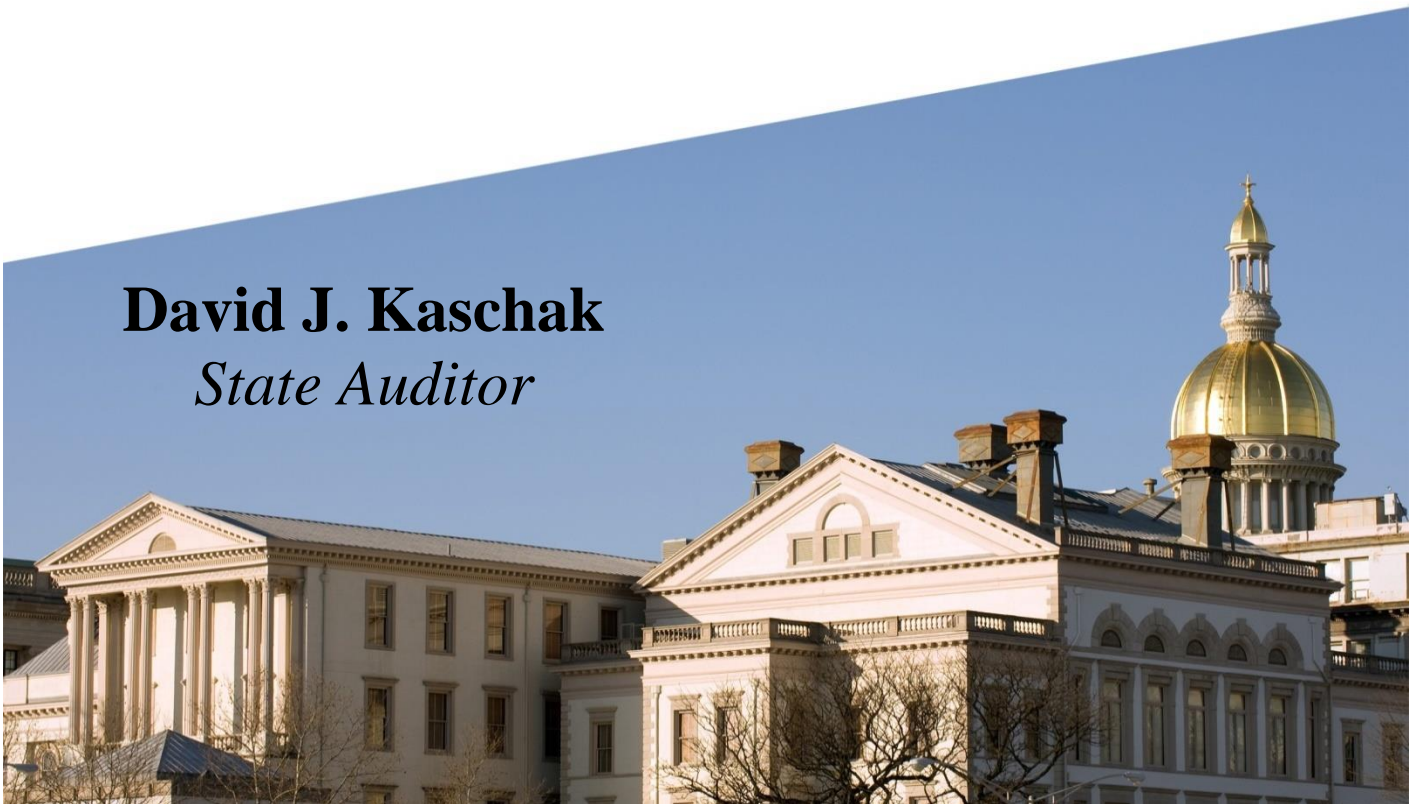


NEW JERSEY LEGISLATURE
OFFICE OF LEGISLATIVE SERVICES
OFFICE OF THE STATE AUDITOR

Department of Human Services
Division of Medical Assistance and Health Services
Office of Legal and Regulatory Affairs
Estate Recovery

July 1, 2021 to November 1, 2024

David J. Kaschak
State Auditor



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www.njleg.gov

OFFICE OF THE STATE AUDITOR
609-847-3470

David J. Kaschak
State Auditor

Brian M. Klingele
Assistant State Auditor

Thomas Troutman
Assistant State Auditor

The Honorable Philip D. Murphy
Governor of New Jersey

The Honorable Nicholas P. Scutari
President of the Senate

The Honorable Craig J. Coughlin
Speaker of the General Assembly

Ms. Maureen McMahon
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of Human Services, Division of Medical Assistance and Health Services, Office of Legal and Regulatory Affairs, Estate Recovery for the period of July 1, 2021 to November 1, 2024. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in cursive script that reads "David J. Kaschak".

David J. Kaschak
State Auditor
January 28, 2025

Table of Contents

Scope.....	1
Objectives	1
Methodology.....	1
Data Reliability.....	2
Conclusions.....	2
Background.....	2
Findings and Recommendations	
Inconsistencies in Case Processing.....	4
Medicaid Recovery Tracking.....	5
Information Technology – Noncompliance with <i>Statewide Information Security Manual</i> Requirements	7
Appendix	
Methodologies to Achieve Audit Objectives.....	8
Auditee Response.....	10

Scope

We have completed an audit of the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS or division), Office of Legal and Regulatory Affairs, Estate Recovery for the period July 1, 2021 to November 1, 2024. Our audit included a review of deceased Medicaid beneficiary cases closed between July 1, 2021 to November 20, 2023 that were subject to estate recovery statutes. During this period, \$46.6 million was recovered from 1,399 estate recovery cases.

Objectives

The objective of our audit was to determine whether adequate controls were in place to ensure compliance with applicable federal and state regulations and internal criteria. An additional objective was to determine if general information system controls were in place and functioning.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

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

Additional guidance for the conduct of the audit was taken from the *Statewide Information Security Manual (SISM)*, published by the New Jersey Office of Homeland Security and Preparedness. We reviewed certain general information system controls, including security management, change management, contingency planning, logical access security, and physical security and environmental controls. The *SISM* was used as the criteria against which those controls were measured.

In preparation for our testing, we studied legislation, the administrative code, circulars promulgated by the Department of the Treasury, as well as internal policies. Provisions we considered significant were documented, and compliance with those requirements was verified by interview, observation, and through our testing. We also reviewed estate recovery cases and interviewed agency personnel to obtain an understanding of the program and the internal controls. To achieve our objectives, we performed various tests and analyses, as we determined necessary. Additional detail regarding our methodology and work performed can be found in the Appendix, as well as in the finding section when testing resulted in a reportable condition.

A nonstatistical sampling approach was used. Our samples were designed to provide conclusions on our audit objectives, as well as internal controls and compliance. Sample populations were sorted, and transactions were judgmentally selected for testing. Because we used a nonstatistical sampling approach for our tests, we cannot project the results to the respective populations.

Data Reliability

We assessed the reliability of the estate recovery data for the division's case management system, Medicaid Recovery Tracking (REC), by performing electronic testing, comparing the data to source documents, and interviewing agency officials knowledgeable about the data. We also reviewed certain general information system controls, including security management, change management, contingency planning, logical access security, and physical security and environmental controls.

We determined that some significant data fields were not sufficiently reliable for the purposes of this report. These issues are noted in an audit finding, and only summaries, testing populations, and testing results from sufficiently relied upon data fields are included within this report.

Conclusions

We found the division had adequate controls to ensure compliance with federal and state regulations. We also found general information system controls were in place and generally functioning. In making these determinations, we noted outdated policies and procedures related to estate recovery led to inconsistent case processing and inadequate case follow-up. In addition, the general controls over the REC system need to be strengthened to prevent errors and omissions in the data.

Background

Under federal and New Jersey law, 42 U.S.C. 1396p and N.J.S.A. 30:4D-7.2, respectively, the division is required to recover funds from the estates of certain deceased Medicaid beneficiaries or former Medicaid beneficiaries for all payments provided through the Medicaid program for services received on or after age 55. Medicaid programs are jointly funded by federal and state programs; therefore, recoveries are split between them.

By law, an estate includes any property that belonged to the deceased at the time of death or at the moment prior to their death. This includes the decedent's home or share of a home, bank accounts (whether solely or jointly held), trusts and annuities, stocks, bonds, and any other real or personal property.

Recovery is sought immediately upon death unless the deceased has a surviving spouse, a surviving child under 21, or a surviving child who is blind or permanently and totally disabled.

When these exceptions no longer apply, the division has a right to recover from any remaining estate assets at that time. A claim or lien shall be filed within three years after receiving actual written notice of the death of the Medicaid beneficiary from the personal representative of the estate or any other interested party. Liens remain in effect for 20 years and may be renewed. In addition, recovery will not be pursued if it is not cost-effective to do so, or if the property in the estate is the sole source of income for one or more of the survivors and pursuit of recovery is likely to result in one or more of those survivors becoming eligible for public assistance and/or Medicaid benefits.

Recovery will not be immediately pursued when a family member of a deceased Medicaid beneficiary had continuously resided in a home owned by the beneficiary at the time of the beneficiary's death if that home was the client's primary residence and was, and remains, the family member's primary residence. In that instance, the division may file a lien against the property; however, it will not enforce the lien until the property is voluntarily sold or the resident family member either dies or vacates the property.

The Recovery Unit, within the division's Office of Legal and Regulatory Affairs (OLRA), is responsible for, among other things, pursuing recovery from estates to supplement funds available for medical assistance programs and limit the burden on taxpayers. The unit consists of 15 employees, including managers, nurses, analysts, and administrative and temporary staff. The Recovery Unit utilizes the REC system to track estate recovery cases and associated payments. REC is an Oracle-based relational database management system developed in-house and implemented in the year 2000. Recovery Unit management asserts they never relinquish the right to recovery; the right is deferred. The Liens, Discharges, and Legal Affairs Unit within OLRA, as well as DMAHS Fiscal, provide support services when processing estate recovery cases.

Inconsistencies in Case Processing

Inconsistencies in the processing of estate recovery cases and inadequate case follow-up may result in lost recoveries.

The division's Recovery Unit is responsible for processing cases of certain deceased Medicaid beneficiaries in accordance with federal and state laws. The Recovery Unit abides by applicable requirements or exemptions to determine eligibility and identify recoverable assets. Although the Recovery Unit does have some policies and procedures, they are not comprehensive or sufficiently updated. This created inconsistencies when analysts conducted case reviews. In addition, we also noted that minimal case follow-up reviews were being performed.

Between July 1, 2021 and November 20, 2023, there were 2,385 closed cases, which consisted of 986 cases without recoveries and 1,399 with recovered funds. We judgmentally selected 10 of 2,385 cases, including those with and without recoveries, to test whether adequate controls were in place to process cases properly. We found one case (10 percent) where there was no evidence research had been performed to verify the accuracy of information received or whether potential recoverable assets were sought.

We also tested 10 of the 1,399 cases with recovered funds based on recoveries and found two cases (20 percent) that did not have adequate support to determine if predeceased spouses were on Medicaid, which could prompt additional recoveries being sought.

We also analyzed the 2,385 closed cases to identify those that may have remained open beyond the 20-year term of a lien. Through this analysis, we found 256 cases that were more than 20 years old. We judgmentally selected 10 cases based on the number of years the cases had remained open, including those with and without recoveries, to determine if controls were in place to ensure cases were processed properly and case follow-ups were performed. We found eight cases (80 percent) where the lien had lapsed and seven cases (70 percent) that had no evidence indicating a follow-up was performed. Effective follow-up of liens ensures necessary action is taken to prioritize and, if needed, extend the lien, which may impact recoveries. According to the Recovery Unit, since the COVID-19 pandemic, it has been focusing its efforts on closing older cases and discharging the associated liens.

These issues risk compromising the program's compliance with current federal and state regulations. Inconsistent processing and a lack of follow-up could result in missed opportunities to recover funds, which directly impacts the supplemental funds available for medical assistance programs. If standard reviews and sufficient evidence to support these reviews were required in formal written policies and procedures, it may help ensure consistency in case processing and follow-up and may increase recoveries.

Recommendation

We recommend the Recovery Unit update and, where necessary, develop formal written operating procedures governing the estate recovery case review process, including case follow-up policies and procedures. In addition, we recommend the Recovery Unit require analysts to document their recovery efforts and support obtained while conducting estate recovery case reviews.



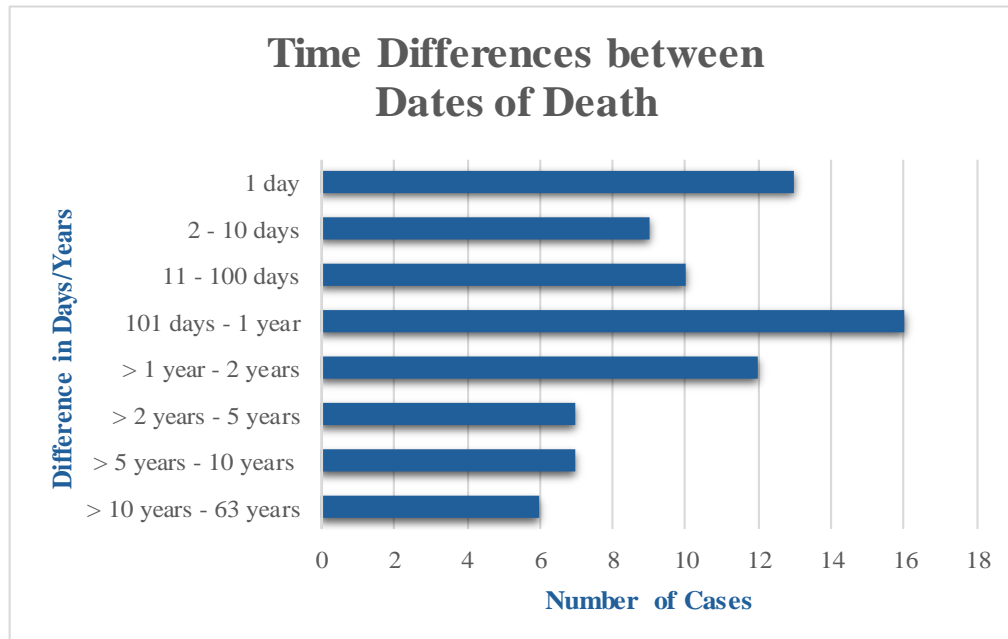
Medicaid Recovery Tracking

The system used to maintain estate recovery cases (REC) has data fields that are not sufficiently reliable because of errors and omissions.

Generally accepted government auditing standards require us to assess and report on the reliability of computer-processed information that we use to support our audit findings, conclusions, and recommendations. Data reliability refers to the accuracy and completeness of the data, given the intended purposes for the data's use. We performed data reliability testing of the division's REC system for a sample of 115 of 2,284 estate recovery cases closed between July 1, 2021 and September 28, 2023. We found 23 cases (20 percent) where one or more fields in REC, including Social Security number (SSN), date of birth, date of death, and recovered amount, were omitted or did not agree with supporting documentation. Because of these results, REC information was verified while we performed other audit tests on cases closed between July 1, 2021 and November 20, 2023. We found 11 of 36 closed cases (31 percent) where one or more fields in REC were incorrect based on supporting documentation.

Because the date of death field had the most discrepancies across the tested areas, we performed a match to compare dates of death in REC to the U.S. Treasury's Do Not Pay working system (federal data). A total of 2,385 estate recovery cases closed between July 1, 2021 and November 20, 2023 were matched to the federal data. There were matches for 2,236 cases, which were sorted based on the federal data's confidence level. We reviewed 932 cases that were matched with a high or very high confidence level and found 63 of these cases (7 percent) where differences existed between the REC and the federal data. In addition, there were 94 cases (4 percent) where the SSNs were omitted in REC; therefore, a match could not be performed on these cases. There were also 55 cases (2 percent) where a match was not found in the federal data. We performed additional research on the 55 cases using case file support and obituary searches and found an additional 10 cases (18 percent) with an incorrect date of death in REC, 12 cases (22 percent) with an incorrect SSN and 7 cases (13 percent) with both an incorrect date of death and incorrect SSN.

The differences between the REC data and supported dates of death are summarized in the chart on the next page:



While the Recovery Unit does not solely rely on the REC data, the presence and potential use of inaccurate information creates the following potential risks:

1. Noncompliance with federal and state regulations: Using inaccurate information could hinder the analyst's ability to accurately assess the decedent's eligibility for recovery based on regulations, such as age requirements.
2. Inefficient case processing: Errors and omissions create unreliable data fields, causing analysts to perform additional research in order to ensure the information being used is complete and accurate.

The Recovery Unit management acknowledged several factors that could have contributed to the cause of these errors and omissions, including:

1. Data entry errors: Human mistakes during manual input.
2. System integration failures: Error in data transfer during the year 2000 integration between the prior system and the REC system.
3. Optional fields: Some fields, such as date of birth, were not required to be entered when the REC system was first implemented.
4. System glitch: Management explained a past glitch in the REC system where certain fields would be involuntarily changed in the background. This glitch was said to be fixed but effects from it may still exist despite efforts to fix them.

Recommendation

We recommend the division develop and enforce standardized data entry guidelines, including supervisory reviews to determine completeness and accuracy. In addition, the division should provide training to all system users on proper data entry practices and the importance of maintaining data integrity. Implementing the recommended actions should help mitigate the identified risks and enhance the overall reliability of the system's data.



Information Technology – Noncompliance with *Statewide Information Security Manual* Requirements

The Medicaid Recovery Tracking (REC) system does not meet the required standards for logical security and business continuity.

The *Statewide Information Security Manual (SISM)* requires systems to be configured to automatically log out a user if a session has been idle for more than 30 minutes. The REC system does not automatically logout users because of inactivity. This could lead to unauthorized access to REC data, which increases the risk of identity theft and the potential misuse of sensitive personal data.

In addition, the *SISM* requires the development, implementation, testing, and maintenance of contingency plans to ensure continuity if a disruption were to occur. Although system backups are performed and a copy is kept at an off-site location, a formal written disaster recovery plan does not exist for the REC system. Having a formal plan in place and performing periodic testing reduces the risk of loss and helps identify necessary modifications when weaknesses are noted.

Recommendation

We recommend making configuration changes to the REC system to log off idle users after a specified duration, as required by the *SISM*. In addition, we recommend the division develop a formal disaster recovery plan for the REC system and perform periodic tests of the plan once it is finalized.



Appendix

Methodologies to Achieve Audit Objectives

Except where otherwise noted, the following audit procedures used information in the Medicaid Recovery Tracking (REC) system and applicant files for estate recovery cases closed between July 1, 2021 and November 20, 2023:

To determine if decedents considered for estate recovery met age requirements, ages were calculated for all decedents. In addition, we tested 10 of 264 cases with blank dates of birth in the REC system to determine if the decedent was 55 or older when they died.

To determine if recovery was duplicated, an analysis was performed to find decedents with multiple estate recovery cases. We tested five decedents, each having two different estate recovery cases with recoveries.

To determine whether cases met program criteria to be considered for estate recovery and to ensure recovery payments were processed properly and supported, we judgmentally selected a sample of 10 cases totaling \$678,102 for review from a total of 1,399 closed cases with recoveries totaling \$46.6 million.

To determine whether all eligible assets were considered for recovery, we judgmentally selected 10 cases from 2,385 closed cases and performed an asset search test.

To determine whether liens were accurate and supported, we judgmentally selected a sample of 16 of 902 lien cases for review.

As part of our review of estate recovery cases, select refunds were reviewed for reasonableness and support.

We reviewed executor's fees to determine whether they were in compliance with New Jersey statutes and internal policies.

To determine whether cases were assigned timely, we analyzed the number of days it took to assign estate recovery cases.

To determine if estate executors had specific areas of concern, we reviewed case files for complaints.

Recovery can only be sought up to the amount of claims a deceased Medicaid beneficiary incurred on or after age 55 based on applicable program status codes of claims. The Recovery Unit utilizes a report on the Shared Data Warehouse to summarize the total amount of claims using only applicable program status codes. We reviewed the build of the Shared Data Warehouse report to

determine whether parameters were in place to only summarize applicable program status codes within the report.

We reviewed various information system controls, including security management, change management, and physical security and environmental controls. User IDs for separated employees were reviewed to determine whether access to the system was terminated. In addition, user roles were reviewed in comparison to staff positions to determine whether user roles aligned with position duties.





PHILIP D. MURPHY
GOVERNOR

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
P.O. BOX 700
TRENTON NJ 08625-0700

SARAH ADELMAN
COMMISSIONER

TAHESHA L. WAY
LT. GOVERNOR

January 21, 2025

Brian M. Klingele
Assistant State Auditor
Office of the State Auditor
125 South Warren Street
P.O. Box 067
Trenton, NJ 08625-067

Dear Mr. Klingele:

The Department of Human Services (the Department), Division of Medical Assistance and Health Services (the Division), is in receipt of the Office of the State Auditor's draft audit report titled "Department of Human Services Division of Medical Assistance and Health Services Office of Legal and Regulatory Affairs Estate Recovery." We appreciate OSA's review and conclusion that the Division had controls in place to ensure compliance with federal and state regulations and that general information system controls were in place. Additionally, we thank you for the improvement recommendations and the opportunity to comment on the draft report.

Before supplying responses to the draft audit findings, the Division wishes to provide context for some of the concerns raised in the draft report about the reliability of information in the Division's recovery system, commonly known as the REC system. The time period that was the focus of the audit was during the Public Health Emergency declared in response to the COVID-19 pandemic. Because of various pandemic related restrictions and associated sequelae, the type of work that the Recovery Unit generally performs had to be adjusted during this time period. For example, in an effort to maximize analyst productivity during a time when there were fewer new cases created, the Estate Recovery Unit within the Office of Legal and Regulatory Affairs undertook the process of reviewing all estate cases older than 20 years to determine whether those older cases could be closed or whether recovery was still feasible. The Division reviewed and closed old cases, many from the 1980s and 1990s. The audit report raises concerns about the reliability of data contained in the REC system largely in relation to those older cases due to "errors and omissions." However, the REC system was created prior to 2000. It was a COBOL based legacy system rewritten for a client server environment using Oracle database and was populated with data in existence at that time. For example, some of the information about beneficiaries that was transferred to REC lacked information such as dates of birth or dates of original eligibility. Attempts to update or correct

such data have been stymied because some of the data had been purged from other systems. The Division acknowledges these data reliability concerns and will work to correct them.

Please accept the following responses to the draft audit findings:

OSA Recommendation

“We recommend the Recovery Unit update and, where necessary, develop formal written operating procedures governing the estate recovery case review process, including case follow-up policies and procedures. In addition, we recommend the Recovery Unit require analysts to document their recovery efforts and support obtained while conducting estate recovery case reviews.”

Response

The Department agrees with the recommendation that the Recovery Unit update and develop formal written operating procedures governing the estate recovery case review process. The Recovery Unit notes that it had begun gathering information related to all federal and state regulations governing estate recovery, procedures, and current processes utilized by this Unit before the initiation of this audit with the goal of developing such written procedures. The work of creating and disseminating written procedures will continue. Additionally, the Recovery Unit has, over the course of the last several years, taken some concrete steps to formalize and clarify operating procedures, including the creation of form letters and records of appeals found in favor of the Division. These materials will be reviewed and updated as part of the creation of a formal manual. The Recovery Unit today has access to Lexis/Nexis, Accurant, County records available online and the Document Imaging Management System which houses application information. These sources are currently utilized to correct data and will be provided as support documentation for case review.

OSA Recommendation

“We recommend the division develop and enforce standardized data entry guidelines, including supervisory reviews to determine completeness and accuracy. In addition, the division should provide training to all system users on proper data entry practices and the importance of maintaining data integrity. Implementing the recommended actions should help mitigate the identified risks and enhance the overall reliability of the system’s data.”

Response

The Department agrees with the recommendations and the Recovery Unit currently works with New Jersey Medicaid Management Information System (NJMMIS) and the Bureau of Vital Statistics to correct and verify information retrieved from these sources. The Recovery Unit also requests birth and death certificates as sources of verification and works with the Division on correcting the discrepancies. Standardized guidelines will be developed, reviewed and included in the formal written procedure manual referenced in the OSA’s first recommendation. Additionally, the Estate Recovery Unit will provide training to all system users on proper data entry practices

and the importance of maintaining data integrity. Systems users are also required to complete mandated online data security training provided by Civil Service which will supplement these efforts. Lastly, as mentioned in the previous response above, the Recovery Unit has access to and utilizes several resources to enhance the reliability and accuracy of the system's data.

OSA Recommendation

“We recommend making configuration changes to the REC system to log off idle users after a specified duration, as required by the *SISM*. In addition, we recommend the division develop a formal disaster recovery plan for the REC system and perform periodic tests of the plan once it is finalized.”

Response

The Recovery Unit agrees and will work with the DMAHS IT and system engineers to ensure that updates to the REC system are implemented in compliance with the *SISM*. Furthermore, the Unit will work with the Division to develop a disaster recovery plan as recommended.

Thank you again for the opportunity to review and respond to OSA's draft audit report. We welcome any opportunity to improve the Estate Recovery Program within the Division's Office of Legal and Regulatory Affairs.

Sincerely,



Sarah Adelman
Commissioner

c: Valerie Mielke, Deputy Commissioner
Gregory Woods, Assistant Commissioner
Allan Brophy, Director, Office of Auditing
Matthew Shaw, DMAHS, Chief Operating Officer