

Special Report

**Statewide Review of
Budget Closeout Transactions for
Fiscal Year 2022**

January 2023



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

Joint Audit and Evaluation Committee

| | |
|--|--------------------------------------|
| Senator Clarence K. Lam, M.D. (Senate Chair) | Delegate Jared Solomon (House Chair) |
| Senator Joanne C. Benson | Delegate Steven J. Arentz |
| Senator Paul D. Corderman | Delegate Nicholas P. Charles II |
| Senator Katie Fry Hester | Delegate Andrea Fletcher Harrison |
| Senator Shelly Hettleman | Delegate David Moon |
| Senator Cheryl C. Kagan | Delegate Julie Palakovich Carr |
| Senator Cory V. McCray | Four Vacancies |
| Senator Justin D. Ready | |
| Senator Bryan W. Simonaire | |
| Senator Craig J. Zucker | |

To Obtain Further Information

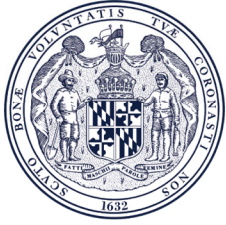
Office of Legislative Audits
The Warehouse at Camden Yards
351 West Camden Street, Suite 400
Baltimore, Maryland 21201
Phone: 410-946-5900
Maryland Relay: 711
TTY: 410-946-5401 · 301-970-5401
E-mail: OLAWebmaster@ola.state.md.us
Website: www.ola.state.md.us

To Report Fraud

The Office of Legislative Audits operates a Fraud Hotline to report fraud, waste, or abuse involving State of Maryland government resources. Reports of fraud, waste, or abuse may be communicated anonymously by a toll-free call to 1-877-FRAUD-11, by mail to the Fraud Hotline, c/o Office of Legislative Audits, or through the Office's website.

Nondiscrimination Statement

The Department of Legislative Services does not discriminate on the basis of age, ancestry, color, creed, marital status, national origin, race, religion, gender, gender identity, sexual orientation, or disability in the admission or access to its programs, services, or activities. The Department's Information Officer has been designated to coordinate compliance with the nondiscrimination requirements contained in Section 35.107 of the United States Department of Justice Regulations. Requests for assistance should be directed to the Information Officer at 410-946-5400 or 410-970-5400.



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Gregory A. Hook, CPA
Legislative Auditor

January 26, 2023

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, 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 budget closeout transactions at selected agencies for the fiscal year ended June 30, 2022. Our review disclosed general compliance with applicable laws, regulations, and policies. However, we determined that certain transactions pertaining to the following agencies were either not in compliance, or otherwise represented significant conditions that warrant disclosure in this report:

Maryland Department of Health (MDH)
Maryland Health Benefit Exchange (MHBE)
Maryland Insurance Administration (MIA)
State Department of Assessments and Taxation (SDAT)

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

One agency (MDH) could not support the propriety of accrued federal fund revenue totaling approximately \$3.5 billion as of June 30, 2022 and did not identify and recover \$862.5 million in federal fund revenue until we brought the matter to its attention. For the past several months we have been unable to obtain support for the federal revenue accrual from MDH, despite repeated requests. Specifically, our initial request for support was made in October 2022 and MDH repeatedly denied the existence of support for accruals as MDH stated they were the result of automated journal entries. Late in the day on January 20, 2023, MDH senior management advised that the respective units may have support for the recorded revenue, despite repeated earlier assertions to the contrary. Due to

the time constraints involved in issuing this report, we did not pursue the matter further during this review. However, if MDH ultimately is able to research and support the recorded revenue, we will review any information forthcoming from MDH during our ongoing fiscal compliance audit of the MDH Office of the Secretary and Other Units, where such accounting transactions are also subject to audit.

In addition, MDH has still not recovered \$127.5 million of the \$1.06 billion in estimated payments made to behavioral health service providers between January 2020 and August 2020. The estimated payments were the result of system errors and have been reported in our two preceding closeout reports. MDH and another agency (MHBE) also had potential liabilities to the federal government totaling \$86.2 million and \$28.4 million, respectively. The MDH liability relates to certain disallowed claims for federal funds and unfulfilled spending requirements and the MBHE liability relates to certain misallocated expenditures. These potential liabilities represent longstanding unresolved conditions, and were disclosed in one or more of our preceding closeout reports. Depending on the resolution of these matters with the federal government, the expenditures related to these liabilities may have to be funded with subsequent year appropriations, or through a deficiency appropriation.

Finally, two other agencies (SDAT and MIA) had special fund deficit balances of \$7.9 million and \$836,956, respectively, at fiscal year-end.

The primary objective of this annual review is to alert the Maryland General Assembly to significant financial and budgetary closeout transactions that do not comply with applicable laws, regulations, and policies or otherwise represent significant matters relating to closeout that we noted and which we believe warrant disclosure in this report. 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, CPA
Legislative Auditor

Table of Contents

| | |
|--|----|
| Background Information | 4 |
| Introduction, Objectives, and Scope | 5 |
| Findings | 6 |
| Revenue Transactions | |
| Finding 1 – The Maryland Department of Health (MDH) could not support the propriety of federal fund revenue totaling approximately \$3.5 billion and did not identify and recover federal fund revenue totaling approximately \$862.5 million. | 6 |
| Expenditure Transactions | |
| Finding 2 – 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 2020 and August 2020, resulting in overpayments that, as of December 12, 2022, totaled approximately \$127.5 million. | 7 |
| Other Liabilities | |
| Finding 3 – MDH had potential liabilities to the federal government totaling approximately \$86.2 million related to certain disallowed claims and spending requirements. | 8 |
| Finding 4 – The Maryland Health Benefit Exchange had a longstanding unresolved potential \$28.4 million liability to the federal government related to certain misallocated expenditures. | 10 |
| Special Fund Deficit Balance | |
| Finding 5 – The State Department of Assessments and Taxation had a special fund deficit balance of \$7.9 million as of June 30, 2022. | 10 |
| Finding 6 – The Maryland Insurance Administration’s Health Care Regulatory Fund had an unreported special fund deficit balance of \$836,956 as of June 30, 2022. | 11 |
| Exhibit 1 – Summary of Fiscal Year 2022 Closeout Review Findings by State Agency | 12 |

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 5, 2023, had not yet been finalized for fiscal year 2022. 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, 2022, 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, 2022. 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, 2022, were properly supported and made in accordance with State budgetary laws, regulations, and accounting policies and to determine if other significant liabilities or conditions relating to closeout existed at fiscal year-end.

Our review consisted of tests of significant year-end transactions for 10 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 or conditions relating to closeout existed at fiscal year-end. We reviewed, on a limited basis, transactions processed subsequent to June 30, 2022 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.

We also determined that four of the findings included in this report were conditions repeated from our January 26, 2022 report entitled *Statewide Review of Budget Closeout Transactions for Fiscal Year 2021* (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 2022 to January 2023.

Findings

Revenue Transactions

Finding 1

The Maryland Department of Health (MDH) could not support the propriety of accrued federal fund revenue totaling approximately \$3.5 billion and did not identify and recover federal fund revenue totaling approximately \$862.5 million.

Analysis

MDH was unable to provide documentation to support the propriety of approximately \$3.5 billion in accrued federal fund revenue. At the end of fiscal year 2022, MDH recorded 1,416 accrued revenue entries totaling \$11.4 billion including 998 positive accrued revenue entries totaling \$7.2 billion (recording a receivable for anticipated future funds due) and 418 negative accrued revenue entries totaling \$4.2 billion (deferring revenue received to the subsequent year). The majority of these 1,416 entries were for federal funds.

We selected 16 of the positive journal entries totaling \$3.5 billion attributable to various MDH programs for additional review including a \$1.1 billion accrued revenue journal entry posted to a federal funds clearing account in the **Medical Care Programs Administration (MCPA)**. MDH senior fiscal management personnel advised us that many of MDH's accrued revenue journal entries, including the 16 we selected for review, were the result of an automated calculation based on data recorded in the State's Financial Management Information System. Specifically, we were advised that MDH's automated system "takes carryover cumulative balance (starting balances) plus current fiscal year expenditures (accrued and actual) less revenues received" to create an accrual entry.

While this process calculates the balance in each account at year-end and the related accrued revenue amount needed, it does not identify the age of any shortfalls nor provide any assurance that the amounts are actually collectable in the subsequent year. Although the MDH senior fiscal management personnel advised us that MDH had received more than the amount accrued in the subsequent year, they could not provide documentation that the amounts received related to the prior year expenditures. In response to our request for this information, we were advised that the specific MDH programs (such as MCPA and the Developmental Disabilities Administration) were responsible for maintaining this detail. However, our subsequent inquiries determined that

personnel at these programs did not have any additional support for these accrued revenue journal entries.

An evaluation of the balances at year-end is critical because of the significant amount of federal funds MDH receives each year, which may mask unrecovered expenditures. In this regard, we noted that MDH had not identified and recovered federal fund revenues totaling approximately \$862.5 million representing shortfalls in Medicaid reimbursements during the period from October 2019 to March 2022. MDH was unaware of these unrecovered funds and did not make any attempt to recover them from the federal government until we brought this matter to its attention in August 2022. In response to our notification, MDH requested and ultimately recovered the funds in September 2022.

As a result of these conditions, there was a lack of assurance that the aforementioned journal entries we reviewed accurately represented amounts actually due from the federal government. While some or all of these amounts may ultimately be recovered, to the extent that the federal funds are not available, State General funds may be needed to cover any related deficits.¹

Expenditure Transactions

Finding 2

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 2020 and August 2020, resulting in overpayments that, as of December 12, 2022, totaled approximately \$127.5 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.²

¹ Due to the time constraints of this review, our Office will analyze any additional support forthcoming from MDH on these matters during our regular fiscal compliance audit of MDH Office of the Secretary and Other Units.

² Estimated weekly payments to each provider were based on that provider's average weekly claims for calendar year 2019.

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, payments have been made based on actual claims submitted beginning August 13, 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. 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. These actions on the part of MDH were disclosed in our reports on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020 and 2021*.

Although, as stated in our fiscal year 2021 report, MDH's initial intention was to forgive provider debt up to \$10,000, that amount was subsequently adjusted to \$25,000 as stipulated and provided for in MDH's fiscal year 2023 budget. According to MDH, as of December 12, 2022, 1,507 providers had debt totaling approximately \$14.3 million forgiven, and there was a remaining balance of approximately \$127.5 million due from 845 providers. MDH also advised us that all remaining providers with debts outstanding are on a repayment plan, are having a percentage of their current claims withheld by MDH in order to reduce their balance owed, or have been sent to the Department of Budget and Management's Central Collection Unit for further action.

Other Liabilities

Finding 3

MDH had potential liabilities to the federal government totaling approximately \$86.2 million related to certain disallowed claims and spending requirements.

Analysis

MDH reported potential liabilities to the federal government totaling approximately \$86.2 million as of June 30, 2022. This amount consists of two different components; \$34.2 million in unresolved longstanding 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), and an additional potential liability to the federal government of approximately \$52 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 November 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 seven preceding *Statewide Review of Budget Closeout Transactions* reports.

- MDH also reported a potential liability to the federal government of approximately \$52 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 \$52

million represents this enhanced funding for which the required additional MFP expenditures had not been made as of June 30, 2022. The Rebalancing Fund Demonstration was to end September 30, 2020, however CMS extended the program until September 30, 2025. This potential liability was also addressed in our *Statewide Review of Budget Closeout Transactions for Fiscal Year 2021*, at which time the amount was \$49.3 million.

Finding 4

The Maryland Health Benefit Exchange (MHBE) had a longstanding unresolved 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 four preceding *Statewide Review of Budget Closeout Transactions* reports. 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 July 27, 2022, 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 November 14, 2022, there still had been no formal resolution of the federal audit finding.

Special Fund Deficit Balance

Finding 5

The State Department of Assessments and Taxation (SDAT) had a special fund deficit balance of \$7.9 million as of June 30, 2022.

Analysis

SDAT had a special fund deficit balance of \$7.9 million as of June 30, 2022. Specifically, **SDAT** made a journal entry at the end of fiscal year 2022 transferring expenditures totaling \$7.9 million, for tax credit payments made to homeowners, from general funds to special funds. These payments related to the recalculation of tax credits for certain homeowners in accordance with Chapter 717, Laws of Maryland 2021. **SDAT** received a general fund deficiency appropriation to ultimately cover the cost of these payments. However, those

funds were mistakenly reverted back to the General Fund, leaving SDAT with a special fund deficit balance. According to SDAT management, they are working with the Department of Budget and Management to resolve the deficit balance.

Finding 6

The Maryland Insurance Administration's (MIA) Health Care Regulatory Fund had an unreported special fund deficit balance of \$836,956 as of June 30, 2022.

Analysis

MIA had an unreported deficit balance of \$836,956 in the Health Care Regulatory Fund as of June 30, 2022. 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 reports on the *Statewide Review of Budget Closeout Transactions for Fiscal Year 2020 and 2021*. In our report for fiscal year 2021, we noted that the Fund had a deficit balance of approximately \$250,000 at June 30, 2017, which increased to approximately \$1.4 million as of June 30, 2020 before declining to \$1 million as of June 30, 2021.

Our current review initially disclosed that the Fund had a surplus balance at June 30, 2022 of \$414,520. However, based on our inquiries, MIA determined that it had erroneously recorded Fund revenue totaling \$1,251,476 twice. Consequently, the actual Fund balance at June 30, 2022 was a deficit of \$836,956. Because of this error, MIA did not report a year-end deficit balance for the Fund to the General Accounting Division as required. As noted in our closeout report for fiscal year 2021, 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.

Exhibit 1

Summary of Fiscal Year 2022 Closeout Review Findings by State Agency

| Agency | Finding Number | Finding Description |
|---|----------------|--|
| Maryland Department of Health | 1 | Support could not be provided for accrued federal fund revenue totaling approximately \$3.5 billion, and \$862.5 million was not identified and recovered. |
| | 2* | Reported overpayment to behavioral health service providers totaled \$127.5 million as of December 12, 2022. |
| | 3* | Potential liabilities to the federal government of approximately \$86.2 million may have to be funded with State general funds. |
| Maryland Health Benefit Exchange | 4* | A potential federal liability of approximately \$28.4 million exists. |
| State Department of Assessments and Taxation | 5 | A special fund deficit balance totaling approximately \$7.9 million existed as of June 30, 2022. |
| Maryland Insurance Administration | 6* | An unreported special fund deficit balance totaling \$836,956 existed as of June 30, 2022. |

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

AUDIT TEAM

Bekana Edossa, CPA, CFE
Audit Manager

W. Thomas Sides
Mindy R. Garrett
Menachem Katz, CPA
Edward J. Welsh, CFE
Senior Auditors

Thomas J. Kraemer
Owen M. Long-Grant
Timothy Moon
Stacey D. Streett
Staff Auditors