

# OFFICE OF THE STATE INSPECTOR GENERAL

PERFORMANCE REVIEW  
*DEPARTMENT OF MEDICAL ASSISTANCE SERVICES*

OCTOBER 2014



June W. Jennings, CPA  
State Inspector General  
Report No. 2014-PR-002



**COMMONWEALTH OF VIRGINIA**  
**Office of the State Inspector General**

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October 17, 2014

Cynthia B. Jones, Director  
Department of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, VA 23219

Dear Director Jones:

Under [§ 2.2-309](#) [A](9) of the *Code of Virginia (Code)*, the Office of the State Inspector General (OSIG) is empowered to conduct performance reviews of state agencies to ensure that state funds are spent as intended and to evaluate the efficiency and effectiveness of programs in accomplishing their purposes. The Department of Medical Assistance Services (DMAS) review covers the period of January 1, 2013 through December 31, 2013.

The OSIG's review focused on the:

- Effectiveness and efficiency of third party contracts.
- Use of funds as appropriated.
- Interagency agreement between DMAS and the Department of Social Services (DSS).
- Cost-effectiveness of the post-payment audit/review process for community-based providers.

DMAS was selected for review in these areas based on a 2013 statewide risk assessment completed by Deloitte, LLP. This agency was ranked as the highest risk agency of all executive branch agencies. The planning phase of the review consisted of conducting interviews with selected members of executive and divisional management, assessing the risks identified during those interviews, and creating a detailed review plan to accomplish the review objectives. The steps in the review plan were executed, and the results were discussed with DMAS management on September 23, 2014.

Overall, OSIG staff found that the DMAS procurement and contracting functions were operating efficiently and effectively and that General Fund dollars were being spent as intended. By copy of this letter OSIG is requesting that agency management provide a corrective action plan within two weeks to address this report's recommendations.

On behalf of the OSIG, I would like to express our appreciation for the invaluable assistance provided by Director Jones and the DMAS staff during this review.

If you have any questions, please contact me at 804-625-3255 or [june.jennings@osig.virginia.gov](mailto:june.jennings@osig.virginia.gov). I am also available to meet in person to discuss this report at your convenience.

Respectfully,

A handwritten signature in black ink that reads "June W. Jennings". The signature is written in a cursive style with a large initial "J".

June W. Jennings

State Inspector General

CC: Paul J. Reagan, Chief of Staff to Governor McAuliffe  
Suzette P. Denslow, Deputy Chief of Staff to Governor McAuliffe  
Dr. William A. Hazel Jr., Secretary of Health and Human Resources  
Senator Frank W. Wagner, Chairman, Rehabilitation and Social Services Committee  
Delegate Robert D. Orrock, Sr., Chairman, Health Welfare and Institutions Committee

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## Executive Summary

Overall, the Office of the State Inspector General staff found that the Department of Medical Assistance Services' procurement and contracting functions were operating effectively and efficiently. Appropriations were spent as intended, and the post-payment audit/review process for community-based providers was cost-effective.

Office of the State Inspector General (OSIG) staff reached this conclusion after:

- Gaining an understanding of the Contract Management and the Contract Monitoring processes and assessing them for effectiveness and efficiency.
- Evaluating a sample of contracts with regard to the Contract Management and Contract Monitoring Processes, including whether the contracts:
  - Addressed a need in the agency.
  - Provided what was expected and needed.
  - Had adequate performance measures and that the vendor met these measures.
  - Provided adequate training for Contract Monitors.
- Evaluating a sample of agency expenditures to determine whether expenditures were reasonable, necessary and consistent with the program they were made under.
- Identifying risks associated with fraud, waste, and abuse and determining whether controls to identify such activities were present and functioning.
- Assessing the interagency agreement between the Department of Medical Assistance Services (DMAS) and the Department of Social Services (DSS) for effectiveness and efficiency.

To improve current processes, OSIG staff recommend DMAS explicitly list performance measures within their requests for proposals (RFP) and within the Interagency Agreement between DMAS and DSS.

## Purpose and Scope of the Review

The Office of the State Inspector General conducted a performance review of the Department of Medical Assistance Services pursuant to *Code of Virginia (Code)* [§ 2.2-309](#) whereby the State Inspector General shall have power and duty to:

*Conduct performance reviews of state agencies to assess the efficiency, effectiveness, or economy of programs and to ascertain, among other things, that sums appropriated have been or are being expended for the purposes for which the appropriation was made and prepare a report for each performance review detailing any findings or recommendations for improving the efficiency, effectiveness, or economy of state agencies, including recommending changes in the law to the Governor and the General Assembly that are necessary to address such findings.*

This review was not designed to be a comprehensive review of DMAS. Instead, the focus was on certain risk areas identified through a statewide risk assessment of state agencies. The scope and objectives of the review were established through interviews with management concerning DMAS' risks in these areas:

- Third Party Administration/Contractor Management
- General Fund Appropriations
- Procurement
- Medicaid Eligibility and Enrollment
- Eligibility Redeterminations
- Non-Emergency Medical Transportation Program

The review was conducted in calendar year 2013, and contracts reviewed were sampled from the population of contracts in place on March 10, 2014. Contracts in this population had effective dates ranging from April 29, 2009 to March 1, 2014.

The review's objectives included:

1. Confirming that third party relationships increased efficiency through promoting meaningful improvements in processes or by providing constituent services.
2. Reviewing performance measures and commitments contained in third party contracts for opportunities to decrease contractual risk and increase the ease of contractual oversight.
3. Determining if established internal controls over contract management policies provided reasonable assurance the contract administration process was managed efficiently, economically, and effectively.
4. Confirming that agency appropriations were expended for the intended purposes.
5. Evaluating whether preventive and detective controls were in place to identify symptoms of fraud, waste, and abuse and to follow-up for resolution, as needed.

6. Evaluating the Interagency Agreement between DMAS and DSS for effectiveness and efficiency.
7. Reviewing the post-payment audit/review process for community-based providers to evaluate the cost-benefit of collections.

*Risk Area Grouping*

The risk areas of Procurement and the Non-Emergency Medical Transportation program were grouped with the Third Party Administration/Contract Management risk area, and objectives were developed to address all three risk areas. The risk areas involving Medicaid Eligibility and Enrollment and Eligibility Redeterminations were combined and reviewed under the objective to evaluate the Interagency Agreement, as DSS administers these functions.

## Background

### *Introduction*

DMAS administers the Medicaid program and the State Children’s Health Insurance Program (CHIP), referred to as the Family Access to Medical Insurance Security (FAMIS) in Virginia. The DMAS website states the agency’s “mission ... is to provide a system of high quality and cost effective health care services to qualifying Virginians and their families.”<sup>1</sup>

DMAS has 16 divisions and offices, including the Office of the Director. Over 400 employees manage all Medicaid activities and resources in these divisions for over one million customers. Also, due to increasing program requirements, DMAS utilizes 103 hourly employees who are a significant component of the agency’s workforce. Lastly, 15 contract employees support the Information Management Division and play a critical role in maintaining the agency’s systems.

### *DMAS Appropriations*

In fiscal year (FY) 2013 the agency’s appropriation was \$8.1 billion and increased to \$8.5 billion in FY2014 and \$9.0 billion in FY 2015.

<b>DMAS FY2015 Appropriations<sup>2</sup></b>	
<b><i>DMAS Programs Receiving Funding</i></b>	<b><i>% Received</i></b>
Pre-Trial, Trial, and Appellate Processes	< 1
Financial Assistance for Health Research	< 1
Non-Medicaid Medical Assistance Services	< 1
Administrative Services	1
Medical Assistance Services for Low Income Children	1
CHIP	2
Medicaid	94

Non-General Funds, including Federal Funds, provide just over half of the agency’s funding.

### *The Importance of Contract Management*

Contracted services are an integral part of the services that DMAS provides Commonwealth of Virginia (Commonwealth) citizens. Executive management indicated if contracted services were not available, “DMAS would not continue.” About two-thirds of the administrative budget consists of contracted services, with over 20 major contracts in place to process claims payments, review prior authorizations, audit providers, and participate in rate setting activities. The claims payment contract was identified as the most critical contract to the agency.

<sup>1</sup> DMAS. Who We Are. DMAS website. URL: <http://www.dmas.virginia.gov/>. Accessed October 2, 2014.

<sup>2</sup> Virginia Performs. View Agency: Department of Medical Assistance Services (602). Virginia Performs website. URL: [https://solutions.virginia.gov/pbreports/rdPage.aspx?rdReport=vp\\_Agency&rdAgReset=True&Agency=602](https://solutions.virginia.gov/pbreports/rdPage.aspx?rdReport=vp_Agency&rdAgReset=True&Agency=602). Accessed October 2, 2014.

## **CONTRACT DEVELOPMENT**

The goal of contract development is to ensure a successful procurement that protects the agency, not only financially but operationally, and that ensures the desired levels of services are provided. As a result of reorganization, DMAS' Budget and Contract Management Division currently handles the development, payment, and financial monitoring of contracts. DMAS' operational divisions monitor contracts to ensure the terms of contracts are met.

## **CONTRACT DEVELOPMENT TEAM**

A contract development team usually consists of at least one member from the Budget and Contracts Division. The majority of the team is typically from the operational division, including the individual responsible for the contract's operational monitoring. The Office of the Attorney General (OAG) is also involved in the contract development process.

## ***The Department of Social Services' Role***

While DMAS is responsible for setting policy for the Medicaid program, DSS, through use of Local Departments of Social Services (LDSS), administers much of the program per the Interagency Agreement between DMAS and DSS. The LDSS meet with prospective clients, determine individuals' Medicaid eligibility, and perform Medicaid enrollment functions.

## **VIRGINIA CASE MANAGEMENT SYSTEM**

The Virginia Case Management System (VaCMS) is part of the Secretary of Health and Human Resources' electronic Health and Human Resources (eHHR) initiative,<sup>3</sup> a program designed to promote and manage Health Information Technology (HIT) in Virginia.<sup>4</sup> DSS operates the VaCMS used by LDSS to provide Medicaid eligibility determinations. VaCMS is part of DSS' eligibility modernization projects.

While it usually takes several years to replace an eligibility and enrollment system, the eligibility modernization projects went from contract signing to implementation in 10 months. In October 2013 the Medicaid enrollment and eligibility function was transferred from the existing legacy systems to VaCMS, and the function for the renewal process will be transferred in subsequent phases. VaCMS was undergoing implementation during the planning phase of this performance review, and although the implementation of VaCMS is not within the scope of this performance review, it is an important event affecting the coordination of services between DMAS and DSS.

OSIG staff is reviewing DSS separately with regard to the agency's role in Medicaid enrollment and eligibility.

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<sup>3</sup> Secretary of Health and Human Resources. *eHHR Innovating Human Services in Virginia*. October 2013. URL: <http://ehhr.virginia.gov/media/2516/Oct2013.pdf>. Accessed October 2, 2014.

<sup>4</sup> Secretary of Health and Human Resources. About eHHR. eHHR website. URL: <http://ehhr.virginia.gov/about/>. Accessed October 2, 2014.

## *Auditor of Public Accounts and Joint Legislative Audit and Review Commission Reviews*

Two of the reviews the Auditor of Public Accounts (APA) performed on the Secretary of Health and Human Resources' agencies included findings concerning DMAS. The FY2013 APA report included two findings on access management to DMAS information systems. The FY2012 report had one finding regarding lack of security over private information, a finding that DMAS' Internal Audit Department previously identified.

The Joint Legislative Audit and Review Commission (JLARC) issued two reports pertaining to DMAS in 2010 and 2012:

- [\*Interim Report: Fraud and Error in Virginia's Medicaid Program\*](#) (Report. No. 404, December 2010).
- [\*Mitigating the Risk of Improper Payments in the Virginia Medicaid Program\*](#) (Report. No. 424, January 2012).

JLARC's reports were both in response to House Joint Resolution 127 (2010) which charged JLARC with identifying opportunities to reduce waste, inefficiency, fraud, and abuse in the Medicaid program. Report No. 424 stated that based on a Federal review of cases, errors in determinations of Medicaid eligibility made by LDSS were the largest contributor to improper payments from the General Fund (between \$18 million and \$263 million) in FY2009. By contrast, fraud contributed about \$6.1 million. Recommendations included improvements to automated controls within the information systems.<sup>5</sup>

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<sup>5</sup> JLARC. Reports: *Mitigating the Risk of Improper Payments in the Virginia Medicaid Program*. JLARC website. URL: <http://jlarc.virginia.gov/reports/Rpt424.pdf>. Accessed October 3, 2014.

## Review Methodology

OSIG review staff conducted this review by:

- Examining the detailed results of Deloitte’s statewide risk assessment
- Interviewing DMAS staff to gain insight into the specific risk areas mentioned in the Deloitte assessment. OSIG staff interviewed DMAS’:
  - Deputy Commissioner for Finance
  - Deputy Commissioner for Administration
  - Director of Policy and Research Division
  - Director of Fiscal and Purchases Division
  - Director of Budget and Contract Management Division
  - Director of Internal Audit
  - APA auditors (for DMAS)

As a result of the interviews, OSIG’s review staff identified associated risks for each of the risk areas, established performance review objectives (see [Purpose and Scope of the Review](#)), and developed detailed review procedures to address these objectives.

The performance review procedures included:

1. Understanding the Contract Management and Contract Monitoring processes and assessing them for effectiveness and efficiency.
2. Verifying a population of contracts and selecting a sample.
3. Determining whether selected contracts:
  - Addressed an agency need.
  - Provided what was expected and needed.
  - Included adequate performance measures and the vendor was meeting these measures.
  - Provided adequate training for Contract Monitors, including written policies and procedures.
  - Included contingency plans.
  - Included dispute resolution processes.
  - Provided verification of vendor compliance with the contract requirements.
  - Contained a post-contract assessment of vendor performance.
  - Contained a process to ensure timely payments to avoid penalties or to take advantage of discounts.
4. Using APA’s [Data Point](#) system to identify a population of agency expenditures, and verifying whether a sample of these was reasonable and necessary, and consistent with the program they were charged to.
5. Identifying risks associated with fraud, waste, and abuse and determining whether controls to identify such activities were present and functioning.

6. Assessing the DMAS/DSS Interagency Agreement for effectiveness and efficiency.
7. Evaluating the post-payment audit and review process for effective and efficient collection processes.

## Review Results

### *Value of Third Party Contractors*

Overall OSIG review staff found that contract development and monitoring added value to the agency.

Nine contracts out of a population of 27 (as of March 2014) were reviewed, including the Non-Emergency Medical Transportation contract. The contracts were judgmentally selected as they represented one-third of the population. At least one contract from each division was selected. The other contracts included:

- Identification and recovery of funds.
- Incontinence supply purchases.
- Administration of behavioral health services.
- Promotion of various assistance programs/educating potentially eligible citizens about the programs.
- Payment Error Rate Measurement (PERM) services.
- Actuarial services.
- Promotion of the Children's Health Insurance Program.
- Provision of services to support the federally certified Medicaid Management Information System (MMIS).

OSIG review staff found that contracts were developed to ensure DMAS received what was needed. The contracts' scope of work:

- Provided specific instruction on how work was to be accomplished.
- Specified the obligations and responsibilities of each party.
- Detailed all tasks.
- Provided an explanation or example of documentation to evidence contractor efforts.
- Identified criteria for successful performance of the contract.

The contracts also had quantifiable, verifiable, and measurable deliverables that were directly related to the scope of work. The contracts provided a meaningful improvement (added value) in a process for DMAS or for DMAS' clients.

### *Performance Measurement*

OSIG review staff evaluated the sample of contracts for opportunities to decrease contractual risk and increase the ease of oversight. During the evaluation, OSIG review staff:

- Examined each related RFP and documented details viewed as performance measures.
- Interviewed the Contract Monitors.
- Verified Contract Monitors knew the performance measures of their assigned contracts.
- Verified through Contract Monitors whether contractors were meeting performance measures.

- Evaluated performance measures to ensure they related to the purpose of the contract.

Out of the nine contracts OSIG review staff examined:

- Two had just been executed and evaluating vendor performance was not practical.
- Six had acceptable vendor performance.
- One (the non-emergency medical transportation contract) had performance issues including client complaints about late arrivals and no-shows, but DMAS had already identified the issues and taken steps, including meeting with the vendors quality assurance team and performing onsite monitoring of calls, to remedy the situation.
- Seven contracts did not have performance measures explicitly mentioned.
- RFPs did not specifically identify performance measures in a separate section; however, specific measurable requirements that could verify/monitor the vendor's performance during the contract period were identified throughout the document (see [\*Issue #1—Performance Measures in Contracts\*](#)).
- All nine contracts had performance measures related to the purpose of the contract that were either stated in the contract or identified by the Contract Monitor.

### ***Effectiveness, Efficiency, and Internal Control***

The contract management function operated with overall effectiveness and efficiency.

- Contract development teams were comprised of subject matter experts and procurement experts.
- Standard procurement request forms were used to document requests and approvals.
- Contracts were being developed with templates provided by the Department of General Services and the Budget and Contract Management Division.
- Monitoring functions were effectively split between fiscal monitors, who were familiar with contract rates, and operational monitors, who were familiar with the technical aspects of the service.
- Performance bonds were included in contracts where needed.
- Contingency plans existed that detailed how the agency would temporarily pick up the service if a critical contractor defaulted.
- Periodic and final evaluations were performed and documented for contractor performance and retained for future reference.

#### **CONTRACT AND PURCHASING PROCEDURES MANUAL**

DMAS uses a *Contract and Purchasing Procedures Manual* that supplements the state requirements found in the *Agency Procurement and Surplus Property Manual (APSPM)*. The DMAS procedures also include a Contract Administrator (also called a Contract Monitor) assignment memorandum that defines the responsibilities for monitoring the performance of a contract and for communicating needed information back to the Office of Contract Management.

## **CONTRACT MONITORING GUIDELINES VERIFICATION**

For each of the nine contracts reviewed, OSIG review staff verified that:

- An assigned Contract Administrator/Monitor had been designated in writing.
- The Contract Administrator/Monitor had used available monitory tools to verify the performance of the services included on the invoices.
- The Budget and Contract Division verified contractual rates were billed on invoices.
- A semi-annual contract evaluation was performed.

## ***Appropriations***

OSIG review staff used the Data Point system to obtain a population of payments by program, and selected one payment per program that looked unusual based on the payee or the amount.

Supporting documentation for a sample of 13 payments was reviewed. A single payment made through the state accounting system (CARS), which also provides transaction data to the Data Point system, could have a large number of supporting payments made by a third party to health care providers for Medicaid claims or other DMAS program claims. In those instances OSIG review staff selected one or two payments from the third party provider's check register to verify the appropriateness of the expenditure. All 13 expenditures reviewed appeared reasonable and necessary.

## ***Symptoms of Fraud, Waste, and Abuse***

OSIG review staff identified and documented possible symptoms/indicators of fraud related to the contract management, procurement, and appropriations processes. These symptoms/indicators are discussed below.

### **FRAUD SYMPTOMS/INDICATORS**

#### ***KICKBACKS***

*Unethical or improper exchange of money or gifts by a vendor to a person in a position of power or influence in order to secure contracts*

Throughout this review and interactions with DMAS contract management and administration staff, OSIG review staff did not observe any employee activity that would indicate kickbacks were being received.

#### ***INAPPROPRIATE CONTRACT AWARDS***

*Contracts awarded to related parties*

OSIG review staff looked at *Procurement Authorization Request Forms* and identified the approvers of each contract and then evaluated the *Statements of Economic Interests* for those individuals. No relationships between approvers and contractors were identified.

### **COLLUSION**

*When two or more parties agree to limit open competition by deceiving, misleading, or defrauding others to gain an unfair advantage in receiving contract awards*

OSIG review staff examined the entire population of 27 contracts to determine if any were awarded to the same contractors or vendors. Some contracts in the population were identified that had been awarded to the same vendor, but they were for various services provided to different Divisions within DMAS, and OSIG review staff did not determine collusion had occurred.

### **IMPROPER USE OF APPROPRIATED FUNDS**

*Funds were not used for their intended purpose or were not expended in a reasonable, necessary manner*

OSIG review staff looked for payments made to individuals or payments made to program codes not related to the overall purpose of the appropriated funds. Although some payments made to individuals instead of providers were found, OSIG review staff verified that these were reimbursements for expenses paid by that individual. Payments charged to other program codes were found reasonable and necessary. OSIG review staff did not find any evidence of funds being used for unintended purposes.

### **DMAS—DSS Interagency Agreement**

DMAS and DSS maintain a comprehensive Interagency Agreement, the purpose of which is:

*For the Virginia Department of Medical Assistance Services . . . to obtain the services of the Virginia Department of Social Services . . . in carrying out certain responsibilities of the Commonwealth of Virginia authorized under the Virginia State Plan for Medical Assistance Services (Medicaid Title XIX), the State Child Health Plan for Title XXI (Family Access to Medical Insurance Security—FAMIS), the State and Local Hospitalization (SLH) Program, and Medicare Part D.<sup>6</sup>*

The Interagency Agreement provides for the performance of activities necessary to comply with certain federal and state regulations.<sup>7,8,9,10</sup> Two senior staff members from each agency were designated the principal contacts for ensuring the agreement was carried out as intended.

### **DSS/LDSS RESPONSIBILITIES**

DSS and its local agencies are responsible for:

- Intake and eligibility determination
- Eligibility re-determination
- Participation in hearings

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<sup>6</sup> MOU between DMAS and DSS signed September 27, 2012

<sup>7</sup> U.S. Government Printing Office (GPO). Electronic Code of Federal Regulations (e-CFR). [Title 45: Subtitle A: Subchapter A: Part 74](#). GPO website. Accessed October 6, 2014.

<sup>8</sup> GPO. e-CFR. [Title 42: Chapter IV. Subchapter D. Part 457 et seq.](#) e-CFR website. Accessed October 6, 2014.

<sup>9</sup> GPO. e-CFR. [Title 42: Chapter IV. Subchapter C. Part 431. Subpart F. § 431.300.](#) e-CFR website. Accessed October 6, 2014.

<sup>10</sup> Division of Legislative Automated Systems (DLAS). Virginia Administrative Code (VAC). [12VAC30](#). DMAS. DLAS website. Accessed October 6, 2014.

- Case management
- Quality control
- Fraud investigation
- Training

There are 21 specific appendices identified in the Interagency Agreement

1. Medicaid Policy and Eligibility Determination
2. Health Insurance Premium Payment Program (HIPP)
3. State and Local Hospitalization (SLH)
4. Office of Newcomer Services/Refugee Medical Assistance Program
5. Obligations of a Non-Custodial Parent and Other Child Support Issues
6. Managed Care Initiatives
7. Third Party Liability, Estate Recovery, Special Needs Trusts and Annuities
8. Long-Term Care (child and adult)
9. Treatment Foster Care
10. Family Access to Medical Insurance Security (FAMIS)
11. Protective Services (child and adult)
12. Medical Assistance Appeals
13. Quality Control/Quality Management
14. Fraud and Non-entitled Benefits
15. Outstation Eligibility Workers (OEW)
16. Data Systems
17. Client Medical Management
18. Early and Periodic Screening, Diagnosis and Treatment (EPSDT)
19. Development of a Back-Up System for the Money Follows the Person Program
20. Fiscal Administration
21. Data Exchange Agreement

OSIG review staff conducted interviews with each agency's principal contacts and did not identify any inefficiencies. However, DMAS had concerns regarding who was accountable for the cost of errors in eligibility determination/re-determination cases. While the LDSS ultimately make the determinations, DMAS could be held responsible for the cost of any errors made. As of the completion of this review, DMAS could not identify any repayments that took place (see [Issue #2—Separation of Responsibility and Control](#)).

When the principal contacts were asked if there were any performance measures that each agency had to meet under the Interagency Agreement, and if there were any consequences for failing to meet those measures, the contacts said there were no performance measures and therefore no consequences. Further, each principal contact indicated there was no way that either DSS or DMAS could require the LDSS to adhere to their requirements (see [Issue #3—Improvements to the Interagency Agreement](#)).

## *Cost Benefit of Collections from Home and Community-Based Providers*

The DMAS Performance Integrity Division (PID) performs post-payment audits on Home and Community-Based Providers. Federal regulation requires DMAS to have these audits performed to provide safeguards against unnecessary or inappropriate use of services and excessive payments.<sup>11</sup> As part of these audits PID verifies, through sampling, that supporting documentation for services is provided, and when such documentation does not exist, requires repayment from the provider. Only the value of the errors found in the sample is required for repayment. The repayment is not extrapolated to the entire population.

OSIG review staff received a constituent complaint alleging that:

*Community based providers have been meeting with DMAS since early 2008 to resolve concerns regarding the zero tolerance of auditors when administrative errors are identified during post claim audits and the high repayments that result.*

*Despite DMAS claims, these issues have only been resolved in the courts. There are now a multitude of court decisions found in favor of providers. Clearly, a zero tolerance approach is unreasonable. Judges continue to hold that when substantial compliance is found, the repayment assessed is unreasonable. DMAS has yet to incorporate that principle, costing taxpayers in defense of appeals that are subsequently lost. It is time that DMAS adjust its expectations and use the audits to look for actual fraud and abuse.*

As a result of this complaint, OSIG review staff included an objective in this performance review to evaluate the cost benefit of such collections. After inquiring about the collections process, OSIG review staff learned that similar complaints had been made directly to DMAS, and that an advocate for the providers had a requirement included in the 2011, 2012, and 2013 Appropriations Acts that stated DMAS must evaluate the efficiency of the collections process.<sup>12,13,14</sup> The 2014 Appropriations Act also contains a similar requirement.<sup>15</sup>

Instead of duplicating work already performed by DMAS over the past three years, OSIG review staff limited testing to evaluation of whether courts were ruling against the repayment requests made by DMAS as alleged. Based on information provided by the Director of PID, only two percent of post-

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<sup>11</sup> DMAS. *Evaluation of Effectiveness and Appropriateness of Review Methodology for Home and Community Based Services*. November 1, 2011. DLAS website. URL: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD302012/\\$file/RD30.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD302012/$file/RD30.pdf). Accessed October 6, 2014.

<sup>12</sup> DLAS. Virginia 2011 Appropriations Act. Item 297. AAAAA. DLAS website. URL: <http://lis.virginia.gov/cgi-bin/legp604.exe?111+bud+21-297>. Accessed October 6, 2014.

<sup>13</sup> DLAS. Virginia 2012 Appropriations Act. Item 307. YYY. DLAS website. URL: <http://lis.virginia.gov/cgi-bin/legp604.exe?122+bud+21-307>. Accessed October 6, 2014.

<sup>14</sup> DLAS. Virginia 2013 Appropriations Act. Item 307. NNNN. DLAS website. URL: <http://lis.virginia.gov/cgi-bin/legp604.exe?131+bud+21-307>. Accessed October 6, 2014.

<sup>15</sup> DLAS. Virginia 2014 Appropriations Act. Item 301. FFFF. DLAS website. URL: <http://leg1.state.va.us/cgi-bin/legp504.exe?142+bud+21-301>. Accessed October 6, 2014.

payment audits ended up in court, and, of those, almost two-thirds were ruled in favor of DMAS. From 2012 through 2013, the courts decided in favor of DMAS in 12 out of 19 cases.

Based on the above findings, OSIG review staff determined no further inquiry was warranted.

## Detailed Findings and Recommendations

### *Issue No. 1—Performance Measures in Contracts*

For the nine contracts reviewed, the requirements set forth in the RFP documents provided thorough and detailed guidelines for vendor/contractor performance expectations during the contract period. However, the RFPs did not consistently or clearly identify the related performance measures that would be used to verify/monitor the vendor's performance. Performance measures in all but two contracts were detailed in various sections of the RFP, but were not contained in one, clear performance measure section. However, where performance measures were not noted in the RFP, Contract Monitors were able to identify performance measures and take them into consideration during their review of the vendor's/contractor's work.

Without easily identified performance measures in the contract, Contract Monitors may have a difficult time ensuring key requirements are addressed by the vendor.

#### **ISSUE NO. 1 RECOMMENDATION**

DMAS, in consultation with the Department of General Services' Division of Purchases and Supply, should consider including a separate section in the RFPs for listing out performance measures.

#### *DMAS RESPONSE TO ISSUE NO. 1 RECOMMENDATION*

During the exit conference held September 23, 2014, DMAS' Commissioner agreed with the above recommendation.

### *Issue No. 2—Separation of Responsibility and Control*

The Medicaid program and similar services require the interaction of DMAS, DSS, and LDSS. The eligibility policy is developed by DMAS and provided to DSS, as described in the DMAS-DSS Interagency Agreement. The LDSS make eligibility determinations based on the instructions DSS provides. DMAS is responsible for paying the claims based on the LDSS' eligibility determinations. However, DMAS has minimal control over the eligibility and enrollment process even though they are accountable for the use of federal funds. If the Federal government performs a review and decides to disallow payments as a result of an LDSS error, DMAS would be responsible for repaying the funds.

#### *ISSUE NO. 2 RECOMMENDATION*

DMAS should research the *Code* to determine if LDSS are currently held or could be held accountable for errors made during the eligibility and enrollment process. If LDSS are not held accountable under the *Code*, then DMAS, in conjunction with DSS, should consider proposing legislation to the General Assembly that would hold LDSS at least partially accountable for errors they make when processing eligibility determination/re-determination cases.

*DMAS RESPONSE TO ISSUE NO. 2 RECOMMENDATION*

During the exit conference held September 23, 2014, DMAS' Commissioner agreed with the above recommendation.

*Issue No. 3—Improvements to the Interagency Agreement*

The DMAS-DSS Interagency Agreement is a comprehensive document that sets out each agency's responsibilities in administering the various social programs for which they are responsible. Although the Interagency Agreement documents each agency's required activities in detail, it lacks any measurement method necessary to track performance, monitor quality, and remediate any shortcomings. Without the ability to measure, evaluate, and improve performance, the opportunities to improve effectiveness and efficiency are lost.

**ISSUE NO. 3 RECOMMENDATION**

DMAS, in conjunction with DSS, should consider adding quantifiable performance measures to the Interagency Agreement in order to be able to identify and remediate any shortcomings in the performance of various activities.

*DMAS RESPONSE TO ISSUE NO. 3 RECOMMENDATION*

During the exit conference held September 23, 2014, DMAS' Commissioner agreed with the above recommendation.