NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Mike Foley
State Auditor

Mike.Foley@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301

February 28, 2024

Dr. Steven Corsi, Chief Executive Officer
Nebraska Department of Health and Human Services
301 Centennial Mall South
Lincoln, Nebraska 68509

Dear Dr Corsi:

This letter is provided pursuant to American Institute of Certified Public Accountants (AICPA) Auditing Standards AU-C Section 265.A18, which permits the early communication of audit findings due to their significance and the urgent need for corrective action. The audit work addressed herein was performed as part of the fiscal year ended June 30, 2023, Statewide Single (Single) audit. This communication is based on our audit procedures through January 31, 2024. Because we have not completed our audit of the fiscal year 2023 Single, additional matters may be identified and communicated in our final reports.

In planning and performing our audit through January 31, 2024, of the State of Nebraska's (State) compliance with the types of compliance requirements identified as subject to audit in the U.S. Office of Management and Budget (OMB) *Compliance Supplement* that could have a direct and material effect on each of the State's major federal programs for the year ended June 30, 2023, in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States (Government Auditing Standards), and the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), we are considering the State's compliance with the applicable types of compliance requirements as described in the OMB *Compliance Supplement* for the year ended June 30, 2023. We are also considering the State's internal control over compliance relevant to the audit in order to determine our auditing procedures for the purpose of expressing our opinions on compliance and to test and report on internal control over compliance in accordance with Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the State's internal control over compliance.

In connection with our engagement to audit compliance as described above, we noted certain internal control or compliance matters related to the activities of the Nebraska Department of Health and Human Services (Agency) or other operational matters that are presented below for your consideration. This comment and recommendation, which has been discussed with the appropriate members of the Agency's management, is intended to improve internal control or result in other operating efficiencies.

Our consideration of internal control over compliance was for the limited purpose described in the second paragraph and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance and therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified a certain deficiency in internal control over compliance that we consider to be a significant deficiency.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A material weakness in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance. We consider the following comment to be a significant deficiency.

This comment will also be reported in the State of Nebraska's Statewide Single Audit Report Schedule of Findings and Questioned Costs.

Draft copies of this letter were furnished to the Agency to provide management with an opportunity to review and to respond to the comments and recommendations contained herein. The formal response received has been incorporated into this letter. The response was not subjected to the other auditing procedures applied in the engagement to audit compliance and, accordingly, we express no opinion on it. A response that indicates corrective action has been taken was not verified at this time, but it will be verified in the next audit.

The following is our interim communication comment and recommendation for the year ended June 30, 2023.

1. Program: AL 93.778 – Medical Assistance Program; AL 93.778 – COVID-19 Medical Assistance Program - Allowability

Grant Number & Year: 2305NE5MAP, FFY 2023; 2205NE5MAP, FFY 2022

Federal Grantor Agency: U.S. Department of Health and Human Services

Criteria: Per 45 CFR § 75.302(a) (October 1, 2022), "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Per 45 CFR § 75.403 (October 1, 2022), costs must be necessary, reasonable, and adequately documented.

Title 471 NAC 15-003.02(H) requires that the provider perform the personal assistance services noted on the service plan, accurately documenting services provided in the Electronic Visit Verification (EVV) system and confirming that services were received as authorized according to Agency procedures.

Title 471 NAC 15-005.02(A) states, "Providers cannot provide services to more than one client at a time." That same regulation says also, "Medicaid will not pay for services that were not performed during the actual hours noted by the provider in the Electronic Visit Verification (EVV) system."

A good internal control plan requires procedures to ensure that services provided agree to the service needs assessment.

Section 1903(l)(5)(A) of the Social Security Act states the following:

The term "electronic visit verification system" means, with respect to personal care services or home health care services, a system under which visits conducted as part of such services are electronically verified with respect to –

(i) the type of service performed;
(ii) the individual receiving the service;
(iii) the date of the service;
(iv) the location of service delivery;
(v) the individual providing the service; and
(vi) the time the service begins and ends.

Public Law 114-255, § 12006, (December 13, 2016) ("21st Century Cures Act") provides, as is relevant, the following:

> *(a) Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by inserting after subsection (k) the following new subsection:*
>
> *''(l)(1) Subject to paragraphs (3) and (4), with respect to any amount expended for personal care services or home health care services requiring an in-home visit by a provider that are provided under a State plan under this title (or under a waiver of the plan) and furnished in a calendar quarter beginning on or after January 1, 2019 (or, in the case of home health care services, on or after January 1, 2023), unless a State requires the use of an electronic visit verification system for such services furnished in such quarter under the plan or such waiver, the Federal medical assistance percentage shall be reduced—*
>
> *''(A) in the case of personal care services—*
> *''(i) for calendar quarters in 2019 and 2020, by .25 percentage points;*
> *''(ii) for calendar quarters in 2021, by .5 percentage points;*
> *''(iii) for calendar quarters in 2022, by .75 percentage points; and*
> *''(iv) for calendar quarters in 2023 and each year thereafter, by 1 percentage point[.]*

42 CFR § 440.167(a)(2) (October 1, 2022) states, in part, that personal care services are those "provided by an individual who is qualified to provide such services and who is not a member of the individual's family[.]" 42 CFR § 440.167(b) adds, "For purposes of this section, *family member* means a legally responsible relative."

Neb. Rev. Stat. § 28-512 (Reissue 2016) creates the offense of "theft by deception." That statute says the following, in relevant part:

> *A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:*
>
> *(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or*
>
> *(2) Prevents another from acquiring information which would affect his judgment of a transaction; or*
>
> *(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship[.]*

Further, Neb. Rev. Stat. § 28-911 (Reissue 2016) prohibits "abuse of public records," as follows:

> *(1) A person commits abuse of public records, if:*
>
> *(a) He knowingly makes a false entry in or falsely alters any public record; or*
>
> *(b) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or*
>
> *(c) Knowing he lacks the authority to retain the record, he refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such record; or*
>
> *(d) He makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.*
>
> *(2) As used in this section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.*
>
> *(3) Abuse of public records is a Class II misdemeanor.*

Condition: During testing of personal assistance service (PAS) claims, we noted the following:

- Personal assistance services appeared to be claimed at the same time that the provider was working at another job or at other activities, resulting in apparent fraudulent billings and payments.

- Services provided lacked adequate supporting documentation. This included providers being able to submit claims without verifying the location where those services were provided.

- Services billed exceeded the number of hours authorized under the service needs assessments.

- Providers billed for unreasonable amounts of time – including, among other things, for more daily hours than are in a 24-hour period and for unfeasible scenarios, such as the supposed performance of a week's worth of duties for one client in only three days.

- Providers received overtime pay for unauthorized services, meaning that they were compensated at an increased rate for services ineligible for payment in the first place.

- Client guardians or parents were paid for providing services, which violates governing regulations prohibiting such arrangements.

A similar finding has been noted in prior audits since 2014.

Repeat Finding: 2022-039

Questioned Costs: $53,758 known

Grant	Questioned Costs (Federal Share)
2205NE5MAP	$ 8,068
2205NE5MAP COVID - 19	$ 865
2305NE5MAP	$ 40,496
2305NE5MAP COVID - 19	$ 4,329

Statistical Sample: No

Context: The Agency offers PAS (assistance with hygiene, mobility, housekeeping, etc.) to Medicaid recipients with disabilities and chronic conditions. The services to be provided are based on individual needs and criteria that must be determined in a written service needs assessment (SNA). The Agency implemented an EVV system for PAS providers on January 3, 2021, as required by Section 12006(a) of the 21st Century Cures Act, passed by Congress in 2016. The EVV system electronically captures and verifies provider visit information, and providers were required to submit claims to the Agency electronically through this application.

We initially selected five provider payments for testing – and, from those, one week of services submitted through the EVV system. A week of service billed by the provider may include multiple claims and clients. Due to the numerous issues identified with the billings, we expanded testing and randomly selected an additional five provider payments for testing, and one week of services. We noted issues with 9 of 10 providers tested.

In addition to the billing issues identified for the weeks tested, we also noted that three of these providers had outside employment or participated in activities that conflicted with the PAS hours billed. We obtained more documentation for additional weeks. Based on the documentation obtained, we identified $14,397 in potentially fraudulent payments made to the providers during fiscal year 2023.

Potentially Fraudulent Provider Payments					*Other Questioned Costs*	
Provider #	**Federal Share**	**State Share**	**Total**		**Federal Share**	**State Share**
1	$ 7,571	$ 4,247	$ 11,818		$ 3,604	$ 1,660
2	$ 1,017	$ 570	$ 1,587		$ 6,671	$ 3,741
3	$ 636	$ 356	$ 992		$ 880	$ 494
4					$ 1,026	$ 414
5					$ 32,083	$ 18,005
6 thru 9					$ 270	$ 148
Totals	**$ 9,224**	**$ 5,173**	**$ 14,397**		**$ 44,534**	**$ 24,462**

In addition to the potentially fraudulent payments related to hours claimed while at another job or activity, we noted $44,534 in Federal payment errors related to other issues, for total Federal questioned costs of $53,758. The Federal share of payments tested totaled $81,926. The total Federal share of PAS claims for the fiscal year was $5,416,039, and the State share was $3,814,632. Federal payment errors noted in the random sample totaled $268. The total Federal sample tested for the random sample was $979. The total dollar error rate was 27.37%, which estimates the potential dollars at risk for fiscal year 2023 to be $1,482,370.

The following details issues with each provider.

Provider #1

This provider was authorized a total of 87.25 hours of service per week for three different clients. For the week tested, the provider manually created the claims for payment and did not use the EVV system to create a visit form; therefore, the claims did not capture client signatures or verify the location of the visit through the Global Positioning System (GPS). Likewise, there was no listing of the activities performed to ensure compliance with the SNA. We requested the claim detail for a second week of services and, again, the provider manually created the claims and did not enter a visit in the EVV system. Consequently, we questioned all of the claims selected for testing. We noted further that the provider exceeded the SNA by 12 hours and billed 24.5 hours of service on one day, which is impossible. We reviewed three additional weeks of claims and noted also that the provider exceeded the SNA by .25 to 2 hours each week, resulting in additional questioned costs.

Most concerning was the fact that the provider worked two additional jobs during the time that she billed for personal assistance services. The provider worked as a dental hygienist and as a pharmacy technician. The provider billed personal assistance services beginning at 6:00 a.m. every day until at least 5:30 p.m. The dental office with which the provider was employed was open only from 8:00 a.m. to 5:00 p.m., Monday through Friday. During the week of February 5, 2023, the provider claimed 87 hours for PAS – of which 43.75 hours were claimed to have been provided between 8:00 a.m. and 5:00 p.m., Monday through Friday. As the provider did not use the EVV, it is unknown where she was at the times the services were claimed; however, considering the provider's other employment, it is possible that fraud may have occurred.

We obtained the pharmacy technician employment records for the provider and compared the PAS billings to those records from July 2022 through January 2023. We identified 101 days during which PAS hours billed overlapped with times that the provider was working as a pharmacy technician. In determining these overlapped hours, we did not factor in any travel time that may have occurred between client homes and the provider's place of employment; therefore, the possibility of additional fraudulent payments exists.

The provider billed 1,200 hours of personal assistance services during this time period, and more than half of these hours could not have been provided. We questioned 770 hours as potential fraud, totaling $8,678. We also noted that the provider did not complete all of the PAS visits through a device using GPS; therefore, additional questioned costs resulted from not using the GPS verification method.

Given that many of the visits completed with GPS verification overlapped with the times that the provider was working at the pharmacy, another individual appears to have aided the provider in falsely claiming that the personal assistance services were provided.

The employment records for the provider included the exact time punched in and out for the shifts worked. Below are a few examples of the hours billed by the provider and the hours the provider worked at the pharmacy. Clients 1 and 2 live at the same residence, and Client 3 is the provider's mother.

Pharmacy Time Record			EVV Visit Form and Claim Documentation				
Date	Start Time	End Time	Client	Start Time	End Time	Hours Billed	Verification Method
7/24/2022	10:04am	6:06pm	1	5:59:22am	10:02:39am	8	GPS
			2	10:05am	2:05pm	8.25	Manual Claim
			3	2:10pm	7:55pm	5.75	Manual Claim
11/14/2022	8:58am	7:32pm	1	6:00am	10:00am	4	Manual Claim
			2	10:05am	2:05pm	4	Manual Claim
			3	2:09:13pm	7:01:31pm	4.75	GPS
1/3/2023	8:59am	6:54pm	1	6:00am	10:00am	4	Manual Claim
			2	10:05am	2:05pm	4	Manual Claim
			3	2:09:19pm	6:55:57pm	4.75	GPS

In addition to the apparent fraudulent hours billed, the provider received overtime pay for the weeks reviewed. Providers are paid at time and one-half for services in excess of 40 hours each week. The provider evidently received overtime pay, in part, due to the apparent fraudulent billing. The provider was paid overtime for 21 weeks from July 2022 through December 2022. This resulted in additional questioned costs of $3,140 for potential fraud. Federal questioned costs not related to other employment totaled $3,604.

Provider #2

This provider was authorized a total of 116.75 hours of service per week for four different clients. For the week tested of December 18, 2022, through December 24, 2022, the provider billed 121.25 hours of service. This provider manually completed visits; consequently, there was no location verification, and no client signatures were captured. Therefore, we questioned the claims for the week tested. We also identified other issues for the week tested. We noted the provider billed a total of 32 hours of service for the four clients on December 22, 2022, which is impossible. Also, for one client, the visit forms for this day supported only 2.75 hours, but the provider billed 20 hours for the client. The provider also exceeded the service authorization by 75 quarterly units or 18.75 hours for the week.

Due to the issues noted, we reviewed additional weeks and claims of service. This resulted in more questioned costs for the provider exceeding the SNA. The provider exceeded the SNA for 8 of the 15 weeks reviewed, ranging from .25 to 11.5 hours overbilled.

Per documentation in the case file, the provider was involved in a court case pertaining to her own child. On December 2, 2022, a law enforcement raid was conducted at the provider's home, which revealed Fentanyl and firearms. The provider was not present at the time and, when contacted later, claimed to be on vacation; however, the provider billed for 14.5 hours of services that day. Despite appearing in court on December 20, 2022, at 11:30 a.m., the provider billed for client services that same day from 10:15 a.m. to 1:30 p.m. Based on these discrepancies, we requested the EVV records for the remaining days billed in December 2022. None of the additional visit forms were completed through a device using GPS to track the location, and no signatures were obtained; therefore, we questioned these claims.

The case file also included documentation of supervised visits that occurred between the provider and the provider's child at the provider's home. Reviewing the EVV records for the days that the visits occurred, we noted that the times the provider billed for PAS services overlapped with the times of these supervised visits. The provider could not have provided the majority of PAS services billed on these days. Again, the visit forms did not contain verification of the location where the services were provided. We questioned the hours billed for each of these days.

	Personal Assistance Hours		Supervised Visit Hours	
Day	Start Time	End time	Start Time	End time
1/7/2023	8:30am	1:45pm	9:00am	1:07pm
1/10/2023	3:30pm	8:15pm	5:30pm	7:30pm
1/17/2023	3:00pm	6:00pm	4:00pm	6:02pm
1/24/2023	12:45pm	8:15pm	4:00pm	7:00pm
1/31/2023	2:45pm	8:00pm	3:30pm	5:34pm
2/7/2023	2:45pm	8:00pm	3:45pm	5:48pm
2/14/2023	2:45pm	8:00pm	4:00pm	6:01pm

Lastly, the provider had other employment as a medical assistant and a student bus driver. It is likely that the hours of other employment conflicted with the PAS hours billed. We requested the provider's employment records for July 2022 through December 2022. While comparing the employment records to the days and hours billed for PAS services, we identified 40 days from June 27, 2022, through November 16, 2022, during which hours worked overlapped with times billed for PAS services. We questioned any PAS hours billed that overlapped with the provider's employment hours as potential fraud.

In determining these overlapped hours, we did not factor in any travel time that may have occurred between client homes and the provider's place of employment; therefore, the possibility of additional fraudulent payments exists. We also noted the provider did not complete the PAS visits through a device using GPS; therefore, any times billed on these 40 days were also questioned for inadequate documentation. Apparent fraudulent PAS hours billed totaled $1,383. Overlapping times ranged from 1.25 hours to 5.25 hours per day.

The table below contains a few examples of overlapping hours billed by the provider:

Bus Driver Time Record			EVV Visit Form and Claim Documentation			
Date	Start Time	End Time	Client	Start Time	End Time	Hours Billed
9/19/2022	6:30am	8:45am	1	6:15am	7:00am	.75
			2	7:10am	8:10am	1
	2:50pm	7:14pm	3	1:45pm	4:30pm	2.75
			2	4:45pm	6:30pm	1.75
11/3/2022	6:00am	8:00am	1	6:15am	7:00am	.75
			2	7:15am	8:15pm	1
	1:45pm	6:05pm	1	1:45pm	2:45pm	1
			4	3:00pm	5:00pm	2
			2	5:15pm	6:00pm	.75

In addition to the apparent fraudulent overlapped hours, the provider was paid for overtime for the weeks reviewed. The provider received overtime, in part, due to the apparent fraudulent billing. All overtime hours paid during fiscal year 2023 were questioned, either due to the fraudulent hours billed for the week, or for inadequate documentation for not using the GPS verification method. This resulted in additional questioned costs of $204 for potential fraud. Federal questioned costs not related to employment issues totaled $6,671.

Provider #3

This provider was authorized a total of 97.5 hours of service per week for four clients. For the week initially tested, six visit forms were entered through a personal computer, so there was no location verification and no client signature. Five of these visits occurred in the evening, from 7:00 p.m. to 10:15 p.m., for 3.25 hours. The provider incorrectly billed 4 hours for one of these visits. The visits with no location verification were questioned. We also noted mileage variances on the visit forms entered through a mobile device when GPS tracking was utilized. There were two visits with a 20-mile variance from the location of the client and where the provider apparently ended the visit. There are unknown questioned costs for these mileage variances.

The service authorizations for each of the clients included some services to be performed every day of the week; however, only two of the four clients were billed daily for services. For example, if a client was authorized for a bath seven times per week, but the provider performed the service on only three days, we considered the hours charged for four baths to be overbilled. We reviewed additional weeks during the fiscal year, and there were additional questioned costs based on the frequency of the task authorized.

This provider also received overtime pay for several of the weeks reviewed. Therefore, the provider was not only overpaid due to billing for tasks that were not provided as authorized but also received overtime pay based upon some of those overbillings, resulting in additional questioned costs. Federal questioned costs for issues not related to other employment and activities totaled $880.

The provider was also receiving wages from a home health care company during fiscal year 2023. Based on the wages earned there, the provider appears to have been working full-time, and hours claimed for PAS likely overlapped with hours worked at the home health care company.

We requested the provider's employment records from the home health care company, and the employer responded that the provider was a salaried employee and did not have a set schedule. The provider also stated that a timesheet was not kept.

We performed a social media search and found several posts on Facebook that depicted the provider being out-of-state on several weekends during fiscal year 2023. We compared those apparent out-of-state dates to the dates of billed services. The provider billed at least nine days that conflicted with these trips outside of Nebraska. The provider billed 94.25 hours during these days, resulting in potential fraud of $992.

Four of the nine days billed did not use the GPS verification method for any of the clients. Based on the Facebook posts, however, the provider was attending an event in Indianapolis, Indiana, on March 11 and 12, 2023, but billed 8.25 hours of services for each of these days. On March 31, 2023, the provider billed 15.75 hours; however, she appeared to be in Arizona. No GPS verification was used on June 6, 2023, and the provider billed 10.75 hours, but appeared to be in Arizona. For the remaining five days, the hours billed did not agree to the times logged through GPS. Additionally, times overlapped between services, and travel time between client homes was unreasonable, or part of the hours billed did not use the GPS verification method. For those visit forms that indicated GPS verification was used, another individual may have entered information into the verification system.

The table below contains examples of some of the discrepancies noted:

Client	Day	Start Time	End Time	Hours Billed	Verification Method	Description
1	5/20/2023	11:00:49am	11:00:52am	5	GPS	Only 3 seconds were logged for Client 1 and the provider appeared to be in Dallas, Texas, on this day.
2	5/20/2023	11:35am	2:50pm	3.25	Personal Computer	
4	6/2/2023	7:00pm	10:15pm	3.25	Personal Computer	The provider appeared to be in Phoenix, Arizona.
1	6/3/2023	11:03:08am	11:03:11am	5	GPS	Only 3 seconds were logged for Client 1.
2	6/4/2023	11:35am	2:50pm	3.25	Personal Computer	The provider appeared to be in Phoenix, Arizona.
3	6/5/2023	11:19am	3:30pm	4.25	GPS	The provider appeared to be in Arizona. There is only one minute between services logged for Clients 3 and 2, and there is overlapping time between Clients 2 and 4.
2	6/5/2023	3:31pm	7:41pm	3.25	GPS	
4	6/5/2023	7:00pm	10:15pm	3.25	Personal Computer	

Provider #4
The Agency authorized this provider to provide 118 hours of service per week (approximately 40 hours for each of 3 clients). It is not reasonable to authorize this many hours of service for one provider, as it would take over 17 hours every day of the week in order to perform all the tasks noted on the SNA. For the week tested, the provider billed 454 quarterly units or 113.5 hours. This included billing 9.5 hours on November 18, 2022, from 7:10 p.m. to 12:04 a.m., even though this is only 5 hours, and then an additional 23.75 hours on November 19, 2022, from 12:06 a.m. to 11:57 p.m.

Each SNA of these clients included some services to be performed every day of the week. The provider billed for tasks authorized for seven days per week but did not provide services on each of those seven days for all clients. For example, if a client was authorized for a bath seven times for the week, but the provider performed services on only three days, we considered the hours charged for four baths to be overbilled. We reviewed an additional two weeks of services and found more errors for not following the SNA. There were $757 Federal questioned costs for not following the SNA. It should be noted that only these three weeks were reviewed, so there may be additional questioned costs for other weeks based on the frequency of the task authorized.

Weeks of 11/13/22 - 12/3/2022				
Client	**# of Days Billed**	**Total Hours Billed**	**Hours Allowed Based on Frequency**	**Hours Overbilled**
1	12	106.5	73.25	33.25
2	13	112.25	81	31.25
3	15	113.5	87.25	26.25
	Totals	**332.25**	**241.5**	**90.75**

The provider also received overtime pay for these three weeks. In addition to being overpaid due to billing for tasks that were not provided as authorized, the provider received overtime pay for this overbilling, resulting in an additional $269 in Federal questioned costs. Providers are paid at time and one-half for services in excess of 40 hours each week. Per the Agency, a claims overtime team reviews the service authorizations to ensure they are not exceeded. For the three weeks reviewed alone, the provider was paid for 60.82, 73.86, and 61.65 hours of overtime. This provider has had similar findings in prior audits since 2021, with no changes to the number of hours authorized by the Agency.

Provider #5
Per documentation provided from the EVV system for the week tested, the provider used a personal computer to clock in and out, so there was no GPS verification of the visit location. The visit forms noted that the provider was unable to clock in with a cell phone; however, the services were being provided at the provider's home. On April 14, 2023, the Agency notified the provider by letter that using a personal computer that did not have GPS to verify location was not compliant with either the Cures Act or Agency EVV guidelines. This letter gave the provider 90 days to achieve compliance. The Agency sent a second noncompliance letter to the provider on August 30, 2023, giving her an additional 30 days to comply. The claims tested are questioned due to the provider's failure to comply with Federal regulations.

We noted also that the provider was the parent and co-guardian of the two clients to whom services were provided. Per CFR 42 § 440.167, personal care services cannot be provided by a member of the individual's family. A family member is defined as "a legally responsible relative." As the co-guardian, the provider was a legally responsible relative of the clients and, therefore, not allowed to be paid for those services. Thus, all payments made during fiscal year 2023 are questioned. The Federal share was $32,083.

Provider #6
The provider used a device with GPS tracking to record her visits. Although the visit form supported only 3.75 hours of services, the provider billed 5 hours, resulting in Federal questioned costs of $9.

Provider #7
This provider was authorized for up to 107 quarterly hour units or up to 26.75 hours of PAS services per week. For the week tested, the provider used a personal computer to complete visits in the EVV system, resulting in the location not being verified through GPS tracking and no client signatures being obtained. Therefore, we question the claims, resulting in Federal questioned costs of $202. We also noted that the provider performed personal care services for two additional clients under the Aged and Disabled Waiver. One of these clients also lived with the client to whom PAS services were provided. Because the provider did not use a device with GPS tracking, it is possible that she could have provided services for these two clients during the same time, which is not allowable. For the week tested, the provider billed a total of 116 hours of service for all three clients. The provider also exceeded the authorization for the week tested by 1.25 hours.

We noted that the Agency sent a letter to the provider in April 2023 about the overbilling of 1.25 hours for the week tested; however, the accounts receivable was not established until September 30, 2023, after we inquired about the overbilling. The Agency also sent a letter to the provider on April 14, 2023, giving her 90 days to comply with the EVV regulations. No changes were made, so the Agency sent a second letter to the provider on August 30, 2023, giving the provider an additional 30 days to come into compliance. A third letter was sent on September 29, 2023, giving the provider an additional 30 days to comply. It is unreasonable to allow a provider who is not compliant with EVV regulations to continue billing for five months of services.

The provider was also paid for overtime hours for the week tested. The provider received $351 in Federal share overtime pay for 74.75 hours of overtime. The overtime was paid under the PAS program. However, only 26.75 hours were related to PAS, and 88 hours were billed under the Aged and Disabled (AD) Waiver; therefore, the overtime should have been charged under the AD Waiver. Per the Agency, the overtime was paid under the PAS program because the Federal share reimbursement is higher, which is not reasonable.

Provider #8
This provider was authorized for up to 164 quarterly hour units or up to 41 hours per week for two clients living in the same household. The provider exceeded the service authorization for both clients by .25 hours each, resulting in Federal questioned costs of $4. The service authorization for both clients included some services to be performed every day of the week; however, services performed were not reasonable based on the times the provider billed. For example, one client was authorized for reminding or coaxing to eat three times a day for seven days a week. The provider billed from 6:00 a.m. to 9:30 a.m. every day for this client. It is not reasonable that the client would be eating only in the morning. We allowed the hours charged for one meal. Additionally, both clients were authorized for the administration of medication three times a day for seven days; however, based on the time during which the provider was providing services, the administration of medication appears to have occurred only once per day. This resulted in additional Federal questioned costs of $51.

Provider #9
The provider used a device with GPS tracking to record her visits; however, the provider exceeded the SNA by two quarterly units or .5 hours for one client, resulting in Federal questioned costs of $4.

Cause: Procedures were inadequate to prevent and/or detect errors.

Effect: An inadequate review of PAS claims increases the risk of services provided not being in accordance with the recipient's needs, as well as a risk of services being billed but not provided. There is a significant risk for fraud or abuse to occur and not be detected. State and Federal funds appear to have been misspent.

Recommendation: We recommend the Agency implement procedures to ensure payments are allowable, adequately supported, and in accordance with State and Federal regulations. We further recommend the Agency immediately discontinue paying claims that are not in accordance with EVV/GPS requirements. Additionally, because this comment gives rise to concerns regarding possible violations of State statute, we are forwarding the information herein to the Nebraska Attorney General for further review.

Management Response: The Agency agrees.

Corrective Action Plan: DHHS will work in collaboration with the APA to improve prevention of improper payments and to implement processes to improve the identification of and actions taken against potential fraud, waste, and abuse. In addition, DHHS has established recurring meetings to review each of the conditions in depth and identify mitigation strategies to implement. This could include a combination of policy, business rules, and technology changes, as well as interim and long-term mitigation strategies.

Contact: Kathy Scheele

Anticipated Completion Date: 12/31/2024

* * * * *

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the Agency and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the Agency.

This interim communication is intended solely for the information and use of management, the Governor and State Legislature, others within the Agency, Federal awarding agencies, pass-through entities, and management of the State of Nebraska and is not suitable for any other purposes. However, this communication is a matter of public record, and its distribution is not limited.

Pat Reding, CPA, CFE
Assistant Deputy