

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**KANSAS'S MEDICAID ESTATE
RECOVERY PROGRAM WAS
COST EFFECTIVE, BUT KANSAS DID NOT
ALWAYS FOLLOW ITS PROCEDURES,
WHICH COULD HAVE RESULTED IN
REDUCED RECOVERIES**



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Report in Brief

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U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

All States are required to have a Medicaid Estate Recovery Program (MERP) that seeks, from the estates of deceased Medicaid recipients who were 55 years old and older when they received medical assistance, reimbursement for certain Medicaid costs. Our objectives were to determine whether: (1) Kansas operated its MERP in accordance with Federal and State requirements and (2) Kansas's MERP was cost effective.

How OIG Did This Audit

Our audit covered deceased Medicaid recipients whose estates were subject to estate recovery by Kansas during State fiscal years 2020 through 2022 (audit period).

We reviewed documentation for a stratified random sample of 128 deceased Medicaid recipients to determine whether Kansas operated its MERP in accordance with requirements. Of these, 30 recipients had estate recovery cases that resulted in asset recoveries; the cases for the other 98 sampled recipients did not result in asset recoveries.

In addition, we compared Medicaid claims data to the estate recoveries to identify deceased Medicaid recipients and determine whether Kansas had opened a case for all potential estate recoveries. We also obtained Kansas's estate recovery operating costs and subtracted that amount from the total estate recoveries to determine whether the State recovered more than it spent.

Kansas's Medicaid Estate Recovery Program Was Cost Effective, but Kansas Did Not Always Follow Its Procedures, Which Could Have Resulted in Reduced Recoveries

What OIG Found

Kansas did not always operate its MERP in accordance with Federal and State requirements in that it did not always follow its estate recovery procedures. Specifically, for the 30 sampled deceased Medicaid recipients with estate recovery cases that had asset recoveries, we did not find any deficiencies. However, for the 98 sampled deceased Medicaid recipients with estate recovery cases that did not have asset recoveries, we identified 18 recipient cases with at least 1 deficiency related to probates and liens for estate recovery that were not initiated in a timely manner, the incorrect closing of a case for having no Medicaid paid claims, or the incorrect performance of other estate recovery procedures. Furthermore, we identified 1,095 deceased Medicaid recipients outside of our sampling frame for whom Kansas had not opened an estate recovery case. For our second objective, during our audit period Kansas's MERP collected \$37 million in estate recoveries while spending \$5 million to operate the program. Therefore, we concluded that Kansas's MERP was cost effective. The deficiencies we identified occurred because Kansas did not always follow its existing estate recovery procedures, the effect of which was that Kansas did not thoroughly pursue estate recovery for all deceased Medicaid recipients and consequently, may not have executed some asset recoveries.

What OIG Recommends and Kansas Comments

We recommend that Kansas improve its estate recovery program by confirming that all deceased Medicaid recipients who are subject to estate recovery are identified and by providing information on them to the State's contractor in a timely manner. We also recommend that Kansas improve its oversight of the estate recovery contractor's performance by: (1) verifying that the contractor files liens and initiates probate in a timely manner, (2) confirming that the contractor's current process for claims verification is accurate, and (3) verifying that the contractor performs applicable estate recovery procedures for deceased Medicaid recipients. Kansas generally agreed with our recommendations and described corrective actions that it had taken or planned to take. Kansas said that some cases would not have been cost effective for recovery, and added that the COVID-19 public health emergency and its upgrade to a new Medicaid system caused some delays in the estate recovery process. We maintain that our findings and recommendations are valid and commend Kansas for its corrective actions.

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INTRODUCTION

WHY WE DID THIS AUDIT

All States are required to have a Medicaid Estate Recovery Program (MERP) that seeks, from the estates of deceased Medicaid recipients who were 55 years old and older when they received medical assistance, reimbursement for certain costs associated with long-term care, home and community-based services (HCBS), and related hospital services and prescription drugs.¹ States also have the option of seeking recovery for other claims for items or services as provided under their State plans. As part of its oversight activities, the Office of Inspector General (OIG) is auditing Medicaid estate recovery to determine whether States are operating their MERPs in accordance with requirements. We selected Kansas as the first State in a series of planned MERP audits.

OBJECTIVES

The objectives of our audit were to determine whether: (1) the Kansas Department of Health and Environment (State agency) operated its MERP in accordance with Federal and State requirements and (2) the State agency's MERP was cost effective.

BACKGROUND

Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

Medicaid Estate Recovery Program Federal Requirements

Section 1917(a)(1)(B) of the Social Security Act (the Act) permits States to file liens, subject to certain exceptions, on real property owned by a Medicaid beneficiary who is an inpatient of a nursing facility, intermediate care facility for the developmentally disabled, or other medical institutions, where the individual is receiving Medicaid coverage for the institutional services where certain other conditions apply.

Under section 1917(b)(1)(A) of the Act, States are required to seek recovery, for Medicaid beneficiaries whose real property may be subject to a lien authorized under section

¹ For this audit, estates are generally defined as including all real and personal property and any other assets in which the deceased Medicaid recipient had any legal interest or title in at the time of or immediately before death.

1917(a)(1)(B), from the estates of such individuals for amounts equal to the medical assistance correctly paid on their behalf. Under section 1917(b)(1)(B) of the Act, States must also seek recovery, for Medicaid beneficiaries who were 55 years old and older when they received medical assistance, from the estates of such individuals for amounts at least equal to medical assistance paid on their behalf for nursing facility services, HCBS, and related hospital and prescription drug services, or, at the State's option, for any other items and services under the State plan (with the exception of Medicare cost-sharing, a provision that is not relevant to this audit or this report).

Under section 1917(a)(2) of the Act, States may not recover from the estate of a deceased Medicaid recipient who is survived by a spouse, child under age 21, child of any age who is blind or disabled, or a sibling who has equity in the home and has resided at the home for a period of at least 1 year before the deceased Medicaid recipient's admission to the medical institution. In addition, section 1917(b)(3)(A) of the Act requires States to establish procedures for waiving estate recovery when recovery would cause an undue hardship.

Kansas Medicaid Program and Estate Recovery

The State agency's Division of Health Care Finance, Estate Recovery Unit, is responsible for the administration of the MERP in Kansas. As part of the estate recovery process, the State agency is authorized to file liens and initiate probate claims against Medicaid recipients' estates. Under this program, the State agency handles all post-death recovery actions, court actions, lien impositions, negotiations, and other related activities.

Through an estate recovery contract award, the State agency delegates some legal and administrative responsibilities to an outside contractor, which maintains an online estate recovery system and uses it to document Kansas estate recovery cases on behalf of the State agency. Under the provisions of the State agency's estate recovery contract award, the State agency is responsible for providing the contractor on a monthly basis with the names of deceased Medicaid recipients for purposes of pursuing estate recovery.

We are addressing our findings and recommendations to the State agency because it is ultimately responsible for oversight of the contractor and the Kansas MERP.

HOW WE CONDUCTED THIS AUDIT

Our audit covered deceased Medicaid recipients whose estates were subject to estate recovery by the State agency during our audit period (State fiscal years (SFYs) 2020 through 2022 (July 1, 2019, through June 30, 2022)). We used both the estate recovery data from the State agency

and Medicaid claims data from CMS's Transformed Medicaid Statistical Information System² to perform our work.

We used the estate recovery data provided by the State agency to define the 23,161 deceased Medicaid recipients for whom the State agency had opened an estate recovery case. The 23,161 deceased Medicaid recipients thus constituted our sampling frame, from which we selected a stratified random sample of 128 deceased Medicaid recipients.³ Of these, 30 recipients had estate recovery cases that resulted in asset recoveries and 98 recipients had estate recovery cases that resulted in no asset recoveries. We were granted access to the State agency's estate recovery system, from which we could review the documentation for each deceased Medicaid recipient to determine whether the State agency's estate recovery case was in accordance with Federal and State requirements and was adequately supported.

In addition, we used Medicaid claims data to identify deceased Kansas Medicaid recipients whose estates appeared to be subject to estate recovery during our audit period. We compared that list to the deceased Medicaid recipients for whom the State agency had opened an estate recovery case to determine whether the State agency pursued estate recovery for all of the identified recipients.

To evaluate the cost effectiveness of the State agency's MERP, we obtained the State agency's estate recovery operating costs for the audit period and subtracted that amount from the total estate recovery amount for the same timeframe, to determine whether the State agency recovered more than it spent on the program. We also determined whether the State agency reported those recovery amounts to the Federal Government.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains details of our audit scope and methodology, Appendix B contains our statistical sampling methodology, Appendix C contains a summary of sample results and deficiencies for each sampled deceased Medicaid recipient, and Appendix D contains a summary of sampled deceased Medicaid recipients with asset recoveries.

² CMS maintains the Transformed Medicaid Statistical Information System. Its primary purpose is to establish an accurate, current, and comprehensive database of standardized enrollment, eligibility, and paid claims data about Medicaid recipients that is used for administering Medicaid federally and assisting in detecting fraud, waste, and abuse in Medicaid. We refer to these data as "Medicaid claims data" throughout the report.

³ We stratified our sample by Medicaid recipients who had estate recovery cases with asset recoveries (stratum 1) and by recipients who had estate recovery cases with no asset recoveries (strata 2, 3, and 4). Appendix B contains additional details on our statistical sampling methodology.

FINDINGS

The State agency did not always operate its MERP in accordance with Federal and State requirements in that it did not always follow its estate recovery procedures during SFYs 2020 through 2022. Specifically, for the 30 sampled deceased Medicaid recipients with estate recovery cases that had asset recoveries, we did not find any deficiencies. However, for the 98 sampled deceased Medicaid recipients with estate recovery cases that did not have asset recoveries, we identified 18 recipient cases with at least 1 of the deficiencies listed in Table 1 (1 deceased Medicaid recipient’s estate recovery case had 2 of the deficiencies):

Table 1: Summary of Deficiencies in Deceased Medicaid Recipient Estate Recovery Cases

Type of Deficiency	Deceased Medicaid Recipient Cases With Deficiency
Probates and liens for estate recovery were not initiated in a timely manner, resulting in no recoveries being made and the estate recovery cases being closed	7
Estate recovery case was incorrectly closed for having no Medicaid paid claims	7
State agency did not correctly perform some of its other estate recovery procedures	5

Furthermore, we identified 1,095 deceased Kansas Medicaid recipients outside of our sampling frame who appeared to be subject to estate recovery and for whom the State agency had not opened an estate recovery case. Specifically, the State agency did not provide the names of 1,059 of those deceased Medicaid recipients to the contractor for estate recovery. For the other 36 of those deceased Medicaid recipients, the State agency provided the recipients’ names to the contractor for estate recovery, but the contractor did not open an estate recovery case for these recipients.

With respect to our second objective, during our audit period the State agency’s MERP collected approximately \$37 million in estate recoveries while spending approximately \$5 million in contractor fees and State agency salaries to operate the program. In addition, we verified that the State agency was correctly reporting its estate recoveries to the Federal Government. Therefore, we concluded that the State agency’s MERP was cost effective.

The deficiencies we identified occurred because the State agency did not always follow its existing estate recovery procedures. Specifically, the State agency: (1) did not always follow its procedures for filing liens within 1 year and initiating probate within 6 months; (2) prematurely closed some estate recovery cases because of inaccurate claims paid verification; (3) did not correctly perform various other estate recovery procedures; and (4) did not identify some deceased Medicaid recipients who were subject to estate recovery.

The fact that the State agency did not always follow its existing estate recovery procedures may have prevented it from thoroughly pursuing estate recovery for all deceased Medicaid recipients; consequently, the State agency may not have executed some asset recoveries. Although we acknowledge that not all estate recovery cases will or should lead to asset recoveries, it is important for the State agency to pursue estate recovery for all deceased Medicaid recipients consistently, in accordance with Federal and State requirements, and in accordance with its own procedures.

NO DEFICIENCIES IDENTIFIED FOR ESTATE CASES THAT HAD ASSET RECOVERIES

Of the 23,161 deceased Medicaid recipients in our sampling frame, 4,968 recipients (approximately 21 percent) had estate recovery cases that resulted in asset recoveries by the State agency. We randomly selected 30 of these deceased Medicaid recipients for our sample and found no deficiencies during our review of their estate recovery cases. Appendix D, Table 7, contains more information about the estate recovery cases for these 30 deceased Medicaid recipients and includes a summary of their assets and recoveries.

The State agency's asset research established that most of these 30 deceased Medicaid recipients had no real property and little or no other assets at their times of death. In addition, the majority of the recoveries made on behalf of these recipients included small dollar amounts that were remitted to the State agency by third parties such as banks, funeral homes, and nursing homes, and that consisted of leftover funds from deceased Medicaid recipients' accounts. Because these recipients had little or no assets at their times of death, the State agency determined that it was not necessary to use liens or probate to pursue estate recovery.

For example, for one deceased Medicaid recipient (sample number 15), the State agency opened an estate recovery case and identified Medicaid paid claims totaling approximately \$760,774. Before it undertook any asset research of this recipient's estate, the State agency received a \$38.50 check from a nursing home for the recipient's leftover account funds. The State agency then performed asset research in accordance with its procedures but was unable to independently verify any real property owned by the recipient at the time of death. In addition, the State agency was unable to locate a contact for the recipient's estate, and therefore, had no one to whom it could mail a notice of estate claim letter and asset questionnaire. In light of these circumstances, the State agency closed the estate recovery case as insolvent.

Although most of the 30 deceased Medicaid recipients had no real property and little or no other assets at their times of death, some of the recipients had assets such that the State agency actively pursued estate recovery through the use of liens or probate. For example, for one deceased Medicaid recipient (sample number 8), the State agency identified Medicaid paid claims totaling approximately \$338,412 and verified that the recipient owned real property with a total market value of approximately \$63,740, against which the State agency filed a lien. The property sold for approximately \$90,000, from which the State agency received \$7,929

after subtracting various costs and fees as detailed in Table 2. The State agency then closed the estate recovery case.

Table 2: Example of Estate Recovery Case for Deceased Medicaid Recipient’s Real Property

Description	Amount
Sale Price	\$90,000
Mortgage Payoff	(56,186)
Other Real Estate Fees	(8,148)
Attorney Fees	(11,012)
Public Administrator Fees	(6,725)
Left Over – Estate Recovery Amount	\$7,929

SOME DEFICIENCIES IDENTIFIED FOR ESTATE CASES THAT DID NOT HAVE ASSET RECOVERIES

Of the 23,161 deceased Medicaid recipients in our sampling frame, 18,193 (approximately 79 percent) had estate recovery cases that did not result in asset recoveries by the State agency. We randomly selected 98 of these deceased Medicaid recipients for our sample, and our review of their estate recovery cases identified 18 Medicaid recipient cases with at least 1 of the deficiencies listed in Table 1 earlier in this report and discussed below. (One deceased Medicaid recipient’s estate recovery case had two of the deficiencies). Appendix C, Table 6, lists (by sample number) all 128 deceased Medicaid recipients in our sampling frame and contains a summary of the deficiencies for each deceased Medicaid recipient whose estate recovery case resulted in no asset recoveries.

Probates and Liens for Estate Recovery Were Not Initiated in a Timely Manner, Resulting In No Recoveries Being Made and the Estate Recovery Cases Being Closed

State statute authorizes the State agency to file a lien within 1 year of a recipient’s death (KSA 39-709(g)(4)). State regulation states that for a deceased recipient, the real property of the recipient may be subject to the imposition of a lien by the State agency for up to 1 year after the death of the recipient (KAR § 129-6-150(f). Together, these provisions specify that the State agency, if it will file a lien, has up to 1 year to file it.⁴

In addition, Kansas probate law authorizes the State of Kansas to initiate a probate claim against a decedent’s estate within 6 months after the decedent’s date of death (KSA 59-2239). Although Kansas’s probate law is not specific to the State Medicaid program or MERP, it is, however, relevant to point out that demands for payment that may need to go through probate are generally barred (with some exceptions) unless initiated within 6 months of a deceased Medicaid recipient’s death.

⁴ In practice, the contractor files liens in coordination with and at the direction of the State agency.

For seven deceased Medicaid recipients, the State agency opened an estate recovery case and identified assets with values ranging from \$32,000 to \$125,000, which the State agency could have recovered by filing a lien or initiating a probate claim. However, the State agency did not file a lien within 1 year or initiate a probate claim within 6 months of the recipients' deaths. Instead, the State agency closed the estate recovery cases for these seven deceased Medicaid recipients without recovering all assets to which it may have been entitled, and all seven cases were coded by the State agency as "Past Timely Filing." Table 3 presents information for these seven deceased Medicaid recipients.

Table 3: Deceased Medicaid Recipient Estate Recovery Cases That the State Agency Closed and Coded as "Past Timely Filing"

Sample Number	Date of Death	Case Opened	Months Opened After Death	Case Closed	Months Closed After Death	Total Asset Value	Medicaid Claims Amount
35	10/28/2019	11/22/2019	0	6/30/2021	20	\$32,030	\$54,237
36	11/7/2019	10/9/2020	11	12/3/2020	12	125,400	440,442
40	3/16/2020	5/5/2020	1	12/24/2020	9	43,200	59,445
42	8/8/2020	9/19/2020	1	6/9/2021	10	32,100	3,967
43	1/28/2021	12/1/2021	10	12/16/2021	10	58,295	13,491
44	5/11/2021	6/23/2021	1	6/24/2022	13	48,640	28,500
47	10/8/2021	12/8/2021	2	6/13/2022	8	86,200	17,472

State agency officials attributed the lack of timeliness for these seven deceased Medicaid recipients' estate recovery cases to various reasons that were specific to each case. For example, for one Medicaid recipient's estate recovery case, the contractor requested but did not receive a property deed from the county register of deeds office, as is required for the lien filing process. Specifically, the contractor sent two separate requests for property deeds to the register of deeds office, approximately 3 months and 6 months, respectively, after the recipient's date of death. Thereafter, the contractor did not attempt any additional contact with the register of deeds office, and the case was closed approximately 13 months after the date of death. We consider this case to be a deficiency because, after the contractor sent the second request, approximately 6 months remained of the 1-year timeframe within which to file a lien, which appears to have been adequate time for the contractor to attempt to make additional contact with the register of deeds office.

For two additional Medicaid recipients' estate recovery cases, the contractor received the Medicaid recipients' names from the State agency approximately 10 to 11 months after the dates of death, which did not leave adequate time for the contractor to complete the lien filing process.

Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims

State Medicaid programs are required to seek recovery of payments from recipients' estates for certain Medicaid services (the Act § 1917(b)(1)(B)).

After opening an estate recovery case for a deceased Medicaid recipient, one of the initial procedures performed by the State agency is to query its Medicaid Management Information System (MMIS) to verify whether the recipient had Medicaid claims that were subject to estate recovery.⁵ If the State agency determines that the deceased Medicaid recipient had claims that were subject to recovery, it records the total claim amount in the case file and continues to pursue estate recovery. If the State agency determines that the deceased Medicaid recipient did not have claims that were subject to recovery, the case is closed.

For seven deceased Medicaid recipients, the State agency incorrectly determined that there were no paid Medicaid claims to pursue for estate recovery. As a result, the State agency closed the related estate recovery cases and coded each case as "No Paid Claims." During our analysis of Medicaid claims data, we were able to independently identify paid Medicaid claims that qualified for estate recovery for each of the seven deceased Medicaid recipients.

A State agency official said that the State agency was not able to determine the exact reason why the contractor caseworkers did not identify paid claims when performing the claims verifications for these seven estate recovery cases, and whether it resulted from human error or an issue with the MMIS query itself. However, after we found paid claims for these recipients during our audit work and asked the State agency about them, it performed another MMIS query and verified that all seven recipients had Medicaid paid claims, with individual totals ranging from approximately \$130,000 to \$434,000.

State Agency Did Not Correctly Perform Some of Its Other Estate Recovery Procedures

State Medicaid programs are required to seek recovery of payments from the recipient estates for certain Medicaid services (the Act § 1917(b)(1)(B)). Based on discussions with the State agency and our review of its internal procedure documentation, we determined that the procedures that the State agency performs while pursuing estate recovery include the following steps:

- After receiving information that a Medicaid recipient has died, the State agency opens a case for the recipient in its estate recovery system.
- After the State agency opens an estate recovery case, it attempts to contact the recipient's estate (usually a family member or next of kin) by sending a notice of estate claim letter that includes an asset questionnaire. When the estate fills out the asset

⁵ The MMIS is a computerized payment and information reporting system that the State agency uses to process and pay Medicaid claims and to manage information about Medicaid beneficiaries and services.

questionnaire and returns it to the State agency, the latter uses it to identify estate assets.

- In addition to sending an asset questionnaire to the estate, the State agency also performs independent asset research (e.g., searching a third-party database for real property records) to determine whether the recipient owned any real property (such as a home or land) at the time of death. If real property is identified, the State agency adds a copy of the property verification to the case file.

We found that the State agency did not perform these procedures for some cases. Specifically:

- For one deceased Medicaid recipient who passed away in 2021, the State agency did not open a case in its estate recovery system. Instead, the State agency appears to have mistaken the recipient for another deceased Medicaid recipient with the same first and last name, on whose behalf the State agency had previously opened and closed a case in 2007 (approximately 12 years before the start of our audit period).
- For three deceased Medicaid recipients, the State agency received information that each of the recipients had passed away but did not attempt to send a notice of estate claim letter to the recipient's estate. Although the State agency performed independent asset research of real property for each of these Medicaid recipients, the asset questionnaire that is included with the notice of estate claim letter can identify other assets, such as bank accounts, that the independent asset research may not identify.
- For one deceased Medicaid recipient, the State agency performed asset research on an incorrect property address. On that basis, the State agency incorrectly determined that the deceased Medicaid recipient had sold their property prior to their death. However, we determined that this recipient appeared to own property at the time of death, with a total value of \$24,930, of which the State agency may have been entitled to a portion.

DECEASED MEDICAID RECIPIENTS OUTSIDE OF OUR SAMPLING FRAME WHO WERE SUBJECT TO ESTATE RECOVERY DID NOT HAVE AN ESTATE RECOVERY CASE OPENED BY THE STATE AGENCY

State Medicaid programs are required to seek recovery of payments from the recipient estates for certain Medicaid services (the Act § 1917(b)(1)(B)). Under the provisions of the State agency's estate recovery contract award, the State agency is responsible for providing the contractor with the names of deceased Medicaid recipients for purposes of pursuing estate recovery; the State agency does this through a monthly report.

We identified deceased Medicaid recipients outside of our sampling frame who appeared to be subject to estate recovery and for whom the State agency had not opened an estate recovery case. Specifically, we identified 1,095 Medicaid recipients who: (1) received Medicaid services that were subject to estate recovery and had Medicaid claims paid totaling \$3,000 or more,

(2) had dates of death occurring during SFY 2020 or SFY 2021,⁶ (3) were at least 55 years old when the recipient received services, and (4) did not match to the State agency's estate recovery data by Medicaid identification number or by name.

We provided the list of 1,095 deceased Medicaid recipients to the State agency, which researched this list and determined that the State agency never provided the names of 1,059 of the 1,095 deceased Medicaid recipients to the contractor on the monthly report. State agency officials said that a possible reason involved "report generation problems," which caused these monthly reports to omit certain information for these recipients. These officials added that the State agency did provide the names of the remaining 36 deceased Medicaid recipients (of the 1,095) to the contractor on the monthly deceased Medicaid recipient report. These officials also said that because of human error, the contractor did not open an estate recovery case for these recipients.

THE STATE AGENCY'S MEDICAID ESTATE RECOVERY PROGRAM WAS COST EFFECTIVE

During our audit period the State agency's MERP collected approximately \$37 million in estate recoveries while spending approximately \$5 million in contractor fees and State agency salaries to operate the program. In addition, we verified that the State agency was correctly reporting its estate recoveries to the Federal Government on the standard Form CMS-64, Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64). Therefore, we concluded that the State agency's MERP was cost effective.

THE STATE AGENCY DID NOT ALWAYS FOLLOW ITS ESTATE RECOVERY PROCEDURES

The deficiencies we identified occurred because the State agency did not always follow its existing estate recovery procedures. Specifically, the State agency: (1) did not always follow its procedures for filing liens within 1 year and initiating probate within 6 months; (2) prematurely closed some estate recovery cases because of inaccurate claims paid verification; (3) did not correctly perform various other estate recovery procedures (i.e. opening an estate recovery case, sending a notice of estate claim letter, or performing independent asset research); and (4) did not identify some deceased Medicaid recipients who were subject to estate recovery.

REDUCED RECOVERIES MAY HAVE RESULTED BECAUSE THE STATE AGENCY DID NOT ALWAYS FOLLOW ITS EXISTING ESTATE RECOVERY PROCEDURES

The fact that the State agency did not always follow its existing estate recovery procedures may have prevented it from thoroughly pursuing estate recovery for all deceased Medicaid recipients; consequently, the State agency may not have executed some asset recoveries. Although we acknowledge that not all estate recovery cases will or should lead to asset recoveries, it is important for the State agency to pursue estate recovery for all deceased

⁶ We did not include deaths from SFY 2022 because our audit work began shortly after SFY 2022 ended, and the State agency may not have had sufficient time to pursue estate recovery for some of the cases in our audit scope.

Medicaid recipients consistently, in accordance with Federal and State requirements, and in accordance with its own procedures.

RECOMMENDATIONS

We recommend that the Kansas Department of Health and Environment:

- improve its estate recovery program by:
 - confirming that all deceased Medicaid recipients who are subject to estate recovery are identified and
 - providing relevant information on those recipients to the contractor in a timely manner so as to give the contractor adequate time to file liens and initiate probate; and
- improve its oversight of the estate recovery contractor's performance by:
 - verifying that the contractor files liens and initiates probate in a timely manner,
 - confirming that the contractor's current process for MMIS claims verification is accurate, and
 - verifying that the contractor performs applicable estate recovery procedures (including the opening of cases, sending of notices, and independent asset research) for deceased Medicaid recipients.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency said that it generally agreed with and accepted all of our recommendations and described corrective actions that it had taken or planned to take to address these recommendations. The State agency introduced its comments by referring to the COVID-19 public health emergency and the State agency's upgrade to its new Kansas Modular Medicaid System (KMMS) as two "unusual circumstances" that occurred during our audit period, and that ultimately caused some delays in the estate recovery process.⁷ The State agency also referred to "data issues" that arose during the transition to the KMMS, in that "each information system seemed to aggregate paid claims somewhat differently at times."

⁷ During our audit period, the State agency replaced its prior MMIS with KMMS. Both information systems played a significant part in the State agency's estate recovery process by providing claims information for the deceased Medicaid recipients.

For our first recommendation, the State agency said that the contractor would begin adding Social Security data to its current death identification processes “as a way to bolster the identification of [Kansas] Medicaid decedents” and “to meet the filing deadlines for cases where there are viable assets to recover.” For our second recommendation, the State agency said that the contractor: (1) had made “workflow enhancements” to its estate recovery system to assist with filing liens and initiating probate in a timely manner; (2) was verifying that “case workers are trained to accurately pull KMMS claims data;” and (3) had “created a new, more comprehensive, operation procedures manual” for its estate recovery system.

Although the State agency generally agreed with our findings, it also said that it would have categorized 3 of the 18 recipient cases that we have reported as deficiencies as “not cost-effective to recover or outside of recovery criteria.”

After reviewing the State agency’s comments, we agree with the State agency that for some of the recipient cases that we identified as deficiencies, recovery would not be cost effective. However, we still categorized these cases as deficiencies because, as we discuss earlier in this report, the State agency did not always follow its existing estate recovery procedures. In addition, we acknowledge that the State agency faced significant challenges during the public health emergency and during its transition to the KMMS, and that these challenges could have contributed to some of our findings. We did not, however, see evidence that the State agency had implemented any specific flexibilities to its estate recovery requirements in response to these circumstances. Therefore, we maintain that our findings and recommendations remain valid, and we commend the State agency and the contractor for the corrective actions that they had taken and planned to take to address our recommendations.

The State agency’s comments appear in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered deceased Medicaid recipients whose estates were subject to estate recovery by the State agency during SFYs 2020 through 2022 (audit period). We used both the estate recovery data from the State agency and Medicaid claims data from CMS's Transformed Medicaid Statistical Information System (footnote 2) to perform our work.

We used the estate recovery data provided by the State agency to define the 23,161 deceased Medicaid recipients for whom the State agency had opened an estate recovery case. The 23,161 deceased Medicaid recipients thus constituted our sampling frame, from which we selected a stratified random sample of 128 deceased Medicaid recipients (Appendix B contains additional details on our statistical sampling methodology). Of these, 30 recipients had estate recovery cases that resulted in asset recoveries and 98 recipients had estate recovery cases that resulted in no asset recoveries. We were granted access to the State agency's estate recovery system, from which we could review the documentation for each deceased Medicaid recipient to determine whether the State agency's estate recovery case was in accordance with Federal and State requirements and was adequately supported.

In addition, we used Medicaid claims data to identify deceased Kansas Medicaid recipients whose estates appeared to be subject to estate recovery during our audit period. We compared that list to the deceased Medicaid recipients for whom the State agency had opened an estate recovery case to determine whether the State agency pursued estate recovery for all of the identified recipients.

To evaluate the cost effectiveness of the State agency's MERP, we obtained the State agency's estate recovery operating costs for the audit period and subtracted that amount from the total estate recovery amount for the same timeframe, to determine whether the State agency recovered more than it spent on the program. We also verified whether the State agency reported those recovery amounts to the Federal Government.

We assessed internal controls necessary to satisfy the audit objectives. In particular, we assessed the control activities related to the State agency's oversight of the MERP, which included oversight of the contractor.

We conducted our audit work from September 2022 to January 2024.

METHODOLOGY

To accomplish our objectives, we:

- reviewed applicable Federal and State requirements and the Kansas State plan;

- held discussions with officials from the State agency and the contractor to gain an understanding of the State’s estate recovery policies and procedures;
- obtained the estate recovery data from the State agency for our audit period and, to verify the completeness of the data, selected some example cases of deceased Medicaid recipients from the data to determine whether each had a case opened in the State agency’s estate recovery system;
- obtained the State agency’s support for the estate recovery amounts reported to the Federal Government on the Form CMS-64 for the quarter ending March 31, 2022, to determine whether the State agency accurately reported its recoveries;
- developed a sampling frame of 23,161 deceased Medicaid recipients for whom the State agency had opened an estate recovery case;
- selected a stratified random sample of 128 deceased Medicaid recipients from the sampling frame and reviewed supporting documentation for each recipient to determine whether the State agency:
 - pursued estate recovery in a timely manner, specifically by following State requirements for liens and probate;
 - correctly verified the deceased Medicaid recipient’s MMIS paid claims;
 - had adequate support for the case, including having: (1) opened a case in the estate recovery system, (2) attempted to contact the deceased Medicaid recipient’s estate, and (3) independently verified the deceased Medicaid recipient’s assets;
- obtained, from CMS’s Transformed Medicaid Statistical Information System (footnote 2), Medicaid claims data that included Kansas Medicaid recipients whose estates appeared to be subject to estate recovery, and who had dates of death occurring during SFY 2020 or SFY 2021, and compared that list to the deceased Medicaid recipients for whom the State agency opened an estate recovery case to determine whether the State agency pursued estate recovery for all of the identified Medicaid recipients;
- obtained the State agency’s estate recovery operating costs for the audit period and subtracted that amount from the total estate recovery amount from the same timeframe, to determine whether the State agency recovered more than it spent on the program; and
- discussed the results of our audit with State agency officials on September 8, 2023.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: STATISTICAL SAMPLING METHODOLOGY

SAMPLING FRAME

The sampling frame consisted of 23,161 deceased Medicaid recipients for whom the State agency had opened an estate recovery case during SFYs 2020 through 2022—information that the State agency gave to us in an Excel spreadsheet.

SAMPLE UNIT

The sample unit was a deceased Medicaid recipient.

SAMPLE DESIGN AND SAMPLE SIZE

We used a stratified random sample as follows:

Table 4: Division of Strata for Sample Design

Stratum	Description	Number of Frame Units	Sample Size
1	Recoveries	4,968	30
2	Non-Recoveries – “Past Timely Filing” Types Only ⁸	18	18
3	Non-Recoveries – Top 10 “No Paid Claims” Only ⁹	10	10
4	All Other Non-Recoveries	18,165	70
Total		23,161	128

SOURCE OF RANDOM NUMBERS

We generated the random numbers using the OIG, Office of Audit Services, statistical software.

⁸ “Past Timely Filing” types of non-recoveries occurred when the State agency did not pursue estate recovery in a timely manner after a deceased Medicaid recipient’s death. For example, the State agency has up to 1 year after a recipient’s date of death to file a lien against the recipient’s real property (KSA 39-709(g)(4) and KAR § 129-6-150(f)).

⁹ To create Stratum 3, we used Medicaid claims payment data for Kansas, from calendar year 2000 to April 2023, to identify the 10 recipients with the highest claims paid totals of all deceased recipients whom the State agency had identified as having “no paid claims.”

METHOD FOR SELECTING SAMPLE UNITS

We sorted the items in each stratum by recipient Medicaid identification number and date of death in ascending order, and then consecutively numbered the items in each stratum in the sampling frame. After generating random numbers for strata 1 and 4 according to our sample design, we selected the corresponding frame items for review. We reviewed all items in strata 2 and strata 3.

**APPENDIX C: SUMMARY OF SAMPLE RESULTS AND DEFICIENCIES FOR EACH
SAMPLED DECEASED MEDICAID RECIPIENT**

Table 5: Sample Results

Stratum	Frame Size	Sample Size	Estate Recovery Was Not Pursued in a Timely Manner	Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims	State Agency Did Not Correctly Perform Some Estate Recovery Procedures
1	4,968	30	0	0	0
2	18	18	7	0	3
3	10	10	0	7	0
4	18,165	70	0	0	2
Total	23,161	128	7	7	5

Table 6: Deficiencies Identified for Each Deceased Medicaid Recipient

Sample Number	Stratum	Estate Recovery Was Not Pursued in a Timely Manner	Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims	State Agency Did Not Correctly Perform Some Estate Recovery Procedures
1	1			
2	1			
3	1			
4	1			
5	1			
6	1			
7	1			
8	1			
9	1			
10	1			
11	1			
12	1			
13	1			
14	1			
15	1			
16	1			

Sample Number	Stratum	Estate Recovery Was Not Pursued in a Timely Manner	Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims	State Agency Did Not Correctly Perform Some Estate Recovery Procedures
17	1			
18	1			
19	1			
20	1			
21	1			
22	1			
23	1			
24	1			
25	1			
26	1			
27	1			
28	1			
29	1			
30	1			
31	2			
32	2			
33	2			
34	2			
35	2	X		
36	2	X		X
37	2			
38	2			X
39	2			
40	2	X		
41	2			
42	2	X		
43	2	X		
44	2	X		
45	2			
46	2			X
47	2	X		
48	2			
49	3			
50	3		X	
51	3		X	
52	3		X	

Sample Number	Stratum	Estate Recovery Was Not Pursued in a Timely Manner	Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims	State Agency Did Not Correctly Perform Some Estate Recovery Procedures
53	3		X	
54	3		X	
55	3		X	
56	3			
57	3			
58	3		X	
59	4			
60	4			
61	4			
62	4			
63	4			
64	4			
65	4			
66	4			
67	4			
68	4			
69	4			
70	4			
71	4			
72	4			
73	4			
74	4			
75	4			
76	4			
77	4			X
78	4			
79	4			
80	4			
81	4			
82	4			
83	4			
84	4			
85	4			
86	4			
87	4			
88	4			

Sample Number	Stratum	Estate Recovery Was Not Pursued in a Timely Manner	Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims	State Agency Did Not Correctly Perform Some Estate Recovery Procedures
89	4			
90	4			
91	4			
92	4			
93	4			
94	4			
95	4			
96	4			
97	4			
98	4			
99	4			
100	4			
101	4			
102	4			
103	4			
104	4			
105	4			
106	4			
107	4			
108	4			
109	4			
110	4			
111	4			
112	4			
113	4			
114	4			
115	4			
116	4			
117	4			
118	4			
119	4			
120	4			
121	4			
122	4			
123	4			
124	4			X

Sample Number	Stratum	Estate Recovery Was Not Pursued in a Timely Manner	Estate Recovery Case Was Incorrectly Closed for Having No Paid Claims	State Agency Did Not Correctly Perform Some Estate Recovery Procedures
125	4			
126	4			
127	4			
128	4			
Totals	128	7	7	5

**APPENDIX D: SUMMARY OF SAMPLED DECEASED MEDICAID RECIPIENTS WITH
ASSET RECOVERIES**

**Table 7: Thirty Sampled Deceased Medicaid Recipients With Asset Recoveries (Stratum 1) –
Summary of Assets and Recoveries**

Sample Number	Asset Types			Recovery Type			Medicaid Paid Claims
	Real Property	Other Assets	Total Assets	Probate or Lien	All Other Recoveries	Total Recoveries	
1	\$99,410	\$0	\$99,410	\$27,357	\$0	\$27,357	\$27,357
2	0	3,235	3,235	0	3,288	3,288	107,089
3	0	285	285	0	570	570	64,446
4	0	0	0	0	55	55	81,862
5	0	1,124	1,124	0	3,986	3,986	31,468
6	0	330	330	0	963	963	7,347
7	0	1,115	1,115	0	2,925	2,925	343,347
8	63,740	0	63,740	7,929	0	7,929	338,412
9	0	0	0	0	139	139	563,627
10	0	0	0	0	2,924	2,924	214,606
11	0	1,777	1,777	0	7,340	7,340	23,103
12	0	0	0	0	1,964	1,964	128,659
13	0	5,954	5,954	0	6,977	6,977	65,844
14	0	10,567	10,567	0	10,567	10,567	56,826
15	0	0	0	0	39	39	760,774
16	30,000	0	30,000	22,917	865	23,782	23,782
17	0	68	68	0	68	68	185,997
18	0	0	0	0	5,244	5,244	198,690
19	0	0	0	0	27,550	27,550	333,818
20	0	0	0	0	394	394	49,111
21	0	1,774	1,774	0	1,774	1,774	129,205
22	0	5,415	5,415	0	8,808	8,808	79,963
23	0	1,820	1,820	0	1,915	1,915	45,103
24	33,700	0	33,700	3,178	0	3,178	342,364
25	82,700	380	83,080	4,304	0	4,304	4,304
26	0	2,880	2,880	0	23	23	149,952
27	0	1,289	1,289	0	4,132	4,132	419,844
28	0	0	0	0	191	191	174,432
29	0	1,937	1,937	0	1,937	1,937	683,780
30	0	2,404	2,404	0	1,977	1,977	420,770
Total	\$309,550	\$42,352	\$351,902	\$65,684	\$96,613	\$162,298	\$6,055,884
Count	5	17	21	5	26	30	

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Janet Stanek, Secretary

Laura Kelly, Governor

February 2, 2024

Mr. James I. Korn
Regional Inspector General for Audit Services
Region VII
601 East 12th St., Room 0429
Kansas City, MO 64106

Report Number: A-07-22-03254

Dear Mr. Korn,

The Kansas Department of Health and Environment wishes to extend our thanks to your agency for the opportunity to respond to your audit report over the Kansas Medicaid Estate Recovery Program. We found your report to be comprehensive, thorough, and educational.

For the most part, KDHE agrees and accepts the conclusions and recommendations offered by the HHS OIG concerning the Kansas Medicaid Estate Recovery Program (KS MERP).

However, Kansas does feel the need to provide some context since the three years audited had some unusual circumstances that affected Kansas Medicaid operations which, in turn, impacted the operations of our MERP contractor performing the KS MERP activity. Some unique events occurred in Kansas during the audit period. As noted in the OIG report, the three years surveyed were State Fiscal Years 2020 to 2022. In actual calendar dates, the audit period covered July 1, 2019 to June 30, 2022.

As an initial circumstance, Kansas and the nation were dealing with COVID-19 restrictions and changes during this audit period. The impact of this pandemic was particularly significant since the country's business operations were modified to deal with varying types of remote work routines from usual brick & mortar office routines. One of the effects that KS MERP and the contractor faced from this transition was erratic contact with other offices, such as a county Register of Deeds, and resulting delayed responses.

A second circumstance during this period involved Kansas Medicaid moving its Medicaid information management system to a new information system. The Kansas Modular Medicaid System (KMMS) modernization project replaced the prior Medicaid Management of Information System (MMIS) beginning in April 2022. A large amount of preparation and transition work occurred in 2021. KMMS, like MMIS before it, was a significant part of the KS MERP process since both information systems provided claims information on Kansas Medicaid recipients. Paid claims information was, and is, the key datum required by KS MERP for its probate demands and post-death liens. Once KMMS went live, KS Medicaid and the contractor faced a delay in

getting timely and accurate paid claims reports from KMMS. Since Kansas has statutory limits for filing probate claims (K.S.A. 59-2239 specifies 6 months post death as cutoff) and post-death liens (K.S.A. 39-709 (g)(4) specifies 1 year post death as cutoff), a delay in receiving timely claims information affects the ability to file the relevant post-death recovery vehicle.

KS Medicaid respectfully notes that there were significant discussions during the February – August 2022 period between KS Medicaid, the MERP contractor, and our fiscal agent (the developer of KMMS) concerning data issues. One example included the need to modify the claims report from MMIS to KMMS format. Initially, there was a limit on the number of paid claims that could be aggregated into a paid claims report in KMMS. So, a complete paid claims report was not possible. Another example involved paid claims totals. Both KS Medicaid and the contractor noted that each information system seemed to aggregate paid claims somewhat differently at times. In several situations involving the same decedent when KS Medicaid or the contractor had a prior MMIS paid claims report, the MMIS claims total was different than the total reported on a subsequent KMMS paid claims report. Since KS MERP was filing official documents with county courts or Register of Deeds offices, it was important to file an accurate claims report. So, when a data mismatch occurred, KS Medicaid and the contractor took extra care to try to resolve the data mismatches.

Our final comment on the report relates to your finding, “The State agency did not always operate its MERP in accordance with Federal and State requirements in that it did not always follow its estate recovery procedures during SFYs 2020 through 2022.” This is found on page 4 of the report. This was based on a review of 30 cases. We agree with this finding however, we did identify 3 of the 18 of cases counted as deficiencies in your findings data would have been categorized as not cost-effective to recover or outside of recovery criteria.

Below, you will find our response to each of your recommendations.

RECOMMENDATIONS

We recommend that the Kansas Department of Health and Environment:

- improve its estate recovery program by:

- o confirming that all deceased Medicaid recipients who are subject to estate recovery are identified

KDHE Response - KS Medicaid encouraged the contractor to review its processes since one of the deficiencies noted by the auditors was that over 1,000 cases were not included in the KS MERP workflow for processing. While KS Medicaid and the contractor have speculated that the KMMS transition may have played a role, the KS MERP processes can be improved. On this point, the contractor has subsequently advised that they are adding death notification routines using Social Security data to current death identification processes as a way to bolster the identification of KS Medicaid decedents.

- o providing relevant information on those recipients to the contractor in a timely manner so as to give the contractor adequate time to file liens and initiate probate

KDHE Response - KS Medicaid continues to review its KMMS system for functionality. As part of this process, KS MERP will work with the contractor to ensure that any data issues are addressed quickly. If the

contractor is bolstering KS data with Social Security data (see above), the hope is that the contractor will be able to meet the filing deadlines for cases where there are viable assets to recover.

- improve its oversight of the estate recovery contractor's performance by:

- o verifying that the contractor files liens and initiates probate in a timely manner,

KDHE Response - See responses above. Additionally, the contractor advises that they have made workflow enhancements to their MERP database. The contractor uses this central database to control their workflow. Specifically, when a probate is identified, the contractor has added a new workflow routine for the assigned case worker to file their claims. This includes process aging guideposts that will trigger reminders and next steps during the MERP process for the contractor's case workers. Overdue steps will automatically show up on management screens for workflow review of case workers. For liens, the contractor updated the workflows for each step of the lien filing process. This includes reminders and next steps along the entire process so that any overdue files will automatically show up as overdue for managers to review.

- o confirming that the contractor's current process for MMIS claims verification is accurate

KDHE Response - KS MERP is regularly verifying that the contractor's MERP personnel are trained and proficient with KMMS. The contractor advises that they are also verifying that their KS case workers are trained to accurately pull KMMS claims data and attaching the data to the relevant file in a timely manner.

- o verifying that the contractor performs applicable estate recovery procedures (including the opening of cases, sending of notices, and independent asset research) for deceased Medicaid recipients.

KDHE Response - See responses above. Additionally, the contractor advises they have created a new, more comprehensive, operation procedures manual with procedural steps unique to Kansas identified through the database.

In closing, KDHE would like to express our appreciation to the auditors for their professionalism in conducting this audit and for the partnership-oriented manner with which they engaged our staff. It is always our pleasure to team with your agency in working to identify methods to improve the Kansas Medicaid Program.

Respectfully,

/s/ Christine Osterlund

Christine Osterlund
Deputy Secretary of Agency Integration and Medicaid