548253, at *6 (Minn. Office Admin. Hearings, July 11, 2023), did not address the applicable statute of limitations when an agency seeks to enforce an administrative order in state court.

No similar provision applies to orders of the Commissioner assessing overpayments against Medical Assistance providers. And although the Legislature has provided that the Commissioner's orders become judgments by operation of law when pursuing overpayments to individual Medical Assistance recipients,⁶ it made no such provision for orders assessing provider overpayments—strongly suggesting that it did not intend for such orders to be enforceable as judgments in district court.⁷ Yet the OLA report seemingly faults the Department for not pursuing a remedy that the Legislature did not grant.

Brown v. Minnesota Dep't of Pub. Welfare is similarly inapposite. In that case, the Minnesota Supreme Court held that the Department was authorized to “assess” and seek recovery of funds erroneously paid to a vendor, but the case did not address the options available to enforce such assessments, did not hold that orders of the Commissioner are enforceable in state court, and did not hold that the statute of limitations would run from the date of such assessment rather than the date the debt was incurred.⁸ Indeed, no statute of limitations was at issue in the case. OLA's suggestion that a contrary position would “enable any provider who commits fraud or abuse ... to insulate himself from recovery by terminating his provider status”⁹ ignores the fact that recovery in state court is always an option for any balances incurred within the applicable statute of limitations, which the Department has never disputed.

In sum, while OLA disagrees with the Department's interpretation and does not “believe” that it reflects state law, OLA does not identify sufficient authority to substantiate a finding or suggestion that the Department has legally enforceable options to collect provider balances beyond the limitations period. The Department, however, intends to send notices requesting repayment from providers whose debts are more than 6 years old, above \$1,000, and for whom the Department has contact information.

Regarding the report's other findings, the Department has already taken significant steps to resolve the issues identified in this report. The agency has undertaken two tracks to approach the issues identified by the auditors, both during the audit and in the audit report.

⁶ See Minn. Stat. § 256.0471, subd. 1. Vendors of medical care are not “recipients” for purposes of this statute, as provider overpayments are adjudicated under Chapter 14 rather than the contested case process referenced in section 256.0471. See *id.* at subd. 3; Minn. Stat. § 256B.064, subd. 2(f); see also Minn. Stat. § 256.045, subd. 3(f). And even under section 256.0471, the Legislature directed that the Commissioner's orders become judgments *only where notification was issued within the applicable statute of limitations*. See Minn. Stat. §§ 256.0471, subd. 2; 541.05.

⁷ See *Halvorson v. B&F Fastener Supply*, 901 N.W.2d 425, 430 (Minn. 2017) (rejecting interpretation of workers' compensation law that would not give effect to every word and would render portions of statute unnecessary); *Hersh Properties, LLC v. McDonald's Corp.*, 588 N.W.2d 728, 735 (Minn. 1999) (rejecting construction of Marketable Title Act that would render portions unnecessary); see also *State v. Friese*, 959 N.W.2d 205, 210 (Minn. 2021) (courts must read statutes as a whole and “favor an interpretation that gives ‘each word or phrase in a statute a distinct, not an identical, meaning’ ”); Minn. Stat. § 645.16(1)–(8) (Legislature's intent may be ascertained by considering, among other things, the occasion and necessity for the law, former law on the same or similar subjects, contemporaneous legislative history, and the circumstances under which law was enacted).

⁸ See 368 N.W.2d 906, 910–12 (Minn. 1985).

⁹ OLA Report at 10 (quoting *Brown*, 368 N.W.2d at 910).

First, the agency has reviewed the outstanding, aged provider credit balances to clear these existing balances through collection and write-off, prioritizing those balances that may have the highest likelihood to collect.

Second, we have engaged our Office of Continuous Improvement to assist in mapping and standing up a process for oversight and collection action on these balances into the future. This process creates an accountability chain that ensures steps are completed and amounts reported to MMB and CMS are accurate and can be easily tracked.

This new process will create clear decision points for action and will ensure that our systems of record – claims data in MMIS and accounts receivables in SWIFT – reflect the accurate status of each credit balance. This new process will also create quality assurance opportunities for more proactive claims and provider review, which have not been previously formalized.

Below are the Department's responses to the specific recommendations.

Audit Finding 1

The Department of Human Services has not attempted to recover over \$40 million in outstanding overpayments to Medical Assistance providers' accounts.

Audit Recommendation 1-1 and 1-2

- The Department of Human Services should recover outstanding overpayments from Medical Assistance providers.
- The Department of Human Services should improve internal controls to ensure that it regularly pursues collection of provider overpayments.

Agency Response to Recommendations 1-1 and 1-2:

The Department partially agrees with this finding and agrees with the recommendations. The Department routinely recovers provider overpayments for currently enrolled providers as part of Department's ongoing claims processing process. The Department also engages RAC contractors to collect provider overpayments that cannot be resolved through ongoing claims processing. The credits reviewed in this report are an important subset of all provider credit balances incurred by the Department and we agree that we need to better manage this subset of provider credit balances.

The Department has analyzed and started the recovery process for the outstanding provider credit balances referenced in the report. We confirmed previous collection efforts for certain balances through surety bonds or other mechanisms and have sent collection letters to providers with outstanding provider credit balances. We will continue this work until all provider credit balances referenced in this report have been evaluated and addressed.

We are also developing a new process for managing this subset of provider credits. Credit balances that can't be collected through our claims processing procedures and that are under 1 year (2024 – present) will be incorporated into our new process for reviewing and pursuing collections on these balances. We anticipate that our new process will be operational by January 17, 2025.

Person Responsible: Britt Kringle

Estimated Completion date: **April 2025**

Audit Finding 2

The Department of Human Services is planning to forgo recovery of outstanding provider debt that may still be recoverable.

Audit Recommendation 2-1

- The Department of Human Services should recover outstanding debt in accordance with state law and its own policy.

Agency Response to Recommendations 2-1:

As stated previously, the Department respectfully disagrees with this finding for reasons discussed above, but agrees with the recommendation. Identifying, addressing, and pursuing these balances, particularly the older balances is a time-consuming and administratively burdensome process. The Department has elected to write-off balances of less than \$1,000 (the average value of provider credits below \$1,000 is \$162) and directed staff to other activities with a greater return on investment for Minnesota taxpayers. The Department will review the current \$25 threshold for writing off accounts receivable and will update the policy accordingly.

Person Responsible: Britt Kringle

Estimated Completion date: **April 2025**

Audit Recommendation 2-2

- The Department of Human Services should work with the Legislature to clarify its authority to recover outstanding debt.

Agency Response to Recommendations 2-2:

Given the lack of clarity surrounding the issues above, the Department is happy to work with the Legislature if it wants to explore expanding or clarifying the means by which the Department can collect long overdue outstanding debts.

Person Responsible: Britt Kringle

Estimated Completion date: **May 2025**

Audit Finding 3

The Department of Human Services has not accurately reported its accounts receivable balance to Minnesota Management and Budget for inclusion in the state's financial statements since 2019.

Audit Recommendations 3-1 and 3-2

- The Department of Human Services should accurately report its accounts receivable balance in the state's financial statements.
- The Department of Human Services should improve internal controls to ensure it accurately reports accounts receivable in the state's financial statements.

Agency Response to Recommendations 3-1 and 3-2:

The Department agrees with this finding and related recommendations. As part of the new process to manage these provider credit balances, the Department will analyze and correct the allowance for doubtful accounts.

Person Responsible: Dave Greeman

Estimated Completion date: **April 2025**

Audit Finding 4

The Department of Human Services was unable to provide adequate data to enable us to confirm the outstanding provider balances.

Audit Recommendations 4- 1 and 4-2

- The Department of Human Services should ensure that it maintains adequate documentation to support the outstanding provider balances.
- The Department of Human Services should ensure that the outstanding provider debt recorded in the Medicaid Management Information System is accurate.

Agency Response to Recommendations 4-1 and 4-2:

The Department agrees with this finding and recommendation. The new process for managing these provider credit balances will assure that they are reviewed and referred for collection after one year of no warrant adjustments if the provider is still currently enrolled. The documentation related to balances referred to collection will be retained in accordance with our data retention policies and be available beyond the current 3 years that MMIS retains this data.

Person Responsible: Matt Woods

Estimated Completion date: **April 2025,**

Judy Randall, Legislative Auditor

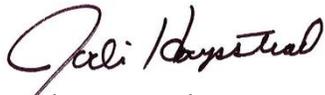
December 6, 2024

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We appreciated the professionalism and dedicated efforts of your staff during this audit. Our policy and practice is to follow up on all audit findings to evaluate our progress toward resolution.

If you have further questions, please contact Gary L. Johnson, Director of Internal Controls and Accountability, Minnesota Department of Human Services at (651) 431-3623.

Sincerely,

A handwritten signature in black ink, appearing to read "Jodi Harpstead". The signature is written in a cursive, flowing style.

Jodi Harpstead
Commissioner



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