Report of the Vermont State Auditor

January 31, 2012

MEDICAID PROVIDERS

State Has Foregone an Opportunity to Recover Delinquent Taxes from Providers

Thomas M. Salmon, CPA, CFE
Vermont State Auditor
Rpt. No. 12-2

Mission Statement

The mission of the State Auditor's Office is to be a catalyst for good government by promoting professional audits, financial training, efficiency and economy in government and service to cities and towns.

THOMAS M. SALMON, CPA, CFE
STATE AUDITOR

STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

January 31, 2012

The Honorable Shap Smith
Speaker of the House of Representatives

The Honorable John H. Campbell
President Pro Tempore of the Senate

The Honorable Peter D. Shumlin
Governor

Mr. Douglas Racine
Secretary, Agency of Human Services

Mr. Mark Larson
Commissioner, Department of Vermont Health Access

Ms. Mary Peterson
Commissioner, Department of Taxes

Dear Colleagues,

This is the second report based on our recent work on Medicaid providers. While the first addressed the controls over provider enrollment, this report addresses the question of whether the state ensures that it does not give taxpayers' dollars to Medicaid providers that owe state taxes.

We found that while the state has a mechanism to ensure that in general it does not pay businesses and individuals from its major financial system without recovering tax debts over 60 days old through an offset program, this process was not applied to Medicaid provider payments. This was because the Department of Taxes determined that the tax offset statute was not applicable to Medicaid providers.

Our comparison of a list of Medicaid providers with a list of delinquent taxes found about $360,000 in taxes more than 60 days overdue owed by Medicaid providers. Accordingly, we recommend that the legislature amend the tax offset statute to enable the Department of Taxes to recover tax debts from payments to Medicaid providers.

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To perform this audit we received cooperation from the Department of Taxes and the Department of Vermont Health Access, as well as HP Enterprise Services, for which I would like to thank the management and staff of those organizations.

If you would like to discuss any of the issues raised by this audit, I can be reached at (802) 828-2281 or auditor@state.vt.us.

Sincerely,

Thomas M. Salmon CPA, CFE

Thomas M. Salmon, CPA, CFE
Vermont State Auditor

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Introduction

In June 2008, federal auditors reported that the providers of services that are paid under the Medicare program—the federally financed health insurance program for persons 65 or older and others—owed over $2 billion in federal taxes.[1] Subsequent to this report, the federal government began to offset Medicare payments to providers who owe delinquent federal taxes and collected about $87 million in the first two years of this program.

Like the federal government, Vermont is owed a substantial amount in delinquent taxes. As of October 30, 2011, the Department of Taxes reported about $130 million in taxes that had been delinquent for more than 60 days.[2]

Vermont also makes several billions of dollars in payments to businesses, non-profit organizations, and individuals for goods and services provided to the state or on behalf of the state. For example, in fiscal year (FY) 2011 Vermont paid about $1.27 billion[3] to providers for goods and services related to the Medicaid program—a joint federal/state program that provides health insurance to certain low-income individuals.[4] Since providers are often enrolled in both the Medicare and Medicaid programs, we decided to look at the issue of whether Medicaid providers were delinquent in paying their state taxes as part of a broader audit engagement pertaining to the state's Medicaid provider controls.[5] Our objective was to determine the extent to which the state has assurance that Medicaid funds are not paid to providers that are delinquent in paying their Vermont taxes.

Appendix I contains the scope and methodology we used to address this objective. A list of the abbreviations used in this report can be found in appendix II.

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[1]*Medicare: Thousands of Medicare Providers Abuse the Federal Tax System* (U.S. Government Accountability Office, GAO-08-618, June 13, 2008).

[2]The source of this data is a Vermont Department of Taxes file, which we did not validate.

[3]Of this amount, about $412 million came from state funds and the rest from the federal government. We did not validate these amounts.

[4]There are a wide variety of state programs that encompass the Medicaid program in Vermont, including traditional Medicaid, Dr. Dynasaur, and the Vermont Health Access Plan.

[5]The first report of this audit engagement was entitled *Medicaid: Many Provider Enrollment and Claims Controls in Place, but Gaps Exist* (Report no. 11-5, September 15, 2011).

Highlights: Report of the Vermont State Auditor

Medicaid Providers: State Has Foregone an Opportunity to Recover Delinquent Taxes from Providers

(January 31, 2012, Rpt. No. 12-2)

Why We Did This Audit

Providers (e.g. physicians, durable medical equipment suppliers and pharmacies) are often enrolled in both Medicaid and Medicare. Since Medicare providers have been found to be delinquent in paying federal taxes at the same time as they were receiving Medicare payments, the objective of this audit was to determine the extent to which the state has assurance that Medicaid funds are not paid to providers that are delinquent in paying their Vermont taxes.

What We Recommend

We recommend that the legislature amend 32 VSA §3113(d) to allow Medicaid claim payments to be offset against delinquent Vermont tax debts.

Findings

The state had limited assurance that Medicaid funds were not paid to providers that were delinquent in paying their Vermont taxes. Firstly, the Department of Vermont Health Access's (DVHA) standard Medicaid provider agreement used as of January 29, 2010 did not require Medicaid providers to certify that they were in good standing with respect to Vermont taxes (which includes delinquent taxpayers who have a payment plan in place), as required by 32 VSA §3113(b). While some Medicaid providers had to submit such certifications to other state entities as a condition of their Vermont license, others, such as out-of-state providers, did not have to provide such a certification. DVHA amended the agreement in November 2011 to include a declaration of tax standing. This recent action makes it less likely that providers that owe delinquent taxes and have not made repayment arrangements will be enrolled in Medicaid.

Secondly, the state does not offset tax debts against payments to providers for Medicaid claims. As authorized by 32 VSA §3113(d), Vermont has a tax offset program for payments made by its primary financial system, including those made to vendors that provide goods to state government, child care providers, and foster parents who receive stipends. This offset program has resulted in over $3 million dollars in gross recoveries between fiscal years 2008 and 2011. However, the Department of Taxes (DOT) has determined that the statute that authorizes these offsets does not pertain to payments to Medicaid providers. (The Office of the Attorney General opined that the applicable statute was unclear, but that DOT's statutory interpretation was a permissible construction of the statute.) Our comparison of Medicaid providers to DOT's file of taxes delinquent over 60 days found 68 providers that owed about $360,000 as of October 30, 2011. Moreover, DOT had submitted about 30 percent of this amount to collection agencies, which could cost the state up to 25 percent of the amount owed if collection is made using this method. While DOT may not be able to collect all of the $360,000 through offsetting Medicaid payments, the use of offsets would likely increase collections at a time when the state is facing budgetary shortfalls as well as treat Medicaid providers in a manner consistent with other vendors used by the state to provide goods and services.

Background

The Vermont Medicaid program is complex from a programmatic, operational, and organizational perspective. Basic policies are set at the national level, but states are given wide latitude to define what is covered, who is covered, and how the program is going to operate.

Medicaid Program and Operations

Within Vermont, the Agency of Human Services has been designated as the single state agency to administer or supervise the administration of the Medicaid program. DVHA—a component entity of this agency—has been designated as the medical assistance department. Among the duties performed by DVHA are (1) program policy, (2) quality improvement and program integrity, and (3) provider relations.

The doctors, hospitals, pharmacies, therapists, durable medical equipment businesses and others that provide medical care, drugs, or supplies to Medicaid beneficiaries are referred to as Medicaid providers and must enroll in the Vermont Medicaid program. There are thousands of individual, group, and institutional providers enrolled in Medicaid. For example, as of February 25, 2011, there were 7,777 physicians, 298 pharmacies, and 109 ambulance services enrolled in the Medicaid program.

When a beneficiary receives care, supplies, or devices from a provider, the provider submits an electronic or paper claim to HP Enterprise Services (HPES), the state's fiscal agent. Claims are processed via the Medicaid Management Information System (MMIS), which is operated by HPES. Once a claim successfully passes all edits and audits in the system, HPES pays the provider. HPES, in turn, is reimbursed by the state.

Vermont Tax Offset Program

32 VSA §3113(d) authorizes the commissioner of taxes to require a government agency to offset taxes owed against payments made by state government to tax debtors. The statute states:

> "If the commissioner determines that any person who has agreed to furnish goods, services or real estate space to any agency has neglected or refused to pay any tax administered by the commissioner and that the person's liability for such tax is not under appeal, or if under appeal, the commissioner has determined that the tax or interest or penalty is in jeopardy, the commissioner shall notify the agency

> and the person in writing of the amount owed by such person. Upon receipt of such notice, the agency shall thereafter transfer to the commissioner any amounts that would otherwise be payable by the agency to the taxpayer, up to the amount certified by the commissioner. The commissioner may treat any such payment as if it were a payment received from the taxpayer."

The current implementation process for this statute is that DOT provides a weekly electronic file of taxes such as personal and corporate income taxes, and sales and use tax that are delinquent by more than 60 days to the Department of Finance and Management. The Department of Finance and Management uses this file to perform an automated match against the payments generated by the state's primary finance system (VISION). This match is based on the Tax Identification Number (TIN), which can be a Social Security Number (SSN) or Employer Identification Number (EIN).[6] When a match is found, an amount up to the lesser of the payment or the tax debt is diverted to DOT to be applied to the tax debt. Letters are sent by DOT to both the payee and the applicable state department explaining the offset.

State Had Limited Assurance of Medicaid Providers' Tax Compliance

The state had limited assurance that its Medicaid payments were not made to providers that are also delinquent in paying Vermont taxes. This is because (1) until recently not all Medicaid providers were required to certify that they were in good standing with respect to Vermont taxes, and (2) the statute allowing the state to offset payments against tax debts has been determined not to apply to Medicaid providers. With regard to the latter point, our comparison of Medicaid providers to DOT's file of taxes delinquent over 60 days found 68 providers that owed about $360,000 as of October 30, 2011. While the state may not be able to collect all of those taxes through offsetting Medicaid payments, conducting such offsets could provide additional tax collections during this time of budgetary difficulties as well as treat Medicaid providers in a manner consistent with other vendors used by the state to provide goods and services.

[6] Each debt has only one TIN associated with it in DOT's receivables listing. Where a debt is owed by multiple taxpayers (for example, income tax of a couple filing jointly), it is listed only against the taxpayer with the lowest TIN. Each vendor ID in VISION also has only one TIN associated with it. If this is not the TIN in the tax receivables listing, then no offset will be made (for example, a sole proprietor may owe taxes under an EIN, but have SSN recorded in VISION).

Prior Provider Agreement Did Not Require Declaration of Tax Compliance

A DVHA operating principle and the Vermont Provider Manual specify that for providers to participate in and receive reimbursement from Medicaid they must first become enrolled, which requires that they sign a legal contract (called a provider agreement). Vermont Medicaid requires that provider agreements be submitted during both initial enrollment and reenrollment. Providers are typically required to undergo reenrollment (and therefore have an updated agreement) every two years.[7]

In 1986, Act 263 established 32 VSA §3113 in order to address a possible diminution of revenues from the federal government. Section (b) of this statute states:

> "No agency of the state shall… enter into, extend or renew any contract for the provision of goods, services or real estate space with, any person unless such person shall first sign a written declaration under the pains and penalties of perjury, that the person is in good standing with respect to or in full compliance with a plan to pay, any and all taxes due as of the date such declaration is made."[8]

DVHA's standard Medicaid provider agreement used as of January 29, 2010 did not include a declaration of tax compliance. DVHA indicated that this was because providers are required to make this declaration when obtaining a Vermont license and it would be redundant to include it in the Medicaid form. We concur that Vermont licensees typically make tax declarations to other state agencies. For example, the licenses most commonly held by Medicaid providers practicing in Vermont are issued by the Secretary of State (e.g., dentists) or the Board of Medical Practice (e.g., physicians) and both of these bodies require the applicant to make a declaration of tax standing

[7] Reenrollment requirements vary by provider type and are generally related to the length of a provider's license to practice. Providers not required to be licensed undergo reenrollment annually.

[8] A person is in good standing with respect to any and all taxes payable if (1) no taxes are due and payable and all returns have been filed; (2) the liability for any taxes due and payable is on appeal; (3) the person is in compliance with a payment plan approved by the commissioner; or (4) in the case of a licensee, the agency finds that requiring immediate payment of taxes due and payable would impose an unreasonable hardship. If the agency finds an unreasonable hardship, it may condition renewal on terms which will place the person in good standing with respect to any and all taxes as soon as reasonably possible.

before issuing or re-issuing a license. However, many Medicaid providers are not licensed by Vermont, and therefore are not required to make a declaration of tax compliance. For example, 46 percent of Medicaid providers were located outside Vermont as of February 25, 2011. Moreover, there are types of providers that are not required to be licensed, such as suppliers of durable medical equipment.

DVHA added a tax compliance declaration to the provider agreement on November 9, 2011. According to DVHA's director of provider and member relations, providers who do not certify that they are in good standing with the Department of Taxes will be reviewed by DVHA and action taken in accordance with the statute. By taking these actions, DVHA has provided greater assurance that providers that owe delinquent taxes and have not made repayment arrangements will not be enrolled in Medicaid.

Tax Debts Are Not Offset Against Provider Claim Payments

DOT does not require delinquent tax debts owed by Medicaid providers to be offset against Medicaid claim payments because the department has determined that the tax offset statute does not apply to such payments. Specifically, DOT has concluded that 32 VSA §3113(d) does not apply to payments for Medicaid services because these services are rendered to Medicaid beneficiaries, not to an agency of state government.

We asked the Office of the Attorney General about this conclusion. In response, the Office of the Attorney General indicated that the statute is not clear and is subject to interpretation, and opined that

> "The Tax Commissioner's interpretation of the phrase "to any agency" as limiting her authority to offset payments to individuals who provide services or goods to a state agency, and not to Medicaid providers who provide a service to Medicaid beneficiaries and then seek reimbursement for those services from a state-funded program that operates essentially as a health insurance plan, is not contrary to the legislative intent of the statute. It does represent a permissible construction of the statute."

In addition to the statutory issue, DOT and DVHA also noted other concerns about offsetting Medicaid payments. Specifically, the commissioner of taxes stated that it is unclear whether such an offset program would be advisable and practicable. In addition, DVHA indicated that further analysis of the feasibility and advisability of the proposal would need to be conducted prior to authorization of a tax offset.

We agree that it is advisable to analyze any policy change prior to its implementation. Accordingly, we compared a recent Medicaid provider file to a DOT file of taxes delinquent over 60 days to assess the potential impact of implementing a tax offset for Medicaid payments. We identified 68 Medicaid providers that had $360,333 in Vermont taxes over 60 days overdue as of October 30, 2011.[9] Of these, 11 providers owed more than $10,000, with the largest single provider's tax debt being $41,467. No single provider type accounted for these delinquencies. Examples of provider types with delinquent taxes included physicians, opticians, durable medical equipment suppliers, and pharmacies.

Not all of these monies are likely to result in a collection via an offset program because monies may be recouped only to the extent that (1) the providers submit valid Medicaid claims available to be offset and (2) the TIN associated with a provider in MMIS is the same as the one against which the debt is recorded.[10] Nevertheless, our analysis demonstrates that there are Medicaid providers who could be receiving payments from the state who also owe back taxes.

Other evidence also suggests that offsetting Medicaid payments is a worthwhile policy. Specifically,

- *Consistency with other state suppliers*. Vermont offsets state tax debts against payments to suppliers of goods and services processed through VISION, regardless of the kind of business or person providing the supply.[11] For example, payments from VISION are made to child-care providers and foster parents (stipends) as well as to small businesses that may provide a service, such as painting. Between FY 2008 and FY 2011, DOT reported that over $3.2 million

[9]There could be more providers that owe delinquent taxes than we identified because (1) the MMIS records only one current TIN for each provider and tax debts may be recorded against a different TIN from the one recorded in MMIS, and (2) DOT data reflects only the amount of unpaid taxes either reported by the taxpayer or assessed by the department and would not include when a filer has underreported tax due or has failed to file.

[10]For example, if an income tax debt due from a provider who files jointly is listed under the spouse's TIN, it will not be offset against a payment to the provider.

[11]Excluded from the VISION delinquent tax offset match are payments to state employees, benefit payments to veterans, and transitional housing for the Department of Corrections.

has been offset against VISION payments, including about $900,000 in FY 2011 alone.[12]

- *Reduction of tax collection costs*. Currently, if DOT is unable to recover debts itself, it passes them to collection agencies, which charge up to 25 percent for debts recovered. Of the outstanding tax delinquencies as of October 30, 2011 owed by Medicaid providers, DOT had placed about 30 percent with debt collection agencies ($109,388 owed by 20 providers). The collection agencies take a fee of 19 percent for the first placement or 25 percent for the second placement of the debts recovered.[13]

- *Other governments offset tax debts against payments of a similar nature*. The federal government offsets federal tax debts against Medicare provider payments and reported that it recovered $87 million of tax debts in the first two years of the levy program. At least one state (Kentucky) offsets state tax debts against Medicaid provider payments and reported recovering $3.75 million in the second half of 2010.

- *Other taxes are offset against Medicaid payments.* HPES offsets federal tax debts against Medicaid provider payments when requested by the Internal Revenue Service.

With a budget gap forecast for FY 2013, it behooves the state to maximize its collection of delinquent taxes. Moreover, it seems an incongruous public policy to make payments to those individuals and organizations from whom the state is also trying to make collections on unpaid obligations.

Conclusion

By adding certification language to the Medicaid provider agreement, the state has taken action to make it less likely that individuals and organizations that are not in good standing with respect to Vermont taxes will be enrolled

[12]These numbers do not account for any amounts that were subsequently returned to the taxpayer (for example, where the offset resulted in a double-payment, or was made in error). DOT did not have such information readily available. We did not validate these numbers.

[13]A debt that remains uncollected after a set period is passed to a collection agency (the first placement). If the collection agency fails to recover it, the debt is returned to DOT. If, after a further interval, DOT is again not able to collect the debt, the debt is again passed to a collection agency (the second placement).

as Medicaid providers. Nevertheless, Medicaid providers could still receive payments from the state while also owing delinquent state taxes. According to the Department of Taxes, the statute allowing the state to offset payments for goods and services by the amount of delinquent taxes owed does not apply to Medicaid providers. As a result, the state is foregoing a possible collection opportunity that could provide additional funds to the state as it struggles to address budgetary shortfalls. In addition, Medicaid providers are being treated differently than other vendors used by the state who are subject to having their payments offset for delinquent taxes. We question whether it is fair or equitable to offset a state vendor payment to a small business or to a provider of child care services, but not to a health care provider. Moreover, in general we do not consider making payments to organizations and individuals that owe the state monies to be sound policy.

Recommendation

We recommend that the legislature amend 32 VSA §3113(d) to allow Medicaid claim payments to be offset against delinquent Vermont tax debts.

Management Comments

The commissioner of the Department of Taxes provided written comments on a draft of this report, which are reprinted in appendix III. The commissioner's response, dated January 25, 2012, indicated that the offset was technologically feasible, noting that the impact on access to health care should be considered. The commissioner encouraged the legislature to consider giving the department this additional tool.

The commissioner of the Department of Vermont Health Access responded by email that he concurs with the response of the commissioner of taxes.

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In accordance with 32 VSA §163, we are also providing copies of this report to the secretary of the Agency of Administration, commissioner of the Department of Finance and Management, and the Department of Libraries. In addition, the report will be made available at no charge on the state auditor's website, http://auditor.vermont.gov/.

Appendix I
Scope and Methodology

To fulfill our objective we first identified and reviewed the statutes related to tax compliance and government licenses, contracts and payments (32 VSA §3113). We also obtained the opinion of the Office of the Attorney General on the application of this statute.

We then gathered information and carried out some confirmatory testing on the processes in place at DVHA and HPES relating to provider enrollment. We reviewed the processes for licensing of Vermont professionals at the Office of Professional Regulation, Board of Medical Practice and others. We also reviewed some of the processes at DOT relating to tax compliance. We gathered this information through reviews of documents, such as written procedures, and interviews with applicable officials, including the DVHA director of provider and member relations, the Secretary of State's director of professional regulation, and DOT's director of tax compliance.

We obtained from HPES applicable tables from the Medicaid claims processing system (MMIS), from which we compiled a list of Medicaid providers enrolled with the status 'Active – Participating' as of September 13, 2011. Providers with this status are allowed to bill and receive payments for valid Medicaid claims. From DOT we obtained electronic files of (1) tax debts used for the VISION offset (the 'Vendor Match' file), generated as of October 30, 2011, (2) an accounts receivable aging report run the following evening, and (3) a lookup table relating TINs to the case numbers used to identify debts in the aging file.

Using our automated data analysis tool, we identified instances where TINs matched between the Medicaid provider file and the Vendor Match delinquent taxes file. For each identified debtor we confirmed manually that the names as well as the TINs matched; those that did not match were excluded from our analysis. We used the aging file to add further details such as tax type and debt age.

We did not evaluate the information technology controls of the MMIS or of DOT's systems. However, we reviewed and evaluated the results of the latest service organization control report on controls placed in operation and tests of operating effectiveness pertaining to the MMIS, which reported no material weaknesses or significant deficiencies related to this system. We also obtained and reviewed the preliminary results of a general control review of the Department of Taxes system performed by the state's financial auditor.

Appendix I
Scope and Methodology

Our audit work was performed between February 2011 and January 2012,[14] and included site visits to DVHA and HPES headquarters in Williston, and to DOT in Montpelier. Except as described below, we conducted this performance audit in accordance with generally accepted government auditing standards, which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The standard that we did not follow requires that our system of quality control for performance audits undergo a peer review every three years. Because of fiscal considerations, we have opted to postpone the peer review of our performance audits. Notwithstanding this exception, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[14] This report is the second based on this work. The first, *Medicaid: Many Provider Enrollment and Claims Controls in Place, but Gaps Exist*, was issued in September 2011.

Appendix II
Abbreviations

DOT	Department of Taxes
DVHA	Department of Vermont Health Access
EIN	Employer Identification Number
FY	Fiscal Year
HPES	HP Enterprise Services
MMIS	Medicaid Management Information System
SSN	Social Security Number
TIN	Taxpayer Identification Number

Appendix III
Response of the Commissioner of Taxes

State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

January 25, 2012

Thomas M. Salmon
Auditor of Accounts
132 State Street
Montpelier, VT 05633-5101

Dear Tom:

Kindly accept this as the official management comments to the Draft Medicaid Report transmitted to the Tax Department on January 12th.

The Tax Department has undertaken several initiatives to reduce the tax gap. In that context, we appreciate the Auditor's work in determining the possible magnitude of recovery should the legislature decide to authorize the Tax Department to offset payments to Medicaid providers to capture outstanding tax liability. From the Tax Department's perspective, the offset is technologically feasible, with the caveat that the match will not capture delinquent taxpayers who belong to separate entities who are providers. The impact on access to health care also should be considered. However, the Administration encourages the legislature to consider giving the Tax Department this additional tool to address the tax gap.

Sincerely yours,

Mary

Mary N. Peterson

Cc: Sarah London, Esq.
Secretary Spaulding
Commissioner Reardon
Commissioner Larson

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http://tax.vermont.gov