Special Report

Statewide Review of Budget Closeout Transactions for Fiscal Year 2021

January 2022

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

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Legislative Auditor

January 26, 2022

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, 2021. 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:

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, 2021.

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 had federal fund revenues totaling $4,775,000 on its records at June 30, 2021 that have been deemed unrecoverable. Another 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 overpayments which, as of September 2, 2021, totaled approximately $240.9 million. At the time of our review, the

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department was formulating and implementing a recoupment plan which, according to the department, includes a level of debt forgiveness. We also found that another department retained $3.7 million in unused State grant funds without legal authority, and had a year-end federal fund deficit balance totaling approximately $3 million.

In addition, one department reported a total of $129.5 million in unprovided for general fund payables or other general fund liabilities as of June 30, 2021 (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 fiscal years 2020, 2019, 2018, 2017, 2016, and 2015 closeout transactions related to this department. The department also reported another potential liability to the federal government of approximately $49.3 million related to its obligation to use these funds for specified program expenditures which it had not yet done. 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 agency did not transfer funds totaling $5.3 million to another department as required by State law, and did not properly report a deficit fund balance of $1.0 million at fiscal year-end.

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,

Gregory A. Hook

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 *Annual Comprehensive Financial Report*.

GAD contracts with an independent accounting firm for the purpose of expressing an opinion on the State's basic financial statements contained in the *Annual Comprehensive Financial Report*, which, as of January 13, 2022, had not yet been finalized for fiscal year 2021. 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, 2021, 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, 2021. 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, 2021, 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 for 11 departments and independent agencies, based on our assessment of risk and materiality, 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, 2021 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 determined that seven of findings included in this report were conditions repeated from our January 26, 2021 report entitled *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020* (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 2021 to January 2022.

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, 2021 that may require general funds.

Revenue Transactions

One department recorded federal fund revenues totaling approximately $4.8 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.

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 overpayments, which as of September 2, 2021 totaled $240.9 million. At the time of our review the department was formulating and implementing a recoupment plan which, according to the department, includes a level of debt forgiveness.

Encumbrance Transaction

One department improperly encumbered unused State grant funds totaling $3.7 million.

Federal Fund Deficit Balance

One department had a year-end federal fund deficit balance totaling $3 million.

Other Liabilities

One department reported a total of $129.5 million in unprovided for general fund payables or other general fund liabilities as of June 30, 2021. For example, this department, which had a similar issue in our six 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 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 $5.3 million as of June 30, 2021.

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

Revenue Transactions

Finding 1
The Maryland Department of Labor (MDL) had unsubstantiated accrued federal fund revenue totaling $4,775,000 that it had previously deemed to be unrecoverable.

Analysis
As of June 30, 2021, **MDL** had unsubstantiated accrued federal fund revenue totaling $4,775,000, which it had deemed to be unrecoverable. This amount was reduced from a balance of $5,875,000 as reported in our January 26, 2021 report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020.* These accrued revenues related to the projected recovery of past indirect costs incurred to administer certain federal programs.

In a letter dated September 30, 2020 to the Chairs of the Senate Budget and Taxation and House Appropriations Committees, MDL indicated that it would offset these unrecovered costs, which initially totaled $6,375,000, over several years by an indirect cost surcharge to most MDL programs until recovered. The funding source was anticipated to be split between general funds and special funds from MDL's Special Administrative Expense Fund; however, to the extent these funds are not received, general funds will be required to eliminate the deficits resulting from these transactions. During fiscal year 2021, MDL advised us that approximately $1.1 million was applied to reduce the balance to $4,775,000 as of June 30, 2021. MDL reported this activity to GAD in its fiscal year 2021 closing process.

Expenditure Transactions

Finding 2
According to a report prepared by the Maryland Department of Health (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 overpayments that, as of September 2, 2021, totaled approximately $240.9 million.

Analysis
In an October 1, 2021 report to the Senate Budget and Taxation Committee and the House Appropriations Committee, **MDH** noted that, because of certain technical and system failures associated with its January 2020 transition to a new Administrative Service Organization (ASO) that impacted payments to behavioral health providers, MDH management directed the ASO to provide weekly estimated payments to providers beginning January 23, 2020 and continuing through August 3, 2020 to ensure providers were paid for services rendered.[1] MDH's report stated that during this period the ASO made estimated payments totaling $1.06 billion. Estimated payments stopped August 3, 2020, and, according to MDH, beginning August 13, 2020 payments have been made based on actual claims submitted. This action on the part of MDH was also disclosed in our report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020.*

MDH's October 2021 report also addressed action it was taking with the ASO and providers to reconcile estimated payments made with actual claims for the aforementioned period, and to recoup overpayments made, which according to MDH, totaled $240.9 million due from 2,149 providers as of September 2, 2021. According to MDH, because of the difficult and time consuming nature of the reconciliation process, and to provide equity where the reconciliation process may be onerous to providers, it has included in its recoupment plan a level of debt forgiveness for certain providers. According to MDH's report, it planned to forgive debt for providers owing less than $10,000, with the exception of certain providers, such as hospitals and laboratories. MDH estimated that this action will cost $3.5 million. Furthermore, MDH stated that for providers with outstanding or fully paid balances between $10,001 and $50,000, it will engage the provider community and will evaluate providing additional relief. MDH advised us that forgiving these balances would allow it to focus on recoupment from providers with more significant outstanding balances due.

[1] Estimated weekly payments to each provider were based on that provider's average weekly claims for calendar year 2019.

It is uncertain if such debt forgiveness would require Board of Public Works approval, or if MDH could rely on such forgiveness authority vested with the State's Central Collection Unit. At the time of our review, MDH had not obtained clarification on the necessity of such third party approval for its debt forgiveness plans.

Encumbrance Transaction

Finding 3
The Maryland State Department of Education (MSDE) improperly encumbered State grant funds totaling approximately $3.7 million.

Analysis
MSDE improperly encumbered unused State grant funds totaling approximately $3.7 million. Through the Maryland Center for School Safety, MSDE provided grants to Local Education Agencies (LEAs) in order to help them maintain adequate School Resource Officer coverage within schools in Maryland. These grants, which were for the period July 1, 2019 to June 30, 2020, were reimbursable in nature, and required the LEAs to submit any final reimbursement requests within 45 days of the end of the grant period. MSDE had no such requests or other documentation to support the continued encumbrance of the $3.7 million in unused General Fund grant appropriations. A similar condition relating to a different grant program was commented upon in our report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020*.

This practice violated the yearly closing instructions of the Comptroller of Maryland – General Accounting Division since the encumbrances did not represent actual fiscal year-end commitments by the State for goods and services and consequently would not qualify as a valid encumbrance.

Federal Fund Deficit Balance

Finding 4
MSDE had a federal fund deficit balance of approximately $3.0 million as of June 30, 2021 that may require State general funds to eliminate.

Analysis
MSDE had a federal fund deficit balance totaling approximately $3.0 million within its Division of Rehabilitation Services at June 30, 2021. MSDE could not

readily explain the reason for the deficit balance, or identify the related expenditures which created the deficit. In addition, MSDE had not submitted a request for federal reimbursement to cover the related expenditures, and was uncertain if federal funds would be available to cover the balance. If federal funds are not available, a deficiency appropriation for State general funds may be needed to eliminate this deficit. MSDE prepared an improper accounting transaction to temporarily eliminate the deficit for fiscal year 2021 closing purposes. Accordingly, MSDE did not disclose this deficit balance to GAD as required.

Other Liabilities

Finding 5
MDH reported a total of $129.5 million in unprovided for general fund payables and other general fund liabilities as of June 30, 2021.

Analysis
MDH reported unprovided for payables and other general fund liabilities totaling $129.5 million. This amount consists of three different components; $34.2 million in disallowed federal fund claims related to the **Developmental Disabilities Administration's (DDA's)** residential habilitation add-on services under its Community Pathways waiver program (a Medicaid funded program), $46.0 million in estimated reimbursements to Medicaid providers related to the **Medical Care Programs Administration** (**MCPA**), and an additional potential liability to the federal government of approximately $49.3 million for an obligation relating to the Rebalancing Fund Demonstration which is associated with the MCPA Money Follows the Person (MFP) program.

Regarding the $34.2 million in 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. In a letter to MDH dated October 23, 2018, CMS affirmed the decision to disallow the claims, and in December 2018, the Maryland Office of the Attorney General filed an appeal of the disallowance with the HHS Departmental Appeals Board. As of January 2022, MDH had received no further correspondence from HHS regarding resolution of this matter.

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. Comments regarding this matter have been made in our six preceding *Statewide Review of Budget Closeout Transactions* reports.

MDH also reported a potential liability to the federal government of approximately $49.3 million for an obligation relating to the Rebalancing Fund Demonstration which is associated with the MCPA MFP program. By participating in the Rebalancing Demonstration, the State agreed to accept federal funds covering 75 percent of its MFP program expenditures, with the remaining 25 percent supported by State funds, instead of the more traditional 50 percent federal and 50 percent State funding arrangement used in many other federal assistance programs. However, the 25 percent savings that the State realized from the enhanced federal reimbursement rate is required to be spent on additional MFP program expenditures. The aforementioned $49.3 million represents this enhanced funding for which the required additional MFP expenditures had not been made as of June 30, 2021. The Rebalancing Fund Demonstration was to end September 30, 2020, however CMS extended the program until September 30, 2025.

Finding 6
The Maryland Health Benefit Exchange (MHBE) had a potential $28.4 million liability to the federal government related to certain misallocated expenditures.

Analysis
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, 2019, and 2020*, dated January 15, 2019, January 16, 2020, and January 26, 2021, 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. We were informed by MHBE that, as of January 11, 2022, there still had been no formal resolution of the audit finding.

Finding 7
The Maryland Insurance Administration (MIA) Health Care Regulatory Fund had a deficit balance of $1.0 million as of June 30, 2021.

Analysis
MIA had a 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. This condition was also commented upon in our report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020*. In that report we noted 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, and that this $1.4 million deficit was improperly offset at fiscal year-end by unrelated surplus funds in the Insurance Regulation Fund. Our current review disclosed that there was a deficit balance of $1.0 million in the Fund at June 30, 2021. According to MIA management that balance was again improperly offset by unrelated surplus funds in the Insurance Regulation Fund, and therefore MIA again did not report this deficit at fiscal year-end to GAD as required.

MIA management advised us that, based on consultation with its legal counsel, a plan was developed to reduce the deficit balance with elimination to occur by fiscal year 2025. Although a temporary deficit balance may periodically occur due to the timing of related transactions; however, a long-term deficit balance, such as this deficit that began in fiscal year 2017, may be indicative of inaccurate assessments and/or recording errors.

Other Issues

Finding 8
MIA could not justify retention of the June 30, 2021 balance in the Health Care Provider Rate Stabilization Fund (RSF), which totaled $5.3 million.

Analysis
MIA could not justify retention of the RSF fund balance at June 30, 2021, which totaled $5.3 million. State law required funds in the RSF to be transferred to MDH for the purpose of retaining certain health care providers in the State. Specifically, premium taxes collected by MIA from health maintenance organizations (HMO) and managed care organizations (MCO) prior to July 1, 2021 were to be credited to the State's RSF, which was administered by MIA. Funds in the RSF should be periodically transferred by MIA to MDH. This condition was also commented upon in our report on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020*.

MIA management claimed that the fund balance was necessary to cover any HMO and MCO premium tax refunds that were required to be paid. However, HMO and MCO premium tax refunds processed during fiscal years 2020 and 2021 totaled $3.0 million and $3.2 million, respectively, each total well below the $5.3 million retained by MIA at June 30, 2021.

Furthermore, Chapter 538, Laws of Maryland 2020, repealed the RSF effective July 1, 2021, after which all premium tax payments were to be deposited to the General Fund. However, as of December 2021, MIA continued to retain the RSF with a fund balance of approximately $3.3 million.

Exhibit 1

Summary of Fiscal Year 2021 Closeout Review Findings by State Agency

Agency	Finding Number	Finding Description
Maryland Department of Labor	**1***	$4,775,000 in recorded federal fund revenues is unrecoverable.
Maryland Department of Health	**2***	Reported overpayment to behavioral health service providers totaling $240.9 million as of September 2, 2021.
	5*	Unprovided for general fund payables and liabilities of approximately $129.5 million may have to be funded with State general funds.
Maryland State Department of Education	**3***	Encumbrance totaling $3.7 million was improperly retained.
	4	MSDE had a year-end federal fund deficit balance totaling $3 million.
Maryland Health Benefit Exchange	**6***	A potential federal liability of approximately $28.4 million may have to be funded with State general funds.
Maryland Insurance Administration	**7***	A $1.0 million deficit was improperly offset by unrelated surplus funds and could not be explained.
	8*	The retention of $5.3 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, 2021 Unprovided for General Fund Payables and Other Liabilities Reported to the General Accounting Division

Agency Reporting	Amount of Reported Unprovided for General Fund Payables / Other Liabilities As of June 30, 2021
Maryland Department of Health	$129,472,000
Total	**$129,472,000**

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