



**Department of Human Services
Investigations of Alleged Kickbacks in
the Early Intensive Developmental and
Behavioral Intervention Program**

Special Review

March 2026

**Special Reviews Division
Office of the Legislative Auditor
State of Minnesota**

Special Reviews Division

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In early 2024, the Office of the Legislative Auditor (OLA) received a complaint from an individual who had previously filed complaints with the Department of Human Services (DHS) Office of Inspector General (OIG). The complainant was concerned that DHS OIG had not taken appropriate action in response to complaints it received.

Based on our preliminary assessment of these concerns, OLA initiated a limited special review to examine the issues in more detail. We agreed with OIG's reason to close most of the complaints we reviewed. However, when we inquired about three complaints involving kickback allegations, DHS officials asserted that, prior to 2025, the department did not have authority to investigate allegations of kickbacks in the Early Intensive Developmental and Behavioral Intervention program unless the allegation also included non-kickback conduct that met the definitions of fraud, theft, abuse, or error. We found, however, that DHS has long had legal authority to address allegations of kickbacks. We also identified a decades-old error in DHS's administrative rules that may limit the department's ability to suspend payments while investigating kickbacks.

This limited special review was conducted by Katherine Theisen, Deputy Legislative Auditor; Nathan Shepherd, General Counsel; Aisia Davis, Associate General Counsel; and Chloe Kepler, Special Reviews Auditor. DHS staff cooperated fully with our review, and we thank them for their assistance.

Sincerely,



Judy Randall
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OLA

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OLA

Introduction

The Legislature established the Early Intensive Developmental and Behavioral Intervention (EIDBI) benefit in 2013.¹ The purpose of the EIDBI benefit is to provide early intervention for children and youth under 21 years of age who are enrolled in the state's Medical Assistance (MA) program and who have autism spectrum disorder (ASD) and related conditions. The benefit reimburses participating providers for various pre-approved evidence-based treatment modalities for developing and maintaining skills in children and youth under 21 years of age with ASD. Over 5,600 individuals received EIDBI services in 2024. The Minnesota Department of Human Services (DHS) oversees the administration of the EIDBI benefit.

In early 2024, the Office of the Legislative Auditor (OLA) received a complaint from an individual who had previously filed complaints with DHS's Office of Inspector General (OIG) about EIDBI providers. According to the complainant, they believed OIG had either taken what the complainant perceived as inappropriate actions or no action at all to investigate allegations of fraud in the program. In addition, the complainant expressed concern that there was a general lack of oversight of the EIDBI program.



DHS OIG is responsible for detecting and investigating fraud, theft, abuse, and error in MA. State law provides DHS a variety of tools to address improper payments in MA, including fines, payment withholds, and terminations.

Based on our preliminary assessment of these concerns, OLA initiated a limited special review to examine whether OIG has taken appropriate action to investigate complaints related to the EIDBI program.² Specifically, we examined:

- The reasons why OIG closed complaints about EIDBI providers without further investigation.
- Whether OIG staff took reasonable steps when determining whether to investigate allegations of fraud, theft, abuse, and error by EIDBI providers.

To help us better understand how OIG has responded to complaints regarding the EIDBI program, we reviewed OIG case files for complaints received between July 2017 and February 2024. We also reviewed OIG's policies and procedures on assessing complaints related to EIDBI providers, including policies and procedures that provide instruction for the detection and investigation of suspicious activity of EIDBI providers. Further, we analyzed state and federal law related to MA and EIDBI. Finally, we interviewed DHS and OIG staff to learn about DHS's oversight of EIDBI providers and OIG's process for investigating EIDBI providers.

¹ *Laws of Minnesota* 2013, chapter 108, art. 7, sec. 14, codified as *Minnesota Statutes* 2025, 256B.0949.

² On November 17, 2025, the Legislative Audit Commission directed OLA's Program Evaluation Division to conduct an evaluation of DHS OIG investigations. This limited special review is distinct from that program evaluation.

Summary

In response to a complaint OLA received in 2024, we reviewed the reasons why DHS OIG closed complaints about EIDBI providers without further investigation. We concluded that most of the decisions we reviewed were reasonable given the information OIG collected or analyzed at the time. However, when we inquired about three complaints involving kickback allegations, DHS officials asserted the department did not have authority to investigate allegations of kickbacks in the EIDBI program unless the allegation also included non-kickback conduct that met the definitions of fraud, theft, abuse, or error. Because DHS believed it did not have authority to investigate or sanction for kickback allegations alone, according to DHS, it pursued legislation in the 2019, 2024, and 2025 legislative sessions to receive such authority. In 2025, the Legislature adopted legislation that added explicit authority to sanction MA providers that solicit, receive, pay, or offer to pay kickbacks.³



Definition of Kickback

In the context of public health care programs, a kickback is money or something of value that is given to an individual or organization to induce or reward that individual or organization for generating business for a health care provider. Kickbacks in public health care programs can lead to overuse of health care services and increased program costs, among other things.

We disagree that DHS did not have the ability to act upon allegations of kickbacks without legislative changes. Instead, we identified several ways DHS could have utilized its existing authority to address allegations of kickbacks. Further, we believe additional action is needed to ensure DHS has authority to withhold or reduce payments to providers on the basis of credible allegations of kickbacks alone. Specifically, we found that:

- Regardless of the legislative changes in 2025, Minnesota statutes have long authorized DHS to impose sanctions for kickbacks by citing specific federal Social Security Act provisions.
- DHS’s administrative rules have—for decades—contained an error in the definition of “fraud.” While DHS could have acted at any time to revise its rules, it has permitted the error to stand since 1995, limiting its authority to address kickbacks.
- Until fraud is defined in administrative rule or applicable state law to include kickbacks, it is unclear whether DHS has legal authority to suspend payments to an MA provider while investigating credible allegations of kickbacks alone.

In this report, we first provide a brief overview of MA, EIDBI, and DHS’s oversight of the EIDBI benefit. Then, we explain our analysis of OIG’s assessment of EIDBI provider complaints received between July 2017 and February 2024. Finally, we discuss DHS’s legal authority to address kickback allegations related to EIDBI providers.

³ See *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 28, codified as *Minnesota Statutes 2025*, 256B.064, subd. 1a(c).

Background

Overview of MA and EIDBI

As stated earlier, EIDBI is a benefit available through Minnesota's MA program.⁴ MA is jointly funded by state and federal dollars and provides health care for individuals who are eligible due to their income or disability status.

Individuals receive MA-funded health care services either through a managed care organization (MCO) model or through a fee-for-service model. In the MCO model, DHS pays a fixed amount to MCOs for individuals enrolled with each MCO. The MCOs then pay health care providers for covered services provided to their enrollees. In contrast, in the fee-for-service model, health care providers submit bills to DHS for reimbursement of the services provided to MA recipients, and DHS makes payments directly to providers for covered services. DHS is responsible for the enrollment, oversight, and investigation of fee-for-service MA providers; MCOs have a parallel responsibility for their providers.

According to Minnesota law, MA recipients are eligible for the EIDBI benefit if:

- They are under 21 years of age.
- They have been diagnosed with ASD or a related condition.
- A health care professional has determined that the EIDBI benefit is medically necessary for the individual.⁵

To determine if EIDBI services are medically necessary, a health care professional must complete an evaluation that assesses an individual's skills, behaviors, needs, and capacities.⁶

EIDBI services include education and support to families of children and youth under 21 years of age with ASD; they also include evidence-based interventions to promote the independence of and long-term outcomes for children and youth under 21 years of age with ASD. Interventions include activities meant to enhance functional communication, teach social interaction, practice personal independence, and maintain learning and playing skills.

By law, EIDBI providers must provide EIDBI services under the supervision of a qualified supervising professional.⁷ Qualified supervising professionals are licensed mental health professionals; licensed behavior analysts; or pediatricians with

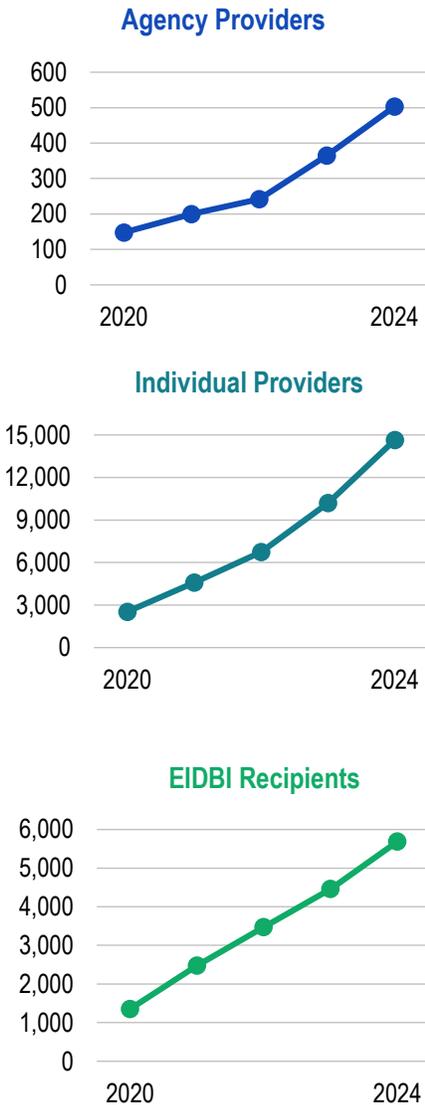
⁴ EIDBI services are also available through MinnesotaCare or other qualifying health care programs. In this review, we focused on EIDBI services accessed through MA.

⁵ *Minnesota Statutes* 2025, 256B.0949, subds. 2(q), 3, 4, 5, and 5a.

⁶ *Minnesota Statutes* 2025, 256B.0949, subd. 5.

⁷ *Minnesota Statutes* 2025, 256B.0949, subd. 13(a).

Exhibit 1
The number of authorized EIDBI providers and EIDBI recipients increased between 2020 and 2024.



Notes: The counts of providers and recipients in this exhibit reflect the total number of authorized providers and EIDBI recipients across the fee-for-service and MCO models. Between 2020 and 2024, there have been more fee-for-service recipients than MCO recipients each year.

Source: Department of Human Services.

2,000 hours of supervised clinical experience or equivalent graduate-level coursework closely related to the diagnosis and treatment of ASD.⁸

Services can be provided in a group setting or individually, and some services may be provided via telehealth. Recipients may also receive services at home or in community environments, such as schools.

The EIDBI program has grown in recent years. According to DHS, the number of authorized EIDBI provider *agencies* has more than tripled from 2020 to 2024, from nearly 150 enrolled in 2020 to over 500 in 2024. In addition, as Exhibit 1 shows, there were over 14,500 *individuals* enrolled as EIDBI providers in 2024. Correspondingly, the number of children and youth under 21 years of age receiving EIDBI services has more than tripled since 2020, from nearly 1,400 EIDBI recipients in 2020 to over 5,600 in 2024.

Following a similar trend, the total annual cost of EIDBI services has increased each year since 2020. In 2020, the total cost of the EIDBI benefit was \$38.1 million; in 2024, the total cost of the program was \$324.9 million. EIDBI services provided through the fee-for-service model made up roughly one-quarter of the annual cost of the program.

DHS Oversight of EIDBI

Program integrity is essential to ensure recipients receive high-quality services and state and federal resources are used as intended. DHS has several mechanisms for overseeing the provision of EIDBI services, including:

- **Use of EIDBI assessment tools.** DHS develops tools to ensure consistency in determining the eligibility and renewal of recipients as well as in the services they receive. For example, one assessment tool includes specialized tests to determine eligibility for and the medical necessity of EIDBI services. The tool is also used to develop individual treatment plans for EIDBI recipients.

⁸ *Minnesota Statutes* 2025, 256B.0949, subd. 15(a).

- **Enrollment of EIDBI providers.** There are several types of EIDBI providers, each with different educational and experiential requirements.⁹ To become an authorized EIDBI provider, providers must enroll with DHS by submitting an application and application fee, a provider agreement, a disclosure of ownership, an agency assurance statement, and an electronic funds transfer identification number. It is DHS policy for staff to review provider enrollment requests within 30 days of submission, and once they determine the provider's application is complete, the provider goes through a standardized screening process and site visit. During the screening process, providers are subject to verification of provider-specific requirements; they are also screened through national exclusion and termination databases. Every three years, EIDBI providers are required to go through a revalidation cycle with DHS to maintain their enrollment status.¹⁰
- **Investigations of EIDBI providers.** Within DHS, OIG is responsible for investigating allegations of EIDBI provider fraud, theft, abuse, and error. OIG receives complaints from members of the public, other DHS staff, and law enforcement agencies. When OIG receives a complaint, staff are responsible for logging it and completing an initial review of documentation. If OIG believes the complaint warrants additional investigation and OIG has authority to investigate it, an investigator is assigned to examine provider records, conduct interviews, arrange onsite visits, and conduct other authorized investigative activities. When investigators identify fraud, theft, abuse, or error by providers, OIG may take certain actions to address the concerns.

In 2025, the Legislature established new licensing requirements for EIDBI provider agencies.¹¹ EIDBI agency providers enrolled before July 1, 2025, must apply for provisional licensure by May 30, 2026, and DHS must issue provisional licenses to all eligible applicants by December 31, 2026. DHS must submit to the Legislature comprehensive licensure standards for EIDBI provider agencies by January 1, 2027. The intent is to create a licensing structure that will ensure provider agencies deliver a consistent standard of care, protect the interests of EIDBI recipients, and provide stronger accountability for state and federal funds.¹²

⁹ Minnesota statutes define five different types of providers; see *Minnesota Statutes 2025*, 256B.0949, subs. 5a and 15. Qualifications range from 1,000 to 6,000 hours of supervised clinical experience, and from high school equivalency to advanced medical degrees. In general, providers with more experience and education need less supervision, and providers with less experience and education require more supervision from more experienced providers.

¹⁰ Effective June 1, 2025, DHS designated EIDBI provider agencies as high risk. High risk provider types must undergo revalidation once every three years. Prior to the high-risk designation, EIDBI providers were required to undergo revalidation once every five years.

¹¹ *Laws of Minnesota 2025*, First Special Session, chapter 9, art. 6, sec. 1, codified as *Minnesota Statutes 2025*, 245A.142.

¹² Effective November 1, 2025, DHS issued a temporary enrollment moratorium for new EIDBI provider agencies. During the moratorium, DHS will not enroll any new EIDBI provider agencies.

DHS Investigation and Sanction Authority

To prevent fraud and ensure appropriate use of state and federal resources, DHS has authority to investigate MA providers and impose sanctions, when warranted. This investigation and sanction framework is not limited to EIDBI providers, but applies generally to all MA providers and programs.

Both state and federal law require DHS to establish procedures for identifying, investigating, and sanctioning fraud in MA programs.

Federal law requires state agencies administering Medicaid programs to develop methods and criteria for identifying, investigating, and addressing fraud cases.¹³ Consistent with these federal directives, state law mandates that DHS establish “general criteria and procedures for the identification and prompt investigation of suspected medical assistance fraud” and other improper conduct, “and for the imposition of sanctions against a vendor of medical care.”¹⁴ To satisfy this obligation, DHS adopted administrative rules to govern procedures for investigating potential fraud, theft, abuse, and error, and for imposing sanctions.¹⁵

State law also authorizes DHS to impose sanctions and recover funds in response to certain provider conduct or circumstances, including fraud related to MA participation.¹⁶ DHS may impose sanctions such as the suspension or withholding of payments, suspension or termination of participation in the program, or the imposition of a fine.¹⁷

Generally, sanctions and monetary recovery may be imposed only after prior notice and an opportunity for a hearing is provided according to the state Administrative Procedure Act.¹⁸ However, statutes require DHS to withhold or reduce payments to a provider *without* advance notice if there is a “credible allegation of fraud” under DHS investigation.¹⁹ The statute that grants this authority does not provide a definition of

¹³ 42 *CFR*, sec. 455.13 (2024). Pursuant to *Minnesota Rules* 2025, 9505.2160, subp. 1, the rules DHS adopted that are consistent with these federal requirements apply to all Minnesota Health Care Program vendors, including MA providers.

¹⁴ *Minnesota Statutes* 2025, 256B.04, subd. 10.

¹⁵ *Minnesota Rules* 2025, 9505.2200.

¹⁶ *Minnesota Statutes* 2025, 256B.064.

¹⁷ *Minnesota Statutes* 2025, 256B.064, subd. 1b.

¹⁸ *Minnesota Statutes* 2025, 256B.064, subd. 2(a). The Administrative Procedure Act is codified as *Minnesota Statutes* 2025, Chapter 14.

¹⁹ *Minnesota Statutes* 2025, 256B.064, subd. 2(b)(2). This statute reflects language in 42 *CFR*, sec. 455.23(a)(1) (2024), which requires state agencies to “suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program....” Federal regulations also permit agencies to suspend payment without first notifying the provider. 42 *CFR*, sec. 455.23(a)(2) (2024).

fraud, so DHS relies on the definition in its administrative rules when taking action in response to provider misconduct.²⁰

Federal law also requires DHS to refer cases to the state's Medicaid Fraud Control Unit (MFCU) whenever its investigations lead to payment suspension.²¹ If MFCU declines the referral, federal law then requires DHS to discontinue the payment suspension, unless there is alternative authority in state or federal law to suspend payments.²² State law authorizes DHS to continue a payment suspension if it has sent the provider a notice that it intends to impose sanctions.²³ In other words, even if MFCU declines a referral, DHS is authorized under state and federal law to suspend payments while it pursues administrative actions.

OLA Review

As stated in the introduction, we received a complaint that OIG had not appropriately investigated complaints about EIDBI providers. As part of this review, we analyzed EIDBI provider complaints OIG received between July 2017 and February 2024. To avoid drawing early conclusions on complaints that were still under investigation, we reviewed only the complaints and investigations that were closed by February 2024. This sample included a total of 25 complaints that DHS determined did not warrant investigation and 7 complaints for which OIG had completed an investigation.²⁴

In general, the seven OIG investigations we reviewed thoroughly addressed the allegations made against the providers. In all seven investigations, OIG staff took appropriate actions to investigate the allegations raised in the complaint and respond to investigation findings. For example, during most of the investigations we reviewed, OIG staff conducted interviews to gather information and requested records from providers. After completing their investigations, OIG staff responded to findings by withholding payments to providers; starting the process of monetary recovery for misused state funds; or referring investigation findings to other entities, such as managed care organizations and MFCU.

²⁰ Under *Minnesota Statutes* 2025, 256B.064, subd. 2(b)(2), allegations are “credible when they have an indicium of reliability and the state agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis.” A credible allegation can come from any source, including fraud hotline complaints; claims data mining; and patterns identified through provider audits, civil false claims cases, and law enforcement investigations.

²¹ 42 *CFR*, sec. 455.23(d)(1) (2024). This requirement is also reflected in state law, which requires DHS to inform the attorney general if a provider may have acted in a manner warranting civil or criminal proceedings. *Minnesota Statutes* 2025, 256B.04, subd. 10. Minnesota's MFCU is a division of the Attorney General's Office and employs teams of investigators, attorneys, and analysts to investigate and prosecute Medicaid provider fraud.

²² 42 *CFR*, sec. 455.23(d)(4) (2024). Under federal law, DHS could also continue the suspension if it refers the case to another law enforcement agency.

²³ *Minnesota Statutes* 2025, 256B.064, subd. 2(d).

²⁴ OIG received 66 complaints and began 18 investigations involving EIDBI providers between July 27, 2017, and February 15, 2024. For our review, we evaluated only the complaints and investigations that had been closed by February 15, 2024. We reviewed all complaints and investigations that met this criterion, for a total of 25 complaints and 7 investigations.

We agreed with OIG’s reason to close most of the complaints OIG did not investigate, based on the information OIG obtained or analyzed during its initial assessment of the complaint. For example, in 10 cases, the complaint did not involve an allegation of fraud, theft, abuse, or error involving fee-for-service payments; in other words, the 10 complaints were outside of OIG’s investigative authority. OIG closed another four complaints because billing data, provider licensure, or provider documentation did not support the allegations made by the complainant. Exhibit 2 summarizes the reasons OIG closed the 25 complaints we reviewed that were not triaged for investigation.

Exhibit 2

OIG’s Reasons for Closing Complaints Without Investigation

Reason for Complaint Closure	Number of Complaints
Not an allegation of fraud, theft, abuse, or error involving fee-for-service MA payments ^a	10
Allegation unsubstantiated based on OIG’s initial assessment of the complaint	4
Not enough information to investigate further	4
Kickback allegation ^b	3
Provider was not authorized to provide MA services	2
Allegation was referred outside DHS	1
Duplicate complaint combined with another complaint	<u>1</u>
Total	25

^a OIG referred four complaints in this category to other DHS divisions.

^b We grouped these complaints together because they involved allegations of kickbacks. One complaint was closed, according to OIG’s complaint file, because OIG believed it did not have authority to investigate allegations of kickbacks. OIG’s stated reason for closing the other two kickback-related complaints was because the providers, while authorized to provide MA services, had not yet requested reimbursement from DHS.

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

Three of the 25 complaints we reviewed involved allegations of kickbacks. When we questioned OIG’s reasoning for closing these complaints without investigation, DHS said it did not have the authority to investigate allegations of kickbacks alone.

Each of the three complaints involved allegations of kickbacks, where an EIDBI provider allegedly offered to pay parents or families to bring or transfer their children to the provider organization to receive EIDBI services. It is illegal under federal law to offer or receive anything of value to induce referrals or business for services covered by federal healthcare programs, including Medicaid.²⁵

²⁵ 42 U.S. Code, sec. 1320a-7b(b)(1) and (2) (2024).

For all three complaints, OIG determined that the EIDBI providers involved were authorized by DHS to provide MA services. While OIG closed two of the complaints because the providers had not yet requested reimbursement, OIG's stated reason for closing the third complaint was because that allegation concerned only kickbacks and no other forms of fraud, theft, abuse, or error.²⁶ OIG closed all three complaints without investigating further, flagging the providers for future investigation, or referring the complaint to another entity that could investigate fraud in MA.

When we inquired about DHS's legal authority to investigate kickbacks in the EIDBI program, it stated that OIG did "not have the authority to investigate allegations that only describe conduct constituting a 'kickback' in the Minnesota Health Care Program (MHCP) (including EIDBI)."²⁷ During the 2025 legislative session, DHS leadership similarly testified that the department did not have statutory authority to investigate standalone kickback allegations against providers. Rather, they stated DHS could only act on a kickback allegation if it was accompanied by a credible allegation of some other conduct constituting fraud. In other words, DHS stated, kickbacks were "not necessarily" fraud under statute and therefore DHS could not initiate an investigation solely based on a kickback allegation.²⁸

As we discuss in the following section, we disagree with DHS's assertion that it did not have the authority to investigate allegations of kickbacks alone. Based on our analysis, DHS has had the authority to investigate allegations of kickbacks in MA since the late 1990s.

DHS's Preexisting Sanction Authority

The 2025 Legislature adopted legislation that added explicit authority to sanction MA providers that solicit, receive, pay, or offer to pay kickbacks.²⁹ Additionally, the Legislature enacted a new statute criminalizing kickbacks in health care programs at the state level, allowing DHS to forward investigation information regarding kickbacks to the attorney general for criminal prosecution.³⁰

²⁶ For the third complaint, the information in OIG's case file did not indicate whether the provider had requested reimbursement for provision of MA goods or services. According to our analysis of data from the state's accounting system, the provider named in the complaint had received MA reimbursements from the state before and after OIG's receipt and closure of the complaint. At the time of our analysis in February 2026, the provider continued to receive regular MA reimbursements from DHS.

²⁷ Amanda Novak, Manager, Medicaid Provider Audits and Investigations, Minnesota Department of Human Services, letter to the Office of the Legislative Auditor, *Re: OLA Inquiry Dated April 17, 2025*, May 1, 2025, 1. More fully, DHS asserted that, because its investigative authority was for the sole purpose of imposing sanctions, and because it did not have authority to sanction providers for kickbacks, it therefore did not have authority to investigate allegations of kickbacks. According to DHS, it pursued legislation in the 2019, 2024, and 2025 legislative sessions because it believed it did not have authority to investigate or sanction for kickback allegations alone.

²⁸ Minnesota House of Representatives Fraud Prevention and State Agency Oversight Policy Committee, *Behavioral Health Administration Overview and Program Integrity*, March 17, 2025, video recording, starting at minute 74. Testifying on behalf of DHS were Shireen Gandhi, Temporary Commissioner; Teresa Steinmetz, Assistant Commissioner, Behavioral Health Administration; and Elyse Bailey, Budget Director.

²⁹ *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 28, codified as *Minnesota Statutes 2025*, 256B.064, subd. 1a(c). The Appendix to this report describes this change and others.

³⁰ *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 32, codified as *Minnesota Statutes 2025*, 609.542.

However, as we explain in this section, state law prior to 2025 already authorized DHS to impose sanctions for kickbacks. In addition, if DHS had corrected an error in its administrative rules, two other decades-old state law provisions would also have permitted DHS to suspend payments during an investigation for kickbacks. Exhibit 3 summarizes these three sources of authority that existed prior to 2025.

Exhibit 3

Prior to 2025, DHS had legal authority to address kickbacks.

	Existing Authority in Minnesota Statutes	Authority in Minnesota Statutes if DHS Had Corrected an Error in Its Rules	
Statutory Basis for DHS Action	For <i>any reason</i> for which a provider <i>could be</i> excluded from participation in Medicare under certain federal laws	For <i>fraud</i> by program vendors	For credible allegations of fraud by program vendors ^b
Application to Kickbacks	Kickbacks are included in the statute by reference to federal law	DHS could have defined fraud to include kickbacks by correcting an error in its rule	DHS could have defined fraud to include kickbacks by correcting an error in its rule
Timing of Consequences	Only after due process; in this case, providing notice and an opportunity for a hearing about the actions	Only after due process; in this case, providing notice and an opportunity for a hearing about the actions	While investigation is pending; no prior notice or hearing is required
Consequences	Sanctions, as outlined in law ^a	Sanctions, as outlined in law ^a	Only withholding or reducing payments

^a Available sanctions under this statute are: “suspension or withholding of payments to an individual or entity and suspending or terminating participation in the program, or imposition of a fine....” *Minnesota Statutes* 2025, 256B.064, subd. 1b.

^b Allegations of fraud are considered credible when they have an indicium of reliability and DHS has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis. DHS is required to withhold or reduce payments under this statute when it receives a credible allegation of fraud. *Minnesota Statutes* 2025, 256B.064, subs. 2(b) and 2(b)(2).

Sources: *Minnesota Statutes* 2025, 256B.064, subs. 1a(a)(1), 1a(a)(8), and subd. 2(b)(2); and *Minnesota Rules* 2025, 9505.2165, subp. 4(C).

Regardless of the legislative changes in 2025, Minnesota law has long authorized DHS to impose sanctions for kickbacks by citing specific federal Social Security Act provisions.

State statutes permit DHS to impose sanctions on MA providers for committing acts that could be sanctioned under the federal Social Security Act (SSA). Specifically, since 1997, state law has permitted DHS to impose sanctions for “*any reason* for which an individual or entity *could be* excluded from participation in the Medicare program” under specified sections of the SSA.³¹ Among other things, the specified sections of the

³¹ Emphasis added. *Minnesota Statutes* 2025, 256B.064, subd. 1a(a)(8). The law, as passed in 1997, originally referred to “vendor[s]” rather than “individual[s] or entit[ies].”

SSA authorize the federal Department of Health and Human Services (HHS) to exclude individuals or entities from Medicare, Medicaid, and other programs if they engage in acts described in the federal anti-kickback statute.³² Thus, because engaging in conduct that would violate the federal anti-kickback statute is a permissible basis for exclusion under the SSA, it is also a permissible basis under state law for DHS to impose sanctions on MA providers.

DHS explained that it interpreted state law to permit sanctions only upon an HHS determination that the provider engaged in kickbacks. In DHS's interpretation, the *reason* for which a provider *could be* sanctioned under state law is HHS's determination that the provider has engaged in kickbacks. According to DHS, it has only imposed sanctions based upon this authority when HHS has placed a provider on the federal exclusion list.³³

We believe that DHS's interpretation is overly cautious. While no legal position is without risk, we believe that state law authorized DHS to sanction providers who engage in conduct for which HHS *could* exclude them, even if HHS has not determined that the conduct occurred or excluded the provider. Our interpretation is consistent with language in the statute that authorizes DHS to impose "sanctions for the conduct described."³⁴ In fact, the Minnesota Supreme Court described the portion of the statute that references the SSA as "requiring nothing more than proof that the proscribed conduct occurred for DHS to seek sanctions."³⁵

³² *Minnesota Statutes* 2025, 256B.064, subd. 1a(a)(8), refers to "section 1128, 1128A, or 1866(b)(2) of the Social Security Act." Sections 1128 and 1128A of the Social Security Act are codified as, respectively, 42 *U.S. Code*, sec. 1320a-7 (2024); and 42 *U.S. Code*, sec. 1320a-7a (2024). Both sections permit program exclusion to be imposed for kickbacks. See 42 *U.S. Code*, sec. 1320a-7(b)(7) (2024); and 42 *U.S. Code*, sec. 1320a-7a(a)(7) (2024). The federal anti-kickback statute is in section 1128B of the Social Security Act, codified as 42 *U.S. Code*, sec. 1320a-7b(b) (2024). Individuals and entities placed on the federal exclusion list cannot receive payment from federal health care programs for any items or services they furnish, order, or prescribe.

³³ DHS also told us it has not otherwise sanctioned providers for kickbacks under this authority because doing so would require Administrative Law Judges and "DHS to interpret whether the federal Health and Human Services agency would find the conduct at issue to warrant an exclusion." Betsy Schollmeier, OIG Chief Legal Counsel, Minnesota Department of Human Services, letter to Nathan Shepherd, General Counsel, Office of the Legislative Auditor, *RE: Follow-up questions regarding investigations of Early Intensive Developmental and Behavioral Intervention (EIDBI)*, July 2, 2025, 1. We believe DHS and Administrative Law Judges are capable of interpreting and applying federal law in making MA decisions.

³⁴ *Minnesota Statutes* 2025, 256B.064, subd. 1b. This same construction is also used in other portions of this statute. See *Minnesota Statutes* 2025, 256B.064, subds. 1c(a), 2(b)(1), and 2(c)(3).

³⁵ *In re SIRS Appeal by Best Care, LLC*, 26 N.W.3d 459, 471 (Minn. 2025) (contrasting this absence of causal language in subdivision 1a with the requirement to prove that the conduct caused an improper payment when DHS pursued monetary recovery under subdivision 1c). In a brief to the court for this case, DHS described the bill that enacted the SSA-referencing language as having "no provisions...that would reflect a legislative intent to limit DHS's authority or reduce its ability to recover Medicaid funds." Minnesota Department of Human Services, Brief of Appellant/Cross-Respondent to Minnesota Supreme Court, *In re SIRS Appeal by Best Care, LLC*, No. A22-1688, March 21, 2024, 26.

In contrast, other provisions of this statute require HHS action before DHS may suspend payments or terminate providers.³⁶ In the absence of similar language where the statute refers to the SSA, DHS’s interpretation adds a requirement that is not present in the law’s plain language. Thus, we believe the more reasonable interpretation of this language is that DHS could have imposed sanctions on providers who engaged in kickbacks, regardless of whether HHS had determined that they did so.

DHS’s administrative rules have—for decades—contained an error in the definition of “fraud.” While DHS could have acted at any time to revise its rules, it has permitted the error to stand since 1995, limiting its authority to address kickbacks.

DHS could have acted independently to remedy its perceived lack of authority to address kickbacks. Specifically, DHS could have done so by correcting an error in its rules—an administrative process that is well within DHS’s authority.³⁷

Since 1980, state law has authorized DHS to impose sanctions for “fraud...in connection with the provision of goods and services” to MA recipients, with advance notice and an opportunity for a hearing.³⁸ Additionally, since 2011, the statute has granted DHS authority to withhold or reduce payments to a provider *without* advance notice if there is a “credible allegation of fraud” under DHS investigation.³⁹ As previously discussed, “fraud” in these situations is defined in DHS’s administrative rules.⁴⁰

Relevant to kickbacks, the definition of “fraud” in DHS’s administrative rules includes “a felony listed in United States Code, title 42, section 1320a-7b(b)(3)(D)...”⁴¹ The precise words and citation are notable because, while the *subsection* (subsection (b)) named in the citation is the federal anti-kickback statute, the more specific *paragraph* (paragraph (b)(3)) cited in the state administrative rule does not list any felonies. Instead, that paragraph identifies exceptions—one of which is in *subparagraph* (b)(3)(D), cited in DHS’s rule—to the felonies listed in paragraphs (b)(1) and (b)(2) of that federal law.⁴² The relevant portions of this law have remained unchanged since 1990.

³⁶ Specifically, one provision permits payment termination when a provider “has been determined to be ineligible for payments” in the Medicaid program. *Minnesota Statutes* 2025, 256B.064, subd. 1. Another provision similarly requires suspension or termination of a vendor without notice “because of the [vendor]’s exclusion from participation in Medicare.” *Minnesota Statutes* 2025, 256B.064, subd. 2(e).

³⁷ *Minnesota Statutes* 2025, 256B.04, subd. 2.

³⁸ *Minnesota Statutes* 2025, 256B.064, subds. 1a(a)(1) and 2(a). The law, as passed in 1980, originally referred to the provision of “medical care,” rather than “goods and services,” to MA recipients.

³⁹ *Minnesota Statutes* 2025, 256B.064, subd. 2(b)(2).

⁴⁰ *Minnesota Rules* 2025, 9505.2165, subp. 4.

⁴¹ *Minnesota Rules* 2025, 9505.2165, subp. 4(C).

⁴² As noted above, kickbacks are described and prohibited by 42 *U.S. Code*, sec. 1320a-7b(b)(1)–(2) (2024). 42 *U.S. Code*, sec. 1320a-7b(b)(3) (2024), lists types of conduct to which the anti-kickback prohibition “shall not apply,” including the subparagraph cited in DHS’s rule. That subparagraph—42 *U.S. Code*, sec. 1320a-7b(b)(3)(D) (2024)—reads, in full, “a waiver of any coinsurance under part B of subchapter XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.]”

Documents from DHS's rulemaking process in 1994–1995 indicate DHS intended to include the federal anti-kickback statute on “a list of specified state and federal statutes” describing conduct that would constitute “fraud” under the state rule.⁴³ More specifically, DHS aimed to preclude reimbursement to MA providers who commit the types of felonies described in the federal anti-kickback statute.⁴⁴

DHS cited the incorrect federal statutes in its 1995 amendment to the rule, and it has remained the same ever since.⁴⁵ DHS has not corrected this error in the more than 30 years since it occurred, despite amending other parts of the rule.⁴⁶ DHS has authority to amend the rule and correct the citation to federal law without any legislative action.⁴⁷ Had DHS done so at any point since 1995, it would have had clear authority to suspend payments while investigating credible allegations of kickbacks and to impose sanctions on providers who engage in kickbacks.⁴⁸

In response to questions during our review, DHS told us that it “is not aware of anything preventing [it] from attempting to get the rule modified” to include kickbacks and that it was reviewing potential changes to its administrative rules.⁴⁹ However, after reviewing our draft report, DHS suggested it was uncertain that a rule amendment to clearly include kickbacks “would survive a rulemaking challenge.”⁵⁰ We think it is unlikely that a rule amendment would fail, but we also do not believe that a

⁴³ *In re Proposed Adoption of Amendments to Department of Human Services Rules Governing the Surveillance and Integrity Review Program, Minn. Rules, Parts 9505.2160 to 9505.2245*, OAH 6-1800-9090-1, at 6 (January 19, 1995).

⁴⁴ DHS proposed the rule amendment to define fraud to include “[a] felony listed in the federal statutes, subject to the exceptions listed in the federal regulations.” Minnesota Department of Human Services, Statement of Need and Reasonableness, *In re Proposed Adoption of Amendments to Department of Human Services Rules Governing the Surveillance and Integrity Review Program, Minnesota Rules, Parts 9505.2160 to 9505.2245*, September 2, 1994, 8.

⁴⁵ When we asked DHS about this administrative rule, the department told us that the citation was correct when the rule was adopted, but that the rule had not been updated to reflect later amendments to federal law. DHS noted it had no institutional knowledge about why the department had not corrected the rule. However, our research indicates that the relevant portions of federal law referenced in the rule have been the same since 1990. DHS acknowledged that the law currently cited in the rule is an exception to the anti-kickback federal statute.

⁴⁶ See 33 *State Register*, p. 127 (2008).

⁴⁷ *Minnesota Statutes 2025*, 256B.04, subd. 2.

⁴⁸ After we raised the issue of this erroneous citation, DHS agreed that “[i]f the Rule were modified to cite to the federal kickback law, then DHS could investigate and take action against providers.” Schollmeier, letter to Shepherd, July 2, 2025, 3.

⁴⁹ Schollmeier, letter to Shepherd, July 2, 2025, 3. *Minnesota Statutes 2025*, 14.05, subd. 5, requires agencies to review their administrative rules and determine whether any are obsolete, unnecessary, or duplicative. It is unclear whether DHS discovered this defect in its administrative rules before we inquired about it in mid-2025. As of February 2026, DHS had not published any proposed changes to the relevant administrative rule.

⁵⁰ Minnesota Department of Human Services, letter to the Office of the Legislative Auditor, *OLA Draft Report – DHS Preliminary Comments*, February 19, 2026, 5. According to DHS, because state statutes “did not authorize DHS to impose sanctions based on the payment of kickbacks,” it could not define fraud to include kickbacks in its administrative rule. As described above, we do not agree that DHS did not have authority in state statute to impose sanctions on the basis of kickbacks. We also note that the rule defining fraud already includes conduct that DHS has no other statutory authority to administratively address.

hypothetical risk of failure should prevent DHS from proposing rule changes to strengthen its authority to address kickbacks.

Ongoing Limits to DHS's Authority

The incorrect citation to the federal anti-kickback law has another, ongoing effect.

Until fraud is defined in administrative rule or applicable state law to include kickbacks, it is unclear whether DHS has legal authority to suspend payments to an MA provider while investigating credible allegations of kickbacks alone.

DHS is authorized to impose sanctions on providers for any of several reasons identified in state statute, but may not do so “without prior notice and an opportunity for a hearing” unless the circumstances fit one of the statutory exceptions.⁵¹ One of the exceptions is that DHS may withhold or reduce payments to providers if it “determines there is a credible allegation of fraud for which an investigation is pending under the program.”⁵² The statute identifies the circumstances that would cause an allegation of fraud to be credible, and DHS applies the definition of fraud in its administrative rules to determine when an alleged action constitutes “fraud.” Because DHS incorporated a faulty citation in its rule—as discussed in the previous section—it may not have authority to withhold or reduce payments to providers on the basis of kickbacks alone without prior notice and a hearing.⁵³

Further, while the definition of fraud in DHS's administrative rules refers to violations of several state criminal laws as fraud, that definition does not presently include violations of the recently enacted state law criminalizing kickbacks.⁵⁴ As a result, it is not clear that an allegation consisting solely of kickbacks is a type of fraud for which DHS could suspend payments during an investigation, even if it receives a credible allegation. Because this statute applies to all MA providers, it is possible DHS cannot suspend payments while it investigates credible allegations of kickbacks in any MA program.

⁵¹ *Minnesota Statutes 2025*, 256B.064, subd. 2.

⁵² *Minnesota Statutes 2025*, 256B.064, subd. 2(b)(2).

⁵³ Stated differently, if DHS determines other alleged conduct meets the definition of “credible allegation of fraud,” it *would* have the authority to suspend payments to an MA provider without prior notice and a hearing. It is possible that DHS encounters few cases that involve only allegations of kickbacks. Nevertheless, the lack of clear authority to suspend payments in these cases is a possible limitation to DHS's ability to ensure public funds are used as intended.

⁵⁴ The definition of fraud incorporates state statutes criminalizing specific types of theft, perjury, aggravated forgery and forgery, medical assistance fraud, and financial transaction card fraud. *Minnesota Rules 2025*, 9505.2165, subp. 4(A). The rule definition does not, however, incorporate the state statute criminalizing kickbacks in federal health care programs, which was adopted in 2025. *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 32, codified as *Minnesota Statutes 2025*, 609.542.

The 2025 legislative changes also did not provide clear additional authority for DHS to suspend payments during an investigation into kickback allegations without notice and an opportunity for the provider to object in an administrative hearing. For example:

- In 2025, the Legislature specifically added kickbacks to the list of conduct for which DHS may impose sanctions, but this addition does not authorize the suspension of payments during an investigation.⁵⁵
- The statute criminalizing kickbacks that was enacted in 2025 does not, on its own, provide authority to suspend payments.⁵⁶
- Statewide payment-withholding authority provided through 2025 legislative changes is more limited and does not clearly include authority to suspend payments for kickbacks.⁵⁷

As a result, if DHS does not add kickbacks to its definition of fraud in rule or the Legislature does not otherwise act to resolve this issue, DHS could be required to continue paying providers through any contested case proceeding, even if it receives a credible allegation that a provider is engaging in kickbacks (and no other fraud, theft, abuse, or error) now criminalized in state law.

RECOMMENDATION

DHS should amend its administrative rule defining “fraud” to clearly include kickbacks. If DHS does not pursue an amendment, the Legislature should act to resolve this issue.

To establish clear authority to address kickbacks by MA providers, DHS should amend its rules to clearly include kickbacks in the definition of “fraud.” This could be

⁵⁵ See *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 28, codified as *Minnesota Statutes 2025*, 256B.064, subd. 1a(c).

⁵⁶ *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 32, codified as *Minnesota Statutes 2025*, 609.542. In response to a draft of this report, DHS told us that this statute provided authority to suspend payments during an investigation into a credible allegation of fraud. DHS noted that, under this new criminal statute, items or services paid as a result of kickbacks are subject to a state law that permits a court to impose civil penalties for submitting false or fraudulent claims to the state (also known as the “false claims act”). However, neither this new criminal statute nor the state false claims act contains any language directly relating to DHS’s administrative authority to investigate or impose sanctions for kickbacks. We also note that, on the impact of this new criminal statute, DHS previously told us that “[t]his specific statute does not...expand DHS’ authority to investigate fraud.” Schollmeier, letter to Shepherd, July 2, 2025, 2.

⁵⁷ *Laws of Minnesota 2025*, chapter 39, art. 2, sec. 22, codified as *Minnesota Statutes 2025*, 15.013, provides new authority across state programs for agencies to withhold payments for 60 days for “fraud.” While that statute’s fraud definition includes “acts that constitute a crime against any program,” kickbacks in MA programs are not listed with other acts specifically included in the statute. The statute also provides more limited authority than *Minnesota Statutes 2025*, 256B.064, subd. 2(b)(2), in a number of ways. Most notably, section 15.013 only permits agencies to withhold payments for 60 days after the agency determines that a preponderance of the evidence shows that the program participant has committed fraud to obtain payments. In addition, section 15.013 authorizes payment recipients to appeal the payment withholding through an administrative proceeding, while the withholding or reduction of payments under section 256B.064 is not subject to any right of appeal. Finally, section 15.013 expires in 2027.

accomplished by correcting the citation to the federal anti-kickback statute or by adding a reference to the state statute criminalizing kickbacks enacted during the 2025 legislative session.⁵⁸

If DHS does not initiate a rulemaking process to correct the issue we identified, the Legislature should take steps to ensure that DHS has full authority to address kickbacks. This could be accomplished through a direction in law for DHS to correct the rule or the enactment of additional statutory language clarifying that kickbacks are a type of fraud for which DHS can suspend payments during an investigation.

Appendix: 2025 Legislative Changes

In 2025, the Minnesota Legislature made a number of changes to law related to allegations of kickbacks in MA and other public programs. This section summarizes key changes.

Paying or receiving kickbacks in the Child Care Assistance Program (CCAP) prohibited. New language prohibits paying or receiving kickbacks in CCAP and authorizes DHS to pursue administrative disqualification from CCAP for engaging in kickbacks in MA or in CCAP.

- *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 1, codified as *Minnesota Statutes 2025*, 142E.51, subd. 5.
- *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 3, codified as *Minnesota Statutes 2025*, 142E.51, subd. 6a.

DHS granted sanction authority in MA programs for kickbacks. Revisions to existing law add explicit authority for DHS to impose sanctions in MA programs on the basis of kickbacks in CCAP, kickbacks as criminalized by newly enacted state law, or kickbacks as prohibited in the federal MA anti-kickback law.

- *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 28, codified as *Minnesota Statutes 2025*, 256B.064, subd. 1a(c).

Kickbacks criminalized under state law. A new section of law criminalizes kickbacks in MA, CCAP, and substance use disorder treatment programs.

- *Laws of Minnesota 2025*, chapter 38, art. 5, sec. 32, codified as *Minnesota Statutes 2025*, 609.542.

Data sharing related to fraud authorized. A new section of law authorizes government agencies to share data relating to fraud in public programs with state or federal agencies and law enforcement agencies. Fraud is defined to include receiving

⁵⁸ If DHS chooses to amend its rules to refer to this recently adopted statute, we believe it should also correct or remove the incorrect citation to the federal anti-kickback statute for clarity.

funds by knowingly engaging in deception or submitting false statements, as well as engaging in criminal violations against a program such as theft, perjury, or forgery.

- *Laws of Minnesota 2025*, chapter 39, art. 2, sec. 16, codified as *Minnesota Statutes 2025*, 13.357.

Payment withholding authority for evidence of fraud. A new statute authorizes, until July 1, 2027, executive branch agencies and Minnesota State colleges and universities to withhold payments for up to 60 days if “a preponderance of the evidence shows that the program participant has committed fraud to obtain payments.” Payment suspensions under this section are subject to an administrative appeal by the recipient. Fraud is defined to include receiving funds by knowingly engaging in deception or submitting false statements, as well as engaging in criminal violations against a program such as theft, perjury, or forgery.

- *Laws of Minnesota 2025*, chapter 39, art. 2, sec. 22, codified as *Minnesota Statutes 2025*, 15.013.



OLA



**Minnesota Department of Human Services
Office of Inspector General
Inspector General James Clark
444 Lafayette Road
St. Paul, Minnesota 55155**

March 13, 2026

Judy Randall, Legislative Auditor
Office of the Legislative Auditor
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Ms. Randall:

Thank you for the opportunity to review and comment on the limited special review titled *Department of Human Services Investigations of Alleged Kickbacks in the Early Intensive Developmental and Behavioral Intervention Program*. The Department values the Office of Legislative Auditor's evaluation of this issue. We have worked intently to detect and prevent fraud while improving [program integrity](#) and oversight of essential programs and services in Minnesota. We cannot achieve this alone, and strive to work in partnership with others to strengthen our controls against fraud, waste and abuse.

We are pleased that the auditors found the work of the Office of Inspector General to be thorough and appropriate in most of the cases sampled. And while the Department believes it currently has legal authority to suspend payments to a Medicaid provider while investigating credible allegations of kickbacks, we agree with the recommendation that fraud should be defined to more clearly include kickbacks.

Below is the Department's response to the recommendation.

Audit Recommendation

- DHS should amend its administrative rule defining "fraud" to clearly include kickbacks. If DHS does not pursue an amendment, the Legislature should act to resolve this issue.

Agency Response

The Department identified the need to more clearly define "fraud" for purposes of Medicaid investigations into fraud, waste and abuse. The Department developed a legislative proposal to include the definition of fraud in statute, specifically in section 256B.02. This definition will be more comprehensive than the current language in Minnesota Rules, part 9505.2165, providing greater clarity as to what conduct constitutes fraud, and for the purposes of this report, make explicit that a "kickback"

Judy Randall, Legislative Auditor

March 13, 2026

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meets the definition of fraud. The Department intends to engage in rulemaking to more clearly define "fraud" if its legislative proposal is unsuccessful.

Estimated Completion date: The Department will put forth its legislative proposal during the current legislative session. The proposal would be effective August 1, 2026, if passed and signed into law. If the Department's legislative proposal is unsuccessful, the Department anticipates that rulemaking will take approximately 12 to 24 months, unless it is determined a good cause exemption applies or the Legislature authorizes expedited rulemaking.

We appreciated your staff's professionalism and dedicated efforts during this limited special review. 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 "J. H. Clark" with a stylized flourish at the end.

James Clark

Inspector General

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