

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

**ANNUAL REPORT  
Fiscal Year 2019**



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

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# 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 concluded work on five performance audits. Most notably, the division set forth recommendations to improve the New Jersey Economic Development Authority’s management and oversight of the state’s various tax incentive programs. The division also made recommendations to improve fiscal and operating practices at the state Department of Environmental Protection and the Prospect Park School District, and completed two follow-up audits

Our Investigations Division completed two reviews this past fiscal year, one concerning the New Jersey State Firemen’s Association’s administration of benefit funds for firefighters and the other concerning the ethical implications associated with municipal tax assessors holding concurrent employment at revaluation firms within the state.

Our Medicaid Fraud Division’s ongoing efforts to combat waste, fraud and abuse in the Medicaid Program resulted in the recovery of more than \$92 million of taxpayer dollars in FY 2019. Its anti-fraud efforts also resulted in the exclusion of 250 ineligible providers from the Medicaid program.

Our Procurement Division reviewed 728 contracts this past fiscal year, 181 of which were valued at \$10 million or more. Division attorneys also reviewed 240 contracts valued between \$2 million and \$10 million.

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, 2018 to June 30, 2019.

# 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.

The Audit Division is led by Director Yvonne Tierney who brings more than 30 years of experience as an auditor and investigator to the position. The Audit Division staff includes individuals who possess certifications or professional designations such as Certified Public Accountant, Certified Internal Auditor, and Certified Fraud Examiner.

Examples of our Audit Division's work in FY 2019 are set forth below. OSC audit reports can be viewed in their entirety on our website.

## Audits

### *New Jersey Economic Development Authority (EDA) – A Performance Audit of Selected State Tax Incentive Programs*

OSC conducted a performance audit of EDA's administration of various tax incentive programs which are designed to retain existing jobs and businesses and/or attract new businesses and jobs to New Jersey. In general, OSC's audit found that EDA did not properly administer the incentive programs in accordance with governing statutes and regulations, its own policies and procedures, and the terms of the award agreements within the audit sample that OSC examined. OSC's audit sample included 48 incentive projects that had been certified with at least one annual tax credit issued between January 1, 2005 and December 31, 2017.

More specifically, OSC's audit found deficiencies in EDA's administration of tax incentive programs in the following areas:

- Inadequate monitoring, insufficient oversight, and non-existent policies and procedures that have created control deficiencies that weaken the transparency and accountability of the incentive programs and their success.
- The lack of an adequate process to assess accomplishments and effectiveness of the incentive programs or to determine whether the state has realized the economic benefits asserted by the applicants.
- The lack of adequate policies and procedures to monitor awardees' performance (i.e., number of jobs created, etc.) and insufficient documentation requirements for awardees to report specific accomplishments of their performance results. These failures resulted in inaccurate representations of awardee performance to the stakeholders and taxpayers.
- A failure to properly analyze recipient performance data to determine whether the incented jobs were actually created or retained pursuant to the award terms for the projects in our audit sample. These failures resulted in 2,993 reported jobs that were not substantiated as having been created or retained.
- Inadequate accounting processes and lack of appropriate controls to ensure that the fees were appropriately assessed, collected, and recorded.

OSC's report contained 21 recommendations for specific actions that EDA should implement to address the various deficiencies found in the audit. In response to the recommendations, EDA submitted a Corrective Action Plan (CAP). As required by law, OSC will conduct a follow-up review to determine whether the EDA has implemented the audit recommendations.

### ***Prospect Park School District – A Performance Audit of Selected Fiscal and Operating Practices***

In this performance audit, OSC reviewed selected fiscal and operating practices of the Prospect Park School District. OSC's audit noted the following exceptions: (1) the District failed to develop a state-mandated IT Disaster Recovery Plan; (2) the District did not maintain accurate inventory records of its IT assets, including unaccounted for computers and tablets; (3) the District issued annual longevity payments to employees which included credit for years of service earned outside of the District; (4) the District executed an agreement for substitute teacher hiring/staffing services that did not contain a detailed scope of work or standard terms and conditions; and (5) the District failed to maintain documented evidence of completed background checks for all substitute teachers.

The audit report contains six recommendations that the District should implement to address the various deficiencies. In response to the recommendations, the District submitted a CAP. As required by law, the OSC will conduct a follow-up review to determine whether the District has implemented the audit recommendations.

### ***New Jersey Department of Environmental Protection (DEP) – A Performance Audit of Controls over Revenue at Selected State Parks***

OSC conducted an audit of DEP's management and administration of lease and

concessions agreements at Island Beach State Park, Cheesequake State Park and Liberty State Park, three of the state's busiest public parks.

OSC's audit found weaknesses in DEP's internal controls that resulted in lost revenue and increased the risk of potential fraud with regard to the handling of cash receipts and deposits.

OSC auditors also found that DEP lacked an internal control system and formal process for monitoring lease payments. These deficiencies, among other things, contributed to DEP's failure to collect lease payments, assess late fees, and enforce rent escalation provisions. As a result, OSC found that DEP had lost approximately \$343,000 in revenue.

The audit also revealed that DEP's lease agreements contained inconsistent and outdated lease terms and that in many cases DEP staff failed to enforce lease terms, including rent escalation and late fee provisions. These collective failures, in many cases, resulted in undervalued lease agreements that do not reflect current market value.

The audit report contains nine recommendations for specific actions that DEP should implement to address the various deficiencies found in the audit. In response to the recommendations, the DEP submitted a CAP. OSC will conduct a follow-up review to determine whether the DEP has implemented the audit recommendations.

### **Follow-Up Reviews**

OSC obtains CAPs from the 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.

## ***New Jersey Redevelopment Authority (NJRA) - Selected Fiscal and Operating Practices***

OSC's 2014 audit identified weaknesses in NJRA's internal controls concerning its loan underwriting process. The OSC also found that although required by law, NJRA had not prepared a biennial redevelopment strategy document for the previous 10 years.

During the follow-up review, OSC found that NJRA had made some progress in implementing the two recommendations contained in the initial audit report. Specifically, NJRA has partially implemented both audit recommendations.

## ***Controls over Personnel and Fiscal Practices at Selected New Jersey Municipalities***

OSC's 2014 audit evaluated controls over selected personnel and fiscal practices at three municipalities: Gloucester City, the Township of Hillside, and the City of Perth Amboy.

Our initial audit identified five areas for potential cost savings related to employee benefits and the failure of one municipality to hire a Business Administrator, a position required pursuant to *N.J.S.A. 40:69A-44*.

During the follow-up review, OSC found that each of the municipalities had made progress in implementing the recommendations set forth in the initial audit report. Specifically, Gloucester City had implemented all three of OSC's audit recommendations, while Hillside had implemented two of four recommendations, and Perth Amboy had fully or partially implemented four of five recommendations.

## **Policies and Procedures**

Our efforts at OSC have included establishing policies and procedures that guide our audit process. The following are descriptions of

some of the policies and procedures we have put into effect and 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's 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 is also 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's staff conducts research along these parameters and performs a risk assessment 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 its peer reviews in 2011, 2014, 2017, and is preparing for its next review in June 2020.

### ***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 organizations 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 each auditor 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. Annually, our staff receives formal training on topics such as governmental accounting, auditing and accounting, audit sampling, audit evidence, and internal controls. All staff members in the Audit Division have satisfied the biennial requirement of obtaining 80 CPE hours 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.

Nicole Acchione is the Acting Director of the Investigations Division. Prior to joining OSC in 2015, Ms. Acchione worked as an attorney in the private sector representing clients in complex matters involving securities fraud, antitrust violations, contract disputes, and regulatory matters. 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 States Postal Inspection Service, and the New Jersey State Police. Staff members hold certifications such as Certified Financial Crimes Investigator and Certified Fraud Examiner.

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

## **Complaints and Referrals**

In FY 2019, the Investigations Division fielded 94 complaints, 11 of which were referred to the Sandy Fraud Task Force. The division referred an additional two matters to criminal investigators at both the state and federal levels.

The Investigations Division also made 17 external referrals to other state, county, and

federal agencies in FY 2019, among them, the state Department of Environmental Protection, the state Department of Community Affairs, the state Department of Health, and the state Department of Human Services.

Other referrals were made in-house to OSC's Audit, Procurement, and Medicaid Fraud Divisions and are expected to result in future audits and/or investigations. The Investigations Division serves as a key resource to OSC's other divisions by helping to conduct witness interviews, and by 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.

In FY 2019, a criminal referral previously made by the Investigations Division led to the recent sentencing of a former consultant to the Newark Watershed Conservation and Development Corporation (NWCDC). Specifically, this political consultant was sentenced to 48 months in prison for their role in a fraud scheme related to contracts with the NWCDC.

## **Public Reports and Letters**

The Investigations Division produced the following public reports and letters in FY 2019:

*Report: Administration of Benefit Funds by the New Jersey State Firemen's Association*

OSC investigators found that funds earmarked for the New Jersey State Firemen's Association (NJSFA) and the state's 538 Local Relief Associations (LRAs) had gone largely unused for decades, resulting in an accumulation of assets of nearly \$245 million. The NJSFA is a non-profit organization that provides burial benefits and financial assistance to qualified firefighters and their families. The NJSFA is funded by a two percent tax levied on fire insurance policies written by out-of-state insurers on New Jersey properties, and receives about \$30 million annually via this funding source. The NJSFA then distributes about half of the total funds to the 538 separately-incorporated LRAs to disburse to firefighters who are able to demonstrate a financial need. The investigation found that due to an antiquated statutory scheme dating back to the late 1800s, money collected and intended for NJSFA and the LRAs went unused. In 2016, for instance, the LRAs collectively received approximately \$16 million, retained nearly \$6 million as surplus, and spent more money on staff salaries, administrative costs, and an annual convention than on disbursements to needy firefighters and their families.

OSC's investigation covered the period between January 2013 and June 2017 and included a review of NJSFA records, as well as records from several LRAs located throughout the state.

OSC recommended that the New Jersey Legislature consider revising existing laws to expand the permissible use of the funds that would allow expenditures for education, ongoing training, and safety equipment for firefighters. OSC also recommended greater oversight of the LRAs by NJSFA.

*Letters to the State Department of Community Affairs and State Department of Treasury, Division of Taxation Regarding Ethical Concerns with Municipal Tax Assessors Holding Concurrent Employment with Revaluation Firms*

In response to a referral from another government agency, OSC conducted an examination related to the ethical implications associated with municipal tax assessors holding concurrent employment at revaluation firms within the state.

OSC investigators reviewed a sample of municipalities that had performed revaluations during years 2015 through 2017, along with the names of the revaluation firms that conducted the work. Investigators identified five municipal tax assessors from the sample reviewed who appeared to work for, or had worked for, the revaluation firm hired to perform the revaluation in the town in which they were employed as an assessor at the time. At least one of those municipal tax assessors appeared to have simultaneously worked as the town's assessor and for the revaluation firm that was hired to conduct the revaluation in the town.

Witnesses interviewed by OSC explained that when a town undergoes a revaluation, the assessor acts as the "supervisor" of the revaluation. In that role, the assessor is required to oversee the revaluation and ensure all benchmarks and contract terms are completed on time and in accordance with professional standards. In this supervisory role, OSC was told that an assessor cannot reasonably maintain his or her objectivity and independence on behalf of the town while simultaneously performing work for the revaluation firm.

OSC referred the names of the five municipal tax assessors to the Local Finance Board within the state Department of Community Affairs, Division of Local Government Services to determine whether local government ethics rules prohibited this type of concurrent employment. OSC also referred this matter to the state Department of Treasury, Division of Taxation with recommendations to consider promulgating regulations that would restrict, or otherwise address, this dual employment.

### **Speaking Engagements and Outreach**

In FY 2019, the Investigations Division continued outreach efforts to other government units across the state, including law enforcement agencies, as well as the public at large. The outreach efforts are intended to promote OSC's mission and encourage public employees and New Jersey residents to report instances of government fraud, waste, and abuse.

Members of the Division have also participated in a variety of speaking engagements to include continuing legal education seminars, fraud symposiums, and presentations aimed towards the general public.

## **GOVERNMENT WASTE & MISMANAGEMENT HOTLINE**

TOLL FREE: 1-855-OSC-TIPS  
(1-855-672-8477)

EMAIL: [comptrollertips@osc.nj.gov](mailto:comptrollertips@osc.nj.gov)  
WEBSITE: [www.nj.gov/comptroller](http://www.nj.gov/comptroller)

# 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, refer cases of suspected criminal fraud to appropriate criminal prosecutors, 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. Moreover, MFD oversees a contractor that identifies and collects payments from insurance carriers when Medicaid has paid for goods or services and there was a third-party coverage that could have paid for such claims.

## **MFD's FY 2019 Statistics**

In FY 2019, MFD recovered \$92.1 million in improperly paid Medicaid funds. Those funds were returned to both the state and federal budgets. MFD also excluded 250 ineligible

providers from participating in the Medicaid program this past fiscal year.

The division received 2,993 complaints, tips, or other submissions (collectively "complaints") from a variety of outlets, including the MFD Hotline, OSC website, referrals from other state and federal agencies, and correspondence from the public. All of the complaints received by OSC resulted in some type of action, up to and including opening an investigation. Pursuant to its internal processes, members of OSC's Medicaid Fraud Division reviewed the substance of the complaints to determine whether additional steps were warranted. As a result of that review, OSC opened cases on 82 complaints and referred the majority of the remaining complaints to other more appropriate entities for handling, including the state Department of Human Services, Division of Medical Assistance and Health Services (DMAHS); professional licensing boards; county welfare agencies; and appropriate state vendors responsible for providing services related to the Medicaid Program at issue.

The division also received and reviewed a total of 86 high-risk provider applications. In addition, the division referred 25 cases to the Medicaid Fraud Control Unit (MFCU) within the state Office of the Attorney General and an additional 9 matters to other law enforcement bodies, including county prosecutors' offices and the Internal Revenue Service.

As part of its educational outreach program, MFD presented training programs to a wide variety of providers, including behavioral health, long-term care, medical day care, and sole providers/practitioners. MFD offered these sessions in coordination with the MFCU, the state Department of Health, state Department of Human Services' 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 their claims, disclosing improperly received payments, and proactively taking steps to train their employees in ways to identify, prevent, and properly address 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. For example, the program pays 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, 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 various stages of the process leading to the recovery of improperly paid Medicaid dollars. Its findings often lead to MFD audits and investigations. The unit employs numerous analytical techniques to detect anomalous or abnormal claims submitted by providers. In order to identify patterns of anomalous Medicaid reimbursements, MFD's data miners review Medicaid fraud reports and investigations from federal oversight bodies as well as reports from other states, and this unit also analyzes 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. This group also selects appropriate samples for audit/investigation purposes and, using statistically valid processes, extrapolates audit/investigative findings to determine the amount of overpayment (restitution) that should be pursued.

In total, MFD's data mining group referred 41 cases of anomalous claims behavior to the audit/investigation units and generated 421 reports for use by these units in FY 2019.

## *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.

As part of MFD's fiscal integrity oversight, MFD launched audits in a number of areas, including durable medical equipment (DME), home care, hospitals, and speech and language providers. MFD completed audits in two areas that are particularly noteworthy.

First, MFD initiated audits of a number of Independent Clinical Laboratories (ICL). MFD issued its first ICL audit on Ammon Analytical Laboratory, LLC. MFD's audit of Ammon found that 66 percent of the sample claims failed to comply with Medicaid program requirements. MFD found that Ammon: a) failed to maintain requisitions with a physician signature; b) failed to ensure the beneficiary's gender was included on test requisitions; c) billed for definitive drug tests that were not ordered by the physician or conducted by Ammon; d) failed to maintain documentation to support the billing of definitive drug tests; and, e) billed definitive drug tests for a greater level of service than ordered by the physician. By extrapolating these errors to the universe of claims/reimbursed amount, MFD determined that Ammon improperly billed and was paid for more than \$2.2 million of presumptive and definitive drug tests. MFD also found that Ammon failed to adhere to certain regulations and separately billed (i.e., unbundled) for specimen validity tests that were performed in conjunction with presumptive and/or definitive drug tests for the same beneficiary on the same date of service. As a result of Ammon's unbundling, MFD determined that Ammon improperly received more than \$750,000 in improper Medicaid reimbursements.

In total, the audit recommended that Ammon take steps to address the billing deficiencies noted above and that Ammon repay the Medicaid program more than \$3 million in identified overpayments. Ammon agreed to implement remedial actions and to repay the overpayment amount identified in the audit, \$3,022,696.

In addition to the comprehensive Ammon audit, MFD also performed numerous desk audits of ICLs where MFD identified instances when ICLs unbundled specimen validity tests from presumptive and/or definitive drug tests. In each such case, MFD notified the ICL of the presumed overpayment and began the process to recover such overpayments.

MFD's Audit Unit completed a comprehensive audit of a speech language pathologist provider, STS Therapy Services, LLC. Through this audit, MFD found that STS failed to properly document the majority of its speech language therapy sessions. Specifically, MFD determined that STS did not provide required information regarding the duration of the sessions, the treatment rendered at each session, and other required information including the provider's signature on the patient record. STS disputed the dollar amount of the overpayment, but agreed to address the audit recommendations through a corrective action plan.

Just as with the ICL audit, the MFD Audit unit identified other speech language pathologists who appear to present a similar profile to STS. The Audit unit is following up with desk audits of those providers applying a similar audit protocol to that used in the STS audit.

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 2019, MFD oversaw the recovery of more than \$19.1 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, as the payor of last resort, 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 the efforts of MFD and its contracted vendor 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 or providers 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 and ensure that Medicaid recipients receive their benefits when improperly denied.

In FY 2019, the state Medicaid program, through its outside vendor, recovered a total of \$57 million from third parties.

### **Investigations Unit**

MFD's Investigations Unit investigates inappropriate conduct on the part of Medicaid, FamilyCare, and Charity Care providers and recipients. In FY 2019, the Investigations Unit opened 329 cases and made referrals to other agencies such as the MFCU, state licensing boards, county prosecutors' offices, and various county boards and social services entities. MFD investigators receive allegations of fraud, waste and abuse from many sources, including MFD's Hotline and website as well as from other state and federal agencies. In total, MFD received 2,891 telephone Hotline tips in FY 2019.

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 2019, the Investigations Unit received 86 such applications from "high risk" providers - DME, prosthetics and orthotics (P & O), and home healthcare agencies, for which MFD performed 656 individual background checks using multiple verification sources. The unit also conducted 70 unannounced pre-enrollment site visits of prospective Medicaid providers and confirmed 16 site visits on PECOS, a federal Medicare site. During the site visits, MFD investigators verify that the applying entity actually exists at the address listed, that it complies with state and federal requirements, and that the information supplied on the provider application is accurate.

In FY 2019, the work of the Investigations Unit resulted in the recovery of \$14.1 million in misspent Medicaid funds, which includes civil recoveries from Medicaid beneficiaries who MFD determined received benefits when they were not eligible for such benefits.

## 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 or exclusions by another state or the federal government. Adverse action taken by MFD 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 2019, MFD excluded 250 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, including advice regarding the legal sufficiency of an audit/investigation and assessments regarding a provider's legal basis for objecting to an overpayment demand. MFD's Regulatory Officers also work with other state departments to propose new Medicaid program regulations and guidance designed to improve program integrity and strengthen the state's oversight of the Medicaid program.



# 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 from more than 1,900 public entities. In FY 2019, the Procurement Division received notice of 728 contracts, including 181 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.

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, state 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.

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 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-related contracts on OSC's Sandy Transparency website. As a result, in FY 2019,

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 2019, the division reviewed 61 contracts and purchase orders pursuant to EO 125 in furtherance of our state's rebuilding and recovery effort.

In all, the Procurement Division received notice of 728 contracts for review in FY 2019. Of those contracts, 181 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 103 (57 percent) of those pre-screened contracts to ensure the legality of the procurement process.

Some notable contracts reviewed include: the estimated \$9 billion contract for health benefits programs for state employees and school employees; the estimated \$6.7 billion contract for the management of pharmacy benefits for the state's workforce; a \$21 million New Jersey Turnpike Authority contract for improvements to the PNC Banks Art Center; and an Essex County contract in the amount of \$23 million for the construction of a new parking deck in the City of Newark's Hall of Records.

The Procurement Division also reviewed 240 contracts valued between \$2 million and \$10 million. In these contracts, the Procurement Division found a 51 percent error rate. In each case, the division gave guidance to the contracting entity to ensure that the errors are not repeated.

## **Educational Outreach**

In FY 2019, the division continued its extensive outreach to government contracting units across the state to review their procurement processes and specific compliance issues identified by OSC. OSC's Procurement Director also participated on various government-related panels discussing OSC's statutory authority to review public procurements.

**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.**

