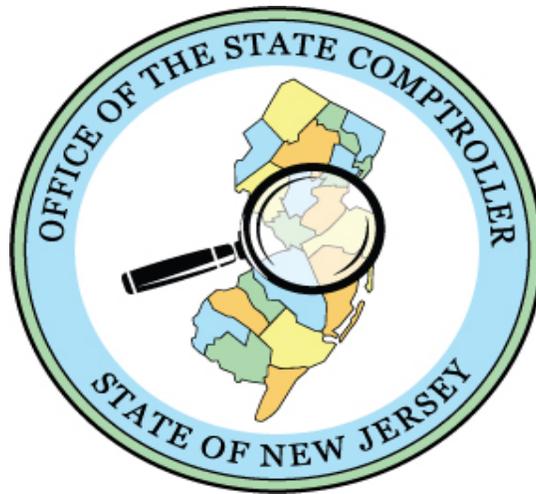


**STATE OF NEW JERSEY  
OFFICE OF THE STATE COMPTROLLER**

**ANNUAL REPORT  
Fiscal Year 2016**



**IMPROVING THE EFFICIENCY, TRANSPARENCY  
AND FISCAL ACCOUNTABILITY OF NEW JERSEY  
GOVERNMENT**

**Philip James Degnan  
STATE COMPTROLLER**

# Table of Contents

Letter from State Comptroller .....	1
Overview.....	3
Audit Division.....	4
Investigations Division .....	7
Medicaid Fraud Division .....	9
Procurement Division .....	13



***Dear Governor Christie, Members of the  
State Legislature and Residents of New Jersey:***

Fiscal Year (FY) 2016 was a time of significant change at the Office of the State Comptroller (OSC). On a personal level, after being appointed Acting State Comptroller in October 2015, I had the honor of being vetted by the Senate Judiciary Committee and confirmed by the New Jersey State Senate for permanent appointment in April 2016. Also during that time-frame, my senior staff and I made significant additions to OSC's management and leadership team, adding a new Audit Director, Public Information Officer, and several managers in the Audit and Medicaid Fraud Divisions. Additionally, we promoted a number of exceptional individuals into leadership positions around the office, including filling the position of Deputy Director of the Audit Division with an internal candidate. When taking into account the additional hires made to fill long-vacant positions, the OSC added 21 individuals during FY 2016. Since that time, we have continued to fill remaining open positions to bring the OSC back to its full complement of personnel in an effort to fully service our statutory mandate and safeguard taxpayer funds.

While addressing the dramatic staffing needs of the office, the OSC continued to perform audits, investigations and contract reviews to ensure the effective and efficient spending of public funds and public accountability. These efforts are discussed in greater detail in this annual report and illustrate the broad reach of OSC. For example, we audited a pre-school program in a local school district finding, among other things, internal control weaknesses related to payments to contractors. We conducted a follow-up review of our 2013 audit of the management of tax-exempt properties in three communities, finding that significant improvements had been made as a result of OSC's original audit which delivered savings to the taxpayers in each of those municipalities. OSC examined the application of mandatory college fees assessed at three state institutions of higher education, recommending better accounting practices and a more transparent process of fixing these fees. Also, in the area of financial practices at institutions of higher education, OSC investigated Kean University's use of exceptions to the public bidding laws to purchase a custom conference table. OSC concluded that, in this instance, Kean's purchasing process was flawed and made recommendations for improvements going forward. OSC completed a follow-up to our 2009 audit report on a municipal water and sewerage utility's oversight of its contract with a service provider, again finding significant improvements that will be applied to the future administration of similar contracts. As with our other ongoing projects, OSC continues to impartially examine diverse areas

of state government where taxpayer funds are being expended to ensure that those funds are being used to their best effect.

Our Medicaid Fraud Division's work during FY 2016 again demonstrated both the breadth of OSC's mission in New Jersey and the benefit that our work delivers to the taxpayers of this state. Through MFD's work in audits and investigations, in conjunction with the reformed Regulatory Unit, the OSC tallied direct recoveries of more than \$112 million during this fiscal year. Moreover, primarily through the work of MFD's Third Party Liability Unit, OSC achieved \$814.5 million in cost avoidance that might otherwise have been billed to the Medicaid Program.

Finally, OSC continued to serve its important role in the procurement process in New Jersey. During the course of FY 2016, OSC's procurement attorneys reviewed 441 different government contracts with a cumulative value of approximately \$10 billion to ensure that government entities employed proper, legal procurement practices. These subject matter experts reviewed, for example, the design/build contract for Trenton Central High School, construction contracts at both Stockton and Rutgers Universities, and a number of Superstorm Sandy related contracts for ongoing repairs and demolition.

What follows in this annual report is a more detailed discussion of the work performed in this office during FY 2016 and information detailing the manner in which the OCS conducts that work. I am enormously proud of the efforts of OSC's staff during this fiscal year and am excited about the year to come. All of us here at OSC look forward to serving our important role in New Jersey, safeguarding taxpayer funds and bringing increased fiscal responsibility to all layers of state government.

Philip James Degnan  
State Comptroller

# OVERVIEW

Since its creation in January 2008, the Office of the State Comptroller (OSC) has served as an advocate for taxpayers and a leader in bringing about government reform. OSC reports have focused on bringing greater efficiency, transparency and analysis to the operation of all levels of government in New Jersey.

OSC consists of four divisions – Audit, Investigations, Medicaid Fraud and Procurement. Each of the four divisions made significant contributions to OSC’s accomplishments this past fiscal year.

Our Audit Division set forth recommendations to improve government operations at the municipal, county and state level. It also followed up on two previous audits and determined that 87 percent of the recommendations issued in those audits had been either fully or partially implemented.

Our Investigations Division found that Kean University did not follow state procurement laws and its own procurement policies, in spending nearly \$250,000 for a custom-built conference table from China. In its investigation report, the division made several recommendations to Kean University to improve its procurement practices.

Our Medicaid Fraud Division saw its total recoveries of taxpayer dollars improve by 30 percent from the previous fiscal year. Its anti-fraud efforts also resulted in the exclusion of more ineligible providers from the Medicaid Program than last fiscal year and the avoidance of more than \$814.5 million in potential Medicaid expenses.

Our Procurement Division reviewed hundreds of public contracts this past fiscal year valued at approximately \$10 billion. Of those contracts, 151 were valued at \$10 million or more. The division also reviewed \$249 million in contracts related to Superstorm Sandy. In 39 percent of the public contracts they reviewed, our attorneys also provided guidance to public entities to bring their procurement processes into legal compliance.

The sections of this report that follow briefly explain the role of each division while setting forth highlights of OSC accomplishments from the past fiscal year of July 1, 2015 to June 30, 2016.

# AUDIT DIVISION

OSC's Audit Division conducts audits and reviews the performance of New Jersey state government, public institutions of higher education, independent state authorities, local governments and school districts.

Hired in January 2016, the Director of the Audit Division is Yvonne Tierney who brings more than 30 years of experience as an auditor and investigator to the position. The Audit Division staff includes members who possess certifications or professional designations such as Certified Public Account, Certified Internal Auditor and Certified Fraud Examiner.

Examples of Audit Division work in FY 2016 are set forth below. OSC audit reports can be viewed in their entirety on our website.

## Audits

### ***Controls Over Collection, Allocation and Use of Student Fees at Selected New Jersey Colleges and Universities***

This audit examined the controls, allocation and use of mandatory student fees by The College of New Jersey (TCNJ), Kean University and William Paterson University (WPU). OSC found that the three schools collectively charged full-time undergraduate students more than \$115 million in mandatory fees during Fiscal Year 2013 which accounted for approximately one-third of the cost of attending college. Despite the heavy reliance on such fees, the audit found that none of the three schools had established written policies or procedures to govern how those fees are assessed.

The audit also found that while the three schools described in appropriate materials

how fee revenue would be used, none of the schools disclosed that a portion of the revenue would be used for "payroll" expenses. At Kean and TCNJ – payroll represented at least 30 percent of fee revenue.

Finally, the audit found that Kean and TCNJ did not maintain separate funds for each mandatory fee. While not required to maintain such separate accounts, OSC found that the commingling of funds resulted in a lack of transparency about how the funds are spent.

In response to OSC's findings, both WPU and TCNJ officials said their schools would develop more formal written policies and procedures for mandatory fees assessed in the current fiscal year. All three schools said they would update the fee descriptions on their website to indicate that a portion of the funds could be used toward personnel costs related to the relevant fees.

As a result of OSC's Audit, a Legislative Committee convened to review OSC's report and State Comptroller Degnan testified at the hearing along with representatives of the schools.

### ***West New York School District Pre-School Audit***

This audit reviewed selected fiscal and operating practices of the West New York School District's pre-school program. The audit identified various internal control weaknesses concerning the District's payments to its contracted pre-school providers. The audit also found that the District had failed to retain certain records concerning the operation of the pre-school program.

## **Follow-Up Reviews**

OSC obtains corrective action plans from public entities it audits to ensure that audit recommendations are properly implemented in an appropriate timeframe. OSC subsequently conducts onsite follow-up reviews to determine compliance with those corrective actions.

In FY 2016, OSC's follow-up reviews found that:

- The City of Camden had improved the operation and maintenance of its water services through its former contract with United Water, LLC.
- The City of Bridgeton, the Township of Middletown and the City of Paterson had significantly improved their oversight and management of tax-exempt properties within their respective municipalities.

Of the 38 recommendations made by OSC in those two audits, 33 were partially or fully implemented by the time of the follow up.

## **Policies and Procedures**

Our efforts at OSC have included putting in place policies and procedures that guide our audit, investigative and related processes. The following are descriptions of some of the policies and procedures we have put into effect, which we have continued to refine over the past year.

### ***Audit Manual***

For professional audit organizations such as ours, it is essential that clearly defined policies be promulgated to provide audit guidance and

to ensure the quality and consistency of the audit work performed. To that end, OSC developed an Audit Manual to serve as the authoritative compilation of the professional auditing practices, policies, standards and requirements for OSC staff. Our Audit Manual is a constantly evolving document that is revised as standards are amended and other changes in the auditing profession occur.

### ***Audit Process Brochure***

Open communication concerning the audit process lets the auditee know up front what to expect. With that in mind, OSC developed a brochure outlining the critical components of the audit process, from initiation to completion. This brochure is provided to the auditee prior to the start of an audit and also is posted on our website.

### ***Risk/Priority Evaluation***

OSC's enabling legislation requires us to "establish objective criteria for undertaking performance and other reviews authorized by this act." Accordingly, OSC developed a risk/priority evaluation matrix that considers a number of risk factors, including, among others, the entity's past performance, size of budget, the frequency, scope and quality of prior audits, and other credible information which suggests the necessity of a review. OSC staff conducts research along these parameters and assesses risk associated with each applicable factor as an aid in determining audit priority.

### ***Quality Control and Peer Review***

Government auditing standards require audit organizations to establish an internal quality control system and to participate in an external quality control "peer review" program. The internal quality control system

provides the organization with ongoing assurance that its policies, procedures and standards are adequate and are being followed. The external peer review, to be conducted once every three years, is a professional benchmark that provides independent verification that the internal quality control system is in place and operating effectively and that the organization is conducting its work in accordance with appropriate standards. OSC passed both of its peer reviews in 2011 and 2014 and is preparing for its next review in 2017.

### ***Audit Coordination***

OSC's enabling legislation requires the State Comptroller to establish a system of coordination with other state entities responsible for conducting audits, investigations and similar reviews. This system serves to avoid duplication and fragmentation of efforts while optimizing the use of resources, promoting effective working relationships and avoiding the unnecessary expenditure of public funds. We continue to work closely with both state and federal audit and law enforcement officials in this regard.

### ***Training***

Audits conducted by OSC's Audit Division comply with Generally Accepted Government Auditing Standards (GAGAS). Auditors performing work under GAGAS are required to maintain their professional competence through Continuing Professional Education (CPE). Specifically, every two years they must complete at least 80 hours of CPE, 24 of which must directly relate to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. OSC is recognized by the National Association of State Boards of Accountancy as a CPE sponsor. This year our staff again received formal training on topics

such as governmental accounting, audit sampling and documentation, and internal controls. All staff members in the Audit Division satisfied the biennial requirement of obtaining 80 CPEs over the reporting period.

# INVESTIGATIONS DIVISION

OSC's Investigations Division works to detect and uncover fraud, waste and misconduct involving the management of public funds and the performance of government officers, employees and programs.

Noelle Maloney is the Director of the Investigations Division. Director Maloney previously served as Deputy Inspector General of the U.S. Securities and Exchange Commission, where she oversaw investigations and audits of the agency's operations and programs. The division consists of a staff of investigators and attorneys, including former federal and state law enforcement professionals from agencies such as the Federal Bureau of Investigation, the United State Postal Inspection Service and the New Jersey State Police.

OSC's investigators field and review all tips, referrals and allegations provided to the office. Those tips come from both the general public and from government employees, and are received through OSC's toll-free Tipline, via e-mail or through the mail. The Tipline also is used as the official statewide Tipline for any public tips regarding the waste or abuse of Superstorm Sandy recovery funds.

In FY 2016, the Investigations Division fielded 253 complaints, 87 of which were referred to the Sandy Fraud Task Force. The division referred an additional five matters to criminal investigators, at either the state Division of Criminal Justice or the respective county prosecutor's offices.

Investigations Division staff initiated an extensive outreach program during FY 2016. For example, division staff met with representatives from all 21 county

prosecutor's offices to increase their awareness of OSC's role in investigating cases of fraud, waste and abuse in government programs. Division staff also conducted both internal and external training concerning fraud, waste and abuse and best practices.

The Investigations Division also produced the following public report in FY 2016:

## ***Investigative Report: Kean University's Purchase of a Custom-Built Conference Table***

OSC's investigation focused on Kean University's purchase of a custom-built conference room table at a total cost of approximately \$250,000. The report found that Kean University failed to adhere to state procurement law, and its own procurement policy, in obtaining the custom-built conference table, which was ultimately purchased from a vendor in China. Instead, Kean University was found to have improperly relied on two exceptions to the procurement law which would have otherwise required the purchase to be publicly bid. The report further found that the table had already been built, and was on a boat enroute from China to the United States, before Kean University's Board of Trustees had voted to approve the purchase. As a result of its findings, OSC made several recommendations for Kean University and other publicly funded entities to consider with regard to improving future procurement practices.

## ***Guidance and Referrals***

Over the past year, the Investigations Division compelled local and state government agencies to improve their practices and procedures through the issuance

of letters to the agencies along with referrals to appropriate oversight agencies. In one such case, the division reviewed a state contract relationship for certain sewerage services and identified deficiencies in the management or oversight of the contract. The contract, executed by the state Department of Corrections, the state Department of Treasury and a municipality, required specific payments to be made to the state. As a result of the division's review and guidance, the state recovered nearly \$150,000 due to it under the contract and is currently in negotiations to recover additional funds.

The Investigations Division also made 118 external referrals to other state, county and federal agencies in FY 2016, among them the state Office of the Attorney General, the state Department of Education, the state Department of Transportation, the state Department of Labor and Workforce Development, and the state Department of Treasury.

Some of the referrals made by the division to criminal authorities in prior years led to action in FY 2016. For example, former Chesterfield Mayor and Planning Board Member Lawrence Durr pleaded guilty and was sentenced in connection with fraudulent ethics disclosure forms that failed to disclose his financial relationship to a developer. The circumstances surrounding Durr's relationship and deal to sell transferrable development rights on a 104-acre farm to a developer was revealed by the Investigations Division in a January 2013 report. Also this fiscal year, the former executive director of the Newark Watershed Conservation and Development Corporation pleaded guilty to soliciting nearly \$1 million in bribes in connection with her position, as well as conspiracy and filing a false income tax return. Her former special

projects manager and a home improvement contractor also pleaded guilty to participating in the kickback scheme. The actions of these individuals were brought to light in a joint report issued by the OSC's Investigations and Procurement Divisions in February 2013.

In addition to making referrals to the Sandy Fraud Task Force, the division has assigned one of its Special Investigators to work as a Special Agent on the Task Force. This investigator worked on and brought to closure nearly a dozen cases during FY 2016, and issued well over a hundred subpoenas and document requests in furtherance of this effort.

Other referrals were made in-house to OSC's Audit, Procurement and Medicaid Fraud Divisions and are expected to result in future audits and investigations. The division serves as a key resource for OSC's other divisions by helping to conduct witness interviews, and using a variety of investigative tools to identify potential subjects for audits. Conversely, the Investigations Division also conducts inquiries based on incoming referrals from other state agencies. Our joint efforts with these other agencies continue to build a synergy that has led to increasingly robust investigative efforts across state government.



# MEDICAID FRAUD DIVISION

OSC's Medicaid Fraud Division (MFD) serves as the State's independent watchdog for New Jersey's Medicaid, FamilyCare and Charity Care programs and works to ensure that the state's Medicaid dollars are being spent effectively and efficiently.

Josh Lichtblau joined the OSC as Director of the MFD in July 2015 after more than two decades serving the interests of New Jersey citizens as a Deputy Attorney General, Assistant Attorney General and as Director of a major state regulatory agency.

As part of its oversight role, MFD audits and investigates health care providers, managed care organizations (MCOs) and Medicaid recipients to identify and recover improperly expended Medicaid funds and to ensure that only those who qualify are enrolled in Medicaid. In performing these functions, MFD considers the quality of care provided to Medicaid recipients and pursues civil and administrative enforcement actions against those who engage in fraud, waste or abuse within the Medicaid program. MFD also excludes or terminates ineligible health care providers from the Medicaid program where necessary and conducts educational programs for Medicaid providers and contractors.

In FY 2016, MFD recovered \$112.6 million in improperly paid Medicaid funds, a nearly 30 percent increase compared to the \$87.2 million recovered in FY 2015. Those funds were returned to both the state and federal budgets. In addition, an estimated \$814.5 million in other potential Medicaid expenses were avoided through MFD's proactive anti-fraud efforts. This represents a 5.5 percent increase versus the \$771.9 million in Medicaid expenses avoided in FY 2015. MFD also

excluded 109 ineligible providers from participating in the Medicaid program this past fiscal year as compared to the 86 providers excluded in FY 2015.

The division received 1,975 complaints or tips from a variety of outlets, including the MFD Hotline, OSC website, referrals from other state and federal agencies, and correspondence from the public. The division received and reviewed a total of 433 high-risk provider applications and denied 13 of these. In addition, the division referred 10 cases to the Medicaid Fraud Control Unit (MFCU) within the state Office of the Attorney General and an additional 22 matters to other law enforcement bodies, including county prosecutors' offices and the Internal Revenue Service.

As part of its educational outreach program, MFD presented provider training for high-risk providers, including home health care providers and pharmacy owners and staff. These educational outreach efforts were staged in coordination with the MFCU, as the Division of Medical Assistance and Health Services, and the MCOs that participate in the New Jersey Medicaid market to help attendees identify and protect against fraud, waste and abuse within the Medicaid program. Speakers emphasized the importance of properly documenting claims and explained what preventative measures these providers should implement to proactively prevent Medicaid fraud, waste and abuse.

Operating under the authority of the Medicaid Program Integrity and Protection Act, MFD provides oversight concerning the following programs:

- New Jersey’s Medicaid program provides health insurance to qualifying parents and caretakers and their dependent children, along with pregnant women and individuals who are aged, blind or disabled. The program pays, for example for hospital services, doctor visits, prescriptions, nursing home care and other health care needs.
- New Jersey FamilyCare is a Medicaid-type program for uninsured children whose family income is too high to qualify for traditional Medicaid but not high enough for the family to afford private health insurance. Combined, the Medicaid and New Jersey FamilyCare programs serve more than 1.7 million New Jersey residents.
- The New Jersey Hospital Care Payment Assistance Program, commonly known as Charity Care, which provides free or reduced-charge services to patients who require care at New Jersey Hospitals.

MFD’s oversight focuses on Medicaid health care providers, MCOs and Medicaid recipients, while coordinating oversight efforts among all state agencies that administer Medicaid program services.

MFD consists of three units: Fiscal Integrity, Investigations and Recovery/Regulatory.

### **Fiscal Integrity Unit**

The Fiscal Integrity Unit focuses on data mining, regulatory and compliance audits, and liability of third parties for expenses improperly paid by the Medicaid program.

### ***Data Mining***

MFD’s data mining group is involved in the initial stages of the process leading to the recovery of improperly paid Medicaid dollars. The unit employs a variety of analytical techniques to detect anomalous or abnormal claims submitted by providers. Its findings often lead to MFD audits and investigations. In order to identify patterns of anomalous Medicaid reimbursements, MFD’s data miners review Medicaid fraud reports and investigations from other states and work with a range of additional resources to acquire pertinent data. The data mining group also monitors the Surveillance and Utilization Review System, a federally mandated exception reporting system, for indications of waste, fraud and abuse and to detect duplicate, inconsistent or excessive claim payments.

In total, MFD’s data mining group referred 90 cases of anomalous claims behavior to MFD’s audit and investigations units in FY 2016.

### ***Audit***

MFD conducts audits to ensure that Medicaid providers comply with program requirements, to identify improper billings submitted by Medicaid providers and to deter fraud, waste and abuse in the Medicaid program.

MFD’s audit group, working with other MFD personnel, also reviews, oversees and coordinates audit work performed by other entities that have contracted with the state to audit specific types of providers. For example, the Affordable Care Act requires each state’s Medicaid system to contract with a Recovery Audit Contractor to identify and recoup overpayments to Medicaid providers. MFD oversees the state’s contract with this external auditor, coordinates the audits and

reviews audit findings. In total, during FY 2016, MFD oversaw the recovery of more than \$13.0 million in overpayments that were identified by New Jersey's Recovery Audit Contractor.

### ***Third Party Liability***

Under federal law, if a Medicaid recipient has other insurance coverage, Medicaid is responsible for paying the medical benefits only in cases where the other coverage has been exhausted or does not cover the service at issue. Thus, a significant amount of the state's Medicaid recoveries are the result of MFD's efforts to obtain payments from third-party insurers responsible for services that were inappropriately paid with Medicaid funds. MFD's Third Party Liability group, working with an outside vendor, seeks to determine whether Medicaid recipients have other insurance and recovers money from private insurers in cases where Medicaid has paid claims for which the private insurer was responsible. In addition, the Third Party Liability group also manages a daily hotline for the public and providers to call and update third-party commercial insurance information for Medicaid recipients.

### **Investigations Unit**

MFD's Investigations Unit is charged with investigating inappropriate conduct on the part of Medicaid, FamilyCare and Charity Care providers and recipients. In FY 2016, the Investigations Unit opened 407 cases and made 32 referrals to other agencies such as the MFCU, county prosecutors' offices and various county boards and social services entities. MFD investigators receive allegations of fraud and waste from many sources, including MFD's Hotline and website as well as from other state and federal agencies. In total, MFD received 1,962 telephone Hotline tips in FY 2016.

To ensure the integrity of Medicaid's enrollment process, the Investigations Unit also conducts background checks of high-risk providers applying to participate in the program. In FY 2016, the Investigations unit received 433 such applications from pharmacies, medical equipment providers, adult medical day care centers, physicians and others. The unit has thus far denied 13 of those applications based on a number of concerns. The unit also conducts unannounced pre-enrollment and post-enrollment site visits of Medicaid providers. During the site visits, MFD investigators verify that the applying entity actually exists and complies with state and federal requirements, and that the information supplied on the provider application is accurate.

In FY 2016, the work of the Investigations Unit resulted in the recovery of \$8.8 million in misspent Medicaid funds.

### **Recovery/Regulatory Unit**

The Recoveries and Exclusions unit (R&E) recovers overpayments that are identified by MFD's auditors and investigators and determines when to exclude a Medicaid provider from the Medicaid program. In cases of fraud, R&E may also assess additional penalties against a provider.

Once MFD identifies overpayments to be recovered, R&E sends out appropriate notices, recovers the money from providers and recipients on behalf of the state and works with federal authorities to ensure that the federal government receives its share of any recovery. In instances where R&E cannot resolve an overpayment through a settlement, MFD will take administrative action against the provider or recipient.

Providers can be excluded from participating in the Medicaid program for numerous

reasons including criminal convictions, exclusions by another state or the federal government, or adverse action taken by a licensing board. Providers can be excluded for a set number of years or, in some cases, until they provide sufficient evidence supporting reinstatement. Actions taken against these individuals are part of an ongoing OSC effort to ensure that only those medical providers who maintain the highest integrity may participate in the Medicaid program.

In FY 2016, MFD excluded 109 providers – including physicians, pharmacists, dentists, social workers and home care nurses’ aides – for failing to meet the standards for integrity in the Medicaid program.

MFD’s Regulatory Officers are licensed attorneys who handle MFD-initiated fraud and abuse cases through the administrative law process, from settlement negotiations through Office of Administrative Law Fair Hearings as State Agency Representatives. The Regulatory Officers provide regulatory guidance to the other units of the division which include but is not limited to legal research as well as case reviews for statutory and regulatory support. MFD’s Regulatory Officers also work with other state departments to propose new Medicaid program regulations designed to improve program integrity and strengthen Medicaid rules.



**MEDICAID FRAUD DIVISION –  
BY THE NUMBERS**

**TOTAL MFD RECOVERIES FOR  
TAXPAYERS**

FY 2016 - \$112.6 million  
FY 2015 - \$87.26 million

**POTENTIAL MEDICAID  
EXPENSES AVOIDED  
THROUGH MFD’S PROACTIVE  
ANTI-FRAUD EFFORTS**

FY 2016 - \$814.5 million  
FY 2015 = \$771 million

**HEALTH CARE PROVIDERS  
EXCLUDED FROM MEDICAID  
PROGRAM BY OSC**

FY 2016 - 109  
FY 2015 – 86

# PROCUREMENT DIVISION

OSC's Procurement Division, staffed by attorneys specializing in public contract law, fulfills the office's statutory mandate to review public agency procurements exceeding \$2 million from more than 1,900 public entities. In FY 2016, the Procurement Division received notice of 605 contracts, including 151 contracts that were valued at more than \$10 million and pre-screened pursuant to OSC's statutory authority.

Barbara Geary is the Director of the Procurement Division. She has more than 20 years of contracting experience in both the public and private sectors. She became Director in June 2015 after joining the OSC as an attorney in 2011.

In addition to reviewing contracts, the attorneys of the Procurement Division work with OSC's audit teams and provide guidance concerning the many legal issues that arise during the course of an audit. Division attorneys also assist in investigations and other projects.

## **Contract Reviews**

As prescribed by statute, the Procurement Division pre-screens the legality of the proposed vendor selection process for all government contracts exceeding \$10 million and has post-award oversight responsibilities for contracts exceeding \$2 million. OSC's procurement reviews cover contracts awarded by municipalities, school districts, colleges, and state authorities and departments, as well as other public boards and commissions with contracting authority. Regulations promulgated by OSC assist public entities in determining whether OSC review is required for a particular contract and provide guidance as to how OSC reviews are conducted.

Procurements subject to OSC review cover a wide range of contracts, including land sales, leases and purchases of goods or services.

For contracts exceeding \$10 million, the Procurement Division works closely with government entities as they formulate specifications, intervening when necessary to achieve procurements that comply with all applicable laws, regulations and rules. Errors are corrected before the contract advertisement takes place.

The review of contracts valued at more than \$10 million begins with judging the appropriateness of the vendor selection process proposed by the contracting unit. The reviewing attorney assesses, for example, whether the procurement requires sealed bids or whether other contracting procedures are appropriate. The reviewer further determines whether the government unit has followed all other statutes, rules and regulations applicable to the procurement. Additional questions asked include: Has the governing body, department or authority approved the procurement? Are the specifications designed to ensure a competitive process? Is the method of advertisement appropriate?

For contracts exceeding \$10 million, the contracting unit must submit notification to OSC 30 days before advertisement or otherwise entering into a contract. On occasion, contracting units request flexibility in that time period. Accordingly, OSC has set forth a procedure through which government entities can seek a waiver of the 30-day time period. OSC works closely with contracting units needing such a waiver to ensure that contract solicitations can be made in a timely manner.

Contracts exceeding \$2 million, including \$10 million contracts previously submitted for pre-approval, are examined post-award. The focus post-award remains on compliance with laws and regulations. In addition, a determination is made as to whether the award followed the guidelines set forth in the solicitation. For example: Did the lowest bidder get the award in a sealed bid determination that appropriately considered alternates? Did the governing body approve and certify funding for the contract? Are the records submitted sufficient to justify the governing body's action? Is there any evidence of collusion or bid rigging?

To ensure that OSC's contract reviews result in a better contracting process in both the short and long terms, the Procurement Division consults directly with contracting units during and following reviews. Depending upon the nature of the review and any deficiency noted, the Procurement Division might hold an exit interview, prepare a written determination or simply provide oral guidance to the contracting unit. In cases involving serious deficiencies, OSC may refer contracts for audit review or further civil or administrative action, such as actions to recover monies expended. Criminal activity is referred to appropriate law enforcement authorities.

The Procurement Division also has added oversight responsibilities with regard to contracts connected to Superstorm Sandy. Under Executive Order (EO) 125, the division is required to review any and all state procurements that involve the expenditure of federal reconstruction resources connected to Sandy recovery. The division then posts Sandy recovery contracts on OSC's Sandy Transparency website. As a result, in FY 2016 the Procurement Division reviewed a variety of purchasing practices that otherwise would

have been below OSC's statutory monetary threshold for review.

The division reviews proposed procurements subject to EO 125 on an immediate basis, providing guidance and feedback to agencies to ensure compliance with public contracting laws without sacrificing expediency in the state's recovery process. In FY 2016, the division reviewed 109 contracts and purchase orders pursuant to EO 125 in furtherance of our state's rebuilding and recovery effort. These contracts included \$20 million for repairs and improvements to various assets of the Passaic Valley Sewerage Commission and \$3.3 million in demolition contracts for the state's Blue Acres program.

In all, the Procurement Division received notice of 605 contracts for review in FY 2016. Of those contracts, 151 of them were valued at more than \$10 million and were pre-screened pursuant to OSC's regular statutory authority. OSC attorneys took corrective action in 69 (46 percent) of those pre-screened contracts to ensure the legality of the procurement process. Some notable contracts reviewed include: the \$143 million contract for the New Tech High School in Secaucus and the \$116 million design/build contract for a new Trenton Central High School.

Among the most frequent errors OSC encountered were the misstatement of the Business Registration Certificate requirement as set forth in *N.J.S.A. 52:32-44*, vague or confusing evaluation criteria and inadequate descriptions of services in the scope of work.

The Procurement Division also reviewed 181 contracts valued between \$2 million and \$10 million. In these contracts, the Procurement Division found a 49 percent error rate. In each case, the division gave guidance to the contracting entity to ensure that the errors are not repeated.

Procurement Division staff also conducted extensive educational outreach to public entities throughout the state this past fiscal year. The purpose of this outreach has been to reaffirm with public entities their statutory responsibility to submit procurements for OSC review and to educate procurement officials about the procurement laws and best practices.

OSC plans to continue its outreach efforts in this area in the coming fiscal year.

Our redesigned Sandy Transparency website, <http://nj.gov/comptroller/sandytransparency/>, provides the public with a place to view the allotment and expenditure of federal Sandy funds, to research information about Sandy programs and to examine detailed documents from Sandy-related contracts.

