



AUDITOR GENERAL

DAVID W. MARTIN, CPA



AGENCY FOR HEALTH CARE ADMINISTRATION MEDICAID THIRD-PARTY LIABILITY ADMINISTRATION Operational Audit

SUMMARY

The Agency for Health Care Administration (Agency) is designated as the Medicaid Agency for the State¹. Federal Medicaid regulations require states to maintain a system to identify third-parties, such as private health or accident insurers, that may be legally obligated to pay for medical services provided to Medicaid recipients. This operational audit for the period July 2005 through February 2007, focused on these Agency responsibilities and its monitoring of the contractor engaged to perform most of the third-party liability (TPL) functions.

With the exception of the following findings, our audit disclosed that for the controls and related transactions tested, the controls were operating effectively, the transactions were accurately recorded in applicable records, and the Agency demonstrated compliance with applicable significant laws, rules, and other guidelines.

Finding No. 1: The Agency's TPL contract monitoring procedures could be improved through the use of checklists or similar documentation to evidence that the monitoring was completed and conducted in accordance with established criteria and standards.

Finding No. 2: The Agency should address in its monitoring reports the significance of monitoring findings to better assess the TPL contractor's performance and whether liquidated damages should be assessed.

Finding No. 3: The Agency should periodically review the TPL contractor's list of insurance carriers to evaluate its sufficiency for identifying

and locating liable third-parties. The Agency should also request a waiver for modifications to related Federally-required processes.

Finding No. 4: To ensure that amounts collected by the Agency's TPL Unit are timely deposited and accurately recorded in accounting and other management records, the TPL Unit should reconcile amounts collected to the amounts recorded.

Finding No. 5: Leads letters are sent to Medicaid recipients for whom claims may identify potential third-parties. The Agency should consider the cost-effectiveness of sending follow-up letters to Medicaid recipients who do not respond to initial leads letters.

Finding No. 6: The Agency should continue to monitor the impact on TPL activities of a recent United States Supreme Court ruling.

BACKGROUND

Medicaid is a Federally-subsidized program which provides medical assistance to certain low-income persons. Related Federal regulations require states to maintain a system to identify third-parties, such as private health or accident insurers, that may be legally obligated to pay for medical services provided to Medicaid recipients. Florida implemented its TPL system through the Medicaid Third-Party Liability Act.² Florida Statutes provide that Medicaid is the payor of last resort for medically necessary goods and services furnished to Medicaid recipients.

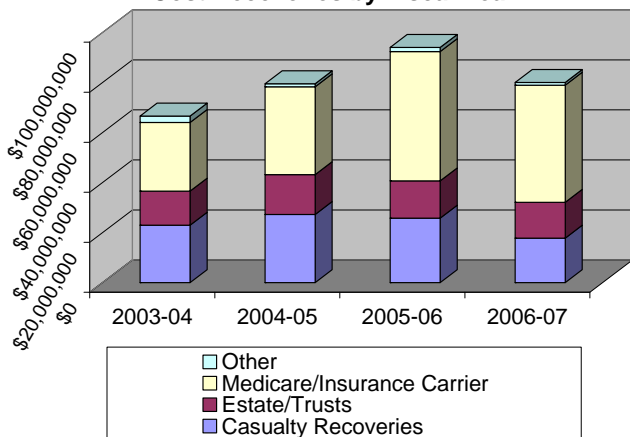
¹ Section 409.901, Florida Statutes.

² Section 409.910, Florida Statutes.

The Agency employs two types of TPL activities: (1) cost avoidance, in which other insurance coverage is identified prior to Medicaid paying a claim, and (2) cost recovery, in which collection is sought after Medicaid payment has been made. With respect to cost avoidance, the Medicaid Program maintains a third-party resource file in the Agency’s Florida Medicaid Management Information System (FMMIS). The file identifies clients with other insurance, such as Medicare and private insurance carriers. The information in the resource file comes from various sources, such as the Federal Government, Medicaid applications for services, and private insurance carriers. Prior to authorizing services, FMMIS accesses the third-party resources file to determine whether another source of coverage is available. If applicable, the other source is billed for the services prior to Medicaid. Based on information provided by Agency staff, costs avoided in fiscal year 2005-2006 totaled \$1.4 billion.

With respect to cost recovery, the primary sources of payment include casualty recoveries, estates and trusts, and insurance (i.e., Medicare and other private insurance carriers). Cost recoveries during fiscal year 2005-06 totaled \$94 million. Table 1 below shows cost recoveries for fiscal years 2003-04 through 2006-07, by source.

**Table 1
Third-Party Liability
Cost Recoveries by Fiscal Year**



Source: Agency records.

Effective November 2001, the Agency entered into a contract under which a vendor was engaged to identify

and recover from third-parties amounts due for medical services provided to Medicaid recipients. Contract payments were to be based on a percentage of the total dollar amount recovered and received by the Agency. The contract payment percentages were 6.9 percent for casualty recoveries, 5.9 percent for estate recoveries, and 4.85 percent for Medicare and other carrier recoveries. The TPL contractor also received fixed fee payments for additions to the FMMIS third-party resource file. TPL contractor payments totaled approximately \$14 million during the audit period.

The TPL contractor utilized the Agency’s TPL case management tracking system (EAGLE) to record and track TPL transactions. EAGLE interfaced with FMMIS, which was used to process Medicaid claims.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Contract Monitoring

The Agency’s TPL Unit had developed written internal policies and procedures for use in monitoring the TPL contractor’s performance, and the procedures included detailed monitoring criteria and standards for each category of cost recovery (i.e., casualty, estate, and insurance). Monitoring criteria and standards included issues, such as whether required legal court documents were accurately and timely filed and whether required data matches were performed.

TPL monitoring activities were on-going using a sample of cases selected from EAGLE, and there were six quarterly monitoring reports issued during our audit period. Our review of the TPL monitoring reports issued during our audit period disclosed that monitoring reports for estate and insurance recovery monitoring activities were not supported by checklists to document that the evaluations and monitoring activities were conducted in accordance with the Agency-established criteria and standards.

Absent completed checklists or other similar documentation, the Agency may be unable to demonstrate that its monitoring efforts were completed in a manner consistent with the criteria and

standards established by management. Also, management's ability to evaluate the extent of staff compliance with established monitoring criteria and standards may be reduced, absent the completion of checklists or similar documentation.

Recommendation: We recommend the Agency develop checklists or similar documentation in support of estate and insurance recovery monitoring.

Finding No. 2: Imposition of Liquidated Damages

Effective October 1, 2004, the TPL contract was amended to authorize the imposition of liquidated damages. Under the contract as amended, if the TPL contractor failed to respond to an estate Objection to Claim or Final Accounting within the period provided by laws and rules, the TPL contractor was to reimburse the Agency three percent of the amount of the uncollected recovery. In addition, if the Agency determined there were repetitive, substantial or significant procedural errors, the TPL contractor could have been assessed damages of up to \$500 per month for each subsequent month the procedural issue was not resolved by the TPL contractor. During our audit period the Agency imposed liquidated damages of \$1,000.

TPL monitoring reports issued during the audit identified significant numbers of errors. For example, casualty recovery monitoring reports indicated overall error rates averaging 36 percent, ranging from 25 to 45 percent, during the audit period. However, further inquiries and evaluations of the monitoring reports disclosed that the reports did not distinguish between minor errors and those that may be considered repetitive, substantial, or significant procedural errors. We also noted that the monitoring reports did not always, when reporting an error or failure to respond to an Objection to Claim or Final Accounting, indicate the impact of the error. For example, should estate funds not be available for recovery, the failure to timely respond may be of little or no consequence.

Absent classification of the errors disclosed in the monitoring reports, the quality of TPL contractor performance may be less evident and it may not be clear whether damages should be assessed.

Recommendation: We recommend the Agency enhance its monitoring process to ensure that monitoring reports distinguish between minor errors and those considered repetitive, substantial, or significant procedural errors. The Agency should also require the TPL contractor to document whether estate funds are available for recovery to allow the Agency to determine whether the TPL contractor's actions were sufficient under the circumstances. Finally, we recommend that the monitoring report contain conclusions regarding whether the assessment of liquidated damages should be pursued by the Agency.

Finding No. 3: TPL Sources and Data Matching

Federal Regulations³ require states to perform certain data exchanges in order to identify potentially liable third-parties. The required exchanges include, but are not limited to, the state workers' compensation or industrial accident commission files and state motor vehicle accident report files. Our audit of the Agency's compliance with those requirements disclosed that, during the audit period, the Agency's TPL contractor did not utilize these data exchanges to identify potentially liable third parties. Upon inquiry, Agency staff indicated that the TPL contractor had used these sources in the past; however, in the TPL contractor's experience, other sources provided more timely information. The Agency had not requested a waiver for this deviation from Federal Regulations.

Further, one of the TPL contractor's responsibilities was to provide the Agency with new commercial insurance information to add to the third-party resource file for cost avoidance purposes. The Federal Deficit Reduction Act of 2005 (Public Law 109-171) expanded the definition of parties which should be considered in the pursuit of third-parties. These additional parties include, for example, self-insured plans and pharmacy benefit managers. While the TPL

³ Title 42, Section 433.138(d), Code of Federal Regulations.

contractor provided the Agency with a listing of insurance carriers that were used for data matches, the Agency did not perform sufficient procedures to ensure the adequacy of the list, including an evaluation of the completeness of any revisions made to conform to the Deficit Reduction Act. The failure to identify third-parties may result in missed opportunities for cost avoidance and recovery.

Recommendation: We recommend the Agency request a waiver from the Federal Government in regards to modified procedures related to the identification of liable third-parties. We also recommend that the Agency periodically review the TPL contractor's insurance carrier list to evaluate its sufficiency. Steps to evaluate the list might include comparisons of the carriers shown by the list to State-licensed providers.

Finding No. 4: TPL Collections and Deposits

TPL collections totaled approximately \$155 million during our audit period, most of which was collected by the TPL contractor and remitted to the Agency. However, certain items were collected by the TPL Unit, and during the audit period, approximately \$13.4 million was collected by the TPL Unit. Of that amount, \$10 million related to a settlement payment.

In regards to collections in the TPL Unit, upon receipt of a check, one person opened the mail, prepared an asset custody transfer form, and delivered the check with the transfer form to the Bureau of Finance and Accounting for deposit and recording in the Agency's accounting records. During the audit period, the TPL Unit did not reconcile its records of the amounts collected in the Unit with the amounts shown by the Agency's accounting and other management records (i.e., FLAIR, FMMIS, EAGLE). Such reconciliations would better ensure that the amounts collected are timely deposited and accurately recorded and that any errors are timely detected and corrected.

Recommendation: We recommend the Agency implement procedures to reconcile TPL Unit receipts with deposits shown by the accounting records.

Finding No. 5: Leads Letter Program

When FMMIS processed a Medicaid claim which included a third-party payment for services, but FMMIS did not include third-party identifying information, FMMIS marked the claim for follow-up and prepared a "leads letter." The TPL contractor was then responsible for sending the leads letter to the applicable Medicaid recipient to request information about the third-party coverage and, if applicable, follow-up with Medicaid recipients who have submitted incomplete information. However, the Agency did not require the TPL contractor to send second-request letters to those recipients who did not respond.

Based on Agency-prepared monitoring information, during the 15-month period ended September 2006, only 17 percent of the leads letters resulted in recipient responses. However, 51 percent of these responses did include usable insurance information. Agency staff responded that FMMIS created another leads letter if similar claims were processed in a later month, but Agency staff had not prepared an analysis comparing the costs and benefits of requiring follow-up for those not responding to initial leads letters.

Recommendation: To increase the return rate on leads letters, we recommend the Agency re-evaluate the process, including the cost effectiveness of sending a follow-up letter to Medicaid recipients who do not respond to the initial request. As part of this analysis, we suggest that second request letters be sent to an appropriate sample of recipients and that related response rates be measured and evaluated.

Finding No. 6: Impact of United States Supreme Court Ruling

On May 1, 2006, the United States Supreme Court issued a ruling on the Arkansas Department of Health and Human Services v. Ahlborn⁴ case, which stipulated that states can only attach Medicaid liens to the medical portion of court settlements. Agency staff indicated that as a result of this ruling, Florida TPL

⁴ 547 U.S. 268, 126 S.Ct. 1752, 164 L.Ed.2d 459.

recoveries have been reduced. Based on information provided by the Agency, the impact on casualty recoveries during the period July 26, 2006, through January 3, 2007, for example, had been a reduction of approximately \$2.3 million (76 percent of potential court settlement-related collections).

Agency staff responded that they have been monitoring discussions between the Federal Government and the Third-Party Liability Technical Advisory Group⁵ on how the Ahlborn case decision will be addressed at the Federal level.

Recommendation: The Agency should continue to monitor the impact on TPL activities of the Supreme Court ruling.

OBJECTIVES, SCOPE, AND METHODOLOGY

This operational audit focused on the Agency's administration of its responsibilities for the identification and collection of Medicaid third-party liabilities. Our objectives were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.

Our audit included examinations of various transactions (as well as events and conditions) occurring during the period July 2005 through February 2007. In conducting our audit, we:

- Interviewed Agency personnel.

- Obtained an understanding of internal controls and observed, documented, and tested key processes and procedures related to the Agency's third party liability contract.
- Reviewed and tested contract monitoring reports and monitoring documentation.
- Performed various other auditing procedures as necessary to accomplish the objectives of the audit.

⁵ Advisory groups are established by the Federal Government to ensure public and expert involvement and advice in Federal decision-making.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT RESPONSE

In a letter dated November 5, 2007, the Secretary responded to our findings. The letter is included in its entirety at the end of this report as Appendix A.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was conducted in accordance with applicable *Generally Accepted Government Auditing Standards*. This audit was conducted by Ying Ying Chen, CPA, and supervised by Peggy Miller, CPA. Please address inquiries regarding his report to Jane Flowers, CPA, Audit Manager, by e-mail (janeflowers@aud.state.fl.us) or by telephone (850-487-9136).

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (<http://www.myflorida.com/audgen/>); by telephone (850-487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

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APPENDIX A
MANAGEMENT RESPONSE



CHARLIE CRIST
GOVERNOR

ANDREW C. AGWUNOBI, M.D.
SECRETARY

November 5, 2007

David W. Martin, CPA
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Martin:

Thank you for the opportunity to respond to the preliminary and tentative findings and recommendations from your audit of Medicaid Third-Party Liability Administration. We appreciate the efforts of your staff and have included our response to the recommendations noted in your report. AHCA continuously looks for opportunities to improve operations and is committed to providing cost-effective and efficient health care services to the citizens of Florida.

In accordance with your request, we have emailed you the preliminary and tentative findings document with our response incorporated therein. If you have any questions regarding our response, please contact Mike Blackburn, Audit Director, at (850) 414-5419.

Sincerely,

Andrew C. Agwunobi, M.D.
Secretary

ACA/mb

Enclosure: Response to the P&T for Medicaid Third-Party Liability Administration

cc: Linda Keen, Inspector General
Mark Thomas, Chief of Staff
Tom Arnold, Deputy Secretary, Division of Medicaid
Janet Parramore, Director, Division of Administrative Services



APPENDIX A
MANAGEMENT RESPONSE (CONTINUED)

**Agency for Health Care Administration
Response to Auditor General's P&T audit findings for
Medicaid Third-Party Liability Administration
July 2005 through February 2007**

Finding 1:

The Agency's TPL contract monitoring procedures could be improved through the use of checklists or similar documentation to evidence that the monitoring was completed and conducted in accordance with established criteria and standards.

Recommendation:

We recommend the Agency develop checklists or similar documentation in support of estate and insurance recovery monitoring.

Agency Response:

The Agency will develop and use a checklist for monitoring purposes for estate and insurance recovery.

Finding 2:

The Agency should address in its monitoring reports the significance of monitoring findings to better assess the TPL contractor's performance and whether liquidated damages should be assessed.

Recommendation:

We recommend the Agency enhance its monitoring process to ensure that monitoring reports distinguish between minor errors and those considered repetitive, substantial, or significant procedural errors. The Agency should also require the TPL contractor to document whether estate funds are available for recovery to allow the Agency to determine whether the TPL contractor's actions were sufficient under the circumstances. Finally, we recommend that the monitoring report contain conclusions regarding whether the assessment of liquidated damages should be pursued by the Agency.

Agency Response:

The Agency shall ensure it summarizes repetitive, substantial or significant procedural errors in its summary cover letter that is submitted with each monitoring report. In addition, the Agency will include conclusions regarding whether the assessment of liquidated damages will be pursued as a result of the monitoring report findings. The Agency will require the contractor to pursue recovery after a legal deadline has passed if possible (e.g. the court has not ordered disbursement of funds). The Agency will determine whether or not the contractor's actions were sufficient and impose sanctions as appropriate in accordance with the contract.

APPENDIX A
MANAGEMENT RESPONSE (CONTINUED)

Finding 3:

The Agency should periodically review the TPL contractor's list of insurance carriers to evaluate its sufficiency for identifying and locating liable third-parties. The Agency should also request a waiver for modifications to related Federally-required processes.

Recommendation:

We recommend the Agency request a waiver from the Federal Government in regards to modified procedures related to the identification of liable third-parties. We also recommend that the Agency periodically review the TPL contractor's insurance carrier list to evaluate its sufficiency. Steps to evaluate the list might include comparisons of the carriers shown by the list to State-licensed providers.

Agency Response:

The Agency will evaluate the effectiveness of the data matches and consider a revision to the Medicaid State Plan. The Agency will require the contractor to submit supporting documentation indicating data matches were conducted. The Agency will continue to monitor collections received from carriers and cost avoidance savings to ensure the contractor is conducting the required data matches.

Finding 4:

To ensure that amounts collected by the Agency's TPL Unit are timely deposited and accurately recorded in accounting and other management records, the TPL Unit should reconcile amounts collected to the amounts recorded.

Recommendation:

We recommend the Agency implement procedures to reconcile TPL Unit receipts with deposits shown by the accounting records.

Agency Response:

TPL receives a daily deposit log and copies of deposit slips from the contractor for casualty, estate and trust deposits. TPL also receives copies of deposit slips and deposit logs from the lockbox. TPL maintains a database in order to reconcile amounts deposited and subsequently invoiced by the contractor. TPL posts an event in the TPL case tracking system (EAGLE) as an additional measure to ensure amounts deposited balance to amounts invoiced. Prior to approving invoices for the contractor, TPL ensures funds have been deposited. In order to eliminate processing of TPL funds through Finance and Accounting, TPL is working towards the TPL contractor depositing all TPL related payments to ensure complete reconciliation of all amounts.

Finding 5:

Leads letters are sent to Medicaid recipients for whom claims may identify potential third-parties. The Agency should consider the cost-effectiveness of sending follow-up letters to Medicaid recipients who do not respond to initial leads letters.

APPENDIX A
MANAGEMENT RESPONSE (CONTINUED)

Recommendation:

To increase the return rate on leads letters, we recommend the Agency re-evaluate the process, including the cost effectiveness of sending a follow-up letter to Medicaid recipients who do not respond to the initial request. As part of this analysis, we suggest that second request letters be sent to an appropriate sample of recipients and that related response rates be measured and evaluated.

Agency Response:

The Agency will work with the contractor to send second request letters to a sample population to determine the rate and adequacy of recipient response. The Agency will work with the contractor to monitor and evaluate responses to the second request to determine its effectiveness in improving recovery potential.

Finding 6:

The Agency should continue to monitor the impact on TPL activities of a recent United States Supreme Court ruling.

Recommendation:

The Agency should continue to monitor the impact on TPL activities of the Supreme Court ruling.

Agency Response:

The Agency will continue to monitor and track the fiscal impact resulting from the United States Supreme Court decision (Ahlborn) of May 2006.

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