



New York State Comptroller
THOMAS P. DiNAPOLI

2020–2021 Annual Report on Audits of State Agencies and Public Authorities

January 2022

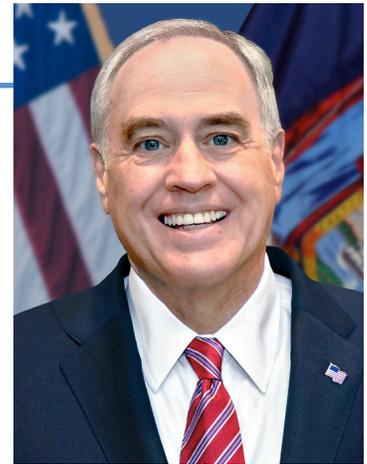
Message from the Comptroller

January 2022

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

State government officials are the stewards of the State's assets and the public's trust. Our audits keep New Yorkers informed on how well agencies and authorities are living up to that responsibility, and sound a call to action when needed. This annual report summarizes the results of the State government audits my staff conducted for the 2020-21 reporting year. This office remains committed to helping officials manage government resources efficiently and to protecting taxpayer assets. I hope that New York public officials and citizens will find this report useful and informative.

Thomas P. DiNapoli
State Comptroller



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About the Annual Report

As required by law, this annual report summarizes the results of all the State agency and public authority audit reports issued by the Office of the State Comptroller from October 1, 2020 through September 30, 2021. It does not include audits of New York City agencies, local governments, or other entities, as these are not included in the statutory requirements. The audit summaries in this report are divided into 8 areas: Health and Human Services; Education; Transportation; Government Support; Economic Development and Housing; Other State Agencies and Public Authorities; Audit Initiatives; and Special Reports. An accompanying volume lists, by State agency or public authority, the audit reports issued during the preceding five-year period—October 1, 2015 through September 30, 2020.

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

Introduction

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

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

Fiscal Impact

For the reporting year 2020-21 (October 1, 2020 through September 30, 2021), SGA issued 76 reports addressing the operations of State agencies and public authorities. Auditors identified nearly \$388 million in actual cost savings at these agencies and authorities. These savings have already been achieved, or will be achieved, with the implementation of audit recommendations. Auditors also identified \$203.5 million in potential savings. In these cases, more action is usually required to realize the savings (e.g., legislative action or agency follow-up investigations with vendors to determine exact amounts).

The following table provides an overall summary of the fiscal impact associated with certain findings from the reports issued in reporting year 2020-21. Auditors estimate that if the agencies and authorities implement the recommendations contained in these reports, they could realize a total of more than \$2.21 billion in monetary benefits (which includes non-recoverable overpayments that, once corrective actions are taken, can be avoided in the future).

Audit Cost Savings for Reporting Year 2020–21

Fiscal Category	Actual	Potential	Totals
Cost Recovery	\$312,790,273	\$47,879,279	\$360,669,552
Cost Avoidance	–	142,465,285	142,465,285
Revenue Enhancement	75,314,731	13,100,502	88,415,233
Subtotals	\$388,105,004	\$203,445,066	\$591,550,070
Non-Recoverable Overpayments & Questionable Transactions			1,616,225,122
Total Fiscal Impact			\$2,207,775,192

Agency Accountability

According to Section 170 of the Executive Law, when a State entity is audited by the State Comptroller, the executive of that entity must report to the Governor, the State Comptroller, and the leaders of the Legislature and the legislative fiscal committees, advising them on steps taken to implement the State Comptroller’s recommendations and, where any particular recommendations were not implemented, explaining the reasons why. (Section 170 is not applicable to New York City agencies.) The State Comptroller also performs follow-ups to assess auditees’ progress in implementing prior audit recommendations.

In reporting year 2020-21, SGA issued 31 follow-ups, reviewing progress on a total of 132 recommendations. Of these recommendations, 110 (83 percent) have been fully or partially implemented, as detailed in the following table:

Agency	Report Number	Number of Recommendations		
		Total	Implemented	Percentage
Health and Human Services				
Department of Health	2019-F-59	11	4	36%
	2020-F-3	6	6	100%
	2020-F-8	6	5	83%
	2020-F-15	6	6	100%
	2020-F-22	10	10	100%
	2021-F-4	3	2	67%
Office for the Aging	2020-F-27	5	5	100%
Office for People With Developmental Disabilities	2020-F-26	3	1	33%
	2021-F-1	8	4	50%
Office of Children and Family Services	2020-F-11	2	1	50%
	2021-F-6	4	2	50%
Education				
City University of New York	2021-F-2	3	3	100%
State Education Department	2020-F-17	5	5	100%
State University of New York	2020-F-32	2	2	100%
	2021-F-7	4	4	100%
	2021-F-8	2	2	100%
Transportation				
Niagara Frontier Transportation Authority	2020-F-28	2	2	100%
Rochester–Genesee Regional Transportation Authority	2020-F-30	2	2	100%
Government Support				
Department of Civil Service / New York State Health Insurance Program	2020-F-23	5	5	100%
	2020-F-24	6	6	100%
	2020-F-25	2	2	100%

Office of General Services	2020-F-18	3	3	100%
	2021-F-12	3	2	67%
Office of Information Technology Services	2020-F-21	2	2	100%
Economic Development and Housing				
Homes and Community Renewal	2020-F-19	7	7	100%
Other State Agencies and Public Authorities				
Department of Agriculture and Markets	2021-F-9	3	3	100%
Department of Motor Vehicles	2020-F-6	5	5	100%
	2021-F-3	2	2	100%
Department of State	2021-F-11	2	1	50%
Gaming Commission	2020-F-31	4	2	50%
Public Service Commission	2021-F-5	4	4	100%
Totals	31	132	110	83%

Audit Impairments and Impediments

State agency and public authority officials have a responsibility to the public to provide access to information to those who oversee their actions, such as OSC. Transparency and accountability are essential cornerstones of good government. When public officials are not transparent about and accountable for their actions, there is an increased risk that internal controls will not function properly—and less assurance that program goals and objectives will be accomplished efficiently and effectively. Denial of, or excessive delay in, auditors' access—or refusal of their direct access—to relevant documents or key individuals leads to incomplete, inaccurate, or significantly delayed findings or recommendations. This, in turn, may prevent agencies from promptly addressing serious problems, and deprive decision makers and the public of timely critical information regarding the agency's performance.

In accordance with professional standards, OSC auditors are required to report instances where management's refusal to share all available, relevant evidence constitutes an impairment of audit work. For the reporting year 2020-21, two agencies significantly delayed, obstructed, or otherwise impaired the scope of audits.

Agency Delays and Obstruction

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

Access Controls Over Selected Critical Systems (2020-F-11). This audit required access to confidential and sensitive information, for which auditors entered into a confidentiality agreement with OCFS. However, it took several months and repeated requests by auditors before OCFS provided partial information. OCFS also sought to impose additional access restrictions based on the confidentiality agreement, finally agreeing to make the information available only via in-person review with OCFS officials present. While this arrangement ultimately provided some assurance for auditors to draw their conclusions, it was an unnecessarily burdensome way to conduct the testing.

- **Port Authority of New York and New Jersey (PANYNJ)**

Selected Aspects of Leasing Practices for Real Estate Department, Aviation, World Trade Center, and Leasing of Properties (2019-S-9). Auditors experienced inordinate delays in obtaining records from PANYNJ. Documents that should have been on hand were not provided for months. In addition, where essential records were missing, auditors tried to gain the information from an alternate source, PANYNJ's leasing agent. However, auditors' multiple attempts were obstructed for want of a non-disclosure agreement (NDA), even though an NDA existed with PANYNJ. Six months after PANYNJ instructed the leasing agent to make the documents available, the leasing agent still had not provided the documents.

Lack of Cooperation

- **Port Authority of New York and New Jersey (PANYNJ)**

Selected Aspects of Accommodations for Passengers With Disabilities (2019-S-41). Auditors were limited in evaluating and assessing internal controls related to the audit objective as they did not have access to PANYNJ officials who establish internal controls. Auditors attempted to contact PANYNJ officials throughout the audit; however, they were not made available despite repeated requests. PANYNJ also did not respond to requests for policies, procedures, or other documents related to the audit objective.

Audits of Special Significance

During the past year, SGA allotted more resources to audits designed to identify system and control deficiencies and policy non-compliance issues that render State programs vulnerable to overcharging, improper claims, and abuse. Some of SGA's most significant audit findings in 2020-21 are discussed below.

- **Medicaid Program**

Medicaid is a federal, state, and locally funded government program that provides a wide range of medical services to those who are economically disadvantaged and/or have special health care needs. For the year ended September 30, 2021, New York's Medicaid program had approximately 7.6 million enrollees and about \$69.8 billion in claim costs. Nine Medicaid audits identified more than \$441 million in actual and potential cost savings to the State and nearly \$1.6 billion in questionable and non-recoverable overpayments. This included nearly \$275 million in actual cost savings and more than \$1 billion in questionable overpayments for claims that were not in compliance with ordering, prescribing, referring, and attending provider requirements ([2019-S-2](#)). Auditors also identified potential cost savings of more than \$122 million annually on payments of Medicare Part C claims ([2020-S-65](#)).

- **New York State Health Insurance Program (NYSHIP)**

NYSHIP, administered by the Department of Civil Service, provides health insurance coverage to more than 1.2 million active and retired State, local government, and school district employees, and their dependents. NYSHIP's primary health insurance program is the Empire Plan, which serves about 1.1 million members and costs the State and local governments about \$9.5 billion each year. Three NYSHIP audits identified more than \$36 million in actual and potential cost savings to the State and nearly \$40 million in questionable and non-recoverable overpayments, including nearly \$31 million dollars in claims that were paid for pharmacy services provided during periods when members were not eligible ([2020-S-17](#)).

- **Metropolitan Transportation Authority (MTA)**

The MTA operates North America's largest transportation network, serving a population of 15.3 million people across a 5,000-square-mile travel area. SGA issued four reports on the MTA, including: contract oversight at the Long Island Rail Road ([2018-S-70](#)); compliance monitoring at Capital Construction ([2019-S-14](#)); response planning for unexpected events at Metro-North Railroad ([2019-S-55](#)); and fare evasion at New York City Transit and MTA Bus Company ([2019-S-7](#)).

Fare evasion has been a chronic problem for the MTA and a significant source of revenue loss. The estimated revenue loss has risen steadily, from \$105 million in 2015 to \$225 million (\$97 million from subway and \$128 million from bus) in 2018. In 2019, the MTA and the New York City Police Department launched a joint Fare Enforcement and Worker Safety Program, with the goal of reducing fare loss to below 2017 levels of approximately \$150 million. According to data provided by MTA officials, as of July 30, 2020, more than \$24 million had been spent on the Program, including more than \$8 million in MTA Police Department overtime costs. Auditors found that, despite the significant investment, the Program did not have the intended impact on revenue: instead of reducing fare losses to 2017 levels, fare evasion actually grew to \$300 million. Furthermore, the MTA significantly understated the Program costs as the amount it reported does not include base salary and fringe benefits costs for the 1,000 MTA Police Department officers deployed in the effort. Therefore, the true cost of the Program is significantly more than reported.

- **Special Education**

SGA issued eight audit reports assessing preschool special education providers' compliance with the State Education Department's Reimbursable Cost Manual (RCM). These audits are part of a continuing series of audits of the special education sector. In December 2013, the Executive signed legislation mandating the Office of the State Comptroller to audit the more than 300 preschool special education providers in this \$1.4 billion program. Auditors found non-compliance with the RCM's claims requirements, and identified disallowances totaling more than \$1.7 million stemming from unsupported and/or inappropriate costs charged to the audited programs.

Audit Summaries

Health and Human Services

Department of Health

(DOH)

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

Audits of the Medicaid Program

The New York State Medicaid program is a federal, state, and locally funded program that provides a wide range of medical services to individuals who are economically disadvantaged and/or have special health care needs. DOH's eMedNY computer system processes Medicaid claims submitted by providers for services rendered to Medicaid-eligible recipients, and it generates payments to reimburse providers for their claims. For the 2020-21 reporting year, OSC issued 12 Medicaid program reports, as follows:

- **Improper Medicaid Payments for Individuals Receiving Hospice Services Covered by Medicare (2018-S-71).** Hospice is a coordinated program of home and/or inpatient care that treats terminally ill individuals and their families. Hospice programs provide palliative care, including nursing, physician, and counseling services; home health aides; physical and occupational therapy; medical appliances and supplies; and drugs. When individuals are enrolled in both Medicaid and Medicare (referred to as dual-eligibles), Medicare is the primary payer for Medicare-covered hospice services, while Medicaid is the payer of last resort. Several entities, including hospice providers, Medicaid Managed Long-Term Care (MLTC) plans, and Local Departments of Social Services (LDSSs), are responsible for coordinating services on behalf of individuals receiving hospice care to avoid duplicate or excessive services and payments. **Key findings:** Auditors identified about \$50 million in actual and potential Medicaid overpayments, cost-saving opportunities, and questionable payments for services provided to dual-eligibles enrolled in Medicare-covered hospice, as follows: \$5.5 million in actual and potential overpayments for services that are not allowed in conjunction with hospice (e.g., Assisted Living) and services that are covered by the Medicare hospice benefit (e.g., nursing care and drugs); \$370,506 in actual and potential overpayments for personal care services in excess of 24 hours in a single day; \$39.8 million in questionable payments for personal care (totaling \$35.7 million) and durable medical equipment and supplies (totaling \$4.1 million) that may have been eligible to be covered by the Medicare hospice benefit; and \$4.3 million in unnecessary payments for nursing home room and board under managed care. **Key recommendations:** Review the \$5.9 million in actual and potential overpayments and ensure proper recoveries are made; improve controls to prevent improper payments for services provided to dual-eligibles receiving Medicare-covered hospice care; and advise MLTC plans, LDSSs, and hospice providers to coordinate care and financial obligations.

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- **Improper Medicaid Payments for Claims Not in Compliance With Ordering, Prescribing, Referring, and Attending Requirements (2019-S-2).** Pursuant to the Affordable Care Act, New York's Medicaid program requires that physicians and other health care professionals who order, prescribe, refer, or attend (OPRA) Medicaid services be appropriately screened and enrolled in Medicaid and their National Provider Identifier (NPI) be included on Medicaid claims. Through the screening and provider enrollment process, DOH gains a level of assurance over the OPRA provider's validity to provide Medicaid services. Additionally, DOH must verify that providers are not prohibited from participating in a Medicaid program by the federal government. **Key findings:** System processing weaknesses in eMedNY allowed payments for Medicaid claims that did not contain an appropriate NPI, resulting in: \$1.5 billion in payments for clinic and professional claims without an appropriate referring or attending NPI; \$57.3 million in payments for pharmacy claims without an appropriate prescriber NPI; and \$19.4 million in payments for claims that contained an OPRA NPI but should not be included on Medicaid claims or should be further reviewed by DOH due to past misconduct. **Key recommendations:** Review Medicaid payments for claims without an appropriate OPRA NPI identified by the audit and determine an appropriate course of action; and enhance system controls to prevent improper Medicaid payments for claims not containing an appropriate OPRA NPI.
 - **Claims Processing Activity October 1, 2019 Through March 31, 2020 (2019-S-53).** During the six-month period ended March 31, 2020, eMedNY processed over 227 million claims, resulting in payments to providers of more than \$36 billion. **Key findings:** The audit identified about \$2.9 million in improper Medicaid payments, including: \$978,966 for inpatient claims that were billed at a higher level of care than was actually provided; \$740,920 for newborn birth claims with inaccurate information, such as birth weight, that allowed improper payments; \$513,427 for practitioner, pharmacy, clinic, inpatient, and episodic home health care claims that did not comply with Medicaid policies; \$479,907 for claims that were billed with incorrect information pertaining to other health insurance coverage; and \$136,257 for psychiatric claims that were billed in excess of permitted limits. By the end of the audit fieldwork, about \$2.1 million of the improper payments had been recovered. Auditors also identified 14 Medicaid providers who were charged with or found guilty of crimes that violated laws or regulations governing certain health care programs. By the end of the audit fieldwork, DOH had removed 11 of the providers from the Medicaid program, entered into settlements with two providers, and was determining the program status of the remaining provider. **Key recommendations:** Auditors made 10 recommendations to DOH to recover the remaining inappropriate Medicaid payments and improve claims processing controls.
 - **Improper Medicaid Payments for Misclassified Patient Discharges (2020-S-8).** When a hospital bills Medicaid for an inpatient stay, the hospital reports certain information on its claims, such as the patient's diagnoses and services received, as well as the time and date of admission and when the services ended. This information is used to calculate the payment made to the hospital. Hospitals must use patient

status codes to indicate whether the patient was transferred or discharged at the end of their stay because payments may vary significantly depending on whether a patient is transferred or discharged. Claims are at a high risk of overpayment if the first hospital inappropriately reports an actual transfer as a discharge. **Key findings:** Auditors identified 2,048 fee-for-service (FFS) claims, totaling \$28.5 million, for Medicaid recipients who were reported as discharged from a hospital but then admitted to a different hospital within 24 hours of the discharge (which often meets the definition of a transfer). Of a sample of 31 claims, totaling \$457,973, 15 claims were overpaid by \$252,107 because they were incorrectly coded as discharges when the patients were actually transferred to another facility. DOH does not have a process to identify and recover improper Medicaid payments for inpatient claims with incorrect patient status codes. **Key recommendations:** Review the \$252,107 in overpayments and recover as appropriate; review the remaining high-risk claims identified in this audit and recover overpayments as appropriate, ensuring prompt attention is paid to those providers that received the highest amounts of payments; and develop a process to identify and recover Medicaid overpayments for FFS inpatient claims that have a high risk of incorrect patient status codes such as those identified by this audit.

- **Claims Processing Activity April 1, 2020 Through September 30, 2020 (2020-S-22).** During the six-month period ended September 30, 2020, eMedNY processed over 151 million claims, resulting in payments to providers of more than \$38 billion. **Key findings:** The audit identified over \$9.7 million in improper Medicaid payments, including: \$4.5 million for claims with an incorrect retroactive rate adjustment; \$2.1 million for inpatient claims that were billed at a higher level of care than what was actually provided; \$892,790 for services rendered prior to, but billed during, the COVID-19 state of emergency that would have been denied had certain eMedNY edits not been relaxed in response to the crisis; \$844,172 for clinic, practitioner, pharmacy, inpatient, managed care capitation, and episodic home health care claims that did not comply with Medicaid policies; \$738,903 for newborn birth claims with inaccurate information, such as birth weight and diagnosis code, that allowed improper payment; \$486,951 for claims that were billed with incorrect information pertaining to other health insurance coverage that recipients had; and \$199,943 for psychiatric claims that were billed in excess of permitted limits. By the end of the audit fieldwork, about \$6.8 million of the improper payments had been recovered. Auditors also identified 13 Medicaid providers who were charged with or found guilty of crimes that violated laws or regulations governing certain health care programs. By the end of the audit fieldwork, DOH had removed three of the providers from the Medicaid program, and the remaining 10 providers had entered into federal settlements. **Key recommendations:** Auditors made 12 recommendations to DOH to recover the remaining inappropriate Medicaid payments and improve claims processing controls.

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- **Cost Saving Opportunities on Payments of Medicare Part C Claims (2020-S-65)**. For individuals who are enrolled in both Medicaid and Medicare (dual-eligibles), Medicare is the primary payer for medical services. Medicaid typically pays for cost-sharing liabilities, which include Medicare deductibles, coinsurance, and copayments. Under Medicare Part C, private companies administer Medicare benefits by offering different health care plans (known as Medicare Advantage Plans) and processing and paying claims for services. The Centers for Medicare & Medicaid Services (CMS) allows state Medicaid programs several options for paying the Medicare Part C cost-sharing. States can pay either the full Medicare cost-sharing liability, their standard Medicaid fee for a service, or a rate between those amounts established by the state and approved by CMS. In 2016, the New York State Legislature approved a plan for Medicaid to pay 85 percent of dual-eligibles' copayment or coinsurance on Medicare Part C outpatient claims, except for ambulance and psychology services, for which Medicaid pays 100 percent of the cost-sharing liability (inpatient services are also still paid at 100 percent). **Key findings:** New York's current Medicaid payment rules for Medicare Part C cost-sharing liabilities compared to the allowable alternatives have significantly different costs to the Medicaid program. If New York Medicaid had limited its cost-sharing so that the total payment (Medicare's payment plus what Medicaid was billed for the copayment or coinsurance) was no more than the typical Medicaid fee, it could have saved over \$419 million from July 1, 2016 to December 31, 2020. Auditors estimated that, based on the average savings for 2019 and 2020, the State could save over \$122 million annually using this reimbursement methodology. **Key recommendation:** Formally re-evaluate the existing Medicaid methodology for processing and paying Medicare Part C cost-sharing liabilities (including the necessity of exemptions to payment limitations for ambulance, psychology, and inpatient services), and engage other stakeholders, as appropriate.
 - **Improper Medicaid Payments for Recipients in Hospice Care (Follow-Up) (2019-F-59)**. The hospice program provides care to terminally ill individuals, with a focus on easing symptoms rather than treating the disease. Generally, when eligible Medicaid recipients elect hospice care, they waive their right to use Medicaid for curative services and a hospice organization assumes responsibility for all medical care related to the terminal illness. Medicaid reimburses hospice organizations an all-inclusive daily rate that covers all hospice services. However, if a Medicaid recipient is also enrolled in Medicare, Medicare is the primary payer and Medicaid is the secondary payer.

Initial Audit (2017-S-76). **Key findings:** Medicaid made more than \$8 million in overpayments for medical services provided to recipients receiving hospice care. Many of the overpayments occurred because DOH did not have a process to identify and track Medicaid recipients receiving hospice care, and the eMedNY claims processing system did not have controls to prevent payments to non-hospice providers for services that were non-allowable or duplicative or when hospice claims should have been covered by other insurance.

Follow-up findings: DOH had made little progress in addressing the problems identified; significant action was still required to prevent future Medicaid overpayments. Of the 11 recommendations from the initial audit, one had been implemented, three had been partially implemented, and seven had not been implemented.

- **Improper Medicaid Payments for Childhood Vaccines (Follow-Up) (2020-F-3).**

The Vaccines for Children Program (VFC Program) is a federally funded Medicaid benefit that provides free vaccines to eligible children younger than 19 years of age whose parents or guardians may not be able to afford them. The Centers for Disease Control and Prevention (CDC), which is responsible for implementing the VFC Program, purchases vaccines from drug manufacturers at a discount and distributes the vaccines to state health departments and certain local and territorial public health agencies at no cost. These agencies then distribute the vaccines at no cost to physicians and public health clinics enrolled in the VFC Program. Because the federal government purchases the vaccines, providers are not reimbursed for the cost of the vaccines but are paid a fee for administering them. For children enrolled in Medicaid, the Medicaid program pays the vaccine administration fee.

Initial Audit (2017-S-41). Key findings: Auditors identified \$32.7 million in improper Medicaid payments, which included payments for free vaccines and inaccurate payments for the administration fee. Of this amount, managed care organizations (MCOs) made improper payments to providers totaling \$29.8 million, and DOH made improper fee-for-service payments totaling \$2.9 million. The improper payments occurred because providers did not bill claims according to Medicaid policies and because of control weaknesses in the MCOs' and DOH's claims processing systems.

Follow-up findings: DOH had made some progress in addressing the problems identified, yet significant action was still required to prevent future Medicaid overpayments. The initial report's six recommendations had been partially implemented.

- **Improper Fee-for-Service Payments for Services Covered by Managed Care (Follow-Up) (2020-F-8).** DOH pays Medicaid providers using the fee-for-service (FFS) or managed care method. Under FFS, DOH pays providers directly for services rendered to Medicaid recipients. Under managed care, DOH pays managed care plans (Plans) a monthly premium for each Medicaid recipient enrolled in managed care, and the Plans then pay providers for services rendered to Plan members. Plans are responsible for providing most medical services to enrollees; however, some services are excluded from the Plans' benefit packages and are paid separately through FFS.

Initial Audit (2017-S-74). Key findings: Auditors identified over \$36 million in improper Medicaid FFS payments for services that should have been covered by the recipients' Plans. The majority of the improper payments occurred because the managed care enrollment information was not updated timely in the Medicaid eligibility files used to process Medicaid claims, particularly for newborns.

Follow-up findings: DOH had made some progress in addressing the problems identified. Of the initial report's six audit recommendations, two had been implemented, three had been partially implemented, and one had not been implemented. However, since the initial audit, auditors identified nearly \$7 million in new improper payments, indicating the need for further corrective and recovery actions.

- **Improper Payments for Sexual and Erectile Dysfunction Drugs, Procedures, and Supplies Provided to Medicaid Recipients, Including Sex Offenders (Follow-Up) (2020-F-15).** Federal and State laws prohibit Medicaid payment of drugs for the treatment of sexual or erectile dysfunction (collectively, ED) for all Medicaid recipients, including registered sex offenders. Medicaid must also not pay for ED drugs unless the drug has another Food and Drug Administration-approved use and the drug is prescribed for that other use, such as pulmonary arterial hypertension (PAH) or benign prostatic hyperplasia (BPH). State law also prohibits Medicaid payment for procedures and supplies used to treat ED for registered sex offenders.

Initial Audit (2018-S-16). Key findings: From April 1, 2012 to July 1, 2018, Medicaid made improper payments totaling \$933,594 for drugs, procedures, and supplies to treat ED, including \$63,301 paid on behalf of 47 sex offenders. Medicaid also made payments totaling \$13.5 million for ED drugs used to treat other medical conditions. However, of this amount, \$11.6 million in payments were made without verifying the recipient's sex offender status, as required, allowing Medicaid to pay \$285,641 for ED drugs on behalf of 14 sex offenders. Additionally, Medicaid made between \$2.8 million and \$5.2 million in questionable payments for ED drugs that treat BPH and PAH on behalf of recipients who did not have a diagnosis of BPH or PAH on their Medicaid claims submitted within two to six months of the drug prescription.

Follow-up findings: Of the initial report's six audit recommendations, one had been implemented and five had been partially implemented. While DOH had made some progress in addressing the problems identified, more improvements were needed to prevent payments for excluded ED drugs, procedures, and supplies for Medicaid recipients, including sex offenders. Further, DOH had not recovered a significant amount of the identified improper payments for ED drugs, procedures, or supplies.

- **Improper Managed Care Premium Payments for Recipients With Duplicate Client Identification Numbers (Follow-Up) (2020-F-22).** Each individual who applies for Medicaid benefits is assigned a unique Client Identification Number (CIN). Medicaid recipients may have multiple CINs assigned to them during the time they are in receipt of benefits; however, only one of the CINs should be active at a time. DOH's Medicaid claims processing and payment system relies on eligibility and enrollment information, including the assignment of CINs, from the NY State of Health, the State's online health care marketplace, and the downstate and upstate Welfare Management Systems to make appropriate Medicaid payments.

Initial Audit (2018-S-24). *Key findings:* Over \$102.1 million in improper managed care premium payments were made on behalf of 65,961 recipients with multiple CINs. Improper CINs resulted from incorrect/missing recipient demographic information and limited access to the multiple eligibility systems during the application process. DOH, Local Departments of Social Services, managed care organizations, and the Office of the Medicaid Inspector General all had separate processes and systems to identify and resolve multiple CINs, but there was no central tracking database.

Follow-up findings: DOH had made significant progress, including enhanced controls to prevent the creation of multiple CINs and recovery of nearly \$51 million, but additional action was still required to prevent future improper managed care premium payments. Of the initial report's 10 audit recommendations, eight had been implemented and two had been partially implemented.

- **Improper Fee-for-Service Payments for Services Covered by Managed Long-Term Care Plans (Follow-Up) (2021-F-4).** Managed long-term care (MLTC) plans (Plans) offer a range of services, such as home health care, nursing home care, dentistry, vision care, and durable medical equipment. DOH established contracts that identify the services that Plans must cover and pay for (benefit packages) in exchange for monthly premium payments for each member enrolled. Some services are excluded (i.e., carved out) from benefit packages and may be paid separately by Medicaid fee-for-service (FFS). The Medicaid program should not pay claims on a FFS basis for Plan-covered services.

Initial Audit (2018-S-65). *Key findings:* Auditors identified \$16.4 million in improper Medicaid FFS payments for MLTC-covered services. Of this amount, \$15.6 million was paid because DOH did not configure eMedNY system edits and MLTC benefit packages correctly, so eMedNY did not correctly identify certain services as the responsibility of the Plan. The remaining \$877,000 was improperly paid because, at the time eMedNY adjudicated the claim, the recipient was not enrolled in MLTC but was retroactively enrolled at a later date.

Follow-up findings: Of the initial report's three recommendations, two had been partially implemented and one had not been implemented. While DOH had made some progress in addressing the problems identified, further actions were still needed. For instance, from July 1, 2019 through February 15, 2021, auditors identified about \$4.3 million in additional improper Medicaid FFS payments for Plan-covered services.

Other Audits of DOH Oversight

Patient Safety Center Activities and Handling of Revenues (2019-S-15). The Patient Health Information and Quality Improvement Act of 2000 (Act) was enacted as a patient safety measure, allowing patients access to physician information. Pursuant to the Act's amendments to the Public Health Law (PHL), a Patient Safety Center (PSC) was

established within DOH for the purpose of maximizing patient safety, reducing medical errors, and improving the quality of health care through data reporting, collection, analysis, and dissemination as well as improving public access to health care information. DOH is responsible for monitoring and enforcing health care facilities' and individuals' compliance with applicable federal and State laws and regulations. Regulatory enforcement occurs through a formal resolution process, which may end in stipulated settlement agreements (Orders), including penalty amounts. Pursuant to PHL, a portion of the penalties imposed against facilities or individuals found to be in violation of certain sections of law is allocated to a special revenue fund created specifically to support PSC expenditures. DOH's Bureau of Accounts Management (Revenue) is responsible for overseeing the PSC account. **Key findings:** DOH needed to improve its oversight of PSC revenues and related activities to ensure that the PSC account is receiving all revenue due. A lack of formalized policies and procedures and poor internal communications contributed to PSC revenue either not being collected or not being properly allocated to the PSC account for PSC-related activities. While penalty payment plans are allowed for certain respondents, DOH did not monitor their compliance with these legally binding payment plans, and respondents are potentially not being held accountable for the full extent of the penalty imposed for their misconduct. Notably, while the enacted State budget provided DOH with an appropriation to spend from the PSC fund for non-personal service expenditures, PSC costs have been paid for by the General Fund—the major operating fund of the State—and federal funding. **Key recommendations:** Develop procedures to ensure that Revenue is informed of all Order codes that are applicable to the PSC account; take steps to enhance accountability over PSC account activities; and develop formal policies and procedures documenting the basis for approving Order terms, including fine amounts, payment plans, and referrals to licensing authorities.

Oversight of Registration, Licensing, and Inspection of Radioactive Materials Facilities & Radiation Equipment Facilities (2019-S-64). Radiation has many benefits and is used in a variety of applications, from medicine to industry. However, improperly handled, it poses dangerous risks to human health as well as the environment. DOH is responsible for licensing and inspecting approximately 1,100 radioactive materials facilities (RAM facilities), as well as registering and inspecting approximately 9,900 radiation equipment facilities that use diagnostic, mammography, and stereotactic equipment. Generally, facilities are inspected at a frequency commensurate with risk, ranging from one to five years; however, established standards allow additional time for inspection—a buffer that is intended to provide flexibility and logical extensions to the inspection intervals. Failure to promptly register, license, or inspect facilities that use radioactive materials or radiation equipment increases the risk that radioactive materials or equipment may be improperly handled or stored, and may expose employees, patients, and others to increased levels of radiation. **Key findings:** For the period January 1, 2017 through February 28, 2020, DOH completed 6,786 (94 percent) of RAM facility and radiation equipment facility inspections on time. However, 44 percent of those inspections were considered on time only because DOH used a buffer period that extended the established inspection time frame. Notably, DOH relied on the buffer a high percentage of time for higher-risk facilities. For 335 of the inspections that needed the buffer to be considered inspected on time, the facilities were not in compliance with established

standards; and for 88 of these inspections, the facilities were not in compliance during the prior inspection as well. DOH also did not complete all license actions (new applications, renewals, amendments) within its established one-year benchmark, which could potentially jeopardize the quality of DOH's licensing program and can have a direct bearing on public health and safety, as well as security. **Key recommendations:** Ensure that all required inspections are completed on time; continue to work toward reducing the backlog of pending licensing actions, and ensure that future licensing actions are completed within their established benchmark.

Office for the Aging (NYSOFA)

NYSOFA's mission is to help older New Yorkers be as independent as possible for as long as possible through advocacy, development and delivery of person-centered, consumer-oriented, and cost-effective policies, programs, and services that support and empower older adults and their families, in partnership with the network of public and private organizations that serve them.

Long-Term Care Ombudsman Program (Follow-Up) (2020-F-27). Within NYSOFA, the Office of the State Long-Term Care Ombudsman (Office) serves as an advocate and resource for both older adults and persons with disabilities who live in long-term care (LTC) facilities, such as nursing homes, assisted living, and board and care homes. About 1,500 facilities in the State house more than 160,000 residents who have a need for ombudsman services. The Office's responsibilities include helping ensure that residents have regular, timely, private, and unimpeded access to ombudsman services; identifying, investigating, and resolving complaints made by or on behalf of residents in a timely manner; establishing procedures for training authorized representatives and local ombudsmen and their staff; and systems advocacy, including analyzing and monitoring laws and regulations that relate to LTC facilities and submitting an annual report that covers progress and problems in providing services. The Office relies heavily on a large corps of trained volunteers to visit LTC facilities in the State, establish relationships with residents, and respond to resident complaints.

Initial Audit (2018-S-48). **Key findings:** Certain system-generated Office data may not have been sufficiently reliable for NYSOFA's use in analysis at the facility, regional program, or complaint level, which may limit its usefulness in decision making. Furthermore, many residents of LTC facilities lacked regular access to ombudsman services, due in part to a decline in the number of volunteers combined with a lack of paid regional program staff. Many facilities were not visited quarterly by an ombudsman, as recommended. In addition, many volunteers were not meeting training requirements.

Follow-up findings: NYSOFA had made significant progress in addressing the problems identified, having implemented all five recommendations from the initial audit.

Office for People With Developmental Disabilities (OPWDD)

OPWDD is responsible for coordinating services for nearly 140,000 New Yorkers with developmental disabilities, offering services directly via its 13 Developmental Disabilities Services Offices (DDSOs) throughout the State as well as a network of approximately 650 community-based service providers.

Compliance With Jonathan’s Law (Follow-Up) (2020-F-26). Enacted in May 2007, Jonathan’s Law expanded parents’, guardians’, and other qualified persons’ access to records relating to incidents involving family members residing in facilities operated, licensed, or certified by OPWDD, including both State- and community-based programs (Facilities). In response to any incident involving a patient receiving care and treatment, Facility directors are required to: provide telephone notification to a qualified person within 24 hours of the initial reporting of an incident; upon request by a qualified person, promptly provide a copy of the written incident report; offer to hold a meeting with a qualified person to further discuss the incident; and, within 10 days, provide the qualified person with a written report on the actions taken to address the incident (Actions Taken Report). In addition, upon written request, qualified persons may obtain records and documents related to reportable incidents within 21 days of either the conclusion of the investigation or the written request, whichever is later.

Initial Audit (2017-S-67). *Key findings:* OPWDD had not implemented processes to effectively monitor Facilities’ compliance with Jonathan’s Law. While Facilities had established practices for notifying qualified persons within the required time frame, 11 percent of incidents reviewed lacked support that the requisite notification was made within the required time frame, and 7 percent lacked support that an Actions Taken Report had been issued within the required time frame. Facilities did not always provide records to qualified persons when requested or did not provide them within 21 days of the request or the conclusion of the investigation.

Follow-up findings: OPWDD had made limited progress in addressing the problems identified in the initial audit report. Of the initial report’s three recommendations, one had been implemented and two had not been implemented.

Accountability and Surplussing of Vehicles (Follow-Up) (2021-F-1). Within the New York City region, four DDSOs—Metro NY (the Bronx and Manhattan), Brooklyn, Bernard M. Fineson (Queens), and Staten Island—oversee 118 State-run residences, including the transportation of clients to and from OPWDD-run residences. As of February 2021, these four DDSOs had a fleet of about 455 vehicles. About 134 of the 455 vehicles were assigned to the transportation offices of the four NYC DDSOs. Statewide policy requires vehicles be used only for official State business, and OPWDD’s Fleet Management Policy requires that a vehicle use log be maintained for all State vehicles to record specific trip information, such as the date and time of use, driver’s name, and purpose of the trip.

Initial Audit (2018-S-42). *Key findings:* OPWDD lacked sufficient controls over fleet vehicle management at the four NYC DDSOs to ensure that all vehicles were properly accounted for, that vehicles were used for official State business only, and that DDSOs were properly surplussing vehicles following a process that is fair and compliant with OGS requirements.

Follow-up findings: Although OPWDD had made some progress in correcting the problems identified, more improvements were still needed. Of the eight recommendations from the initial report, three had been implemented, one had been partially implemented, and four had not been implemented.

Office of Addiction Services and Supports (OASAS)

OASAS oversees one of the nation's largest and most diverse programs for the prevention and treatment of alcohol and substance abuse. Its mission is to provide quality, accessible, and cost-effective services that strengthen communities, schools, and families through alcohol and drug prevention treatment.

Oversight of Contract Expenditures of Palladia, Inc. (2020-S-5). In 2014, OASAS entered into a five-year \$45.6 million contract with Palladia to provide drug and addiction treatment services. During fiscal year 2017-18, Palladia operated 31 distinct programs, 10 of which were contracted with OASAS. These 10 programs served 603 individuals through residential treatment, outpatient treatment, and scattered-site housing programs. In December 2014, Palladia merged with, and began operating under, Services for the Underserved (SUS), an organization that offers housing, employment, skills-building, treatment and rehabilitation services. In 2017, Palladia and SUS entered into a management agreement whereby SUS would provide Palladia with administrative services. According to the contract, OASAS reimburses Palladia for its net operating expenses, up to the maximum budgeted amount for providing the contracted services. The expenses are reported by Palladia on its annual Consolidated Fiscal Reports and are subject to the requirements in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), OASAS' Administrative and Fiscal Guidelines for OASAS-Funded Providers (Guidelines), and the contract. *Key findings:* OASAS was not effectively monitoring the expenses reported by Palladia to ensure that reimbursed claims are allowable, supported, and program related. For the three fiscal years ended June 30, 2018, Palladia claimed \$2,508,682 in expenses that did not comply with the requirements in the CFR Manual, the Guidelines, and the contract, including \$1,679,913 in personal service expenses, \$779,458 in other than personal service expenses, and \$49,311 in unallowable and/or unsupported parent agency administration expenses. *Key recommendations:* Recover the \$2,508,682 in unallowable and/or unsupported costs from Palladia; establish additional monitoring controls and improve oversight to ensure that Palladia claims only actual expenses and that those expenses are allowable, reasonable, supported, and consistent with the CFR Manual, the Guidelines, and the contract; and ensure that Palladia

discloses all expenses and allocation methodologies during its budget process, specifically salary expenses shared between OASAS and non-OASAS programs and the details of those expenses included in parent agency administration costs.

Office of Children and Family Services (OCFS)

OCFS is charged with promoting the safety, permanency, and well-being of children, youth, families, and vulnerable populations in New York State. Its responsibilities encompass a wide range of social services programs, including foster care and adoption; child and vulnerable adult protective services; and juvenile justice. OCFS programs are administered by 58 local Departments of Social Services (Local Districts) throughout the State.

Access Controls Over Selected Critical Systems (Follow-Up) (2020-F-11). OCFS owns approximately 60 computer systems, which contain a broad range of confidential information necessary to support its programs and services. To ensure that only authorized users are allowed to access information stored on systems, agencies, such as OCFS, must follow New York State Information Technology (NYS IT) security policies and standards related to security and account management and access controls.

Initial Audit (2017-S-56). **Key findings:** For six OCFS systems containing confidential information, access controls were insufficient to prevent unnecessary or inappropriate access. OCFS had not performed required annual user reviews to identify user accounts with inappropriate access to OCFS systems. Also, OCFS did not keep accurate records of those individuals authorized to approve or manage access to its systems, maintain accurate inventory of systems, or classify the data on those systems, as required by NYS IT policy and standards. **Audit impairment:** OCFS officials introduced significant delays to the audit as a result of lack of cooperation and timely access to information necessary for audit work, which also limited the amount of testing auditors were able to perform.

Follow-up findings: OCFS had made progress in correcting the problems identified. Of the two recommendations from the initial audit, one had been implemented and one had not been implemented.

Oversight of Direct Placement of Children (Follow-Up) (2021-F-6). OCFS' Central Office is responsible for supervising and coordinating child welfare services, including child protective services, foster care, and preventive services. Preventive services focus on averting scenarios that could result in the placement of a child in foster care. An alternative to foster care is direct placement, where a child is placed in the direct custody of a relative or suitable person under the jurisdiction of the court. While most of the standards for foster care do not apply to children in direct placement, Local Districts are required to document that a placement can safely provide for the needs of the child and must also provide the court with information to make decisions regarding the safety and well-being of a child, such as details of the child's service plan and the family's progress. Information regarding children in direct

placement is tracked in CONNECTIONS, the system of record for child welfare in New York State. As of March 1, 2021, CONNECTIONS reported there were 3,738 children in New York State directly placed with caregivers via Family Court Act (FCA) Section 1017.

Initial Audit (2017-S-30). *Key findings:* OCFS did not maintain adequate oversight of direct placement to ensure that Local Districts comply with applicable laws and regulations and that children are placed in safe environments. Of 30 direct placement cases sampled, 10 lacked evidence that the Local District provided the courts with all critical case information needed to make decisions regarding children’s safety and well-being. Further, OCFS did not develop the same type of centralized standards, policies, or procedures for supervising all direct placement cases as for similar child welfare services, such as foster care, including minimum standards for home investigations. Additionally, direct placement data in CONNECTIONS was not always complete or accurate, potentially compromising its integrity and usefulness for OCFS’ data analysis, reporting, and performance measure purposes, as well as the reliability of direct placement case tracking.

Follow-up findings: OCFS officials had made limited progress in addressing the issues identified in the initial report. Of the initial report’s four recommendations, two had been partially implemented and two had not been implemented.

Office of Mental Health (OMH)

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

Oversight of Telemental Health Services (2020-S-16). Telemental health (TMH) is a treatment method that uses two-way, real-time interactive audio and video equipment to provide and support mental health services and psychiatric care at a distance. In July 2019, OMH expanded the State’s TMH regulations to allow additional OMH-licensed care providers to provide services and expanded where services could be delivered and received, allowing individuals to receive TMH services at their place of residence, at a temporary location, or at a site licensed by OMH. Providers applying to use TMH must complete OMH’s Telemental Health Services Standards Compliance Attestation form and the Technical Guidelines Checklist for Local Providers and submit them to OMH. In early response to the COVID-19 pandemic, OMH further expanded the definitions of TMH and TMH practitioners, outlined programs and/or services eligible to use TMH, issued a blanket attestation for providers who wished to use TMH during the disaster emergency, and streamlined its TMH approval process. *Key findings:* Although OMH had expanded TMH regulations, there is a risk that some patients may no longer have access to the mental health services they need once the disaster emergency period ends. Nearly three-quarters of the providers eligible to offer TMH were not approved to provide services once the disaster emergency ends. Also, OMH did not conduct subsequent TMH provider reviews after its initial review, and did not develop

standardized procedures or forms to incorporate reviews of TMH into its oversight processes. As a result, OMH lacked assurance that providers are continuing to adhere to TMH regulations (e.g., equipment continues to operate as designed, treatment session security continues to be appropriate). **Key recommendations:** Work with providers to increase their ability to offer TMH as a service when it is deemed an appropriate method of treatment; and develop defined processes and procedures related to overseeing TMH beyond the initial approval process.

Benefits Advisement Services for Individuals With Disabilities Seeking Employment (2020-S-41). Working-age New Yorkers with disabilities participate in the work force at a rate of less than half that of people without disabilities, and New Yorkers with disabilities are more than twice as likely to live in poverty. To address these disparities, OMH was tasked with implementing a recommendation of the New York State Employment First Commission for improving benefits advisement services to assist all individuals with disabilities in making informed decisions about going to work. OMH was responsible for implementing an interactive web-based platform to provide accurate information and benefits calculators so individuals with disabilities could better assess how work would impact their benefits. OMH was also charged with developing a life coaching network available to all individuals with disabilities seeking economic self-sufficiency. **Key findings:** While OMH successfully designed and launched a disability benefits advisement system, the Work Incentives Navigator and Reports (WINR) application, it did not fully address all aspects of the Commission's recommendation. WINR does not include an interactive benefits advisement calculator, automated life coaching communications, or information regarding certain additional benefits such as nutritional and housing assistance. Furthermore, WINR is only available to individuals working with an employment services provider, and many others who would likely benefit from WINR services do not have access to the application. Also, there is a risk that current WINR customers are missing out on relevant benefits information because notifications are only delivered via email and OMH does not assess the effectiveness of its email notification system (i.e., whether emails are being received; whether customers are opening the emails/clicking on relevant links). **Key recommendations:** Formally assess and make improvements to WINR, considering key system features recommended in the report, including the development of a network of professional life coaches; expand access to WINR to all individuals with disabilities, including those who are not currently working with an employment services provider; and capture historical notification data for analysis and assessment of the effectiveness of WINR notifications, making improvements to the notifications process as applicable.

Education

City University of New York (CUNY)

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

Compliance With Payment Card Industry Standards (Follow-Up) (2021-F-2). CUNY's Central Office is responsible for issuing various CUNY-wide policies in areas such as academic affairs, legal and compliance issues, facility management, and IT security, including credit card payment processing. All industries that accept credit cards as a method of payment must comply with the Data Security Standards (DSS) established by the Payment Card Industry (PCI) Security Standards Council. The PCI DSS is a comprehensive set of technical and operational requirements designed to protect cardholder data.

Initial Audit (2018-S-61). **Key findings:** CUNY fell short in providing CUNY colleges with sufficient guidance and direction needed to ensure campus-wide compliance. System and data controls needed to be improved to meet compliance standards at all four of the colleges sampled. Furthermore, Central Office did not oversee colleges' PCI compliance, but instead relied on each college to self-monitor. As a result, Central Office had no knowledge of the compliance status of any of its colleges and thus no assurance that the relevant data was properly protected.

Follow-up findings: CUNY officials had made progress in addressing the findings identified in the initial report, having implemented two recommendations and partially implemented one recommendation.

State Education Department (SED)

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

Audits of Preschool Special Education Programs

Private special education providers can be for-profit or not-for-profit organizations. These providers must be approved by SED to deliver special education services, such as Special Education Itinerant Teacher (SEIT), Special Class (SC), and Special Class in an Integrated Setting (SCIS) programs, to children in New York. SED annually develops rates for preschool special education programs operated by approved providers based on actual personal service and other than personal service (OTPS) costs reported to SED on annual Consolidated Fiscal Reports (CFRs). These rates are used to reimburse providers for eligible costs, which must be in compliance with comprehensive instructions and guidelines set forth in SED's Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) and

its Reimbursable Cost Manual (RCM). Chapter 545 of the Laws of 2013 requires the State Comptroller to audit the expenses reported to SED by every program provider of special education services for preschool children with disabilities, subject to the funding made available by the Legislature for such purpose. In the 2020-21 reporting year, OSC issued eight such reports, as detailed below. For these providers, auditors identified a total of more than \$1.7 million in reported costs that were ineligible for reimbursement. Generally, auditors recommended that, in each case, SED review the disallowances identified and make the necessary adjustments to the costs reported on the provider's CFRs and to the provider's tuition reimbursement rates, as warranted, and remind providers of the pertinent SED requirements that relate to the deficiencies identified; and that the provider ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification, as needed.

- **Mama Program, LLC (2019-S-73).** Mama Program, a New York City-based for-profit organization, provides preschool SEIT services to 3- to 5-year-olds with disabilities. For the three fiscal years ended June 30, 2015, Mama Program reported approximately \$9.78 million in reimbursable costs for the SEIT preschool cost-based program. **Key finding:** Auditors identified \$95,562 in reported costs that were ineligible for reimbursement.
- **Mary Cariola Children's Center, Inc. (2020-S-25).** Mary Cariola Children's Center (Mary Cariola), a not-for-profit organization located in Monroe County, provides preschool special education services to 3- and 4-year-olds with disabilities. For the fiscal year ended June 30, 2016, Mary Cariola reported approximately \$2.6 million in reimbursable costs on its CFR for its Preschool SC – over 2.5 hours per day and Preschool SC – 2.5 hours per day. **Key finding:** Auditors identified a total of \$12,744 in reported costs that were ineligible for reimbursement.
- **Westchester County Chapter NYSARC, Inc. (2020-S-27).** Westchester County Chapter NYSARC, Inc. (WARC), serving Westchester and Putnam counties students, provides preschool special education services to children with disabilities who are 3 and 4 years of age. For the fiscal year ended June 30, 2016, WARC reported approximately \$5.3 million in reimbursable costs on its CFR for its Preschool SC – over 2.5 hours per day and Preschool Integrated SC – over 2.5 hours per day. **Key finding:** Auditors identified a total of \$49,605 in reported costs that were ineligible for reimbursement.
- **Wayne County Chapter NYSARC, Inc. (2020-S-30).** The Wayne County Chapter of NYSARC, Inc. provides preschool special education services to 3- and 4-year-old children with disabilities, among other programs. For the fiscal year ended June 30, 2017, ARC Wayne reported approximately \$3 million in reimbursable costs on its CFR for the Preschool SC – over 2.5 hours per day, Preschool Integrated SC – over 2.5 hours per day, and Preschool Integrated SC – 2.5 hours per day that it operated. **Key finding:** Auditors identified \$20,988 in reported costs that were ineligible for reimbursement.

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- **The Kelberman Center, Inc. (2019-S-57).** The Kelberman Center, an SED-approved special education provider located in Utica, provides preschool special education services to 3- to 5-year-old children with disabilities. For the fiscal year ended June 30, 2017, the provider reported approximately \$1.77 million in reimbursable costs on its CFRs for the Preschool SC – over 2.5 hours that it operated. **Key finding:** Auditors identified \$23,616 in reported costs that were ineligible for reimbursement.
 - **Buffalo Hearing & Speech Center, Inc. (2020-S-20).** Buffalo Hearing & Speech Center (BHSC), based in Erie County, is authorized by SED to provide, among other programs, preschool special education services to 3- to 5-year-olds with disabilities. For the fiscal year ended June 30, 2018, BHSC reported approximately \$9 million in reimbursable costs on its CFR for its Preschool SC – over 2.5 hours per day, Preschool Integrated SC – over 2.5 hours per day, and Preschool Integrated SC – 2.5 hours per day. **Key finding:** Auditors identified a total of \$272,526 in reported personal service and OTPS costs that were ineligible for reimbursement. In addition, for the three fiscal years ended June 30, 2018, SED failed to offset \$307,735 in Medicaid fee-for-service revenue received by BHSC when calculating its tuition rate. As a result, BHSC received \$216,451 in excess public funding reimbursements.
 - **SteppingStone Day School, Inc. (2020-S-23).** SteppingStone Day School (SteppingStone), a New York City-based not-for-profit organization, is authorized by SED to provide preschool special education services to 3- to 5-year-old children with disabilities. SteppingStone operated SC – full-day and SCIS – full-day programs during the fiscal year ended June 30, 2018 and a SC – half-day program during the two fiscal years ended June 30, 2017 (collectively referred to as the SED preschool cost-based programs). For the three fiscal years ended June 30, 2018, SteppingStone reported approximately \$46.3 million in reimbursable costs for the SED preschool cost-based programs. **Key finding:** Auditors identified \$562,609 in reported costs that did not comply with the requirements in the RCM and the CFR Manual and were ineligible for reimbursement.
 - **Kids Unlimited, PT, OT & SLP, PLLC (2020-S-33).** Kids Unlimited is a New York City-based for-profit organization authorized by SED to provide SEIT services to 3- to 5-year-olds with disabilities. For the three fiscal years ended June 30, 2015, Kids Unlimited reported approximately \$8.8 million in reimbursable costs for the SEIT preschool cost-based program. **Key finding:** Auditors identified \$446,835 in reported costs that did not comply with the requirements in the RCM and were ineligible for reimbursement.

Other Audits of SED Oversight

Oversight of Career and Technical Education Programs in New York State Schools (2019-S-29). Career and technical education (CTE) programs aim to prepare students for success in future careers by introducing them to workplace competencies and providing hands-on learning in the high school setting. SED is responsible for overseeing State CTE programs as well as CTE funding. **Key findings:** CTE programs and respective student

enrollments generally do not align with occupations that are most in demand, fastest growing, or highest salaried in the State, and for certain programs, enrollment exceeds the number of open positions in the job market. Also, students encounter barriers to enrolling in and successfully completing CTE programs, including scheduling restrictions and insufficient program support by school officials. Cost concerns, including low CTE instructor pay, may also restrict program growth and student opportunity. **Key recommendations:** Ensure that CTE programs, as well as student enrollments, align with State workforce needs and meet the career goals of secondary school students; work with schools to ensure they are adequately promoting, supporting and teaching CTE programs.

Oversight of Pupil Transportation Services (2019-S-49). SED is responsible for overseeing pupil transportation services provided by public school districts (School Districts) to 2.3 million children across the State. SED sets qualification requirements for school bus drivers, monitors, and attendants; and New York Codes, Rules and Regulations sets safety training requirements to help ensure safe transportation. As part of these requirements, SED administers the School Bus Driver Safety Training Program, which provides school bus drivers, monitors, and attendants with required initial and annual refresher trainings. SED also contracts with the Pupil Transportation Safety Institute (PTSI) to provide resources and training and maintain databases of training and school bus accident information. **Key findings:** SED was not sufficiently monitoring School Districts' compliance with requirements and, consequently, had no assurance that school bus drivers, monitors, and attendants were qualified and had completed the required training. Without training, employees may not be aware of proper procedures, including for emergency events. Furthermore, a review of driver, monitor, and attendant files at School Districts and busing contractors found that a significant amount of required safety and discrimination/harassment training documentation was missing. A lack of communication with PTSI, School Districts, and busing contractors resulted in an unclear understanding of SED's requirements. Additionally, PTSI's school bus accident database was incomplete and did not account for all reportable accidents statewide, which negatively impacts SED's ability to effectively develop future safety training programs. **Key recommendations:** Develop and implement a risk-based method to identify School Districts and busing contractors that warrant review to fully utilize all site record reviews allotted in the PTSI contract; work with School Districts and busing contractors to ensure they are aware of SED training record requirements; work with the New York City Department of Education and other jurisdictions across the State to ensure that all reportable accidents are reported to SED and PTSI; and, in conjunction with the Department of Motor Vehicles, develop and implement policies and procedures to standardize monitoring of drug and alcohol compliance for drivers, monitors, and attendants.

Licensing and Monitoring of Proprietary Schools (2019-S-68). Non-degree-granting proprietary schools provide training in a broad range of disciplines, such as business, computer/information technology, and English as a second language. New York State Education Law (Law) requires all non-degree-granting proprietary schools to be licensed by the State, unless they meet certain exemption criteria. SED's Bureau of Proprietary School Supervision (Bureau) oversees these schools, including licensing and monitoring. As of

January 15, 2020, there were 391 licensed proprietary schools—357 private career schools (PCSs) and 34 English as a Second Language schools—operating in the State. Schools are required to submit financial documentation for license applications and annually thereafter, which the Bureau reviews to ascertain schools’ financial viability. In addition, PCSs are required to annually submit statistical reports of student enrollment and placement, such as the Occupational Educational Data Survey (OEDS), which is included in each school’s catalog to guide prospective students in their enrollment decisions. If the Bureau finds a school is not financially viable or is operating in violation of the Law or the Regulations of the Commissioner of Education (Regulations), it can impose sanctions, such as probation, and penalties.

Key findings: While schools’ financial statements are intended to serve as the basis for assessing their financial viability, the Bureau’s analysis of these documents was not sufficient to detect viability problems. For example, auditors’ analyses determined that: 47 of the 103 (46 percent) initial license applications approved between January 1, 2016 and December 31, 2019 had at least one deficiency pertaining to the financial documents submitted that should have precluded their approval. Of the 330 schools that submitted financial statements for fiscal year 2018, 70 schools had financial viability concerns. Despite the risk such schools pose to students’ education goals and tuition investment, the Bureau did not impose probation or other actions to address issues and mitigate risk of unexpected closure. Additionally, for 92 of 127 schools (72 percent) that submitted OEDSs with student counts, the reports contained apparent math errors but were not rejected by the Bureau, potentially resulting in vulnerable students selecting substandard schools, which could jeopardize students’ future employment prospects and their ability to repay loans—as well as taxpayer funds if the loans are government backed. For 38 of 41 of its on-site inspection reports, the Bureau failed to report on at least one school document type that required its review, making it unclear if it is ensuring that schools fully comply with the Law and Regulations. **Key recommendations:** Develop policies and procedures to ensure that pre-licensed schools’ financial information and licensed schools’ financial statements comply with requirements and that schools’ financial viability is determined using more objective measures in accordance with the Law and Regulations; use the mechanisms identified in the Law, such as placing a school on probation or requiring the school to secure a performance bond, when financial viability issues are identified; develop policies and procedures to ensure that inspections are fully completed and documented and that determinations rendered are consistent.

Oversight of School Safety Planning Requirements (Follow-Up) (2020-F-17). In New York, schools are required to develop and regularly review safety plans as part of the Safe Schools Against Violence in Education (SAVE) Act, which aims to prevent school violence and increase the safety of students and teachers in school settings. Among key provisions, the SAVE Act establishes a uniform system for reporting violent incidents and requires schools and districts to be prepared to respond to incidents when they occur. Public school districts, charter schools, and Boards of Cooperative Educational Services programs (collectively referred to as School Districts) are required to develop comprehensive district-wide safety plans and building-level emergency response plans.

Initial Audit (2018-S-34). *Key findings:* SED was not sufficiently monitoring School Districts' compliance with the requirements for school safety planning, and consequently did not have assurance that the requirements were being met. SED primarily focused on ensuring that School Districts submitted their Building Plans to the State Police annually, which resulted in 99 percent compliance. However, due to SED's lack of oversight, School Districts did not consistently adopt their annual safety plans in accordance with SED guidance, hold public hearings on the plans, appoint district-wide safety teams including all required representatives, or train employees on the plans. In addition, SED never submitted a report on the implementation of and compliance with the provisions of the Law to the Executive and the Legislature, although it has been required to do so annually since 2000.

Follow-up findings: SED had made significant progress in addressing the issues noted in the initial report, implementing four recommendations and partially implementing one.

State University of New York (SUNY)

SUNY is the largest comprehensive system of public education in the nation, comprising 64 autonomous campuses. In 2017-18, SUNY served nearly 1.4 million students, with approximately 91,000 faculty and staff. Campuses are located throughout the State, and SUNY maintains a central administrative office in Albany. For fiscal year 2017-18, SUNY had a budget of \$13 billion, including State support totaling \$4.1 billion, and \$1.6 billion in total research activity. For the reporting year 2020-21, auditors conducted three follow-ups involving the Research Foundation, which supports SUNY's research, innovation, and transfer discoveries; and Upstate Medical University (Upstate), which comprises four colleges, a research enterprise, one hospital with two locations (Upstate University Hospital and Upstate University Hospital at Community Campus), and over 80 outpatient clinics and other centers.

Technology Transfer Program and Royalty Payments (Follow-Up) (2020-F-32). The Research Foundation for the State University of New York (Research Foundation) supports SUNY's technology transfer activity—the formal transfer of rights for intellectual property (IP) developed using SUNY resources. Technology transfer is a collaborative process that requires efforts from the Research Foundation, IP creators, and industry partners to translate such discoveries into commercial products and services that benefit society. The Research Foundation follows SUNY's Patents and Inventions Policy (Policy), which aims to encourage innovation, assist creators, and ensure the public receives the benefit of such innovation by encouraging disclosure of IP, securing protections, marketing IP through licensing and other arrangements, and managing royalties and other related income, such as litigation proceeds.

Initial Audit (2019-S-10). *Key findings:* The Research Foundation took steps to protect SUNY's interest in the transfer of technology and royalties for projects developed at SUNY schools, having retained ownership rights for 94 percent of all IP disclosures from January 1, 2015 through March 12, 2019; made decisions about retaining ownership

rights for disclosed IP within the applicable time frames; verified that royalty payments were correctly calculated by the licensees based on the license agreement and the licensees' royalty reports; and correctly allocated royalties to the applicable campus and creator accounts. However, the Research Foundation had not developed standardized monitoring mechanisms to determine whether a licensee was accurately reporting net sales and paying the full royalty owed. Additionally, SUNY Downstate had accumulated \$1,019,390 in campus royalty revenues, none of which had been reinvested to support SUNY research programs.

Follow-up findings: The Research Foundation had made progress in addressing the audit findings identified in the initial audit report, having implemented both of the initial report's audit recommendations.

Human Resource Practices (Follow-Up) (2021-F-7). Upstate serves approximately 1.8 million people and is Central New York's largest employer, with a workforce of more than 10,000 supporting its operations. Each year, Upstate's Human Resource Department (HR) receives over 30,000 employment applications and processes approximately 1,600 new hires, 1,000 separations, and 1,700 job changes.

Initial Audit (2018-S-57). Key Findings: Insufficient HR monitoring and oversight, as well as inadequate or poorly enforced policies and procedures, contributed to questionable and/or weak practices that rendered Upstate vulnerable to misuse of funds and safety and security risks.

Follow-up findings: Upstate officials had made significant progress in addressing the problems identified in the initial audit, having implemented all four recommendations.

User Access Controls Over Selected System Applications (Follow-Up) (2021-F-8). To facilitate its clinical care, education, research activities, and communication, Upstate owns and/or administers approximately 200 system applications. As these applications may contain a broad range of sensitive and personal information that is considered confidential for a variety of programs, controls over their access are especially important.

Initial Audit (2019-S-34). Key findings: Upstate's access controls were not sufficient to prevent unnecessary or inappropriate access to various applications. Upstate employees maintained unnecessary and inappropriate access to applications after a change in the users' status (e.g., employment separation, death). Some of these user accounts were logged into during the period of inappropriate active access. In addition, users maintained unnecessary and inappropriate access to certain clinical applications after they had transferred to new jobs that did not require that access.

Follow-up findings: Upstate officials had made significant progress in addressing the problems identified, implementing both of the initial report's recommendations.

Transportation

Capital District Transportation Authority (CDTA)

CDTA is the premier mobility provider in the Capital Region, providing regular route bus service, shuttle systems, and paratransit services.

Compliance With Freedom of Information Law Requirements (2019-S-70). Under the Freedom of Information Law (FOIL), CDTA is required to make all eligible records available for public inspection or copying and to declare rules and regulations pertaining to the availability of records and procedures to be followed. Within five days of receiving a FOIL request, CDTA is required to make the requested records available, deny the request in writing, or furnish a written acknowledgment of the request that states the approximate date when such request will be granted or denied. Delays in responding to FOIL requests equate to denial of requests and could result in unnecessary appeal proceedings and an assessment of attorneys' fees against the agency. **Key findings:** CDTA's FOIL policy is consistent with the provisions set forth in the FOIL statute; however, it does not have formal internal procedures for processing and tracking FOIL requests, which has resulted in inconsistent practices affecting the timeliness of its responses. Of the 111 FOIL requests received from January 1, 2017 through January 23, 2020, CDTA did not respond to 26 within the statutory time frame, including one that was not acknowledged for 100 business days, and completely missed responding to two; for 10 others, auditors could not determine timeliness due to incomplete information. **Key recommendations:** Develop and implement internal procedures to ensure FOIL requests and appeals are processed consistently and within the time frames required by law; monitor activity to ensure compliance; and provide formal training for employees responsible for processing FOIL requests and appeals.

Metropolitan Transportation Authority (MTA)

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

Long Island Rail Road: Management of Capital Projects (2018-S-70). The MTA must submit a five-year Capital Program to the State's Capital Program Review Board (CPRB) for approval and can amend the program annually thereafter. For the 2010-2014 and the 2015-

2019 Capital Programs, the CPRB approved \$2.3 billion and \$2.9 billion, respectively, for LIRR. One objective of the Capital Program is to bring the MTA's capital assets to a "State of Good Repair" and keep them there through capital maintenance and replacement schedules. However, the MTA and its agencies have a history of not delivering capital projects on time, on budget, and within scope. **Key findings:** LIRR's capital management process is guided by a series of Department of Program Management (DPM) Procedures (Procedures); however, project managers did not always comply with, and contractors/consultants were not required to follow, them. Lack of compliance potentially contributed to LIRR completing 10 of 11 sampled projects late, with delays ranging from three months to over four years. In addition, eight of the projects sampled were over budget, two projects came in on target, and one was under budget, for a net overbudget of \$69.9 million, or almost 20 percent. The cost overruns ranged from \$675,049 to over \$35 million. Among budgeting issues, the MTA did not allow LIRR to account for inflation when preparing project budgets, and LIRR's Estimating Unit was not always involved in the initial budget process, for example, when bids show substantial variance from initial estimates. **Key recommendations:** Comply with all DPM Procedures; revise and strengthen the Procedures by incorporating terms used by other MTA agencies; require, in writing, that contractors/consultants comply with DPM Procedures; develop protocols for reassigning LIRR employees to other projects that deviate from the original project plan and document the impact to the project schedule in the project records; and work with the MTA to calculate and include in the budget an inflation factor for projects that begin in subsequent years of the Capital Program.

New York City Transit and MTA Bus Company: Fare Evasion (2019-S-7). The MTA has the authority to collect fares from the riding public and issue fines of \$50 or \$100 to fare evaders. Transit's Division of Operations Planning and Evasion and Graffiti Lawlessness Eradication Teams are responsible for observing and reporting fare evasion rates in order to determine revenue loss estimates, which are reported to the MTA Board of Directors (Board). In 2019, MTA and the New York City Police Department (NYPD) combined their resources to introduce the Fare Enforcement and Worker Protection Task Force (Task Force) to reduce fare evasion, increase revenue, and improve safety for MTA workers. The Task Force is made up of the NYPD and several MTA agencies and divisions. According to the Fare Enforcement and Worker Safety Program (Program), these agencies are expected to deploy additional law enforcement officers to supplement the efforts of the NYPD and Transit to deter fare evasion. **Key findings:** MTA officials did not provide auditors with all the Program information requested. For example, rather than comparisons of budgeted versus actual Program costs, the MTA only provided a summary of the actual costs, which showed over \$24 million had been spent on the Program as of July 30, 2020. This included more than \$8 million in MTA Police Department overtime costs but excluded base salary and fringe benefits and did not account for the additional 500 officers MTA deployed, thus significantly understating the true cost of the Program. Additionally, MTA officials did not provide assurance that the Program was effective in achieving its goal of reducing fare evasion losses below 2017 levels (\$150 million). Instead, Transit estimated that it lost more than \$300 million to fare evasion in 2019. Furthermore, certain aspects of the subway and bus systems contributed to increased fare evasion, including subway emergency exit doors that remain open for an extended time,

providing an easy way for passengers to evade the fare, as well as fare evasion and payment signage that was missing, defaced, misleading, not prominently displayed, and/or not in the appropriate language for the neighborhood. **Key recommendations:** Improve the quality and content of signage at key locations; implement control activities by establishing, and disclosing to the Board, metrics for measuring progress and effectiveness of Task Force and other Program initiatives, as well as actions being taken to correct problems/deficiencies; disclose pertinent details of statistical sampling methodologies and results when sharing fare evasion results with the Board; and continuously assess and revise methodologies used to calculate and report fare evasion statistics.

MTA Capital Construction: All-Agency Contract Evaluation System (2019-S-14). In 1997, MTA implemented the All-Agency Contract Evaluation (ACE) system, a performance evaluation system for use by its agencies to report on contractor and consultant performance. MTA-adopted ACE Guidelines (Guidelines) help the agencies to uniformly obtain and record reliable information on performance on MTA capital contracts equal to or greater than \$250,000. To implement the Guidelines, MTA Capital Construction issued “Project Procedure—MTA’s All-Agency Contractor Evaluation System” (Procedures), which require an interim performance evaluation within six months of the Notice-of-Award and subsequent evaluations conducted twice a year to continue through completion of the work. Evaluations must be filed in the ACE database within 45 days of the evaluation period end date and consist of two to five categories depending on the type of contract, including: Safety; Quality; Scheduling; Management; and Minority, Women and Disadvantaged Business Enterprise.

Key findings: MTA Capital Construction did not always follow the Procedures when monitoring and evaluating contractor/consultant performance and so did not fully benefit from the established processes. A review of 11 contracts found that, while the project managers and construction managers who completed the evaluations maintained documentation to support each Marginal and Unsatisfactory rating, documentation was not consistently maintained to support projects rated Satisfactory and, in some cases, did not support the work performed or contradicted the ratings. Moreover, lack of clarity in the Procedures gave the project teams broad discretion when awarding a contract, introducing the risk that contractors are being treated inconsistently. Although required, evaluations were not done for two contractors who went one year without ACEs. In both situations, the contractors would have received a less-than-satisfactory overall rating, which may have impacted their chances of being awarded future contracts. While MTA Capital Construction stated that this was done in the best interest of the agency, this determination was not documented. In addition, letters notifying contractors of their deficiencies were sent late, including for one contractor 114, 296, and 192 days after the end of the respective evaluation period. Such delays hinder efforts to improve contractor performance while work is still underway. **Key recommendations:** Train the MTA Capital Construction ACE evaluators and administrators regarding issues including adherence to deadlines, compliance with the Procedures, retention of documents that support the ACE ratings, and guidance for rating common situations for ACE components; establish a time frame for when critical documents (e.g., notification letters) should be sent, and identify patterns in component issues and work with contractors while they are on site; and require documentation in the procurement file to support the rationale for awarding or rejecting a contract.

Metro-North Railroad: Response Planning for Unexpected Events (2019-S-55). Metro-North's Operations Control Center (OCC) is responsible for safely routing trains across the Metro-North network, including track outage coordination and management of unexpected events. For an unexpected event, OCC notifies the Customer Communications Department so they can notify customers, as warranted. In significant emergency situations that have the potential to disrupt or have actually disrupted service, the Emergency Management Task Force (EMTF)—a group of Metro-North, MTA, and MTA Police Department personnel—may be mobilized to plan a coordinated, company-wide response to the incident. Additionally, the Customer Service Center receives customer complaints, which are sent to the relevant department for further investigation, as appropriate. **Key findings:** Metro-North had procedures to address how its employees respond to most issues; however, based on a sample of 80 events, they were not always followed. For example: in 38 of 80 sampled events, Metro-North did not have documented evidence that each step of the required procedure was performed; the EMTF was not notified of 25 of 26 events that required EMTF to be on standby or activated; customers either were not notified of an event or were informed beyond the required time frame. **Key recommendations:** Ensure Metro-North personnel follow all procedures in the applicable manuals; revise policies and procedures to clearly specify when an initial customer notification must be sent and exactly how often updates are to be sent after the initial notification; update procedures for notifying EMTF of a significant event; provide customers with timely responses to complaints that focus on the issues raised; document and maintain the minutes and recommendations of all lessons learned meetings and the corrective actions taken in response to unexpected or unplanned events.

Niagara Frontier Transportation Authority (NFTA)

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

Use of Vendor-Supported Technology (Follow-Up) (2020-F-28). NFTA has approximately 1,500 employees, including an information technology (IT) department that operates out of its main office. To help carry out its mission, NFTA owns approximately 546 desktops/workstations and 250 servers that support 30 databases. As a public benefit corporation, NFTA must adhere to the New York State Information Technology Security Policy (Policy) established by the New York State Office of Information Technology Services. The Policy defines the minimum information security requirements that all state agencies (including all public benefit corporations) must follow to secure and protect the confidentiality, integrity, and availability of information. This includes requirements for ensuring systems are up to date and maintained at vendor-supported levels.

Initial Audit (2019-S-40). **Key findings:** NFTA generally maintained its systems at vendor-supported levels; however, auditors identified unsupported systems used by NFTA on 66 devices. NFTA officials did not develop policies and procedures to ensure

that their systems were regularly reviewed and kept up to date, nor did they maintain a single clear inventory of IT assets to aid in tracking their systems. NFTA officials indicated they were in the process of or had plans to upgrade certain systems identified as no longer supported by the vendors.

Follow-up findings: NFTA had made significant progress in addressing the problems identified in the initial audit, having implemented both recommendations.

Port Authority of New York and New Jersey (PANYNJ)

PANYNJ conceives, builds, operates, and maintains infrastructure critical to the New York/ New Jersey region's trade and transportation network. Its facilities include: a five-airport aviation system; the Port Authority Trans-Hudson rail transit system; six tunnels and bridges between New York and New Jersey; the Port Authority Bus Terminal in Manhattan; the George Washington Bridge Bus Station; and the World Trade Center.

Selected Aspects of Leasing Practices for Real Estate Department, Aviation, World Trade Center, and Leasing of Properties (2019-S-9). PANYNJ's real estate portfolio consists of over 12,000 acres of land and 45 million square feet of office, industrial, retail, and technical space, and includes airport and marine terminals, buildings, warehouses, parking lots, billboards and advertising spaces. **Key findings:** For the audit period January 1, 2014 through November 21, 2019, PANYNJ did not always collect all revenues due, including \$8.3 million from four leases at the World Trade Center for utilities, early lease terminations, and other revenues specified in leases. PANYNJ also did not adequately monitor its advertising vendor to ensure revenue opportunities at its airports were being maximized and that revenues reported by the vendor were complete and accurate. In addition, PANYNJ did not optimally manage its leasing of properties. Despite the availability of space at 1WTC, PANYNJ paid \$19.1 million, including \$3.2 million in build-out costs, to lease seven properties for its own use. PANYNJ could not show that it evaluated the use of available internal space prior to leasing or support for the prevailing market rates. Furthermore, when subleasing properties, PANYNJ did not take steps to minimize its tax liability where possible: For two sampled subleased properties, PANYNJ did not obtain the tax exemptions to which it was entitled, costing PANYNJ nearly \$2.85 million in unnecessary real estate tax payments. **Key recommendations:** Collect all revenue due in a timely manner; formalize policies and procedures for leasing external property, including requiring documentation of the decision to rent external property for PANYNJ use; actively monitor the contract with the advertising vendor regarding inventory of advertising locations available for sale and advertisement pricing, and consider obtaining direct access to the vendor's system to support monitoring of contracts; ensure that the taxing authorities where the leased properties are located are properly notified of the property uses and of PANYNJ's tax-exempt status.

Selected Aspects of Accommodations for Passengers With Disabilities (2019-S-41). The Americans with Disabilities Act of 1990 (ADA) provides people with disabilities the right to access and participate in the same day-to-day activities as everyone else, and Section

504 of the Rehabilitation Act of 1973 (Rehabilitation Act) prohibits discrimination on the basis of disability in federally assisted programs. According to the ADA, PANYNJ was required to identify key stations in its Port Authority Trans-Hudson (PATH) system and make those stations accessible and usable by people with disabilities. In addition, the Rehabilitation Act requires airport (and terminal) operators to be responsible for implementing and maintaining boarding accessibility. **Key findings:** PANYNJ was not in compliance with selected aspects of the ADA and Rehabilitation Act: four of 14 PATH stations and several access points at the Port Authority Bus Terminal (PABT) were not accessible to persons in wheelchairs and proper signage was not installed; at several PATH stations, the raised rubber platform edges, which alert travelers with visual impairments of the edge of the platform, were in poor condition; and there were no written agreements between airport and terminal operators allocating responsibilities for meeting the boarding requirements with all of its airport operators and carriers. **Key recommendations:** Ensure that passengers with disabilities have access to all gates at PABT; maintain PATH's tactile platform-edge tile in good condition; renovate facilities so that they are wheelchair accessible and, where this is not possible, ensure signs are posted; and ensure that there are agreements in place with terminal operators regarding the provision of services to passengers with disabilities and ensure that the provisions of these agreements are implemented.

Rochester-Genesee Regional Transportation Authority (RGRTA)

RGRTA is a regional transportation authority established by New York State to provide safe, reliable, and convenient public transportation to customers in eight counties (Monroe, Genesee, Livingston, Ontario, Orleans, Seneca, Wayne, and Wyoming).

Compliance With Requirements to Maintain Systems at Vendor-Supported Levels (Follow-Up) (2020-F-30). RGRTA owns approximately 525 desktops/workstations and 164 servers that host 57 databases. As a public benefit corporation, RGRTA must adhere to the Office of Information Technology Services' New York State Information Technology Security Policy (Policy), which defines the minimum security requirements that all State entities must follow to secure and protect the confidentiality, integrity and availability of information. This includes requirements for ensuring systems are up to date and maintained at vendor-supported levels.

Initial Audit (2019-S-6). **Key findings:** RGRTA generally maintained its systems at vendor-supported levels; however, auditors identified unsupported systems used by RGRTA on 14 devices. In addition, RGRTA officials did not develop policies and procedures to ensure that its systems were regularly reviewed and kept up to date.

Follow-up findings: RGRTA officials had made significant progress in addressing the problems identified in the initial audit report, having implemented both recommendations.

Government Support

Department of Civil Service (Civil Service)

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

Empire Plan Members With Dual Family Coverage (2019-S-23) For the period January 1, 2014 through September 30, 2019, the annual cost for Empire Plan Family coverage ranged from \$20,570 to \$28,953. State and participating organization employers and members pay their respective share of those premiums. However, while participating organizations are required to pay a minimum employer share of the cost, some may pay a higher rate of contribution, up to the full cost of coverage. The State does not allow two Family coverages for its employees; if a member and their spouse are both eligible to enroll in NYSHIP, only one may elect Family coverage (the other may either elect lower-cost Individual coverage or waive coverage). Participating organizations, however, may allow for dual Family coverage, whereby employees within a family can each have Family coverage. Dual Family coverage can increase the costs to both participating organizations and members. **Key findings:** During the audit period, 696 employees and retirees of participating organizations had dual Family coverage. The total cost of premiums to the members and participating organizations for the second Family coverage was \$39,777,772. Participating organizations may be unaware that an employee has dual Family coverage because they do not have information to determine if a member is a dependent on another NYSHIP policy with the State or a different participating organization. Civil Service had not shared sufficient information with participating organizations to minimize waste and ensure efficiency for members and participating organizations of the Empire Plan. Participating organizations would benefit from additional information from Civil Service to help members make informed, financially sound health care decisions that would benefit both the member and the participating organization. **Key recommendations:** Evaluate the feasibility of more effective information sharing with participating organizations regarding dual Family coverage, consistent with applicable laws and regulations; and work with participating organizations to educate members on the cost of dual Family coverage, including less costly alternatives such as buyback and opt-out programs.

Payments by CVS Health for Pharmacy Services for Ineligible Members (2020-S-17).

Typically, organizations that participate in NYSHIP have Health Benefits Administrators (HBA) that process eligibility transactions in NYBEAS. Civil Service sends CVS Health daily files of NYBEAS member eligibility changes, and CVS Health has access to NYBEAS to confirm eligibility information. Timely and accurate member eligibility information is crucial to ensure members are disenrolled promptly and to prevent payment of ineligible claims on their behalf. **Key findings:** Auditors identified 132,051 claims, totaling \$30,695,221, for pharmacy services that were provided during periods when members were not eligible. Overpayments stemmed from data transfer issues between NYBEAS and CVS Health's systems and retroactive disenrollments. Further, Civil Service paid CVS Health \$170,359 in administrative fees for processing these claims. **Key recommendations:** Civil Service and CVS Health should review the \$30,695,221 in improper payments to determine the cause of the error, identify responsibility, and recover payments as warranted; continue to perform periodic reconciliations, and establish or strengthen additional controls as needed, to prevent payment of ineligible claims. Civil Service should continue to take steps to ensure HBAs are properly informed of their responsibilities (including the importance of timely and accurate coverage updates) and monitor whether HBAs are up to date on relevant training.

Payments by UnitedHealthcare for Medical/Surgical Services for Ineligible Members (2020-S-34).

Civil Service sends United daily files of NYBEAS eligibility changes and United has access to NYBEAS to confirm eligibility information. Up-to-date enrollment records are necessary to process payments accurately and prevent financial losses. For instance, contracts that United negotiates with health care providers may include limitations on the recovery of claims paid for members who were retroactively disenrolled (when a member is disenrolled from NYBEAS after the date eligibility ended). For contracts that do not include this language, typically improperly paid claims may be recovered for six years. **Key findings:** Auditors identified nearly \$5.7 million that United paid on behalf of members who were not eligible for Empire Plan coverage. The improper payments occurred because the member was retroactively disenrolled (\$4.6 million) or the claims were for services provided before a member was enrolled or after United was notified the member was disenrolled (\$1.1 million). **Key recommendations:** Review the \$5.7 million in claims paid for ineligible members and make recoveries, as warranted; take steps to ensure all recoverable claims are identified and pursued for recovery to the fullest extent practicable; and take steps to ensure eligibility information in NYBEAS and United's eligibility system is complete, accurate, and up to date, including, but not limited to, a periodic reconciliation process.

CVS Health – Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service (Follow-Up) (2020-F-23).

In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates and remit the rebate revenue to Civil Service.

Initial Audit (2016-S-41). **Key findings:** CVS Health did not always properly invoice drug manufacturers for rebates (either in a timely manner, accurately, or at all) or remit all rebate revenue to Civil Service that it collected. As a result, Civil Service was due \$2,052,653 in rebates.

Follow-up findings: CVS Health had made progress in correcting the problems identified in the initial report, having implemented two recommendations and partially implemented three recommendations.

CVS Health – Accuracy of Drug Rebate Revenue Remitted to the Department of Civil Service (Follow-Up) (2020-F-24). In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates and remit the rebate revenue to Civil Service.

Initial Audit (2018-S-50). Key findings: CVS Health did not always invoice drug manufacturers for all rebates, collect all rebates from the manufacturers, or remit all rebate revenue to Civil Service. As a result, Civil Service was due \$2,240,798 in rebates.

Follow-up findings: CVS Health officials addressed most of the problems identified in the initial audit. Of the report's six recommendations, three had been implemented and three had been partially implemented.

CVS Health – Temporary Holding Account Rebate Revenue (Follow-Up) (2020-F-25). In accordance with the contract, CVS Health was required to negotiate agreements with drug manufacturers for rebates and remit the rebate revenue to Civil Service.

Initial Audit (2019-S-27). Key findings: CVS Health improperly designated a temporary holding account, used to process certain prescription drug claims, as "non-rebate-eligible." As a result, CVS Health did not seek rebates from drug manufacturers on claims in the temporary holding account that were, in fact, rebate eligible. Auditors identified \$428,958 in rebate revenue due Civil Service for rebate-eligible claims in the temporary holding account for the period January 1, 2014 through December 31, 2018. CVS Health agreed Civil Service is due the rebates and agreed to remove the "non-rebate-eligible" designation from the account. Auditors projected Civil Service would receive additional rebates of \$1.27 million attributable to rebate-eligible claims in the holding account over the next contract period of January 1, 2019 through December 31, 2023.

Follow-up findings: CVS Health had made significant progress in correcting the problems identified in the initial report, having implemented both recommendations.

Office of General Services (OGS)

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

Compliance With Executive Order 88 – Energy Efficiency of State Buildings (Follow-Up) (2020-F-18). Executive Order 88 (EO 88) is the centerpiece of BuildSmart NY—the State's program for pursuing energy efficiency in certain State government buildings while

advancing economic growth, environmental protection, and energy security in the State. EO 88 mandated a 20 percent collective improvement in the energy performance of all covered agencies and authorities by April 1, 2020, calculated from a 2010-11 State fiscal year baseline. OGS is responsible for 19 buildings, 11 of which are exempt because of their Energy Star designation.

Initial Audit (2018-S-62). *Key findings:* While OGS generally developed targets and plans to contribute toward EO 88 and complied with the guidelines, it relied on one capital project, Sheridan Avenue Project (SAP), for most of its energy savings. The SAP was met with criticism from environmental and community advocates, and its implementation was in doubt. If this project failed to move forward, it was unlikely that OGS would meet its goal of reducing energy usage by 20 percent.

Follow-up findings: OGS had made significant progress in correcting the problems identified in the initial report, having implemented all three recommendations.

Office of Information Technology Services (ITS)

As the State's centralized technology agency, ITS provides statewide IT strategic direction, directs IT policy, and delivers centralized IT products and services that support the mission of the State.

Oversight of Information Technology Consultants and Contract Staffing (Follow-Up) (2020-F-21). ITS' contracts and procurement unit oversees the procurement of both contracts and other purchases, including those for IT services provided by consultants and contract staff. According to ITS' policies, program managers are responsible for monitoring project deliverables and timelines and determining if deliverables are acceptable and milestones have been met.

Initial Audit (2018-S-38). *Key findings:* ITS was generally monitoring IT services procured from consultants and contract staff to ensure compliance with contract terms and deliverables. However, for some contracts, for which ITS paid out more than \$156 million, deficiencies in contract monitoring created a risk that ITS may not have received the required deliverables. Most notably, auditors found significant monitoring deficiencies regarding the International Business Machines Service Desk contract.

Follow-up findings: ITS had made progress in correcting the problems identified, having implemented the recommendations from the initial audit.

Economic Development and Housing

Homes and Community Renewal (HCR)

HCR is the State's affordable housing agency, with a mission to build, preserve, and protect affordable housing and increase homeownership throughout New York State. HCR consists of several major housing and community renewal agencies, including: the Division of Housing and Community Renewal (DHCR), responsible for the supervision, maintenance, and development of affordable low- and moderate-income housing; and the Housing Trust Fund Corporation (HTFC), responsible for community development through the construction, development, revitalization, and preservation of low-income housing, the development and preservation of businesses, the creation of job opportunities, and the development of public infrastructures and facilities.

Housing Trust Fund Corporation: Oversight of the Residential Emergency Services to Offer Home Repairs to the Elderly Program (2020-S-4). HTFC administers the Residential Emergency Services to Offer Home Repairs to the Elderly (RESTORE) program, which assists senior citizen homeowners with the cost of addressing emergencies and code violations that pose a threat to their health and safety or affect the livability of their homes. The program is administered locally by not-for-profit corporations and municipalities (referred to as Local Program Administrators, or LPAs), which are awarded funds through an application process. LPA applications that demonstrate sufficient organizational capacity and resources to complete the proposed program timely, efficiently, and effectively are generally given preference. For the three funding years 2017-19, HTFC granted 49 RESTORE program awards, totaling approximately \$6.13 million, to 36 LPAs for an estimated 785 projects. **Key findings:** HCR needed to improve its process for selecting LPAs and ensuring RESTORE program funds reach senior homeowners from more counties and within the prescribed time frames to better support those needing assistance. For instance, inaccurate scoring on seven of 30 sampled LPA applications resulted in at least three LPAs being inappropriately awarded funds while others were denied. LPAs were not properly administering the RESTORE program and were not using awarded funds within required time frames to ensure emergency repairs were addressed promptly. Furthermore, the 49 RESTORE awards granted for the three-year period 2017-19 served only 36 of the 62 counties in the State. More targeted outreach regarding the RESTORE program could increase statewide participation in the application process and result in better distribution of funds. In addition, there were significant lags between when HTFC received notice of available funding and when RESTORE funds were made available to LPAs, delaying the start of projects and assistance to seniors. **Key recommendations:** Develop objective scoring guidelines to promote consistency and transparency in scoring and selecting LPA applications; identify LPAs that have shown they are unable to use awarded RESTORE funds within the contracted period and provide timely assistance; increase outreach and support to LPAs in counties that have not applied for or did not receive RESTORE program awards; and improve the timeliness of awarding RESTORE program funds to LPAs.

Controls Over Federally Funded Programs and Maximization of Federal Funding

(2020-S-48). DHCR administers the State's Weatherization Assistance Program (WAP), which is intended to reduce energy and utility costs by installing energy efficiency measures in the homes of income-eligible persons, especially those occupied by the elderly, persons with disabilities, and families with children. Funding for the WAP comes from both the U.S. Department of Energy (DOE) and the U.S. Department of Health and Human Services (HHS), and DHCR should make every effort to disburse and/or adjust all unspent federal awards as soon as possible to maximize federal funding. DHCR was appropriated a total of \$92,317,035 from DOE between April 1, 2017 and December 31, 2020 and a total of \$163,539,842 from HHS between October 1, 2016 and December 31, 2020. **Key findings:** DHCR had established controls to ensure WAP meets federal reimbursement documentation requirements and that it receives federal reimbursements on time and in a manner that recovers all funds. However, it lost \$120,475 in federal funding because the funding was not expended by program deadlines, primarily due to a decrease in production caused by the COVID-19 pandemic. As of December 31, 2020, DHCR had until March 31, 2022 to obligate and expend \$10,925,486 or it will be returned to DOE. **Key recommendations:** Identify and take steps to mitigate potential future losses of federal funds caused by unexpected events, and ensure all remaining funds are obligated and expended by the end of the current grant period.

Division of Housing and Community Renewal: Administration of Mitchell-Lama Waiting Lists (Follow-Up) (2020-F-19).

The Mitchell-Lama Housing Program (Program) was created to provide affordable rental and cooperative (co-op) housing to middle-income families. In exchange for low-interest mortgage loans and real property tax exemptions, the Program required limitations on profit and supervision by DHCR. At the time of the audit, there were 133 State-supervised Program developments with approximately 64,000 apartments. Apartments are rented or sold to eligible applicants on waiting lists maintained by DHCR's Automated Waiting List (AWL) system. When there are vacancies, applicants should be offered and awarded apartments in the order their names appear on the waiting lists. In addition, while internal transfer applicants (those already occupying Program units) have priority over external applicants for available apartments, developments are required to offer one out of every four available units to applicants on external lists.

Initial Audit (2016-S-46). **Key findings:** DHCR needed to improve monitoring of the developments to preserve the integrity of the Program and ensure that affordable units were awarded in compliance with New York Codes, Rules and Regulations, Title 9, Section 1727. The audit found instances of non-compliance, such as: applicants who were not selected from the AWL; developments not complying with the required 3:1 internal/external applicant ratio; successions not approved by DHCR; files missing required documentation to support tenant selection; and units vacant for extended periods of time. Auditors also found that DHCR gave approval to admission and transfer applications that did not comply with the Regulations.

Follow-up findings: DHCR had made some progress in addressing the problems identified in the initial audit report, having implemented one of the initial audit report's seven recommendations and partially implemented the remaining six.

Other State Agencies and Public Authorities

Department of Agriculture and Markets

(Ag&Mkts)

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

Oversight of the Farm-to-School Program (2020-S-9). New York's Farm-to-School Program (Program) is intended to connect schools with local farms and food producers, increase schools' purchase of local specialty crops, strengthen local agriculture, improve student health, and promote regional food system awareness. By providing financial assistance to develop programs, schools should be better positioned to purchase food from State farms. From January 2016 to February 2020, Ag&Mkts entered into 45 Program contracts, totaling \$4.2 million, with 34 different entities. During this period, Ag&Mkts reimbursed recipients over \$2.6 million for Program expenses, such as Program coordinator salaries, consulting services for safety or food service, and food preparation and storage equipment. **Key findings:** Ag&Mkts needs to improve monitoring of both Program expenditures and recipient performance to ensure recipients use funds as intended and to achieve Program goals. Of 21 Program contracts totaling approximately \$2.27 million, for 17 contracts, about \$1.17 million (68 percent) in expenses either lacked sufficient documentation to support expenses paid or were not authorized under the contract. Further, 19 of the 21 contracts reviewed had missing, late, and/or incomplete quarterly progress reports, which diminishes Ag&Mkts' ability to monitor and ensure contractors are performing as required, including meeting terms of the contracts and goals of the Program. **Key recommendations:** Develop written policies and procedures to provide guidance on what documentation should be maintained for contract reimbursement and monitoring of contract terms and conditions; and take appropriate action to investigate and recover, where applicable, the \$1,169,243 in unsupported, insufficiently supported, and unauthorized Program reimbursements.

Oversight of Industrial Hemp (Follow-Up) (2021-F-9). Industrial hemp is an expanding commodity in the United States, as both the stalk and seed can be used to produce thousands of different products, including clothing, building materials, fuel, paper, and biodegradable plastics. Federal and State law define industrial hemp as any part of the *Cannabis sativa L.* plant with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent. The federal Agricultural Act of 2014 authorized institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp for research purposes. In response, Article 29 of New York's Agriculture and Markets Law was enacted, launching the Industrial Hemp Agricultural Research Pilot Program (Program). Ag&Mkts, through its Division of Plant Industry, administers the Program.

Initial Audit (2018-S-32). **Key findings:** While the Program had rapidly expanded opportunities for industrial hemp production in the State, Ag&Mkts did not always follow established practices when reviewing applications, conducting inspections, and sampling

plants. According to Ag&Mkts, staffing shortages and competing priorities affected its ability to inspect and sample participants. Incomplete records and unreliable data systems further hindered Ag&Mkts' ability to effectively monitor Program requirements. Because of these and other weaknesses, auditors concluded that Ag&Mkts needed to improve its monitoring of Program compliance by taking steps to improve the quality of Program data and performing comprehensive analytics of the data, which would enable Ag&Mkts to better allocate staff resources. In addition, auditors found that Ag&Mkts needed to develop clear and consistent procedures for several aspects of the Program.

Follow-up findings: Ag&Mkts officials had made progress in addressing the problems identified in the initial audit report, fully implementing one recommendation and partially implementing two.

Department of Environmental Conservation (DEC)

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

Compliance With the Sewage Pollution Right to Know Act and Monitoring and Enforcement of State Pollutant Discharge Elimination System Permit Requirements (2019-S-54). As the State's environmental regulatory agency, DEC is responsible for improving and protecting the State's vast network of water resources—over 70,000 miles of rivers and streams and more than 7,600 freshwater lakes, ponds, and reservoirs—including preventing, abating, and controlling pollution. Wastewater has been identified as one of the top sources of pollutants, including bacteria and other pathogens, which impact the quality of State waters and pose health risks to those who use them. Two key pieces of legislation specifically related to wastewater were enacted to protect the State's natural resources and the health of its residents: the 2013 Sewage Pollution Right to Know Act (Act) and Article 17 of the State Environmental Conservation Law, which created the State Pollutant Discharge Elimination System program (SPDES). The Act requires publicly owned (e.g., municipal) treatment works (POTWs) and publicly owned sewer systems (POSSs) to report untreated and partially treated sewage discharges to DEC and the local health department within two hours of discovery and to notify the public and affected and adjoining municipalities within four hours of discovery. To this end, DEC requires POTWs and POSSs to register for and use its NY-Alert electronic notification system to report overflow events and updates. The SPDES was created as a means to maintain reasonable standards of water purity by controlling discharges via a permit system. SPDES permit holders have certain discharge reporting responsibilities, depending on permit type. DEC monitors compliance by analyzing the discharge reports, conducting periodic facility inspections, responding to citizen complaints, and issuing enforcements. **Key findings:** DEC established procedures to help ensure that POTWs and POSSs comply with the Act; however, 83 (22 percent) of the 371 identified POSSs were not registered for NY-Alert and were not reporting overflow events. DEC

established procedures to ensure that SPDES permit requirements are met; however, some permit holders do not respond timely to actionable follow-ups resulting from inspections, and 11 percent of discharge monitoring reports that identified exceedances did not include a report of non-compliance as required. **Key recommendations:** Initiate prompt enforcement action to register POSSs with NY-Alert; and monitor and take timely enforcement action for facilities that do not submit required reports or plans.

Department of Labor

(DOL)

DOL enforces New York Labor Laws (Laws) and promotes education about the protections they offer to workers, the unemployed, and job seekers. Its mission is to protect workers, assist the unemployed, and connect job seekers to jobs.

Selected Wage Investigation Procedures (2019-S-46). DOL's Division of Labor Standards (Division) is responsible for examining complaints and alleged Law violations that arise during an investigation. Where employers are found to be in violation of the Laws, the Division can require them to pay restitution of wages (and can also assess penalties that are retained by DOL), liquidated damages (i.e., additional amounts assessed to compensate workers for the delayed wages, which may serve as a deterrent to future violations), and interest. DOL reported collecting \$31 million and \$29 million in wages, interest, and penalties as a result of its wage investigations during calendar years 2019 and 2018, respectively. **Key findings:** Of a sample of 150 of the 5,387 cases opened by the Division's Albany, Buffalo, and Syracuse District Offices, for 69 cases (46 percent), Division investigators did not make first contact with the employer within 60 days of creating a wage investigation case in DOL's tracking system, as recommended by procedures. In 55 of the 69 cases, first contact did not occur for more than 120 days, including 13 cases where it did not occur until after more than 360 days had passed. In 24 cases, there was no documented investigation activity for significant periods of time, including two cases with gaps of more than two years. Further, in a review of 56 cases that DOL's system showed to be closed and paid, auditors could not determine whether 976 claimants represented by nine cases had received recovered wages totaling \$413,582. **Key recommendations:** Pursue appropriate actions to ensure investigators make initial contact with employers within 60 days of case docketing and fully document their actions; make efforts to identify the reasons for, and reduce, gaps in the investigation process; and identify and implement methods to better document and verify payments to claimants.

Department of Motor Vehicles

(DMV)

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

Enforcement of Article 19-A of the Vehicle and Traffic Law (Follow-Up) (2020-F-6). In the wake of a tragic school bus and freight train collision near Congers, New York, caused by bus driver negligence, Article 19-A of the New York State Vehicle and Traffic Law (Law) was enacted to create qualification standards for bus drivers. The DMV is responsible for overseeing the Article 19-A Program (Program) and establishing and enforcing policies to support the Law's requirements. Every motor carrier, as defined in the Law, must enroll in the Program, comply with its requirements, and ensure that their bus drivers meet the Law's qualification standards. These standards include passing a medical examination, passing practical and behind-the-wheel driving tests, and maintaining a safe driving record both on and off the job. Additionally, school bus drivers must undergo criminal background checks. Motor carriers are required to maintain records showing that each of their drivers has met these standards.

Initial Audit (2018-S-7). Key findings: Auditors identified deficiencies in the DMV's policies and procedures that could result in motor carriers operating out of compliance with the Program's requirements, with the associated risk that under- or unqualified drivers are operating vehicles and potentially jeopardizing safety. For example, the DMV did not clarify certain regulatory terms, which caused confusion among staff in determining whether certain entities are subject to the Law or could receive an exemption. The DMV also did not consistently document the basis for entities' exemptions or review past exemptions to determine if they were still appropriate. In addition, it did not use all readily available information to identify entities that may have been subject to, but were not enrolled in, the Program. The audit identified 311 entities that were not enrolled in the Program but appeared to be subject to its requirements. Finally, the audit found that the DMV's revised process for reviewing motor carrier compliance, which uses desk reviews with advance notice of the sample of driver files instead of the prior on-site review, introduced a risk that carriers could alter the records.

Follow-up findings: Of the five recommendations from the initial audit report, the DMV implemented four and partially implemented one.

Allocation, Billing, and Collection of Expenses of Administering the Motor Vehicle Financial Security Act and the Motor Vehicle Safety Responsibility Act (Follow-Up) (2021-F-3). The DMV administers the Motor Vehicle Financial Security Act and the Motor Vehicle Safety Responsibility Act (collectively, "Acts") pursuant to Articles VI and VII of the Vehicle and Traffic Law. These Acts help ensure that the operators of motor vehicles registered in New York possess adequate insurance coverage, or are financially secure, to compensate persons they might injure or whose property they might damage as a result of an accident. Department activities relating to the Acts fall into three program areas: the Dedicated Bridge and Highway Safety Program, the Compulsory Insurance Services Program, and the Accident Prevention Course Program. Under the Acts, the Department is required to annually estimate the expenses of administering the related programs and assess these expenses on insurance carriers in proportion to their reported premiums.

Initial Audit (2019-S-5). *Key findings:* In general, the DMV was appropriately allocating, billing, and collecting nearly all expenses related to administering the Acts. However, it could have better ensured the accuracy of its allocation and billing practices by analyzing reported premium data and taking follow-up action as needed. In addition, the DMV did not bill \$126,493 in assessable expenses due to its practice of not adjusting its billing to account for amended premiums reported by insurance carriers. The DMV also lacked a method for carrying prior period balances forward to subsequent periods and, as a result, did not collect \$25,265 that it had billed to insurers.

Follow-up findings: The DMV partially implemented the two recommendations from the initial audit report.

Department of State (DOS)

DOS serves as the official compiler of State agency rules and regulations, and provides a variety of services related to areas such as licensing, community planning and development, and consumer protection.

Implementation of the Security Guard Act (2019-S-42). DOS oversees the licensure, registration, and regulation of 35 occupations, including security guards. Pursuant to Article 7-A of the General Business Law, known as the Security Guard Act (Act), DOS is responsible for issuing new and renewal registration cards for all security guard applicants who meet certain Act requirements. For instance, security guards must satisfactorily complete initial and annual training programs through certified security guard training schools, including: an 8-hour pre-assignment training course, a 16-hour on-the-job training course, and, if applicable, a 47-hour firearms training course. Security guards must also be free of any criminal convictions for serious offenses. For this requirement, in addition to a criminal history background check during the initial application process, DOS reviews arrest notifications from the Department of Criminal Justice Services for anyone who has applied for a new or a renewed security guard registration. DOS is also required to maintain a computerized registry of all security guards and registration card applicants, through which employers must verify the status of security guards before employment. Between April 1, 2016 and September 27, 2019, DOS received 317,463 security guard applications and approved 98 percent (309,877), including 122,983 (of 130,244) original applications and 186,894 (of 187,219) renewal applications. *Key findings:* DOS was generally in compliance with the Act's requirements, maintaining an accurate registry of security guard applicants and having processes in place to ensure that only individuals meeting the Act's requirements are issued registration cards. However, it does not proactively monitor training requirements for security guards classified as police and peace officers—a classification that includes individuals who are retired. Auditors found that certain registered security guards who were retired police/peace officers did not complete required trainings, including firearms training. In addition, DOS did not always follow its policies and procedures for registered security guards with arrest notifications. *Key recommendations:* Develop processes to effectively monitor and

review training records, especially for armed security guards classified as peace/police officers, to ensure these guards are in compliance with the Act; enhance current procedures for reviewing arrest notifications of registered security guards, including a clearly defined process for following criminal cases and taking action against security guards charged with serious offenses; and enhance current renewal application policies and procedures to ensure consistency in processing security guard renewal applications.

Department of Taxation and Finance

(Tax and Finance)

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

Efforts to Collect Delinquent Taxes (2019-S-61). When a tax debt has been billed and the taxpayer has exhausted all applicable protest rights, or protest rights have expired, the tax is considered delinquent, and Tax and Finance may initiate collection actions. Five key collection steps include warrants, levies, Responsible Person Assessments, and performing applicable searches to locate delinquent taxpayers and/or identify potential sources of payment. In addition, in some cases, Tax and Finance has the authority to waive or abate a tax liability, such as when it has been deemed legally uncollectible or not legitimate or when there is reasonable cause to abate. Tax and Finance publishes a monthly list of both the top 250 individual and top 250 business tax debtors for whom it filed at least one warrant in the prior 12 months. The March 2021 lists for individuals and businesses totaled almost \$316 million and \$182 million, respectively, for the amount due and owed at the time the warrant was filed. **Key findings:** Tax and Finance generally followed relevant policies in cases where it abated amounts due. However, for a significant number of the delinquent tax assessments reviewed, auditors were unable to determine that Tax and Finance took adequate collection actions—specifically using search tools to identify taxpayer resources—prior to completing or closing cases. **Key recommendations:** Improve documentation for each relevant assessment so that it affirms which actions are applicable and which actions staff take in their collection activities; and take steps to ensure compliance with policies and procedures that address abatement decisions, and, where considered necessary, document the rationale for decisions.

Gaming Commission

(Gaming)

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

Oversight of Casino Revenues and Regulatory Oversight Reimbursement Collections (Follow-Up) (2020-F-31). Commercial and VLT casinos are required to remit a percentage of their gaming revenues to the State, and tribe/nation casino remittances are defined in compacts (agreements with the State). Gaming has officials at each of the 19 commercial,

VLT, and tribe/nation casinos to ensure compliance with gaming regulations and tribe/nation compacts, and collect the costs for these oversight activities (also known as regulatory or operation and administration costs) from each casino. During the State fiscal year ended March 31, 2020, Gaming reported that it received \$1.34 billion in casino revenues: \$1.07 billion from VLT casinos, including \$917 million as education aid; \$183.7 million from commercial casinos; and \$85 million from tribe/nation casinos.

Initial Audit (2019-S-8). *Key findings:* Gaming did not bill an estimated \$13 million in oversight costs to commercial casinos. Gaming lacked policies regarding dispute resolution procedures for commercial casino oversight cost charges, leaving it unprepared to address disputes that might arise. While Gaming was adequately monitoring casinos to ensure that revenues were appropriately collected, accounted for, and transmitted to the State as required, it was not evaluating risks related to tribe/nation revenue reporting.

Follow-up findings: Gaming made limited progress in addressing the problems identified in the initial audit report. Of the initial report's four audit recommendations, two were partially implemented and two were not implemented.

Office of Parks, Recreation, and Historic Preservation (Parks)

Parks is responsible for operating and maintaining the State park, recreation, and historic site system to conserve, protect, and enhance the natural, ecological, historic, cultural, and recreational resources of New York State. This system includes 180 State parks with opportunities for hiking, camping, swimming, golfing, and snowmobiling as well as 38 historic sites.

Oversight of Construction Management Contracts (2020-S-43). Parks oversees a range of capital projects to improve the State's park, recreation, and historic sites. To ensure certain capital projects are executed and constructed properly, Parks occasionally contracts with firms that specialize in providing construction management (CM) services. In 2012, Parks entered into a contract with the Dormitory Authority of the State of New York (DASNY) to serve as the construction manager of a \$25 million Niagara Falls State Park revitalization project. After five amendments, this contract expanded to include additional projects throughout New York and is Parks' largest CM contract. In addition to the DASNY contract, Parks enters into three-year contracts with private firms to serve as the construction manager (term contracts). Parks currently has 10 active CM term contracts with private firms that total approximately \$27.9 million for 58 projects. *Key findings:* Parks generally established controls to ensure CM term contractors are meeting contract terms and requirements. Auditors identified only limited instances where Parks could not provide documentation showing CM requirements were met and where minor overpayments were made, for which Parks obtained a refund from the contractor. Parks paid over \$229,000 in fees under the contract with DASNY that could have been avoided if it had used a term contract rather than the DASNY contract. The fees will continue to accrue and be paid by Parks until contract

completion. Also, Parks officials do not receive detailed support for payments made under the DASNY contracts and, therefore, cannot monitor payments made under this contract as effectively as their other term contracts. **Key recommendations:** Complete new CM projects using the term contracts in place or under new term contracts, as practicable; and develop and implement a process to obtain additional support to adequately monitor vouchers under the DASNY contract for accuracy, support, and project-related expenses.

Public Service Commission (PSC)

PSC regulates 650 utilities operating across the State. Through its Department of Public Service (Department), PSC seeks to ensure affordable, safe, secure, and reliable access to electric, gas, steam, telecommunications, and water services for New York State's residential and business consumers, while protecting the natural environment.

Enforcement of Commission Orders and Other Agreements (Follow-Up) (2021-F-5).

PSC reviews and approves applications for potential mergers and acquisitions, rate cases, and other agreements with utility companies. Approval of these applications is often based on conditions such as replacing or upgrading infrastructure, providing access to services to outlying areas, or improving the quality of service. These conditions are listed in Commission Orders (Orders), and any violation of an Order's terms is grounds for the Commission to seek reparations, terminate the approved acquisition/merger, or even revoke a utility's license. The Commission also has the statutory authority to pursue penalties against utilities pursuant to Public Service Law. Between January 1, 2019 and February 28, 2021, the Department reported six settlements under provisions of the Public Service Law, totaling \$76.75 million, including a \$38 million settlement with National Grid to lift the natural gas moratorium in Long Island, Queens, and Brooklyn. For electric and gas utilities, the Department employs individualized measures of utility service quality, reliability, and safety, which include performance improvement goals that utilities agree are appropriate and achievable. The Department monitors the major electric and gas utilities' performance in relation to benchmarks in each utility's performance plan. These performance plans state the utilities have sufficient resources to meet agreed-upon performance standards. Failure to meet the goals in these plans may result in fines based on fixed-dollar amounts or a percentage of equity.

Initial Audit (2018-S-27). **Key findings:** The Department did not always adequately monitor compliance with Order conditions—and in some cases even lacked the equipment necessary to do so. Orders were, at times, ambiguous and lacked time frames for completion, interim performance measures, and consequences for non-compliance, making enforcement difficult and inconsistent. In the absence of policies and procedures, Department staff use their discretion for identifying non-compliance and PSC imposes fines and/or sanctions. Additionally, while utilities submitted required documents per the Orders and performance plans, the Department did not always verify the information it receives from utilities and shares with PSC—information that is the basis for PSC decision making.

Follow-up findings: Significant progress had been made in addressing the issues identified in the initial audit. Of the initial report's four audit recommendations, two had been implemented and two had been partially implemented.

State Board of Elections (BOE)

The BOE is responsible for administering and enforcing election laws in the State. To fulfill these responsibilities, the BOE supports 57 County Boards of Elections and the New York City Board of Elections (County Boards).

Use of Federal Funding for Election Technology and Security (2020-S-18). Congress passed the Help America Vote Act of 2002 (HAVA) to help reform the nation's voting process by establishing minimum election administration standards and creating the U.S. Election Assistance Commission (EAC) to aid in the administration of federal elections. In 2018, the EAC made the HAVA Election Security Grant (HAVA Security Grant) available to help states improve and enhance election administration, technology, and security at both the state and county levels. In June 2018, the BOE received \$19.5 million in HAVA Security Grant funds. **Key findings:** The BOE generally utilized available funding from its HAVA Security Grant to enhance the State's election technology and infrastructure. Specifically, the BOE planned for and spent funds for the activities described in its ARMOR cybersecurity plan. Although a portion of the funds remained unspent as of February 2021, the BOE designated the remaining funds for ongoing, multi-year initiatives that continue to address constantly evolving cybersecurity threats and enhance election infrastructure and security. **Key recommendation:** Continue to review County Boards' claims for reimbursement to ensure they are for approved remediation plan activities and that County Boards are moving forward with the needed security measures.

Workers' Compensation Board (WCB)

The WCB's mission is to protect the rights of employees and employers by ensuring the proper delivery of benefits and by promoting compliance with the Workers' Compensation Law (Law).

Assessment of Costs to Administer the Workers' Compensation Program for the Three State Fiscal Years Ended March 31, 2020 (2021-M-1). Costs to administer the Workers' Compensation Program (Program) are recovered via assessments by the WCB on participating insurance carriers, the State Insurance Fund, self-insurers, and self-insured political subdivisions of the State. Under the Law, the WCB and the State Comptroller are required to ascertain the Board's expenses. Auditors performed certain procedures, agreed to by the WCB, to ascertain the expenses it incurred in administering the Program for the three State fiscal years ended March 31, 2020. **Key findings:** On average, the WCB incurred \$207 million in expenses, including about \$6 million attributable to administering self-insurance, to administer the Program for each of the three State fiscal years.

Audit Initiatives

Compliance With Executive Order 95 (Open Data)

State government entities possess large amounts of valuable information on subjects such as health, business, public safety, parks, recreation, labor, and transportation. Executive Order 95 (EO 95) established an online Open Data Website ([Open Data](#)) for the collection and public dissemination of publishable State data maintained by covered State entities (generally, those headed by individuals appointed by the Executive). Open Data should provide ongoing “single-stop” access to publishable State data and make such data freely available in accessible formats for public use. As of June 2021, there were over 5,280 data items on Open Data. OSC issued two reports and two follow-ups of State agencies’ compliance with EO 95 to improve accountability and support continuous improvement of Open Data, increasing its benefits to the public and government entities.

Department of Environmental Conservation (2020-S-11). As the steward of New York’s natural resources and environment, DEC is responsible for managing water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the State and their overall economic and social well-being. As of March 2021, DEC had published 147 data items on Open Data. **Key findings:** DEC had taken steps to meet the requirements of EO 95, but was not in compliance with EO 95’s requirements regarding the qualifications of the Data Coordinator and incorporating Open Data into its ongoing core business planning and strategies. In response to auditors’ findings, DEC appointed a qualified Data Coordinator and began to incorporate Open Data into its core business functions. However, DEC did not identify the total population of State data it maintains. Therefore, there was limited assurance that DEC had provided a complete catalogue of publishable State data that it maintains or established a schedule for making the data public, as required. The data DEC posted to Open Data was generally updated timely and easily accessible. However, auditors found issues with seven data sets (of 15 reviewed), mostly related to formatting and completeness with minor issues related to accuracy. **Key recommendations:** As soon as practicable, submit to ITS and make publicly available a complete catalogue and schedule of publishable State data for addition to Open Data; develop procedures to ensure data is reliable and usable.

Olympic Regional Development Authority (2020-S-36). ORDA is responsible for operating and maintaining facilities developed for the 1980 Winter Olympics, Gore Mountain, and Belleayre Mountain. As of August 2020, ORDA had not published any data items on Open Data. **Key findings:** ORDA did not begin to take action to meet the requirements of EO 95 until after the start of the audit. In addition, to not having any data item published, it did not designate a Data Coordinator, complete a comprehensive catalogue of publishable data, submit a master schedule of publishable data sets to the Office of Information Technology Services (ITS), or incorporate Open Data into its ongoing core business planning and strategies. However, since then, ORDA has taken steps to comply with EO 95 including appointing a Data Coordinator, contacting ITS for guidance, creating a data catalogue, and developing policies related to EO 95. **Key recommendations:** As soon as practicable,

submit to ITS and make publicly available a complete catalogue and schedule of publishable State data for addition to Open Data; develop procedures for incorporating Open Data and compliance with EO 95 into ORDA's core business and planning strategies.

Department of State (Follow-Up) (2021-F-11). DOS serves as the official compiler of State agency rules and regulations as well as the publisher of information on official State documents. DOS also provides a variety of services related to licensing, uniform commercial code, consumer protection, and the New York State Athletic Commission. As of June 16, 2021, DOS had published 22 data items on Open Data.

Initial Audit (2019-S-16). *Key findings:* DOS generally complied with the requirements of EO 95, incorporating compliance with EO 95 into its core business functions and continuing to identify new data sets to add to Open Data. However, DOS did not identify the total population of publishable State data that it maintains, resulting in limited assurance that it provided a complete catalogue or accompanying schedules for making the data public, as required; and there were some problems with the usability of some of DOS' data sets on Open Data.

Follow-up findings: DOS had made progress by working to implement a new system for one of its data sets, resulting in the data being more accessible and incorporating Open Data needs. Of the initial report's two audit recommendations, one had been implemented and one had not been implemented.

Office of General Services (Follow-Up) (2021-F-12). OGS published its first data item to Open Data on June 24, 2014 and had published six data items as of June 9, 2021.

Initial Audit (2019-S-39). *Key findings:* While OGS took steps to meet the requirements of EO 95, certain aspects of the order were not fully addressed. OGS did not identify the total population of publishable State data that it maintains, and there was limited assurance that OGS provided a complete catalogue of its publishable State data or accompanying schedules for making that data public, as required. Additionally, OGS maintained potentially high-value publishable State data that it did not add to Open Data. OGS also did not incorporate compliance with EO 95 into its core business functions.

Follow-up findings: OGS had made limited progress in addressing the problems identified. Of three recommendations from the initial audit, OGS partially implemented two and did not implement one.

Special Reports

Open Data

Compliance With Executive Order 95: Achieving Transparency and Citizen Engagement Through Open Data (2021-D-1). The publication of digital State data for purposes of collaboration and analysis (i.e., open data) is driven by the rationale that such practices make government more transparent and empower New Yorkers to use data to improve their lives. Open data can bring enormous benefits to the public, businesses, and researchers, and can be used in various fields such as health, food security, education, climate, intelligent transport systems, and the development of “smart cities.” When open data systems are designed and implemented effectively, they allow stakeholders direct, centralized access to high-value publishable State government data to search, analyze, download, and share. This policy enables individuals, organizations, and governments to innovate and collaborate in new ways, encouraging transparency as well as public service improvements, economic value, and efficiency.

In New York, State government entities possess large amounts of valuable information on subjects such as health, business, public safety, parks and recreation, labor, and transportation. Recognizing the importance of data as a public asset, Executive Order 95 (EO 95), “Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement,” issued March 11, 2013, established an Open Data website ([Open Data](#)) for the collection and public dissemination of publishable State data maintained by covered State entities (generally, those headed by individuals appointed by the Executive). Publishable data specifically includes only information that is not protected or otherwise sensitive and whose release does not violate confidentiality, privacy, or security statutes and laws. The Department of Environmental Conservation’s Recommended Fishing Rivers and Streams, the Department of Health’s Food Service Establishment: Last Inspection, and the Department of State’s Active Corporations are just a few examples of the high-value State data that EO 95 requires be published on Open Data.

Since April 2020, OSC has issued five audits examining State agencies’ compliance with EO 95 to improve accountability and support continuous improvement of Open Data, increasing its benefits to the public and government entities. OSC’s audits found that compliance with EO 95 requirements varied across the five agencies audited. DOS generally complied with EO 95 requirements, but did not provide a complete data catalogue and schedule. OGS, Parks, and DEC took steps to meet the requirements of EO 95; however, certain aspects of EO 95 were not addressed. ORDA was not aware of and did not comply with EO 95 requirements.

Education

2020 Annual Report on Preschool Special Education. The State Education Department (SED) oversees special education programs that provide services to students with disabilities between the ages of 3 and 21 in New York State. While most school-age students with disabilities in New York receive their educational services from public school districts, preschool special education services are predominantly provided by private providers. SED reports that, for the 2016-17 school year, about 80,000 preschool students with disabilities received services throughout the State from over 350 approved providers at an annual cost of almost \$1.4 billion to the State and its local governments. In 2020, OSC completed 10 audits of expenses submitted to SED by preschool special education providers. These audits have, collectively, identified more than \$4.4 million in recommended disallowances, or 3.2 percent of the total claimed expenses of \$139.3 million for the audit period. The audits completed in 2020 indicate ongoing inaccuracies in cost reporting by special education providers, with certain categories continuing to be of concern. These include errors related to the allocation and/or inappropriate claiming of personal service and other than personal service expenses, including those from other programs, and insufficiently documented related-party transactions. Although audit work continued virtually in 2020 due to the COVID-19 pandemic, the inability to conduct on-site work at provider locations slowed the pace of OSC's special education audits. The dollar amount of audit findings and number of audits decreased from \$11.2 million for 18 audits in 2019 to \$4.4 million for 10 audits in 2020.

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