



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Accounts Receivable Collections

Office of the Attorney General



Report 2011-S-25

March 2013

Executive Summary

Purpose

To determine whether the Office of the Attorney General effectively collects delinquent accounts receivable that are referred by state agencies. Our audit period was April 1, 2008 through October 20, 2011.

Background

The Office of the Attorney General (OAG) includes the Civil Recoveries Bureau (Bureau). The Bureau is responsible for collecting accounts receivable that state agencies have been unable to collect and have referred to the OAG. During the period April 1, 2008 through December 31, 2010, state agencies sent 156,072 accounts receivable collection cases totaling \$926.8 million to the Bureau for action. During this period, the Bureau collected \$381.6 million and wrote off 43,487 uncollectible cases totaling \$155.3 million.

Key Findings

- Overall, the Bureau was generally effective in its collection of accounts receivable referred by state agencies. However, there are improvement opportunities.
- From a sample of 194 collection cases totaling \$22.2 million, we noted 69 cases (35.6 percent) where the Bureau's actions were delayed by as much as a year or where cases were on hand from one to three years without any actions taken. The Bureau indicates that staff reductions in recent years contribute to processing delays.
- Also, there were 909 hospital accounts receivable cases totaling \$2.3 million that remained closed when they should have been reopened and reassigned because new charges were incurred on the accounts.
- The Bureau needed to enhance its collection actions through computer matches with State and City payrolls to locate debtors.

Key Recommendations

- Ensure that all accounts receivable collection cases referred by state agencies are promptly assigned.
- Continue to assess staffing needs and, accordingly, make budget request where appropriate.
- Assess other potential practices to improve collection related operations

Other Related Audits/Reports of Interest

[Department of Health: Collection of Medicaid Accounts Receivable \(2009-S-59\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

March 13, 2013

The Honorable Eric T. Schneiderman
Attorney General
State of New York
The Capitol
Albany, NY 12224-0341

Dear Mr. Schneiderman:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of *Accounts Receivable Collections*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The Office of the Attorney General (OAG) includes the Civil Recoveries Bureau (Bureau) which is responsible for collecting outstanding accounts receivable that are referred to it from state agencies. Such accounts receivable include amounts owed for state hospital services, student loans, State University of New York (SUNY) tuition, oil spill clean ups, and state contract breaches. After state agencies have made their best effort to collect on amounts over \$500 that have been outstanding for 120 days or more, a referral to the Bureau or to a collection agency is required. Debt exceeding \$1,000, outstanding longer than 120 days and requiring legal action for collection must be referred to the Bureau.

The Bureau has four Albany-based units: General Recoveries, Mental Hygiene, Oil Spill, and Student Recoveries. The Bureau also has a unit at each of five state hospitals located in Brooklyn, Buffalo, Stony Brook, Syracuse and West Haverstraw. The Bureau has about 113 full time equivalent (FTE) staff positions including 66 that are funded by referring agencies. The staff duties include researching the validity of referred accounts receivable, attempting to locate debtors, arranging debtor payment plans, investigating debtor assets for seizure, securing and collecting debt, and filing lawsuits.

During the period April 1, 2008 through December 31, 2010, the state agencies referred 156,072 cases valued at \$926.8 million. During this period, the Bureau collected about \$381.6 million of accounts receivable, including receivables referred prior to April 1, 2008. According to Bureau records, collection increased from \$117 million for 2008 to \$161 million in 2010. Generally, the Bureau is apportioned 22 percent of the revenue collected and the referring state agencies obtain 78 percent of the collections by the three units that are not funded by a client agency (General Recoveries, Mental Hygiene and Student Recoveries). Also, during this period April 1, 2008 through December 31, 2010, the Bureau, with appropriate authorization from referring agencies and OAG management, wrote-off 43,487 accounts receivable totaling \$155.3 million. The reasons for writing off this debt include: missing or inadequate documentation to support the debt, inability to locate the debtor, lack of debtor assets, the debtor is deceased without an estate, the debt was discharged in bankruptcy, or, in the case of hospital referrals, the billing to insurance companies was not performed within required time limits.

Audit Findings and Recommendations

Collection Efforts

To assess the effectiveness of Bureau collection activities, we examined a sample of 194 accounts receivable referrals totaling about \$22.2 million. Overall, we conclude that the Bureau's efforts to collect accounts receivable are generally effective, but improvement still needs to be made. We found the following:

- The Bureau achieved positive outcomes on 68 of the referrals including seven that were paid in full for \$227,000, 36 with completed or pending debtor agreements for about \$8.7 million and partial collections of \$680,000, and 25 with judgments secured for about \$1.4 million.
- There were 22 cases that the Bureau was actively working on without delay and the Bureau had determined in a timely manner that 28 referrals were uncollectible.
- While the Bureau was working on 55 referrals, some delays were experienced. For example, one hospital referral totaling about \$303,000 was received in December 2009, but no action had been taken for the 19 elapsed months between January 2010 and August 2011. A referral totaling \$43,400 went over two years (April 2009 to June 2011) until an action was taken. For a \$35,700 referral, the debtor requested a payment plan. Over a year later, there was neither a plan in place, nor a payment made.
- No Bureau action had been taken on 14 referrals totaling \$498,568, though these had been on hand from one to three years.
- Seven referrals became uncollectible with little action including four where the debtor is deceased without an estate search, two which reached the statute of limitation and one which was written off.

During our examination we also noted that 909 unpaid and closed hospital accounts receivable totaling \$2.3 million were not reopened even though new charges had been incurred on these accounts. These accounts should have been reopened when the new charges were incurred. However, this did not happen because the closed status on the accounts as recorded in the Bureau's information system was not modified when the new charges were added.

Bureau officials responded that the problem with the information system was corrected when we brought it to their attention. Further, OAG officials attribute collection activity delay with large caseloads, lack of staff and the difficulty in locating debtors. Bureau officials advised us that they set priorities based on the potential for collection of the referrals. However, we noted that the Bureau did not share any written analysis to determine whether it was optimally staffed to maximize revenue collections while minimizing delays in the collection process. Such an analysis could be used to support a budget request that would be cost justified.

Other Collection Practices

We identified other practices the Bureau may be able to use to enhance its ability to locate

debtors and enforce judgments. These practices include the use of temporary employees and use of additional electronic systems to obtain debtor information. For example, the Bureau could periodically conduct matches of its debtor listings to New York State, New York City, and other government payroll registers, and other customer lists maintained by State and local governments. Presently, the Bureau uses Department of Motor Vehicles license files, Department of State corporate and other business entity records such as United States Postal Service records, and addresses from the referring client agency.

Bureau officials told us that over ten years ago they assessed contracting with private collection agencies to locate debtors. The Office did not enter into a contract because collection agencies were not willing to certify that they were only obtaining information from reputable sources. Perhaps there are new vendors today that would be willing to make this certification. Bureau officials told us that prior to January 2000 they matched the names of debtors against a listing of State and New York City employees and obtained many new addresses. However, they did not have sufficient information technology resources to repeat the matches.

In response to our draft report, the Bureau indicated that it has also proposed integrating debt collection into the State's new accounting system (the Statewide Financial System), to improve the State's ability to track and recover debts.

Recommendations

1. Prepare a formal analysis identifying the optimal staffing to maximize revenue collections while minimizing delays in the collection process. Utilize the analysis, as appropriate, to support budget requests that are cost justified.
2. Assess other potential practices to improve operations such as the use of contractors and temporary employees to augment available resources and the use of other databases such as the New York State and New York City payrolls to locate debtors.

Audit Scope and Methodology

The objective of our audit was to determine whether the Office of the Attorney General is effective at collecting on delinquent accounts receivable referred by State agencies. Our audit period was April 1, 2008 through October 20, 2011.

To achieve our objective, we interviewed Bureau employees and management, and reviewed records of collection activities for sampled referrals provided by the Bureau, State laws and Budget Bulletins. We researched other states' methods for collecting past due debt. We also analyzed a database of referrals, collections, and write-offs that occurred from April 1, 2008 through December 31, 2010.

We selected a judgmental sample of 194 referrals totaling about \$22.2 million to determine whether there were periods without collection activity and what impediments were encountered.

We selected referrals from four units (Roswell Park Cancer Institute, General Recoveries, Stony Brook, and Student Recoveries) focusing on those with relatively high balances, and a mix of different status codes. The four units had the highest referral amounts and a variety of different types of debt and accounted for approximately 54 percent of the referrals totaling \$926.8 million. We also selected a judgmental sample of 60 write-offs totaling \$9.7 million to determine whether they were approved and appeared appropriate given the collection action taken. We selected write-offs from the Oil Spill, Stony Brook, and Roswell Park units that accounted for 12,790 write-offs totaling about \$51.8 million of the 43,487 write-offs totaling \$155.3 million. The 60 write-off files we reviewed generally contained appropriate supporting documentation.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance. The Attorney General has constitutional and statutory authority to manage the State's legal affairs and the priorities within the OAG.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Office of the Attorney General officials for their review and comment. We considered their comments in preparing this final report and have included them in their entirety at the end of this report. State Comptroller's Comments to their response are also attached at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Attorney General shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

KENT T. STAUFFER
EXECUTIVE DEPUTY ATTORNEY GENERAL
DIVISION OF STATE COUNSEL

February 7, 2013

The Honorable Thomas P. DiNapoli
Comptroller
State of New York
110 State Street
Albany, New York 12236

Re: Response to Draft Audit Report 2011-S-25

Dear Mr. DiNapoli:

We have reviewed the draft of the New York State Office of the State Comptroller's Accounts Receivable Collections - Office of the Attorney General Report, Report 2011-S-25, dated January 2013 for the period of April 1, 2008 through December 31, 2010 (the "Report"). First, we note the Report acknowledges the Civil Recoveries Bureau's success in recovering hundreds of millions of dollars on behalf of the State, and concludes the Bureau overall was generally effective in its efforts to manage a large volume of diverse cases within fiscal and staffing constraints.

More specifically, the Report states that during the period of April 1, 2008 through December 31, 2010, state agencies referred 156,072 cases with claimed indebtedness of \$926.8 million, the Bureau collected \$381.6 million during that period, and write-offs authorized by referring agencies were generally supported by appropriate documentation. Further, recoveries by the Bureau increased from \$117 million in 2008 to \$161 million in 2010. The nearly 38% increase in Bureau recoveries reflects the dedication of the staff of the Civil Recoveries Bureau who carried significantly increased case loads primarily as a result of the decrease in the number of employees, mostly due to retirements. However, it is also important to recognize that due to the very nature of the case load – a broad variety of legal causes of action and complex factual evidence – cases take time to prosecute. For that reason, work done during the audit period may not result in recoveries until months, and often years, later.

We would like to address a number of factual issues which we request be clarified in the final report:

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Honorable Thomas P. DiNapoli
 February 7, 2013
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* The Report refers to the Division of Budget's Guideline for Accounts Receivable Management and Collection, or Section K, by noting the parameters for the referral of accounts receivable to the Office of the Attorney General. The Report paraphrases Section K: "After state agencies have made their best effort to collect on amounts over \$500 that have been outstanding for 120 days or more, a referral to the Bureau or to a collection agency is required. Debt exceeding \$1,000, outstanding longer than 120 days and requiring legal action for collection must be referred to the Bureau." However, State agencies do not consistently follow these Guidelines, which have not been modified by the Division of Budget ("DOB") since 1993. In fact, the Attorney General's Office does not receive all referrals that meet Section K parameters, many referrals are received with little or no collection effort by the agency and referrals are sometimes made with little time left on the applicable statutes of limitations, all of which impede the Bureau's collection efforts. Also, historically, agencies have referred matters as low as \$25 to the Bureau. The Bureau has alerted DOB to these issues over the years and proposed alternative protocols for debt collection. We remain hopeful that DOB will respond to our concerns in the near term. More recently, in addition to requesting an update of Section K, the Bureau has also proposed integrating debt collection into the newly implemented Statewide Financial System, by creating an Accounts Receivable Module for use by all state agencies, which we anticipate would increase the State's ability to track and recover debts.

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 Comment
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* The Report states: "Generally, the Bureau is apportioned 22 percent of the revenues collected and the referring state agencies obtain 78 percent of the collections." To clarify, only three of the Bureau's nine units retain 22% of what is recovered. In the other six client funded units, the referring agencies receive 100% of the collections, and the clients fund the staff who work on their behalf.

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 Comment
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* The Report notes that presently the Bureau only relies on DMV license records, Department of State corporate, other business entity records and addresses provided by our client agencies to locate debtors. In fact, the Bureau also relies on the United State Postal Service records (the OAG further maintains a subscription to an address update service), Westlaw public records searches, credit report header information when appropriate, and Internet searches to obtain available debtor information.

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 Comment
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* Please change the close of the "Audit Period" in the first paragraph under Audit Scope and Methodology from October 20, 2011 to December 31, 2010 to reflect the actual audit period as stated elsewhere in the Report.

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 Comment
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With respect to several of the findings made in the Report, we comment as follows. The audit team reviewed a sample of 194 collection cases with a total receivable of \$22.2 million and found that the Bureau's actions were "delayed" in the handling of some of these cases. However, significantly, there were no findings that periods of inactivity resulted in lower recoveries.

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* See State Comptroller's Comments, page 15.

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Moreover, "delays" may simply reflect the prioritization of work that is necessary in any organization.

By way of background, the Attorney General has charge and control of the legal business of the State. Thus, as acknowledged in the Report, the responsibility of how to manage the legal affairs of the State is within the authority and discretion of the Attorney General who must determine how to deploy the Department's limited resources to best execute his responsibilities in accordance with his Constitutional and statutory duties. Therefore, the determination as to which cases to pursue at which time falls squarely within the legal judgment of the Attorney General. Accordingly, and consistent with the OAG's Constitutional and statutory mandates, the Bureau prioritizes the order in which it prosecutes certain cases in view of available resources and the six-year statute of limitations that is applicable to the bulk of its cases. In exercising its legal judgment, the Bureau continuously assesses priorities, the likelihood of success on any given matter, the amount at issue, the client agency's position, the volume of cases, the probability of obtaining a recovery, time remaining on the statute of limitations, court schedules, and other factors relating to the Bureau's case load as a whole. Therefore, each case requires a different approach as each referral presents unique factual and legal issues that bear directly on the probability of obtaining and, subsequently, enforcing a judgment. As a result, some cases are necessarily prosecuted before others. Though it is difficult to conduct an audit where the subject matter has so many variables unique to the practice of law and debt collection litigation, it is critical to recognize that timeliness findings in the abstract must be viewed in the context of the overall prioritization of cases which has been developed to maximize recoveries for the State.

During the audit the Bureau explained to the audit team the basis for advancing particular cases before others. On a number of files where the Bureau believed the audit team's characterization of un-timeliness was not appropriate, the audit team responded positively; however, others were still included in the Report. For example, in one hospital matter, \$675,000 was owed for a four month inpatient stay. The patient was an undocumented immigrant who provided our client with an unusable address and no social security number upon admission to the hospital. The patient was not eligible for Medicaid coverage for a non-emergency admission due to his immigration status. The auditors commented that the Bureau was not making a sufficient effort to locate a valid address. In fact, it is not unusual that an individual with immigration law issues would take steps to remain undetected and would likely avoid providing information which would be revealed in public records databases. In any event, the Bureau diligently searched periodically for an address to no avail. And, unfortunately, even if the Bureau were able to obtain a judgment in this case, successful enforcement of that judgment would be highly unlikely for the reasons just described.

Another hospital debt was originally referred as a \$1.3 million matter owed by a patient who had a serious illness and an extensive inpatient stay. The hospital worked for several months to secure Medicaid coverage, which was eventually obtained. However, coverage was not available for the first part of the inpatient stay. The reason Medicaid did not pay the entire bill was likely due to the patient's inability to comply with the application requirements during her inpatient hospitalization. The original self pay bill, at full charges, was \$1.3 million – the amount included in the Report – yet a portion of the bill was written-off. The balance of \$925,996 was re-billed at

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 Comment
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* See State Comptroller's Comments, page 15.

Honorable Thomas P. DiNapoli
 February 7, 2013
 Page 4

the Medicaid rate leaving a balance due from the patient of \$64,226, significantly lower than the referred amount of \$1.3 million. The patient was billed for these charges, but subsequently died. The auditors noted a delay between sets of demand letters, which was likely due to a decision by the collector regarding the merits of this case and the appropriateness of proceeding with debt collection. The open Medicaid case indicates that the patient is indigent. The patient would have most likely had insufficient assets at her death to warrant opening an estate proceeding, because any assets she might have had would have been spent down to qualify for Medicaid. In our opinion, the collection specialist appropriately analyzed the collection prospects and circumstances surrounding the case and properly did not elevate it to priority status.

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 Comment
 4

The auditors also identified "delays" in twenty-three non-hospital cases by focusing on the time periods between various steps in the collection or litigation process. For example, in several cases the Report identified the number of months that elapsed between the time a summons was filed and when a judgment against a corporation was entered. In other cases, the Report identified "delays" between the last contact with the debtor and the next step taken on the file. There was no finding that any of the perceived delays noted by the auditors had an impact on the collectibility of the debt. Generally, these particular referrals involved debts owed by corporations with limited liability that are either experiencing financial problems or that have gone out of business prior to referral. In fact, fifteen of the twenty-two cases identified involve corporate debtors with limited liability. In our opinion, the collection specialists appropriately analyzed the collection prospects and circumstances surrounding these cases and properly did not elevate them to priority status.

The fact that there may be extended periods of time between certain steps in the collection or litigation process does not mean the "delays" have any meaningful impact on the overall effectiveness of the Bureau's recovery efforts. Not taking a particular action at the first available date may, in fact, be entirely benign and permit a collector or attorney to work another matter with a more pressing or more meaningful deadline, and a higher likelihood of recovery for the State. The Report's findings fail to take into account the context of the management of the overall case load. Certain "delays" are inevitable given the large volume of cases handled by the Bureau. All files cannot be worked at the same time. Furthermore, certain cases may receive delayed attention because the Bureau prioritizes cases based on collectibility and statutes of limitation deadlines. As set forth above, "delays" in processing any individual case must be viewed in the context of the large volume of cases handled by the Bureau, factual and legal issues presented in each referral, and the priorities set by the Bureau to marshal existing resources so as to maximize overall recoveries. Nevertheless, improvements can be made and certainly some delays need not have occurred. The Bureau is committed to continue its work to eliminate any potential delays that may have an impact on the Bureau's effectiveness.

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 Comment
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The Report finds that 909 hospital accounts totaling \$2.3 million were closed when the account reached a zero balance, but were not properly reopened and reassigned when new charges were incurred. This issue arose due to a new computer program which was rolled-out in various units between November of 2008 and July of 2009. Although management provided extensive training with respect to the new computer program, the electronic assignment of cases had not been identified as an issue. The Bureau first became aware of the situation during the course of the audit. As acknowledged in the Report, management arranged for appropriate training to resolve

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* See State Comptroller's Comments, page 15.

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the problem. We also note that all of these cases were properly reopened and thereafter pursued. None of the accounts were deemed uncollectible as a result of this initial error.

In connection with these 909 hospital cases, the Report makes a recommendation that the Bureau "[e]nsure that all accounts ... are promptly assigned." Again, the Bureau promptly addressed this issue during the Audit process. All referrals are assigned to an attorney and a collection specialist or legal assistant upon entry of the referral on the new computer system.

The Report also makes recommendations concerning potential improvement opportunities, one of which recommends that the Bureau continue to assess staffing needs and, accordingly, make budget requests where appropriate. The reference that the Bureau "continue" to assess staffing needs recognizes that the Bureau has assessed staffing needs over time. However, the Report elsewhere indicates that the "Bureau did not have an analysis to determine whether it was optimally staffed to maximize revenue collections while minimizing delays in the collection process." In the course of the audit, the Bureau provided documentation of multiple requests made during the audit period for additional staffing to maximize revenue collections while minimizing delays in the collection process. The Bureau also noted that there was a Statewide hiring freeze in place during most of the audit period. Beginning in January of 2011, hiring has resumed on a targeted basis and staffing levels have begun to improve. During 2011 and 2012, nineteen new staff were hired in the Bureau.

We will take into account all of the Report's recommendations as we continue to strive to improve our recovery efforts on behalf of the State. We appreciate the thoroughness and the professionalism demonstrated by your staff throughout the audit process.

Sincerely yours,



Kent T. Stauffer

* Comment 6

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* See State Comptroller's Comments, page 15.

State Comptroller's Comments

1. We revised the report based on the information in the agency comments.
2. The scope period is correct. Our audit sampled referrals from April 1, 2008 to December 31, 2010 and all of the information regarding collection activities that occurred subsequent to that date until the end of field work.
3. The information regarding each of the sampled referrals reflects information obtained during a review of the case files done side by side with an experienced Bureau supervisor with extensive knowledge of the Bureau's practices. This collaborative review process was established to avoid any misinterpretation of the files and facts documented in case files. Our auditors discussed the collection actions taken with the supervisor and reached a consensus conclusion on each case. In this case, the files showed a letter was sent to the postal service in September 2009 to verify an address but no subsequent efforts were documented.
4. The date the patient died is not provided in the response to our draft report, and it was not in the case file at the time of our review. Regarding the balance due, we were aware that the amount was reduced to \$64,226 and did not report that it was still \$1.3 million.
5. As stated in its response improvements can be made and we are pleased the Bureau is committed to continuing to work to eliminate any potential delays that may have an impact on its effectiveness.
6. The auditors were advised that requests for additional staffing were made, but the Bureau did not provide documentation.