

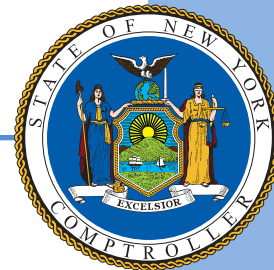
# 2019–2020 Annual Report on Audits of State Agencies and Public Authorities

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OFFICE OF THE NEW YORK STATE COMPTROLLER

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Thomas P. DiNapoli, State Comptroller



FEBRUARY 2021

# Message from the Comptroller

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February 2021

One of the chief responsibilities of my office is to audit State agencies, public authorities, and public programs to ensure that the public's money is appropriately protected and wisely used. The audits conducted by my staff in the Division of State Government Accountability help establish whether our tax dollars are being spent effectively and whether government officials are doing all they can to eliminate waste and prevent and detect fraud. This, in turn, helps promote transparency and accountability in New York State government, which benefits each and every one of us.

State government officials are the stewards of the State's assets and the public's trust. Our audits keep New Yorkers informed on how well agencies and authorities are living up to that responsibility, and sound a call to action when needed. This annual report summarizes the results of the State government audits my staff conducted for the 2019- 20 reporting year. This office remains committed to helping officials manage government resources efficiently and to protecting taxpayer assets. I hope that New York public officials and citizens will find this report useful and informative.

Thomas P. DiNapoli  
State Comptroller



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# About the Annual Report

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As required by law, this annual report summarizes the results of all the State agency and public authority audit reports issued by the Office of the State Comptroller (OSC) from October 1, 2019 through September 30, 2020. It does not include audits of New York City agencies, local governments, or other entities, as these are not included in the statutory requirements. The audit summaries in this report are divided into nine areas: Health and Human Services; Education; Transportation; Criminal Justice and Judicial Administration; Government Support; Economic Development and Housing; Other State Agencies and Public Authorities; Multi-Agency; and Special Reports. An accompanying volume lists, by State agency or public authority, the audit reports issued during the preceding five-year period—October 1, 2014 through September 30, 2019.

To obtain any of the audits cited in this report, visit <https://www.osc.state.ny.us> or contact the State Comptroller's Office of Public Information at (518) 474-4015.

# Introduction

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The New York State Constitution designates the State Comptroller as the State's Auditor. Within the Office of the State Comptroller (OSC), the Office of State and Local Government Accountability (SLGA) is the primary office that carries out the State Comptroller's functions as State Auditor. The Division of State Government Accountability (SGA) is a component of SLGA, and conducts audits of New York State and New York City agencies and public authorities. Audits of New York City agencies, while not included in this report, are accessible at <https://www.osc.state.ny.us/state-agencies/audits/by-agency>.

SGA employs more than 250 professional auditors, many of whom hold advanced degrees and professional certifications in the accounting and auditing fields, including Certified Internal Auditors, Certified Fraud Examiners, Certified Information Systems Auditors, and Certified Public Accountants. SGA also employs staff with other professional expertise, including in the social sciences, health, and computer science. OSC is dedicated to protecting the public interest and promoting government accountability.

## Fiscal Impact

For the reporting year 2019-20 (October 1, 2019 through September 30, 2020), SGA issued 118 reports addressing the operations of State agencies and public authorities—exceeding prior years' achievements despite the work impediments posed by the pandemic during the latter six months of this period. Auditors identified nearly \$686 million in actual cost savings at these agencies and authorities. These savings have already been achieved or will be achieved with the implementation of audit recommendations. Auditors also identified \$97.7 million in potential savings. In these cases, more action is usually required to realize the savings (e.g., legislative action or agency follow-up investigations with vendors to determine exact amounts).

The following table provides an overall summary of the fiscal impact associated with certain findings from the reports issued in reporting year 2019-20. Auditors estimate that if the agencies and authorities implement the recommendations contained in these reports, they could realize a total of more than \$1.64 billion in monetary benefits (which includes non-recoverable overpayments that, once corrective actions are taken, can be avoided in the future).

### Audit Cost Savings for Reporting Year 2019–20

Fiscal Category	Actual	Potential	Totals
Cost Recovery	\$115,502,031	\$78,749,606	\$194,251,637
Cost Avoidance	–	17,471,208	587,682,223
Revenue Enhancement	570,433,923	1,485,507	1,708,415
<b>Subtotals</b>	<b>\$685,935,954</b>	<b>\$97,706,321</b>	<b>\$783,642,275</b>
Non-Recoverable Overpayments & Questionable Transactions			857,431,234
<b>Total Fiscal Impact</b>			<b>\$1,641,073,509</b>

## Agency Accountability

According to Section 170 of the Executive Law, when a State entity is audited by the State Comptroller, the executive of that entity must report to the Governor, the State Comptroller, and the leaders of the Legislature and the legislative fiscal committees, advising them on steps taken to implement the State Comptroller's recommendations and, where any particular recommendations were not implemented, explaining the reasons why. (Section 170 is not applicable to New York City agencies.) The State Comptroller also performs follow-up reviews to assess auditees' progress in implementing prior audit recommendations. In reporting year 2019-20, SGA issued 44 follow-up reports, reviewing progress on a total of 169 recommendations. Of these recommendations, 142 (84 percent) have been fully or partially implemented, as detailed in the following table:

Agency	Report Number	Number of Recommendations		
		Total	Implemented	Percentage
<b>Health and Human Services</b>				
Department of Health	2019-F-20	5	5	100%
	2019-F-28	1	1	100%
	2019-F-29	3	2	67%
	2019-F-33	7	7	100%
	2019-F-34	2	2	100%
	2019-F-35	3	2	67%
	2019-F-41	2	2	100%
	2019-F-43	2	2	100%
	2019-F-53	3	3	100%
	2020-F-2	5	4	80%
	2020-F-4	5	5	100%
	2020-F-9	2	1	50%
2020-F-10	3	2	67%	
Office for People With Developmental Disabilities	2019-F-42	3	3	100%
	2020-F-1	4	1	25%
Office of Addiction Services and Supports	2020-F-5	2	2	100%
Office of Children and Family Services	2019-F-40	4	3	75%
	2019-F-52	3	3	100%
Office of Mental Health	2019-F-51	9	5	56%
Office of Victim Services	2020-F-16	1	1	100%
<b>Education</b>				
Higher Education Services Corporation	2019-F-56	4	4	100%
State Education Department	2019-F-26	3	3	100%
	2019-F-32	3	3	100%
	2019-F-57	5	5	100%
State University of New York	2019-F-47	3	3	100%

<b>Transportation</b>				
Metropolitan Transportation Authority	2019-F-1	9	6	67%
	2019-F-15	6	6	100%
	2019-F-16	2	2	100%
	2019-F-17	5	4	80%
	2019-F-18	3	3	100%
	2019-F-19	1	0	0%
	2019-F-58	18	13	72%
<b>Government Support</b>				
Department of Civil Service/ New York State Health Insurance Program	2019-F-38	2	2	100%
	2019-F-39	2	2	100%
	2019-F-46	2	2	100%
<b>Economic Development and Housing</b>				
Homeless Housing and Assistance Corporation	2020-F-14	4	4	100%
Homes and Community Renewal	2019-F-44	3	2	67%
<b>Other State Agencies and Public Authorities</b>				
Department of Environmental Conservation	2020-F-12	3	3	100%
	2020-F-13	5	4	80%
Department of State	2019-F-48	3	3	100%
Department of Taxation and Finance	2019-F-6	5	5	100%
Gaming Commission	2019-F-49	2	1	50%
<b>Multi-Agency</b>				
Department of Labor/Department of Taxation and Finance	2020-F-7	5	5	100%
New York City Police Department/ State Liquor Authority	2019-F-36	2	1	50%
<b>Totals</b>		<b>169</b>	<b>142</b>	<b>84%</b>

## Audit Impairments and Impediments

### Agency Delays and Obstruction

State agency and public authority officials have a responsibility to the public to provide access to information to those who oversee their actions, such as OSC. Transparency and accountability are essential cornerstones of good government. When public officials are not transparent about and accountable for their actions, there is an increased risk that internal controls will not function properly—and less assurance that program goals and objectives will be accomplished efficiently and effectively. Denial of, or excessive delay in, auditors' access—or refusal of their direct access—to relevant documents or key individuals leads to



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incomplete, inaccurate, or significantly delayed findings or recommendations. This, in turn, may prevent agencies from promptly addressing serious problems, and deprive decision makers and the public of timely critical information regarding the agency's performance.

In accordance with professional standards, OSC auditors are required to report instances where management's refusal to share all available, relevant evidence constitutes an impairment of audit work. For the reporting year 2019-20, two agencies significantly delayed, obstructed, or otherwise impaired the scope of audits:

- **Office of Children and Family Services (OCFS)**

**Oversight of Direct Placement of Children (2017-S-30).** This audit required access to confidential and sensitive information, for which auditors entered into a confidentiality agreement with OCFS. However, OCFS sought to impose additional access restrictions based on its interpretation of various laws as well as the confidentiality agreement itself. Auditors objected to the additional restrictions, but ultimately agreed to the subsequent amendment of the confidentiality agreement in the interest of proceeding with the audit. OCFS' restrictions may have compromised the completeness of auditors' findings and conclusions.

- **Office of Temporary and Disability Assistance (OTDA)**

**Oversight of Homeless Shelters (2018-S-52).** During the course of the audit, OTDA was not transparent in its interactions with auditors. This led to delays in receiving information, scheduling meetings, and performing shelter site visits, which factored into auditors' risk assessment and raised further questions about the adequacy of OTDA's oversight.

## **Lack of Cooperation**

In addition, one agency was not cooperative during a follow-up review, hindering auditors' ability to determine the status of the initial audit's recommendations:

- **Gaming Commission (Gaming)**

**Equine Health and Safety (Follow-Up) (2019-F-49).** Gaming impeded auditors' progress in conducting this follow-up review, presenting numerous delays in responding to auditors' requests for information and documentation and in the scheduling of meetings with auditors.

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## Audits of Special Significance

During the past year, SGA allotted more resources to audits designed to identify system and control deficiencies and policy non-compliance issues that render State programs vulnerable to overcharging, improper claims, and abuse. Some of SGA's most significant audit findings in 2020 are discussed below.

- **Medicaid Program**

Medicaid is a federal, State, and locally funded government program that provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. For the fiscal year ended March 31, 2020, New York's Medicaid program had approximately 7.3 million enrollees and about \$69.8 billion in claim costs. Fifteen Medicaid audits identified more than \$708 million in actual and potential cost savings to the State and nearly \$200 million in non-recoverable overpayments, including nearly \$48 million in improper Medicaid payments for recipients with multiple Client Identification Numbers.

- **Special Education**

SGA issued 14 audit reports assessing preschool special education providers' compliance with the State Education Department's Reimbursable Cost Manual (RCM). These audits are part of a continuing series of audits and investigations of the special education sector. In December 2013, the Executive signed legislation mandating the Office of the State Comptroller to audit the more than 300 preschool special education providers in this \$1.4 billion program. Auditors found widespread noncompliance with the RCM's claims requirements, and identified disallowances totaling nearly \$11 million stemming from unsupported and/or inappropriate costs charged to the audited programs, with more than \$3.7 million charged by one provider alone ([2018-S-56](#)).

- **Homeless Outreach in the New York City Subway System**

In the last of a four-part series of audits examining outreach across MTA properties ([2018-S-59](#)), auditors found that the Metropolitan Transportation Authority (MTA) and the New York City Department of Homeless Services did not maintain sufficient oversight and monitoring controls over outreach at MTA subway stations to ensure that services were being delivered as contracted and that homelessness was being effectively addressed and alleviated. Contracted at a total value of about \$36 million covering the period 2014 to 2020, the services provided by the Bowery Residents' Committee were ineffective in reducing the homeless population. In fact, as of 2019, the homeless population had actually increased by 18 percent since 2013.

# Audit Summaries

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## Health and Human Services

### Department of Health

(DOH)

*DOH promotes and protects the health of New Yorkers through prevention, science, and the assurance of quality health care delivery, and administers a wide range of public health programs, including the State's Medicaid program.*

#### **Medicaid Program: Overpayments for Therapy Services and Prescription Drugs**

**Covered by Medicare (2016-S-73).** Many of the State's Medicaid recipients are also enrolled in Medicare (referred to as "dual-eligibles"). When health care services, including physical, occupational, and speech therapy as well as prescription drugs, are rendered to dual-eligible recipients, health care providers are required to bill Medicare, which is generally the primary payer, before billing Medicaid. The audit identified \$20.1 million in Medicaid payments for services provided to dual-eligible recipients that should have been paid by Medicare, including \$18.6 million for physical, occupational, and speech therapy services. Notably, 20 providers alone accounted for more than \$13 million of these payments. Auditors found that providers were generally unaware that the services were covered by Medicare and, therefore, did not bill Medicare. The remaining \$1.5 million was for prescription drugs. While the Medicaid recipients had Medicare coverage for the prescription drug services, over half of the claims were for individuals whose Medicare coverage had been added retroactively, and their Medicare coverage information was thus not available to providers on the service dates. Auditors recommended that DOH: review the \$20.1 million in Medicaid payments for therapy services and prescription drugs and recover overpayments, as warranted; formally remind providers to comply with all Medicaid and Medicare billing rules, including their obligation to bill Medicare first for services rendered to dual-eligible recipients; and implement claims processing controls to prevent Medicaid overpayments for therapy services and prescription drugs for dual-eligible recipients.

**Wadsworth Center Environmental Laboratory Approval Program (2018-S-1).** Within DOH's Wadsworth Center, the Environmental Laboratory Approval Program (ELAP) is responsible for the certification of laboratories that perform environmental analyses on samples originating from New York State, thus ensuring the accuracy and reliability of these analyses. Currently, ELAP grants certification to commercial, self-monitoring, and government-operated environmental laboratories in fields including: Drinking (Potable) Water; Non-Potable Water; Solid and Chemical Materials (Solid and Hazardous Waste); Air and Emissions; and Medical Marijuana. As of July 2019, ELAP had 468 laboratories (287 in-State, 168 out-of-State, and 13 outside of the United States) approved in the following fields: potable water, 247; non-potable water, 249; solid and hazardous waste, 156; air and emissions, 176; and medical marijuana, four. While auditors identified opportunities to improve documentation of on-site assessments, for which the Wadsworth Center had taken corrective action, they did

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not otherwise find significant noncompliance with ELAP procedures and protocols in the areas reviewed that would call into question the sufficiency of the Wadsworth Center's processes for certifying, monitoring, and enforcing regulations over environmental laboratories.

**Medicaid Program: Medicare Part D Clawback Payments (2018-S-46).** Effective January 1, 2006, pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Medicare Part D provides prescription drug benefits for individuals who are dually eligible for Medicare and Medicaid. DOH is required to make a monthly payment (referred to as the phased-down State contribution, or "clawback" payment) to the federal government to cover part of the cost of prescription drugs for the State's full-benefit dual-eligible population. Auditors found that DOH did not ensure that all Part D clawback payments were correctly charged to the State and did not establish processes to routinely review the appropriateness of clawback payments. For the period January 1, 2017 through December 1, 2018, auditors identified opportunities for cost reductions totaling \$2.9 million in clawback payments made on behalf of 5,840 recipients, as follows: \$1.65 million in payments on behalf of 2,315 recipients who were receiving Medicaid in another state; \$451,348 in payments on behalf of 1,250 recipients who either were only eligible for partial Medicaid benefits or did not have any Medicaid coverage; \$269,478 in payments on behalf of 645 recipients who appeared to have been incarcerated; \$259,584 in payments on behalf of 929 deceased recipients; and \$257,761 in payments on behalf of 714 recipients who no longer had Part D coverage. Among other actions, auditors recommended that DOH: review the \$2.9 million in clawback payments and take the necessary steps to ensure appropriate adjustments are made before the 36-month time frame for refunds expires; and develop a process to verify the reasonableness and accuracy of clawback charges.

**Medicaid Program: Improper Fee-for-Service Payments for Services Covered by Long-Term Care Plans (2018-S-65).** Many of the State's Medicaid recipients are enrolled in managed long-term care (MLTC) plans, which provide long-term care services, such as home health care, nursing home care, and durable medical equipment, to people who are chronically ill or disabled. Medicaid pays MLTC plans monthly managed care premiums and, in return, MLTC plans pay for all MLTC-covered services. The Medicaid program should not pay claims on a fee-for-service (FFS) basis for services covered by MLTC plans. Individuals are enrolled in MLTC through either Local Departments of Social Services (Local Districts) or a contractor that operates a statewide enrollment center for public health insurance programs. Enrollment information is ultimately communicated to the eMedNY claims processing system. Auditors identified \$16.4 million in improper Medicaid FFS payments for MLTC-covered services, including: \$15.6 million paid because eMedNY did not identify certain MLTC services as the responsibility of the MLTC plan; and \$877,719 related to recipients' retroactive enrollment in MLTC. Auditors recommended that DOH: review the \$16.4 million in improper Medicaid FFS payments and make recoveries, as appropriate; correct MLTC benefit package information and system edits on eMedNY to prevent FFS payments for MLTC-covered services; and work with Local Districts and develop a process to identify and recover improper Medicaid FFS payments for MLTC services resulting from retroactive enrollments.

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### **Medicaid Program: Cost of Pharmacy Services Under Managed Care (2019-S-11).**

New York's Medicaid program covers prescription and non-prescription drugs for Medicaid enrollees. DOH uses two methods to pay health care providers for Medicaid pharmacy services: fee-for-service (FFS) and managed care. Under FFS, DOH pays pharmacy providers directly for each drug dispensed to a Medicaid recipient. Under managed care, DOH contracts with managed care organizations (MCOs), which arrange for the provision of pharmacy services for Medicaid recipients and payments to pharmacy providers. While DOH has taken a number of actions to help ensure pharmacy services under FFS Medicaid are provided efficiently and economically, it has not established similar controls to ensure the most cost-effective delivery of pharmacy services under managed care. Rather, DOH relies on MCOs and their Pharmacy Benefit Managers to effectively and efficiently manage drug costs for the Medicaid program. Auditors found that DOH has not provided adequate oversight to ensure that managed care pharmacy services are delivered in the most economical manner, identifying an estimated \$605 million in unnecessary costs to the Medicaid program for the period January 1, 2016 through December 31, 2019. For example, DOH does not require MCOs to use the most cost-effective drugs for the Medicaid program, nor does it provide MCOs with information or assistance to determine the most cost-effective drugs. In addition, while Medicaid-participating MCOs are required to regularly provide their drug formulary information, as well as information on costs and supplemental rebates for all drugs delivered under managed care, DOH does not review this information to determine if MCO formulary preferences result in the use of the most cost-effective drugs. Auditors recommended that DOH conduct timely routine analyses to identify the most cost-effective drugs for the Medicaid program and ensure drug utilization is steered toward drugs with the lowest net cost when medically appropriate.

**Medicaid Program: Claims Processing Activity April 1, 2019 Through September 30, 2019 (2019-S-12).** DOH's eMedNY system processes Medicaid claims submitted by providers for services rendered to Medicaid-eligible recipients, and generates payments to reimburse the providers. During the six-month period ended September 30, 2019, eMedNY processed over 244 million claims, resulting in payments to providers of more than \$35 billion. For this period, auditors identified over \$8.2 million in Medicaid payments that required DOH's prompt attention, including: \$3.2 million for clinic, practitioner, managed care capitation, pharmacy, inpatient, durable medical equipment, and dental claims that did not comply with Medicaid policies; \$2.9 million for maternity and newborn birth claims that contained erroneous information (e.g., incorrect diagnosis code or newborn birth weight); \$1.1 million for claims billed with incorrect information pertaining to other health insurance coverage that recipients had; \$767,471 for inpatient claims billed at a higher level of care than what was actually provided; \$225,862 for episodic home health care claims that did not comply with Medicaid policies; and \$57,597 for psychiatric claims billed in excess of permitted limits. By the end of the audit fieldwork, about \$4.2 million of the improper payments had been recovered. Auditors also identified 21 Medicaid providers who were charged with or found guilty of crimes that violated laws or regulations governing certain health care programs. By the end of the audit fieldwork, DOH had removed 18 of the providers from the Medicaid program, entered into

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settlements with two providers, and was determining the program status of the remaining provider. Auditors made 12 recommendations to DOH to recover the remaining inappropriate Medicaid payments and improve claims processing controls.

**Medicaid Program: Improper Medicaid Payments Involving Fee-for-Service Claims for Recipients With Multiple Client Identification Numbers (2019-S-22).** DOH uses two methods to pay for Medicaid services: fee-for-service (FFS) and managed care. Under the FFS method, DOH pays health care providers directly through eMedNY. Under managed care, DOH pays managed care organizations (MCOs) monthly premiums and the MCOs arrange for the provision of health care services for Medicaid recipients and reimburse providers. Each individual who applies for Medicaid benefits is assigned a Client Identification Number (CIN). Although recipients may have more than one CIN assigned during the time they are in receipt of benefits (e.g., a CIN under FFS enrollment and a different CIN under managed care enrollment), only one CIN should have active eligibility at a time to prevent duplication of payments. Individuals have several options for enrolling in Medicaid, including through Local Departments of Social Services (Local Districts) and the NY State of Health (NYSOH, the State's online health insurance marketplace). Local Districts use the State's downstate Welfare Management System (WMS) to process enrollment data for individuals in New York City and the upstate WMS for individuals in the rest of the State. The NYSOH system processes its own enrollment data. Additionally, the New York City Administration for Children's Services processes Medicaid enrollments for individuals in foster care in New York City, but must use the upstate WMS. The eMedNY system relies on the information sent by the WMS and NYSOH systems to update its enrollment data, which is necessary to make accurate payments. When an individual is assigned multiple CINs, each with its own record of eligibility, Medicaid is at risk of making improper payments for the duplication of benefits. Auditors determined that Medicaid made \$47.8 million in improper payments on behalf of recipients with multiple CINs for the period January 1, 2014 through March 31, 2019, including: \$32.6 million in premiums for inappropriate managed care enrollments of recipients concurrently enrolled in FFS foster care under different CINs; \$12.7 million in premiums for managed care enrollments of recipients concurrently enrolled in FFS under different CINs; and \$2.5 million in potential duplicate FFS payments made on behalf of recipients with concurrent FFS enrollments under different CINs. Auditors determined that multiple CINs are often the result of incorrect or missing recipient demographic information, use of multiple eligibility systems during enrollment, and limitations in the enrollment process for foster care recipients. The Office of the Medicaid Inspector General (OMIG) recovers improper premium payments for foster care recipients with multiple CINs, and by the end of fieldwork, \$16.6 million of the improper payments identified had been voided. However, OMIG does not have a process to recover improper premium payments for non-foster care recipients with concurrent FFS enrollment or improper FFS payments for recipients with multiple FFS enrollments. Among other actions, auditors recommended that DOH: review the improper payments identified and make recoveries, as appropriate; correct the multiple CIN cases identified to prevent future improper payments; evaluate controls to prevent the creation of multiple CINs

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for recipients in foster care; and begin recovering improper premiums for non-foster care recipients with concurrent FFS enrollment and improper FFS payments for recipients with concurrent FFS enrollments.

**Medicaid Program: Accuracy of Medicaid Eligibility Determined by NY State of Health (2019-S-43).** Many of the State's Medicaid recipients receive their services through managed care, whereby DOH pays managed care organizations (MCOs) a monthly premium for each enrolled recipient and, in turn, the MCOs pay health care providers for services their members require. Recipients can also receive services through fee-for-service (FFS), whereby DOH pays health care providers directly, through eMedNY, for each eligible service rendered to Medicaid recipients. NY State of Health (NYSOH) is the State-run health plan marketplace where individuals, families, and small businesses can search for and enroll in Medicaid and other health insurance plans. An individual's Medicaid eligibility and enrollment information is transmitted from NYSOH to eMedNY. The eMedNY system relies on the information sent by NYSOH to update eligibility and enrollment data necessary to make appropriate claim payments. If this information is not sent in an accurate or timely manner, eMedNY is at risk of making improper payments on behalf of individuals who are ineligible for or disenrolled from the Medicaid program. Auditors found that eMedNY made over \$16.6 million in improper and/or questionable payments on behalf of managed care and FFS recipients who were identified in NYSOH as no longer eligible for coverage (NYSOH recorded recipients' coverage as terminated or recorded recipients as deceased, but the coverage continued in eMedNY). Auditors determined these payments generally stemmed from system processing weaknesses in NYSOH that caused improper transmission of eligibility and enrollment information to eMedNY. In addition, DOH does not conduct recipient eligibility reconciliations, which could identify and prevent such improper payments. Among auditors' recommendations, DOH should: review the \$16.6 million in payments and make recoveries, as appropriate; perform reconciliations of Medicaid program eligibility and enrollment between NYSOH and eMedNY and resolve differences in a timely and accurate manner; and prioritize corrective actions to prevent Medicaid overpayments due to eligibility and enrollment processing weaknesses in the NYSOH and eMedNY systems.

**Medicaid Program: Improper Medicaid Payments for Terminated Drugs (2019-S-45).** The Medicaid program covers medically necessary prescription and nonprescription drugs. Drugs may be removed from the market (i.e., terminated) for safety or commercial reasons. To ensure terminated drugs will not be dispensed or paid for, the federal Centers for Medicare & Medicaid Services (CMS) requires state Medicaid programs to reject claims on the basis of the drug's termination date (either the expiration date of the final batch produced or the date the drug was recalled for health and safety reasons). Auditors determined that, for the audit period July 1, 2014 to June 30, 2019, pharmacies received \$29 million in improper payments through Medicaid managed care and fee-for-service (FFS) for drugs that were dispensed after their termination date. Payments by managed care organizations (MCOs) accounted for \$27.2 million of this amount. The payments occurred because DOH never communicated CMS' "termination date" claim rejection policy and many MCOs thus lacked controls to properly identify and reject such claims. FFS payments accounted for the remaining \$1.8

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million, including \$1.5 million that was paid because DOH had not received the drugs' termination dates from CMS at the time the claims were processed. The remaining improper payments occurred because DOH did not apply its controls to all types of claim submissions (e.g., paper claims). Among other actions, auditors recommended that DOH: review the Medicaid payments made for terminated drugs identified by the audit and determine an appropriate course of action, including recovery where feasible; formally instruct MCOs to reject the payment of claims for terminated drugs; and monitor managed care encounter claims to ensure MCOs are not paying claims for terminated drugs.

**Medicaid Program: Inappropriate Premium Payments for Recipients No Longer Enrolled in Mainstream Managed Care and Family Health Plus (Follow-Up) (2019-F-20).** Most of the State's Medicaid recipients receive their services through managed care and enroll in managed care plans (Plans) through Local Departments of Social Services, which includes the New York City Human Resources Administration (Local Districts) and the NY State of Health (the State's online health insurance marketplace). Plans receive monthly premium payments from DOH and, in return, arrange for the provision of health care services their members require. DOH has the right to recover premium payments from Plans for inappropriately enrolled recipients. NYSOH and the Local Districts are responsible for determining whether Plans made payments to health care providers on behalf of recipients who were disenrolled or who face disenrollment. The initial audit (2015-S-47) found that DOH had made improper and questionable premium payments totaling \$122.4 million for 171,936 recipients who were retroactively disenrolled from a Plan. Auditors provided the claim data to the Office of the Medicaid Inspector General (OMIG), which had recovered about \$7.4 million from the Plans by the end of the audit. Auditors also found that the New York City Human Resources Administration misinterpreted premium recovery guidelines, leaving many improper premiums uncollected. Auditors made five recommendations to address the issues, including that DOH: review the remaining \$115 million in premiums and recover all overpayments; and strengthen controls to prevent the types of improper payments identified by the audit. The follow-up review found that DOH had made progress in addressing the problems identified in the initial audit; however, additional action was needed. In particular, while OMIG had recovered about \$20 million of the identified improper premiums, \$83.5 million in premiums still needed to be reviewed and recovered. Of the initial report's five audit recommendations, one had been implemented and four had been partially implemented.

**Medicaid Program: Improper Medicaid Payments to a Transportation Provider (Follow-Up) (2019-F-28).** The State's Medicaid program provides transportation to medically necessary services for recipients who are unable to obtain transportation on their own. Medicaid providers are required to maintain contemporaneous, complete, acceptable, and verifiable records necessary to support Medicaid payments for a period of six years. If the information is incomplete, unacceptable, or false, any Medicaid payments will be recouped and the provider may be subject to other statutory or regulatory liability, financial damages, and sanctions. The initial audit report (2018-S-10) found that a transportation provider did not maintain the required documentation to support \$1.4 million in Medicaid transportation claims prior to 2016. Auditors recommended that DOH recover improper payments made to



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the Medicaid transportation provider. The follow-up review found that DOH had made some progress in addressing the problem identified in the initial report. The Office of the Medicaid Inspector General opened an investigation into the provider; however, the investigation remained ongoing at the time of the follow-up review. The initial report's one recommendation had been partially implemented.

**Medicaid Program: Medicaid Payments to Medicare Advantage Plan Providers (Follow-Up) (2019-F-29).** Many of the State's Medicaid recipients are also enrolled in Medicare, the federal health insurance program for people age 65 and older and people under 65 who have certain disabilities. Under Medicare Part C, private managed care companies administer Medicare benefits and offer different health care plans (Medicare Advantage plans) tailored to the specific needs of beneficiaries. For individuals enrolled in Medicaid and Medicare, providers bill Medicaid for the enrollee's Part C cost-sharing liabilities (deductibles, coinsurance, and copayments). The initial audit (2016-S-54) identified \$770,935 in Medicaid overpayments for Medicare Part C cost-sharing. The overpayments occurred because providers reported inflated Part C cost-sharing amounts on claims and DOH lacked sufficient controls to detect and prevent such claims. For three providers in particular who received significant overpayments, auditors analyzed all other Part C cost-sharing claims and identified potential additional overpayments of \$562,356. Auditors recommended that DOH: recover the inappropriate payments; advise the three providers how to properly bill Medicaid for Medicare Part C cost-sharing; and develop a risk-based approach to identify and prevent future inappropriate claims. The follow-up review found that DOH had made some progress in addressing the problems identified in the initial audit report. However, no action had been taken to recover the inappropriate payments identified. Of the initial report's three audit recommendations, one had not been implemented and two had been partially implemented.

**Medicaid Program: Managed Care Premium Payments for Recipients With Comprehensive Third-Party Insurance (Follow-Up) (2019-F-33).** Mainstream managed care provides recipients with comprehensive medical services that range from hospital care and physician services to dental and pharmacy benefits. In accordance with New York State Social Services Law, DOH's policy is to exclude Medicaid recipients from mainstream managed care when they have concurrent comprehensive third-party health insurance (TPHI), such as health insurance offered through an employer. Recipients should, instead, be enrolled in Medicaid fee-for-service to avoid the expense of monthly managed care premiums. The Office of the Medicaid Inspector General (OMIG) contracts with Health Management Systems, Incorporated (HMS) to identify and verify third-party coverages. HMS enters into data-sharing agreements with third-party insurers to obtain this information. DOH, Local Departments of Social Services (Local Districts), and the NY State of Health are responsible for identifying enrollees with comprehensive TPHI and promptly disenrolling them from managed care. The initial audit (2016-S-60) identified \$1.28 billion in premiums paid on behalf of recipients with concurrent comprehensive TPHI. Of this, \$1.17 billion (91 percent) was not recoverable per the Medicaid Managed Care Model Contract because the managed care organization and third-party insurer were not the same legal entity or related entities (such as an affiliate). In addition to advising that DOH review the managed care premium

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payments identified and make appropriate recoveries, auditors made six recommendations for actions that DOH could take to minimize the occurrence of inappropriate premium payments and eliminate obstacles to their recovery. In their follow-up review, auditors found DOH had made progress addressing the problems identified in the initial audit report; however, additional action was needed. For instance, for the one-year period ended September 30, 2019, auditors found DOH had paid another \$199 million in Medicaid mainstream managed care premiums for recipients with comprehensive TPHI. Additionally, HMS had not updated its data-sharing agreements with the vast majority of insurance carriers to require more frequent TPHI updates. Also, OMIG had only recovered about \$19 million of the improper payments identified in the initial audit. Of the initial report's seven audit recommendations, three had been implemented and four had been partially implemented.

**Oversight of Public Water Systems (Follow-Up) (2019-F-34).** In New York State, DOH oversees the delivery of drinking water to ensure that it is suitable for human consumption. This oversight includes efforts to ensure that public water systems (PWSs) comply with State Public Health Law, State Sanitary Code, and U.S. Environmental Protection Agency requirements. DOH district offices and local health departments conduct the day-to-day oversight of PWSs. As of September 2019, there were 9,086 PWSs in New York. DOH reports that nearly 95 percent of all New Yorkers receive their drinking water from PWSs operating in the State. The initial audit report (2017-S-45) found that DOH had taken various actions to safeguard the quality of drinking water delivered to PWS customers. However, they identified opportunities for improved oversight, particularly regarding PWS compliance as well as system and procedural controls. In addition, there are emerging contaminants with known adverse health effects that DOH continues to study to determine whether maximum limits and regulations are appropriate. Auditors made two recommendations to DOH to ensure that safe drinking water is distributed to the public through a robust monitoring program and to prioritize actions to regulate emerging contaminants with known adverse health effects. Auditors found that DOH had made significant progress in addressing the concerns noted in the original audit report, having implemented both recommendations.

**Oversight of Resident Care-Related Medical Equipment in Nursing Homes (Follow-Up) (2019-F-35).** DOH oversees nursing homes in the State through its Division of Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities Surveillance (Division). The Division is responsible for ensuring nursing homes comply with federal and State regulations designed to optimize the health, safety, and quality of life for the State's approximately 117,000 nursing home residents. The Division assesses and certifies nursing home compliance through Certification surveys (or inspections) of both quality of care and fire and safety (which includes mechanical equipment, such as beds and wheelchairs, and electrical equipment, such as respiratory/oxygen systems). The initial audit (2016-S-80) found that DOH completes Certification surveys in a timely manner and reports deficient practices to the public, as required. However, auditors identified gaps in the Division's procedures that weaken its ability to effectively monitor nursing homes' equipment inspection, testing, and maintenance programs. For instance, DOH's Inventory Form, which surveyors use to conduct inspections, is not comprehensive and omits some types of resident

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care equipment in use at facilities, such as heart monitors and dialysis machines. In addition, the standard equipment sample sizes that DOH uses for inspection are very small relative to the number of equipment items in facilities, and auditors questioned whether they were optimal for identifying equipment deficiencies at facilities with larger inventories or histories of poor survey results. During on-site visits to a sample of 36 facilities, auditors determined the facilities did not maintain some equipment according to manufacturer recommendations or lacked records of their maintenance. Additionally, 13 of the facilities could not provide documentation that generators had been exercised under load for four continuous hours every 36 months as required, and four facilities were not aware of the requirement. In the follow-up review, auditors found that DOH had made progress in addressing the problems identified. Of the initial report's three recommendations, one had been implemented, one had been partially implemented, and one had not been implemented.

**Medicaid Program: Maximizing Drug Rebates for Health and Recovery Plans (Follow-Up) (2019-F-41).** In 1990, Congress created the Medicaid Drug Rebate Program, which allows states to recover a portion of their Medicaid prescription drug costs by requesting rebates from drug manufacturers. The Affordable Care Act, enacted in 2010, extended prescription drug rebates to cover medications dispensed to enrollees of Medicaid managed care organizations. In October 2015, adult Medicaid recipients with significant behavioral health needs began to be enrolled into Health and Recovery Plans (HARPs)—a type of managed care program that provides specialized care, including prescription drugs, to Medicaid recipients age 21 or older with serious mental illness and/or substance use disorders. The initial audit (2017-S-61) found that DOH failed to collect rebates for HARP-related drugs since the program's inception. In response, DOH promptly updated its procedures and invoiced \$425.9 million in HARP drug rebates. Auditors also identified an additional \$1.2 million in rebates that could be collected with further efforts by DOH. Auditors recommended that DOH regularly monitor the activities of its rebate contractor to help ensure the accuracy of the drug rebate function and take steps to invoice any remaining uncollected HARP drug rebates. In the follow-up review, auditors found that DOH had made significant progress in addressing the problems identified in the initial audit report. Since that audit, auditors estimated that DOH was able to collect over \$570 million in HARP rebates. Of the initial report's two audit recommendations, one had been implemented and one had been partially implemented.

**Oversight of Obesity and Diabetes Prevention Programs (Follow-Up) (2019-F-43).** Pursuant to New York State Public Health Law, DOH established programs to address the increasing incidence and prevalence of obesity, which has reached epidemic proportions in the State and is directly linked to diabetes. According to the American Diabetes Association, diabetes and prediabetes cost an estimated \$21.2 billion in New York during 2017. For the four fiscal years 2014-15 through 2017-18, DOH received \$27.7 million in State appropriations for services and expenses related to obesity and diabetes programs. In the initial audit (2017-S-78), auditors identified opportunities for DOH to improve its oversight of programs, particularly regarding contractor performance, to ensure that contractor deliverables are outcome-based and correlate to DOH expectations, and that costs reported

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by its network of contractors are supported, appropriate, and reimbursable. In the follow-up review, auditors found that DOH had made significant progress in correcting the problems identified in the initial report, having implemented both recommendations.

**Medicaid Program: Opioid Prescriptions for Medicaid Recipients in an Opioid Treatment Program (Follow-Up) (2019-F-53).** Opioid treatment programs (Treatment Programs) provide medication-assisted treatment for people diagnosed with an opioid use disorder. The State monitors controlled substance prescription drug use through the Internet System for Tracking Over-Prescribing (I-STOP) database. I-STOP contains records of controlled substance prescriptions and can assist prescribers in determining the most appropriate treatment for an individual, and can be used by Treatment Programs to identify undisclosed opioid prescriptions or drug abuse. State law requires Treatment Programs to consult I-STOP when controlled substances are dispensed for off-premises use, and federal guidance encourages them to coordinate care with patients' other prescribers of controlled substances. The initial audit (2017-S-66) identified 18,786 recipients who received 208,198 opioid prescriptions through the Medicaid program while also receiving opioids as part of a Treatment Program for opioid use disorder. These recipients may have received inappropriate, unnecessary, and/or dangerous prescriptions if Treatment Programs did not check I-STOP and, where authorized, coordinate care. Auditors noted that 493 of these recipients required medical care as a result of an opioid or narcotic overdose within a month of receiving a prescription opioid, 12 of whom died during care. Based on a review of medical records for a sample of 25 recipients who received 1,065 opioid prescriptions while also in a Treatment Program for their opioid use disorder, auditors determined Treatment Programs were not consistently checking I-STOP in accordance with requirements, and also found that care coordination occurred for only 59 of the 1,065 prescriptions (6 percent). Auditors' recommendations to DOH focused on ensuring Treatment Programs appropriately check I-STOP and improving scrutiny over opioid prescriptions for Medicaid recipients who are being treated for opioid use disorder. In the follow-up review, auditors found that DOH had made significant progress in addressing the problems identified in the initial report, having implemented two recommendations and partially implemented one.

**Medicaid Program: Medicaid Overpayments for Medicare Advantage Plan Services (Follow-Up) (2020-F-2).** Many Medicaid recipients are also enrolled in Medicare Part C, commonly referred to as Medicare Managed Care or Medicare Advantage. Under Part C, managed care companies administer Medicare benefits and offer different health care plans (Plans) to meet the specific needs of Medicare enrollees. When a health care service is covered by a Medicaid recipient's Plan, Medicaid is generally the secondary payer and reimburses providers for financial balances not covered by the Plan (typically deductibles and coinsurance). The initial audit report (2017-S-46) identified almost \$12.8 million that was paid by Medicaid for services typically covered by recipients' Plans. Many overpayments occurred because DOH did not have adequate controls in place to detect the improper claims. Auditors' key recommendations to DOH included: reviewing the claims identified and recovering overpayments as warranted; developing and implementing procedures for identifying and analyzing high-risk claims; and reminding providers of their obligation to bill all liable third

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parties before billing Medicaid. The follow-up review found that DOH had made some progress in addressing the problems identified in the initial audit report, having implemented one and partially implemented three of that report's five recommendations. However, the Office of the Medicaid Inspector General had yet to take action to recover approximately \$11 million of the identified claims.

**Medicaid Program: Medicaid Overpayments for Medicare Part B Services Billed Directly to eMedNY (Follow-Up) (2020-F-4).** Many Medicaid recipients are also enrolled in Medicare Part B, which provides supplemental insurance coverage for outpatient medical services, physician services, and medical supplies. As the secondary payer, Medicaid generally pays the Part B cost-sharing amounts (e.g., deductibles and coinsurance) for these dual-eligible individuals. Under DOH's automated Medicare/Medicaid crossover system, providers submit medical claims for dual-eligibles to Medicare. After Medicare processes the claims, they are automatically transferred to DOH's eMedNY system for payment of deductibles and coinsurance. The intent of the automated crossover system was to minimize the need for providers to self-report Medicare payment data to eMedNY and thereby improve the accuracy of Medicaid payments for dual-eligibles. However, in certain instances, providers may still submit these claims directly to eMedNY for payment (i.e., self-report Medicare data). In these situations, the claims bypass the payment controls enforced by the crossover system. The initial audit report (2017-S-36) identified up to \$8.7 million in improper Medicaid payments for Part B deductibles and coinsurance to providers who submitted Part B cost-sharing claims directly to eMedNY. Many of the overpayments occurred because eMedNY controls were not in place to prevent the payment of coinsurance for non-covered services as well as excessive annual deductibles. Auditors' key recommendations to DOH included: reviewing the payments identified by the audit and recovering overpayments, as appropriate; formally advising providers to report accurate claim information when billing Medicaid for Part B deductibles and coinsurance on direct-bill claims; and enhancing controls to prevent overpayments for Part B deductibles and coinsurance on direct bill claims. The follow-up review found that DOH had made some progress in addressing the problems previously identified. For instance, DOH had implemented a new claim processing control to prevent payment of excessive Part B deductibles and enhanced an existing claim processing control to prevent overpayment of Part B coinsurance. However, the Office of the Medicaid Inspector General had only recovered about \$325,000 of the overpayments identified. Of the initial report's five audit recommendations, one had been implemented and four had been partially implemented.

**Medicaid Program: Improper Medicaid Payments for Recipients Diagnosed With Severe Malnutrition (Follow-Up) (2020-F-9).** Malnutrition can result from the general deterioration of an individual's health, inadequate treatment or neglect, or treatment of another condition. Once malnutrition is identified, a hospital must use the appropriate International Classification of Diseases code on its Medicaid claim to reflect the diagnosis. Generally, as the severity of the malnutrition diagnosis increases, Medicaid's payment to a hospital will increase. The initial audit (2017-S-85) identified \$416,237 in Medicaid overpayments on inpatient claims that contained a severe malnutrition diagnosis that the medical records did

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not appear to support. Auditors made two recommendations to DOH: to review and recover the inappropriate payments; and to formally remind hospitals of billing and documentation requirements for cases of severe malnutrition. The follow-up review found that DOH had made some progress in addressing the problems identified in the initial audit report; however, additional action was needed. In particular, the Office of the Medicaid Inspector General had not taken action to review the Medicaid overpayments and make any recoveries. Of the initial report's two audit recommendations, one had been implemented and one had not been implemented.

**Medicaid Program: Medicaid Overpayments for Inpatient Care Involving Mechanical Ventilation Services (Follow-Up) (2020-F-10).** Mechanical ventilation is the use of a device to inflate and deflate the lungs of a patient whose ability to breathe is diminished or lost. Hospitals use International Classification of Diseases (ICD) procedure codes on their claims to report mechanical ventilation services. When hospitals use a specific ICD procedure code to report that a patient received 96 consecutive hours or more (i.e., four days or more) of mechanical ventilation, it causes higher Medicaid payments. The initial audit (2018-S-45) identified \$975,795 in overpayments on 32 inpatient claims that reported 96 consecutive hours or more of mechanical ventilation services. Auditors found claims processing control weaknesses that prevented eMedNY from identifying claims where a period of 96 consecutive hours or more of mechanical ventilation services was not possible. Auditors made three recommendations to DOH: to review and recover the overpayments identified; to remind hospitals to use the proper ICD procedure code that represents the duration of time the patient received mechanical ventilation services; and to establish payment controls. The follow-up review found that DOH had made some progress in addressing the problems identified in the initial audit, having implemented the latter two of the three recommendations. However, the Office of the Medicaid Inspector General, which recovers Medicaid payments on behalf of DOH, had not taken action to review the Medicaid overpayments and make any recoveries.

## **Office for the Aging (NYSOFA)**

*NYSOFA serves as an advocate and resource for both older adults and persons with disabilities who live in long-term care facilities, such as nursing homes, assisted living, and board and care homes. In 2016, NYSOFA and its partners served almost 700,000 older adults.*

**Long-Term Care Ombudsman Program (2018-S-48).** To be eligible for certain federal grants, each state is required to establish an Office of the State Long-Term Care Ombudsman (Office). Administratively housed within NYSOFA, the Office's mission is to serve as an advocate and resource for both older adults and persons with disabilities who live in long-term care (LTC) facilities, such as nursing homes, assisted living, and board and care homes. According to NYSOFA, there are about 1,500 facilities in the State, housing more than 160,000 residents who have a need for ombudsman services. Although ombudsmen may

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be paid staff or volunteers, the Office relies heavily on a large corps of trained volunteers to visit LTC facilities in the State, establish relationships with residents, and respond to resident complaints. Auditors found that certain Office data generated through the federal reporting system (complaint records, number of volunteers and paid staff, and number of LTC facilities and associated beds) may not be sufficiently reliable for analysis at the facility, regional program, or complaint level, which may limit its usefulness in decision-making. Additionally, LTC facility residents in the State lack regular access to ombudsman services, due in part to a decline in the number of volunteers combined with a lack of paid regional program staff. As of January 2019, about 600 of the approximately 1,500 LTC facilities in the State—about 40 percent—had an assigned volunteer ombudsman, leaving the remaining 900 facilities to be covered by only 50 paid local staff, which is about half the recommended minimum number. Eleven of the 15 regional programs fell short of the recommended minimum number of staff for the federal fiscal year ending September 30, 2018, and about 30 percent of facilities were not visited by an ombudsman, leaving residents with reduced access to these important services. Auditors recommended that NYSOFA: improve the reliability of system-generated Office data by working with the existing system vendor to address unresolved issues and by implementing ways to prevent and detect input errors; and take steps to identify and understand reasons for the decline in volunteers and differences in regional program results, and use the resulting information to develop and implement strategies to improve access to ombudsman services.

### **Office for People With Developmental Disabilities (OPWDD)**

*OPWDD is responsible for coordinating services for nearly 140,000 New Yorkers with developmental disabilities, offering services directly and through a network of approximately 650 community-based service providers. OPWDD operates 13 Developmental Disabilities Services Offices (DDSOs) in six regions across the State.*

**Compliance With Jonathan’s Law (2017-S-67).** In May 2007, Jonathan’s Law was enacted to expand parents’, guardians’, and other qualified persons’ access to records relating to certain incidents involving family members residing in facilities operated, licensed, or certified by OPWDD, the Office of Mental Health, or the Office of Addiction Services and Supports. Under Jonathan’s Law, facility directors are required to take steps to provide the following to qualified persons in response to any incident involving a patient receiving care and treatment: telephone notification within 24 hours of the initial reporting of an incident; upon request, a copy of the written incident report; an offer to meet to further discuss the incident; and, within 10 days, a written report on the actions taken to address the incident (Actions Taken Report). In addition, upon written request to the provider, qualified persons may obtain records and documents related to reportable incidents within 21 days of either the conclusion of the investigation or the written request, whichever is later. Auditors found that OPWDD had not implemented processes to effectively monitor whether providers were complying with Jonathan’s Law. While providers have established practices for notifying qualified persons within the required time frame, 11 percent of the incidents reviewed lacked support that the

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required notification was made within the required time frame and 7 percent lacked support that an Actions Taken Report had been issued within the required time frame. Additionally, auditors found that providers did not always provide records to qualified persons upon their request or did not provide them within the required time frame. In a sample of 63 record requests, 32 percent (20) were either not provided on time or not provided at all. In addition, providers were inconsistent in giving information—with some offering more detail than others—to qualified persons in response to record requests. Auditors recommended that OPWDD: provide updated guidance to providers on their responsibilities related to Jonathan’s Law requirements, including clear and consistent implementation procedures, and require providers to follow procedures; take steps to improve the use and quality of its recorded incident data; and implement procedures for periodic data analysis to identify patterns or areas of concern that may indicate noncompliance with Jonathan’s Law.

**Controls Over Transportation Services and Transportation-Related Expenses (2019-S-38).** Outside New York City, nine DDSOs are responsible for administering the transportation of clients from OPWDD-run residences to service providers or other necessary places. Statewide and agency policies are in place to ensure that: individuals are transported safely; vehicle operators are properly trained and comply with all State licensing and traffic laws; and State vehicles are operated cost-effectively and efficiently and used expressly for official State business. For the period April 1, 2016 through March 31, 2019, the DDSOs operated a fleet of about 3,000 State-owned vehicles, and OPWDD transportation expenditures, outside New York City, totaled approximately \$104.2 million. Despite statewide and agency policies intended to promote accountability for transportation services, auditors found that OPWDD did not always follow through with sufficient controls to ensure compliance among DDSOs. In some instances, the lack of accountability ultimately posed safety risks to OPWDD’s staff and vulnerable clients. For example, while OPWDD reasonably ensures that employees with a revoked or suspended license are not allowed to drive State vehicles, it does not monitor employees’ driving records to identify those with risky driving behaviors, evidenced by frequent license suspensions or serious violations, and prevent them from using State vehicles or provide driver safety training. Auditors found 11 employees who were permitted to drive clients despite records showing multiple traffic infractions and/or accidents. Auditors also found that DDSOs were not responsive to vehicle manufacturer recall notices, some of which were of a serious nature (e.g., faulty anti-lock brakes, faulty seatbelts). OPWDD has issued limited guidance to DDSOs for handling open recalls, conducting inspections, and monitoring repair and maintenance costs for its fleet, and does not monitor this information centrally. Auditors recommended that OPWDD: develop and implement procedures to improve employee driving practices; develop processes to track vehicle recalls and vehicle inspections and provide vehicle maintenance guidance to DDSOs; develop procedures to monitor repair and maintenance costs agency-wide; and communicate and develop processes to periodically verify DDSOs’ responsibilities for controls over transportation expenses.



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### **Oversight of the Young Adult Institute, Inc.'s Family Support Services Contracts**

**(Follow-Up) (2019-F-42).** OPWDD's Family Support Services (FSS) are designed to help families care for a relative with a developmental disability at home. OPWDD contracts with three entities within the Young Adult Institute (YAI) Network to provide FSS in the New York City metropolitan area. As of July 1, 2014, there were seven active contracts between OPWDD and the YAI Network entities, with a total contract amount of \$14.9 million. OPWDD reimburses providers based on actual program expenses, up to the contracted amount. FSS providers, like the YAI Network, report program expenses on their annual Consolidated Fiscal Reports (CFRs). Reported expenses must fully comply with the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) regarding the eligibility of costs and documentation requirements. The initial audit ([2017-S-29](#)) found that OPWDD needs to improve its oversight of the YAI Network to ensure that FSS expenses are program-appropriate and consistent with contract requirements. Auditor determined that the YAI Network claimed \$47,418 for personal service costs that were not properly supported, and inappropriately billed OPWDD for \$15,042 in estimated related fringe benefit costs, and also billed OPWDD \$28,553 in units of service that were not allowable. Auditors recommended that OPWDD: establish additional monitoring controls to ensure that only reasonable, necessary, allowable, and supported expenses are claimed; establish and distribute formal policies and procedures, and provide training, to regional offices for reviewing CFRs and quarterly fiscal reports; and follow up with the YAI Network to formally assess the expenses identified in this report, totaling \$91,013, and take steps to ensure the YAI Network does not re-claim these costs in the future. The follow-up review found that OPWDD had made significant progress in addressing the problems identified in the initial audit, having implemented two recommendations and partially implemented one.

**Oversight of Passenger Safety (Follow-Up) (2020-F-1).** Within the New York City (NYC) region, four local DDSOs—Metro NY (the Bronx and Manhattan), Brooklyn, Bernard M. Fineson (Queens), and Staten Island—oversee 115 State-run residences. As of October 2018, these four DDSOs had a fleet of about 484 vehicles; of these, 136 were assigned to the transportation offices of the four DDSOs for business use. Statewide policy requires vehicles to be used only for official State business, and OPWDD's Fleet Management Policy requires that a vehicle use log must be maintained for all State vehicles to record specific trip information, such as date and time of use, driver, occupants, and purpose of the trip. The initial audit report ([2017-S-50](#)) found many critical driving-related issues that place OPWDD clients, children, and the public at risk. For example, numerous vehicles assigned to transport clients were issued violations for serious traffic infractions (e.g., running red lights, speeding through school zones). OPWDD did not analyze the traffic violations to identify whether employees needed driver training or counseling or whether they should be reassigned. Additionally, although OPWDD participates in the Department of Motor Vehicles' License Event Notification Service (LENS), an automated reporting system that notifies organizations of driver-related events, DDSOs were not properly monitoring LENS reports to identify drivers whose licenses had been suspended. Auditors found at least seven employees who drove OPWDD client transport vehicles while their license was suspended. In addition, DDSOs were not responsive to manufacturers' recall of vehicles with safety problems: related repairs

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were not being performed timely or at all. The follow-up review found that OPWDD had made limited progress in addressing the problems identified in the initial audit report. Of the initial audit report's four recommendations, one had been partially implemented and three had not been implemented.

## **Office of Addiction Services and Supports**

*(OASAS, formerly Office of Alcoholism and Substance Abuse Services)*

*OASAS addresses the prevention, treatment, and recovery needs of New Yorkers with drug, alcohol, and/or gambling addictions.*

**Oversight of Drug Disposal (2018-S-64).** Unwanted and expired pharmaceuticals pose potentially harmful societal consequences—including misuse, abuse, and addiction—and must be disposed of to mitigate those risks. However, long-accepted disposal practices, such as flushing and garbage disposal, have led to the contamination of environmental resources, and more environmentally sound disposal options, such as approved drug take-back programs, community take-back events, and drop-off collection boxes at authorized entities, have become more widely available. Both the U.S. Drug Enforcement Administration (DEA), which regulates drug disposal at the federal level, and the Department of Health (DOH), its State-level regulatory counterpart, primarily support pharmaceutical collection and other environmentally sound disposal methods, but allow flushing and garbage-mixture disposal when such options are not available. Due to the nature of addiction treatment, OASAS programs and the programs that OASAS oversees frequently manage client pharmaceuticals, and are thus responsible for ensuring that any unused, expired, or otherwise unwanted drugs are properly disposed of. Auditors determined that, overall, OASAS addiction treatment centers and providers (Providers) met the regulatory requirements for collecting and disposing of unneeded drugs, but found that not all Providers used environmentally sound methods of disposal whenever possible. A review of records from 20 Providers found that more than half of the 90,469 doses of controlled substances that were disposed of during the 40-month period January 1, 2016 through April 27, 2019 were discarded through flushing. Furthermore, although Providers should develop drug disposal policies and procedures that align with applicable regulations, including environmentally sound methods, not all Providers were compliant with their own policies and, in some cases, not even familiar with them. Since 2008, with the Department of Environmental Conservation's support of pharmaceutical collection as a best management practice alternative, the State has been shifting away from flushing as an acceptable option and toward a policy of environmentally sound drug disposal. In support of this effort, OASAS should encourage Providers accordingly. Auditors' key recommendation to OASAS was to review Provider pharmaceutical management, including drug disposal policies and procedures, during recertification inspections and encourage the inclusion and use of environmentally sound disposal methods.

**Problem Gambling Treatment Program (Follow-Up) (2020-F-5).** OASAS is responsible for administering the State's problem gambling treatment program, which as stipulated in the Mental Hygiene Law and New York Codes, Rules and Regulations, includes: defining problem

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gambling services; developing and ensuring access to prevention, treatment, and recovery services; developing minimum standards for treatment; establishing core competencies for treatment professionals and service providers; and educating providers of other addictive disorder treatments and mental health services about problem gambling treatment services. The initial audit (2018-S-39) found that, while OASAS fulfilled its statutory obligations to define problem gambling treatment, develop minimum standards for treatment, and establish core competencies for treatment professionals and service providers, since 2006, it had not conducted a comprehensive needs assessment or social impact study to identify the number or location of individuals in need of such services. As such, auditors were unable to determine whether OASAS had a sufficient number of treatment programs available or whether its limited resources were applied where they were needed most. Auditors recommended that OASAS: conduct a comprehensive needs assessment social impact study for problem gambling; and continue efforts to ensure accessibility to problem gambling treatment programs. In the follow-up review, auditors found OASAS had made significant progress in addressing the problems identified in the initial audit report, having implemented both recommendations.

## **Office of Children and Family Services (OCFS)**

*OCFS oversees programs and services involving: foster care; adoption and adoption assistance; youth bureaus; runaway and homeless youth programs; child protective services; adult protective services; and services for victims of domestic violence.*

**Oversight of Direct Placement of Children (2017-S-30).** OCFS' preventive services are focused on averting domestic situations that could result in a child's placement in foster care. As an alternative to foster care, a child may be placed directly in the custody of a relative or suitable person (direct placement) under the jurisdiction of the court, which will likely order the Local District to supervise the placement. Although most of the standards for foster care (e.g., caregiver age, child's sleeping arrangements) do not apply to children in direct placement, the Local District is required to document that a placement can safely provide for the needs of the child, pursuant to New York Codes, Rules and Regulations, and must also provide the court with information to make decisions regarding the child's safety and well-being. Auditors found that OCFS did not maintain adequate oversight of direct placement to ensure that Local Districts comply with applicable laws and regulations and that children are placed in safe environments; of 30 direct placement cases sampled, 10 lacked evidence that the Local District provided the courts with all critical case information. Additionally, OCFS had not developed the same type of centralized standards, policies, or procedures for supervising direct placement cases as for foster care, resulting in differing levels of attention across and possibly within Local Districts. Furthermore, direct placement data maintained by OCFS was not always complete or accurate, potentially compromising its integrity and usefulness as well as the reliability of direct placement case tracking. Among other actions, auditors recommended that OCFS: develop procedures for monitoring Local Districts' handling of

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direct placement cases; establish minimum standards for the safety of children in direct placement; and correct the errors identified in the direct placement data and implement ways to prevent and detect input errors to ensure that information is complete and accurate.

**Runaway and Homeless Youth Program (2019-S-47).** OCFS oversees a system of supports designed to meet the needs of runaway and homeless youth (RHY), including: residential assistance through OCFS-certified crisis services programs; transitional independent living support programs; and nonresidential services that address needs such as food, clothing, emergency housing, behavioral/medical health, and educational/vocational support. Counties that operate certified RHY programs can opt in to receive RHY funding from OCFS. Half the counties in the State (31) opt to receive funding; the other half do not operate certified programs in their county specifically for RHY. Every county—regardless of whether it receives OCFS funding—is required to complete and submit a Child and Family Services Plan (Services Plan) outlining the provision of services and the allocation of resources. OCFS is responsible for reviewing and approving all Services Plans; approval of the RHY portion of these plans is equivalent to OCFS endorsement. Reviews of Services Plans by OCFS staff should determine if they support positive local programming within the county; those that do not warrant approval should be returned for revision. OCFS is also required to perform program and fire safety inspections annually for all certified RHY programs and facilities. OCFS staff issue inspection reports and performance improvement plans (Improvement Plans) addressing any deficiencies identified. Auditors found that OCFS has generally established controls to ensure it is conducting program and fire safety inspections for certified RHY programs and facilities. However, OCFS did not always conduct inspections within established time frames: for the two-year audit period, 57 of 186 program inspections (31 percent) and 23 of 184 fire safety inspections (13 percent) were late. While the overall conditions of the RHY programs generally meet program and fire safety requirements, auditors identified 32 deficiencies across many of the 20 programs visited, including: missing smoke detectors, dirty bathroom vents, loaded power strips plugged into another loaded power strip, missing outlet covers, and water-damaged ceilings with possible mold. In addition, Services Plans for counties that do not receive RHY funding were not always sufficiently detailed to determine whether they support positive local programming within the county. Auditors recommended that OCFS: develop written standards for conducting inspections as well as recording and reconciling deficiencies found during inspections on the written report and Improvement Plans; work with RHY programs to ensure that the deficiencies auditors identified are corrected; and revise internal guidance for Services Plans to include details as to what information is expected and sufficient to provide assurance that counties are supporting positive local programming.

**Oversight of Residential Domestic Violence Programs (Follow-Up) (2019-F-40).**

Victims of domestic violence are a vulnerable population and constitute a large segment of the population whose well-being and survival depend on emergency housing—and for whom homelessness is a daily threat. The Domestic Violence Prevention Act (Act) of 1987 requires social services districts to provide shelter and services to victims of domestic violence, and establishes mainstream funding mechanisms for these programs. As a

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result of the Act, OCFS created regulations to promote standards for the establishment and operation of nonresidential and residential domestic violence (DV) programs. OCFS' Central Office is tasked with the licensing and oversight of DV programs in the State and oversees six Regional Offices—Albany, Buffalo, New York City, Rochester, Spring Valley, and Syracuse—that provide local oversight and are responsible for the various shelter inspection functions (e.g., certification, monitoring, complaint investigation). The initial audit (2017-S-16) examined whether OCFS maintained adequate oversight of residential programs for victims of domestic violence to ensure these programs operate in compliance with applicable laws, rules, and regulations. During the audit, OCFS was unable to provide the audit team with all program and fire safety inspection reports or consistent information across the variations of reports and documentation that were submitted. OCFS officials also placed constraints on the audit, including delays in and denial of access to records needed to evaluate the effectiveness of their oversight. As a result, there was considerable risk that OCFS had withheld material information concerning its oversight of DV programs from auditors. Based on the lack of information and the systemic unreliability of the data that was provided, auditors determined that OCFS had no assurance that DV shelters were operating in compliance with applicable laws, rules, and regulations and that victims of domestic violence were being protected. In the follow-up review, auditors found OCFS had made progress in addressing the issues identified in the initial audit, having implemented three of the four recommendations.

**Oversight of Critical Foster Care Program Requirements (Follow-Up) (2019-F-52).** OCFS regulates and supervises child welfare services, including foster care and adoption, through its Division of Child Welfare and Community Services. Regional Offices oversee the entities that provide child welfare services, including voluntary agencies and Local Departments of Social Services. These entities administer the foster care program, including placing children in foster care settings, certifying and approving certain foster homes, and providing casework services to children and families. In the initial audit (2015-S-79), auditors found that foster home records lacked evidence of meeting certain critical certification/approval and recertification requirements, thus increasing the risk of placing children in an unacceptable environment. They also found that casework records lacked evidence that caseworkers made the required contacts with foster children, foster parents, and parents. Additionally, auditors identified inconsistencies and errors among different sources of foster care data, which may compromise its integrity and usefulness. In the follow-up review, auditors found that OCFS had made progress in addressing the issues identified in the initial audit, having implemented two of the three recommendations and partially implemented the third.

## **Office of Mental Health (OMH)**

*OMH operates psychiatric centers across the State and regulates, certifies, and oversees more than 4,500 programs operated by local governments and nonprofit agencies that assist New Yorkers with their mental health needs.*

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**Oversight of Provider Consolidated Fiscal Reports – Independent Living, Inc. (2019-S-60).** OMH funding allocations for its mental health programs, through either the counties that contract with program providers or direct contracts with providers, are generally historical and based on prior year amounts, with small annual percentage increases. The expenditure of these funds is governed by the *Aid to Localities Spending Plan Allocation Guidelines* (Guidelines). Annually, providers are required to complete and submit to OMH a Consolidated Fiscal Report (CFR) that reports revenues, expenditures, and other key data by program. According to the Guidelines, OMH may perform desk reviews and field audits, as needed, including reviewing costs reported on the CFR for compliance with appendices of the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). Independent Living, Inc. (ILI) is a not-for-profit provider serving Dutchess, Orange, Rockland, Sullivan, and Ulster counties. On its CFR for the year ended December 31, 2018, ILI reported approximately \$2.9 million in expenses associated with the 12 OMH programs it operated. The audit objective was to determine whether OMH ensures that the costs reported by providers such as ILI on their CFRs are allowable, properly calculated, and adequately documented in accordance with CFR Manual requirements. Auditors found that OMH takes certain steps to ensure costs and other information reported by providers on their CFRs is accurate, documented, properly calculated, and allowable, including desk reviews that incorporate computer-assisted auditing techniques to identify areas for further review by an analyst. However, OMH generally does not perform detailed audits or field reviews of providers' CFR information. OMH officials noted that they do not depend on information contained in the CFRs to make decisions on funding allocations to providers like ILI. Therefore, the impact of incorrect or overstated costs on providers' funding is somewhat reduced. Still, OMH does use the CFR data for informational and analytical purposes, and there is a risk that conclusions drawn from any inaccurate data may not be as useful as they otherwise could be. Auditors recommended that OMH evaluate the potential for conducting field audits, on a risk basis, to more fully assess provider compliance with CFR Manual requirements for reporting, calculating, and documenting allowable costs on their CFRs.

**Administration of the Contract With the Postgraduate Center for Mental Health (Follow-Up) (2019-F-51).** The Postgraduate Center for Mental Health (PCMH), a not-for-profit entity, is one of New York's largest providers of supportive housing services for individuals with severe and persistent mental illness. PCMH's OMH-funded supportive housing programs include both multiple- and single-occupancy apartments located in Brooklyn, the Bronx, Queens, and Manhattan. OMH-funded providers such as PCMH must file an annual Consolidated Fiscal Report (CFR), which categorizes and summarizes all contract costs and serves as a cost-claiming document for program reimbursement. At the end of each contract year, OMH reviews the reported data for reasonableness, and reconciles the total advance payments to the contract budget and total approved costs claimed on the CFR. At the time of the initial audit, PCMH's most recently completed contract with OMH covered the period July 1, 2009 to June 30, 2014, for which PCMH received \$40.8 million, including \$9.67 million for the year ended June 30, 2014, which was the audit's period of focus. The initial audit (2015-S-88) found that sampled clients were program-eligible and were referred to the program via the proper authorities and that client case files contained required documentation. However,

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auditors' visits to certain client apartments identified what appeared to be ongoing conditions that could negatively affect the health and/or safety of clients. For example, three apartments had significantly damaged ceilings/walls, two did not have smoke/carbon monoxide detectors installed, and one had a severe bedbug problem. Auditors also identified \$697,938 in unsupported and/or inappropriate expenses charged to the audited contract and other related OMH contracts, including: charges for a profit-sharing account that primarily benefited three PCMH executives; a deferred compensation plan reserved solely for PCMH's Chief Executive Officer; parties and alcoholic beverages for staff; and unsupported professional fees and staff travel. Auditors also found deficiencies in efforts by OMH staff to follow up on recommendations to PCMH resulting from field visits as well as excessive delays by OMH to recover \$1.4 million in surplus advances from the 2011-12 through 2013-14 fiscal years. The follow-up review found that OMH had made some progress in addressing the issues identified in the initial report. Four of the nine recommendations had been implemented, one had been partially implemented, three had not been implemented, and one was no longer applicable.

### **Office of Temporary and Disability Assistance (OTDA)**

*OTDA administers programs that provide housing, financial, and other forms of assistance to eligible low-income New Yorkers, and provides support to Local Departments of Social Services (Local Districts) in the operation of these programs.*

**Oversight of Homeless Shelters (2018-S-52).** OTDA is responsible for overseeing the State's network of transitional homeless shelters—ranging from large former hotels, apartment houses, and armories to smaller multi-family houses, specifically designed housing units, and roadside hotels and motels—and for administering a system of supervision, inspection, and enforcement to ensure shelters' compliance with applicable rules and regulations. For 2018, Local Districts submitted \$2 billion in gross claims to OTDA for homeless housing reimbursement. Auditors determined that OTDA was not providing adequate oversight of homeless shelters to ensure that conditions were safe. Auditors visited 159 homeless shelters in spring 2019. Of the 159 shelters, 96 (60 percent) were in generally unsatisfactory condition—21 of which had been visited on prior audits and were found to be in poor condition at that time. Auditors also determined that some violations identified from prior audits went uncorrected and, as a result, had gotten worse. Serious violations included: structural damage; mold; vermin and bug infestations; excessive garbage in rooms; and missing or malfunctioning smoke detectors. Auditors also identified discrepancies between OTDA's shelter inventory and Local Districts' lists of facilities, and found that OTDA was unaware of 35 shelters that received homeless resident referrals from the Local Districts. In addition, required plans designed to help homeless individuals and families secure permanent housing were not being completed timely or at all. During the audit, auditors encountered transparency and cooperation issues with OTDA that led to delays in receiving information, scheduling meetings, and performing shelter site visits. Auditors recommended that OTDA: improve policies and procedures for using inspection checklists and monitoring shelter violations; take steps to ensure shelter violations are corrected, which may include

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withholding all or a portion of reimbursements for homeless services or reconsidering provider eligibility in the homeless shelter system; review required plans to help homeless individuals and families secure permanent housing; and improve transparency and cooperation to maintain good governance.

**National Directory of New Hires Data Security (2019-S-67).** Among other programs, OTDA supervises Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP). The National Directory of New Hires (Directory), which is maintained by the U.S. Department of Health and Human Services' Office of Child Support Enforcement, contains information on new hires, quarterly wage, and unemployment insurance, and OTDA uses Directory data to verify TANF and SNAP eligibility. All state agencies that receive and process Directory data must demonstrate a strong security posture and comply with established security requirements. They must also must comply with *Security Requirements for State Agencies Receiving National Directory of New Hires Data*, dated August 2018, which defines the administrative, technical, and physical security controls required to be implemented prior to receiving Directory data. Every four years, OTDA must submit a copy of an independent security assessment to the Office of Child Support Enforcement. At the request of OTDA officials, auditors performed an independent security assessment of their Directory system security controls. Auditors found that OTDA had taken actions to comply with the federal requirements for securing Directory data and was fully compliant with 30 of the 32 requirements; the remaining two requirements were not applicable due to current practices at OTDA and modifications of federal reporting requirements. Auditors recommended that OTDA continue to maintain a system of controls that ensures compliance with federal requirements for securing Directory data.

## **Office of Victim Services (OVS)**

*OVS advocates for victims' rights, needs, and interests in New York State. Its functions include providing financial relief and direct support services, through a network of community-based Victim Assistance Programs (VAPs), to victims and families as well as community training and outreach.*

**Controls Over Selected Expenditures (Follow-Up) (2020-F-16).** OVS awards grants to VAPs that serve crime victims, and assists sexual assault survivors by directly reimbursing State-licensed providers for forensic rape examination (FRE) services. The FRE Direct Reimbursement Program is designed to ensure that sexual assault survivors are not billed for FRE services. The initial audit (2017-S-72) found that OVS' controls generally ensured that its expenditures for crime victim compensation claims, VAP grants, and FRE claims were made only to eligible victims and providers for eligible victim services. However, auditors identified minor discrepancies in OVS' verification of FRE provider licenses, and recommended that OVS implement a risk-based approach to verify and validate provider licenses on submitted claims. The follow-up review found that OVS had implemented the one recommendation from the original report.



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## Education

### City University of New York (CUNY)

*CUNY is the nation's largest urban public university, comprising 25 colleges located throughout New York City's five boroughs.*

**Compliance With Payment Card Industry Standards (2018-S-61).** CUNY's Central Office is responsible for issuing various CUNY-wide policies in areas such as academic affairs, legal and compliance issues, facility management, and IT security, including credit card payment processing. All industries that accept credit cards as a method of payment must comply with the Data Security Standards (DSS) established by the Payment Card Industry (PCI) Security Standards Council. The PCI DSS is a set of technical and operational requirements designed to protect cardholder data. Entities that do not comply with PCI DSS may be subject to fines and penalties and lose the ability to accept credit card payments. CUNY colleges accept credit cards as a method of payment (e.g., donations, events) and, as such, must comply with the PCI DSS to protect against electronic security breaches and theft of payment card data. Auditors found that, while the Central Office recognizes the importance of PCI DSS compliance and is committed to maintaining strong internal controls, it had not provided its colleges with sufficient guidance and direction for addressing and maintaining compliance with PCI DSS requirements. The four CUNY colleges auditors visited were significantly unfamiliar with the PCI DSS requirements, compliance thereof, and the need to protect credit card data from unauthorized access. Auditors recommended: that Central Office develop strategies to enhance compliance with PCI DSS and improve monitoring of PCI compliance at all CUNY colleges; and that the CUNY colleges visited implement the recommendations detailed during the audit for strengthening technical controls over cardholder data.

**Course Offerings (2019-S-19).** As of fall 2019, approximately 162,000 full-time undergraduate degree-seeking students were enrolled at CUNY's 25 campuses. Historically, many first-time students studying toward a bachelor's degree would earn that degree in four years of full-time study. However, based on recent CUNY data, many full-time first-time CUNY college students do not graduate within four to six years of enrollment—just 30 percent received their bachelor's degree after four years, and 53 percent received their bachelor's degree after six years. The audit focused on the five senior colleges with the largest enrollments, one in each of New York City's boroughs, as of the fall 2017 semester. These five colleges serve approximately 52,500 full-time students. Auditors determined that CUNY is not effectively matching course offerings to student demand and, consequently, some students have difficulty registering for required and elective courses and graduating in a timely manner—a finding confirmed by CUNY's own 2018 Student Experience Survey, in which 5,067 of the 14,479 responding students (35 percent) indicated that they were unable to register for one or more required or elective courses, thus delaying their graduation. CUNY's Central Office does not have university-wide policies and procedures to address the scheduling of courses or a system-wide policy specifying when additional course sections

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should be added. Instead, departments at each college decide which courses and sections should be offered each semester. Auditors interviewed 25 department officials at the five senior colleges and were told that course schedules are established using enrollment data from prior semesters. In addition, 13 of these officials stated they do not offer online or hybrid (classroom and online formats) courses because they believe such courses are unnecessary. Auditors also determined that administrators at CUNY's Central Office and at the five sampled colleges do not comprehensively track students' use of their financial aid or monitor graduation rates. Information compiled by CUNY at the auditors' request showed that approximately 4,923 students had exhausted their financial aid during the three academic years ended June 30, 2019—1,533 of whom (31 percent) ultimately dropped out. Among other actions, auditors recommended that CUNY: ensure that students have opportunities to register for elective courses and courses required for their programs of study; require that department officials responsible for scheduling courses formally survey students in their respective departments about required and elective courses; improve advisor training to keep them up to date on degree requirements; and track students' progress toward graduation and their financial aid eligibility, as well as provide appropriate and timely academic advisement to those students while alerting them of the risk of exhausting their financial aid eligibility.

## **Higher Education Services Corporation (HESC)**

*HESC, New York State's higher education student financial aid agency, administers the State's scholarship and loan forgiveness programs, 529 College Savings Program, and financial aid outreach programs for students and families.*

**Oversight of the STEM Incentive Program (Follow-Up) (2019-F-56).** HESC administers the Science, Technology, Engineering, and Mathematics (STEM) Incentive Program (Program), which provides a full-tuition scholarship to State high school graduates who pursue a STEM degree and agree to work in a STEM field in the State for five years after graduation. Recipients must meet multiple eligibility requirements for the award, both before and after receiving it, including: graduating in the top 10 percent of their class from a State high school; enrolling full time in a HESC-approved undergraduate STEM program; maintaining an undergraduate cumulative grade point average of 2.5 or higher; and working in a HESC-approved STEM field and maintaining residency in the State for five years after graduation. Recipients who fail to meet Program requirements have their awards converted into ten-year student loans with interest. The initial audit (2017-S-75) found that HESC had taken steps to implement the structure necessary to administer the Program. However, HESC did not always ensure applicants met Program eligibility requirements, and made \$81,198 in award payments on behalf of 20 recipients who did not meet Program requirements while in college. Auditors also determined that HESC's policy to prorate loans for recipients who did not fulfill work and residency requirements was contrary to its regulations. Further, HESC's data systems were somewhat antiquated and restrictive, limiting their usefulness for monitoring and tracking Program compliance and award repayments. Auditors recommended that HESC review the \$81,198 in ineligible award payments and make recoveries, as appropriate, and

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take steps to: strengthen oversight of Program recipient eligibility requirements and ensure receipt of required documentation; ensure that HESC policies and procedures comply with the regulations governing the Program; and strengthen the database systems used to administer the Program. The follow-up review found that HESC had made progress in correcting the problems identified in the initial audit report. Of the four recommendations, two had been implemented and two had been partially implemented.

## **State Education Department** (SED)

*SED's range of responsibilities includes oversight of pre-kindergarten through 12th grade programs and higher education as well as the licensure and practice of 58 professions.*

**Compliance With the Reimbursable Cost Manual.** Private special education providers can be for-profit or not-for-profit organizations. These providers must be approved by SED to deliver special education services, such as Special Education Itinerant Teacher (SEIT), Special Class (SC), and Special Class in an Integrated Setting (SCIS) programs, to children in New York. SED annually develops rates for preschool special education programs operated by approved providers based on actual costs reported to SED on annual Consolidated Fiscal Reports (CFRs). These rates are used to reimburse providers for eligible costs, which must be in compliance with comprehensive instructions and guidelines set forth in SED's Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) and its Reimbursable Cost Manual (RCM). Chapter 545 of the Laws of 2013 requires the State Comptroller to audit the expenses reported to SED by every program provider of special education services for preschool children with disabilities, subject to the funding made available by the Legislature for such purpose. In the 2019-20 reporting year, OSC issued 14 such reports, as detailed below.

- **Auditory Oral Learning Center (2016-S-94).** Auditory Oral Learning Center (AOLC) is a New York City-based not-for-profit organization authorized by SED to provide preschool SEIT services, full-day preschool SC, and preschool SCIS programs to children with disabilities who are between the ages of three and five years. On its CFR for the fiscal year ended June 30, 2014, AOLC reported approximately \$9.09 million in reimbursable costs for the audited cost-based programs. Auditors identified \$1,025,977 in costs that did not comply with the RCM, including: \$334,774 in employee compensation that was not properly supported by time and attendance records; and \$691,203 in other than personal service costs and in depreciation that was not supported by appropriate substantiating documentation. Auditors recommended: that SED review the recommended disallowances and, if warranted, make the appropriate adjustments to the costs reported on AOLC's CFRs and to AOLC's tuition reimbursement rates and work with AOLC officials to help ensure their compliance with SED's reimbursement requirements; and that AOLC ensure that costs reported on future CFRs fully comply with SED's requirements.

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- **Quality Services for the Autism Community (2018-S-8).** Quality Services for the Autism Community (QSAC) is a New York City- and Long Island-based nonprofit organization that supports children and adults with autism. For the fiscal year ended June 30, 2015, QSAC received \$3.7 million in State funding for its cost-based SC and SEIT programs. Auditors identified \$128,294 in reported costs that did not comply with the RCM's requirements for reimbursement, including \$111,791 in personal service costs and \$16,503 in other than personal service (OTPS) costs. Ineligible personal services costs included: \$58,183 paid to employees with insufficient documentation to support their administrative functions or hours of attendance or who were not qualified to work above 1.0 full-time equivalent per RCM rules; \$41,180 in inaccurately allocated salaries and an unsubstantiated employee salary increase; and \$12,428 in non-mandated fringe benefits that were not proportionately similar or available to all employees. Disallowed OTPS costs included: \$11,607 in rent expenses; \$2,699 in depreciation-related expenses; \$1,291 in expenses with insufficient documentation and incorrect allocation; and \$906 in expenses that were either not related to the SED programs or not allowable. Auditors recommended: that SED review the recommended disallowances resulting from the audit and make the appropriate adjustments to QSAC's CFR and reimbursement rates, as warranted, and work with QSAC officials to help ensure their compliance with the provisions in the RCM; and that QSAC ensure that costs reported on future CFRs comply with the requirements in the RCM.
  - **Psychotherapeutic Evaluational Programs, Inc. dba Parsons Preschool (2018-S-26).** Parsons Preschool (Parsons) is a New York City-based for-profit organization authorized by SED to provide full-day SC, full-day SCIS, and SEIT preschool special education services to disabled children who are between the ages of three and five years. Additionally, Parsons collaborates with the North Side School (North Side) to offer SCIS classes. North Side also operates Universal Pre-Kindergarten and a Toddler-Preschool program. For the three fiscal years ended June 30, 2015, Parsons reported approximately \$12.2 million in reimbursable costs for the cost-based programs under audit. Auditors identified \$1,782,360 in reported costs that did not comply with RCM and CFR Manual requirements, including: \$612,855 in non-reimbursable personal service costs associated with paid lunch periods for employees; \$394,811 in undocumented rental expenses for the fiscal year ended June 30, 2013; \$221,417 in rental expenses charged to Parsons' cost-based programs that should have been allocated to North Side; \$159,781 in undocumented and/or insufficiently documented expenses, including a \$94,010 levy by the Department of Taxation and Finance, \$31,682 for pension plan audits, and \$34,089 in compensation costs; \$125,841 in undocumented expenses for repairs and maintenance, supplies and materials, consulting, vehicle usage, and cell phones; \$115,714 in utility, equipment, and other facility-related expenses that should have been allocated to North Side; \$89,989 in undocumented, accrued rent expenses; and \$61,952 in unnecessary and unreasonable unemployment insurance (UI) contribution costs, which were charged to Parsons for its failure to pay contributions in a timely manner. Auditors recommended: that SED review the recommended disallowances identified by the audit and make the appropriate adjustments to Parsons'

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CFRs and tuition reimbursement rates, work with Parsons officials to ensure their compliance with the provisions of the RCM and the CFR Manual, and monitor Parsons' operations and request fiscal viability plans; and that Parsons ensure that all costs reported on future CFRs comply with the requirements in the RCM and CFR Manual.

- **League Treatment Center (2018-S-56).** League Treatment Center (LTC) is a New York City-based not-for-profit organization authorized by SED to provide preschool special education services to children with disabilities who are between the ages of three and five years. In addition, LTC operated several other programs, including an SED-approved school-age special education program as well as programs authorized and funded by the Office of Mental Health and the Office for People With Developmental Disabilities. For the three fiscal years ended June 30, 2015, LTC reported approximately \$21.4 million in reimbursable costs for its cost-based programs. Auditors identified \$3,759,935 in reported costs that did not comply with RCM and CFR Manual requirements, including: \$2,779,515 in compensation for 53 employees whose services were incorrectly allocated to the cost-based programs; \$324,603 in excessive executive compensation; \$296,057 in unsupported compensation; \$239,222 in ineligible consultant costs; \$111,648 in unsupported and ineligible other than personal service costs; and \$8,890 in inequitable pension contributions. Auditors recommended: that SED review the recommended disallowances resulting from the audit and make the appropriate adjustments to LTC's CFRs and tuition reimbursement rates, and work with LTC to strengthen its internal controls to ensure compliance with the RCM and CFR Manual; and that LTC ensure that all costs reported on future CFRs comply with SED's reimbursement requirements.
- **Hebrew Academy for Special Children, Inc. (2018-S-68).** Hebrew Academy for Special Children, Inc. (Hebrew Academy) is a New York City-based not-for-profit organization authorized by SED to provide preschool SEIT, full- and half-day SC, and full- and half-day SCIS programs to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2017, Hebrew Academy reported approximately \$52 million in reimbursable costs for its SED preschool cost-based programs. Auditors identified \$2,873,898 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, including: \$792,672 in compensation for 174 employees whose services were incorrectly allocated to the SED preschool cost-based programs; \$766,955 in fringe benefit costs not directly related to the SED preschool cost-based programs; \$479,596 in property costs and \$488,450 in other than personal service (OTPS)-related costs incorrectly charged to the SED preschool cost-based programs; \$121,769 in inappropriate depreciation costs; \$113,552 in excess executive compensation; \$76,793 in unsupported OTPS costs; and \$34,111 in unsupported personal service costs. Auditors recommended: that SED review the disallowances identified by the audit and, if warranted, make the necessary adjustments to the costs reported on Hebrew Academy's CFRs and tuition reimbursement rates, and work with Hebrew Academy officials to help ensure their compliance with the provisions

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of the RCM and the CFR Manual; and that Hebrew Academy ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.

- **Block Institute School (2018-S-69).** Block Institute School (Block) is a New York City-based not-for-profit organization authorized by SED to provide preschool SC and SCIS programs to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2017, Block reported approximately \$22.4 million in reimbursable costs for its SED preschool cost-based programs. Auditors identified \$1,761,867 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, including: \$922,765 in inadequately documented compensation costs for teaching staff; \$588,874 in inadequately documented other than personal service costs, including \$32,682 for legal expenses that were not supported by invoices; \$198,689 in other ineligible costs, including \$98,347 in excess executive compensation and \$38,283 in expenses that were not related to the SED preschool cost-based programs; and \$51,539 in overallocated nurse compensation costs. Auditors recommended: that SED review the recommended disallowances identified by the audit and, if warranted, make the appropriate adjustments to Block's CFRs and tuition reimbursement rates, and remind Block officials of the pertinent SED requirements that relate to the deficiencies identified; and that Block ensure that all costs reported on annual CFRs fully comply with SED's reimbursement requirements.
- **St. Anne Institute (2019-S-20).** St. Anne Institute (St. Anne) is an SED-approved, not-for-profit private school located in Albany that provides preschool special education services to children with developmental disabilities. For the fiscal year ended June 30, 2016, St. Anne reported about \$450,000 in reimbursable costs on its CFR for its rate-based program. Auditors identified \$14,204 in ineligible costs reported by St. Anne, including: \$7,287 in salaries and fringe benefits for employees who were not directly related to the preschool program; and \$6,917 in other than personal service costs, including \$2,434 in non-reimbursable account adjustment and bad debts, \$1,505 in insufficiently documented vehicle expenses, and \$1,362 in excess audit and legal costs. Auditors recommended: that SED review the disallowances identified by the audit and make the necessary adjustments to the costs reported on St. Anne's CFR and to St. Anne's tuition reimbursement rates, and remind St. Anne officials of the pertinent SED guidelines that relate to the deficiencies that were identified; and that St. Anne ensure that all costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.
- **Children's Education Services, Inc. (2019-S-24).** Children's Education Services, Inc. (CES), an SED-approved, for-profit special education provider located in Jamestown, provides preschool special education services to children with disabilities who are between three and four years of age. For the fiscal year ended June 30, 2015, CES reported \$725,856 in reimbursable costs on its CFR for its two rate-based programs. Auditors identified \$2,509 in ineligible costs reported by CES, including \$1,952 for non-allowable expenses and \$557 in unsupported agency administration expenses for rent

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and supplies. Auditors recommended: that SED review the disallowances identified by the audit and make the necessary adjustments to the costs reported on CES' CFRs and to CES' tuition reimbursement rates, and remind CES officials of the pertinent SED requirements that relate to the deficiencies identified; and that CES ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.

- **Parsons Child and Family Center (2019-S-25).** Parsons Child and Family Center (Parsons) is an SED-approved, not-for-profit special education provider located in Albany County that provides preschool special education services to children with disabilities who are between three and five years of age. For the fiscal year ended June 30, 2015, Parsons reported approximately \$1.2 million in reimbursable costs for its three rate-based preschool education programs. Auditors identified \$247,699 in costs that were ineligible for reimbursement, including: \$188,149 in overstated expenses; \$46,843 in other than personal service costs, consisting of \$26,002 in unsupported expenses, \$15,425 in incorrectly allocated expenses, and \$5,416 in other non-reimbursable costs; and \$12,707 in personal service costs, consisting of \$11,674 in excessive salary and fringe benefit costs for certain employees and \$1,033 in executive compensation that was greater than the allowed regional median salary. Auditors recommended: that SED review the disallowances identified by the audit and, if warranted, make the necessary adjustments to the costs reported on Parsons' CFR and to Parsons' tuition reimbursement rates, and remind Parsons officials of the pertinent SED requirements that relate to the deficiencies identified; and that Parsons ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.
- **Minds in Motion, Inc. (2019-S-28).** Minds in Motion, Inc. (MIM) is an SED-approved, for-profit special education provider located in Newburgh that provides preschool special education services to children with disabilities who are between three and four years of age. For the fiscal year ended June 30, 2015, MIM reported \$571,094 in reimbursable costs on its CFR for its rate-based program. Auditors identified \$27,970 in costs that were ineligible for reimbursement. The ineligible costs included: \$25,412 in personal services costs (executive compensation that either exceeded 1.0 full-time equivalent or was inappropriately allocated to the preschool program); and \$2,558 in other than personal service costs that either lacked documentation or were not program-related or otherwise not allowable. Auditors recommended: that SED review the disallowances identified by the audit and make the necessary adjustments to the costs reported on MIM's CFRs and to MIM's tuition reimbursement rates, and remind MIM officials of the pertinent SED requirements that relate to the deficiencies identified; and that MIM ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.
- **Children's Development Group, PLLC (2019-S-30).** Children's Development Group, PLLC (CDG) is an SED-approved, for-profit provider of preschool special education services to children with disabilities who are between three and five years of age. For

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the reporting year ended June 30, 2016, CDG reported \$427,599 in reimbursable costs on its CFR for its preschool SCIS program, and provided these services to 18 children from nine school districts located in Washington and Essex counties. Auditors identified \$166,676 in ineligible costs reported by CDG, including: \$110,989 for personal service costs for which CDG could not provide appropriate supporting documentation; \$48,144 in other than personal service costs, such as insurance premiums and property lease payments, that did not meet one or more SED requirements related to documentation; and \$7,543 in costs that did not relate to the program under which they were reported. Auditors recommended: that SED review the disallowances identified by the audit and make the necessary adjustments to the costs reported on CDG's CFRs and to CDG's tuition reimbursement rates, and remind CDG officials of the pertinent SED guidelines that relate to the deficiencies identified; and that CDG ensure that all costs reported on annual CFRs fully comply with SED requirements, and communicate with SED to obtain clarification as needed.

- **Behavior Analysts of New York, LLC (2019-S-35).** Behavior Analysts of New York, LLC (BANY) is an SED-approved, for-profit provider of preschool special education services to children with disabilities who are between three and five years of age. For the reporting year ended June 30, 2015, BANY reported \$245,613 in reimbursable costs for its SEIT Program (Program), and provided these services to 18 children from 12 school districts in Westchester County. Auditors identified \$2,082 in reported costs that did not comply with SED requirements, including: \$1,134 in personal service costs that either exceeded documented costs or that BANY could not provide supporting documentation for; and \$948 in other than personal service costs, such as vehicle insurance, that either did not relate to the Program or did not meet one or more SED requirements related to documentation. Auditors recommended: that SED review the disallowances identified and, if warranted, make the necessary adjustments to the costs reported on BANY's CFR and to BANY's tuition reimbursement rates, and remind BANY officials of the pertinent SED guidelines that relate to the deficiencies identified; and that BANY ensure that all costs reported on annual CFRs fully comply with SED requirements, communicate with SED to obtain clarification as needed, and take steps to improve record keeping and documentation to support related costs reported on annual CFRs.
- **Marie Pense Center, LLC (2019-S-36).** Marie Pense Center, LLC (Marie Pense) is a New York City-based for-profit organization authorized by SED to provide preschool SEIT services to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2015, Marie Pense reported approximately \$8 million in reimbursable costs for the SEIT cost-based program. Auditors identified \$152,967 in reported costs that did not comply with the requirements in the RCM, including: \$71,760 in pension costs; \$29,519 in overallocated compensation costs associated with shared employees; \$25,893 in miscellaneous other than personal services costs; \$8,816 in non-allowable rent expenses; \$7,822 in unsupported compensation expenses; \$7,582 in unsupported depreciation expenses; and \$1,575 in H1 visa costs. Auditors recommended: that SED review the recommended disallowances



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identified by the audit and, if warranted, make the necessary adjustments to the costs reported on Marie Pense's CFRs and to Marie Pense's tuition reimbursement rates, and remind Marie Pense officials of the pertinent SED requirements that relate to the deficiencies identified; and that Marie Pense ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.

- **Through Ages, Inc. (2019-S-56).** Through Ages, Inc. (Through Ages) is a New York City-based for-profit organization authorized by SED to provide preschool SEIT services to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2015, Through Ages reported approximately \$13.7 million in reimbursable costs for its rate-based program. Auditors identified \$137,377 in reported costs that did not comply with RCM and CFR Manual requirements, including: \$137,027 in other than personal service costs, (\$121,317 in insufficiently documented and/or incorrectly allocated costs; \$7,366 in unsupported or ineligible costs; \$5,200 in underreported offsetting interest revenue; and \$3,144 in overreported depreciation expenses); and \$350 in personal service costs (excessive compensation). Auditors recommended: that SED review the recommended disallowances and, if warranted, make the necessary adjustments to the costs reported on Through Ages' CFRs and to Through Ages' tuition reimbursement rates, and remind Through Ages' officials of the pertinent SED requirements that relate to the deficiencies identified; and that Through Ages ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.

**Oversight of Smart Schools Bond Act Funds (2019-S-13).** The Smart Schools Bond Act (Act), approved in 2014, authorized the issuance of up to \$2 billion in bonds to finance improvements to educational technology and infrastructure for students throughout the State. To receive school funding, districts must submit a Smart Schools Investment Plan (Plan) detailing how they propose to use the funds, and each Plan must be approved by the Smart Schools Review Board. Once Plans are approved, school districts may begin to submit requests for reimbursement of expenses related to purchases or projects in their approved Plans. SED is responsible for reviewing and approving reimbursement claims. As of June 2019, SED had approved 655 Plans, with projects valued at \$1.3 billion, and school districts had been reimbursed a total of \$255 million. Auditors determined that SED had implemented a detailed upfront process for collecting and reviewing school districts' Plans. However, its process for approving claims poses the risk of improper reimbursement: SED does not require school districts to submit any documentation to support their reimbursement claims and relies instead on district officials to attest that claims are for legitimate, allowable expenditures. Without such documentation, SED has no assurance that expenses were actually incurred, were for approved projects or items, and complied with the other requirements for reimbursement. Of the 10 districts sampled, one was reimbursed a total of \$549,749 for expenses incurred as part of contracts initiated prior to Review Board approval of its Plan. Furthermore, auditors also found that SED's Plan approval process can be lengthy—taking an average of 9½ months for the 655 Plans it had approved—which

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can ultimately impact school districts' costs and their ability to undertake projects. In at least one case, the delays left a school district without adequate security surveillance equipment. Auditors recommended that SED: re-evaluate the risk of not obtaining documentation to support district expenditures prior to reimbursement; and evaluate opportunities to streamline the application process for both applicants and reviewers in order to shorten time to approval.

**Oversight of Nurse Licensing (Follow-Up) (2019-F-26).** As of July 1, 2019, about 414,400 nursing professionals had active New York State licenses in the titles of licensed practical nurse, registered professional nurse, clinical nurse specialist, and nurse practitioner. SED is responsible for ensuring that nursing license applicants meet certain State standards, including education, examination, and moral character requirements (e.g., no involvement in certain crimes or offenses). SED also is responsible for investigating complaints and prosecuting professional misconduct (e.g., gross negligence, physical or sexual abuse, conviction of a crime). SED has established a risk-based system for prioritizing investigations as well as time frames and benchmarks to ensure they are completed timely. For example, Priority 1 investigations (involving complaints that pose a substantial danger to public health and safety) should be completed within six weeks and all investigations, regardless of priority, should be completed within 180 days. The initial audit (2016-S-83) found that SED was challenged to ensure investigations, particularly Priority 1 complaints, were completed timely. Auditors also found that SED did not take proactive steps to check applicants' backgrounds in relation to required moral character standards and did not actively monitor nurses to identify incidents of professional misconduct or criminal convictions. During the audit, SED officials stated that their resources have not kept pace with increased expectations, citing an out-of-date computer system, reduced staffing in investigation backlogs, and difficulties using data to monitor and manage investigations. Auditors recommended that SED: ensure management more closely tracks investigations, particularly those classified as Priority 1, to help them meet established time frames for completion; re-evaluate existing resources and procedures to identify opportunities for streamlining investigations; and take steps to strengthen oversight of nurse licensing. In the follow-up review, auditors found SED officials had made some progress in addressing the issues identified, having partially implemented all three recommendations.

**Implementation of the Dignity for All Students Act (Follow-Up) (2019-F-32).** New York State's Dignity for All Students Act (DASA) seeks to provide students in New York with a safe and supportive environment free from discrimination, harassment, and bullying on school property, on school buses, and at school functions. DASA's initial provisions, which took effect in 2012, included curriculum and annual reporting requirements in 12 bias-related categories (e.g., race, sexual orientation, weight) and required schools to designate a trained Dignity Act Coordinator (DAC). A 2013 amendment defined cyberbullying and added requirements for investigating and reporting alleged incidents. SED provides guidance to assist school districts in complying with DASA requirements. For the school year ended June 30, 2018, school districts (excluding New York City) reported 15,826 incidents statewide under DASA. The initial audit (2016-S-28) found that SED generally provided effective oversight of DASA implementation. However, while most schools visited had designated DACs, more than half

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did not communicate DAC contact information throughout the school. Further, officials at most schools visited were not aware of DASA record retention requirements. Auditors also found that certain schools may not accurately report some DASA incidents or may not report them at all, and incident records often were not adequate to clearly demonstrate whether or not the incidents were reportable. Auditors recommended that SED: develop a risk assessment that incorporates known and suspected weaknesses in DASA implementation, and commit sufficient resources to promote school compliance; work with partners to enhance training to better meet user needs; and remind school and district officials of DASA record retention requirements and address areas of confusion that compromise compliance with these requirements. The follow-up review found that SED had made significant progress in addressing the issues identified in the initial report. Of the three prior recommendations, two had been implemented and one had been partially implemented.

**Oversight of Chronic Absenteeism (Follow-Up) (2019-F-57).** Chronic absenteeism is a widespread problem that increases students' risk for disengagement, low achievement, and dropping out. Chronic absenteeism is defined as missing at least 10 percent of enrolled school days in a year for any reason. Based on attendance information from school districts and other local education agencies (e.g., charter schools, Boards of Cooperative Educational Services), SED calculated that about 18 percent of the approximately 2.6 million K–12 public school students enrolled in New York State's 732 public school districts (as of June 2018) were considered chronically absent during the 2017-18 school year. In December 2015, the federal Every Student Succeeds Act (ESSA) was signed into law, requiring states to include chronic absenteeism data on the state report card sent to the federal government and to submit a plan to the U.S. Department of Education that outlines how they will measure student success and school quality. The initial audit (2017-S-52) found that SED had taken steps to address chronic absenteeism in New York school districts. For example, SED issued communications to school districts and incorporated chronic absenteeism measures into its ESSA plan. However, auditors identified certain risks that could adversely impact SED's chronic absenteeism initiatives (e.g., discrepancies in reported attendance data), and made five recommendations to address them. In the follow-up review, auditors found that SED had made significant progress in addressing the problems identified in the initial audit report, having implemented all five recommendations.

## **State University of New York (SUNY)**

*SUNY is the largest comprehensive system of public education in the nation, comprising 64 autonomous campuses. In 2017-18, SUNY served nearly 1.4 million students, with approximately 91,000 faculty and staff. Campuses are located throughout the State, and SUNY maintains a central administrative office in Albany. For fiscal year 2017-18, SUNY had a budget of \$13 billion, including State support totaling \$4.1 billion, and \$1.6 billion in total research activity.*

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**Stony Brook University: Select Financial Management Practices at the Office of Transportation and Parking Operations (2018-S-11).**

Stony Brook University (Stony Brook), located on Long Island, is one of the four university centers operated by SUNY, with an enrollment of about 26,800 students as of fall 2019. In addition to semester tuition fees, students pay general fees to finance activities that benefit the student body but that are outside the core instructional program. These include the Intercollegiate Athletics, Campus Recreation Facilities, Student Health Services, Technology, and Transportation Fees, which totaled about \$1,453 per student for the fall 2019 semester. Stony Brook's Transportation Fee provides support for transit operations across Stony Brook's campuses and is allocated to Stony Brook's Transportation and Parking Operations (TPO). Expenditures associated with these general fees are paid from Income Fund Reimbursable accounts (IFRs). Each IFR must generate enough revenue to cover costs. According to Stony Brook's IFR Procedure Manual (IFR Manual), expenditures in IFRs must be directly related to the purposes for which income was collected and must fall within the stated purpose of the account. However, because IFR activities are generally funded from current revenues, there is always the risk that revenues will not be sufficient to meet expectations. The IFR Manual states that all IFR deficits are to be resolved within one year (with the exception of Service Center IFR accounts, where rates are reviewed every two years). From January 2, 2014 through April 18, 2018, TPO had 17,110 IFR expenditures totaling approximately \$26 million. Auditors identified control deficiencies in TPO's management of IFR accounts, expenditures, and collections of revenues that jeopardize its ability to support operations. Three of TPO's 21 IFR accounts have operated with a cash deficit balance for at least four consecutive years. Overall, the Transportation Fee account's deficit balances ranged from approximately \$1.3 million to \$3.2 million over a four-year period. In addition, \$429,420 of the approximately \$3.4 million in TPO's expenditures reviewed for the period of January 2, 2014 to April 18, 2018 were not properly supported. Auditors also identified control deficiencies in the revenue collection process for the Administration Parking Garage (Admin Garage) and Metered Parking IFRs. For example, auditors found 310 unaccounted-for tickets for the Admin Garage for the 10 days in their sample. Among other actions, auditors recommended that Stony Brook: eliminate deficits, as required; comply with all laws, contractual agreements, and Stony Brook policies to ensure that expenditures are appropriate and properly supported; and examine the discrepancies between the number of pulled and returned parking tickets for the Admin Garage, document the outcome of the examination, and take appropriate action for any violations.

**University at Buffalo: Procurement Practices (2018-S-37).** The University at Buffalo (Buffalo) is one of the largest institutions within the SUNY system. Specializing in research and medicine, Buffalo serves more than 31,000 students and employs more than 2,500 faculty on its three campuses. In support of its mission, Buffalo spent nearly \$330 million in State funds on procurements between April 2016 and September 2018. Requirements established in law and elsewhere are in place to ensure that spending is appropriate and in the best interest of the State. Auditors' review of \$8 million in spending between April 2016 and September 2018 uncovered various issues within Buffalo's procurement processes, leading us to question whether \$895,839 was spent appropriately and in the best interest

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of the State. The majority of these expenses were paid to two vendors: Buffalo Foundation Activities, Inc. for research-related administrative services; and Corr Distributors, Inc. for custodial equipment maintenance. Buffalo's poor monitoring of spending and contracting practices resulted in potential lost savings and cost avoidance, overcharges by vendors, and purchases that lack support for business need or reasonableness of price, among other questionable transactions. Buffalo agreed with most of the auditors' concerns and indicated it will make improvements. Among other actions, auditors recommended that Buffalo: ensure procurement procedures are being followed and document purchases appropriately so purchases are business-related and goods or services are obtained at a reasonable price; improve the awarding and monitoring of research-related administrative services and custodial equipment maintenance agreements; and develop a process for low-bid selection that includes evaluating parts and materials price lists for custodial equipment maintenance and repair services to ensure Buffalo is receiving the true contracted cost.

**The Research Foundation for the State University of New York: Technology Transfer Program and Royalty Payments (2019-S-10).** Among its duties to bring talent, services, and technology to SUNY, the Research Foundation supports SUNY's technology transfer—a collaborative process between the Research Foundation, creators of intellectual property (IP), and industry partners to translate academic discoveries into commercial products and services that benefit society. When IP is licensed and begins generating revenue, the Research Foundation is entitled to receive royalty payments based on executed agreements with the licensee. Auditors found the Research Foundation had taken steps to protect SUNY's interest in the transfer of technology and royalties for projects developed at SUNY schools. The Research Foundation retained ownership rights for 94 percent of all IP disclosures from January 1, 2015 through March 12, 2019, made decisions about retaining ownership rights for disclosed IP within the applicable time frames, and verified royalty payments were correctly calculated by the licensees and allocated to the applicable campus and creator accounts. However, the Research Foundation has not developed standardized monitoring mechanisms to determine whether a licensee is accurately reporting net sales and paying the full royalty owed. In addition, although SUNY policy states that campus shares of any royalty must be used to support SUNY research programs, there is no requirement for campuses to develop a specific royalty distribution policy. Since 1992, Downstate Health Sciences University (Downstate) has accumulated \$1,019,390 in campus royalty revenue, none of which has been used to support SUNY research programs. Downstate's failure to reinvest royalty proceeds may have hindered implementation of SUNY's policy of encouraging innovation and managing royalty income. Auditors made two key recommendations to SUNY: develop monitoring mechanisms to provide reasonable assurance that the royalty payments received comply with licensing agreements; and work with Downstate to develop policies and procedures for the use of funds in the campus project account and for the distribution of future royalty revenue.

**State University of New York Upstate Medical University: User Access Controls Over Selected System Applications (2019-S-34).** SUNY Upstate Medical University (Upstate), the only academic medical center in Central New York, consists of four colleges, a research

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enterprise, a clinical system, and a hospital that includes a Level 1 trauma center and a dedicated children's hospital and cancer center. To facilitate patient care, research, and education, Upstate owns and/or administers more than 200 applications that contain a broad range of information that is considered confidential. Applications may be used not only by Upstate employees but also by students, visiting or adjunct professors, and various non-employees, such as contractors, emeritus professors, and vendors. Auditors found that Upstate's access controls were not sufficient to prevent unnecessary or inappropriate access to various applications, which could create the risk of intentional or accidental modification, destruction, or disclosure of clinical, educational, and research—and otherwise confidential—information. Specifically, auditors identified: 352 user accounts, for 113 users, that maintained unnecessary and inappropriate access to applications due to a change in the users' status (e.g., employment separation, death), 61 of which had been logged into during the period of inappropriate active access, including accounts whose users were deceased at the time; and 27 users who maintained unnecessary and inappropriate access to certain clinical applications after they had transferred to new jobs that did not require that access. Although Upstate has certain measures in place to review the appropriateness of user access, auditors questioned the thoroughness and extensiveness of these reviews, having found 73 user accounts with inappropriate access to 11 different clinical applications that were not identified or remediated during the course of Upstate's reviews. Auditors recommended that Upstate: improve controls over user access to Upstate applications to ensure they meet the applicable laws, regulations, and policy requirements; and remove access for improper user accounts identified in the audit.

**Oversight of Hazardous Materials and Waste (Follow-Up) (2019-F-47).** SUNY campuses use hazardous materials, and generate hazardous waste, in a variety of both classroom-related (e.g., laboratory operations, photo processing) and non-classroom-related (e.g., facilities operations and maintenance, and construction and renovation) activities. Due to their properties (e.g., toxicity, flammability, explosiveness, corrosiveness), such substances pose inherent and potentially large-scale and harmful risks. Robust controls over hazardous materials are essential to ensure student and campus safety and to protect campus communities and the environment. SUNY's System Administration (SUNY Admin) established the Environmental Health & Safety Office, which serves as a technical resource for the campuses, providing tools, training, and communication on best practices and compliance with local, State, and federal regulations, along with SUNY's own requirements governing environmental management. Each campus has designated employees responsible for ensuring its hazardous waste and material programs comply with all applicable rules, regulations, and laws. The initial audit (2017-S-51) found that SUNY officials had established controls over and complied with hazardous waste regulations that provide reasonable assurance that students and communities are safeguarded against exposure to hazardous waste. However, at two University Centers (University at Buffalo and Stony Brook University) and five campuses (Plattsburgh, New Paltz, Polytechnic Institute, Oneonta, and Cobleskill), auditors found significant variation in the adequacy of controls over hazardous materials. At most of the campuses, auditors found select areas in which controls over hazardous materials could be improved. However, these weaknesses were not pervasive throughout all

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areas of internal controls. In contrast, the University Centers had weaknesses throughout all the areas of internal controls reviewed. These weaknesses prevent proper monitoring and accounting for hazardous materials, compliance with legal requirements, and enforcement of restricted access to hazardous materials. The three recommendations in the initial audit report addressed the need for enhanced monitoring and improved controls over access, procurement, and accounting for hazardous materials as necessary to further reduce risks, as well as the implementation of recommendations detailed during the audit. The follow-up review found that SUNY officials and campuses had made significant progress in correcting the problems previously identified. All three of the prior audit recommendations had been implemented.

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## Transportation

### Metropolitan Transportation Authority (MTA)

*The MTA is a public benefit corporation, overseen by a 21-member Board of Directors (Board), providing transportation services in and around the New York City metropolitan area. The MTA has six agencies: New York City Transit (Transit), which operates bus and subway service; MTA Bus Company (MTA Bus); Long Island Rail Road (LIRR), the largest commuter railroad in the country; Metro-North Railroad (Metro-North); Triborough Bridges and Tunnels Authority (TBTA), which operates seven toll bridges and two tunnels that interconnect parts of New York City; and MTA Construction & Development. The MTA also has a headquarters, which provides administrative support. Staten Island Railway (SIR) is a subsidiary agency that operates a single rapid transit line on Staten Island.*

**Selected Performance Measures (2018-S-18).** The MTA is required under the Public Authorities Law to report annually on its performance. Given the millions of people who rely on Metro-North, LIRR, Transit, and MTA Bus—the agencies of focus of this audit—it is incumbent on them to accurately report on their performance. Each agency identifies specific performance measures related to its mission, such as ridership and mean distance between failures (MDBF). The MTA is also required by the Federal Transit Administration (FTA) to report certain performance measures to the National Transit Database (NTD). The FTA uses this information as the basis for allocation of federal funding. In some instances, the FTA defines a performance measure differently than the MTA. These performance data are critical to evaluating actual service and conditions. For two key performance measures—MDBF and ridership—auditors identified deficiencies and inconsistencies in the agencies’ methodology and calculations that may result in misleading or inaccurate results. For example, Transit Subways and LIRR calculate the miles component of MDBF using the miles per train car rather than the actual distance traveled by the whole train; their methodology generally results in a significantly higher—and misleading—MDBF. In addition, LIRR did not include all mechanical failures in its calculation of MDBF. For the month reviewed, 24 incidents were included in the MDBF, but another 14 incidents that were mechanical in nature and resulted in delays or lost trips were omitted. Had they been included, LIRR’s number of failures would have been 58 percent higher, and its MDBF would have been 156,493 as opposed to 247,780. Auditors also found that neither Metro-North nor LIRR have a way to account for actual rides by weekly and monthly ticket holders. Instead, both use a formula to estimate ridership that was developed from a 1983 survey of Metro-North customers. As it is based on demographics and commuting patterns from 36 years ago, the formula is of questionable value in producing reliable estimates today. Also, MTA Bus does not include non-paying passengers when reporting ridership to the NTD. Although the NTD Manual does not explicitly require these riders be included, those numbers are used to allocate federal funding. Among other actions, auditors recommended that the MTA: evaluate Transit Subways’ and LIRR’s MDBF to determine if it is an easily understood, accurate representation of car fleet and service reliability, and determine whether changes need to be made regarding how



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the metrics are calculated and presented; update the survey used to calculate commuter railroads' ridership statistics, including, but not limited to, consideration of ticket use patterns, changes in the composition and travel habits of customers, and changes in ticket, pass, and refund policies; and adjust the MTA Bus ridership methodology for FTA reporting to properly identify nonrevenue riders.

**Administration of Self-Insured Workers' Compensation Plans (2018-S-33).** Every year, tens of thousands of New Yorkers suffer an injury or occupational illness related to their work. Almost all employees are covered by the Workers' Compensation Law (Law), which ensures that such employees receive speedy and adequate replacement benefits as well as medical coverage. The Workers' Compensation Board (WCB) was created to adjudicate claims and ensure that employers provide coverage to their injured employees. Virtually all employers in the State must provide workers' compensation, and are required to buy insurance against the cost of occupational injury and illness by using a private insurance carrier, or the State Insurance Fund, or by electing to self-insure or participating in group self-insurance. Three MTA constituent agencies—Transit, MTA Bus, and TBTA—are self-insured and administer their own workers' compensation claims in accordance with the Law. Auditors found that all three agencies could improve how they administer their workers' compensation plans to ensure they meet the self-insurers' obligations. Each agency administers its own plan and uses its own procedures for processing claims, and the MTA does not monitor the procedures being used. Inconsistent processes and application of the Law across agencies have resulted in late, inaccurate, or sometimes missed administration of benefits, placing an undue financial burden on injured employees. From July 1, 2015 to June 30, 2018, the three agencies were penalized 547 times by the WCB, totaling \$576,030, for violations of the Law, including late payments, late reporting to the WCB, and late objections to claims. In addition, auditors found that workers' compensation payments were made beyond the time frames required by Law, including one payment that was 33 days late. Workers' compensation payment processing for the three self-insured agencies is complex and requires a coordinated effort among several departments. While officials and key employees understand their roles and responsibilities, no one clearly understands the entire process. Auditors' key recommendations to the MTA were to: create and implement a workers' compensation manual to guide claims processing for all self-insured agencies; and develop a common procedure for processing payments for workers' compensation claims for the three constituent agencies.

**Long Island Rail Road: Fare Collection (2018-S-53).** LIRR has a distance-based fare structure. Two main types of tickets are offered: commutation (unlimited weekly and monthly travel within the specified zones shown on the ticket) and non-commutation (one-way, round-trip, and ten-trip travel). Tickets can be purchased prior to boarding or, for an additional surcharge of up to \$6.50, on board the train. Train Service Personnel (TSP) are responsible for checking tickets or collecting fares from every rider. Customers who cannot pay the cash fare on board the train or who need a receipt for a confiscated ticket are issued an invoice. From January 1, 2015 to December 16, 2018, LIRR issued 329,612 invoices worth \$4.4 million. Auditors found that LIRR employees did not always follow the required fare collection procedures. During a series of observations between December 2018 and

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May 2019, auditors noted that TSPs did not collect non-commutation fares 26 percent of the time (78 of 301 rides) and often collected incorrect fare amounts (e.g., did not collect onboard surcharges). Based on the percentages from their observations, auditors estimated a potential revenue loss of \$33.4 million due to uncollected or incorrect fares. Further, LIRR did not always follow invoice collection procedures, leading to additional lost revenue. Among other actions, auditors recommended that LIRR: determine why TSPs did not adhere to fare collection requirements, and develop a corrective action plan accordingly; and standardize and document all invoice policies and procedures.

**New York City Transit: New Customer-Focused Subway Metrics (2018-S-72).** In July 2017, in response to the Board's demand for performance improvements, the MTA released a Subway Action Plan (Plan), which included new customer-focused performance measures that would be more relevant and easier for customers to understand: Additional Platform Time (APT), the average time that customers wait at a station beyond their scheduled wait time; Additional Train Time (ATT), the average time customers spend on board a train beyond their scheduled travel time; Additional Journey Time (AJT), which is the sum of APT and ATT; and Customer Journey Time Performance (CJTP), the percentage of customer trips completed within five minutes of the scheduled time. The Public Authorities Law requires the MTA to publicly report APT, ATT, AJT, and CJTP, providing customers and MTA management with an overview of current service as well as a roadmap for what areas need improvement. Auditors found that the new customer-focused statistics do not appear to meet the Plan's goal as public performance measures. The MTA's model for calculating performance metrics is based on limited MetroCard swipe data (e.g., date and time of customer travel, station of entry), and otherwise relies on significant assumptions (e.g., passenger destination, travel route, start wait time) that cannot be verified and that introduce uncertainty and complexity to the model. Thus, the metrics posted may not reflect actual customer experience. Further, APT, ATT, and AJT represent the average additional time for each leg of a trip. A customer who transfers multiple times would have to add the times for each leg of their trip together to obtain the total APT, ATT, or AJT. However, based on the published definition, this is not clear. Auditors recommended that the MTA evaluate whether the APT, ATT, and CJTP meet the goals of the Plan and disclose the assumptions and margin of error for each assumption.

**New York City Transit: Subway Wait Assessment (2019-S-62).** Under the Public Authorities Law, the MTA is required to issue an annual report on its mission statement, measurements, and performance indicators. The MTA's 2017 and 2018 calendar year Mission Statement and Performance Indicator reports list Subway Wait Assessment (WA) as an indicator of the MTA's progress toward its goal of providing reliable service for its customers and federal, State, and local government partners. Performance measure results are often reviewed by the Board, which provides feedback, guidance, and recommendations to Transit on the success of its operations. On July 25, 2017, in response to the Board's demand for performance improvements, the MTA released the Subway Action Plan to improve service. One of the changes in the Plan was the implementation of new customer-focused performance measures intended to be more relevant and easier to understand. In September 2017, Transit introduced the new metrics, and WA became a "legacy indicator," but continues

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to be reported monthly to the MTA Board's Transit and Bus Committee (Committee) and posted on the MTA website's Subway Performance Dashboard (Dashboard). According to Transit Operations Planning (OP), subway WA is calculated at time points, which should consist of between 25 and 50 percent of all stops along each route. Auditors found that time points cover only between 11 and 30 percent of all stops on each route per direction. Therefore, the majority of the service provided is not captured in the WA calculation. Even though the time points were selected based on customer traffic, OP did not include key subway stations such as Penn Station, 59th Street-Columbus Circle, and 14th Street. These stations had the second, third, and fourth highest rates of ridership, respectively, in 2017 and on average from 2012 to 2017. For November 2018, more than 3.1 million actual train records were excluded from the WA calculation because they were recorded at stations that are not time points. As a result, OP may not be providing its customers and government partners with complete performance results. The MTA does not disclose to the Committee or on the Dashboard that WA is based only on certain stations. Additionally, WA calculations may be affected by trains opting to skip non-time point stops in order to avoid arriving late at time points. WA is reported for each of the 24 subway service lines and is presented separately in the Committee reports for both weekday and weekend service. However, on the Dashboard, an individual can filter WA data by line, division, and peak/off-peak service for only weekday service—weekend statistics are not provided. Auditors recommended that Transit: calculate system-wide WA performance based on all subway stations rather than time point stations, and, in the interim, disclose that WA is calculated based only on time point locations; provide the public with the supplement schedules that are used to calculate WA and only include intervals that are in accordance with transit service guidelines and, in the interim, disclose that headways may not be in accordance with the guidelines; and provide weekend WA statistics on the Dashboard.

**Selected Aspects of Collection of Bridge and Tunnel Tolls and Fees (Follow-Up) (2019-F-1).** TBTA toll revenues help subsidize MTA's transit and commuter rail services. For most TBTA bridges, drivers can pay tolls in cash or by E-ZPass, an electronic system that allows prepayment or automatic charges to a checking account. The system includes a toll tag for the car, an overhead antenna in the toll lane, and cameras to identify cars without toll tags. At gated TBTA crossings, the cameras are part of the toll violation enforcement system. TBTA also offers an E-ZPass On-the-Go (OTG) tag, a prepaid tag designed to make it easy for cash customers to try the device. For customers who do not have E-ZPass or sufficient cash at a TBTA gated facility, some lanes accept credit/debit cards; otherwise, a Deferred Toll Payment Request (Deferred Toll) is issued, enabling motorists to remit payment at a later time. In November 2012, TBTA implemented cashless tolling at the Henry Hudson Bridge (HHB). Cashless tolling uses the E-ZPass system, but replaces cash with Tolls by Mail, which uses cameras to take pictures of the license plates, and toll bills are mailed to the registered owners of the vehicles. In December 2016, the MTA announced it was moving to "open road" tolling (ORT) by dismantling the toll booths from seven bridges and two tunnels by the end of 2017. To deter nonpayment, an administrative fee can be added to each unpaid toll. Also, a regulation implemented in January 2016 allows the Department of Motor Vehicles (DMV) to suspend vehicle registrations for owners with five or more unpaid toll violations on different

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days within an 18-month period. The initial audit (2016-S-64) found that, while TBTA makes efforts to collect unpaid tolls, \$11.3 million in tolls were either written off or uncollected. Auditors determined that major portions of the uncollected tolls resulted from issuing OTG tags to motorists, who then used the 65,561 unregistered OTG tags to incur \$2.3 million in unpaid tolls (in excess of the original deposit) and \$2.79 million in unpaid Deferred Tolls, incurred when customers appeared at toll plazas and could not pay the toll, promising to pay later. In addition, TBTA had more than \$72 million in unpaid fees for the HHB from 2013 through 2015. TBTA has waived as much as 90 percent of fees due upon receipt of the payment of the unpaid tolls. TBTA also did not fully utilize the DMV registration suspension program, submitting only a limited number of registrations for suspension each week after the initial introductory period. Also, officials stated that the new ORT system has no mechanism to alert officials that a vehicle crossing its facility is on a toll violator list and should be pursued. In addition, a “Hot List,” which would allow law enforcement to locate vehicles of out-of-state violators, was not implemented because other change orders for ORT and other New York E-ZPass agencies took priority. The follow-up review found that officials had made progress in addressing the issues identified, but additional improvements were needed. Of the nine audit recommendations, four had been implemented, two had been partially implemented, and three had not been implemented.

**New York City Transit: Selected Aspects of Subway Station Safety (Follow-Up) (2019-F-15).** Within Transit, the Division of Station Environment and Operations (Division) is responsible for maintaining safety and cleanliness for the daily riders who use its 472 subway stations. Transit has six operating units with 6,024 employees who maintain the safety and cleanliness of station areas such as stairs, platforms, mezzanines, and walkways. The Division’s Station Supervisors (supervisors) are required to perform mandatory weekly station inspections and daily inspections for the top 25 slips, trips, and falls in subway stations to identify defects in need of repair and ensure the cleanliness of each station. Subsequent to the initial audit, supervisors and managers began using the Infor Enterprise Asset Management system to report and track all nonconformities (formerly known as defects), which are grouped into five categories based on severity and amount of time to address them. The initial audit (2016-S-11) found that the Division often did not take sufficient and/or timely actions to identify and address safety-related defects. Auditors identified 66 defects, including 21 Priority A defects, as classified under the previous system (affects safety, security, and revenue-related issues and must be made safe within 24 hours), at 12 of the 25 subway stations inspected. However, 20 of the 21 Priority A defects were not identified by supervisors during required station inspections within three days before and after auditor site visits. Once identified, defects were not always addressed within the required time frames. In the follow-up review, auditors found that Transit had made progress in addressing the problems identified in the initial audit report. Of the six audit recommendations, five had been partially implemented and one had not been implemented.

**Staten Island Railway: Safety at Stations (Follow-Up) (2019-F-16).** SIR’s single rapid transit line runs the length of Staten Island (about 14 miles) from St. George Terminal to the southern terminal at Tottenville. Riders can connect with New York City Transit system buses

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at many of SIR's 21 stations or to the Staten Island Ferry. SIR operates 24 hours a day with service every 30 minutes, and more frequently during weekday rush hours. From July 1, 2017 to December 3, 2019, SIR's Maintenance of Way (MOW) Infrastructure Department (Infrastructure) records showed at least one safety-related incident was reported on 142 dates. When an incident occurs, the Rail Control Center receives the call, prepares an Exception Report, and notifies MOW and/or the Engineering Department of the incident, requiring a field inspection and/or investigation of the issue. A foreman is dispatched to the site of the incident and prepares a SIR Infrastructure Department Station Inspection Form (Form). The completed Form is reviewed and a defect priority is assigned, ranging from "A" defects, which affect safety, danger, security and revenue and must be made safe or repaired upon immediate response, to "P" defects, which are non-safety project-type work requiring longer duration and planning to complete. The initial audit (2016-S-91) found that SIR had documented its inspections and the actions taken to remediate conditions found, but had not always documented its responses to safety-related incidents. A lack of pertinent policies and procedures as well as staffing shortages likely contributed to lapses in documenting incidents and the related SIR responses. Auditors also noted that SIR's Customer Assistance Intercom system was not operational system-wide. In the follow-up review, auditors found that SIR officials had made progress in addressing the problems identified in the initial audit report, having implemented one recommendation and partially implemented the other.

**New York City Transit: Operational Training and Medical Assessments of Train Crews (Follow-Up) (2019-F-17).** Train crews consist of two members: a Train Operator (TO) and a Conductor, both of whom have direct responsibility for the safe, timely, and proper operation of Transit trains. Employees new to the TO and Conductor positions must have Induction Training, where they learn how to operate trains in revenue and nonrevenue road service in a yard or terminal; prepare trains for road service and switch cars in the yards; and learn the components of a train and gain familiarity with operating procedures, including how to deal with emergency situations. Every three years, train crews must undergo Refresher Training, which includes three days of classroom training, road training, and fire and evacuation training; Conductors receive an additional day of training in communications. Employees new to these positions are required to pass a medical assessment and periodic medical assessments thereafter (every two years for TOs and every five years for Conductors). Federal regulations also require Conductors and TOs to have annual hearing tests. The initial audit (2016-S-26) found that Transit was not in compliance with the requirements of the Induction Training curriculum established for its train crews, and that TOs and Conductors did not always meet or complete Refresher Training requirements. Review of training files for 45 employees showed that only 16 (35 percent) received a passing grade of 80 or higher on the final test, while 23 (51 percent) failed the test and returned to work; for the remaining six employees, tests were missing from the files. Furthermore, annual hearing tests were not always administered as required. Among other actions, auditors recommended that the MTA: require all training instructors to review the class files periodically during and at the end of training to ensure all that all quizzes, tests, and examinations are documented and graded, and retained in training files along with attendance sheets; evaluate the Refresher Training to determine the reason for the low passing rate and implement corrective action; and develop

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a system that properly tracks and monitors employee medical assessments, hearing tests, and revisits against the scheduled time intervals. The follow-up review found that MTA officials had made some progress in addressing the problems identified in the initial audit report. Of the five audit recommendations, two had been implemented, two had been partially implemented, and one had not been implemented.

**Staten Island Railway: Operational Training and Medical Assessments of Train Crews (Follow-Up) (2019-F-18).** SIR train crews consist of two members: a Locomotive Engineer (Engineer) and a Conductor. Induction Training is required for all employees new to their positions. Additionally, train crews are required to take Refresher Training courses (intended to update the employees on operating, communications, fire, and evacuation procedures). Employees new to these positions are required to pass a medical assessment, and periodic medical assessments are required thereafter every two years for Engineers and every five years for Conductors. The initial audit (2017-S-71) found that SIR was not in compliance with the requirements of the Induction and Refresher Training established for its Engineers and Conductors. For example, for the auditors' sample of Conductors, 61 percent (55 of 90) of the Induction Training test papers were either not graded or missing. In addition, for the sample of Engineers, 81.7 percent (49 of 60) of test papers for those newly hired and 41.7 percent (30 of 72) for those newly promoted were either missing or not graded. Because these tests cover knowledge of safety issues and how to respond in situations that may delay trains en route, it is essential that SIR ensure train crews take and pass these tests. Auditors also noted that medical assessments were not always done for either Conductors or Engineers. Auditors recommended that SIR: require all instructors to review the class files periodically during and at the end of training to ensure that all quizzes, tests, and final examinations are documented and graded, and are retained in the training files; emphasize the importance of Refresher Training to ensure compliance by instructors and train crews, evidenced by complete records; and develop a system that properly tracks and monitors employee medical examinations against the scheduled time intervals. The follow-up review found that MTA officials had made progress in addressing the problems identified in the initial audit report. At the time of the follow-up, one recommendation had been implemented and two had been partially implemented.

**New York City Transit: Utilization of the Arch Street Yard and Shop Facility (Follow-Up) (2019-F-19).** As part of its East Side Access Project (ESA), the MTA constructed a new yard and shop facility at Arch Street (Facility) in Long Island City, adjacent to the No. 7 line Hunters Point Avenue Station. The Facility was designed to provide inspections, maintenance, and cleaning for LIRR trains that operate into Grand Central Terminal. However, the latest projections estimate that this service, which is contingent upon ESA completion, will not begin until December 2022. From July 2016 to June 2019, LIRR incurred \$2,714,552 in operating expenses at the Facility. Metro-North used the Facility from September 1, 2016 to November 30, 2018 for the installation of Positive Train Control on Metro-North trains, and was billed \$707,694 of the operating expenses for the incremental costs to operate the Facility. The initial audit (2016-S-78) found that the Facility was constructed before it was needed for ESA, and was never used as intended: for the initial acceptance and inspection of M-7 cars.

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Moreover, except for occasional use of the wheel truing machine to round off flat spots on wheels, the Facility was not used for periodic inspections or repairs by LIRR's Maintenance of Equipment Department. Instead, since its completion, the Facility was vacant for over 3½ years, leased to the M-7 vendor to make warranty repairs, and licensed twice—once as a parking lot to accommodate a tenant displaced from an MTA project and once to a contractor to perform modifications on Metro-North rail cars. The follow-up review found that LIRR officials had not implemented the single recommendation that they perform a written cost-benefit analysis to determine the best use for the Facility and its equipment until ESA is open.

**New York City Transit: Signal Maintenance, Inspection, and Testing (Follow-Up) (2019-F-58).** Transit's Department of Subways' (Subways) Electrical subdivision is responsible for Power and Signals (Signals). Subway track is divided into sections for maintenance, and Transit employs Signal Maintainers for the maintenance, inspection, and testing (MIT) of the equipment at their assigned section locations. Signal maintenance is critical in preventing subway delays. MIT work is performed at predetermined intervals, and Signal Maintainers use logbooks to record MIT work, including: a description of the device; the interval in which the MIT should be performed; each test/task performed; and the date the MIT was performed. When work is completed, logbook information is entered into the Integrated Signals' Equipment Information System and Enterprise Asset Management (EAM), Signals' internal database. The EAM, still under development, will capture real-time testing and maintenance through hand-held devices. In New York State, the Public Transportation Safety Board (PTSB) reviews and approves Transit's System Safety Program Plan (SSPP), which outlines when MIT is required. Transit is required to review the SSPP annually, and any modifications must be submitted to the PTSB for review and approval. The initial audit (2017-S-6) found that Signals did not always perform MIT of its signal equipment within the required intervals. For example, at Howard Beach and Pelham, 450 of the 1,280 MIT activities (35 percent) required from January 1, 2015 to May 16, 2017 were not completed within the required intervals. Auditors found that 39,194 of the annual inspections (76 percent) were late, and identified 2,345 devices that were on the Signal Device Master List but were not inspected by a Supervisor during this period. Moreover, Transit did not update its SSPP for at least one of the Task Codes auditors examined. Signals also did not have an inventory system to account for all of the equipment it maintains, despite the significant investment it represents. Transit officials advised auditors at the time that the EAM system would also manage inventory, but would take about three years to complete. Auditors made 18 recommendations to Transit to ensure that signal devices are maintained, inspected, and tested in accordance with applicable standards and that all maintenance and inventory are recorded as required. The follow-up review found that Transit had made progress in addressing these issues. At the time of the follow-up, of the 18 audit recommendations, three had been implemented, ten had been partially implemented, and five had not been implemented.

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## Niagara Frontier Transportation Authority

(NFTA)

*NFTA is responsible for public transportation in Erie and Niagara counties, including operation of the Metro Bus and Rail System, Buffalo Niagara International Airport, and Niagara Falls International Airport.*

**Use of Vendor-Supported Technology (2019-S-40).** To carry out its mission, NFTA owns information technology resources, including desktops/workstations, servers, and databases. As a public benefit corporation, NFTA must adhere to the State Information Security Policy (Policy) established by the Office of Information Technology Services. The Policy defines the minimum information security requirements that all State entities must follow to secure and protect the confidentiality, integrity, and availability of information, including ensuring that systems are maintained at vendor-supported levels (i.e., systems continue to be updated and patched by the system's vendor). Auditors determined that, generally, NFTA maintained its systems at vendor-supported levels, but identified unsupported systems used by NFTA on 66 devices. NFTA officials had not developed policies and procedures to ensure that its systems are regularly reviewed and kept up to date. Auditors recommended that NFTA: take steps to ensure that systems are maintained at vendor-supported levels, such as developing policies and procedures related to software updates and vulnerability analysis; and implement the remaining recommendations detailed in the preliminary report.



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## **Criminal Justice and Judicial Administration**

### **Department of Corrections and Community Supervision (DOCCS)**

*DOCCS is responsible for the confinement and rehabilitation of approximately 35,600 individuals under custody held at 52 State facilities and the supervision of over 35,000 parolees throughout seven regional offices statewide.*

**Compliance With Executive Order 88: Energy Efficiency in State Buildings (2019-S-33).** Executive Order 88 (EO 88), issued on December 28, 2012, is the centerpiece of BuildSmart NY—the Executive’s program for pursuing energy efficiency in certain New York State government buildings while advancing economic growth, environmental protection, and energy security in the State. EO 88 is intended to accomplish broader State policy goals, such as reducing State government utility expenses, fostering investment in smart buildings, protecting the environment and public health by reducing the emissions of greenhouse gases and other pollutants, and supporting economic growth by creating green jobs and stimulating the marketplace for clean energy and energy-efficient products and services. EO 88 mandated a 20 percent collective improvement in the energy performance of all covered agencies and authorities by April 1, 2020. Auditors found that, generally, DOCCS had developed targets and plans to contribute toward EO 88 and had complied with the guidelines. However, DOCCS did not submeter all buildings greater than 100,000 gross square feet by December 31, 2016, as required. Furthermore, only six of 159 total planned submeters were connected to a monitoring and control system capable of real-time monitoring of energy use and providing alerts to facility staff, as required, by the December 31, 2017 deadline. DOCCS officials stated that they did not meet the submetering deadline because they were installing more meters than required. In addition, a major design change was made after the contract was awarded, causing some delays in project delivery and meter integration. Because of the delays, DOCCS was not on track to accomplish its full projected 23.05 percent energy reduction until well after the April 1, 2020 deadline. Auditors recommended DOCCS continue implementing capital projects that reduce energy usage, as resources allow.

### **Division of Criminal Justice Services (DCJS)**

*DCJS is responsible for law enforcement training; collection and analysis of statewide crime data; maintenance of criminal history information and fingerprint files; funding and oversight of probation and community correction programs; and administration of federal and state criminal justice funds.*

**Monitoring and Administration of Public Protection Grant Programs (2019-S-21).** DCJS administers State and federal grant programs aimed at crime prevention and control. Its responsibilities include: executing contractual agreements with grant recipients; monitoring

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their performance; and assessing program effectiveness. Auditors focused their efforts on the Gun Involved Violence Elimination (GIVE) and SNUG programs, which seek to reduce and prevent shootings and firearm-related homicides. GIVE is designed to assist law enforcement agencies in the 17 counties that account for about 85 percent of violent crime in the State, excluding New York City. GIVE contracts may include amounts for confidential funds, which are paid—generally in cash—to confidential informants for tips and information. Contract language requires grantees that receive confidential funds to maintain certain records that authorize payment of the funds and document their receipt. DCJS awards SNUG contracts to not-for-profit organizations that use community outreach and that involve residents and other stakeholders to reduce and prevent shootings and gun-related deaths. Together, these two programs make up about \$19.2 million of the \$42.3 million in DCJS public protection program funding for the State Fiscal Year ended March 31, 2020 that is provided to entities such as law enforcement agencies and not-for-profit organizations. Auditors found that DCJS’ administration and monitoring of the grant programs they reviewed were adequate to ensure that the related grant expenses were supported and allowable. Of the \$3.1 million in combined GIVE and SNUG grant expenditures reviewed from the three years ended December 31, 2019 (of \$57.3 million expended during the period), auditors identified one exception related to a GIVE grantee’s payments of confidential funds, some of which, totaling \$1,652, lacked documentation of approval or receipt. Auditors recommended that DCJS take steps to increase GIVE grantee accountability over confidential funds.

## **Division of State Police** *(State Police)*

*State Police’s safety and protection responsibilities include patrolling roads and highways outside major urban areas, providing specialty and investigative police services, conducting sophisticated investigations of criminal activities like drug trafficking and child endangerment, and working cooperatively with various levels of law enforcement throughout the State.*

**Processing of Sexual Offense Evidence Collection Kits (2019-S-44).** Medical professionals use Sexual Offense Evidence Collection Kits (kits) to collect DNA and other evidence during the physical exam of an alleged victim of sexual assault. Once a victim consents to release a kit for testing, the investigating law enforcement agency collects it and sends it to a forensic laboratory to be analyzed and to potentially develop a DNA profile. DNA profiles that meet specific requirements are added to a federally administered database that facilitates the electronic exchange and comparison of information, which can help link violent crimes and known offenders. Executive Law Section 838-a: Maintenance of Sexual Offense Evidence Kits (Executive Law), which was enacted in November 2016 and amended in February 2017, required all law enforcement agencies to submit any untested kits in their possession to a forensic laboratory by December 28, 2017 for analysis. The amendment further required kits received by law enforcement agencies prior to February 26, 2017 to be processed and results reported within 210 days of receipt at the lab, and kits received by law enforcement agencies on or after February 26, 2017 to be processed and reported on within 90 days of receipt at the lab. The Forensic Investigation Center (FIC) in Albany is the only

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State Police Crime Laboratory System laboratory that processes kits, and it does so for all jurisdictions across the State, excluding New York City. Auditors found that, from November 28, 2017 to October 31, 2019, the FIC processed 1,656 kits, but only 356 of these (21 percent) were completed within the prescribed time frames. As of October 31, 2019, the FIC had 1,916 kits that needed to be processed, and as of that date, the required processing time frame had elapsed for 1,681 kits (88 percent). In response to the Executive Law, State Police officials stated that law enforcement agencies submitted 2,227 kits to the FIC in 2017—more than three times the number of kits received the prior year, far surpassing the State Police’s estimates. Auditors projected it will take the FIC about two years with its current staffing levels to process the backlog and begin processing all newly received kits within 90 days, as required. Auditors recommended that the State Police review the FIC’s ability to process kits within the statutory time frames, and determine what process changes and resources are needed to meet Executive Law requirements.

### **Office of Court Administration (OCA)**

*OCA is responsible for directing and overseeing the administrative operations of all courts in the Unified Court System (UCS) through nine District Offices and the Deputy Chief Judge for New York City.*

**Court Facilities Aid and Assistance Programs (2019-S-4).** OCA administers several programs for municipalities and local justice courts that assist in the maintenance and improvement of court facilities. The Court Facilities Incentive Aid (CFIA) Fund reimburses municipalities for cleaning, maintenance, and improvements to court-occupied space. OCA administers the CFIA program through its District Offices for all areas outside of New York City. For New York City, OCA works directly with the Department of Citywide Administrative Services to administer the CFIA program. The Justice Court Assistance Program (JCAP) provides annual grants of up to \$30,000 to towns and villages for court improvements, including security enhancements, renovations, and furnishings. While OCA has processes for ensuring its facilities aid and assistance programs are used for only eligible expenses, review and approval processes are not standardized across the District Offices. For the three-year period ending March 31, 2018, auditors identified a total of \$301,000 in questionable CFIA expenses (of \$2.1 million reviewed) for two District Offices and New York City, including \$288,000 in purchases with missing or incomplete documentation. Ninety-one percent—or \$273,000—of the questionable expenses were attributed to two municipalities within the same district. Auditors also identified about \$21,000 in questionable JCAP expenses (of \$274,000 reviewed), including unapproved purchases, purchases with insufficient supporting documentation, and purchased items that could not be located at court facilities during site visits. Auditors recommended that OCA: provide training to District Offices to standardize the review and approval of submitted CFIA claims; and take action to review and recover, where applicable, the \$301,000 and \$21,000 in questionable CFIA and JCAP expenses, respectively.

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## Government Support

### Department of Civil Service (Civil Service)

*Civil Service is the principal human resources provider for the Executive Branch of State Government, serving approximately 150,000 employees. It also administers the New York State Health Insurance Program (NYSHIP), which covers more than 1.2 million current and retired State and local government employees and their family members. NYSHIP's primary health insurance program is the Empire Plan, which costs the State and local governments about \$9.5 billion each year. Civil Service contracts with: UnitedHealthcare (United) to process medical claims; Empire BlueCross (Empire) to process hospital claims; CVS Health to process prescription drug claims; and Beacon Health Options to process mental health and substance abuse claims for the plan.*

#### **Empire BlueCross – Improper Payments for Special Items Billed by Hospitals**

**Within Long Island Health Network (2017-S-43).** Empire processes claims for hospital services according to contracts it negotiates with hospitals. The hospital contracts include reimbursement fee schedules for inpatient and outpatient hospital services. Hospitals may be entitled to additional payments for special items (e.g., implants, drugs, and blood) that are not covered by standard fee schedules. Under Empire's contract with Long Island Health Network (LIHN), which covered ten hospitals on Long Island, Empire paid about \$180.5 million for 158,305 special item claims during the audit period January 1, 2013 through December 31, 2017. Auditors found that Empire did not pay for special item claims according to the terms of its contract with LIHN. From a sample of 874 claims, Empire overpaid LIHN hospitals \$3,597,688 for 722 special item claims (83 percent). As of July 23, 2019, Empire had recovered \$262,467. Auditors made several recommendations, including to: recover the remaining \$3,335,221 for special item claim overpayments from LIHN; develop a corrective action plan with LIHN hospitals to prevent recurrence of these types of errors; and continue to monitor special item claims, and consider implementing a risk-based approach that incorporates reviews of more hospitals and claims, and targets hospitals with patterns of billing errors.

#### **UnitedHealthcare – Reasonable and Customary Reimbursement Rates for Delayed Claims (2018-S-60).**

United contracts with a large network of participating providers (in-network providers) to deliver services to Empire Plan members. Members may also choose to receive services from out-of-network providers. United's reimbursement for certain out-of-network claims is 80 percent of the reasonable and customary (R&C) rate for the service. R&C rates are updated every six months ("rate period") and typically increase over time. From January 1, 2017 through December 31, 2018, United paid over \$416 million for 255,807 out-of-network claims based on R&C rates. Auditors found that United's automated claims processing system uses only the two most recent R&C rate periods (i.e., rates from the prior 12 months) to process all R&C claims—even claims for services that occurred before those rates took effect. For a sample of 100 high-risk R&C claims, auditors found 84 were

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paid based on a later rate period—and at a higher R&C rate than was in effect on the date of service—and calculated a potential cost savings of \$214,008 for these claims. Auditors recommended that United: evaluate the feasibility of processing R&C claims based on date of service (thereby using the R&C rate in effect at the time); and review the claims identified in this audit and assess whether recoveries are warranted.

**CVS Health – Temporary Holding Account Rebate Revenue (2019-S-27).** In accordance with its contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates and remit the rebate revenue to Civil Service. During the contract period, Civil Service received more than \$1 billion in commercial drug rebates (rebates exclusive of Medicare Part D rebates). Auditors found that CVS Health improperly designated a temporary holding account, used to process certain prescription drug claims, as “non-rebate-eligible.” As a result, CVS Health did not seek rebates from drug manufacturers on claims that were, in fact, rebate-eligible. Auditors identified \$428,958 in rebate revenue that is due Civil Service for rebate-eligible claims in the account for the period January 1, 2014 through December 31, 2018. CVS Health agreed that Civil Service is due the additional rebates, and also agreed to remove the “non-rebate-eligible” designation from the account. As a result, auditors project Civil Service will receive additional rebates of \$1.27 million attributable to rebate-eligible claims in the holding account over the next contract period of January 1, 2019 through December 31, 2023. Auditors recommended that CVS Health: remit \$428,958 in rebate revenue to Civil Service; and ensure all future rebate revenue attributable to claims in the temporary holding account (estimated at \$1.27 million) is properly remitted to Civil Service.

**Empire BlueCross – Improper Payments for Intraocular Lens Claims Billed by Hospitals (2019-S-31).** Empire processes claims for hospital services according to contracts it negotiates with hospitals. The hospital contracts include reimbursement fee schedules for inpatient and outpatient hospital services. Hospitals may be entitled to additional payments for special items, such as implants, which are not covered by fee schedules. Intraocular lenses are used in the treatment of cataracts—the clouding of the lens in the eye—which cause vision problems. A cataract is corrected with surgery, which frequently involves removing the clouded lens and replacing it with an intraocular lens (such as a plastic lens). Empire generally reimburses the intraocular lens as a special item implant, meaning the hospital receives an additional fee for the lens itself. If a provider corrects or adjusts the intraocular lens, the additional implant fee should not be paid. When hospitals send claims for reimbursement, in addition to general service codes, they typically include specific service codes, which helps Empire make appropriate payments. From January 1, 2014 through June 30, 2019, Empire paid over \$1.5 million for 3,169 special item intraocular lens claims. Auditors reviewed the 3,169 special item intraocular lens claims paid during the audit period, and found Empire paid \$162,887 for 164 claims that included a specific service code that contradicted the general service code and indicated a lens had not been implanted. Auditors recommended that Empire: review the \$162,887 in claims identified in the audit and recover all overpayments, as warranted; and ensure that adequate payment controls over intraocular lens claims are implemented.

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**Payments by Empire BlueCross for Hospital Services for Ineligible Members (2019-S-32).** A coordinated effort is required by Civil Service, Empire, employer health benefits administrators (HBAs), and members to maintain accurate and up-to-date eligibility records for the Empire Plan; however, Civil Service is ultimately responsible for ensuring these groups fulfill their duties. Civil Service maintains the New York Benefits Eligibility and Accounting System (NYBEAS) as the system of record for member enrollment and eligibility information, and notifies Empire of any changes in a member's status. Many contracts that Empire negotiates with hospitals limit recoveries to one year or less for claims paid on behalf of members who are retroactively disenrolled (i.e., when a member is disenrolled after the date their coverage ended; for example, action can be taken to disenroll a member on December 31, 2018, but the disenrollment period goes back to June 1, 2018). For contracts that do not include this retroactive disenrollment language, claims may be recovered for six years. The audit identified 3,177 claims totaling \$18.2 million paid for hospital services provided during periods when members were not eligible. The claims were paid due to various reasons, including retroactive disenrollments. For retroactive disenrollments, it took an average of nearly 400 days to cancel members' coverage due to delays by Civil Service, HBAs, and members. In one example, Empire paid \$186,000 in ineligible claims because it took more than eight years to retroactively disenroll a member. Overpayments also occurred due to errors in Empire's processing of certain claims. Of the \$18.2 million, Empire recovered \$11.5 million and \$2.1 million was beyond recoverability time frames, leaving \$4.6 million to be recovered. Auditors recommended that Civil Service: review the \$4.6 million in claims paid for ineligible members and make recoveries, as warranted; take corrective steps to help ensure NYBEAS reflects accurate eligibility information and updates are made promptly; and monitor the accuracy of Empire's eligibility data and recovery of claims paid for disenrolled members. Auditors also recommended that Empire: ensure eligibility information used to process claims is complete and accurate and reconciles with current NYBEAS information; and take corrective steps to ensure all claims paid for ineligible members are identified and recoveries are made, where appropriate.

**CVS Health – Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service (2019-S-51).** The cost of the prescription drug program averaged \$2.4 billion per year during the contract period. In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates, discounts, and other consideration (collectively referred to as “rebates”) and remit the rebate revenue to Civil Service. During the contract period, Civil Service received more than \$1 billion in commercial drug rebates (rebates exclusive of Medicare Part D rebates). Auditors reviewed discrepancies between the drug rebates that CVS Health invoiced versus those collected from drug manufacturers, and found CVS Health did not always collect and remit all rebate revenue to Civil Service. As a result, Civil Service is due \$453,029 in rebates. Auditors recommended that CVS Health: remit \$453,029 in drug rebate revenue to Civil Service; and take corrective steps to ensure all of the Empire Plan's rebate-eligible drug utilization is invoiced, collected from drug manufacturers, and remitted in a timely manner to Civil Service.

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**UnitedHealthcare – Overpayments for Out-of-Network Anesthesia Services Provided at In-Network Ambulatory Surgery Centers (Follow-Up) (2019-F-38).** Ambulatory Surgery Centers (ASCs) are health care facilities focused on providing same-day surgical care. To help control costs, certain in-network ASCs have contract provisions that require all anesthesia services provided to Empire Plan members at their facilities to be performed by in-network anesthesia providers. The initial audit (2017-S-35) identified \$991,357 in overpayments that occurred because United paid for out-of-network anesthesia services provided at ASCs that were contractually required to use in-network anesthesia providers. The follow-up review found that United had made significant progress in addressing the problems auditors identified, including recovering \$780,478 of the \$991,357 in overpayments. Of the initial report's two audit recommendations, one had been implemented and one had been partially implemented.

**Empire BlueCross – Controls Over Payments for Special Items (Follow-Up) (2019-F-39).** Empire processes claims for hospital services according to contracts it negotiates with member hospitals, which include rate schedules for the payment of inpatient and outpatient hospital services. Hospitals may be entitled to additional payments for special medical items (implants, drugs, and blood) that are not covered by fee schedules. Additionally, contracts with many of Empire's member hospitals limit payment amounts for special items; however, some contracts do not have such limitations. Prior audits have shown that, where special items are not subject to reimbursement limits, there is a high risk of excessive payment. The initial audit (2016-S-57) found that Empire still needed to strengthen certain internal controls and hospital contract language to help ensure payments for special items are accurate. The follow-up review found that Empire had made significant progress in addressing the problems identified in the initial audit. In particular, Empire recovered \$11.5 million on behalf of the Empire Plan and implemented both of the report's audit recommendations.

**UnitedHealthcare – Out-of-Network Providers Upcoding Selected Evaluation and Management Services (Follow-Up) (2019-F-46).** Evaluation and Management (E/M) billing codes are divided into broad categories, such as office visits, hospital visits, and consultations. Within each category, there are different billing levels (e.g., level 1, 5-minute visit; level 5, 40-minute visit). The higher the level that is billed, the greater United's reimbursement. Billing for a higher level of care than the service actually provided is known as upcoding. In the initial audit (2017-S-34), auditors found that, for the period January 1, 2016 through December 31, 2016, 42 claims (47 percent of the 90 claims sampled) totaling \$28,731 were upcoded or unsupported for the higher level of care billed, and United's method for monitoring out-of-network providers who billed for higher-level E/M services needed improvements. Auditors recommended that: United improve the monitoring of claims submitted for E/M services by assessing out-of-network providers who routinely bill the majority of their claims at high-level E/M codes; and review the \$28,731 and make recoveries, as warranted, and expand the review of the at-risk providers identified and recover other improper payments. In their follow-up review, auditors found that United had made progress

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in addressing the problems identified in the initial audit. In particular, United saved the Empire Plan \$862,334 through reviews of claims from three of nine providers identified in the initial audit. Both of the initial report's recommendations have been partially implemented.

## **Office of General Services (OGS)**

*OGS is responsible for providing essential support services for the operations of State government, including architectural, engineering, and construction management services; building management, energy saving operations, and maintenance services; and the administration of centralized procurement contracts for goods, services, and technology.*

**Efficiency of Warehouse Space (2019-S-1).** The Warehouse Consolidation Initiative (Initiative) was implemented to achieve cost savings through the consolidation of warehouse space used by State agencies. At the start of the Initiative, a survey was issued to all State agencies inquiring about warehouse and storage space and the associated costs, because there was no central source for this information. Auditors found OGS had made progress in reducing leased warehouse space, having evaluated 29 leased warehouses, resulting in: the consolidation of 14, liquidation of nine, square footage reduction for three, and no changes in the remaining three. Three other warehouse evaluations were in progress during the audit. The Initiative realized cost savings of \$1,699,020 during the audit scope and a reduction of 434,266 square feet. However, auditors could not determine the Initiative's overall success, as an inventory of all State warehouses—leased and State owned—does not exist. OGS had not yet reduced any State-owned warehouse space as part of the Initiative, because it was directed to first evaluate and reduce leased warehouse space. Auditors recommended that OGS: identify all State warehouses—both leased and State-owned—including those previously evaluated and those yet to be evaluated as part of the Initiative, and maintain a comprehensive central listing; and evaluate all State-owned and leased warehouses to optimize repurposing and cost-savings opportunities.

**Compliance With Executive Order 95 (Open Data) (2019-S-39).** State government entities possess large amounts of valuable information on subjects such as health, business, public safety, parks and recreation, labor, and transportation. Executive Order 95 (EO 95), issued March 11, 2013, established an Open Data Website (Open Data) for the collection and public dissemination of publishable State data maintained by covered State entities (generally, those headed by individuals appointed by the Executive). Open Data should provide ongoing “one-stop” access to publishable State data, and make such data freely available in accessible formats for public use. As of January 2020, there were over 4,600 data items on Open Data. OGS provides critical services to State agencies, including: managing and leasing real property; designing and building facilities; and contracting for goods, services, and technology. As of January 28, 2020, OGS had published six data items on Open Data. Auditors found that OGS had taken steps to meet the requirements of EO 95; however, certain aspects of the order had not been fully addressed. There was limited assurance that OGS had created a complete catalogue of the publishable State data that it maintains or



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accompanying schedules for making that data public, as required by EO 95. OGS maintains potentially high-value publishable State data that it did not add to Open Data, and did not incorporate compliance with EO 95 into its core business functions. As such, OGS did not have processes to identify new high-value data sets to publish on Open Data (the most recent data was added in 2016), and OGS did not consistently update data already posted to Open Data. However, auditors found that the data OGS had posted to Open Data was usable and easily accessible, with no formatting issues. Auditors recommended that OGS: as soon as practicable, submit to the Office of Information Technology Services (ITS) and make publicly available a complete catalogue and schedule of publishable State data for addition to Open Data; and develop procedures for incorporating compliance with EO 95 into its core business practices and ensuring accurate, complete, and timely updates to data posted on Open Data.

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## Economic Development and Housing

### Empire State Development (ESD)

*ESD promotes the State's economy, encourages business investment and job creation, and supports local economies through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance.*

**Oversight of Select High-Technology Projects (2017-S-60).** ESD is the chief agency responsible for coordinating New York State's economic development programs, and has approved billions of dollars in investments intended to stimulate job creation and economic growth in high-tech industries across the State since 2013. The majority of these ESD investments have been for projects developed under the State University of New York Polytechnic Institute (SUNY Poly). ESD funding for these types of projects has included the acquisition of real estate as well as the design, construction, and equipping of high-tech facilities for private companies. In some instances, the private companies then operate and maintain the facilities with lease or other payments and with certain requirements for private investment and creating high-tech or other jobs. Collectively, these projects were intended to create thousands of jobs and generate billions of dollars in private investment. Since 2013, ESD has approved \$2.2 billion for high-tech projects administered through SUNY Poly and the Buffalo Billion initiative (an investment announced in 2012 for the Buffalo area economy to create jobs and spur economic growth), and \$477.5 million for programs overseen by NYSTAR, ESD's Division of Science, Technology and Innovation. Auditors found that, while ESD has effective practices for monitoring specific programs, such as those under NYSTAR, it has not adequately monitored other high-tech projects within the SUNY Poly and/or Buffalo Billion portfolio to ensure that taxpayer money is effectively spent and is producing the intended results. For example, initial project assessments lacked sufficient detail, such as reviews of the financial viability of beneficiary companies and cost-benefit analyses to assess the overall benefits of the projects, to justify the use of State funds. Auditors also found a lack of consistent and rigorous performance and evaluation standards for measuring whether programs and projects have attained their intended goals. Public progress reports have provided limited and conflicting information on high-tech projects' progress, making it difficult to determine their current statuses. Despite millions of dollars of State funding, selected high-tech projects had yet to create the expected number of jobs. While these projects still had time to meet their total job commitments, it was unclear whether such goals would be met, given that much work remained to yield the overall employment and investment targets—in some cases, years after construction had been completed. Auditors recommended that ESD: conduct comprehensive assessments of the risks, costs, and economic benefits of projects before funding decisions are made to determine if projects should receive significant State investment; develop standard performance metrics and then evaluate projects to determine their actual economic benefits compared with the State's investment; and standardize the

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public reporting of projects to eliminate discrepancies and provide the public with accurate information on project costs, statuses, and economic benefits using a clear and consistent method.

## **Homeless Housing and Assistance Corporation (HHAC)**

*HHAC administers the Homeless Housing and Assistance Program and provides State financial assistance in the form of grants, loans, or loan guarantees to acquire, construct, or rehabilitate supportive housing for the homeless.*

**Homeless Housing and Assistance Program – Project Selection and Maintenance (Follow-Up) (2020-F-14).** The Homeless Housing and Assistance Program (HHAP) provides funding for projects for the homeless. HHAP is overseen by HHAC and is administered and staffed by the Office of Temporary and Disability Assistance pursuant to its service agreement with HHAC. Through the Homeless Housing and Assistance Fund, HHAC provides State financial assistance in the form of grants, loans, or loan guarantees to acquire, construct, or rehabilitate supportive housing for the homeless. HHAC’s providers are required to provide supportive services to these clients to assist in maintaining their residence. HHAP performs monitoring inspections to ensure the projects are adequately maintained. As an additional means of monitoring, HHAC requires all project providers to submit detailed annual reports, which include information related to budget, finances, milestones, and proof of insurance and tax payments. From the inception of the program in 1983 through State Fiscal Year 2019-20, the State appropriated \$1,226,500,000 for the development of 22,128 units of housing. As of June 12, 2020, there were 342 active provider contracts. The initial audit (2018-S-4) found that, of the 51 projects that were awarded funding during the three-year period ending March 31, 2016, all but one were operational or in the pre-construction or construction phase within two to four years of being awarded funding. Auditors also identified several areas for improvement. For instance, for 326 projects that were active during the period April 2015 through March 2018, auditors determined that HHAP conducted the required inspections but not all were done timely: for about 10 percent (32) of the projects, inspections were past due, ranging from one to nine months. Further, 46 annual reports (14 percent) were delinquent, ranging from 94 to 980 days overdue. Further, HHAP officials disclosed that their database was not always reliable and, in some instances, query results were inaccurate. In July 2016, officials began seeking solutions to replace this system. Auditors made four recommendations, including that HHAP: continue to improve the timeliness of monitoring site visits; ensure all annual reports are received and reviewed timely; take appropriate action to acquire delinquent annual reports; and continue taking steps to implement a management information system that generates reliable data for decision-making. In the follow-up review, auditors found that HHAP had made progress in addressing the problems identified in the initial audit report; however, additional improvements are needed. Of the initial report’s four recommendations, two had been implemented and two had been partially implemented.

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## Homes and Community Renewal

(HCR)

*HCR builds, preserves, and protects affordable housing and increases home ownership while spurring related economic development activity to create business opportunity and strengthen communities across the State.*

**Collection of Fines Related to Tenant Complaints (2018-S-58).** HCR comprises New York State's major housing and community renewal agencies, including the Division of Housing and Community Renewal (DHCR). Within DHCR, the Office of Rent Administration (ORA) administers the State's rent laws and regulations related to nearly one million regulated apartments in the State. Between January 1, 2016 and September 30, 2018, 22,761 complaints from rent-regulated tenants were filed by ORA, including 684 harassment and 895 noncompliance cases. Harassment is a course of conduct intended to force tenants out of their apartment, and includes interfering with their privacy, comfort, or quiet enjoyment of the premises by reducing services or engaging in baseless court proceedings. Noncompliance is when an owner failed to comply with an order for corrective action to resolve a previous case. Noncompliance and harassment cases that cannot be resolved by settlement, mediation, or conference are heard before an Administrative Law Judge. If owners are found to be in violation, they could face fines of at least \$1,000 for each first noncompliance offense and at least \$2,000 for each first harassment offense. For noncompliance complaints, owners are given an opportunity to avoid a hearing and pay settlements of \$100 or \$250, provided the conditions are corrected within 60 days. Between January 1, 2016 and September 30, 2018, ORA collected \$673,215 in fines and settlements. Auditors found that ORA lacks proper fiscal controls over fines and settlements and had limited assurance that all moneys due the State were received and accounted for because of system, process, and policy weaknesses. ORA does not exercise its full authority to collect outstanding fines more timely; as of April 2019, at least \$346,000 in fines were outstanding. Harassment fines were imposed in only 12 of the 684 harassment cases (2 percent) filed during the scope period. Additionally, State harassment laws and regulations were different for rent-controlled units inside and outside of New York City. As a result, tenants living outside New York City face greater challenges in resolving harassment complaints. Auditors recommended that ORA: develop policies and create a system that accurately tracks fines and settlements; exercise full authority to collect outstanding fines; consider whether the current settlement amounts are sufficient, particularly for owners who repeatedly fail to provide essential services; and enhance protections for rent-controlled tenants outside New York City.

**Low-Income Housing Trust Fund Program (Follow-Up) (2019-F-44).** The Housing Trust Fund Corporation (Corporation) administers the Low-Income Housing Trust Fund Program (Program). The Program provides funding to eligible applicants to construct low-income housing; to rehabilitate vacant, distressed, or underutilized residential property; or to convert vacant or underutilized nonresidential property to low-income housing. The Program received annual appropriations totaling \$44.2 million for 2017 through 2019 and generally provides up to \$125,000 per housing unit or a total of up to \$2.4 million per project selected to receive funding. According to an HCR report, for 2014 through 2018, Program awards totaled about

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\$218 million for 91 housing projects, developing 4,775 housing units across the State. During the initial audit (2013-S-32), auditors found that a significant number of projects were being delayed by at least six months due to, among other issues, questionable award decisions, lax monitoring or enforcement of expectations, and delays in key approvals. The initial audit also found that the Program did not consistently adhere to its own policies regarding the project award process. Moreover, the Program did not adequately document management decisions to award funding to projects that scored lower than others based on criteria such as community impact/revitalization, financial leveraging, and project readiness. Auditors found that HCR had made some progress in addressing the problems identified in the initial audit report. Of the initial report's three audit recommendations, one had been implemented, one had been partially implemented, and one had not been implemented.

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## Other State Agencies and Public Authorities

### Department of Agriculture and Markets

(Ag&Mkts)

*Ag&Mkts promotes New York State agriculture and its high-quality and diverse products, fosters agricultural environmental stewardship, and safeguards the State's food supply, land, and livestock to ensure the viability and growth of New York's agriculture industries.*

**Oversight of Industrial Hemp (2018-S-32).** Industrial hemp is an expanding commodity in the United States; both the stalk and seed can be used to produce a wide range of products, from clothing to building materials and biodegradable plastics. Federal and State law define industrial hemp as any part of the *Cannabis sativa* L. plant with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3 percent. The federal Agricultural Act of 2014, among other actions, authorized institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp for research purposes. In New York State, Article 29 of the Agriculture and Markets Law launched the Industrial Hemp Agricultural Research Pilot Program (Program), which is administered by Ag&Mkts. In December 2018, the Program had 156 participants (growers); by July 2019, that number increased by 169 percent to 419 growers. Ag&Mkts processes and approves Program applications, and then is responsible for conducting pre-growing inspections and for sampling plants to test THC levels before harvested industrial hemp enters the supply chain. Auditors found that the Program had rapidly expanded opportunities for industrial hemp production in the State. However, Ag&Mkts did not always follow established practices when reviewing applications, conducting inspections, and sampling plants. Ag&Mkts generally accepts most grower applications, even if they are incomplete or contain risk factors that officials state they screen for during their review. Auditors recommended that Ag&Mkts: take steps to improve the usability, accuracy, and completeness of Program data, including implementing procedures for input, quality assurance, and use of information; and develop, implement, and follow clear and consistent procedures for processing Program applications, conducting inspections, and sampling plants.

### Department of Environmental Conservation

(DEC)

*As the State's environmental regulatory agency, DEC's mission is to conserve, improve, and protect New York's natural resources and environment and to prevent, abate, and control water, land, and air pollution.*

**Management of Invasive Species (2019-S-26).** Many species of plants and animals currently found in New York State are not indigenous, and may cause habitat degradation, loss of native species, risks to public safety, human illness, and damage to crops and livestock. These "invasive" species aggressively outcompete native species, adversely affecting the ecological integrity of the State's natural communities and systems. Invasive

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species are generally classified as aquatic invasive species (AIS) or terrestrial invasive species (TIS). AIS are commonly spread via fishing and boating activities. As the State's environmental regulatory agency, DEC is authorized to enact AIS preventive measures, including public education (e.g., boat steward education/inspection program, warning signage at public boat launches), and is responsible for implementing and maintaining a statewide, coordinated management program, including a permit system to control activities (e.g., dredging, mining, construction) that could inadvertently spread AIS and TIS. DEC also performs assessments to categorize and quantify the invasiveness of non-native species and their social and economic implications, which allow DEC to control the spread of non-native species through regulation. Further, DEC actively participates in early detection methods, such as trap checking and other forms of direct observation, to identify specific forest-related TIS. Auditors found that, while DEC has been active in establishing programs to address invasive species, improvements in its oversight, monitoring, and communication relating to boat inspections, permits, and early detection and assessment of invasive species could strengthen its ability to mitigate the spread of invasive species. For example, boat stewards did not always engage boaters exiting and entering waterbodies to provide AIS and watercraft inspection training; and educational signage was not always posted or posted conspicuously, limiting its usefulness in educating the boating public about AIS and their role in preventing its spread. In addition, DEC does not consistently apply or monitor its permit system to control activities that can trigger invasive species spread and further impact the State's biological resources, nor did it provide guidance to regional staff on how to monitor provisions of permits that included invasive species management. Auditors also found assessments of non-native species were not always completed or were missing information. Auditors recommended that DEC: develop a process to, among other things, communicate duties and responsibilities to boat stewards and coordinate with other oversight entities to improve preventive efforts across public boat launches statewide, ensuring consistency and compliance with signage and other requirements; and implement policies, procedures, or guidance on issuing permits and monitoring compliance relating to invasive species.

**Oversight of Waste Tire Cleanup and Use of Waste Tire Fees (Follow-Up) (2020-F-12).** In 2003, the Waste Tire Management and Recycling Act (Act) was enacted to ensure the proper management of waste tires in the State. DEC is responsible for enforcement and abatement (cleanup) of waste tire sites. To fund waste tire management and recycling efforts, the Environmental Conservation Law (Law) established a waste tire management and recycling fee of \$2.50 for each new tire sold. All fees are deposited into the Waste Management and Cleanup Fund (Fund) for use in administering provisions of the Act. DEC is authorized to use the Fund to cover costs associated with administering and enforcing the Act, such as inventorying and assessing waste tire sites and abating noncompliant waste tire stockpiles. Between April 1, 2013 and March 31, 2020, DEC received approximately \$192 million in fees. Disbursements from the Fund for personal services, non-personal services, and fringe benefit costs totaled about \$158 million between April 1, 2013 and March 31, 2020. The initial audit (2018-S-43) found that DEC had made significant progress abating identified waste tire sites. Of the 187 noncompliant waste tire sites identified by DEC, nearly 44 million tires (99 percent) had been abated at 160 sites (86 percent) as of October 2018. Most of

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the remaining 27 noncompliant sites contained relatively few waste tires. Auditors, however, identified delays in the timely abatement of waste tire sites due to delays in establishing a new abatement contract through the Office of General Services (OGS), as well as delays with certain enforcement steps typically taken prior to initiating the abatement process for some of the remaining 27 sites. Auditors also found some expenses charged to the Fund that did not appear to be related to waste tire abatement or other waste management activities allowable under the Law. According to DEC officials, they developed a process in 2010 that allows divisions with mandated responsibilities that include, but are not limited to, activities covered under the Law to charge certain amounts to the Fund; however, the methodology used to develop that process was neither retained nor provided for auditors' review. Auditors made three recommendations to DEC to: collaborate with OGS to renew or establish new abatement contracts in a timely manner; initiate enforcement actions as promptly as possible for noncompliant sites; and establish and document a methodology to estimate the portion of expenses to be charged to the Fund consistent with the authorized purposes under the Law. The follow-up review found that DEC had implemented all three recommendations.

**Title V Operating Permit Program Revenues, Expenditures, and Changes in Fund Balance for the Eight Fiscal Years Ended March 31, 2017 (Follow-Up) (2020-F-13).** The U.S. Environmental Protection Agency established an operating permit program (Program) under Title V of the federal Clean Air Act Amendments of 1990 (Act). The purpose of the Program is to help control excessive industrial pollution by requiring states to monitor pollutant output and to take action to correct the conduct of violators that produce pollutant quantities in excess of established limits. Pursuant to New York's Clean Air Compliance Act of 1993 (CACA), DEC is responsible for developing and administering this Program. Air pollution sources subject to the Program must obtain an operating permit and pay annual fees established by the Act. DEC assesses the fees on Title V facilities based on their self-reported emissions from the previous calendar year and bills them annually. The Act mandates that the Program's permit fee revenues be sufficient to cover all reasonable direct and indirect costs necessary for DEC to develop, administer, and enforce the Program. The initial audit (2017-S-81) found that DEC generally had adequate procedures in place to capture the Program's transaction data for revenues, expenditures, and changes in fund balance. However, auditors identified errors in the permit fee billing process and in the allocation of expenses to the Program. Additionally, during the audit period, Program revenues were insufficient to cover Program expenses, as required by the Act and CACA. Auditors' five recommendations addressed the need for DEC to take steps to improve monitoring systems to ensure expenses are appropriately charged and to work with relevant stakeholders to develop a strategy to bring the Program into self-sufficiency, in compliance with the Act. The follow-up review found that DEC had made significant progress in correcting the problems previously identified. Of the five recommendations from the initial report, four had been implemented and one had not been implemented.



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## Department of Motor Vehicles

(DMV)

*DMV is responsible for issuing secure identity documents, delivering essential motor vehicle and driver-related services, and administering motor vehicle laws enacted to promote safety and protect consumers.*

**Allocation, Billing, and Collection of Expenses of Administering the Motor Vehicle Financial Security Act and the Motor Vehicle Safety Responsibility Act (2019-S-5).** The Motor Vehicle Financial Security Act and the Motor Vehicle Safety Responsibility Act (Acts) help ensure that operators of motor vehicles registered in New York State possess adequate insurance coverage, or are financially secure, to compensate persons they might injure or whose property they might damage as a result of an accident. DMV activities relating to the Acts fall into three program areas: the Dedicated Bridge and Highway Safety Program, the Compulsory Insurance Services Program, and the Accident Prevention Course Program. Under the Acts, the DMV is required to annually estimate the expenses of administering the related programs and assess these expenses on insurance carriers in proportion to their reported premiums. In general, the DMV is appropriately allocating, billing, and collecting nearly all the expenses related to administering the Acts. However, certain processes could be strengthened to ensure accuracy of its allocation and billing practices. For example, the DMV did not bill \$126,493 in assessable expenses due to its practice of not adjusting billing to account for amended premiums reported by insurers. The DMV also lacks a method for carrying prior period balances forward to subsequent periods and, as of August 2019, had not collected \$25,265 that it had billed to insurers. Auditors recommended that DMV: enhance the accuracy and reliability of reported premium data by analyzing premium data and taking follow-up action where appropriate; and take steps to bill insurance carriers for, and collect, all assessable expenses under the Acts.

## Department of State

(DOS)

*DOS serves as the official compiler of State agency rules and regulations, and provides a variety of services related to areas such as licensing, uniform commercial code, and consumer protection.*

**Compliance With Executive Order 95 (Open Data) (2019-S-16).** State government entities possess large amounts of valuable information on subjects such as health, business, public safety, parks and recreation, labor, and transportation. Executive Order 95 (EO 95), issued March 11, 2013, established an Open Data Website (Open Data) for the collection and public dissemination of publishable State data maintained by covered State entities (generally, those headed by Executive appointees). Open Data should provide ongoing “one-stop” access to publishable State data, and make such data freely available in accessible formats for public use. As of December 2019, there were over 4,600 data items on Open Data. As of December 6, 2019, DOS had published 18 data items on Open Data. Auditors found that DOS generally fulfilled the requirements of EO 95, incorporating compliance

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with EO 95 into its core business functions. DOS also continues to identify new data sets to add to Open Data. However, DOS did not identify the total population of publishable State data that it maintains. Therefore, there is limited assurance that DOS provided a complete catalogue or accompanying schedules for making the data public, as required. Additionally, auditors found some problems with the usability of some of DOS' data sets on Open Data. Auditors recommended that DOS: as soon as practicable, submit to the Office of Information Technology Services (ITS) and make publicly available a complete catalogue and schedule of publishable State data for addition to Open Data; and work with ITS to enhance the quality and utility of publishable State data by improving DOS data accessibility, as well as consistency, where permitted under applicable law.

**Do Not Call Enforcement Efforts (Follow-Up) (2019-F-48).** The New York State Do Not Call Law (Law) allows consumers to register their personal mobile and landline phone numbers on a central national registry to reduce unsolicited telemarketing calls. DOS' Division of Consumer Protection (Division) is responsible for enforcing the Law, which took effect in 2001. Initially, New York consumers registered their phone numbers on a statewide registry, but in 2003 the numbers were transferred to the newly created National Do Not Call Registry (Registry). The Division uses the national Registry to retrieve New York complaints about potential violations of the Law, and also receives complaints by phone and email. It investigates complaints to determine if a violation of the Law has occurred, takes actions to enforce and resolve complaints, and provides information and outreach to consumers. Violators may be subject to penalties up to a maximum of \$11,000 per violation. The initial audit (2017-S-55) showed that, while Registry complaints by State residents more than doubled since 2014, the number of cases referred to counsel for further action decreased in each of the two subsequent years, possibly due in part to turnover and vacancies in key positions. Additionally, the data maintained by the Division to document its enforcement efforts was sometimes inaccurate, incomplete, or inconsistent with other relevant information. Auditors also concluded that the Division should evaluate the potential for using Federal Trade Commission resources and strategies to enhance the effectiveness of its Do Not Call enforcement efforts. The follow-up review found that DOS had made significant progress in addressing the issues identified in the initial report, having implemented all three recommendations.

## **Department of Taxation and Finance** *(Tax and Finance)*

*Tax and Finance is responsible for administering State and local taxes and fees and enforcing the State's tax laws.*

**Collection of Petroleum Business Tax and Motor Fuel Excise Tax (2018-S-28).** Petroleum Business Tax (PBT) is paid by petroleum businesses for certain types of fuel, and is imposed at a cents-per-gallon rate at different points in the distribution chain (e.g., at importation into the State or on the first sale or use in the State), depending on the product involved. Fuels subject to PBT include motor fuel and highway diesel motor fuel, among others. Effective

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January 1, 2020, the PBT rate is 17.4 cents per gallon. Certain sales, such as those to federal, state, and local governments, are exempt from the tax. New York also has a Motor Fuel Excise Tax (MFT) on gasoline and similar motor fuels that is imposed when motor fuel is first produced or imported or when diesel fuel is first sold or used in the State. Effective January 1, 2020, the MFT rate is 8.0 cents per gallon. An additional 0.05 cent-per-gallon petroleum testing fee is imposed on gasoline and similar motor fuels. For the two State Fiscal Years ended March 31, 2019 and 2018, PBT collections totaled \$1.17 billion and \$1.09 billion, respectively; MFT collections for the same two years totaled \$528.1 million and \$512.5 million, respectively. A portion of revenues from PBT and MFT is used to support investment in the State's mass transportation systems, including highways and bridges. Tax and Finance jointly administers the two taxes. Diesel and motor fuel distributors must be registered with Tax and Finance to legally conduct petroleum transactions in the State. They may also be required to provide collateral security in an amount provided for in statute or determined by Tax and Finance. Distributors whose combined PBT and MFT liability exceeds \$5 million for Tax and Finance's reference period must enroll in its PrompTax electronic filing and payment program and prepay a portion of each month's tax liability. As of June 2018, 1,658 businesses were registered with Tax and Finance as distributors, retailers, and other capacities. Auditors found that Tax and Finance does not review distributors' existing collateral security amounts to determine if they continue to be appropriate based on Tax and Finance criteria. Auditors identified distributors that, despite Tax and Finance notification, were not enrolled in PrompTax and were not prepaying their PBT and/or MFT tax liability as required. Auditors recommended that Tax and Finance: use a risk-based approach to revisit collateral security amounts to determine if they are appropriate, and adjust them as warranted; and assess whether distributors that are required to enroll in PrompTax are complying with applicable requirements, and take appropriate follow-up action as needed.

**Controls Over Unclaimed Bottle Deposits (Follow-Up) (2019-F-6).** Tax and Finance is responsible for enforcing certain aspects of the New York State Returnable Container Act (Act), also known as the "Bottle Bill." The Act requires every deposit initiator to collect a 5-cent deposit from consumers on containers of less than one gallon of many beverages sold in the State. Consumers may then return their empty beverage containers to a dealer or redemption center to get their deposit back. The Act requires all deposit initiators to register with Tax and Finance and remit 80 percent of any unclaimed bottle deposits quarterly. Tax and Finance has the authority to penalize deposit initiators that fail to register or fail to file quarterly reports. Tax and Finance collected \$117.7 million and \$112.9 million in unclaimed bottle deposits in the State fiscal years ended March 31, 2018 and 2017, respectively. The initial audit (2016-S-96) determined that Tax and Finance deposited all funds received into the General Fund, as required. However, it did not assess penalties on 39 deposit initiators that failed to file required quarterly reports, nor did it assess penalties on those who filed late, and took little action to improve compliance. Further, Tax and Finance did not have procedures to verify data in the quarterly reports, and auditor analysis identified multiple red flags in the data that were potential indicators of material errors and/or fraudulent reporting. Auditors made five recommendations to Tax and Finance, including that it: assess penalties on initiators that fail to file quarterly reports; review the red flags identified in the initial audit report and take

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appropriate corrective action, such as requesting supporting documentation or conducting investigations; and require deposit initiators to submit supporting documentation with their quarterly reports to support their reported amounts. Auditors found Tax and Finance made significant progress in addressing the issues identified in the initial audit report, implementing four of the prior recommendations and partially implementing the fifth.

## **Division of Military and Naval Affairs (DMNA)**

*DMNA manages the State's military forces, which are composed of the New York Army National Guard, New York Air National Guard, New York Naval Militia, and the New York Guard. DMNA employs about 450 State and 3,880 federal employees, who together manage federal and State budgets, oversee human resources, operate training, and arrange logistics.*

**Internal Controls Over Selected Financial Operations (2018-S-66).** A Master Cooperative Agreement (MCA) between DMNA and the federal National Guard Bureau (NGB) allows DMNA to be reimbursed by NGB for expenses it incurs in operations and training of the State Army and Air National Guard. Auditors identified weaknesses in DMNA's handling of reimbursement requests to NGB that resulted in nearly \$1.27 million in lost reimbursements; DMNA did not maintain an internal audit function throughout the course of the audit, despite a Division of the Budget (DOB) requirement that it do so. There were also significant weaknesses in DMNA's controls over accounting for employee credit card purchases, including a lack of review of purchases by individuals who no longer worked for DMNA and lack of follow-up on unsubmitted supporting documentation for credit card purchases that were made up to two years prior. Auditors recommended that DMNA: ensure that requests to NGB for reimbursement for costs covered under the MCA are adequately documented and submitted timely and retain the related records as required; establish an internal audit function in compliance with DOB requirements; and implement methods to better monitor employee credit card purchases, including appropriate and timely follow-up on unsubmitted purchase support records and questionable purchases.

**Lead Contamination of State Armories (2019-S-50).** Historically, armories were built with an indoor firing range (IFR), used for training purposes. The firing of weapons inside the IFR resulted in lead dust accumulation throughout. Although IFRs in New York have not been used in more than 20 years, over time, the accumulation of lead dust has been transported to other areas of the armory: on soldiers' shoes; through the heating, ventilation, and air conditioning system; and as a result of weapons cleaning, maintenance, movement, or storage. Personal exposure to lead can occur through ingestion, inhalation, and dermal contact, and can have health consequences, such as growth disorders and damage to the nervous system, the kidneys, and the reproductive system. Exposure to lead is especially dangerous for young and unborn children. DMNA is the State's executive agency responsible for managing New York's military forces, including the New York National Guard. The Department of Defense National Guard Bureau (NGB) acts as a federal authority over the New York National Guard, and provides them with federal resources, including funding,

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regulatory guidance, and equipment. In September 2015, the NGB's Army National Guard (ARNG) issued guidance to all states regarding a possible lead dust hazard in ARNG armories. The guidance issued a new acceptable level for surface lead dust of 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ). It required that all facilities be tested, and if lead surface contamination above the 40  $\mu\text{g}/\text{ft}^2$  threshold is confirmed, public rental of the armory must be immediately suspended and access to family members, the general public, and pregnant women no longer permitted. Once the armory is remediated and lead testing confirms compliance below 40  $\mu\text{g}/\text{ft}^2$ , public access may resume. The guidance also requires the implementation of safety measures, such as posting warning signs and training all armory employees in lead hazard awareness. ARNG guidance issued in December 2016 stipulates the cost of lead remediation efforts will be 100 percent federally funded. Auditors found that public access has continued at four armories that contain lead levels exceeding the acceptable threshold. None of these four armories disclosed the excess lead levels to the public. Three are allowing public access through a non-military use agreement, and one is a military museum in a former armory building. Additionally, lead hazard awareness training was not provided to employees at three armories. Auditors recommended that DMNA: update non-military use agreements to disclose lead issues to armory occupants; post signs warning of potential lead hazards in public areas; and ensure that new staff receive lead hazard awareness training upon hire, and that this training is provided to all staff annually.

## **Gaming Commission**

*(Gaming)*

*Gaming regulates all aspects of gaming activity in the State, including horse racing and pari-mutuel wagering, Class III Indian Gaming, the State lottery (including video lottery terminals), and commercial and charitable gaming.*

**Oversight of Casino Revenues and Regulatory Oversight Reimbursement Collections (2019-S-8).** Gaming oversees three types of casinos in the State: commercial, video lottery terminal (VLT), and Class III tribe/nation (tribe/nation). Commercial and VLT casinos are required to remit a percentage of their gaming revenues to the State and tribe/nation casino remittances are defined in compacts (agreements with the State). During the three fiscal years ended March 31, 2019, Gaming received \$4.2 billion in revenues from casinos. Gaming has officials at each casino to ensure compliance with gaming regulations and tribe/nation compacts. Costs for this oversight are to be collected from each casino. During the three fiscal years ended March 31, 2019, Gaming collected \$144.8 million from VLT casinos and \$8.9 million from tribe/nation casinos for oversight costs. Auditors determined that Gaming did not bill or collect an estimated \$13 million from commercial casinos for oversight costs. Gaming stated that a lack of regulations had delayed assessments of commercial casinos, but also indicated that, with completion of the rulemaking process, these costs will be billed. In addition, Gaming does not have policies regarding dispute resolution procedures when a casino disagrees with oversight cost charges, leaving Gaming unprepared to address disputes that may arise. Auditors also found that, while Gaming is adequately monitoring commercial, VLT, and tribe/nation casinos to ensure that revenues are appropriately

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collected, accounted for, and transmitted to the State as required, it is not evaluating risks related to tribe/nation revenue reporting. Auditors recommended that Gaming: assess and bill commercial casinos' oversight costs in a timely manner; develop and implement policies and procedures for handling oversight cost disputes; and include tribe/nation casino revenue reporting in its annual risk assessment and adapt procedures as needed based on results.

**Equine Health and Safety (Follow-Up) (2019-F-49).** Gaming supervises four thoroughbred tracks (Finger Lakes Gaming and Raceway, Saratoga Racecourse, Aqueduct Racetrack, and Belmont Park) as well as seven harness tracks (Batavia Downs, Buffalo Raceway, Monticello Raceway, Saratoga Gaming and Raceway, Tioga Downs, Vernon Downs, and Yonkers Raceway). Gaming's Equine Medical Director (Director) is responsible for all aspects of equine health, safety, and welfare at State racetracks, and advises Gaming on equine medication policies as well as the safety and condition of racetrack facilities and surfaces. In addition, the Director: supervises all Gaming regulatory veterinarians and the New York State Equine Drug Testing Program Laboratory at Morrisville State College; oversees equine testing procedures; ensures compliance with regulatory veterinary protocols; investigates incidents; and monitors Gaming's necropsy (autopsy) program. The initial audit (2017-S-77) found that the Director had implemented measures to improve Gaming's practices to promote equine health and safety. However, Gaming could better document its daily operating policies and procedures; improve how information is recorded in the Equine Breakdown, Death, Injury and Incident Database; and ensure adherence to drug testing requirements. Auditors made two recommendations to address these issues; however, Gaming did not provide a 90-day response indicating any steps it had taken to implement the recommendations, as required by Section 170 of the Executive Law. Furthermore, Gaming impeded auditors' progress in conducting this follow-up review, presenting numerous delays in responding to auditors' requests for information and documentation and in the scheduling of meetings with auditors. Ultimately, auditors found that Gaming had made limited progress in addressing the problems identified in the initial audit, and additional action was still needed. Of the initial report's two recommendations, one had been partially implemented and one had not been implemented.

## **Office of Parks, Recreation, and Historic Preservation**

### *(Parks)*

*Parks' mission is to provide safe and enjoyable recreational opportunities for all New York State residents and visitors and to be responsible stewards of the State's valuable natural, historic, and cultural resources.*

**Compliance With Navigation Law (2019-S-59).** With its vast network of waterways, including about 70,000 miles of rivers and 7,600 freshwater lakes and ponds, New York State is rich with opportunities for motorized water recreation. The New York State Navigation Law (Law) outlines rules for boating and watercraft recreation, including safety and quality-of-life components. For example, the Navigation Law imposes restrictions on engine noise, establishes requirements for on-board safety equipment, and requires all motorized boat operators to pass a State-approved boating safety course. Enforcement of the Law is a

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collaborative effort among various entities, including Parks, the Department of Environmental Conservation, the Division of State Police, and local law enforcement (e.g., counties and municipalities), with Parks having primary oversight and enforcement responsibilities. All entities that enforce the Law on State waters are required to submit Navigation Activity Reports (Activity Reports) to Parks annually as a condition of receiving State aid or using leased equipment. Parks compiles data from these Activity Reports and other sources, such as boating accident reports from local law enforcement and Department of Motor Vehicles registration reports, as the basis for its annual New York State Boating Recreational Report (Boating Report), a detailed analysis identifying law enforcement activity, boating accidents, fatalities, and injuries by waterway for the year. In tandem with data from past years, Parks uses the information to better understand and prevent recreational boating accidents and inform the public about recreational boating activity in the State. Auditors found Parks had developed and implemented controls to adequately monitor and enforce requirements for safety and quality of life on State waters in accordance with the Law. However, they also identified several aspects of Parks' oversight that could be strengthened to maximize the efficiency of State marine law enforcement resources and improve its ability to assess boating safety risks and proactively mitigate them. For example, Parks did not have a structured process for communicating and coordinating patrol activities across law enforcement entities, such as county sheriff's offices, with overlapping jurisdictions. Consequently, certain waterways may be overpatrolled—unnecessarily expending valuable State resources—and other areas inadequately covered. In addition, Parks did not verify Activity Report data submitted by local law enforcement, nor did it ensure that all entities consistently submit Activity Reports. With incomplete and/or inaccurate information, the Boating Report may be less useful or misleading to the public regarding safety on the State's waterways, and may distort Parks' ability to reliably assess accident data and develop preventive measures. Auditors recommended that Parks develop a structured process for coordinating marine law enforcement activity across entities with shared waterway jurisdictions, as well as processes to improve the accuracy and completeness of Activity Reports.

**Compliance With Executive Order 95 (Open Data) (2019-S-65).** State government entities possess large amounts of valuable information on subjects such as health, business, public safety, parks and recreation, labor, and transportation. Executive Order 95 (EO 95), issued March 11, 2013, established an Open Data Website (Open Data) for the collection and public dissemination of publishable State data maintained by covered State entities (generally, those headed by individuals appointed by the Executive). Open Data should provide ongoing “one-stop” access to publishable State data and make such data freely available in accessible formats for public use. Parks is responsible for the operation and stewardship of the parks and historic sites located throughout the State. As of July 2, 2020, Parks had published 22 data items on Open Data. Auditors found that Parks had taken steps to meet the requirements of EO 95; however, certain aspects of the order had not been fully addressed. For instance, Parks did not identify the total population of publishable State data that it maintains. Therefore, there is limited assurance that Parks provided a complete catalogue or established a schedule for making the data public, as required by EO 95. Also, Parks did not incorporate compliance with EO 95 into its core business functions, and there were no

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processes to identify new publishable data to post on Open Data (the most recent data was added in 2015). However, auditors found that the data that Parks posted to Open Data was usable, easily accessible, and reliable, as it was both complete and accurate.

## **Public Service Commission (PSC)**

*PSC regulates 650 utilities operating across the State. Its primary goal is to ensure affordable, safe, secure, and reliable access to electric, gas, steam, telecommunications, and water services for New York State's residential and business consumers, while protecting the natural environment.*

**Enforcement of Commission Orders and Other Agreements (2018-S-27).** Through its Department of Public Service (Department), PSC works to ensure affordable, safe, secure, and reliable access to electric, gas, steam, telecommunications, and water services for New York's residential and business customers. As part of its responsibilities, PSC reviews and approves utility companies' applications for potential mergers and acquisitions, rate cases, and other agreements. Approval of these applications is often based on conditions, such as pledges to replace or upgrade infrastructure, provide access to services to outlying areas, or enhance quality of service. These conditions are listed in Commission Orders (Orders), and any violation of an Order's terms is grounds for PSC to seek reparations, terminate the approved acquisition/merger, or even revoke a utility's license. PSC also has the statutory authority to pursue civil penalties against gas and electric utilities. The Department's responsibilities include, among other activities: advising PSC on rate determinations, utility financing, consumer protection, and safety and reliability of utility services; developing and implementing regulatory and energy policies; and monitoring major electric and gas utilities' performance related to benchmarks set in utility performance plans. Auditors found that the Department does not sufficiently monitor utilities' compliance with all conditions listed in Orders, and in some cases even lacks the equipment necessary to do so. For example, until 2019, the Department did not have equipment to measure Internet speeds, despite setting minimum speeds in Orders to be implemented as early as the end of 2017. Some Order conditions lack interim measures of performance and consequences for noncompliance. The Department lacks policies and procedures for staff to follow when monitoring Orders for compliance, and, rather than imposing penalties, prefers to work with utilities on compliance, creating little incentive for utilities to meet all Order conditions. In some cases, utilities submitted inaccurate data that the Department uses—without verification—to calculate electric reliability, gas safety, and utility service quality. While this information has not been used in determining rates that utilities can charge, it is sometimes used for determining fines and for general decisions made by the Department and PSC regarding utility monitoring. Auditors recommended that the Department: actively monitor all conditions listed in Orders to ensure all utilities are in compliance; develop and issue Orders that include well-defined, measurable, and enforceable conditions as well as the consequences for noncompliance,



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as appropriate; and verify the accuracy of data submitted by utilities used by PSC or the Department to evaluate or make decisions concerning the utilities, including data submitted for performance metrics, safety standards, and reports.

### **State Liquor Authority** (SLA)

*SLA is responsible for issuing licenses and permits for the manufacturing, distribution, and sale of alcoholic beverages and for enforcing the Alcoholic Beverage Control Law.*

**Internal Controls Over Selected Financial Operations (2019-S-69).** Through an agreement between SLA and the Office of General Services (OGS), OGS' Business Service Center (BSC) performs many administrative functions on behalf of SLA, such as maintaining accounts payable and receivable, procurement, human resources, and payroll. During the State fiscal year ending March 31, 2020, SLA generated nearly \$67 million in revenue from license and permit fees. Auditors found that SLA had adequate internal controls in the areas of revenues, payroll, procurement and procurement card expenditures, asset management, and travel expenses to ensure assets and information are properly managed and safeguarded. For two employees—one current and one former—SLA did not reconcile six travel card charges totaling \$708 for the purchase of train tickets. The former employee left SLA in July 2019 and had two charges for \$230 dating back to March 2018 and July 2018; and the current employee had four charges for \$508 ranging between four months to one year old as of June 2020. Auditors recommended that SLA: take steps, in coordination with the BSC, to ensure timely and accurate receipt of information about outstanding travel card charges; and take appropriate follow-up action on outstanding charges.

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## Multi-Agency

### **Department of Labor (DOL)**

### **Department of Taxation and Finance (Tax and Finance)**

*DOL's mission is to protect workers, assist the unemployed, and connect job seekers to jobs.*

*Tax and Finance is responsible for administering State and local taxes and fees and enforcing the State's tax laws.*

**New York Youth Jobs Program (Follow-Up) (2020-F-7).** The New York Youth Jobs Program (Program), established in 2011, is intended to create jobs and spur economic growth in the State by establishing incentives for employers to hire new employees and retain existing ones. Under the Program, eligible employers may receive tax credits when they hire unemployed or underemployed youth aged 16 to 24 who live in New York State and who meet one or more criteria, such as being currently or formerly in foster care or being homeless. Employers are entitled to claim tax credits equal to \$750 per month, for up to six months, for each full-time employee, and equal to \$375 per month, for up to six months, for each part-time employee who worked at least 20 hours per week (or ten hours per week for employees enrolled full-time in high school). Retaining employees beyond the initial six months results in an additional credit to the employers. DOL certifies both employer and youth eligibility and also calculates the dollar amount of tax credits that an employer is entitled to claim. Tax and Finance establishes procedural requirements for claiming Program tax credits and processes employers' tax forms. The 2018-19 Enacted Budget allocated \$40 million to the Program annually for the years 2018 to 2022. The initial audit (2017-S-69) found that DOL could improve its methods for verifying youth eligibility, and that Tax and Finance could better ensure that the tax credits granted are accurate and only for Program-eligible youth. The follow-up review found that DOL and Tax and Finance had implemented all five recommendations—three addressed to DOL and two addressed to Tax and Finance—from the initial audit report.

### **Metropolitan Transportation Authority (MTA)**

### **New York City Department of Social Services (DSS)**

*The MTA is a public benefit corporation that provides subway, rail, and bus transportation services in and around the New York City metropolitan area.*

*DSS is responsible for administering many of New York City's social services programs, such as financial, housing, and food assistance, and child support and adult protective services.*

### **Homeless Outreach Services in the New York City Subway System (2018-S-59).**

Within the MTA, New York City Transit (Transit) operates the New York City (NYC) subway system—the largest subway transportation network in North America, with 472 stations that serve a daily average of 5.6 million travelers throughout the Bronx, Brooklyn, Manhattan, and Queens. Many of the stations are open 24 hours a day, seven days a week, and as

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such have increasingly become a place of refuge for homeless individuals—and a growing concern for the MTA on behalf of its customers and staff. In 2013, the MTA entered into a Memorandum of Understanding (MOU) with NYC Department of Homeless Services (DHS), an administrative unit of DSS, to provide homeless outreach and placement services. In turn, DHS contracted with Bowery Residents' Committee (BRC), a nonprofit provider of homeless housing and services, to perform these services. DHS' three-year contract, effective June 2014 through June 2017, required BRC to reduce the homeless population residing in subways by two-thirds of the 2013 NYC homeless census count (from 1,841 to 626). In July 2017, DHS extended the contract for another three years, to 2020. Funded equally each year by both DHS and the MTA, the contract is valued at about \$36 million for homeless outreach. BRC is responsible for conducting regular visits to MTA subway stations to locate, identify, and engage with homeless individuals, with the goal of placing them in an appropriate facility. The contract established performance measures (e.g., frequency of station visits) for tracking BRC's success and outcomes and also required DHS to establish annual census reduction targets. BRC is also required to document its activities through standardized reports (e.g., Daily Reports) related to performance measures and to enter the report data into various DHS databases. Auditors found that BRC's outreach failed to reduce the homeless population residing within the subway system below the 2013 levels. The homeless census count at the 2017 contract milestone was 1,812—a decrease of only 29 from the 2013 count of 1,841 and short of the two-thirds reduction requirement—and the 2019 homeless census put the count at 2,178, which is an 18 percent increase since 2013. Auditors also found that DHS and the MTA did not live up to their oversight and monitoring responsibilities, such as establishing reduction targets and using tools available under the contract to monitor BRC's activities and track performance. Furthermore, while DHS touted BRC's subway placement numbers, the data were unreliable: From a sample of 50 client placements, 20 clients (40 percent) either were not placed in the reported shelter or were not placed on the date reported. In one case, a client was not placed until over one year after being reported as placed. Auditors made nine recommendations, among them: that DHS ensure outreach workers meet established performance measures; that DHS monitor BRC outreach workers to ensure they are providing a sufficient level of outreach services in the subway system; that DHS enhance internal controls to ensure that BRC's reported data is accurate, complete, and used to make informed managerial decisions; and that DHS and MTA work together to develop and establish census reduction targets.

### **New York City Police Department (NYPD) State Liquor Authority (SLA)**

*NYPD is responsible for policing an 8.5-million-person city, by performing a wide variety of public safety, law enforcement, traffic management, counterterrorism, and emergency response roles.*

*SLA is responsible for issuing licenses and permits for the manufacturing, distribution, and sale of alcoholic beverages and for enforcing the Alcoholic Beverage Control Law.*

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## **Responsiveness to Noise Complaints Related to New York City Nightlife**

**Establishments (Follow-Up) (2019-F-36).** Exposure to excessive levels of community noise can have adverse quality of life and health effects for residents, including: hearing loss; increased stress, anxiety, and fatigue; elevated blood pressure; cardiovascular disease; and sleep loss. In New York City, the number of noise complaints called in to the 311 system has risen significantly in recent years, from 86,365 in 2010 to 179,394 in 2015. Over the same period, the annual number of noise complaints involving nightlife establishments also increased significantly, from 38,401 to 93,412. NYPD and SLA are responsible for addressing noise complaints related to nightlife establishments. The initial report (2016-S-37) found that NYPD's and SLA's efforts to communicate and coordinate noise mitigation strategies and tactics with each other were limited. In addition, the SLA did not access and analyze pertinent data from the 311 system, and as a result, certain establishments with numerous noise complaints lodged against them continued to operate with little or no notice from public oversight authorities to address such complaints. Further, when the SLA took action against establishments with high levels of complaints, the complaints were primarily related to violations other than noise. Moreover, the NYPD used its resources to respond to the same locations hundreds of times a year, often with little or no apparent effect on the numbers of complaints. Auditors recommended that NYPD enhance precinct recordkeeping of noise complaints to track the exact times of officer follow-up to improve management analysis of response times and the effectiveness of the actions taken; and develop formal system-wide procedures to follow up on establishments with high volumes of complaints, including periodic communications with the SLA, and formally assess the effectiveness of actions taken to mitigate persistent noise problems. In addition, auditors recommended that SLA: develop a formal process to access and analyze 311 noise complaint data to enhance the efficiency and effectiveness of efforts to address potential noise violations and associated licensing concerns; and develop and implement a formal communication protocol with the NYPD and any other public oversight authority responsible for addressing noise matters, as they pertain to SLA-licensed establishments. In the follow-up review, auditors found that the NYPD had made some progress in addressing the problems identified, implementing one of the two recommendations. SLA, however, had not implemented either of the two recommendations.

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## Special Reports

### Education

**2019 Annual Report on Preschool Special Education Audit Initiative.** The State Education Department (SED) oversees special education programs that provide services to students with disabilities between the ages of three and 21 in New York State. While most school-age students with disabilities in New York receive their educational services from public school districts, preschool special education services are predominantly provided by private providers. SED reports that, for the 2015-16 school year, about 79,000 preschool students with disabilities received services throughout the State from over 400 approved providers at an annual cost of almost \$1.4 billion to the State and its local governments.

In 2019, OSC completed 18 audits of expenses submitted to SED by preschool special education providers. These audits have cumulatively identified almost \$11.2 million in recommended disallowances, or almost 11 percent of the total claimed expenses of \$103.5 million for the audit period. The audits completed in 2019 indicate ongoing inaccuracies in cost reporting by special education providers to SED.

Although the dollar amount of disallowed expenses decreased from \$14.8 million in 2018 for 18 audits completed to almost \$11.2 million in 2019 for the same number of audits, the share of disallowed costs as a percentage of total dollars claimed is much higher at 10.79 percent in 2019 compared to 3.79 percent in 2018. The number of findings in certain categories continues to be of concern, in particular errors related to the allocation and/or the inappropriate claiming of personal service and other than personal service costs.

### Health

**An Analysis of Reasonable and Customary Out-of-Network Reimbursement Rates for Medical/Surgical Services in the New York State Health Insurance Program (2018-D-2).** The New York State Health Insurance Program (NYSHIP), administered by the Department of Civil Service (Civil Service), is one of the nation's largest public sector health insurance programs. NYSHIP covers over 1.2 million active and retired State, local government, and school district employees, and their dependents. The Empire Plan is the primary health benefits plan for NYSHIP, covering 1.1 million of the NYSHIP members. The Empire Plan provides its members with four types of health insurance coverage: medical/surgical, hospital, prescription drug, and mental health and substance abuse services.

Civil Service contracts with UnitedHealthcare (United) to administer the medical/surgical portion of the Empire Plan. Medical/surgical benefits cover a range of services including, but not limited to: office visits, diagnostic testing, outpatient surgery, physical therapy, chiropractic services, home care services, and durable medical equipment. United processes and pays claims submitted by health care providers on behalf of Empire Plan members.

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United contracts with a large network of participating (in-network) providers who deliver medical/surgical services to Empire Plan members at rates established by United. Empire Plan members may also choose to receive services from non-participating (out-of-network) providers. United bases payment for most services provided by out-of-network providers either on the MultiPlan, Inc. rate or the reasonable and customary (R&C) rate. MultiPlan, Inc. is the provider network leased by United to supplement its own network. If the out-of-network provider does not receive the MultiPlan rate, United will reimburse the provider at the R&C rate. The R&C rate is generally based on provider charges for the same or similar service in the same or similar geographic region.

United's reimbursement rates for out-of-network services are generally higher — often significantly higher — than United's in-network reimbursement rates. Consequently, services provided by out-of-network providers are more costly to the State. During the five years 2012 to 2016, United paid \$1.7 billion for out-of-network services. United's payments, based on the R&C rate, totaled approximately \$902 million for 4,003,040 services. By comparison, United's payments based on the MultiPlan rate totaled approximately \$832 million for 8,681,167 services. During the five-year period, United's payments based on the in-network rate totaled about \$6.5 billion for 226,128,077 services. To illustrate, the average reimbursement for a routine office visit in 2016 was \$29 for in-network, \$72 for MultiPlan, and \$147 for R&C.

Despite efforts to control out-of-network costs, United's R&C-based payments increased steadily from 2012 to 2016 — from \$160 million to \$202 million — an increase of 26 percent. Significant disparities were also found in the R&C rates across the State. For example, the rate for a certain spinal procedure in the Brentwood/Coram/Riverhead region was \$38,000 — over 225 times higher than the \$167 rate for the same procedure in the Amherst/Niagara Falls region. Large disparities in R&C rates were also found in neighboring regions. For example, the rate for a different spinal procedure in the Far Rockaway/Hempstead region was \$90,000, double the rate for the same procedure in both neighboring regions of Great Neck/Port Washington (\$43,755) and Flushing/Jamaica (\$45,000). There was no evidence that these increases and disparities stemmed from a predictable source (e.g., an increase in claims or medical care cost-of-living). As a result, there do not appear to be any readily identifiable factors to explain these differences other than the provider-driven nature of R&C rates, which, as stated, are based on provider charges for services.

Auditors determined that significant cost savings are achievable if alternative reimbursement methodologies are considered for services that are paid based on R&C rates. If changes were adopted, the estimated potential recurring annual cost savings are \$17 million to \$146 million under various other reimbursement methodologies.

While Civil Service is responsible for administering the Empire Plan, the Council on Employee Health Insurance (Council) supervises the administration of changes to the Empire Plan and provides policy direction to the health insurance plans administered by the State. The Council consists of the President of the Civil Service Commission, the Director of the Division of the Budget, and the Director of the Governor's Office of Employee Relations. The Empire Plan's

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benefit design and any changes to it are the result of collective bargaining. The Council develops ideas to be used in the collective bargaining process, which includes negotiating the out-of-network reimbursement rates.

Auditors recommended that the Council and key stakeholders work together to determine if better reimbursement methodologies and plan design options exist for R&C out-of-network services other than one option that is based on provider-driven charges. The new methodologies and plan options should consider the cost effectiveness of reimbursement rates, thereby benefiting Empire Plan members and the State's taxpayers by lowering the Empire Plan's health care premiums, while continuing to provide the same level of medical services to all Empire Plan members.

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