

Special Report

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**Statewide Review of  
Budget Closeout Transactions for  
Fiscal Year 2020**

January 2021

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**OFFICE OF LEGISLATIVE AUDITS**  
**DEPARTMENT OF LEGISLATIVE SERVICES**  
**MARYLAND GENERAL ASSEMBLY**

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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Gregory A. Hook, CPA  
Legislative Auditor

January 26, 2021

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee  
Delegate Carol L. Krimm, House Chair, Joint Audit and Evaluation Committee  
Members of Joint Audit and Evaluation Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a review of the State's budget closeout transactions for the fiscal year ended June 30, 2020. Our review of closeout transactions disclosed general compliance with the applicable laws, regulations, and policies. However, we determined that certain transactions pertaining to the following agencies were not in compliance:

Department of State Police  
Maryland Department of Health  
Maryland Department of Labor  
Maryland Insurance Administration  
Maryland State Department of Education

Additionally, we noted significant potential liabilities pertaining to the Maryland Department of Health and the Maryland Health Benefit Exchange that were reported at June 30, 2020.

A summary of our findings, by agency, is included in Exhibit 1.

Generally, the non-compliant transactions we identified suggest that additional State funds may be required to eliminate potential deficits. Specifically, one State department recorded federal fund revenues totaling \$5,875,000 that were deemed unrecoverable. Another department reported revenues totaling \$551.5 million that, according to the State's independent auditor, could not be recorded under generally accepted accounting principles. This department also, because of certain automated system failures, made estimated payments totaling

approximately \$1.06 billion to behavioral health service providers between January and August 2020, resulting in potential overpayments of approximately \$225.6 million and potential underpayments of approximately \$61.7 million. The department advised us that, effective August 13, 2020, the system was corrected and that payments were based on actual claims submitted. Although investigations of overpayments and underpayments were started in December 2020, we were advised that any recoupment of overpayments will not begin until June 2021. We also found that another department retained \$235,000 in unused State grant funds without legal authority, and a further department had a year-end special fund deficit balance totaling approximately \$509,000.

In addition, one department reported a total of \$40.3 million in unprovided for general fund payables or other general fund liabilities as of June 30, 2020 (Exhibit 2). Specifically, this department reported a liability of approximately \$34.2 million attributable to the disallowance of certain claims by the federal government. A similar condition was included in our reports on the review of the fiscal years 2019, 2018, 2017, 2016, and 2015 closeout transactions related to this department. Furthermore, the department reported an additional unprovided for payable of approximately \$6.1 million related to the over expenditure of a certain appropriation. We also identified one other agency that had a potential \$28.4 million federal liability. The expenditures related to these liabilities may have to be funded with subsequent year appropriations (or through a deficiency appropriation). Finally, one department did not transfer funds totaling \$8.1 million to another department as required by State law.

The primary objective of this annual review is to alert the Maryland General Assembly to significant financial and budgetary closeout practices that do not comply with applicable laws, regulations, and policies and to determine if other significant liabilities existed at fiscal year-end. The issues identified during this review will be fully addressed, as appropriate, in our fiscal compliance audit reports on the applicable agencies, which will include relevant recommendations. We wish to acknowledge the cooperation extended to us during the course of our review by the Comptroller of Maryland's General Accounting Division and by the various State agencies.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA  
Legislative Auditor

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## **Background Information**

The Comptroller of Maryland – General Accounting Division (GAD) annually provides State agencies with instructions for completing the fiscal year-end budget closeout process. State agencies individually report to GAD their fiscal year-end closeout transactions that have not been previously recorded in the State’s accounting records. GAD is responsible for closing the State’s accounting records on a statewide basis and for preparing the State’s *Comprehensive Annual Financial Report (CAFR)*.

GAD contracts with an independent accounting firm for the purpose of expressing an opinion on the State’s basic financial statements contained in the *CAFR*, which, as of January 22, 2021, had not yet been finalized for fiscal year 2020. The firm will determine whether the State’s financial statements have been presented fairly, in all material respects, the respective financial position of the State of Maryland as of June 30, 2020, and the respective changes in the financial position and cash flows, for the year then ended in accordance with accounting principles generally accepted in the United States of America (referred to as GAAP).

## **Introduction, Objectives, and Scope**

We conducted a review of the State's budget closeout transactions for the fiscal year ended June 30, 2020. This review was conducted under the authority of the State Government Article, Section 2-1220 of the Annotated Code of Maryland.

The objective of our review was to determine whether budget closeout transactions, for the fiscal year ended June 30, 2020, were properly supported and made in accordance with State budgetary laws, regulations, and accounting policies and to determine if other significant liabilities existed at fiscal year-end.

Our review consisted of tests of significant year-end transactions, based on our assessment of risk and materiality, for 14 departments and independent agencies to ascertain if the transactions were properly supported and made in accordance with State budgetary laws, regulations, and accounting policies and to determine if other significant liabilities existed at fiscal year-end. We reviewed, on a limited basis, transactions processed subsequent to June 30, 2020 to determine if the transactions were properly recorded (such as charged or credited to the proper fiscal year).

As part of our current review, we contacted various officials of State agencies. Our review excluded public colleges and universities and transactions processed through the Transportation Trust Fund because the related financial activity does not involve the State's General Fund and/or because agencies have the authority to retain unspent funds at year-end. Our conclusions for the aforementioned objective are contained on page 7 of this report.

We also assessed the status of the six issues identified in our January 16, 2020 report entitled *Statewide Review of Budget Closeout Transactions for Fiscal Year 2019*. We determined three of the six issues were resolved. The remaining three issues are repeated and appear as four issues in this report (see Exhibit 1).

Our review was limited to the procedures necessary to accomplish the aforementioned objective. These procedures did not constitute an audit conducted in accordance with generally accepted government auditing standards (GAGAS). Had we conducted an audit in accordance with GAGAS, those standards would require the issuance of recommendations as part of our reporting process. In addition, other matters may have come to our attention that would have been reported. We advised the appropriate agencies of our findings. Formal responses were not requested since this report contains no recommendations. Our fieldwork was conducted during the period from September 2020 to January 2021.



## **Findings**

### **Conclusion**

Our review of State agencies' budget closeout transactions disclosed that such transactions were generally properly supported and made in accordance with State budgetary laws, regulations, and accounting policies. However, we determined that three departments or agencies were not in compliance primarily because certain year-end transactions were not properly recorded, could not be substantiated, or did not comply with budget closeout requirements. Additionally, we determined that four agencies or departments had significant payables or liabilities at June 30, 2020 that may require general funds.

### **Revenue Transactions**

One department recorded federal fund revenues totaling approximately \$5.9 million to cover certain expenditures. Although the department has advised the Comptroller of Maryland – General Accounting Division (GAD) of its plan to fund these expenditures using future sources of revenue, to the extent these funds are not received, general funds will be required to eliminate the deficits resulting from these transactions. Another department made a revenue accrual totaling \$551.5 million that was determined not to be allowable by the independent auditor of the State's *Comprehensive Annual Financial Report*.

### **Expenditure Transactions**

One department, because of certain automated system failures, made estimated payments totaling approximately \$1.06 billion to behavioral health service providers between January and August 2020, resulting in potential overpayments of approximately \$225.6 million and potential underpayments of approximately \$61.7 million.

### **Encumbrance Transaction**

One department improperly encumbered unused State grant funds totaling \$235,000 that should have been reverted to the State's General Fund at fiscal year-end.

### **Special Funds**

One department had a long-standing year-end special fund deficit balance totaling \$509,000, which had increased from the prior year-end.

### **Other Liabilities**

One department reported a total of \$40.3 million in unprovided for general fund payables or other general fund liabilities as of June 30, 2020. For example, this department, which had a similar issue in our five preceding closeout reports, may

require general funds of approximately \$34.2 million to cover an unfunded liability attributable to the disallowance of certain federal reimbursement claims. Another agency had a potential \$28.4 million liability to the federal government related to certain misallocated expenditures. Furthermore, one agency could not readily explain a deficit of \$1.4 million.

According to an opinion of the Attorney General, unprovided for payables are not a violation of State law if the General Assembly enacts a budget bill for the subsequent year containing an appropriation that can be used to fund these expenditures.

### **Other Issues**

One agency could not justify retention of a certain fund balance, which totaled \$8.1 million as of June 30, 2020.

A summary of our findings, by agency, is included in Exhibit 1.

## **Revenue Transactions**

### **Finding 1**

**The Maryland Department of Labor has determined that \$5,875,000 in previously recorded federal fund revenues is unrecoverable.**

### **Analysis**

Our January 16, 2020 report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2019* noted that **Maryland Department of Labor (MDL)** had unsubstantiated accrued federal fund revenues totaling \$6,375,000, which MDL had deemed to be unrecoverable. These accrued revenues related to the projected recovery of past indirect costs incurred to administer certain federal programs.

The April 2020 Joint Chairmen's Report required MDL to provide a report indicating where in State records this debt is located and a detailed plan to pay down the remaining debt. In a letter dated September 30, 2020 to the Chairs of the Senate Budget and Taxation and House Appropriations Committees, MDL indicated that it will offset these unrecovered costs over several years by an indirect cost surcharge to most MDL programs of up to \$500,000 per year until recovered. The funding source was anticipated to be split between general funds and special funds from MDL's Special Administrative Expense Fund. The letter further stated that, during fiscal year 2020, \$500,000 had been applied reducing

the unrecoverable balance to \$5,875,000, and that this was reported to GAD as part of the year-end closing process.

The recording of these unsubstantiated federal fund revenues was also disclosed in our *Statewide Review of Budget Closeout Transactions for Fiscal Year 2016, 2017, and 2018* dated January 25, 2017, January 24, 2018, and January 15, 2019, respectively, and our fiscal compliance audit report on the Department of Labor, Licensing and Regulation's Office of the Secretary dated August 7, 2017.

## **Finding 2**

**The Maryland Department of Health (MDH) recorded accrued revenue totaling approximately \$551.5 million at June 30, 2020 which, according to the State's independent auditors, are not allowed to be recorded under generally accepted accounting principles for purposes of the State's fiscal year 2020 *Comprehensive Annual Financial Report*.**

## **Analysis**

**Maryland Department of Health (MDH)** recorded accrued revenue totaling approximately \$551.5 million at June 30, 2020 which, according to the State's independent auditors, are not allowed to be recorded under generally accepted accounting principles for purposes of the State's fiscal year 2020 *Comprehensive Annual Financial Report*. The accrual relates to COVID-19 expenditures incurred by MDH, which MDH anticipates being reimbursed by the federal government through the Federal Emergency Management Administration's (FEMA) Public Assistance grant program. If the accrued revenues are not recorded, an unprovided for payable results as related costs have already been incurred.

As of June 30, 2020, MDH had not yet requested reimbursement of these expenditures and the independent auditors have indicated that the aforementioned accrual cannot be substantiated until FEMA has acted upon an MDH request for reimbursement and provided certain documentation back to MDH to that effect. MDH stated that its first request for reimbursement was submitted in November 2020, but as of January 19, 2021 the aforementioned required documentation has not been received back from FEMA. That first request for reimbursement was for cost incurred totaling \$454.9 million.

## Expenditure Transactions

### **Finding 3**

**According to a report prepared by MDH, because of certain automated system failures, estimated payments totaling approximately \$1.06 billion were made to behavioral health service providers between January and August 2020, resulting in potential overpayments of approximately \$225.6 million and potential underpayments of approximately \$61.7 million.**

### **Analysis**

According to a report prepared by MDH, because of certain automated system failures, estimated payments totaling approximately \$1.06 billion were made to behavioral health service providers between January and August 2020, resulting in potential overpayments of approximately \$225.6 million and potential underpayments of approximately \$61.7 million.

On January 1, 2020, MDH's new Administrative Service Organization (ASO) vendor assumed responsibility for managing the MDH behavioral health claims processing and payment functions. According to MDH, at its initial launch, the ASO's system had technical and system failures that impacted behavioral provider payments; for example, erroneously denying claims. As a result, beginning January 23, 2020, MDH management directed the ASO to provide weekly estimated payments to providers to ensure providers were paid for services rendered. These estimated payments continued through August 3, 2020, and were calculated based on the average of each provider's 2019 weekly payment history.

According to MDH, estimated payments totaled approximately \$35 million per week, and approximately \$1.06 billion for the entire period of January 23, 2020 to August 3, 2020. During that period, providers were required to continue submitting claims and, as of November 13, 2020, the ASO had authorized as valid, claims submitted for the period totaling \$894.7 million. According to MDH, the net difference between estimated payments and authorized claims included \$225.6 million in possible overpayments to approximately 2,200 providers and \$61.7 million in possible underpayments to approximately 400 providers.<sup>1</sup>

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<sup>1</sup> The overpayment and underpayment amounts reported by MDH and noted above net to \$163.9, which does not equate to the \$165.3 million difference between the estimated payments (\$1.06 billion) and validated claims (\$894.7 million) also reported by MDH and noted above. The difference of \$1.4 million was not pursued by us during this review.

However, as of December 2020, MDH and the ASO were continuing to work with providers to determine specific amounts over and under paid during the aforementioned period, and to establish procedures for the proper disposition of each, such as recouping amounts found to have been overpaid. MDH advised that this process will be concluded by April 2021, and that any recoupment necessary will begin in June 2021. MDH further advised that it permitted reactivation of the ASO's system in July 2020, and that estimated payments were stopped August 3, 2020. According to MDH, beginning August 13, 2020 payments have been made based on actual claims submitted.

## **Encumbrance Transaction**

### **Finding 4**

**The Maryland State Department of Education improperly encumbered \$235,000 in unused State grant funds that should have been reverted to the State's General Fund at year-end.**

### **Analysis**

**The Maryland State Department of Education (MSDE)** improperly encumbered unused State grant funds totaling \$235,000 that should have been reverted to the State's General Fund at fiscal year-end. These funds had been awarded to a local government by MSDE's Division of Library Development and Services (DLDS) in July 2017. Effective that same month, State law established the Maryland State Library as an independent State agency. The Maryland State Library essentially assumed the functions of DLDS, and DLDS ceased as a division within MSDE. At that point in time, the aforementioned funds were retained and had not been distributed to the local government. MSDE inappropriately continuously recorded this encumbrance for the State grant funds during fiscal years 2018, 2019, and 2020 without supporting documentation. As of December 2020, MSDE had not reverted the funds and did not have support for retaining this encumbrance.

## Special Funds

### **Finding 5**

**The Department of State Police had a year-end special fund deficit balance totaling \$509,000.**

### **Analysis**

The **Department of State Police (DSP)** had a special fund deficit balance totaling approximately \$509,000 within its Operations Bureau at June 30, 2020. This is an increase of \$24,000 from the \$485,000 deficit balance noted in our January 16, 2020 report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2019*. We were advised that this deficit remains in spite of DSP's efforts to address a long-standing unexplained deficit of special fund balances first identified in our fiscal compliance audit report dated November 23, 2015. Since then, this deficit condition has been reported in our two preceding budgetary closeout reports and our fiscal compliance audit report dated September 23, 2019.

During our current review, the Department of Budget and Management (DBM) confirmed to us that it had authorized DSP to use collections for the salvage vehicle inspection program to reduce the deficit. However, in November 2020, DSP advised us that expenditures for that program had exceeded collections for the year because of the COVID-19 pandemic, thereby increasing rather than helping to decrease DSP's deficit balance as noted above. This increase in the deficit was reported to GAD at June 30, 2020. As noted in our fiscal year 2019 budgetary closeout report, DBM had advised DSP that, as part of the fiscal year 2021 budget cycle, it would work with DSP to consider the best way to address the remaining deficit balance going forward. During our current review, we noted that a similar commitment was made by DBM for the fiscal year 2022 budget cycle.

## Other Liabilities

### **Finding 6**

**The MDH – Developmental Disabilities Administration reported a total of \$40.3 million in unprovided for general fund payables and other general fund liabilities as of June 30, 2020.**

### **Analysis**

**MDH Developmental Disabilities Administration (DDA)** reported unprovided for payables and other general fund liabilities totaling \$40.3 million. This amount

consists of two different components; \$6.1 million in unprovided for payables related to expenses paid to providers that exceeded the appropriation for DDA's Community Service Program, and \$34.2 million in disallowed federal fund claims related to the DDA's residential habilitation add-on services under its Community Pathways waiver program (a Medicaid funded program).

Regarding the disallowed claims, the federal Department of Health and Human Services (HHS) – Office of the Inspector General (OIG), in its June 2015 audit report, disallowed these DDA claims and recommended that DDA refund the overbilled amount to the federal HHS Centers for Medicare and Medicaid Services (CMS). In MDH's September 24, 2015 response to the audit report and to CMS, MDH disagreed with the OIG's interpretation of waiver requirements and urged CMS to reconsider requiring MDH to refund the \$34.2 million in disallowed claims. In a letter dated June 26, 2018, CMS issued a formal disallowance letter requiring the refund of the identified \$34.2 million. On August 23, 2018, MDH issued a *Request for Reconsideration* letter to HHS to begin the appeals process related to CMS' determination.

The CMS disallowance letter provided that MDH could elect to either retain or return the funds in question during the appeals process; however, should HHS confirm CMS' decision, any amount retained by MDH would be subject to interest. MDH's *Request for Reconsideration*, stated that it had elected to retain the funds during the appeals process; therefore, depending on HHS' final determination, MDH could be required to pay the federal government the original \$34.2 million in disallowed claims and any accrued interest. Since the August 2018 *Request for Reconsideration* letter, there has been no further action or correspondence regarding HHS' final determination.

Comments regarding the \$34.2 million in federal claims disallowances relating to MDH have been made in our five preceding *Statewide Review of Budget Closeout Transactions* reports.

#### **Finding 7**

**The Maryland Health Benefit Exchange had a potential \$28.4 million liability to the federal government related to certain misallocated expenditures.**

#### **Analysis**

The **Maryland Health Benefit Exchange (MHBE)** had a \$28.4 million potential liability to the federal government related to a previous audit finding by the HHS – OIG of certain misallocated expenditures. This issue was also addressed in our reports on the *Statewide Review of Budget Closeout Transactions for Fiscal Year*

2018 and 2019, dated January 15, 2019 and January 16, 2020, respectively. In a letter dated September 1, 2019 to the Chairs of the Senate Budget and Taxation and House Appropriations Committees, MHBE noted that the HHS – Office of General Counsel had recommended that MHBE rely on a previous determination by HHS’ CMS that MHBE followed CMS’ guidance when allocating establishment grant expenditures. In correspondence dated October 8, 2020, CMS informed MHBE that there was no change to that recommendation, but also that no formal resolution of the audit finding was yet available.

#### **Finding 8**

**The Maryland Insurance Administration could not readily explain a deficit in the Health Care Regulatory Fund, which totaled \$1.4 million as of June 30, 2020.**

#### **Analysis**

**Maryland Insurance Administration (MIA)** could not readily explain a growing deficit balance in the Health Care Regulatory Fund. MIA administers the Fund, which consists of assessments on specified providers of health insurance in the State. State law provides that annual assessments are to cover all costs relating to activities of MIA’s Appeals and Grievances Unit. Our review disclosed that the Fund had a deficit balance of approximately \$250,000 as of June 30, 2017, which increased to a deficit of approximately \$1.4 million as of June 30, 2020. That \$1.4 million balance was improperly offset by unrelated surplus funds in the Insurance Regulation Fund and therefore, MIA did not report the deficit at fiscal year-end to the General Accounting Division as required.

Although a temporary deficit balance may periodically occur due to the timing of related transactions, a long-term and growing deficit balance may be indicative of inaccurate assessments and/or recording errors.



## Other Issues

### **Finding 9**

**MIA did not transfer the balance in the Health Care Provider Rate Stabilization Fund (RSF), which totaled \$8.1 million as of June 30, 2020, to MDH as required by State law.**

### **Analysis**

MIA could not justify retention of the RSF fund balance, which totaled \$8.1 million<sup>2</sup> as of June 30, 2020. In accordance with State Law, any funds in the RSF should be transferred to MDH for the purpose of retaining certain health care providers in the State. MIA management claimed that a fund balance was necessary to cover any health maintenance organizations (HMO) and managed care organizations (MCO) premium tax refunds that were required to be paid. However, refunds processed during fiscal years 2019 and 2020 related to HMO and MCO premium taxes totaled \$17,000 and \$3 million, respectively, well below the \$8.1 million retained by MIA.

By law, premium taxes collected by MIA are to be credited to the State's General Fund, except for taxes collected from HMOs and MCOs that are to be credited to the State's RSF, which is administered by MIA. State law requires that funds in the RSF must be periodically transferred by MIA to MDH.

Chapter 538, Laws of Maryland 2020, repeals the RSF effective July 1, 2021; after which all premium tax payments will be deposited to the General Fund. Although the RSF is scheduled for repeal, it is still incumbent upon MIA to ensure that all funds are properly accounted for.

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<sup>2</sup> This amount includes a \$2.4 million accounting error for an entry made after the close of fiscal year 2019, which had not been addressed by the end of fiscal year 2020. MIA needs to determine if these funds should be reverted to the General Fund.

## Exhibit 1

### Summary of Fiscal Year 2020 Closeout Review Findings by State Agency

Agency	Finding Number	Finding Description
Maryland Department of Labor	1*	\$5,875,000 in recorded federal fund revenues is unrecoverable.
Maryland Department of Health	2	Accrued Revenues totaling \$551.5 million were not allowable.
	3	Net estimated overpayment to behavioral health service providers totaling \$163.9 million.
	6*	Unprovided for general fund payables and liabilities of approximately \$40.3 million may have to be funded with State general funds.
Maryland State Department of Education	4	Encumbrance totaling \$235,000 was improperly retained.
Department of State Police	5*	DSP had a year-end special fund deficit balance totaling \$509,000.
Maryland Health Benefit Exchange	7*	A potential federal liability of approximately \$28.4 million may have to be funded with State general funds.
Maryland Insurance Administration	8	A \$1.4 million deficit was improperly offset by unrelated surplus funds and could not be explained.
	9	The retention of \$8.1 million in Health Care Provider Rate Stabilization funds could not be justified.

\* Denotes item repeated in full or part from preceding report

## **Exhibit 2**

### **Schedule of June 30, 2020 Unprovided for General Fund Payables and Other Liabilities Reported to the General Accounting Division**

<b>Agency Reporting</b>	<b>Amount of Reported Unprovided for General Fund Payables / Other Liabilities As of June 30, 2020</b>
Maryland Department of Health	\$40,242,000
<b>Total</b>	<b>\$40,242,000</b>

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