

REPORT TO THE LEGISLATURE

Overpayment Project

42 C.F.R..
433.312 C.F.R
RCW 43.20B.675
RCW 41.05A.170
RCW 41.05A.040

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Washington State Department of Social and Health Services
Aging and Long Term Support Services
Home and Community Services
PO Box 5600
Olympia, WA 98504-5600
(360) 725-2272
<https://www.dshs.wa.gov/altsa>

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Overview

During the 2022 Legislative session, a fiscal request was granted to the Department of Social and Health Services (DSHS) in the amount of \$627,000 to fund 2.3 FTEs (Full Time Equivalents) to support the Overpayment Resolution Team (ORT) to resolve a backlog of approximately 400,000 potential Medicaid provider overpayments dating back to 2016 – totaling approximately \$50 million.

The backlog of provider overpayments includes clients served by the Aging and Long-Term Support Administration (Home and Community Services Division/Area Agencies on Aging) and the Developmental Disabilities Administration.

Estimated Overpayment Breakdown by Division

HCS/AAA: \$39.9 million
DDA: \$10.2 million

Background

The ORT was established to investigate complex Medicaid Individual Provider (IP) overpayments to ensure overpayments were correctly assessed and only required federal funds were returned to the Federal Government. The ORT's goal was to clear the backlog of IP overpayments and resolve disputes with providers, informally, when possible, to avoid costly legal challenges.

Home and community-based service (HCBS) providers deliver personal care services for persons receiving Medicaid services. Provider types include: Individual Providers (IPs), Home Care Agencies, Adult Family Homes, and Assisted Living Facilities.

Federal law requires states to return the Federal portion of any overpaid funds made to Medicaid contracted providers. It must be done within one year of the date the overpayment is identified by the state.

Washington State law requires that DSHS attempt to recover the overpaid funds from the provider.

Directive

The Legislature directed the DSHS to continue the work of the ORT through the 2021-2023 fiscal biennium and “submit to the appropriate committees of the legislature a report describing the work undertaken by the team and the associated outcomes.” The ORT continued the process established, whereby all backlogged Medicaid funded HCBS IP overpayments were resolved in a manner that minimized the negative consequences to the state or the providers.

Challenges

IPOne System Delays

The backlog of HCBS IP overpayments was the result of a combination of factors but was primarily due to a delay in the development of the ability to process overpayments in IPOne, the payroll sub-system to the state Medicaid Management Information System (MMIS, also known as ProviderOne) used to pay IPs.

The delays date to 2016, when new functionality was introduced to enable the calculation and payment of overtime for individual providers who worked hours in excess of a 40-hour work week. However, the introduction of the new functionality had an unintended consequence resulting in the functionality to process overpayments no longer being accurate. This prevented DSHS from establishing overpayments for referral to the Office of Financial Recovery (OFR), the agency responsible for issuing overpayments to IPs.

The overpayment functionality was finally corrected and re-introduced in August 2020, which enabled the IPOne electronic payment system to begin to establish overpayments again. During the time period from 2016 to 2020, potential overpayments accrued and were held in the IPOne system.

Factors Resulting in Overpayments

Potential IP overpayments were due to several factors including:

- Changes made to an authorization after payment had already occurred, including:
 - service line cancellations
 - dates of service being removed
 - units being reduced
 - increases in client cost of care
- System defects
- Other incorrect rates

Multiple Provider Backlog Types

IPs are one of several HCBS provider types who contract with the DSHS. While analyzing the IP overpayment issue, a similar backlog of overpayments was discovered for other HCBS provider types such as Adult Family Homes, Home Care Agencies, and Assisted Living Facilities. These providers were being paid directly from ProviderOne.

All provider overpayment backlogs needed to be processed to comply with Federal Medicaid rules.

Consumer Directed Employer Transition

The Department contracted with Consumer Direct Care, WA, LLC to become the new legal employer for all IPs. Over 46,000 IPs were planned to transition from contracting with the DSHS to Consumer Direct Care, WA, LLC in Spring 2022.

The backlog of IP overpayments had to be processed prior to the decommissioning of IPOne to ensure that collection efforts for backlogged overpayments were initiated prior to the six-year limit for collections, under RCW 41.05A.040.

Approximately 120,000 backlogged Medicaid-funded IP overpayments were identified and required processing to comply with federal rules.

It was estimated that without implementation of the ORT, the state would need to return approximately \$25 million to the federal government to account for the Federal share.

Additionally, between August 2020 (when the overpayment functionality was reintroduced) and June 2022, another ~46,000 additional Medicaid-funded IP overpayments were identified as being outside of the backlogged potential overpayments. These, too, required investigation and processing to comply with federal rules.

These additional potential overpayments were addressed by staff from the ALTSA HCP Payment Systems Unit. It was estimated that without this work, the state would need to return an additional approximately \$9.5 million to the federal government to account for the Federal share.

The exact amount returned is not available yet. The Office of Financial Recovery is continuing to work on finalizing this data.

Process and Structure

The ORT was developed in 2019 when IPOne was planned to be decommissioned as part of the transition to the Consumer Directed Employer. Issuing overpayments required both technical capabilities and compliance with business rules and procedures. A process was necessary to screen out false overpayments, resolve disputes, and represent the Department in administrative challenges, if necessary.

The ORT was established to perform overpayment tasks which normally would have been performed on a case-by-case basis by ALTSA, AAA, or DDA case managers. Due to the delay in overpayment functionality, the backlog of potential overpayments would have caused a significant workload impact to field staff. The Payment Systems Unit took on the overpayment tasks on the thousands of overpayments that were created each month during regular, ongoing operations of IPOne.

The joint goal of the ORT and the Payment Systems Unit was to implement a process that was fair, respectful, and offered providers a means for informal dispute resolution before issuing an overpayment or going to an administrative hearing.

Timeline

Following a temporary hiring freeze due to the pandemic, the ORT was fully staffed by September 2020.

The COVID-19 pandemic caused the Consumer Directed Employer implementation and transition to be delayed – pushing the decommissioning of IPOne out to 2022. The delay substantially increased the volume of overpayments requiring review by the Payment System Unit at HCS.

Throughout this period, both the ORT and the Payment Systems units had tried to absorb the additional work, but ran into capacity limitations.

The original project completion deadline of March 2022 was extended to November 2022. Additional funding was granted in the 2022 supplemental budget to continue funding the FTEs who had been hired, to allow time to complete the work from April – November 2022. By November 2022 the entire backlog had been processed, with only some administrative hearings that were scheduled past this date, remaining. The non-backlog potential IP overpayments were completed by the Payment Systems Unit in March 2023.

ORT and Payment Systems Unit Work

The Units were collectively responsible for:

- 1) determining whether Medicaid funds had been overpaid to a vendor;
- 2) sending valid overpayments for processing;
- 3) defending administrative challenges, as needed; and
- 4) improving processes to prevent future overpayments.

Determining If Medicaid Funds Had Been Overpaid

The Units began by investigating the validity of overpayments. As part of this work, the ORT provided the IPs that had received a backlog overpayment with contact information for ORT staff. Staff were able to answer questions and provide additional detailed information. Staff engaged with providers in an informal dispute resolution process, with the goal of resolving issues so that unnecessary Administrative Hearings could be avoided.

Sending Overpayments for Processing

When overpayments were potentially valid, the Units sent the overpayments to IPOne. IPOne processed the overpayment and sent it on OFR for collection. The OFR offered payment plans to providers who were struggling to pay back debts.

Note: The OFR has authority to garnish wages and bank accounts, file liens to secure the debt, and can recover by seizure if necessary.

The ORT does not have a role in the collection of overpaid funds from providers.

Defending Administrative Challenges

Providers that have been issued an overpayment have the right to appeal. When OP issues could not be resolved informally, the ORT acted as the subject matter experts in administrative hearings.

The ORT received 628 formal backlog hearing requests, resolving 84% of those disputes, 9% remain pending resolution, and Administrative Law Judges ruled in favor of the department in 93% of the cases.

If the provider did not request an appeal, or the DSHS prevailed, the OFR proceeded with collection of the OP under applicable rules/laws.

Improving Processes

To promote quality improvement, and reduce future overpayments, the ORT deployed process changes to address the overpayments for IPs, and other providers, that were caused by case manager errors when authorizing services. Permanent staff in the Payment Systems Unit developed a comprehensive quality improvement plan to address the issue which included the development of new staff training materials and webinars.

Tools for tracking case management errors were distributed to regional staff and included:

- Three trainings throughout 2021 – directed to educate case managers on avoiding common mistakes that created overpayments.
- Quarterly review of authorization payment accuracy by the ORT for both IPs (first) and all other provider types (second).
 - Case management staff were required to remediate errors.

Impact

Backlog of OPs Resolved

IPOne contained hundreds of thousands of false overpayment records mixed with true overpayments. As stated previously, false overpayment records were caused by 1) defects in the IPOne payment system, and 2) errors made by case management staff when authorizing services.

False overpayment records were files that appeared to show a debt owed by a provider. However, in most cases following ORT investigation, no debt was found, and the overpayment was resolved.

Decrease in the Number and Cost of Administrative Hearings

Processing HCBS overpayments without the ORT and the Payment Systems Unit would have resulted in a significant increase in the number of administrative appeals that must be adjudicated by the Office of Administrative Hearings (OAH). ¹ Both Units screened out false overpayments and applied the DSHS collection policies to limit the number of backlogged overpayments going forward for collections. The ORT actively engaged providers that received overpayments in an informal resolution process.

¹ **RCW 43.20B.675 and RCW 41.05A.170** requires that notice of the overpayment be sent to the provider via certified mail and “will include the amount of the overpayment, the basis for the claim, and the rights of the vendor under this section.” The law gives providers the right to contest the overpayment in an administrative hearing.

The department estimates that administrative challenges to overpayments would have cost upwards of \$500 per case due to the costs of the Administrative Law Judge, the Administrative Hearings Coordinator, and OAH support staff. If the appeal reached the Board of Administrative Appeals (BOA) the cost of adjudicating the appeal could have exceeded \$1,000 per case.

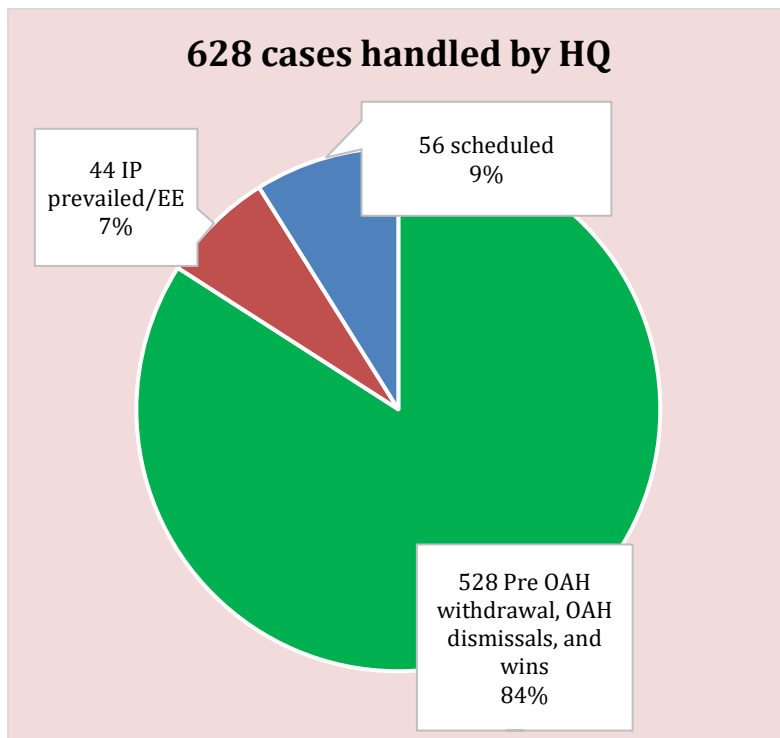
Due to the work of the ORT and the Payment Systems Unit, Administrative Hearings were largely avoided.

Reduction in the Federal Funds Required to Paid Back

Processing IP provider overpayments, without the ORT and the Payment Systems Unit, would have resulted in the unnecessary return of Federal Medicaid funds.² Due to the work of these Units, Federal repayment was unnecessary in most cases.

² **42 C.F.R. § 433.312 C.F.R.** requires the State to return federal funds that were overpaid to Medicaid providers regardless of whether the state is successful in collecting the overpaid funds.

2022 Data



Outcomes

1. Funding this request allowed the department to complete processing all HCBS IP provider overpayments and avoid returning unrequired funds – estimated at \$50 million.
2. ORT’s provider liaison process helped avoid expensive provider appeals by resolving overpayments through an informal dispute process. 93% of hearings resulted in the department prevailing.
3. Strategies such as implementation of payment plans offered provider solutions for repayment.
4. Enhanced Case Management training served to stem the number of current and future overpayment errors.

Conclusion

The Department of Social and Health Services wishes to thank the Legislature for funding the Overpayment project.

This important project resulted in the resolution of IP provider overpayments, ensured compliance with the Centers for Medicare and Medicaid Services policies, and thus, helped to ensure the continued Federal funding necessary to serve Washington residents who are recipients of Medicaid services.