



RICK SCOTT
GOVERNOR

ELIZABETH DUDEK
SECRETARY

June 24, 2016

Elizabeth Dudek, Secretary
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Dear Secretary Dudek:

Attached is Report #15-09, *Third Party Liability*. This review focused on the Third Party Liability (TPL) Unit's business process and controls for monitoring the TPL vendor's activities with regards to casualty and estate recoveries and evaluated a sample of closed cases that required legal action or Agency input to determine if the case closure decisions in the sample were adequately supported. Our engagement objectives were to:

- Evaluate TPL's business process and controls for monitoring the TPL vendor activities with regards to casualty and estate recoveries.
- Evaluate a sample of closed casualty and estate cases from CETAMax, the TPL vendor's main frame case tracking system for Casualty, Estate, Trust, and Annuity (CETA) cases with closure reasons "Court Order," "Client's Request," "Closed by Legal Department," and "Per Client Procedure" which required legal action or Agency input, some of which were for less than the full benefit amount, to determine if the case closure decision was adequately supported

Our review noted areas where improvement could be made in documenting monitoring of the TPL vendor contract with regards to casualty and estate recoveries.

Management's response to our recommendations is included in the report. We will schedule a follow-up review in six months to assess the status of the efforts taken by management to correct all remaining open issues.

If you have any questions or concerns regarding this report, please let me know.

Sincerely,

Eric W. Miller
Inspector General

EWM/pz
Attachment

cc: Tonya Kidd, Deputy Secretary, Division of Operations
Dan Gabric, AHC Administrator, Third Party Liability

2727 Mahan Drive • Mail Stop #4
Tallahassee, FL 32308
AHCA.MyFlorida.com



Facebook.com/AHCAFlorida
Youtube.com/AHCAFlorida
Twitter.com/AHCA_FL
SlideShare.net/AHCAFlorida



Office of the Inspector General
Internal Audit

Report No. 15-09
June 2016

Third Party Liability

EXECUTIVE SUMMARY

At the request of the Agency for Health Care Administration's (Agency) Secretary, the Agency's Office of the Inspector General (OIG) conducted a limited management review of the Division of Operations' Third Party Liability (TPL) Unit processes. The review focused on TPL's business process and controls for monitoring the TPL vendor's activities with regards to casualty and estate recoveries and evaluated a sample of closed cases that required legal action or Agency input to determine if the case closure decisions in the sample were adequately supported.

Overall, our review disclosed that there was sufficient documentation to support closure of cases reviewed requiring legal action or Agency input. However, we noted the following areas where improvements could be made:

- The TPL Unit does not have written internal policies, procedures, or guidelines regarding monitoring of the TPL vendor contract.
- The TPL Unit does not adequately document monitoring of the TPL vendor's handling of casualty and estate recovery cases. Although TPL staff state that they review and give guidance on the daily handling of cases and hold bi-weekly meetings with vendor management, there is inadequate documentation of monitoring done.

The Findings and Recommendations section at the end of this report provides details of the results of our review.

SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the review included casualty and estate recovery cases closed from June 1, 2014, through November 30, 2014. The objectives of our review were to:

- Evaluate TPL's business process and controls for monitoring the TPL vendor activities with regards to casualty and estate recoveries.

- Evaluate a sample of closed casualty and estate cases from CETAMax, the TPL vendor's main frame case tracking system for Casualty, Estate, Trust, and Annuity (CETA) cases with closure reasons "Court Order," "Client's Request," "Closed by Legal Department," and "Per Client Procedure" which required legal action or Agency input, some of which were for less than the full benefit amount, to determine if the case closure decision was adequately supported.

To accomplish our objectives, we interviewed management and appropriate TPL staff; reviewed state and federal laws; reviewed established or stated policies, processes, procedures, contracts, and related documents; and reviewed reports from the CETAMax system, and other applicable documentation.

We analyzed a six-month sample of activity reports for closed casualty and estate cases and looked through the summary of closure reasons to narrow our sample. There were 20 categories of casualty closure reasons and 13 categories of estate closure reasons in the six-month sample reviewed. We then evaluated cases with closure reasons "Per Client Procedures,"¹ "Client's Request,"² "Closed by Legal Department,"³ and "Court Order,"⁴ which required legal action or Agency input to determine whether closure was adequately supported. Evaluation was done by reviewing the case notes and looking through the scanned supporting documents in CaseLink for each case chosen to determine whether actions were supported and justified. For casualty cases, closure reasons "Per Client Procedures" and "Court Order" and for estate cases "Per Client Procedures" represented cases where recovery was less than the full benefit amount.

BACKGROUND

Section 409.910, Florida Statutes (F.S.), known as the Medicaid Third-Party Liability Act, states that "it is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients." The Agency is automatically subrogated to any rights of a Medicaid recipient to any third-party benefit for the full amount of medical assistance provided by Medicaid. Section 409.901(27), F.S., states that a "third party" is "an individual, entity, or program, excluding Medicaid, that is, may be, could be, should be, or has been liable for all or part of the cost of medical services related to any medical assistance covered by Medicaid."

The TPL Unit, through the TPL vendor, administers the third party recovery program and is responsible for identifying, managing, and recovering funds paid by Medicaid for which a third party was liable. Some examples of TPL functions include recovery from

¹ Cases closed when recipient's benefit plan does not include payments to providers and other reasons.

² The Agency has directed the TPL vendor to close the case.

³ The TPL vendor has documented that no payment is to be made to Medicaid or the case was opened in error.

⁴ The amount collected is the amount to be paid to Medicaid in accordance with a court order and the TPL vendor has mailed a Satisfaction and Release of Claim.

Medicare and other insurance companies, and CETA recovery. New or updated third party insurance information is also added to the Florida Medicaid Management Information System (FMMIS) in order to “cost avoid” claims that are submitted by Medicaid providers. The TPL Unit instructs the provider to bill the other insurance company prior to billing Medicaid when they submit a claim and a recipient has other insurance.

Casualty recovery entails a process whereby Medicaid asserts a lien against any possible third party benefits available to the recipient for the amount Medicaid has paid for services on behalf of a recipient who has been involved in an accident or injury. Section 409.910, F.S., provides that recipients or their legal representatives notify the Agency of the existence of any third party benefits, and notify the Agency within thirty days after filing an action against a third party. Notification to the Agency is done through the TPL vendor.

Estate recovery entails the filing of a claim in the estate of a deceased recipient for Medicaid payments made after age 55. Medicaid is paid as a class three creditor after class one (attorney and personal representative fees) and class two (funeral costs) are paid. If a decedent at the time of death was 55 years of age or older, an estate attorney or personal representative must notify the Agency through the TPL vendor, by promptly serving a copy of the notice to creditors and providing a copy of the death certificate within three months after the first publication of the notice to creditors, unless the Agency has already filed a statement of claim in the estate proceedings. This helps ensure that Medicaid’s rights as a class three creditor are protected.

TPL recovery services were contracted with Xerox State Healthcare, LLC (formerly ACS State Healthcare, LLC) from November 1, 2008, to October 31, 2015. In 2015, the Agency negotiated and signed a five-year contract with Health Management Systems, Inc. (HMS) which went into effect on September 1, 2015, and was implemented on November 1, 2015.

Vendor Case Tracking and Documentation

Xerox utilizes a mainframe case tracking system called CETAMax and a user inquiry subsystem called CaseLink, which allows users to initiate, track, and review all actions taken for casualty, estate, trust, and annuity cases. Users such as vendor staff, case managers, paralegals, and attorneys are able to enter notes, activities, or actions taken and the system generates tasks, due date reminders, and notes regarding actions needed.

The vendor’s Manual File Specialist (MFS) opens a case based on information received regarding an individual or decedent from incoming calls or correspondence. The MFS then determines whether the individual or decedent was a Medicaid recipient. A casualty lien is calculated based on the date of incident, incident description, and details of the injuries. A copy of the benefits paid or casualty lien is scanned into the case file. Once the case is opened, the Recovery Specialist (RS) takes over the case and sends a notice of lien to the recipient’s attorney and other liable third parties and collects the

monies owed the Agency. When the benefits paid exceed \$30,000, the RS also files the lien with the court by sending a claim of lien to the county Clerk of Court of the recipient's residence. When communication is received that a case has settled with a liable party, the RS will send a letter confirming settlement to the party holding the funds, verify the final lien amount, and request payment within 60 days.

For estate recovery, cases are opened in CETAMax as a result of the monthly probate case lists from the county clerks of court, Notices to Creditors, or the receipt of court documents. The MFS enters the decedent information available, Medicaid ID, probate case number and county, personal representative, and personal representative's attorney information. The RS assigned ensures that the date of death is not more than two years from the opening of the case and that the recipient age at the time of death was 55 years old or over. A search of claims paid within the past seven years at most or from the date the recipient reached age 55, if less than seven years ago, is made to determine amounts in preparing a *Statement of Claim* which will be filed at the appropriate county clerk's office. A copy of the benefits paid is scanned into the case file.

Vendor Monitoring

The 2008 and 2015 TPL *Invitation to Negotiate* and the resulting contracts, give the Agency the right to conduct reviews of specific records or other data and conduct performance and/or compliance reviews. The contracts also require the vendor to provide specific reports for monitoring progress or performance of contracted services. In addition, the vendor's quality assurance (QA) procedures require the vendor to submit QA report cards quarterly in 2008 and monthly in 2015. The CETA QA report cards measure the performance of activities related to casualty and estate recovery. This includes the Active Case Report, the Settlement Recovery Report, the Health Insurance Portability and Accountability Act (HIPAA) Report, and the Over \$30,000 Report.

The Active Case QA report samples 20 cases per month and notes the timeliness of the case activities; the correctness of the claim type and contact information; and whether claims were scanned and indexed within four days of receipt. Under the 2015 contract, QA testing does not include whether claims were scanned and indexed timely.

The Over \$30,000 QA report samples 20 cases per month to determine the following: whether a claim was filed in court which is required for all casualty claims exceeding \$30,000; whether claims were scanned into the file; whether images were indexed within four days of receipt; whether the diary⁵ notifying attorneys and case managers is current; and whether there was an "aggressive pursuit of settlement funds." Under the

⁵ A timing mechanism in CETAMax designed to generate tasks, due date reminders, and notes regarding actions needed.

2015 contract, QA testing is limited to the timeliness⁶ of the case and whether the case was filed with court.

The Settlement Recovery QA report samples 20 cases per month to determine whether: benefits paid are scanned and indexed within four days of receipt; there is a timely pursuit of settlement funds (i.e. within 90 days); and the third party or third party insurer (TP/TPI) has been notified of any updates to the lien every 90 days. Under the 2015 contract, QA testing is limited to whether the case is timely⁷ and whether the TP/TPI has been notified of any updates to the lien every 60 days.

The HIPAA QA report samples 20 cases per month to determine whether: the request for a lien amount was accompanied by a valid HIPAA compliant medical authorization/release; the response was timely;⁸ an explanation was provided of why the release was invalid, if applicable; the release was scanned into the file within four days of receipt; and any actions taken by the vendor related to the medical authorization was documented. Under the 2015 contract, HIPAA QA testing does not include whether the release was scanned within four days of receipt.

Under the previous contract, QA reports were submitted quarterly. The TPL contract allowed the Agency to impose a monetary sanction of up to \$1,000 for each report not submitted, and \$1,000 for each calendar day past the deadline date. QA procedures state that once the Agency completes the report card review, typically within one month, the vendor will respond to any discrepancies found by the Agency.

According to TPL staff, both monitoring and reporting were used as learning tools during the beginning of the previous contract. As part of QA report card monitoring, TPL staff would utilize a Contract Monitoring Case Review Checklist to document the monitoring of CETA cases chosen for review. Twenty cases were chosen for each quarterly review comprised of five cases randomly selected from cases opened during each of the three months of the quarter reviewed and five cases sampled from the vendor report card for each of the CETA areas.

The TPL Contract Manager issued Monitoring Report Letters that documented the results of the QA review for each of the areas reviewed with general and specific case findings outlined. In accordance with QA procedures, the letter also required specific corrective actions with a deadline for submission of requested information.

The TPL Unit used four different Contract Monitoring Case Review Checklists, one for each of the four areas of CETA. The checklist documented the review of a sampled case. For example, the checklist for casualty and estate recovery reviewed the following:

⁶ The TPL Vendor is required to notify the TP or TPI of any lien within fourteen (14) business days of receipt of required information.

⁷ Timely pursuit of settlement funds within 90 days of notification.

⁸ Responses are required within seven business days.

- Case initiation – such as whether the documents were scanned and indexed timely.
- Pursuit of recovery – such as whether the vendor performed a timely review of paid claims in FMMIS to determine if a claim pull was necessary to assert a lien. For estate cases, whether the vendor took appropriate and timely action to protect the state's interest.
- Case Management – such as whether the case was timely referred to vendor legal staff for required legal action or consideration.
- Payment collection – such as whether the appropriate documents were recorded in the notes, scanned into the case and the statutory formula applied correctly. For estate cases, if recovery is less than the full claim amount, whether the case file includes documentation or notes sufficient to demonstrate that the amount collected is appropriate for a class three creditor or that it is the amount agreed upon by the Agency or by the vendor attorney (as authorized by the Agency) or as ordered by a court.
- Case closure - such as whether the vendor closed the case timely and appropriately.
- General Considerations – such as whether the vendor's case notes are clear and sufficiently complete, and the vendor acted timely and appropriately based on the Agency directives.

The checklist for estate recovery, reviewed the following areas in addition to those listed above:

- Referrals to the Agency - such as whether upon receipt of a settlement offer and relevant supporting documentation the vendor referred offer to the Agency.
- Legal actions - such as whether the vendor responded in a timely and appropriate manner to preserve the state's right to recover.

Our review of a sample of CETA QA report cards issued during our review period showed major areas of noncompliance as self-reported by the vendor. However, there was no documentation of the TPL staff's review of the QA report card results or correspondence documenting any corrective action. According to TPL staff, the contract monitoring case review checklists and monitoring report letters have not been used since 2012.

TPL staff stated that after the initial implementation phase of the previous contract they started utilizing a "hands on" approach to monitoring. Vendor monitoring is done through bi-weekly meetings between TPL staff and vendor managers where trends are tracked and "issues" identified. TPL staff also pointed out that the vendor's full-time

quality control staff person, who monitors contractual activities and trains other staff, covers monitoring requirements of the contract. TPL staff also stated that continuous daily interactions with attorneys, recipients, and insurance companies mean that TPL staff are able to view individual case files and give feedback as needed. However, although the vendor provides a “weekly status report” for the meeting which contains a month to date and year to date recovery report and an assessment of TPL operations and CETA recoveries, updates, and issues, there is inadequate documentation or tracking of any specific issues found or discussed with the vendor. In addition, as of January 2016, there were no written internal procedures or guidelines used by TPL staff to monitor the vendor.

2015 Contract and Other Changes to TPL Recovery

The 2015 contract with HMS requires the monthly submission of the QA report for the preceding month. The monthly report includes review activity that occurred during the reporting month for all contract components; review findings; review accomplishments; summary of findings of staff performance; identification of patterns and trends; recommendations for deficiency improvement; and any additional information as required by the Agency. The contract allows the assessment of liquidated damages of \$25,000 per business day for each day a report is not submitted or \$25,000 per occurrence, if the vendor submits an incomplete and/or incorrect report or submits a report in a format not previously approved by the Agency.

In the CETA area, time entry and turn-around requirements are spelled out in the contract. The vendor is required to make a response within seven business days of receipt of initial notice of a CETA case. Liquidated damages may be imposed if response turn-around times are not met in at least 98% of cases monthly. In addition, liquidated damages may be assessed if the vendor does not send notice of a lien for a casualty case within fourteen business days of receipt of the required information or if the vendor does not review each casualty case and follow-up as appropriate at a minimum every sixty-calendar days for casualty cases or every ninety calendar days for estate cases.

Other notable changes under the 2015 contract include a provision that the TPL vendor coordinate directly with the Agency Office of General Counsel (OGC) on cases. In addition, the Agency is given the option to conduct litigation that would otherwise be handled by the vendor either through in-house resources or outside private counsel. There are also new provisions for liquidated damages and contract sanctions have increased from \$5,000 to \$50,000 for each hearing that is not attended due to the fault of the vendor that could potentially affect recovery.

Another major change that affects current TPL recovery is related to the Statewide Medicaid Managed Care (SMMC) expansion. There is a reduction in the TPL Unit’s casualty recovery functions due to enrollment of most of the Medicaid population into a managed care plan. The Managed Care Plans are responsible for covering TPL collections and are given the sole right to subrogation and recovery from a liable third

party for one-year from when the plan incurred the cost to recover from any third party resource. However, all recoveries after the one-year period and estate, trust, and annuity recoveries continue to be the responsibility of the TPL Unit through the TPL vendor.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Overall, there was sufficient documentation to support closure of cases reviewed requiring legal action or Agency input. However, we noted areas where improvements could be made. Our review disclosed the following:

- The TPL Unit does not have written internal policies, procedures, or guidelines regarding monitoring of the TPL vendor contract. This lack of policies, procedures, or guidelines results in inconsistency and uncertainty in the manner in which the TPL Unit conducts and reports its monitoring actions and makes training of any new staff difficult.
- The TPL Unit does not adequately document monitoring of the TPL vendor's handling of casualty and estate recovery cases. Although TPL staff stated that they review and give guidance on the daily handling of cases and hold bi-weekly meetings with vendor management, there is inadequate documentation of monitoring activities. This is shown by the following:
 - The TPL Unit does not document its response to quality report cards on casualty and estate recoveries submitted by the vendor nor does it independently verify the accuracy of a sample of the report card results.
 - The TPL Unit does not document monitoring such as through checklists or logs to provide a means of tracking vendor performance.
 - Documentation found in Caselink of the samples tested was adequate but needed improvement in quality. For example, one case had insufficient information attached to verify case closure for the specific case. It included a fax cover sheet requesting file closure and the last page of an electronically signed Order with insufficient information to link to a specific case. In addition, several cases reviewed had unrelated court documents scanned into the case file or insufficient documentation.

Documented monitoring provides a means of tracking vendor performance, provides visibility to monitoring, and formalizes communications with the vendor that encourages accountability and enhances the perception of detection, which deters any potential fraud. It also allows the TPL staff to document any noncompliance, which might be subject to corrective action or liquidated damages.

Recommendations

- We recommend that the TPL Unit develop written contract monitoring procedures.

Management Response:

The TPL unit will develop a written contract monitoring tool to coincide with Agency contract monitoring guidelines.

Anticipated Date of Completion: July 31, 2016.

- We recommend that the TPL Unit document and formalize monitoring of the TPL vendor's activities and communication with the vendor by:
 - Capturing the results of monitoring such as by utilizing contract monitoring case review checklists and/or issuing monitoring report letters similar to what was previously utilized to document and track the review of cases or other areas of concern identified by the TPL Unit.
 - Verifying the accuracy of the vendor's quality assurance report cards, on a sample basis, as part of the monitoring process and documenting the review of report card submissions and any discrepancies found to allow for tracking to gauge quality improvement or deficiencies.
 - Documenting any guidance or directives given by the Agency in cases requiring Agency input in the case file.

Management Response:

The TPL unit will develop protocols to document our monitoring activities, which will include but not be limited to reviewing submitted quality assurance report cards and randomly chosen sample of Estate, Trust & Annuity, and Casualty cases.

Anticipated Date of Completion: July 31, 2016.

FINAL COMMENTS

Internal Audit would like to thank the management and staff of the Agency's Division of Operations Third Party Liability Unit for their assistance and cooperation extended to us during this engagement.

PROJECT TEAM

The review was conducted by Pilar C. Zaki, JD, CIGA, under the supervision of Mary Beth Sheffield, Audit Director, CPA, CIA, CFE, CIG.

**The Agency for Health Care Administration's mission is
Better Health Care for All Floridians.**

**The Inspector General's Office conducts audits and reviews of Agency programs to assist
the Secretary and other agency management and staff in fulfilling this mission.**

This review was conducted pursuant to Section 20.055, Florida Statutes. Please address
inquiries regarding this report to the AHCA Audit Director at (850) 412-3978.

Copies of final reports may be viewed and downloaded via the internet at:
ahca.myflorida.com/Executive/Inspector_General/Internal_Audit/audit.shtml.

Copies may also be obtained by telephone (850) 412-3990, by FAX (850) 487-4108,
in person, or by mail at Agency for Health Care Administration, 2727 Mahan Drive,
Mail Stop #5, Tallahassee, FL 32308.