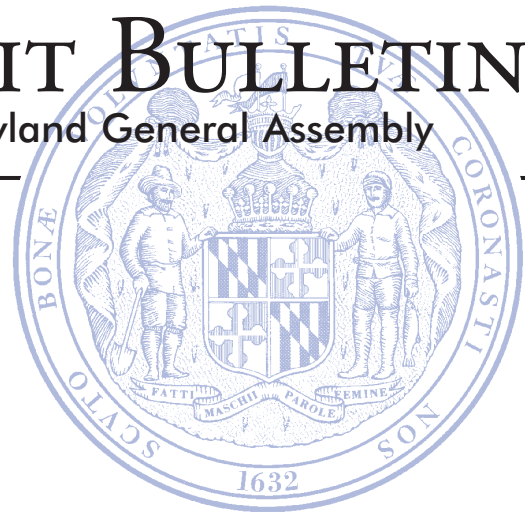


# LEGISLATIVE AUDIT BULLETIN

Publication for Members of the Maryland General Assembly



## DEPARTMENT OF HEALTH AND MENTAL HYGIENE – DEVELOPMENTAL DISABILITIES ADMINISTRATION (DDA)

DDA did not ensure that all available federal funds were obtained. DDA lost the opportunity to obtain federal funds totaling \$3 million because it failed to correct and resubmit the applicable claims to the federal government.

Certain other federal fund claims that were rejected due to client eligibility edits were not investigated and properly resubmitted. DDA disagreed with this finding, but could not support its contention that funds were not lost. In this regard, DDA did not maintain the records necessary to determine the extent of claim rejections and the related dispositions.

*DDA lost the opportunity to obtain federal funds totaling \$3 million.*

Federal funds totaling \$433,000 were not recovered due to a computer edit that was not applicable to DDA claims, but yet prevented the DDA claims from processing. Also, delays in requesting federal funds resulted in lost interest to the State of approximately \$420,000 for the reimbursement requests selected for testing.

DDA was unaware that 72 clients lost federal program eligibility because it did not monitor contractors who had failed to perform federally required annual Medicaid eligibility reassessments.

DDA did not maintain adequate documentation to support its January 2009 report to the General Assembly indicating that 17,250 developmentally disabled individuals were waiting for services. DDA also did not periodically review the waiting list.

Effective procedures were not in place to detect providers that billed for services rendered to individuals who were deceased. Our tests found that payments were made to seven providers totaling \$235,000 for eight clients who were deceased on the dates the services were reportedly provided.

## DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DHMH) - PROCESSING OF CERTAIN MEDICAID CLAIMS PERFORMANCE AUDIT

We conducted a performance audit of the procedures for processing certain Medicaid claims and conducting post-payment reviews. Such claims, which totaled \$2.68 billion during FY 2009, were applicable to certain provider payments made by DHMH's Medical Care Programs Administration (MCPA), the Developmental Disabilities Administration (DDA), and the Mental Hygiene Administration (MHA).

MCPA had not established sufficient internal controls over the automated edit functions within the Maryland Medicaid Information System (MMIS II). System edits help ensure that provider medical claims are valid and are eligible for federal reimbursement.

Our tests identified nine system claim edits that were inappropriately disabled, thereby allowing claims valued at \$98 million, which otherwise would have been suspended and subject to manual reviews, to be processed for payment during the nine-month period tested.

### Inside this issue:

**Maryland State Department  
of Education**

**Office of the Public Defender  
Performance Audit**

**Board of Trustees of the  
Maryland Teachers and State  
Employees Supplemental  
Retirement Plans  
Special Review**

**Maryland Automobile  
Insurance Fund**

**Reports Issued Since  
the Last Bulletin**

Certain employees could change edit settings (such as enabling or disabling an edit) without independent authorization, and records of setting changes and justifications were not maintained. Due to a temporary change in edit settings, claims totaling \$1.4 million were improperly paid.

MCPA had also inadvertently granted 532 individuals with MMIS II system access capabilities that allowed them to process certain claims through MMIS II.

The post-payment review processes used to validate paid claims (for example, fee-for-service claims) needed more structure and

formal procedures to help ensure that the reviews were effective, efficient, fully carried out, and fully documented.

For example, the types of claim data analyses to be regularly performed were not established, and certain automated reports designed to identify improper payment patterns were not routinely produced.

DHMH management needs to determine how to minimize recurring rejections by MMIS II of claims for federal reimbursement submitted by MHA and DDA, and to ensure that rejections are resolved and resubmitted in a timely manner to maximize federal reimbursements. This issue has been commented upon in our audit reports for the last 10 years.

As of December 2008, claims paid for DDA services provided in CY 2006 totaling \$8.4 million were submitted and denied by MMIS II for submission for federal reimbursement and remained outstanding.

### MARYLAND STATE DEPARTMENT OF EDUCATION (MSDE)

Certain aspects of MSDE's loaned educator program appeared to be in conflict with State law and regulations. This program has been in existence for about 30 years for the purpose of obtaining the temporary services of local school system employees for specific jobs at MSDE.

Twenty-six of the 66 loaned educators employed by MSDE during FY 2009 had been on loan continuously for at least five years. According to an Opinion of the Attorney General, such services should be provided on a temporary basis or otherwise the educators should become State employees.

The program also raises concerns over potential conflicts of interest, as 15 loaned educators served in MSDE executive management and director positions. The extent and total costs of the program (approximately \$8.5 million during FY 2009)

were not specifically disclosed to the General Assembly's budget committees.

MSDE disagreed with the finding that the program appeared to be in conflict with State law and regulations. Nevertheless, MSDE has taken steps to abide by the Attorney General's Opinion.

MSDE was not inspecting child care facilities as required by State law. For each of the 11,700 child care facilities, State regulations require MSDE to conduct at least one unannounced inspection per 12-month period and at least one announced inspection per 24-month period.

Our test of 100 facilities found that, during the period tested, 76 facilities were either missing a required inspection or the inspection was conducted untimely.

MSDE has been unable to eliminate a deficit of \$13.3 million attributable to unfunded federal fund expenditures incurred as early as FY 2002.

### OFFICE OF THE PUBLIC DEFENDER (OPD) PERFORMANCE AUDIT

We conducted a performance audit of OPD's budgetary and financial management practices to assess the effectiveness of changes made to its practices and procedures following our 2001 performance audit.

OPD coordinates delivery of legal services to indigent persons at 12 district offices. During FY 2009, OPD had 957 positions, including over 500 attorneys, and expenditures totaling \$91.1 million.

OPD made substantial progress in implementing the recommendations contained in our 2001 audit report; nevertheless, problems with meeting its budgets have persisted.

In five of the eight fiscal years from 2002 to 2009, OPD exceeded its total budget and required deficiency appropriations totaling \$13.9 million.

In many cases, it appears that budget problems can be traced to differences between OPD's determination of its funding needs and the targets set by the Department of Budget and Management and, ultimately, the inability of OPD to operate within the allotted budget.

*Certain aspects of MSDE's loaned educator program appeared to be in conflict with State law and regulations.*

*OPD made substantial progress in implementing past recommendations, but problems with meeting its budgets have persisted.*

*Nine system claim edits were inappropriately disabled, thereby allowing claims valued at \$98 million to be processed for payment.*

OPD's budget development process considered historical costs and identified short and long-term needs and it had instituted certain procedures to attempt to control expenditures. Nevertheless, the final budget submissions contained certain unrealistic amounts, such as a high personnel turnover expectancy rate, because of the need to meet budget targets. In addition, OPD had not established sufficient processes to control certain costs incurred by local district offices, such as private (panel) attorney costs.

OPD had increased the number of attorneys by 119 between FY 2004 and 2007, which reduced overall attorney caseloads, but not the caseloads in some districts. While caseloads in Baltimore City generally had decreased, caseloads in rural districts had increased.

Despite the overall improvement, OPD's attorneys continued to handle significantly more cases than specified in standards established by a 2005 *Caseload Study*. Based on CY 2007 data, OPD needed 68 additional positions to meet those standards. Since then, OPD has lost 23 attorney positions as a result of cost containment.

OPD had implemented a statewide case management system, but did not use the system to centrally monitor workload levels and efficiency at the districts. Also, OPD did not adequately analyze attorney caseloads and sufficiently reallocate positions to minimize caseload disparities.

## BOARD OF TRUSTEES OF THE MARYLAND TEACHERS AND STATE EMPLOYEES SUPPLEMENTAL RETIREMENT PLANS (MSRP) SPECIAL REVIEW

MSRP needs to improve disclosure of financial performance of its Investment Contract Pool (ICP), which is one of several investment options of the Retirement Plans, as well as better document its related monitoring efforts.

MSRP did not adequately disclose ICP unrealized investment losses in financial publications made available to existing or prospective plan participants. As of December 31, 2008, these unrealized losses totaled approximately \$48 million and the ICP portfolio, which included stable value contracts and fixed income instruments, had a reported book value totaling \$729 million.

MSRP believes its current presentation for conveying portfolio value (which was initiated after OLA's review began) is appropriate.

MSRP did not independently verify the reported market value of ICP investments, nor did it independently verify the accuracy of the interest rates calculated by the investment manager that were used to credit earnings to participant accounts.

MSRP and its Board need to improve their documentation of the management and monitoring of the ICP. During our review, MSRP management personnel were consistently unable to satisfactorily address fundamental questions, including a clear and accurate explanation of the wrapper agreements. These agreements are secured to provide protection of portfolio principal under certain circumstances. Also, MSRP could not produce certain relevant ICP documents, including the executed wrapper agreements.

In our opinion, MSRP and its Board have a fiduciary responsibility to actively oversee ICP activities, including the performance of contractors, and to exercise appropriate actions. Although certain sub-managers did not meet established performance standards for close to a two-year period, there was a lack of documentation to indicate that MSRP or its Board had taken any measures to address this substandard performance.

The MSRP response indicated that certain actions have been taken to address the issues. For example, it indicated that independent verifications are being conducted of the ICP portfolio values, which have improved over the last year, and better documentation of MSRP's oversight efforts is being maintained.

The review was conducted based on an allegation received through OLA's hotline.

## MARYLAND AUTOMOBILE INSURANCE FUND (MAIF)

In June and December of 2008, MAIF's Board of Trustees approved changes to certain critical requirements of MAIF's CY 2008 employee bonus program. We question the timing and appropriateness of these changes, without which the majority of that year's approximately \$1.4 million in bonuses would not have been paid.

MAIF had incurred certain expenditures for consulting, marketing, and lobbying services, as well as certain outreach costs. Such expenditures may not be consistent with MAIF's primary mission as a State-created insurer of last resort; and therefore, we believe this information should be disclosed to the General Assembly's budget committees.

*MSRP needs to  
improve disclosure  
of financial  
performance of its  
Investment Contract  
Pool and better  
document its related  
monitoring efforts.*

# REPORTS ISSUED

August 1, 2009 to December 31, 2009

Agency	Report Date	Number of Pages
Caroline County – Office of the Clerk of Circuit Court	8/3/09	7
Department of Human Resources – Local Department Operations	8/4/09	28
University System of Maryland – University of Maryland Baltimore County	8/6/09	18
Department of Transportation – State Highway Administration	8/6/09	20
Comptroller of Maryland – Office of the Comptroller – Bureau of Revenue Estimates	8/11/09	6
Queen Anne's County – Office of the Register of Wills	8/17/09	4
Maryland State Department of Education	8/27/09	34
Review of Local Government Audit Reports – Fiscal Year Ending June 30, 2008 (Special)	9/2/09	14
Cecil County Public Schools (Financial Management Practices Performance Audit)	9/10/09	58
Comptroller of Maryland – General Accounting Division	9/14/09	7
Baltimore City – Office of the Register of Wills	9/18/09	6
Historic St. Mary's City Commission	9/18/09	4
Department of Transportation – Secretary's Office	9/21/09	12
Queen Anne's County – Office of the Clerk of Circuit Court	9/23/09	5
Calvert County – Office of the Register of Wills	9/29/09	4
Department of Health and Mental Hygiene – Laboratories Administration	9/30/09	10
Managing for Results – Performance Measures – Education – Maryland State Department of Education (Performance)	10/2/09	17
University System of Maryland – University of Maryland, College Park – Office of Information Technology	10/6/09	11
Department of Disabilities	10/8/09	6
Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans (Special)	10/9/09	32
Calvert County – Office of the Clerk of Circuit Court	10/9/09	5
Maryland Environmental Service	10/14/09	7
Montgomery County – Office of the Clerk of Circuit Court	10/15/09	6
Montgomery County – Office of the Register of Wills	10/20/09	6
Howard County Public Schools (Financial Management Practices Performance Audit)	10/23/09	68
Maryland Automobile Insurance Fund	11/4/09	13
Worcester County – Office of the Register of Wills	11/5/09	4
Financial Management Information System – Centralized Operations	11/5/09	6
Department of Information Technology	11/10/09	12
Charles County – Office of the Register of Wills	11/10/09	6
Office of the Public Defender (Performance)	11/19/09	53
Department of Health and Mental Hygiene – Developmental Disabilities Administration	11/20/09	28
Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans	11/23/09	8
Department of Health and Mental Hygiene – Processing of Certain Medicaid Claims (Performance)	11/23/09	42
Review of Community College Audit Reports – Fiscal Year Ending June 30, 2008 (Special)	11/24/09	6
Worcester County – Office of the Clerk of Circuit Court	12/1/09	6
Charles County – Office of the Clerk of Circuit Court	12/1/09	9
Howard County – Office of the Register of Wills	12/10/09	4
Board of Public Works – Interagency Committee on School Construction	12/10/09	11
Wicomico County – Office of the Clerk of Circuit Court	12/14/09	7
Wicomico County – Office of the Register of Wills	12/15/09	6
University System of Maryland – Towson University	12/18/09	20
Department of Health and Mental Hygiene – Rosewood Center	12/22/09	9
Office of the State Prosecutor	12/23/09	4
Department of Transportation – Maryland Aviation Administration	12/29/09	18

The Legislative Audit Bulletin is periodically issued by the Office of Legislative Audits (OLA) to inform the General Assembly of audits or reviews completed and to provide a summary of significant findings from selected reports. Unless specifically noted, the agencies generally agreed with the audit findings and recommendations, although some follow-up of the report response may have been necessary. Copies of reports can be obtained from the web site or by contacting either OLA or the Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401, 410-946-5400 - 301-970-5400. For further details about any report or finding, please contact OLA at the listed numbers. We welcome your comments and suggestions.

**Bruce A. Myers, Legislative Auditor**

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