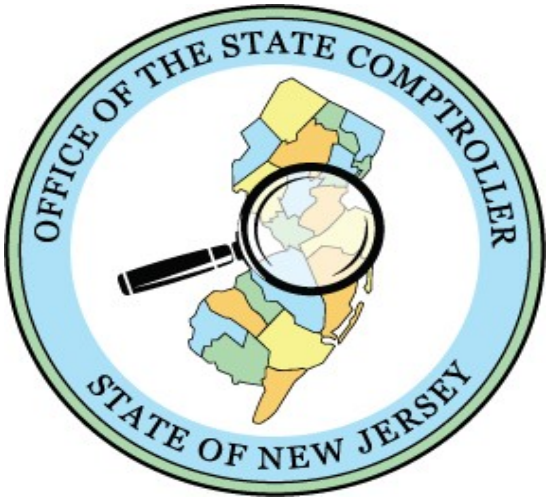
STATE OF NEW JERSEY
OFFICE OF THE STATE COMPTROLLER

ANNUAL REPORT
Fiscal Year 2018



IMPROVING THE EFFICIENCY, TRANSPARENCY AND FISCAL ACCOUNTABILITY OF NEW JERSEY GOVERNMENT

Philip James Degnan
STATE COMPTROLLER

Table of Contents

Dear Governor Murphy, Members of the State Legislature and Residents of New Jersey:

The Office of the State Comptroller (OSC) reached a significant milestone during Fiscal Year 2018, as we marked the 10th anniversary of our creation. As we paused to look back on a decade's worth of accomplishments, we recalled the words spoken by then Governor Jon S. Corzine upon the opening of the Office in January 2008:

> "The Comptroller will serve a crucial function in New Jersey government from this day forward . . . the people of New Jersey know we need a watchdog."

OSC is an independent office created with a statutory mission to bring greater efficiency, transparency and fiscal accountability to all levels of New Jersey government. OSC staff fulfill this commitment through their ongoing work scrutinizing how taxpayer funds are being spent.

As we enter into our second decade of existence, we rededicate ourselves to that mission and to pursuing effective and innovative methods of safeguarding public funds. Beyond the traditional work done in our four divisions, we have looked consistently for opportunities to be proactive and partner with other agencies as we have with the U.S. Social Security Administration (SSA) in establishing a new Cooperative Disability Investigations Unit (CDIU). The CDIU, based in Iselin, is part of a nationwide initiative to identify and prevent Social Security disability fraud. Investigators from our Medicaid Fraud Division are staffing this unit alongside personnel from the SSA and we are already seeing positive results from this cooperative effort.

Beyond our cooperative efforts with our Medicaid Fraud Division that took place in FY 2018 and that carry on into the current fiscal year, the Audit Division has managed the ongoing audit of the Economic Development Authority as well as servicing eight additional audits in various stages of completion; the Procurement Division maintained its robust affirmative outreach program and continues to review the State's most complex procurement submissions; and the Investigations Division continues its work on four investigations while also completing unpublished work on State emergency management plans and providing legal support and guidance to other areas of the OSC. In all, I am proud of the work that was done in FY 2018 and look forward to an impactful FY 2019.

Philip James Degnan
State Comptroller

OVERVIEW

Since its creation in January 2008, the Office of the State Comptroller (OSC) has served as an advocate for taxpayers and a leader in bringing about government reform. OSC reports have focused on bringing greater efficiency, transparency and analysis to the operation of all levels of government in New Jersey.

OSC consists of four divisions – Audit, Investigations, Medicaid Fraud and Procurement. Each of the four divisions made significant contributions to OSC's accomplishments this past fiscal year.

Our Audit Division set forth recommendations to improve operations at a municipal utilities authority and conducted two follow-up audits, one concerning the Town of Harrison (Hudson County) and the other concerning the City of Newark.

Our Investigations Division conducted the fifth in a series of OSC reviews of the New Jersey State Police and the Office of Law Enforcement Professional Standards. This review focused on the investigation and resolution of public complaints alleging trooper misconduct. Although no significant violations were found, OSC did identify several areas for improvement.

Our Medicaid Fraud Division's ongoing efforts to combat waste, fraud and abuse in the Medicaid Program resulted in the recovery of more than $90 million of taxpayer dollars in FY 2018. Its anti-fraud efforts also resulted in the exclusion of 364 ineligible providers from the Medicaid program.

Our Procurement Division reviewed nearly 700 contracts this past fiscal year, 165 of which were valued at $10 million or more. Division attorneys also reviewed 374 contracts valued between $2 million and $10 million.

The sections of this report that follow briefly explain the role of each division while setting forth highlights of OSC accomplishments from the past fiscal year of July 1, 2017 to June 30, 2018.

AUDIT DIVISION

OSC's Audit Division conducts audits and reviews the performance of New Jersey state government, public institutions of higher education, independent state authorities, local governments, and school districts.

The Audit Division is led by Director Yvonne Tierney who brings more than 30 years of experience as an auditor and investigator to the position. The Audit Division staff includes individuals who possess certifications or professional designations such as Certified Public Accountant, Certified Internal Auditor, and Certified Fraud Examiner.

Examples of our Audit Division's work in FY 2018 are set forth below. OSC audit reports can be viewed in their entirety on our website.

Audit

Jersey City Municipal Utilities Authority – Selected Fiscal and Operating Practices

OSC's audit found that the Jersey City Municipal Utilities Authority ("JCMUA") had failed to conduct yearly financial reviews before it approved water and sewer service rate increases, during a period when it had multi-million dollar budget surpluses. Specifically, OSC auditors found that from 2006 through 2015 sewer rates increased by 93.8 percent and water rates increased by 38.9 percent. During this same time period, JCMUA's year-end net position also grew from $10.1 million in 2006 to $86.4 million in 2015, a nearly 760 percent increase.

During this period of increased service rates and annual budget surpluses, JCMUA also failed to ensure that its vendor billed and collected substantial payments from its institutional bulk-water customers. That failure resulted in JCMUA losing an estimated $575,000 in revenue for nearly 300 million gallons of water delivered to those customers. Throughout this time, the City's water services, including billing, collections, and bulk water sales were managed for JCMUA by United Water – Jersey City, which is owned by Suez Water, Inc. OSC found that United Water – Jersey City failed to collect the outstanding bulk water fees from two companies that are also owned by Suez Water.

OSC also discovered that during the audit period, JCMUA incurred additional expenses by allowing its former Executive Director to give himself raises and by allowing him to start a buy-back program for unused sick and vacation days for all administrative employees, including himself.

OSC's audit also revealed that JCMUA did not have adequate procurement and contract administration controls in place to ensure compliance with appropriate laws and regulations, contract terms and conditions, or its own policies and procedures. These deficiencies resulted in overpayments, improperly managed contract change orders and amendments, and a lack of compliance with the state's Local Public Contracts Law and applicable purchasing regulations and internal policies and procedures.

The audit contains several recommendations for specific actions that JCMUA should implement to address the various deficiencies found in the audit. In response to the recommendations, JCMUA submitted a Corrective Action Plan. As required by law, OSC will conduct a follow-up review to determine whether JCMUA has revised its practices in accordance with our audit recommendations.

Follow-Up Reviews

OSC obtains corrective action plans from the public entities it audits to ensure that audit recommendations are properly implemented in an appropriate timeframe. OSC subsequently conducts onsite follow-up reviews to determine compliance with those corrective actions.

Town of Harrison – Selected Financial and Operating Practices

OSC's initial audit had found certain weaknesses in Harrison's fiscal and operating practices and areas in which the town could improve its cost-savings measures. During the follow-up review, OSC found that Harrison had fully implemented 10 of the 13 audit recommendations made in OSC's initial audit, including:

• Eliminating longevity pay for new hires.

• Eliminating the payment of health insurance premiums after age 65 (or the age of Medicaid eligibility) for newly hired employees and their dependents.

• Pro-rating an employee's payment for unused sick and vacation time during his/her final year of service.

• Revising developer contracts to protect the town financially during construction delays and to allow the town to impose penalties on developers who do not meet project deadlines.

City of Newark – Selected Payroll, Timekeeping, and Operating Practices

Newark officials have taken actions to address weaknesses in the city's payroll and timekeeping practices that were identified in OSC's 2013 audit. In addition, Newark, in coordination with the state Department of Community Affairs, reduced expenses of the Office of the City Clerk and the City Council as recommended in the initial audit.

The follow-up review found that Newark either fully or partially implemented eight of the 11 recommendations contained in the 2013 audit report. These recommendations included reducing or eliminating supplemental payments to municipal employees and obtaining appropriate documentation before processing overtime payments, among other things. OSC auditors noted that some newly hired city employees will no longer be eligible for longevity payments over the course of their careers, under terms of two new collective bargaining agreements.

Policies and Procedures

Our efforts at OSC have included putting in place policies and procedures that guide our audit, investigative and related processes. The following are descriptions of some of the policies and procedures we have put into effect, which we have continued to refine over the past year.

Audit Manual

For professional audit organizations such as ours, it is essential that clearly defined policies be promulgated to provide audit guidance and to ensure the quality and consistency of the audit work performed. To that end, OSC developed an Audit Manual to serve as the authoritative compilation of the professional auditing practices, policies, standards and requirements for OSC staff. Our Audit Manual is a constantly evolving document that is revised as standards are amended and other changes in the auditing profession occur.

Audit Process Brochure

Open communication concerning the audit process lets the auditee know up front what to expect. With that in mind, OSC developed a brochure outlining the critical components of the audit process, from the initiation to

completion. This brochure is provided to the auditee prior to the start of an audit and also is posted on our website.

Risk/Priority Evaluation

OSC's enabling legislation requires us to "establish objective criteria for undertaking performance and other reviews authorized by this act." Accordingly, OSC developed a risk/priority evaluation matrix that considers a number of risk factors, including, among others, the entity's past performance, size of budget, the frequency, scope and quality of prior audits, and other credible information which suggests the necessity of a review. OSC staff conducts research along these parameters and assesses risk associated with each applicable factor as an aid in determining audit priority.

Quality Control and Peer Review

Government auditing standards require audit organizations to establish an internal quality control system and to participate in an external quality control "peer review" program. The internal quality control system provides the organization with ongoing assurance that its policies, procedures and standards are adequate and are being followed. The external peer review, to be conducted once every three years, is a professional benchmark that provides independent verification that the internal quality control system is in place and operating effectively and that the organization is conducting its work in accordance with appropriate standards.

Audit Coordination

OSC's enabling legislation requires the State Comptroller to establish a system of coordination with other state entities responsible for conducting audits, investigations and similar reviews. This system services to avoid duplication and fragmentation of efforts while optimizing the use of resources, promoting effective working relationships and avoiding the unnecessary expenditure of public funds. We continue to work closely with both state and federal audit and law enforcement officials in this regard.

Training

Audits conducted by OSC's Audit Division comply with Generally Accepted Government Auditing Standards (GAGAS). Auditors performing work under GAGAS are required to maintain their professional competence through Continuing Professional Education (CPE). Specifically, every two years each auditor must complete at least 80 hours of CPE, 24 of which must directly relate to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. OSC is recognized by the National Association of State Boards of Accountancy as a CPE sponsor. This year our staff again received formal training on topics such as governmental accounting, audit sampling and documentation, and internal controls. All staff members in the Audit Division satisfied the biennial requirement of obtaining 80 CPEs over the reporting period.

INVESTIGATIONS DIVISION

OSC's Investigations Division works to detect and uncover fraud, waste and misconduct involving the management of public funds and the performance of government officers, employees, and programs.

Noelle Maloney is the Director of the Investigations Division. Director Maloney previously served as Deputy Inspector General of the United States Securities and Exchange Commission, where she oversaw investigations and audits of the agency's operations and programs. The division consists of a staff of investigators and attorneys, including former federal and state law enforcement professionals from agencies such as the Federal Bureau of Investigation, the United States Postal Inspection Service, and the New Jersey State Police.

OSC's investigators field and review all tips, referrals, and allegations provided to the office. Those tips come from both the general public and from government employees, and are received through OSC's toll-free Tipline, via e-mail or through the mail. The Tipline also is used as the official statewide Tipline for any public tips regarding the waste or abuse of Superstorm Sandy funds.

In FY 2018, the Investigations Division fielded 207 complaints, 46 of which were referred to the Sandy Fraud Task Force. The division referred an additional four matters to criminal investigators at the federal and state level as well as local police and county prosecutor's offices.

The Investigations Division also produced the following public report in FY 2018:

Fifth Periodic Report on Law Enforcement Professional Standards, Review of the Training Bureau at the New Jersey State Police

OSC investigators determined that NJSP is continuing to comply with professional standards designed to prevent discrimination, as they reviewed how public complaints alleging trooper misconduct are investigated and resolved. The report, issued in June 2018, found no significant violations but OSC did identify several steps that should be taken to further improve NJSP's process for handling such complaints.

Pursuant to state law, OSC is required to periodically review the performance of NJSP with regard to its continuing efforts to prevent racial and other forms of discrimination in its policies, practices and procedures and the state Office of Law Enforcement Professional Standards' (OLEPS) oversight of those efforts.

OSC investigators found problematic that NJSP had expanded the role of Troop Command in the review and classification of misconduct complaints to include investigative activities such as conducting interviews of the involved trooper and the complainant. Pursuant to NJSP policy, such activities are to be conducted by NJSP's Office of Professional Standards (OPS). Investigators noted several concerns with this expanded role, including the potential adverse legal consequences, and the report recommended that the state Office of the Attorney General review the appropriateness of this new process.

OSC's review also examined a sample of trooper misconduct investigations conducted during the time period of 2015 to 2016. While

OSC found no substantive issues with the handling of those matters, it did find that NJSP failed to complete about one-third of the investigations within the required 120-day time period. OSC recommended several improvements NJSP could make to ensure future compliance with this time requirement.

Investigators also found that OLEPS and NJSP were not in full compliance with NJSP's Standing Operating Procedure regarding the weekly review of public complaints called into NJSP's complaint hotline. OSC recommended that OLEPS and NJSP ensure that the weekly reviews are, in fact, taking place as required and that such reviews are properly documented.

Guidance and Referrals

The Investigations Division also provides guidance to local and state government entities to improve their practices and procedures. In FY 2018, the division also made 24 external referrals to other state, county and federal agencies in FY 2018, among them, the state Department of Education, the state Department of Transportation, the state Department of Environmental Protection, the Department of Community Affairs , the Election Law Enforcement Commission, and the state Department of Treasury.

Other referrals were made in-house to OSC's Audit, Procurement and Medicaid Fraud Divisions and are expected to result in future audits and investigations. The Investigations Division serves as a key resource for OSC's other divisions by helping to conduct witness interviews, and by using a variety of investigative tools to identify potential subjects for audits. Conversely, the Investigations Division also conducts inquiries based on incoming referrals from other state agencies. Our joint efforts with these other agencies continue to build a synergy that has led to increasingly robust investigative efforts across state government.

GOVERNMENT WASTE & MISMANAGEMENT HOTLINE

TOLL FREE: 1-855-OSC-TIPS
(1-855-672-8477)

EMAIL: comptrollertips@osc.nj.gov
WEBSITE: www.nj.gov/comptroller

MEDICAID FRAUD DIVISION

OSC's Medicaid Fraud Division (MFD) serves as the State's independent watchdog for New Jersey's Medicaid, FamilyCare, and Charity Care programs and works to ensure that the state's Medicaid dollars are being spent effectively and efficiently.

Josh Lichtblau joined the OSC as Director of the MFD in July 2015 after more than two decades serving the interests of New Jersey citizens as a Deputy Attorney General, Assistant Attorney General and as Director of a major state regulatory agency.

As part of its oversight role, MFD audits and investigates health care providers, managed care organizations (MCOs), and Medicaid recipients to identify and recover improperly expended Medicaid funds, refer cases of suspected criminal fraud to appropriate criminal prosecutors, and to ensure that only those who qualify are enrolled in Medicaid. In performing these functions, MFD considers the quality of care provided to Medicaid recipients and pursues civil and administrative enforcement actions against those who engage in fraud, waste, or abuse within the Medicaid program. MFD also excludes or terminates ineligible health care providers from the Medicaid program where necessary and conducts educational programs for Medicaid providers and contractors. Moreover, MFD oversees a contractor that identifies and collects payments from insurance carriers when Medicaid has paid for goods or services and there was a third-party coverage that could have paid for such claims.

New Initiatives

Ocean County Recipient Voluntary Disclosure Pilot Program

On September 12, 2017, OSC launched an innovative pilot program designed to recapture improperly spent Medicaid funds and to remove from Medicaid individuals who were not entitled to participate in this state and federally funded program. As a result of the Program, OSC recovered $2,246,978 in improperly spent Medicaid funds including penalties and referred 159 program participants to be removed from the Medicaid program. In 2018, OSC issued a report titled "Ocean County Recipient Voluntary Disclosure Program: A Summary and Discussion of the Program" which is available on our website

Cooperative Disability Investigations Unit

OSC has partnered with the United States Social Security Administration (SSA) and SSA's Office of the Inspector General to form New Jersey's Cooperative Disability Investigations Unit (CDIU). CDIU is one of Social Security's most successful anti-fraud initiatives, contributing to the integrity of many federal, state, and local assistance programs, including the Medicaid program. CDIU brings together personnel from SSA and state and local agencies to review suspicious or questionable Social Security disability claims and to investigate suspected cases of disability fraud, which, when identified, often includes Medicaid fraud. In such cases, CDIU seeks to recover for all benefits that were improperly obtained, including Medicaid benefits.

MFD's FY 2018 Statistics

In FY 2018, MFD recovered $90.2 million in improperly paid Medicaid funds. Those funds were returned to both the state and federal budgets. MFD also excluded 364 ineligible providers from participating in the Medicaid program this past fiscal year.

The division received 2,996 complaints, tips, or other submissions (collectively "complaints") from a variety of outlets, including the MFD Hotline, OSC website, referrals from other state and federal agencies, and correspondence from the public. All of the complaints received by OSC resulted in action. Pursuant to its internal processes, members of OSC's Medicaid Fraud Division reviewed the substance of the complaints to determine whether additional steps were warranted. As a result of that review, OSC opened cases on approximately 129 complaints and referred the majority of the remaining complaints to other more appropriate entities for handling, including the state Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), professional licensing boards, county welfare agencies, and certain state vendors responsible for providing services related to the Medicaid Program.

The division also received and reviewed a total of 171 high-risk provider applications and denied six of these. In addition, the division referred one case to the Medicaid Fraud Control Unit (MFCU) within the state Office of the Attorney General and an additional eight matters to other law enforcement bodies, including county prosecutors' offices and the Internal Revenue Service.

As part of its educational outreach program, MFD presented provider training for behavioral health, and long-term care facility providers. These educational outreach efforts were staged in coordination with the MFCU, the state Department of Human Services' Division of Medical Assistance and Health Services, and the MCOs that participate in the New Jersey Medicaid market to help attendees identify and protect against fraud, waste, and abuse within the Medicaid program. Speakers emphasized the importance of properly documenting claims and explained what preventative measures these providers should implement to proactively prevent Medicaid fraud waste and abuse.

Operating under the authority of the Medicaid Program Integrity and Protection Act, MFD provides oversight concerning the following programs:

- New Jersey's Medicaid program provides health insurance to qualifying parents and caretakers and their dependent children, along with pregnant women and individuals who are aged, blind or disabled. For example, the program pays for hospital services, doctor visits, prescriptions, nursing home care, and other health care needs.

- New Jersey FamilyCare is a Medicaid-type program for uninsured children whose family income is too high to qualify for traditional Medicaid but not high enough for the family to afford private health insurance. Combined, the Medicaid and New Jersey FamilyCare programs serve more than 1.7 million New Jersey residents.

- The New Jersey Hospital Care Payment Assistance Program, commonly known as Charity Care, provides free or reduced-charge services to patients who require care at New Jersey hospitals.

MFD's oversight focuses on Medicaid health care providers, MCOs and Medicaid recipients, while coordinating oversight efforts among all state agencies that administer Medicaid program services.

MFD consists of three units: Fiscal Integrity, Investigations and Recovery/Regulatory.

Fiscal Integrity Unit

The Fiscal Integrity Unit focuses on data mining, regulatory and compliance audits, and liability of third parties for expenses improperly paid by the Medicaid program.

Data Mining

MFD's data mining group is involved in the initial stages of the process leading to the recovery of improperly paid Medicaid dollars. The unit employs a variety of analytical techniques to detect anomalous or abnormal claims submitted by providers. Its findings often lead to MFD audits and investigations. In order to identify patterns of anomalous Medicaid reimbursements, MFD's data miners review Medicaid fraud reports and investigations from other states and work with a range of additional resources to acquire pertinent data. The data mining group also monitors the Surveillance and Utilization Review System, a federally mandated exception reporting system, for indications of waste, fraud and abuse and to detect duplicate, inconsistent or excessive claim payments.

In total, MFD's data mining group referred 49 cases of anomalous claims behavior to MFD's audit and investigations units in FY 2018.

Audit

MFD conducts audits to ensure that Medicaid providers comply with program requirements, to identify improper billings submitted by Medicaid providers and to deter fraud, waste, and abuse in the Medicaid program.

Contract Compliance Review of the State of New Jersey's Personal Preference Program

MFD conducted an audit of the state's Personal Preference Program (PPP) and found that the state Department of Human Services, Division of Disability Services (DDS) had failed to adequately oversee the state's PPP contractor, Community Access Unlimited, Inc. (CAU). OSC also found that CAU had violated the terms of its state contract by, among other things, retaining unspent public funds that it was required to return to the Medicaid Program annually.

The audit recommended that DDS and CAU address the return of any unspent program funds and related interest, a process that remained ongoing at the close of FY 2018.

MFD's audit group, working with other MFD personnel, also reviews, oversees, and coordinates audit work performed by other entities that have contracted with the state to audit specific types of providers. For example, the Affordable Care Act requires each state's Medicaid system to contract with a Recovery Audit Contractor to identify and recoup overpayments to Medicaid providers. MFD oversees the state's contract with this external auditor, coordinates the audits and reviews audit findings. In total, during FY 2018, MFD oversaw the recovery of more than $9.3 million in overpayments that were identified by New Jersey's Recovery Audit Contractor.

Third Party Liability

Under federal law, if a Medicaid recipient has other insurance coverage, Medicaid, as the payor of last resort, is responsible for paying the medical benefits only in cases where the other coverage has been exhausted or does not cover the service at issue. Thus, a significant amount of the state's Medicaid recoveries are the result of the efforts of MFD and its

contracted vendor to obtain payments from third-party insurers responsible for services that were inappropriately paid with Medicaid funds. MFD's Third Party Liability group, working with an outside vendor, seeks to determine whether Medicaid recipients have other insurance and recovers money from private insurers or providers in cases where Medicaid has paid claims for which the private insurer was responsible. In addition, the Third Party Liability group also manages a daily hotline for the public and providers to call and update third-party commercial insurance information for Medicaid recipients and ensure that Medicaid recipients receive their benefits when improperly denied.

Investigations Unit

MFD's Investigations Unit is charged with investigating inappropriate conduct on the part of Medicaid, FamilyCare, and Charity Care providers and recipients. In FY 2018, the Investigations Unit opened 309 cases and made referrals to other agencies such as the MFCU, state licensing boards, county prosecutors' offices, and various county boards and social services entities. MFD investigators receive allegations of fraud and waste from many sources, including MFD's Hotline and website as well as from other state and federal agencies. In total, MFD received 2,941 telephone Hotline tips in FY 2018.

To ensure the integrity of Medicaid's enrollment process, the Investigations Unit also conducts background checks of high-risk providers applying to participate in the program. In FY 2018, the Investigations Unit received 171 such applications from pharmacies, medical equipment providers, adult medical day care centers, physicians, and others. The unit denied six of those applications based on a number of concerns. The unit also conducts unannounced pre-enrollment and post-enrollment site visits of Medicaid providers. During the site visits, MFD investigators verify that the applying entity actually exists at the address listed, that it complies with state and federal requirements, and that the information supplied on the provider application is accurate.

In FY 2018, the work of the Investigations Unit resulted in the recovery of $10.5 million in misspent Medicaid funds.

Recovery/Regulatory Unit

The Recoveries and Exclusions Unit (R&E) recovers overpayments that are identified by MFD's auditors and investigators and determines when to exclude a Medicaid provider from the Medicaid program. In cases of fraud, R&E may also assess additional penalties against a provider.

Once MFD identifies overpayments to be recovered, R&E sends out appropriate notices, recovers the money from providers and recipients on behalf of the state, and works with federal authorities to ensure that the federal government receives its share of any recovery. In instances where R&E cannot resolve an overpayment through a settlement, MFD will take administrative action against the provider or recipient.

Providers can be excluded from participating in the Medicaid program for numerous reasons including criminal convictions or exclusions by another state or the federal government. Adverse action taken by MFD against these individuals are part of an ongoing OSC effort to ensure that only those medical providers who maintain the highest integrity may participate in the Medicaid program.
In FY 2018, MFD excluded 364 providers – including physicians, pharmacists, dentists, social workers, and home care nurses' aides – for failing to meet the standards for integrity in the Medicaid program.

MFD's Regulatory Officers are licensed attorneys who handle MFD-initiated fraud and abuse cases through the administrative law

process, from settlement negotiations through Office of Administrative Law Fair Hearings as State Agency Representatives. The Regulatory Officers provide regulatory guidance to the other units of the division which include but is not limited to legal research as well as case reviews for statutory and regulatory support. MFD's Regulatory Officers also work with other state departments to propose new Medicaid program regulations designed to improve program integrity and strengthen Medicaid rules.

PROCUREMENT DIVISION

OSC's Procurement Division, staffed by attorneys specializing in public contract law, fulfills the office's statutory mandate to review public agency procurements from more than 1,900 public entities. In FY 2018, the Procurement Division received notice of 699 contracts, including 165 contracts that were valued at more than $10 million and pre-screened pursuant to OSC's statutory authority.

Barbara Geary is the Director of the Procurement Division. She has more than 20 years of contracting experience in both the public and private sectors. She became Director in June 2015 after joining the OSC as an attorney in 2011.

In addition to reviewing contracts, the attorneys of the Procurement division work with OSC's audit teams and provide guidance concerning the many legal issues that arise during the course of an audit. Division attorneys also assist in investigations and other projects.

As prescribed by statute, the Procurement Division pre-screens the legality of the proposed vendor selection process for all government contracts exceeding $10 million and has post-award oversight responsibilities for contracts exceeding $2 million. OSC's procurement reviews cover contracts awarded by municipalities, school districts, state colleges, and state authorities and departments, as well as other public boards and commissions with contacting authority. Regulations promulgated by OSC assist public entities in determining whether OSC review is required for a particular contact and provide guidance as to how OSC reviews are conducted.

Procurements subject to OSC review cover a wide range of contracts, including land sales, leases, and purchases of goods or services.

For contracts exceeding $10 million, the Procurement Division works closely with government entities as they formulate specifications, intervening when necessary to achieve procurements that comply with all applicable laws, regulations and rules. Errors are corrected before the contract advertisement takes place.

The review of contracts valued at more than $10 million begins with judging the appropriateness of the vendor selection process proposed by the contracting unit. The reviewing attorney assesses, for example, whether the procurement requires sealed bids or whether other contracting procedures are appropriate. The reviewer further determines whether the government unit has followed all other statutes, rules and regulations applicable to the procurement. Additional questions asked include: Has the governing body, department or authority approved the procurement? Are the specifications designed to ensure a competitive process? Is the method of advertisement appropriate?

For contracts exceeding $10 million, the contracting unit must submit notification to OSC 30 days before advertisement or otherwise entering into a contract. On occasion, contracting units request flexibility in that time period. Accordingly, OSC has set forth a procedure through which government entities can seek a waiver of the 30-day time period. OSC works closely with contracting units needing such a waiver to ensure that contract solicitations can be made in a timely manner.

Contracts exceeding $2 million, including $10 million contracts previously submitted for pre-approval, are examined post-award. The focus post-award remains on compliance with laws and regulations. In addition, a determination is made as to whether the award followed the guidelines set forth in the solicitation. For example: Did the lowest bidder get the award in a sealed bid determination that appropriately considered alternates? Did the governing body approve and certify funding for the contract? Are the records submitted sufficient to justify the governing body's action? Is there any evidence of collusion or bid rigging?

To ensure that OSC's contract reviews result in a better contracting process in both the short and long terms, the Procurement Division consults directly with contracting units during and following reviews. Depending upon the nature of the review and any deficiency noted, the Procurement Division might hold an exit interview, prepare a written determination or simply provide oral guidance to the contracting unit. In cases involving serious deficiencies, OSC may refer contracts for audit review or further civil or administrative action, such as actions to recover monies expended. Criminal activity is referred to appropriate law enforcement authorities.

Among the most frequent errors OSC encountered were the misstatement of the Business Registration Certificate requirement as set forth in N.J.S.A. 52:32-44, vague or confusing evaluation criteria and inadequate descriptions of services in the scope of work.

The Procurement Division also has added oversight responsibilities with regard to contracts connected to Superstorm Sandy. Under Executive Order (EO) 125, the division is required to review any and all state procurements that involve the expenditure of federal reconstruction resources connected to Sandy recovery. The division then posts Sandy-related contracts on OSC's Sandy Transparency website. As a result, in FY 2018, the Procurement Division reviewed a variety of purchasing practices that otherwise would have been below OSC's statutory monetary threshold for review.

The division reviews proposed procurements subject to EO 125 on an immediate basis, providing guidance and feedback to agencies to ensure compliance with public contracting laws without sacrificing expediency in the state's recovery process. In FY 2018, the division reviewed 42 contracts and purchase orders pursuant to EO 125 in furtherance of our state's rebuilding and recovery effort.

In all, the Procurement Division received notice of 699 contracts for review in FY 2018. Of those contracts, 165 of them were valued at more than $10 million and were pre-screened pursuant to OSC's regular statutory authority. OSC attorneys took corrective action in 81 (49 percent) of those pre-screened contracts to ensure the legality of the procurement process. Some notable contracts reviewed include: the estimated $400 million contract concerning the Medicare Advantage Plan for the state employee and school employee health benefits programs; the $18 million New Jersey Transit contract for the replacement of the Henderson Street substation in Hoboken that was damaged during Superstorm Sandy; and contracts for the construction of new public school facilities in Camden ($100 million contract), Paterson ($53 million contract), North Brunswick ($47 million contract) and Pemberton ($43 million contract).

The Procurement Division also reviewed 374 contracts valued between $2 million and $10 million. In these contracts, the Procurement Division found a 40 percent error rate. In each case, the division gave guidance to the contracting entity to ensure that the errors are not repeated.

Educational Outreach

In FY 2018, the division continued its extensive outreach to government contracting units across the state to review their procurement processes and specific compliance issues identified by OSC. OSC's Procurement Director also participated on various government-related panels discussing OSC's statutory authority to review public procurements.

Our redesigned Sandy Transparency website, http://nj.gov/comptroller/sandytransparency/, provides the public with a place to view the allotment and expenditure of federal Sandy funds, to research information about Sandy programs and to examine detailed documents from Sandy-related contracts.