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
auditors.nebraska.gov

December 18, 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, 2024, Statewide Single (Single) audit. This communication is based on our audit procedures through December 5, 2024. Because we have not completed our audit of the fiscal year 2024 Single, additional matters may be identified and communicated in our final reports.

In planning and performing our audit through December 5, 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, 2024, 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, 2024. 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.

Our consideration of internal control over compliance is for the limited purpose described in the second paragraph above and not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance; therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, based on the audit procedures performed through December 5, 2024, 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 the financial statements 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, 2024.

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

   Grant Number & Year: 2305NE5MAP, FFY 2023; 2405NE5MAP, FFY 2024

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

   Criteria: Per 45 CFR § 75.302 (October 1, 2023), 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, 2023), costs must be reasonable, necessary, 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 document services provided in the EVV (Electronic Visit Verification) system, and confirm that services were received as authorized according to Agency procedures.

   Title 471 NAC 15-005.02(A) states that the provider can provide services to only one client at a time, and services will not be paid unless performed during the actual hours noted in the EVV system.

   Title 471 NAC 15-005.01(A) states that the provider will comply with all EVV billing requirements.

   Per the "Service Definition" provided in the Personal Care Service Handbook, "Personal Care is a service of the HCBS Waiver for Aged and Adults and Children with Disabilities (AD) and Traumatic Brain Injury (TBI) which provides needed assistance with Activities of Daily Living (ADLs) health-related tasks or Instrumental Activities of Daily Living (IADLs) provided in a participant's home and other community settings."

   A good internal control plan requires procedures to ensure services provided agree to the service needs assessment or individual support plan and service authorization.

   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) In general. 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[.]*

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) and personal care service claims, we noted the following:

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

- Services billed exceeded the number of hours authorized.

- PAS and personal care services appeared to be claimed at the same time the provider was working at another job or was no longer providing services for the client, resulting in apparently fraudulent billings and payments.

- The caregivers for two clients were incarcerated at the time of service and could not have provided the services.

- The PAS and other employment hours exceeded 24 hours in one day for one client, which is not possible.

- The PAS and personal care providers had the ability to edit the billable start and end times in the EVV system.

- The Agency authorized a PAS provider to perform services for three clients, totaling up to 85 hours a week, which is unreasonable.

- A PAS provider did not declare all income earned when applying for assistance.

Similar findings have been noted in prior audits since 2014.

Repeat Finding: 2023-050

Questioned Costs: $98,008 known

Grant	Questioned Costs (Federal Share)
2305NE5MAP	$ 346
2305NE5MAP COVID-19	$ 15
2405NE5MAP	$ 97,623
2405NE5MAP COVID-19	$ 24

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 also offers personal care services under the Aged and Disabled (AD) Waiver to recipients with disabilities. These services enable the participants to carry out tasks that they are unable to perform because of their disabilities. The services provided are based on individual needs and criteria that are documented in the individual support plan and service authorization.

The Agency implemented an electronic visit verification (EVV) system for PAS and personal care providers in January 2021, as required by Section 12006(a) of the 21st Century CURES Act, passed by Congress in 2016. The EVV system electronically captured and verified provider visit information, and providers were required to submit claims to the Agency electronically through this application.

We judgmentally selected four providers and a PAS/personal care agency based on high total dollars and units for testing and two PAS providers from the prior year audit with findings who received payments during fiscal year 2024. For those providers, we selected one week of claims for testing. We also randomly selected five PAS and ten waiver payments for testing.

Due to the numerous issues identified with the billings, we expanded testing for several of the providers. In addition to the billing issues identified for the weeks tested, we noted three of these providers had outside employment that conflicted with the PAS hours billed. We also identified billings submitted for two employees who no longer worked for the PAS agency. We identified $5,640 in potentially fraudulent payments made to the providers during fiscal year 2024. In addition to the potentially fraudulent payments, we noted $92,368 in Federal payment errors related to other issues, resulting in total Federal questioned costs of $98,008.

Questioned Costs			
Provider #	**Federal Share**	**State Share**	**Total**
1*	$ 88,289	$ 62,374	$ 150,663
2*	$ 6,188	$ 4,371	$ 10,559
3*	$ 1,636	$ 1,097	$ 2,733
4	$ 33	$ 24	$ 57
5	$ 452	$ 319	$ 771
6*	$ 499	$ 352	$ 851
7	$ 402	$ 284	$ 686
8	$ 20	$ 14	$ 34
9	$ 81	$ 57	$ 138
10	$ 281	$ 199	$ 480
11	$ 127	$ 89	$ 216
Totals	**$ 98,008**	**$ 69,180**	**$ 167,188**

*Amounts include potentially fraudulent payments.

The Federal share of PAS and AD Waiver claims paid for the fiscal year totaled $6,282,331 and $170,743,608, respectively. Payments tested and questioned costs for each are as follows:

	Federal Share Payments Tested	**Federal Share Questioned Costs**
PAS – Provider 1	$ 8,770	$ 8,672
PAS – Other Providers	$ 28,806	$ 9,311
AD Waiver - Provider 1	$ 92,009	$ 79,617
AD Waiver – Other Providers	$ 1,343	$ 408

The following information describes issues noted with each provider:

Provider #1

Murray's Blessings LLC (Murray's Blessings) is an agency that employed caregivers to provide PAS and personal care assistance for multiple clients. Murray's Blessings received $87,857 in PAS payments and $921,160 in personal care payments during the fiscal year, for a total of $1,009,017. We initially selected one week of claims to test, from April 28, 2024, through May 4, 2024, for all clients. Six clients received PAS and 16 clients received personal care services during this week. Services for 18 of 22 clients were not completed through a device using Global Positioning System (GPS) verification. The caregiver for five of the clients was unknown because the forms listed only "Murray's Blessings Admin" as the caregiver, and there were mileage variances for visits that were completed using GPS devices. Due to the numerous issues identified with the initial week tested, we reviewed an additional seven weeks of PAS and personal care services for the period of May 5, 2024, through June 22, 2024. We identified similar issues. The following is a summary of the issues identified for the eight-week period.

Client 1

No personal care visits from April 28, 2024, through May 18, 2024, used a device with GPS verification. According to payroll records provided by Murray's Blessings, the caregiver (caregiver A) for this client received his last check on April 30, 2024. Additionally, county court records noted that the caregiver was arrested on April 29, 2024, for possession of a firearm by a prohibited person, terroristic threats, and use of a firearm to commit a felony. The caregiver was in custody during the entire time that services for Murray's Blessings submitted billings were supposedly provided. All visits were questioned as potential fraud, as this caregiver could not have performed these services. Previously, the caregiver served time in a Nebraska prison for State drug offenses from June 2013 through May 2019. In June 2017, while serving time for these State offenses, the caregiver was charged with committing Federal offenses. The caregiver was found guilty and on July 2, 2018, was sentenced to seven years in Federal prison for participating in a racketeering conspiracy involving acts of violence, including attempted murder and assaults, witness tampering, and drug distribution. The sentence was later reduced to 71 months. The caregiver was no longer in Federal prison as of October 5, 2023.

Client 2

No PAS visits completed from April 28, 2024, through June 22, 2024, used a device with GPS verification. According to payroll records provided by Murray's Blessings, the caregiver (caregiver B) for this client received her final paycheck on April 23, 2024, prior to these visits. Additionally, county court records noted the caregiver was in jail from June 3, 2024, until June 5, 2024, and could not have provided the services billed on June 3, 2024. All visits were questioned as potential fraud because services do not appear to have been provided by this caregiver. An arrest warrant was issued for the caregiver on May 30, 2024, for delivery of a controlled substance. The warrant was served on June 3, 2024, at the jail. The caregiver was taken into custody on June 3, 2024, for a pretrial violation in another case filed on April 11, 2024, for possession of a controlled substance.

Client 3

All of the personal care visits for this caregiver had starting and ending mileage variances. Based on the GPS coordinates, the visits started at either the caregiver's home or the home of another client receiving personal care services from another agency. All visits ended at the caregiver's home, raising doubt that the visits were provided as billed. Additionally, the client was authorized to receive 25 hours of service per week, and the provider exceeded the service authorization all eight weeks by 0.5 to 3.75 hours. Due to these variances, all claims were questioned.

Client 4

The SNA authorized 31.5 PAS hours of services each week. The provider exceeded the SNA for seven of eight weeks, ranging from 2.5 to 38.25 hours over the authorization. Four visits were not completed through a device using GPS. For the remaining visits, GPS was utilized; however, there were mileage variances for each visit, and only one visit appears to have had an end location at the client's home. The client in this case was the caregiver's parent. The majority of the visits started and ended at the caregiver's home per the captured GPS coordinates. Seven visits occurred overnight. Other beginning or ending locations included a daycare center attended by the caregiver's child and also a plasma donation center. All claims for this client are questioned due to the various issues identified.

Client 5

This client was authorized to receive 70 hours of personal care each week. There were two caregivers for this client. All visits completed by Antoinette Murray, the owner of Murray's Blessings, were from 4:00 p.m. to 12:00 a.m., and GPS verification was not used. The second caregiver used GPS; however, there were mileage variances for each visit. Per the GPS coordinates, the caregiver clocked in at her home for all visits but one. The starting location for the other visit was a retirement home that was not where the client lived. The majority of the visits ended at the caregiver's home or at the home of the caregiver's parents. The caregivers exceeded the service authorization for six of eight weeks, ranging from 2 to 10 hours over the authorization. All claims were questioned due to these issues.

Client 6
The client was authorized to receive 60 hours of personal care services each week between two agencies. For Murray's Blessings, seven visits were not completed using a GPS device, and they included a duplicate claim on June 22, 2024. Due to the duplicate billing, the service authorization was exceeded by 4.5 hours. Additionally, the second agency billed 10 hours on this day – for a total of 27.5 hours of care provided in a day, which is impossible.

Client 7
Six visits were completed that did not use a GPS device and, therefore, are questioned. One visit completed with a GPS device had a start time of 2:57:00 p.m. to 2:57:58 p.m. The billable start time was changed to 9:00 a.m. The client was authorized for 42 personal care hours each week. The caregiver exceeded the service authorization by 4.25 hours for one week.

Other Clients
For 18 additional clients (13 personal care and 5 PAS), no visits over the eight-week period were completed through a device using GPS verification. All claims were questioned. Additional billing issues were identified for these claims, as follows:

- The caregiver for six personal care clients and two PAS clients was noted as "Murray's Blessings Admin" for all or some of the visits, so the caregiver remains unknown.

- Overlapping and duplicate services were paid for three personal care clients, as detailed in the following table:

Client #	Date	Start Time	Stop Time	Hours Billed	Caregiver
8	5/20/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/20/24	10:00 a.m.	8:00 p.m.	10	Caregiver C
8	5/21/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/21/24	10:00 a.m.	8:00 p.m.	10	Caregiver C
8	5/22/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/22/24	10:00 a.m.	8:00 p.m.	10	Caregiver C
8	5/23/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/23/24	10:00 a.m.	10:00 p.m.	12	Caregiver C
8	5/27/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/27/24	11:00 a.m.	9:00 p.m.	10	Caregiver C
8	5/28/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/28/24	11:00 a.m.	9:00 p.m.	10	Caregiver C
8	5/29/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/29/24	11:00 a.m.	9:00 p.m.	10	Caregiver C
8	5/30/24	9:00 a.m.	3:30 p.m.	6.5	Murray's Blessings Admin
8	5/30/24	11:00 a.m.	9:00 p.m.	10	Caregiver C
9	5/23/24	7:00 a.m.	5:00 p.m.	10	Caregiver D
9	5/23/24	7:00 a.m.	3:00 p.m.	8	Caregiver D
10	5/10/24	9:00 a.m.	1:00 p.m.	4	Murray's Blessings Admin
10	5/10/24	9:00 a.m.	12:00 p.m.	3	Murray's Blessings Admin
10	5/15/24	3:00 p.m.	10:00 p.m.	7	Caregiver E
10	5/15/24	3:00 p.m.	11:00 p.m.	8	Caregiver E

- The caregiver for one personal care client received family support services and supervised visitation for a child who was removed from the home. Four family support visits and one visitation service overlapped with services performed by the caregiver. All personal care visits were logged from 9:00 a.m. to 4:30 p.m., and the family support and visitation services started at 4:00 p.m. Consequently, overlapping services occurred from at least 4:00 p.m. to 4:30 p.m.

The following table summarizes the questioned costs for each client during the eight-week period:

Client #	Program	Total Hours Billed	Hours Billed with No GPS Verification	Hours Billed That Exceeded the Authorization	Federal Questioned Costs
1	Personal Care	90	90	15	$ 1,521
2	PAS	110	110	0	$ 872
3	Personal Care	210	0	10	$ 3,549
4	PAS	361.25	28	119.75	$ 2,862
5	Personal Care	519.25	264	51.5	$ 8,775
6	Personal Care	307.5	78.5	4.5	$ 1,327
7	Personal Care	217.5	30	4.25	$ 680
8	Personal Care	422	422	81	$ 7,132
9	Personal Care	474	474	58	$ 8,011
10	Personal Care	407.75	407.75	50.5	$ 6,891
11	Personal Care	304	304	4	$ 4,664
12	Personal Care	150	150	18	$ 2,535
13	Personal Care	360.25	40	.75	$ 689
14	Personal Care	357	357	0	$ 6,033
15	Personal Care	300	300	0	$ 5,070
16	Personal Care	215	215	5	$ 3,634
17	Personal Care	120	120	0	$ 2,028
18	Personal Care	312	312	0	$ 5,273
19	Personal Care	320	320	16	$ 5,408
20	Personal Care	164.75	152	18.75	$ 2,582
21	Personal Care	175	175	28	$ 2,958
22	Personal Care	50.75	50.75	0	$ 857
23	PAS	202	202	29.75	$ 1,600
24	PAS	120	120	0	$ 951
25	PAS	165	165	0	$ 1,307
26	PAS	70	70	0	$ 139
27	PAS	42	42	5.25	$ 333
28	PAS	89.25	76.75	6.5	$ 608
Totals		**6,636.25**	**5,075.75**	**526.5**	**$ 88,289**

Per the Nebraska Secretary of State's website (https://sos.nebraska.gov/), Murray's Blessings was established on June 1, 2022. The agreement with the Agency for the provision of PAS and personal care services began on August 5, 2022. Prior to the establishment of Murray's Blessings, Ms. Murray was an individual PAS provider, beginning on August 13, 2013. Ms. Murray was also a license-exempt child care subsidy provider from November 13, 2015, through November 1, 2017, when her agreement was terminated for not providing attendance calendars, not billing according to service authorizations, and double billing. A $6,468 overpayment was established on October 14, 2017, due to the billing issues. A $1,617 recoupment was applied toward the balance in December 2017, and Ms. Murray made two $50 payments towards the overpayment balance in March 2018. The Agency wrote off the remaining debt of $4,751 in May 2024.

The child care subsidy program did not approve another agreement with Ms. Murray due to this overpayment and her subsequent failure to make full restitution. Given her history of billing problems, as well as a substantial overpayment, the Agency's decision to approve a Medicaid agreement with Ms. Murray appears questionable. Nevertheless, the Agency did not require Ms. Murray to repay the overpayment balance prior to consideration of a new personal care agreement. It is evident, based on the PAS and personal care findings, that billing problems have continued. Further, on August 25, 2023, the Agency met with Ms. Murray to complete the annual Medicaid provider renewal. The worker explained to Ms. Murray that the caregivers must clock in and out using the EVV system. No changes occurred, however, as the majority of the Murray's Blessings caregivers continued to neglect using, either intentionally or otherwise, a GPS device to clock in and out.

Provider #2
This provider was authorized a total of 27.75 hours of service per week for one client. For the week tested of April 14, 2024, through April 20, 2024, the provider billed 148.25 hours of service. The provider exceeded the SNA by 120.5 hours, more than four times the number of hours authorized. During this week, the provider billed multiple 24-hour visits using the GPS verification method. The provider lived with the client, making it convenient to clock in the morning of one day and then clock out the next morning and then repeat the process with no GPS mileage variances. From January 28, 2024, through April 7, 2024, the provider exceeded the SNA for an additional 11 weeks, ranging from 17.75 to 91.25 hours over the SNA. Beginning on May 6, 2024, the SNA was increased to 37 hours of service per week, and the provider continued to exceed the SNA by 0.5 to 17.75 hours per week through June 22, 2024.

Not only was the number of hours billed excessive and unreasonable, but also the provider was employed full-time with a financial technology company. We obtained the provider's employment records and compared the PAS billings to those employment records for a three-month period from February 2024 through April 2024. The provider generally worked for the other employer from 8:00 a.m. to 4:30 p.m., Monday through Friday, which conflicted with the hours being billed for personal assistance services. We identified 55 days during which PAS hours billed overlapped with times that the provider was recorded as having been working for the other employer. Based on employment records, the provider appears to have worked remotely; however, PAS hours would not be allowed during the time the provider was working another job. We questioned 338.5 hours as potential fraud, totaling $4,577 (Federal share $2,682 and State share $1,895). Below are examples of the overlapping hours identified:

Financial Technology Company			EVV Visit Form and Claim		
Date	**Start Time**	**End Time**	**Start Time**	**End Time**	**Hours Billed**
2/20/24	7:57 a.m.	4:31 p.m.	8:22 a.m.	2:39 p.m.	6.25
2/26/24	7:57 a.m.	4:35 p.m.	8:47 a.m.	3:42 p.m.	7
3/21/24	7:57 a.m.	4:31 p.m.	8:19 a.m.	8:04 p.m.	11.75

We noted that 11 of the PAS visits from February 2024 through April 2024 were not completed using a device with GPS verification, and 30 visits were billed overnight. Due to the apparent fraudulent billings, excessive hours, visits completed overnight, and some visits not being completed using a GPS device, we questioned all claims paid from February 2024 through April 2024. This resulted in additional questioned costs of $3,506.

This individual became a PAS provider on August 17, 2023, and began the outside employment on October 30, 2023. The provider had three children noted in the household and was receiving Supplemental Nutrition Assistance Program (SNAP) and Medicaid benefits at the time the PAS agreement was signed. On January 30, 2024, the provider submitted a renewal application for SNAP and declared income from only the PAS payments and reported working only 2-3 hours per week. Subsequent to the audit period, the provider applied for child care benefits on August 14, 2024, and declared only the income from the outside employer. The provider told the Agency worker that the PAS employment ended on August 20, 2024; however, the provider continued to receive PAS payments. The provider was evidently not only overbilling PAS services but also being deceitful when applying for public assistance.

Provider #3
For the initial week tested, the provider was authorized a total of 38.5 hours per week for one client. The provider exceeded the SNA by 10.25 hours for the week. Additionally, from June 2, 2024, through June 8, 2024, the provider did not follow the SNA when billing for tasks provided. The SNA included some services to be provided every day of the week, but services were billed on only five days. For example, the client was authorized for meal preparation assistance for seven days, but the provider performed services on only five days. We considered the hours charged for meal preparation on two days overbilled. We also noted the provider exceeded the frequency for some services authorized. For example, the client was authorized to shop for food once a week, but the provider billed this service on five days. Additionally, we noted the client attended county court on June 6, 2024, at 10:30 a.m., and the provider billed from 8:00 a.m. – 4:00 p.m. on that day. Per Title 471 NAC 15-004.02(B)(ii), accompanying the client to court is not an allowable service for PAS.

Due to the issues noted for the initial week tested, we reviewed additional weeks. From July 1, 2023, through March 1, 2024, the provider performed PAS services for three individuals. In addition to the 38.5 hours authorized for the first client, the provider was authorized to provide PAS services for two clients who lived in the same home. The SNA authorized 26 hours and 21 hours of PAS services for these two clients for a total of 85.5 hours each week for the three clients. The provider billed over the SNA for an additional 25 weeks reviewed. There were 128.5 hours overbilled. We also questioned three visits that were not completed through a GPS device.

This provider not only billed over the authorization, recording up to 95 PAS hours worked in a week, but also worked full-time for a rental management company. We obtained the employment records for the provider and compared the PAS billings to those records for a three-month period from October 22, 2023, through December 16, 2023. We identified 29 days during which PAS hours billed overlapped with times that the provider was recorded as having been working at the rental management company. In determining overlapping hours, we did not factor in any travel time that may have occurred between the client homes and the provider's place of employment; therefore, the possibility of additional fraudulent payments exist. On several days, the PAS hours and employment hours exceeded 24 hours, which is impossible.

We questioned 62.75 hours of personal assistance services as potential fraud, totaling $848 ($510 Federal Share and $338 State share). The majority of the visits were completed through a device using GPS; therefore, another individual appears to have aided the provider in falsely claiming that personal assistance services were performed, as the provider could not have been in two places at once. Based on case file documentation, the first client lived with the provider, and those evening hours billed for this client overlapped with the provider's other employment hours. The table below contains examples of the overlapping of hours:

Management Company Time Record			EVV Visit Form and Claim Documentation		
Date	**Start Time**	**End Time**	**Start Time**	**End Time**	**Hours Billed**
12/1/23	4:03 p.m.	9:01 p.m.	5:10 p.m.	10:55 p.m.	5.75
12/10/23	5:51 p.m.	5:55 a.m. on 12/11/23	6:00 p.m.	11:30 p.m.	5.5
12/12/23	10:26 p.m.	5:58 a.m. on 12/13/23	6:27 p.m.	11:28 p.m.	5

Other billing issues were identified as well. On several occasions, for instance, the provider changed the start and/or end times of the visit. The claim form in the EVV system included the scheduled start time, the actual service start time, and the billable service start time. The provider was allowed to edit the billable start and end times verified through a GPS device, which resulted in duplicate billings and overlapping times billed between clients. There were other instances of the provider changing the time, so that there would be no overlapping of times between clients and the provider's outside employment. The ability to edit the billable start and stop times recorded in the EVV system, with no secondary review, places doubt on whether the service was performed as billed. Below are some examples:

Date	Client #	GPS Start	GPS End	Billable Start	Billable End
11/25/2023	2	6:28 a.m.	12:05 p.m.	*	*
11/25/2023	3	12:05 p.m.	4:34 p.m.	11:30 a.m.	4:30 p.m.
12/1/2023	2	6:25 a.m.	11:24 a.m.	*	*
12/1/2023	3	2:00 p.m.	7:30 p.m.	11:30 a.m.	4:55 p.m.
12/1/2023	1	5:10 p.m.	10:55 p.m.	*	*
12/2/2023	2	7:02 a.m.	11:23 a.m.	*	*
12/2/2023	3	4:24 p.m.	4:28 p.m.	11:30 a.m.	4:30 p.m.
12/2/2023	1	6:15 p.m.	10:59 p.m.	*	*

*The provider did not edit the times for these services.

It is unreasonable for the Agency to authorize a provider to perform services for three clients for up to 85 hours a week. With those hours alone, the provider would have to average more than 12 hours per day for 7 days a week. After adding in the hours worked at the outside employment, the provider would have been working over 20 hours a day. We noted also that the provider received Medicaid benefits during the fiscal year. The provider signed a Medicaid renewal application on September 14, 2023, and reported only the income at the rental management company. The provider did not disclose the income made through PAS, which averaged out to be $3,186 for both July and August 2023. PAS payments made to the provider during the fiscal year totaled $52,900. The Agency had access to this information, so it is questionable how this income was not discovered and included in determining Medicaid eligibility. Additional questioned costs for the provider totaled $1,126.

Provider #4
The provider double billed a service on June 17, 2024. The visit form on June 17, 2024, had a clock-in time of 1:31 p.m. and a clock-out time of 6:48 a.m. on June 18, 2024. It appears that the provider may have forgotten to clock out. Upon crossing from one day to another, the visit generated two claim forms in the EVV system. The first claim had an end time of 11:59 p.m., and the second claim form had the start time of midnight or 24:00 on the next day. In this case, the provider changed the billable start and end times for both claims and was able to double bill 4.25 hours.

First Claim		**Second Claim**	
6/17/2024	**6/17/2024**	**6/18/24**	**6/17/24**
GPS Time	Billable Time	GPS Time	Billable Time
1:31 p.m. – 11:59 p.m.	2:35 p.m. – 6:46 p.m.	12:00 a.m. – 6:48 p.m.	2:32 p.m. – 6:47 p.m.

The provider was authorized 31 hours per week for one client. The provider exceeded the SNA by three hours for the week tested. Questioned costs totaled $33.

Provider #5
This provider was authorized 26.25 hours per week for one client. The provider exceeded the SNA by 25 hours for the initial week tested from April 14, 2024, through April 20, 2024. This included billing 21.75 hours on April 16, 2024.

For the week tested, the provider did not follow the SNA when billing for tasks provided. The SNA included some services to be provided every day of the week, but services were billed on only five days. For example, the client was authorized for assistance with medication administration three times a day for seven days, but the provider performed services on only five days. We also noted the provider exceeded the frequency for some services. For example, the client was authorized to have cleaning done once a week, but the provider billed this service on five days.

We reviewed an additional eight weeks of claims and noted the provider billed over the SNA for an additional five weeks. Hours that exceeded the SNA ranged from 1.5 to 21 hours. Questioned costs for the provider totaled $452.

Provider #6
This provider was authorized a total of 66.75 hours of service per week for two clients. For the week tested of May 12, 2024, through May 18, 2024, no visits were completed using a GPS device that captured the location of the visits. We questioned the entire claim, totaling $499.

This provider was tested in the prior year with similar issues. Potential fraud was also identified, as the provider billed PAS hours that overlapped with her employment hours as a student bus driver and with other court-related activities. A law enforcement raid was conducted at the provider's home on December 2, 2022, and her child was removed after Fentanyl and firearms were discovered there. The provider's agreement closed on June 15, 2023; however, the Agency received a referral on January 17, 2024, for the provider to perform personal assistance services for a client, and a new provider agreement was signed on January 30, 2024. The Agency was notified of the prior year billing issues on January 22, 2024.

The Agency established overpayments for PAS hours billed that exceeded the service authorization; however, no PAS overpayments were established for those hours billed that overlapped with other employment hours and court-related activities. The provider began providing services again on January 30, 2024, and, according to quarterly employment records, the provider was also employed as a student bus driver. We inquired with the Agency in July 2024 to determine what action had been taken against the provider, and we were informed that preparation was underway to terminate the provider. On September 3, 2024, the Agency sent a letter to the provider terminating her from participation as a Medicaid provider due to the billing issues identified from the prior year audit. The provider appealed the termination, and on November 27, 2024, the Agency received the final order from the hearing officer affirming the Agency's actions, and the provider's agreement was terminated as of November 27, 2024.

We obtained the provider's timecard records from the employer and compared the employment records to the EVV visit forms for the week of May 12, 2024, through May 18, 2024. We identified four days during the week in which PAS hours billed overlapped with times the provider was working as a student bus driver. In determining overlapping hours, we did not factor in any travel time that may have occurred between the clients' homes and the provider's place of employment. Additionally, we compared only one week of records; therefore, the possibility of additional fraudulent payments exists. We questioned seven hours of personal assistance services as potential fraud, totaling $95 ($56 Federal share and $39 State share). It is concerning that the Agency signed a new agreement with the provider on January 30, 2024, after the potential fraud was disclosed and after the Agency had established $2,062 in overpayments for billing hours over the SNA. It is unreasonable for the Agency to have allowed the provider to submit billings that did not comply with EVV guidelines in order for the provider to "pay back" the overpayments for previous billing errors. From January 30, 2024, through June 30, 2024, the provider was paid $13,317, and payments from July 1, 2024, through December 2, 2024 totaled $21,475.

Subsequent to the audit period, the provider was charged with six felony counts in county court, including four counts of possession with intent to distribute an exceptionally hazardous controlled substance, one count of manufacturing, distributing, or possession with intent to distribute a controlled substance with a firearm, and one count of failure to affix a tax stamp – the last two charges noted arising from the law enforcement raid conducted on December 2, 2022.

Provider #7

This provider was authorized to provide personal assistance services for three clients for a total of 77.75 hours per week. During the week tested, from June 9, 2024, through June 15, 2024, we noted that the provider did not complete the visit through a device using GPS for four visits, totaling 19 hours. There were also mileage variances ranging from 0.3 to 2.3 miles for six of the visits that involved two of the clients. Four visits for Client 1 did not start or end at that client's home. Two of these visits started and ended at Client 2's home. The other two visits started at a medical facility and ended at Client 2's home. All four of these visits are questioned because the client was not authorized for services to be performed outside the home, and it is unknown if the provider was ever at Client 1's home to provide services. The ending location of two visits for Client 2 were at the same medical facility where the visits started for Client 1.

The provider also edited the beginning and ending billable times of one visit completed on June 10, 2024. The provider clocked in at 11:02:27 a.m. and clocked out at 11:02:53 a.m. using a GPS device. The provider changed the start time to 6:00 a.m. and the end time to 11:00 a.m. These hours are questioned because it is unknown if the provider was at the client's home providing services beginning at 6:00 a.m.

Additionally, the provider did not follow the SNA for Client 3. The SNA included some services to be performed every day of the week, but these services were not performed daily, if at all, even though the provider billed as though the tasks were being completed. For example, the client was authorized for a bath seven times per week, but the provider did not record that this service was provided during the week. For other services, the provider billed for more days than allowed. For example, the client was authorized for removal of trash three times during the week, but the provider billed for removal of trash five times. We considered the hours charged for the additional two times to be overbilled. Questioned costs for the provider totaled $402.

It should be noted this provider was tested in the prior year with similar issues noted. This provider was identified as working full-time at a home health care company where hours claimed for PAS likely overlapped with hours worked at the home health care company. The provider has continued not to follow EVV guidelines or the SNA.

Random Sample Testing

We also randomly selected five PAS and ten Aged and Disabled Waiver lines of coding for testing. We noted issues with two of the five PAS claims tested. The two waiver claims with errors were for personal care services. The Federal payment errors for personal care waiver claims totaled $127 for the sample. The total sample tested was $1,343, and the total population for the Federal share of Aged and Disabled Waiver claims for the fiscal year totaled $170,743,608. Based on the sample tested, the dollar error rate for the sample was 9.46% ($127/$1,343). We also noted $281 of personal care questioned costs outside of the sample. We noted $101 out-of-sample questioned costs for two of five PAS claims.

Random PAS Testing

Provider #8

The SNA authorized 21 PAS hours per week for the client. The provider exceeded the SNA by 2.5 hours for the week tested, which resulted in $20 out-of-sample questioned costs.

Provider #9

The SNA authorized 18.75 PAS hours per week for the client. Three of the six visits, totaling 10.25 hours, did not use GPS verification and are questioned. This resulted in $81 in out-of-sample questioned costs. The provider also exceeded the SNA by 2 hours for the week tested.

Additionally, the services provided did not agree to the SNA. The SNA included some services to be performed every day of the week; however, the provider performed services on only six days of the week. For example, the client was authorized for meal preparation services three times per day for seven days, but the provider performed services on only six days, so we considered the hours charged for three meal preparation services overbilled. There were 3.25 hours overbilled for not following the SNA. There are no additional questioned costs, as 10.25 hours were questioned for not completing visits with a GPS device.

Random Personal Care Testing

Provider #10

The client was authorized for up to 112 hours per week of personal care services provided by the client's parents. Parent 1 was authorized up to 24 hours, and Parent 2 was authorized for up to 88 hours. We identified issues with Parent 2's claims on the day tested; therefore, we reviewed all of the visit forms and claims data for a two-week period from November 5, 2023, through November 18, 2023, for both providers.

For 17 of 66 visit forms completed, the parents did not use the GPS verification method to clock in and out of the visit. This included three visits by Parent 1 and 14 visits by Parent 2. None of the 11.5 hours billed on November 6, 2023, used the GPS verification. This resulted in $268 Federal share questioned costs. Additionally, there were mileage variances between the scheduled start and end locations compared to the GPS captured start and end locations. There were mileage variances for all visits for Parent 2 that utilized GPS verification. Mileage variances ranged from 0.7 to 7.4 miles.

There were seven instances of visits overlapping based on the GPS location of the visit and time billed. As an example, on the date tested, Parent 1 billed a visit from 5:58 a.m. to 7:29:27 a.m. at the client's and parents' home. Parent 2 began a visit from 7:29:50 a.m. at a location that was 5.6 miles from the home. The client could not have been at both locations at 7:29 a.m. Essential shopping was not an activity performed on any of these visits; therefore, the client was required to be with the provider in order to bill. This resulted in $13 Federal share questioned costs.

We also noted that both providers had other full-time employment. Parent 2 worked for a county government. The majority of the personal care hours billed by Parent 2 were from 7:30 a.m. to 12:30 p.m., which would fall within the normal work hours of 8:00 a.m. to 4:30 p.m. for the county. We obtained the work records for Parent 2, which noted the total hours worked each day and leave used. Parent 2 was an exempt employee and not required to track start and end times for each day. Per the supervisor, Parent 2 is fully remote with only occasional hours at the office for meetings. Therefore, we were unable to determine if any employment hours overlapped with hours worked for the county. The total number of hours worked between the county employment hours and personal care hours appear unreasonable, as they ranged from 15.75 to 16.50 hours per day. Based on the county personnel policy manual, employment with the county is the primary employment, and other outside employment cannot be performed while on duty with the county.

There were also 12 instances of the parents logging out early or late in the EVV system, and it is unknown where the visits began or ended. In these cases, the parents billed according to the scheduled visit times and not actual hours recorded by GPS. We were unable to determine if there were any questioned costs.

Provider #11
For another provider payment, no EVV visit form or record was found for the service date tested. The provider billed seven hours for personal care services on December 20, 2023. There is no documentation to support that the services occurred, resulting in $127 in Federal share questioned costs. Additionally, the client was authorized for 47 hours of personal care services per week. The provider billed 48.25 hours of services for the week tested, exceeding the authorization by 1.25 hours.

<u>EVV System Requirements</u>
The Federal 21st Century Cures Act of 2016 mandates the use of an EVV system for personal care services or home health care services requiring an in-home visit by a provider. The Federal regulations require the EVV system to verify electronically the time the service begins and ends, the location of service delivery, the individual providing the service, the type of service performed, the date of the service, and the individual receiving the service. The Agency implemented the EVV system in January 2021 for PAS and personal care providers.

The Agency's regulations were updated in June 2022, requiring providers to comply with all applicable billing requirements for the EVV system. The regulations also state that Medicaid would not pay for services that were not performed during the actual hours noted by the provider in the EVV system. The Agency allowed a 10% threshold for circumstances such as the provider forgetting to clock in and out, no internet connection, or GPS issues.

The Agency has not effectively enforced these regulations, as evident by the continued PAS findings noted since 2022.

Subsequent to the audit period, the Agency issued Provider Bulletin 24-16 on July 10, 2024. The bulletin notified PAS and Home and Community-Based Service (HCBS) providers of changes to the EVV system in response to continued noncompliance with Federal and State regulations regarding the 21st Century Cures Act. In addition to no longer allowing providers to submit manual claims, the changes included non-payment of EVV claims if: a) the provider did not use GPS location services during the visit or an approved alternative method; or b) the mileage variance of the scheduled location was not within the GEO-FENCE radius. These changes were to become effective on August 14, 2024.

On August 6, 2024, the Nebraska Association of Service Providers (NASP) filed a complaint in the Lancaster County District Court on behalf of PAS and HCBS providers, claiming that implementation of these changes was "unduly burdensome and harsh" and would have an adverse impact on the providers in the state if the Agency would not accept manually adjusted claims for times when the employee forgot to clock in or out, if the scheduled visit location changed, or there was a technical issue preventing the capture of the geolocation.

On August 12, 2024, the Agency paused the implementation of the EVV system changes and extended that date to January 8, 2025. In communicating the pause, the Agency encouraged providers to comply with applicable State and Federal regulations; however, the Agency did not require such compliance, thereby allowing providers to continue to circumvent the controls put in place to prevent fraud, waste, and abuse of the program – issues that have been identified since the implementation of the EVV system. On October 2, 2024, NASP filed a motion to dismiss its complaint. Regardless, the Agency will have allowed providers multiple years to become fully compliant with State and Federal regulations, a clear violation of the 21st Century Cures Act.

As illustrated in the findings above, the manual adjustment or editing of visit start and end times in the EVV system allows the provider to manipulate the visit data, making it difficult, if not impossible, to determine if the service was provided to the client as billed. The providers were able to double bill services and clock in and out at their own homes or other locations with no consequences for the resulting mileage variances.

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

Effect: An inadequate review of PAS and personal care 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:** Management agrees. The findings were largely consistent with the nature of the findings from prior year. The department uses system generated reports to identify providers who are not using the system as intended, specifically focused on non-compliance with using GPS, to send education letters to try to modify provider behavior/compliance. If they do not modify behavior (most end up doing so) then they are referred to Program Integrity who then tries to educate one last time with consequences articulated as to what will occur if no action is taken, then if none is taken PI can sanction, up to and including termination. This has led to reduction in visits not fully compliant with GPS from over 23% in January of 2023, to under 9% in October of 2024. This is in addition to the automated system controls which will be implemented shortly, as noted in the corrective action plan.
>
> **Corrective Action Plan:** The Department has been actively working with program, technology, and the EVV vendor to implement system controls to address the deficiencies identified in this and prior year's findings. The Department has two system change releases scheduled, the first in February 2025 and the second in late June 2025 to implement additional system improvements.
>
> **Contact:** Jeremy Brunssen
>
> **Anticipated Completion Date:** 7/1/2025

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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 Auditor

cc. Nebraska Attorney General