




WHITE EARTH RESERVATION

CHAIRMAN Michael Fairbanks **SECRETARY-TREASURER** Leonard Alan Roy
DISTRICT I Raymond Auginaush, Sr. **DISTRICT II** Kathy Goodwin **DISTRICT III** Eugene "Umsy" Tibbetts

November 26, 2019

MEMORANDUM

TO: White Earth Reservation Business Committee

FROM: Alan Roy, Secretary/Treasurer 

SUBJECT: Secretary/Treasurer Report

White Earth Reservation Business Committee (RBC),

A report on the Band's finances is discussed in Section I. Fiscal violations and recommendations can be found in Section II.

In accordance with Ordinance Number 1-65 (Revised), audits are mandated by Band law and the Secretary/Treasurer shall procure an independent audit of the accounting records of the Band at least once a year unless explicitly waived by the RBC.

The responsibility and authority to conduct audits remains delegated to the Secretary/Treasurer under Ordinance Number 1-65 (Revised). General Counsel, Internal Affairs, and associated audits are budgetarily supported by Other Professional Services in the Legal Department.

If there are any questions or feedback, I can be reached at alan.roy@whiteearth-nsn.gov or 218-983-3285. The Administration is directed to publish a copy of this Memorandum to the website, the Anishinaabeg Today, and at the Administration front desk.

cc: Executive Director
Chief Financial Officer
Tribal Attorney
MCT

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Section I – Financial Report

Overview

The RBC's finances are reported annually through a Statement of Net Position and Statement of Activities. The most recent available statements are found in the RBC's Audit Report. These statements provide information about the activities of the Band as a whole and present a longer-term view of the Band's finances.

The Statement of Net Position presents information on all of the Band's assets and liabilities and deferred inflows and outflows of resources, with the difference reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the Band is improving or deteriorating. The Statement of Activities presents information showing how the Tribe's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., earned vacation leave).

In the Statement of Net Position and the Statement of Activities there are two kinds of activities:

- **Governmental Activities** – Most of the Band's governmental activities are reported here, which include general government, health services, education, human services, public safety, conservation of natural resources, transportation, economic development, culture and recreation, and community services. Shared taxes, charges for services, interest on investments, governmental contracts and grants, and transfers from the business-type activities finance most of the governmental activities.
- **Business-Type Activities** – The Band's gaming and retail sales are reported here. Fees charged to customers is what primarily finance these activities.

Fund Financial Statements

The fund financial statements provide detailed information about the most significant funds – not the Tribe as a whole. The RBC establishes funds by resolution to help it control and manage money for a particular purpose, or in order to demonstrate that it is meeting legal responsibilities for using certain grants and other money. The two fund types – governmental and proprietary – use different accounting approaches.

- **Governmental Funds** – Most of the Band's basic services are reported in governmental funds. Governmental fund presentation focuses on how money flows into and out of those funds and the balances that are left at year-end and are available for spending. These funds are reported using an accounting method called modified accrual accounting, which measures cash and all other financial assets that can readily be converted to cash. Governmental fund information helps you determine whether

there are more or less financial resources that can be spent in the near future to finance the Tribe's programs. We describe and reconcile the relationship (or differences) between governmental and business-type activities and balances reported in the Statement of Net Position and the Statement of Activities and governmental funds and proprietary funds financial statements.

- **Proprietary Funds** - When the Band charges customers for the services it provides - whether to outside customers, members of the Band or to other units of the Band - these services are generally reported in proprietary funds, which are reported the same way that all activities are reported in the Statement of Net Position and the Statement of Activities. In fact, the enterprise funds (a component of proprietary funds) present the same information as the business-type activities reported in the Tribe-wide statements but provide more detail and additional information, such as cash flows. We use internal service funds (the other component of proprietary funds) to report activities that provide supplies or services for the Band's other programs and activities - the cost of the Band's general, medical, and workers compensation insurance - which are then allocated to the various tribal units and funds.

The governmental fund financial statements report the Band's operations in more detail, showing how these services were financed in the short term as well as what remains for future spending. Governmental fund financial statements also report the Band's operations in more detail than the Band-wide statement by providing information about the Band's significant funds.

General Fund

The General Fund includes departments that operate more for the good of the Band members than to make a profit. Departments such as education and public safety are directly involved with the Band members. Other departments are indirectly involved with the Band members but perform functions for the Band's overall good.

As reported through audits, Special Revenue Funds were administered through: General Government, Health Services, Education, Human Services, Public Safety, Conservation of natural resources, Transportation, Economic development, Culture and recreation, Interest, and Public works.

The approved Fiscal Year 2020 RBC General Fund Budget was authorized at the September 2019 Regular Meeting and it has been included in the Financial Inquiries section of this report.

Fiscal Year 2020 - Month 1

Reporting the revenues and expenditures for the Band's most recent finances will be generated quarterly as substantial changes occur between reporting periods. For example, revenue and expenses arrive infrequently on a monthly reporting basis. This standard applies

to all funds and activities. Moving forward, the Band will report the Band's finances with significant changes highlighted at Regular Meetings. The Band's most recent finances can be found below. As with any monthly report the numbers will change significantly. To better reflect the actual finances of the Band, Quarterly Financials will be provided for the Quarter ending in December, March, June, and September of each year. The unaudited preliminary numbers are subject to change as the numbers are finalized.

For governmental activities, overall from October 1 2019 to October 31 2019—the first month of fiscal year 2020—combined revenue was \$5.7 million and expenditures were \$2.4 million. On October 31, 2019, cash on hand was \$59.8 million. However, \$57.4 million is considered Other Governmental Funds; \$41.2 million of these funds belonged to Behavioral Health while the General Fund was \$2.4 million.

Collective expenditures during this period were \$2.4 million. Other Governmental Funds were \$2.1 million, and the General Fund was \$253,888.

Special Revenue Funds

The Special Revenue funds are used to account for the activities of various federal, state and other grant programs. This has been reported as *Other Governmental Funds* synonymously. The expenditure of grant funds is legally restricted to specified purposes. Program expenditures are budgeted on a basis of each respective program's fiscal year, which varies by program, and generally may or may not coincide with the Band's fiscal year.

As reported through audits, Special Revenue Funds were administered through: General Government, Health Services, Education, Human Services, Public Safety, Conservation of natural resources, Transportation, Economic development, Culture and recreation, Interest, and Public works.

Behavioral Health Division

The Behavioral Health Division is made of 15 departments that are headquartered on the White Earth Reservation. Some of its programs are delivered in the Twin Cities and Duluth area to assist Band members that do not live on the Reservation.

Program Deficits

As the Behavioral Health Division is generally administered through Special Revenue Funds that do not coincide with the Band's fiscal year, putting together a budget for the Division is very complex. However, with the Minnesota Department of Human Services' (DHS) MAT billing changes, the RBC requested a budget and business plan from the Behavioral Health Division to address these changes.

As a Budget was never established in prior years for the Division because each program and its grants run on different fiscal years than the Band, preliminary estimates indicated that the Reservation MOM program was running a \$1.7 million monthly deficit. Based upon further

analysis authorized by the RBC, the program deficit was found to be annual but also revealed a significant program deficit for the Mental Health program at \$1.2 million annually. The losses attributed to DHS billing changes for the Reservation MOM program is 38% from the prior fiscal year. The unaudited preliminary numbers are subject to change as the numbers are finalized.

Behavioral Health Budget

At the request of the RBC, preliminary Behavior Health Billing Revenue Budgets for fiscal year 2020 have been complete. The total revenue for all funds is \$41.9 million, expenses are \$37.2 million with a net income of \$4.7 million. Despite the Reservation MOM deficit, a net income of \$1.8 million is generated when the MAT and MOM programs are combined. The total MAT and MOM budget for fiscal year 2020 is \$15.1 million in revenue and \$13.3 million in expenses. The Behavioral Health Division has 26 grants totaling \$18.7 million that support their programs.

The attached preliminary Behavioral Health Billing Revenue Budgets are subject to review and approval. It is estimated that the budget and business plan will be approved after the January 1, 2020.

Behavior Health Billing Revenue Funds Fiscal Year 2020 Budgets 11/22/2019			
	Fund	030500	TOTAL
	Div	Dream Catcher	
Revenue			1,100,000
Expenses			
	Salaries and Wages		770,174
	Employee Benefits		158,406
	Purchased Services		191,500
	Supplies and Materials		40,000
	Capital Expenses		0
	Other Expenses		146,149
	Total Expenses		1,306,229
	Revenues Over (Under) Expenditures		-206,229
			=====
	Fund	131200	TOTAL
	Div	Urban WESA	
Revenue			550,000
Expenses			
	Salaries and Wages		330,549
	Employee Benefits		86,396
	Purchased Services		18,150
	Supplies and Materials		11,000
	Capital Expenses		0
	Other Expenses		71,968
	Total Expenses		518,063
	Revenues Over (Under) Expenditures		31,937
			=====
	Fund	131500	TOTAL
	Div	Urban MCM	
Revenue			1,180,000
Expenses			
	Salaries and Wages		582,810
	Employee Benefits		112,740
	Purchased Services		50,850
	Supplies and Materials		22,000
	Capital Expenses		0
	Other Expenses		231,187
	Total Expenses		999,387
	Revenues Over (Under) Expenditures		180,613
			=====
	Fund	132200	TOTAL
	Div	Urban MAT	
Revenue			2,150,000
Expenses			
	Salaries and Wages		838,313
	Employee Benefits		195,709
	Purchased Services		175,500
	Supplies and Materials		65,500
	Capital Expenses		0
	Other Expenses		484,724
	Total Expenses		1,759,746
	Revenues Over (Under) Expenditures		390,254
			=====
	Fund	131600	TOTAL
	Div	Rez MAT	
Revenue			9,700,000
Expenses			
	Salaries and Wages		1,723,150
	Employee Benefits		355,042
	Purchased Services		1,755,100
	Supplies and Materials		166,900
	Capital Expenses		2,000,000

Behavior Health Billing Revenue Budget 2020

	Other Expenses		660,208						
	Total Expenses		6,660,400						
	Revenues Over (Under) Expenditures		3,039,600						
			=====						
	Fund 130900 Div WESA		TOTAL						
Revenue			1,750,000						
Expenses									
	Salaries and Wages		708,838						
	Employee Benefits		131,005						
	Purchased Services		135,100						
	Supplies and Materials		45,000						
	Capital Expenses		0						
	Other Expenses		142,748						
	Total Expenses		1,162,689						
	Revenues Over (Under) Expenditures		587,311						
			=====						
	Fund 131100 Div Rez MCM		TOTAL						
Revenue			2,100,000						
Expenses									
	Salaries and Wages		890,353						
	Employee Benefits		156,914						
	Purchased Services		371,500						
	Supplies and Materials		139,000						
	Capital Expenses		2,000,000						
	Other Expenses		316,445						
	Total Expenses		3,874,212						
	Revenues Over (Under) Expenditures		-1,774,212						
			=====						
	Fund 234700 Div Mental Health		TOTAL						
Revenue			4,100,000						
Expenses									
	Salaries and Wages		3,073,105						
	Employee Benefits		708,467						
	Purchased Services		875,050						
	Supplies and Materials		80,000						
	Capital Expenses		0						
	Other Expenses		617,191						
	Total Expenses		5,353,813						
	Revenues Over (Under) Expenditures		-1,253,813						
			=====						
	Fund 137300 Div ICW		TOTAL						
Revenue			3,300,000						
Expenses									
	Salaries and Wages		1,728,625						
	Employee Benefits		408,434						
	Purchased Services		654,600						
	Supplies and Materials		73,500						
	Capital Expenses		0						
	Other Expenses		617,590						
	Total Expenses		3,482,749						
	Revenues Over (Under) Expenditures		-182,749						
			=====						
	Fund 132500 Div Acute Care		TOTAL						
Revenue			1,600,000						
Expenses									
	Salaries and Wages		720,068						
	Employee Benefits		179,888						

Behavior Health Billing Revenue Budget 2020

	Purchased Services		59,660
	Supplies and Materials		97,100
	Capital Expenses		0
	Other Expenses		165,605
	Total Expenses		1,222,341
	Revenues Over		
	(Under) Expenditures		377,659
			=====
	Fund 063900		TOTAL
	Div Circle Back		
Revenue			230,000
Expenses			
	Salaries and Wages		156,921
	Employee Benefits		44,256
	Purchased Services		25,120
	Supplies and Materials		14,800
	Capital Expenses		0
	Other Expenses		42,606
	Total Expenses		283,703
	Revenues Over		
	(Under) Expenditures		-53,703
			=====
	Fund 037200		TOTAL
	Div ICW Time Study		
Revenue			2,800,000
Expenses			
	Salaries and Wages		0
	Employee Benefits		0
	Purchased Services		15,000
	Supplies and Materials		1,800
	Capital Expenses		0
	Other Expenses		3,248,816
	Total Expenses		3,265,616
	Revenues Over		
	(Under) Expenditures		-465,616
			=====
	Fund 133400		TOTAL
	Div Harm Reduction		
Revenue			25,000
Expenses			
	Salaries and Wages		141,543
	Employee Benefits		34,546
	Purchased Services		8,500
	Supplies and Materials		8,000
	Capital Expenses		0
	Other Expenses		23,668
	Total Expenses		216,257
	Revenues Over		
	(Under) Expenditures		-191,257
			=====
	Fund 081600		TOTAL
	Div Juvenile Wellness		
Revenue			400,000
Expenses			
	Salaries and Wages		53,879
	Employee Benefits		6,536
	Purchased Services		19,550
	Supplies and Materials		24,000
	Capital Expenses		0
	Other Expenses		20,335
	Total Expenses		124,300
	Revenues Over		
	(Under) Expenditures		275,700
			=====
	Fund 017800		TOTAL
	Div Oshki Manidoo		
Revenue			11,000,000
Expenses			
	Salaries and Wages		4,090,600
	Employee Benefits		675,637

Behavior Health Billing Revenue Budget 2020

Purchased Services			592,500						
Supplies and Materials			570,000						
Capital Expenses			0						
Other Expenses			896,998						
Total Expenses			7,025,735						
Revenues Over (Under) Expenditures			3,974,265						
Fund	TOTAL BH BILLING		TOTAL						
Div									
Revenue			41,985,000						
Expenses									
Salaries and Wages			15,808,928						
Employee Benefits			3,453,976						
Purchased Services			4,947,500						
Supplies and Materials			1,358,600						
Capital Expenses			4,000,000						
Other Expenses			7,686,236						
Total Expenses			37,255,240						
Revenues Over (Under) Expenditures			4,729,760	3,974,265	Is from Oshki Manidoo				
				755,495	Without Oshki Manidoo				
Fund	TOTAL MOM/MAT		TOTAL						
Div									
Revenue			15,130,000						
Expenses									
Salaries and Wages			4,034,626						
Employee Benefits			820,405						
Purchased Services			2,352,750						
Supplies and Materials			393,400						
Capital Expenses			4,000,000						
Other Expenses			1,692,564						
Total Expenses			13,293,745						
Revenues Over (Under) Expenditures			1,836,255						
Program	Net Income/Loss		Percent						
Dream Catcher	(206,229.00)		-4.36%						
Urban WESA	31,937.00		0.68%						
Urban MOM	180,613.00		3.82%						
Urban MAT	390,254.00		8.25%						
Rez MAT	3,039,600.00		64.27%						
WESA	587,311.00		12.42%						
Rez MOM	(1,774,212.00)		-37.51%						
Mental Health	(1,253,613.00)		-26.51%						
ICW	(182,749.00)		-3.86%						
Acute Care	377,659.00		7.98%						
Circle Back	(53,703.00)		-1.14%						
ICW Time Sludy	(465,616.00)		-9.84%						
Harm Reduction	(191,257.00)		-4.04%						
Juvenile Wellness	275,700.00		5.83%						
Oshki Manidoo	3,974,265.00		84.03%						
	4,729,760.00		100.00%						

Behavioral Health Fiduciary Responsibility Reserve Fund

The Minnesota Office of the Legislative Auditor (OLA) produced a report related to overpayments provided to White Earth Nation and Leech Lake Nation. Generally, the OLA report was focused on DHS issues and did not address the Band's role in the alleged overpayments except that the Bands administered programs at DHS' direction. The OLA has also stated that they lack the jurisdiction to compel the Bands to cooperate in their audit, which has led them to contact Federal Officials. The Minnesota Governor and other State Officials have openly stated that the Bands should be held harmless for the alleged overpayments. However, the DHS Commissioner has stated that they are statutorily required to recuperate the alleged overpayment provided to the Bands.

The RBC has consistently stated that the Band will protect its resources and that the Band is not liable for the alleged overpayments. However, because the State of Minnesota is statutorily required to recuperate the alleged overpayment from the Band and the OLA has requested federal assistance, which causes great financial uncertainty for the Band, the RBC established a *Behavioral Health Fiduciary Responsibility Reserve Fund* in the amount of \$17 million from the \$41.2 million Behavioral Health Other Governmental Funds. The \$17 million fund covers the \$15 million alleged overpayment and an estimated \$2 million Mental Health program takeback. Furthermore, the Behavioral Health Fiduciary Responsibility Reserve Fund was established to prevent the appearance of fraud if the Band expended an exorbitant amount of funds from the Behavioral Health Other Governmental Funds that would leave the Band unable to fulfill a judgement or an order related to the alleged DHS overpayment.

Health Division Budget

At the request of the RBC, preliminary Health Billing Revenue Budgets for fiscal year 2020 have been complete. The total revenue for all funds is \$6.7 million, expenses are \$7 million with a net loss of \$300,000. The Division reports that the loss is mitigated by IHS carryover funds. The Health Division has 36 grants totaling \$34.8 million that support its programs. Generally, these are considered Special Revenue Funds with restrictions.

Gaming – Month 1

Consolidated Gaming Revenue was \$7.3 million compared to a budget of \$7.2 million. Exceeding budget by \$167,000 or 2.3%. Non-Gaming Revenue was \$2.2 million compared to a budget of \$2.4 million; under budget by \$ 211,000 or 8.9%. Total Expenses were \$8.5 million compared to a budget of \$9.2 million. A savings compared to a budget of \$715,000 or 7.8%. Net Income was \$1 million compared to a budget of \$342,000.

Financial Inquiries

Memorial Assistance Fund

In Fiscal Year 2019, the RBC passed a motion to start a \$1 million Memorial Assistance Fund for enrolled members. The Memorial Assistance Fund was budgeted for expenditures starting in Fiscal Year 2020. Based upon prior year rates through Constituent Services,

\$300,000 was budgeted for Constituent Services to administer the fund for the current Fiscal Year.

The Memorial Assistance guideline includes the following provisions:

- 1) The deceased must be a White Earth member or the spouse of a White Earth member when no other assistance is available
 - a) A spouse is the person with whom the member is currently in a conjugal relationship for seven years or more and lives on the reservation
- 2) The Memorial Assistance Advocate will work with families along with funeral service providers in providing financial assistance and respect for family members
- 3) The program will provide a limited amount of assistance for those expenses which may be above and beyond the typical interment services. Included in the list of expenses may be flowers, printed materials, clergy expenses, grave marker and possibly embalming.
- 4) No funds will be paid to any individual. All funds will be paid directly to the vendor.

Band members are encouraged to contact the White Earth Constituent Services program for additional assistance as related to the Memorial Assistance guideline. The Constituent Service Guideline is included in this report.

**White Earth Reservation Business Committee
Constituent Service Program**

The White Earth Reservation Business Committee (WERBC) established the Constituent Service Program (CSP) to assist enrolled tribal members during times of emergencies. Emergency assistance is defined by these major categories: Health/Medical and Life Necessity emergencies, Fire disaster/Pandemic events and Loss of Life and Veterans. Constituents applying for assistance must be deemed eligible through an application process. The CSP worker, under the supervision of the Resource and Supportive Services Department, will process applications and determine eligibility. Once the worker has determined eligibility, assistance will be awarded according to a preset formula or availability of funds.

Eligibility:

1. White Earth enrollment must be verified before an application will be processed.
2. Any enrolled White Earth Tribal member living on or near the White Earth Reservation will be considered as if they were living on the White Earth Reservation.
3. Emergency assistance criteria must be met.
4. Verification or proof of address must be provided.
5. Applicant must be 18 years or older, or application must be completed by parent or guardian on behalf of a minor child.
6. Only one applicant per household can receive assistance in a three-month period. Once a member receives assistance, then all other members of the house hold are ineligible, except if requested assistance is in another category.
7. Individuals seeking assistance must apply for and exhaust all other resources prior to receiving assistance from the Constituent Service Program.
8. Applicant must provide supporting documentation for all assistance.

Ineligibility:

1. Any individual who has falsified information to receive assistance will be sanctioned from services.
2. Any individual who appears to be under the influence of alcohol or drugs will not be eligible for services.
3. Any individual who acts inappropriately to the CSP advocate will not be eligible for services.
4. Any individual who is physically or verbally violent to the CSP advocate may be sanctioned from services and the length of sanction will be determined accordingly.
5. Any individual who fails to attend an appointment for which they received assistance will be placed on sanction until the amount of assistance is reimbursed or other arrangements are made with the CSP advocate.

Revised 8/2019

Enrollment Requirements:

1. White Earth Tribal enrolled members only are eligible to receive assistance. Enrollment must be verified before an application will be processed.
 - a. Loss of Life exception: an individual making funeral arrangement for a deceased enrolled member does not need to be enrolled.

Application Process:

1. Constituents requesting assistance must complete the CSP application.
2. Application must be filled out completely and signed by the applicant.
3. The applicant must provide supporting information for the request.
4. CSP advocate will process completed applications.
5. The advocate will review the application to assure proper completion and determine if it falls within the guidelines.
6. Eligible applicants will be processed in a timely manner.

General Guidelines:

1. Assistance will be limited to available funds.
2. Loss of life is not limited to the three-month guidelines.
3. The applicant will have the right to have their application reviewed by the Resource & Supportive Services manager in the event an application is denied. The Resource & Supportive Services manager has the right to defer the application up the chain of command.
4. An applicant should seek assistance from other service providers to help offset the cost of the emergency. Assistance given to the applicant is not to be considered as a pay in full assistance. It should be considered as a subsidy to assist in emergency situations.

Criteria:

1. Medical/Health
 - a. Medical Care:
 - i. Medical appointment
 - ii. Emergency room visit
 - iii. Elderly/disabled medical care
 - b. Medical Assistance travel will be provided to individuals who have medical appointments on or near the reservation. Medical appointments scheduled off the reservation must have a referral from a medical provider located on or near the reservation and must be with a provider nearest the reservation.
 - i. Medical assistance travel will be paid according to the current approved rate.

Revised 8/2019

- c. Medical emergency hotel assistance will be provided to a family member of a hospitalized individual due to a life-threatening illness or injury.
 - i. Assistance will be provided for a one-night stay for parents, significant other or the individual responsible for making medical decisions for the member.
 - ii. A limit of one (1) room will be provided.
- d. Individuals experiencing terminal illness may be eligible for on-going assistance of up to \$200 per month during time of treatment.
 - i. Illnesses considered are cancer, heart problems, or other illnesses considered life-threatening.
 - ii. Eligibility for health emergency vouchers will follow income guidelines in accordance with the federal poverty index.

2. Life Necessity

- a. Elders or disabled individuals may be provided with energy/heating assistance. Assistance up to \$200 may be accessed once every six months.
 - i. Proof of disability must be provided.
 - ii. Proof of MA, SNAP, Commodities or Energy Assistance must be provided.
- b. Food vouchers can be accessed on an emergency basis once-per-year.
 - i. Applicants must document household income.
 - ii. Food voucher assistance will be provided after all other resources are exhausted.
 - iii. Allowable foods: nutritious perishable and non-perishable foods.
 - 1. Junk food, ready-to-eat food/deli sandwiches and pop are unallowable.
 - iv. Food vouchers will be provided according to the following:
 - 1. One individual per household - \$25
 - 2. Two individuals per household - \$30
 - 3. Three to four individuals per household - \$40
 - 4. Five or more individuals per household - \$50
 - v. Eligibility for food vouchers will follow income guidelines in accordance with the federal poverty index.

3. Veteran Assistance

- a. Any veteran actively enrolled in the White Earth Homeless Prevention Program is entitled to \$100 per month benefit with a life-time benefit of 12 months.
 - i. The benefit may be used during non-consecutive months.
 - ii. The benefit is regardless of income, disability status or age.
- b. In addition to the Loss of Life benefit, the spouse, Power of Attorney or designated caretaker of a deceased enrolled Veteran is entitled to an additional \$400 funeral benefit. This benefit may be combined with other funeral benefits.

Revised 8/2019

4. Fire Disaster or Pandemic Events
 - a. Assistance due to fire or pandemic events will be paid to the head-of-household.
 - b. Assistance will be paid according to the following:
 - i. Damage resulting in over \$500 will be eligible for assistance of \$50.
 - ii. Damage resulting in over \$1,000 will be eligible for assistance of \$100.
 - iii. Damage resulting in over \$2,500 will be eligible for assistance of \$250.
 - iv. Damage resulting in over \$5,000 will be eligible for assistance of \$500.
 - c. In the event of a pandemic event, emergency assistance may be used to assist individuals according to fund availability.

5. Memorial Assistance:
 - a. The deceased must be a White Earth member or the spouse of a White Earth member when no other assistance is available.
 - i. A spouse is the person is with whom the member is currently in a conjugal relationship for seven years or more and lives on the reservation
 - ii. Loss of Life verification must be provided by the funeral home.
 - b. The Memorial Assistance advocate will work with families along with funeral service providers in providing financial assistance and respect for our loved ones.
 - i. We will provide a limited amount of assistance for those expenses which may be above and beyond the typical interment services. Included in the list of expenses may be flowers, printed materials, clergy expenses, grave marker and possibly embalming.
 - ii. Memorial assistance will be paid to vendors only with an amount of up to \$2000.
 - iii. If the deceased is a Veteran, spouse, Power of Attorney designee or designated caretaker of the Veteran, an additional funeral benefit of \$400 is available.
 - iv. No funds will be paid to any individual.

6. After Hour Emergencies/Outside Normal Guidelines
 - a. Prior approval is required
 - b. Emergency must be a result of an accident, unforeseen act of nature, life threatening medical condition or injury.
 - c. Hotel stays, emergency gas and food vouchers, funeral travel and funeral hotels are allowable expenses.
 - d. All after-hour emergencies/outside normal guidelines must be approved by no less than three RBC members. These approvals may be in writing with signatures of three RBC members.
 - i. No other approvals are allowed.

Revised 8/2019

Sanctions:

1. Individuals who did not attend their appointments and have accepted the funds are subject to being sanctioned by the program.
2. Sanctions can be paid back by the consumer in one of two ways:
 - a. The assistance can be paid back by check or cash, or
 - b. The individual can reschedule their appointment, then inform Constituents, and give Constituents the opportunity to bill for this medical appointment.
3. Sanctions can be lifted after 30 months.

Revised 8/2019

Youth and Elder Casino Fund

For several years the RBC has facilitated a Shooting Star Casino Youth and Elder Fund. This fund may assist with youth and Elder activities. Generally, and at the discretion of the RBC, the funds are intended to assist with group activities. The Elder Fund currently has \$53,565 and the Youth Fund has \$128,428.

The Elder Fund has been used to support Community Councils, Elder trips, gift cards, and snow removal. The Youth Fund has been used for the Christmas Toy Program, take a kid fishing day, trip assistance and gift cards. The Shooting Star Casino Youth and Elder Fund Guideline and the Application for Assistance are included in this report.

Shooting Star Casino Youth and Elder Fund Guideline

White Earth Reservation Business Committee
SHOOTING STAR CASINO YOUTH & ELDER FUNDS
Guidelines

The White Earth Reservation Business Committee has funds available to assist with youth and elder activities.

General guidelines:

1. The funds are designated to assist with costs associated with group activities supporting enrolled members of White Earth.
2. Groups applying are eligible for assistance once per Fiscal Year (October 1 thru September 30).
3. Groups must seek other funding.
4. Requests must be submitted to the Executive Director, Chief Operations Officer or Special Projects Coordinator at least three weeks prior to the proposed activity.
5. When funds are limited, priority will be given to groups who have not previously received funding.
6. Funds may be used for travel expenses, lodging, conference registration, meals, uniforms, entrance fees, as examples.
7. Groups receiving funding are asked to submit a one-page reflection of the conference, activity or experience to the Executive Director, Chief Operations Officer or Special Projects Coordinator within 30 days of completed travel.
 - a. This reflection will be forwarded to the White Earth Reservation Business Committee.
 - b. Failure to submit a reflection will deem the group ineligible to apply for assistance the following Fiscal Year.
8. Groups receiving funding shall submit photos and a brief article to the Anishinaabeg, the White Earth Tribal Newspaper.

Funding:

Funding is limited to covering the expenses of elders and youth. Family expenses, including parents, children or others, and chaperone expenses will not be covered.

Funding will be supported up to 50% of expenses minus other resources.

Youth and Elder Fund Application for Assistance

White Earth Reservation Tribal Council
APPLICATION FOR ASSISTANCE – YOUTH & ELDER FUNDS

APPLICANT INFORMATION			
First Name			
Last Name			
Date of Application			
E-mail			
Applicant Phone Number			
Program/Group/Organization			
Address			
City, State ZIP Code			
White Earth Enrollment #			
REQUEST DETAILS			
Date(s) of Planned Event/Activity			
Type of Event/Activity			
Destination (if applicable)			
Purpose			
Number of individuals to be assisted			
Attach Program/Conference/Event Information			
BUDGET			
A complete budget must be included. Please use the budget sheet on the back of this application.			
AGREEMENT			
<ol style="list-style-type: none"> 1. By submitting this application, I authorize White Earth Reservation Tribal Council to verify Tribal Enrollment and costs associated to this request. 2. I agree to provide the White Earth Administration a follow-up written report and photos upon completion the event. I agree to sharing of this information and photos with the White Earth Tribal Council and publication of such in the Anishinaabeg, the White Earth Tribal newspaper and on Social Media. 3. If the event does not take place, funds will be returned to the White Earth Tribal Council/Administration within two weeks of proposed travel dates. 			
Applicant Signature		Date	

BUDGET

Budget should include expenses and all resources. Resources must include funding support from all Tribal Programs and the Donation Committee as applicable. Resources will be verified prior to RBC approval.

Anticipated Expenses		Additional Funding Resources	
Item	Amount	Source	Amount
Travel Expenses			
Airfare (attach quote)			
Mileage/Gas			
Rental Car (attach quote)			
Lodging			
Registration			
Meals			
Entrance Fees			
Uniforms			
Other (specify)			
Total Expenses		Total Resources	
Unmet Need		Total Request	

WHITE EARTH ADMINISTRATION REVIEW & APPROVAL

Total Expenses		Total Resources	
Assistance Amount Approved		Administration Signature	
		Date	

Fiscal Year 2020 Budget




WHITE EARTH RESERVATION

CHAIRMAN Michael Fairbanks SECRETARY-TREASURER Leonard Alan Roy
DISTRICT I Raymond Auginaush, Sr. DISTRICT II Kathy Goodwin DISTRICT III Eugene "Umsy" Tibbetts

November 2, 2019

MEMORANDUM

TO: White Earth Reservation Business Committee

FROM: Alan Roy, Secretary/Treasurer 

SUBJECT: Financial Inquiry: Fiscal Year 2020 Budget

Reservation Business Committee,

Pursuant to Article VI, Section 1(b) of the Minnesota Chippewa Tribe Constitution, this Memorandum is being delivered at the request of Band members regarding inquiries of the Fiscal Year 2020 budget for the general fund of the Reservation Business Committee.

The attached Fiscal Year 2020 Budget was approved September 27, 2019 in Pine Point, Minnesota by a vote of 4 for, 0 against, and 0 silent. Resolution #001-19-049 approved the Fiscal Year 2020 Reservation Business Committee Budget.

The Administration is directed to publish a public notice of this message with the attachment on the website and by written copy of this Memorandum at the Reservation Business Committee building entrance and Administration desk entrance.

cc: Executive Director
Chief Financial Officer
Tribal Attorney
Executive Coordinator
Minnesota Chippewa Tribe

DPT NAME	2019		2020		Difference	
	APPROVED	APPROVED	APPROVED	APPROVED	REVENUE	EXPENSE
	REVENUE	EXPENSE	REVENUE	EXPENSE	REVENUE	EXPENSE
	BUDGET	BUDGET	BUDGET	BUDGET	BUDGET	BUDGET
ECONOMIC DEVELOPMENT						
LOBBYIST		176,837		176,837		0
PROPERTY TAXES		154,000		156,000		2,000
COMMODITY FOODS IN K	204,000	117,599	201,480	161,959	(2,520)	44,360
INTEREST/BUILDING PAYMENT	100,000	770,000	133,500	820,000	33,500	50,000
CAPITAL & PROJECTS		2,350,000		669,950		(1,880,050)
EDUCATIONAL LICENSES		38,437		36,437		0
CULTURAL PROGRAM	0	265,369	66,000	273,267		7,898
SOLAR PROJECT MATCH		31,482		0		(31,482)
ELDERS RAMPS		15,000		15,000		0
OLD PINE POINT SCHOOL		186,934		201,478		14,544
ELDER SNOWPLOWING		126,344		176,455		50,111
ELDERLY NUTRITION SU		70,000		90,000		20,000
CASINO DISTRIBUTION	10,325,163		10,270,128		(55,035)	
FIRE PROTECTION		42,321		42,321		0
WATER SYSTEM		656,587		677,032		20,445
LODGING & TOBACCO TAXES	135,768	0	102,000	0	(33,768)	
GIWANIKIMIN HOUSING PROJECT		50,000		50,000		0
TRIBAL COLLEGE		800,000		600,000		0
ELDER MOWING		83,025		88,187		5,162
FLEET		100,000		195,950		95,950
RTC KITCHEN		80,614		83,487		2,873
DREAM CATCHER HOMES		20,000		20,000		0
NAYTAHWAUSH FIRE HALL		16,577		18,056		1,479
WATER SYSTEM CONSTRU		272,429		336,838		64,409
WIND ENERGY		49,527	27,600	49,870	27,600	343
RICE LAKE CENTER		99,120		105,280		6,160
MANITOK BUILDING		11,423		11,423		0
WHITE EARTH COMMUNITY CENTER	0	175,416	1,800	175,416	1,800	0
BIA COMBINED SERVICES		624,275		998,650		374,375
RESERVATION TRIBAL C	5,847,476	1,494,867	5,860,676	787,445	13,200	(707,422)
SECRETARY/TREASURER		146,266		146,283		17
DIST. 1		126,887		147,056		20,169
DIST. 2		157,811		149,855		(7,956)
DIST. 3		140,991		138,474		(2,517)
CHAIRMAN		161,164		181,739		20,575
ELECTIONS		154,331		179,549		25,218
RTC EVENTS & EMPLOYEE IN		72,672		72,672		0

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9/24/19 4:49 PM	2019	2019	2020	2020	Difference	Difference
DPT NAME	APPROVED REVENUE BUDGET	APPROVED EXPENSE BUDGET	APPROVED REVENUE BUDGET	APPROVED EXPENSE BUDGET	REVENUE BUDGET	EXPENSE BUDGET
MAHNOMEN BUILDING	67,500	181,563		199,660	(67,500)	18,097
PLANNING DEPT		203,878		204,163		285
LEGAL COUNCIL	12,000	445,322		1,021,630	(12,000)	576,308
ENROLLMENTS	5,520	326,340	6,500	281,249	980	(45,091)
COMMUNICATIONS		144,873		170,797		25,924
TERO	281,872	225,960	281,193	281,193	(679)	55,233
ARCHIVES		39,783		47,414		7,631
BOYS & GIRLS CLUB NTW		120,820		146,082		25,262
CIRCLE OF LIFE SCHOOL		0		106,962		106,962
SECURITY		138,305		134,922	0	(3,383)
TRIBAL POLICE	0	2,080,837		2,067,362	0	(13,475)
CONSERVATION		74,391		86,115	0	11,724
DISPATCH		411,298		410,987		(311)
EMERGENCY MANAGEMENT		77,562		102,603		25,041
REDISCOVERY CENTER		26,993		31,090	0	4,097
LAND DEPARTMENT	0	594,574	0	610,472	0	15,898
WILD RICE MANAGER		80,113		100,323		20,210
MINNEAPOLIS OFFICE		132,290		155,569		23,279
VETERANS ASSOCIATION		24,000		24,000		0
CONSTITUENT SERVICES		419,502		780,683		361,181
ELDERLY NUTRITION	360,000	708,328	360,000	763,276	0	54,948
SOLID WASTE PAYMENT		0		6,273		6,273
TRANSIT SYSTEM	38,000	862,535	42,000	854,918	4,000	(7,617)
SURVEILLANCE CAPITAL SSC	0	0	0	0	0	0
LITTLE ELBOW LAKE PARK		46,743		81,781		35,038
POW-WOW FUNDS	193,000	325,000	23,000	325,000	(170,000)	0
DRUM HALL		0		2,240		2,240
CONGREGATE HOUSING		75,000		75,000		0
MOTOR VEHICLE	140,000	196,964	150,000	192,402	10,000	(4,562)
COMPLIANCE DIVISION	0	105,679		159,020	0	53,341
ROOSEVELT BUILDING	53,520	38,080	53,000	38,080	(520)	0
PUBLIC RELATION & CO	7,500	266,138	7,500	264,466	0	(1,673)
INDIRECT SHORTFALL		0				0
BOYS & GIRLS CLUB ADMINISTRATION		281,627		325,446		43,819
SURVEILLANCE		42,176		50,016		7,840
DRUG COURT	0	169,950		160,266	0	(9,684)
CHILD SUPPORT MATCH		0		7,800	0	7,800
HOMELESS		50,000		80,000	0	30,000

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9/24/19 4:49 PM DPT NAME	2019		2020		Difference	
	APPROVED	APPROVED	APPROVED	APPROVED	Difference	Difference
	REVENUE	EXPENSE	REVENUE	EXPENSE	REVENUE	EXPENSE
	BUDGET	BUDGET	BUDGET	BUDGET	BUDGET	BUDGET
ELDERLY ADVOCACY PROGRAM		103,558		103,558		0
DONATIONS	90,000	100,000	90,000	100,000	0	0
OGEMA/WHITE EARTH BOY & GIRLS		163,532		164,625		1,093
COMMUNITY SERVICE OFFICERS		61,840		116,275		54,435
WETLANDS WEED INSPECTOR	0	0		0	0	0
CRP LANDS	0	238,604	0	277,883	0	39,279
LEECH LAKE OFFICE		154,979		199,990		45,011
NAYTAHWAUSH COMPLEX		377,971		377,971		0
MAHNOMEN POLICE	211,584	213,000	224,027	224,027	12,443	11,027
OLD WHITE EARTH SCHOOL LIBRARY		0		7,980		7,980
PINE POINT BOYS & GIRLS CLUB		98,599		106,668		8,069
CHILD ADVOCACY CENTER		0		1,008		1,008
WHITE EARTH FIRE HALL		5,824		6,224		400
RICE LAKE BOYS & GIRLS CLUB		94,757		109,800		15,043
CALLAWAY BOYS & GIRLS CLUB		94,196		145,298		51,102
MAHNOMEN BOYS & GIRLS CLUB		170,905		276,347		105,442
WAUBUN BOY & GIRLS CLUB		83,590		100,815		17,225
	18,072,903	20,514,284	17,900,404	20,700,395	(238,499)	186,110
		(2,441,381)		(2,799,991)		
WORK FORCE RE-ENTRY		116,726		139,726	0	23,000
COMPLIANCE ADJUDICATION	164,000	294,187	163,992	241,048	(8)	(53,139)
DRUG TESTING	125,000	266,454	87,600	279,194	(37,400)	12,740
SURVEILLANCE	356,078	356,078	1,299,669	1,299,669	943,591	943,591
COMPLIANCE	70,000	358,470	60,000	381,496	(10,000)	25,026
	715,078	1,389,915	1,611,261	2,341,133.00	896,183	951,218
JOM		81,001		81,001		0
Higher Ed		842,398		1,066,979		224,581
ABE		166,895		203,530		36,635
Conservation		387,654		392,937		5,283
Tribal Courts		615,145		757,839		142,694
Forestry		121,843		123,738		1,895
Real Estate Services		72,662		0		(72,662)

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9/24/19 4:49 PM	2019		2020		Difference	
DPT NAME	APPROVED REVENUE BUDGET	APPROVED EXPENSE BUDGET	APPROVED REVENUE BUDGET	APPROVED EXPENSE BUDGET	Difference REVENUE BUDGET	Difference EXPENSE BUDGET
Natural Resources		172,045		207,494		35,449
Water Resources		22,428		19,500		(2,928)
Social Services		129,482		132,522		3,040
Direct Employment		10,000		10,000		0
Zoning		0		0		0
Fisheries		196,446		196,833		387
		2,817,998		3,192,373		374,375
Available revenue		2,193,723		2,193,723		0
Subsidy needed from general fund		624,275		998,650		374,375

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Sales and Use Tax

Report delivered by Tribal Finance.

Section II – Fiscal Violations and Recommendations

Audits

In accordance with Ordinance Number 1-65 (Revised), audits are mandated by Band law and the Secretary/Treasurer shall procure an independent audit of the accounting records of the Band at least once a year unless explicitly waived by the RBC.

The responsibility and authority to conduct audits remains delegated to the Secretary/Treasurer under Ordinance Number 1-65 (Revised). General Counsel, Internal Affairs, and associated audits are budgetarily supported by Other Professional Services in the Legal Department.

2019 Audits

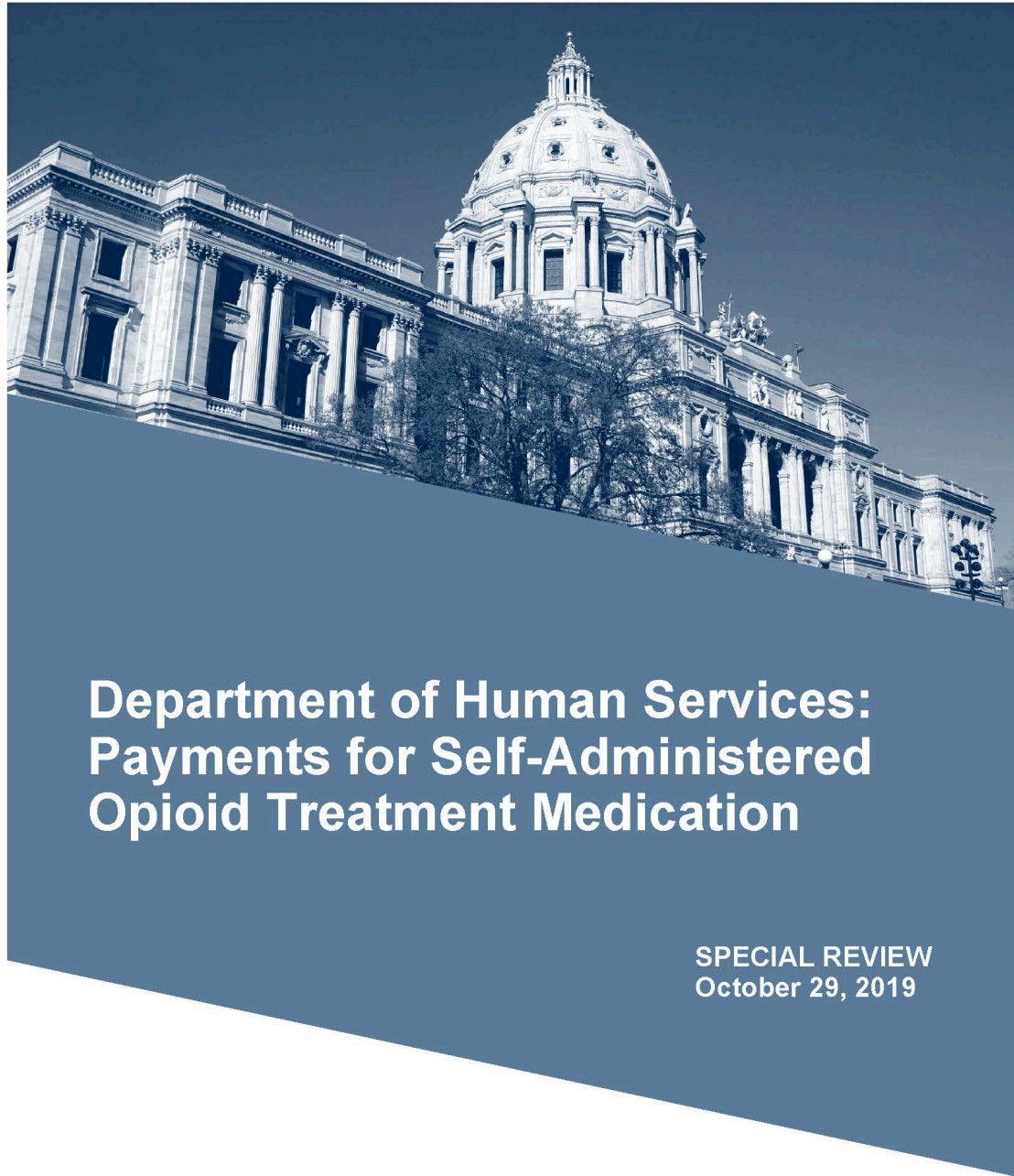
A final report is scheduled for delivery to the RBC before January 1, 2020.

Prior Year Behavioral Health Funds

Vanya S. Hogen, attorney with Hogen Adams Law firm from St. Paul, MN has been hired to give a legal opinion on Behavior Health funds that were used to pay back previous years Behavior Health losses to the General Fund.

Eide Bailly accounting firm has be engaged in the Behavior Health audit and is working with Vanya S. Hogen to provide additional audit information.

When Ms. Hogen has completed her work, the RBC will forward the legal opinion, along with Eide Bailly's information to the Office of Inspector General (OIG). This information will be forwarded to the OIG's Compliance department for an Advisory Opinion. This Advisory Opinion will provide the RBC with an opinion that identifies the legality of the Behavior Health funds paid back to the RBC General Fund.



Department of Human Services: Payments for Self-Administered Opioid Treatment Medication

SPECIAL REVIEW
October 29, 2019

OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

State of Minnesota
Office of the Legislative Auditor

Special Reviews

We conduct special reviews in response to requests from legislators and other public officials, or to address a government issue that has come to our attention in some other way.

While the focus of a special review is more narrow than an audit or evaluation, our objective is the same: to find the facts and report them accurately and objectively.

For more information about the Office of the Legislative Auditor, go to our website at:

www.auditor.leg.state.mn.us

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October 29, 2019

Members of the Legislative Audit Commission:

The Office of the Legislative Auditor (OLA) conducted a special review of payments the Department of Human Services (DHS) made to the White Earth Nation and the Leech Lake Band of Ojibwe for clients in their opioid addiction treatment programs to self-administer medications at home.

Because the payments were not authorized, occurred over several years, and total over \$29 million, OLA had a responsibility to determine why DHS made the payments and why the department did not stop them sooner.

Our review was conducted by Jim Nobles, Legislative Auditor; Elizabeth Stawicki, Legal Counsel; Joel Alter, Director of Special Reviews; and Valerie Bombach, Audit Director. The department cooperated fully with our review.

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles". The signature is written in a cursive, flowing style.

James Nobles
Legislative Auditor



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Department of Human Services: Payments for Self-Administered Opioid Treatment Medication

Introduction

The Department of Human Services (DHS) notified the Office of the Legislative Auditor (OLA) on July 9, 2019, that DHS had overpaid the opioid addiction treatment programs operated by the White Earth Nation (White Earth) and the Leech Lake Band of Ojibwe (Leech Lake).¹ In July, DHS estimated the overpayments amounted to \$25 million; recently, the department increased the estimate to nearly \$29 million.²

The overpayments were in connection with the tribes' Medication-Assisted Treatment programs to treat opioid addiction. These programs combine counseling with a narcotic known as buprenorphine (brand name, Suboxone®), which reduces cravings and symptoms of withdrawal.³

DHS classified these expenditures as “overpayments” because the department paid White Earth and Leech Lake the U.S. Indian Health Service (IHS) “encounter rate” when clients took the treatment drug at home. The department should not have used that rate—currently \$455 per day—because it can only be used when there was a face-to-face interaction between a client and a health care professional within a clinic.⁴

¹ *Minnesota Statutes* 2019, 3.971, subd. 9, requires state agencies to “promptly” notify the Legislative Auditor when they obtain information indicating that public money or other public resources may have been used for an unlawful purpose. In this case, DHS did not promptly notify OLA; the notice came approximately four months after the department determined that public money had been used for an unlawful purpose.

² The initial amounts were based on payments the department made through December 2018. Human Services Commissioner Jodi Harpstead notified Legislative Auditor James Nobles of the revised estimate in a telephone call on September 24, 2019. According to the commissioner, the new amount included a \$2.4 million increase for the White Earth Nation and a \$1.4 million increase for the Leech Lake Band of Ojibwe. The increase was mostly due to payments the department made in 2019 after the department had determined that paying tribes the encounter rate for take-home medications did not comply with state and federal legal requirements.

³ Buprenorphine is a Schedule III narcotic. According to the U.S. Drug Enforcement Administration, drugs are classified into five different categories (or schedules) based on a drug's potential for abuse. The schedules range from Schedule I drugs, which have the highest potential for abuse and dependence, to Schedule V drugs, which have the least potential for abuse. For details, see <https://www.dea.gov/drug-scheduling>.

⁴ 42 *CFR*, sec. 440.90 (2019); and Department of Human Services, “Minnesota State Plan Amendment, Methods and Standards for Establishing Payment Rates, Supplement 2 to Attachment 4.19-B,” approved January 3, 2012, 1.

When a client takes a dose of medication at home, there is no face-to-face encounter with a treatment provider.

According to DHS officials, because the department made the overpayments with federal Medicaid funds, the department has to repay the federal government the full amount of the overpayments. DHS contends that state law requires White Earth and Leech Lake to repay the state.

Given OLA's responsibility to audit DHS and the state's use of Medicaid funds, we decided that OLA had a responsibility to conduct a special review of the issues involved. *Minnesota Statutes* 2019, 3.972, subd. 2a, says:

To ensure continuous legislative oversight and accountability, the legislative auditor shall give high priority to auditing the programs, services, and benefits administered by the Department of Human Services.

In addition, *Minnesota Statutes* 2019, 3.971, subd. 6, says:

The legislative auditor shall see that all provisions of law respecting the appropriate and economic use of public funds and other public resources are complied with and may, as part of a financial audit or separately, investigate allegations of noncompliance.

In this special review, our primary objective was to determine what factors contributed to DHS making the overpayments and why the department did not disclose and stop them sooner. To conduct our review, we examined DHS and federal documents, and we interviewed former and current DHS officials under oath.

While we focused our review on DHS, we also wanted input from the tribes. Therefore, we reached out to the chairman of the White Earth Nation and the chairman of the Leech Lake Band of Ojibwe. We asked to meet with them and other tribal officials. We also asked them to provide us with documents that would help OLA understand the overpayment issue from the tribes' perspectives. They did not respond to our request, and given the fact that American Indian tribes are sovereign nations, OLA's authority to compel their participation in an OLA review was uncertain.

Therefore, we had to rely largely on information we obtained from DHS and other nontribal documents. It is possible that as the overpayment issue continues to unfold, White Earth or Leech Lake will bring forth additional documents and testimony that will be relevant to a full understanding of what occurred.

Summary

Over a decade ago, and without authority, DHS officials decided that it would pay opioid treatment providers when their clients took medication at home. A few years later, and again without authority, DHS officials decided it would pay tribal opioid treatment providers the Indian Health Service (IHS) encounter rate when their clients took medication at home.

Who made the decisions, why, and when is not clear because DHS officials never documented their decisions. Even during the interviews we conducted, DHS officials could not recall who was responsible. In addition, none of the DHS officials we interviewed could offer a credible rationale for paying health care providers for their clients taking medications at home.

While some DHS officials took actions that led to the overpayments, there were other DHS officials who could have stopped the payments but did not. In interviews with OLA, some officials said they were unaware of the payments, while others said they were aware but it was not their responsibility to question an established payment practice.

On February 13, 2019, a representative of the Red Lake Nation e-mailed a DHS opioid treatment expert to find out if Red Lake's opioid addiction treatment program could receive the IHS encounter rate for days when clients took treatment medications at home. Red Lake already operated an opioid addiction treatment program, but it had not given its clients treatment medication to take at home.

The DHS expert told Red Lake "yes"; Red Lake would be able to receive the encounter rate when clients took treatment medication at home. But another DHS official copied on the e-mail told Red Lake to wait for an official response.

The department did not, however, issue an official response to Red Lake until May 1, 2019. In a letter to Red Lake, Leech Lake, and White Earth, the DHS commissioner reversed the department's long-standing practice of paying tribes for their clients to self-administer treatment drugs at home. The commissioner told the tribal chairmen that DHS can only pay the IHS encounter rate when there is a face-to-face interaction between a client and a health care professional.

Also on May 1, 2019, the department finally implemented a policy and a payment control that stopped the department from making payments to tribes when clients take medication at home.

The department took another three months to inform the White Earth and Leech Lake tribes that they must return all of the payments their tribes received from DHS for clients self-administering medications at home.⁵

Leaders of the White Earth Nation and the Leech Lake Band of Ojibwe have expressed frustration with how DHS has communicated with them about the overpayment issue. They have placed responsibility for the overpayments on DHS and questioned their obligation to repay the state. The state could face legal challenges in its efforts to require White Earth and Leech Lake to return the overpayments.

⁵ The department also informed the White Earth and Leech Lake tribes that they had a right to dispute the department's determination that any individual payment was unauthorized by evidence that there was a face-to-face encounter between the client and a tribal health care provider. In addition, the department gave the tribes notice that they could appeal the department's determinations and judgments to an independent hearing officer. We will discuss the legal issues involved in Finding 6.

Conclusion

Our review found troubling dysfunction at the Department of Human Services, which resulted in the department making \$29 million in overpayments to the White Earth and Leech Lake tribal opioid treatment programs.

The department did not have legal authority to make the payments; it did not document why, when, and who decided it was appropriate to make the payments; no one at DHS takes responsibility for the decision; and no one at DHS can provide a rationale for the payments. The overpayments continued over several years and did not stop until an outside inquiry brought them to light.

The dysfunction we found at DHS has created serious financial and legal problems for the state, the White Earth Nation, and the Leech Lake Band of Ojibwe; those problems will be difficult to resolve.

Background

Opioid Addiction and Treatment

In recent years, opioid addiction has become a major public health crisis. According to the National Institute on Drug Abuse, more than 130 people die each day in the U.S. after overdosing on opioids.⁶

While opioid addiction has become a serious problem nationwide and in every part and population of Minnesota, a recent article in *The Circle: Native American News and Arts* noted its particular impact on American Indians:

Minnesota's crisis with opioid addiction is devastating families and communities across the state and country. Opioids account for more overdoses than any other drug. American Indians are experiencing the effects of the opioid epidemic far more than other Minnesotans.⁷

Opioids include a wide variety of drugs both illegal (such as heroin) and prescribed pain medications (such as oxycodone, morphine, and codeine). Some opioids are made from opium extracted from poppy plants, while others are synthetically created by formulating chemicals into drugs that replicate the effects of natural opium.⁸

According to medical professionals, the process of reducing an addiction to opioids can take significant time and poses significant risks. For example, Mayo Clinic offers this advice: "Opioid withdrawal can be dangerous, and symptoms can be severe.

⁶ See "Opioid Overdose Crisis," National Institute on Drug Abuse, revised January 2019, <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis>, accessed October 18, 2019.

⁷ Lee Egerstrom, "Tribes and Public Agencies Spur Efforts to Fight the Opioid Crisis," *The Circle: Native American News and Arts*, April 1, 2019. The quote is a statement made by Richard Latterner, a manager and chemical health counselor at the White Earth Urban Substance Abuse Program in Minneapolis.

⁸ For more information about opioids, see Centers for Disease Control and Prevention, *Opioid Basics*, <https://www.cdc.gov/drugoverdose/opioids/index.html>, accessed October 23, 2019.

Depending on the type and dose of drug you've been taking, it may take weeks or even months to gradually and safely reduce your [addiction]."⁹

There are various approaches to the treatment of opioid addiction. One approach, Medication-Assisted Treatment (MAT), uses medications specifically formulated to help people reduce or completely taper off of opioid use. The U.S. Substance Abuse and Mental Health Services Administration describes MAT programs as follows:

Medication-Assisted Treatment (MAT) is the use of medications, in combination with counseling and behavioral therapies, to provide a "whole-patient" approach to the treatment of substance use disorders. Research shows that a combination of medication and therapy can successfully treat these disorders, and for some people struggling with addiction, MAT can help sustain recovery.¹⁰

Medication-Assisted Treatment programs commonly use three types of medication: methadone, buprenorphine, and naltrexone. Because of their potential for abuse and diversion into illicit drug markets, the U.S. government regulates methadone and buprenorphine as "controlled substances."¹¹ Our review focused on payments for treatment involving buprenorphine (commonly referred to under the brand name Suboxone®) since this was the take-home medication used in the MAT programs operated by the Leech Lake and White Earth tribes.¹²

Federal requirements for buprenorphine treatment have evolved over time. Prior to 2013, federal regulations required that patients be stable and in treatment for nine months before they were eligible to receive a one-week take-home supply of buprenorphine. Effective in January 2013, however, a physician for an opioid treatment program could determine at any point in treatment (even upon admission) that a patient was suitable to receive take-home medications, and the amount of medication given to patients was not necessarily limited to one week.¹³

In addition, Minnesota law establishes criteria that prescribing physicians must consider when determining whether they will allow their clients to self-administer treatment

⁹ "Tapering Off Opioids: When and How," Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/tapering-off-opioids-when-and-how/art-20386036>, accessed October 23, 2019.

¹⁰ "Medication and Counseling Treatment," Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, <https://www.samhsa.gov/medication-assisted-treatment/treatment>, accessed October 18, 2019.

¹¹ Buprenorphine is a Schedule III narcotic. According to the U.S. Drug Enforcement Administration, drugs are classified into five different categories (or schedules) based on a drug's potential for abuse. The schedules range from Schedule I drugs, which have the highest potential for abuse and dependence, to Schedule V drugs, which have the least potential for abuse. For details, see <https://www.dea.gov/drug-scheduling>.

¹² The U.S. Food and Drug Administration (FDA) approved buprenorphine in 2002.

¹³ H. Westley Clark, Director, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, "Dear Colleague" letter regarding federal regulatory changes effective on January 7, 2013, November 21, 2012.

medications.¹⁴ The stated purpose of these criteria is to “limit the potential for diversion” of these medications “to the illicit market.”¹⁵

Leech Lake and White Earth Opioid Medication-Assisted Treatment Programs

The White Earth Nation and the Leech Lake Band of Ojibwe are bands within the Minnesota Ojibwe (Chippewa) Tribe.

The Leech Lake Band of Ojibwe reservation in northern Minnesota includes land in Beltrami, Cass, Hubbard, and Itasca counties. The White Earth reservation in northern Minnesota includes land in Becker, Clearwater, and Mahnommen counties.

The box below shows recent data on tribal membership and the populations on the reservations. It is important to keep in mind that not all people who live on the White Earth and Leech Lake reservations are tribal members, and not all tribe members live on their respective reservation.

Tribe	Tribal Members	Reservation Population
Leech Lake	9,509	11,456
White Earth	18,109	9,799

NOTES: Tribal membership was reported in tribal publications (Leech Lake in Fiscal Year 2015, White Earth in September 2018). The reservation population reflects U.S. Census Bureau estimates averaged over five years (2013-2017).

As sovereign, self-governing nations, American Indian tribes have the authority to establish a wide range of services and programs for their members. They may also choose to coordinate some services and programs with state and federal government agencies. They may choose to do that in part to obtain state and federal funding.

OLA limited the scope of our review to the opioid Medication-Assisted Treatment (MAT) programs that White Earth and Leech Lake operate.¹⁶ Leech Lake started its program in 2004; it served approximately 162 clients in fiscal years 2018-2019. White Earth established its program in 2017; it served approximately 595 clients in fiscal years 2018-2019.

¹⁴ *Minnesota Statutes* 2019, 245G.22, subd. 6.

¹⁵ *Ibid.*

¹⁶ The Red Lake tribe established its program in 2017; however, this program is not the subject of our review because it has not received payments for clients to take medications at home. In fact, a representative of the Red Lake MAT program told us its program does not allow clients to take treatment medications at home.

By their choice, Leech Lake and White Earth enrolled their opioid MAT programs with the state and became service vendors.¹⁷ While tribal programs are not required to be licensed by the Minnesota Department of Human Services, if enrolled as vendors with the state, they must demonstrate to the department that their standards for credentialing health care professionals meet, exceed, or are exempt from corresponding state standards.¹⁸

To receive Medicaid payments for the services they provide, tribal programs must meet certain requirements established in federal law.¹⁹ Also, state Medicaid plans—including the portions related to tribal services—must be reviewed and approved by the federal Centers for Medicare and Medicaid Services (CMS).²⁰ U.S. Indian Health Service (IHS) periodically publishes rates that are used to pay for services provided at IHS tribal facilities to Medicaid recipients. Federal law specifies that the federal government will pay 100 percent of these payments.²¹

Leech Lake and White Earth have been paid what is called an IHS “encounter rate” for the health services they provide. It is an all-inclusive payment for the services within a category of service (dental, behavioral health, etc.) an individual receives at a health clinic within a day. When tribal providers submit claims to DHS for services provided, it is DHS’s responsibility to review and—if appropriate—pay the claims based on IHS-authorized payment rates and the state’s federally approved Medicaid Plan.

Exhibit 1 shows the total opioid treatment payments to MAT providers and individuals served by the Leech Lake and White Earth programs in state fiscal years 2018 and 2019.

¹⁷ *Minnesota Statutes* 2019, 254B.03, subd. 1(b), says, “The [Minnesota] commissioner of human services shall select eligible vendors of chemical dependency services who can provide economical and appropriate treatment.” *Minnesota Statutes* 2019, 254B.05, subd. 1(a), says, “American Indian programs that provide substance use disorder treatment, extended care, transitional residence, or outpatient treatment services, and are licensed by tribal government are eligible vendors.”

¹⁸ *Minnesota Statutes* 2019, 256B.02, subd. 7(c).

¹⁹ 42 *U.S. Code*, sec. 1396j (2019).

²⁰ 42 *CFR*, secs. 430.14-430.16 (2019).

²¹ 42 *U.S. Code*, sec. 1396d(b) (2019).

Exhibit 1: Total Medication-Assisted Treatment (MAT) Payments and Enrollment for Leech Lake and White Earth, Fiscal Years 2018 - 2019

Tribe	Number of Individuals who Received MAT Treatment, Fiscal Years 2018-2019 ^a	Total Payments Fiscal Years 2018-2019 ^b
Leech Lake (Cass Lake)	162	\$14,404,096
White Earth, by Program		
• Maternal Outreach and Mitigation Services (MOMS) (Naytahwaush)	73	9,503,616
• Urban MOMS (Minneapolis)	38	3,446,860
• Oshki Manidoo MAT (Bemidji)	102	9,957,298
• Naytahwaush MAT (Naytahwaush)	196	18,905,486
• White Earth Urban MAT (Minneapolis)	123	6,819,128
• White Earth MAT (White Earth)	132	14,189,680
White Earth Total	595	\$62,822,068
Total	752	\$77,226,164

^a Represents an unduplicated count of individuals who received services for that program during fiscal years 2018 and 2019. Some individuals received services from more than one White Earth MAT program, therefore, the total of individual programs is greater than total reported here.

^b Totals represent fee-for-service payments from the Consolidated Chemical Dependency Treatment Fund to White Earth and Leech Lake Indian Health Service providers for medical treatment services, and excludes payments from grants for program-related services, such as staff training, data collection and analysis, and program evaluation.

SOURCE: Department of Human Services.

Findings

Finding 1. The Department of Human Services did not have authority to claim federal Medicaid funds to pay White Earth and Leech Lake opioid treatment providers who submitted claims when their patients self-administered medication at home.

A complex set of laws, rules, policies, and guidance establish the conditions under which states, Indian tribal health providers, and nontribal health providers may claim

Medicaid funds for health care services.²² At the federal level, the Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services administers the federal Medicaid program. In Minnesota, the Department of Human Services (DHS) is responsible for administering the state’s Medicaid program (which Minnesota calls Medical Assistance).

To access Medicaid funds for a service, DHS must specify the service in its State Medicaid Plan and obtain approval from CMS for Medicaid funds to be used to pay for that service.²³ DHS must also ensure on an ongoing basis the State Medicaid Plan and the department’s programs and payment policies stay aligned with federal and state Medicaid requirements.²⁴ For example, DHS should track changes in state law related to chemical dependency treatment to ensure they do not conflict with federal Medicaid law and the State Plan. If there are discrepancies, DHS must either promptly submit a State Plan amendment, obtain a program waiver from CMS, or modify its practices.²⁵

Medicaid generally pays for services on a fee-for-service basis or through a fixed amount for each individual enrolled in a managed care organization. Tribal health providers may choose another option; they may select to be paid an “encounter rate” the U.S. Indian Health Service (IHS) establishes annually.²⁶ Under Minnesota’s agreement with IHS, tribal health programs enrolled with DHS may receive an encounter rate payment for several categories of health services. For example, a Minnesota tribal health provider can be paid an encounter rate when a client has a counseling session with a therapist, when a client takes a dose of medicine in the presence of a nurse or other health care professional, or when a client has a teeth cleaning by a dental hygienist.

However, DHS payments at the IHS encounter rate—\$427 per day in 2018 and \$455 per day in 2019—to tribal providers who submitted claims for payment when their clients self-administered a treatment drug at home, and not at a clinic, conflicted with

²² For example, 42 *CFR*, sec. 440.90 (2019), requires generally that clinic services “must be furnished at the clinic by or under the direction of a physician...” Services may be furnished outside of a clinic—by clinic personnel under the direction of a physician—to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address. Federal guidance expands on this regulation. See U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, *State Health Official Letter #16-002*, “Federal Funding for Services ‘Received Through’ an IHS/Tribal Facility and Furnished to Medicaid-Eligible American Indians and Alaska Natives,” February 26, 2016, 2; and the related document, U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, “Frequently-Asked Questions (FAQs) Federal Funding for Services ‘Received Through’ an IHS/Tribal Facility and Furnished to Medicaid-Eligible American Indians and Alaska Natives (SHO #16-002),” January 18, 2017, 2 and 5. Also, see *Minnesota Statutes* 2019, 256B.0625, subd. 34; and *Minnesota Rules*, 9505.0210, published electronically August 13, 2013.

²³ 42 *CFR*, sec. 430.10; 430.14-16; and 440.230 (2019).

²⁴ 42 *CFR*, sec. 430.12 (2019).

²⁵ *Ibid.*

²⁶ IHS regulations establish “per visit” rates for reimbursement. Minnesota’s State Medicaid Plan refers to “encounters” or “encounters/visits” at IHS facilities. *Minnesota Statutes* 2019, 256B.0625, subd. 34(b), refers to the federal “encounter rate.”

various DHS rules and requirements.²⁷ Most notably, since at least January 2011, Minnesota’s federally approved state Medicaid plan has had the following language:

An encounter for a [tribal] or [Indian Health Service] facility means a face-to-face encounter visit between a recipient eligible for Medical Assistance and any health professional at or through an [Indian Health Service] or [tribal] service location....²⁸

DHS publishes comprehensive guidance and provides training to health care providers related to covered services and billing processes in order to receive reimbursement for their services. This guidance also lays out the requirement for interaction between the provider and client in order to receive the encounter rate. For example:

- In 2001 and 2007, DHS issued bulletins to providers regarding payment of Indian Health Service rates from the Minnesota Consolidated Chemical Dependency Treatment Fund. The bulletins defined an “encounter” as a “face-to-face treatment episode” and stated that this criterion must be met “for the encounter payment to be authorized and paid.”²⁹
- DHS’s provider manual for Minnesota Health Care Programs has had language since at least 2012 that says: “An encounter for a tribal or [Indian Health Service] facility means a face-to-face visit between a recipient eligible for [Medical Assistance] and any health professional at or through an [Indian Health Service] or tribal service location for the provision of [Medical Assistance] covered services....”³⁰

The encounter payments DHS made to White Earth and Leech Lake for clients to self-administer opioid medications at home did not involve a face-to-face encounter between the client and a health professional within the clinic. In other words, the DHS payments did not comply with state policies that specified when an encounter rate can be paid.

We could not find, and DHS did not provide, any evidence that anyone at DHS ever sought or obtained authority from a federal agency to use federal funds to reimburse tribes an IHS encounter rate—or any rate—for opioid medication that patients take at home. Further, given federal restrictions on Medicaid claiming for IHS facilities, it seems unlikely that such a request would have been approved.

We discuss in the next sections, however, that DHS also gave different guidance to different opioid treatment providers. This conflicting guidance, and other factors,

²⁷ *Minnesota Rules*, 9505.0210, published electronically August 13, 2013, require that services paid for from Medicaid funds must be “personally furnished by a provider” unless otherwise authorized in the rules.

²⁸ Department of Human Services, *Medicaid State Plan*, 4.19-B (Methods and Standards for Establishing Payment Rates), Attachment Supplement 2, effective January 1, 2011.

²⁹ Department of Human Services, *Bulletin 01-51-10: CCDTF Implementation of Encounter Rates*, September 28, 2001; and *Bulletin 07-51-04: CCDTF Implementation of Encounter Rates*, July 19, 2007.

³⁰ Department of Human Services, *Minnesota Health Care Provider Manual*, September 26, 2012. In a May 9, 2019, revision to the manual, DHS added the following language: “The [Indian Health Service] encounter rate is not available for self-administered medication therapy.”

resulted in DHS reimbursing White Earth and Leech Lake an estimated \$29 million in unauthorized payments.

Finding 2. No DHS official—past or present—takes responsibility for deciding that the department could use the U.S. Indian Health Service encounter rate to pay tribal opioid addiction treatment programs for clients to self-administer medications at home.

In an April 2019 internal memo, a DHS official said: “The explanation of how/who approved the encounter rate reimbursement for the self-administered prescriptions is unclear.”³¹

Like the department, we could not determine who decided to pay tribes the IHS encounter rate for a client to self-administer medication at home. No one at DHS documented the decision or formulated a written policy to implement the decision. In addition to being a poor management practice, the department’s failure to document its decision violated the Minnesota Official Records Act, which says that agencies “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.”³²

In addition, no DHS official we interviewed acknowledged making the decision to pay the IHS encounter rate to tribal opioid addiction treatment programs for clients to take medications at home.

The department’s current opioid treatment program expert, Rick Moldenhauer, told us that the decision to pay the tribes the encounter rate grew out of a previously established practice of paying nontribal opioid treatment programs for clients to self-administer medications at home. Moldenhauer said that when he came to work at DHS in 2001 the practice was as follows:

[I]f you’re an OTP [opioid treatment program], a methadone program, we regularly...[paid] for the self-administration of dispensed doses. That has never been an issue and that was the format and the billing process that I inherited when I came here May of 2001.

Other DHS staff confirmed that the practice of paying MAT providers for doses of medicine clients took at home has been in place for nontribal providers for many years—perhaps since the 1990s.

Moldenhauer told us that the decision to apply this practice to the tribes occurred in 2004. At that time, DHS awarded grants to three organizations (the Leech Lake Band of Ojibwe and two nontribal organizations) to foster an expansion of the state’s opioid addiction treatment programs. Moldenhauer said that former chemical health division

³¹ DHS Health Care Administration, memorandum to Deputy Commissioner Claire Wilson and Assistant Commissioner Marie Zimmerman, “MAT Payment Structure for Tribal Providers,” April 3, 2019.

³² *Minnesota Statutes* 2019, 15.17, subd. 1.

director Don Eubanks wanted to make sure that billing for take-home medication by tribes would mirror those of nontribal programs.

In an interview with OLA, Eubanks denied any responsibility for payment decisions affecting the tribes. According to Eubanks, he worked on higher-level issues and pushed for policies that would increase the number of tribal opioid addiction treatment providers, but he left detailed decisions about payment levels to other staff.

Given Eubanks' response and the denials of involvement we received from other DHS officials, we interviewed Moldenhauer a second time about the origins of the decision to pay tribes for clients to take medications at home. Moldenhauer continued to insist that Eubanks and others in positions above Moldenhauer were either directly involved in the decision or were aware of the decision to pay tribes the IHS encounter rate for self-administered treatment medications at home.

When we asked Moldenhauer about others' denials, he said no one wants to take responsibility for a decision that has become controversial. In fact, Moldenhauer claimed that DHS officials and others are trying to pin the blame on him. He said:

[T]he impression that I received within DHS and, and outside of DHS, is either myself running with a rogue interpretation of rules and statutes or to the other extreme, individual malfeasance, where I've intentionally somehow engineered this. How? I'm not a business analyst, I'm not a programmer.... The other extreme being malfeasance on my part or that I somehow personally have benefited from this. I have no contractual agreements with any of these organizations, I don't do the assessments, I don't provide the service, I don't receive the, the, the monies that [are paid]. What happened? I think it became a political issue.

Because Moldenhauer has played a central role for many years in the department's substance abuse treatment programs, we focused significant attention on him. We reviewed a large number of his e-mails, we interviewed him twice under oath, and we asked about Moldenhauer's role and activities in our interviews with other DHS staff and officials. Here is what we concluded about Moldenhauer:

- Moldenhauer is highly regarded inside DHS for his deep knowledge of opioid addiction and treatment programs.
- Moldenhauer was the person tribal representatives came to for advice about establishing opioid addiction treatment programs and about DHS billing policies for those programs.
- Moldenhauer advised tribal representatives that DHS would pay them the IHS encounter rate when clients take opioid treatment medications at home. We discuss the advice he gave in Finding 4.
- Moldenhauer continues to assert that there is a legal basis for DHS to pay tribes the IHS encounter rate for clients to take opioid treatment medications at home.

- We have no evidence, however, that Moldenhauer was directly involved in the decision to pay tribes the IHS encounter rate for opioid treatment medications clients took at home.

In addition, we find it highly unlikely that someone at Moldenhauer’s level within DHS could make a decision and implement a process that resulted in \$29 million in unauthorized payments being made to White Earth and Leech Lake.

As shown in Exhibit 2, there are multiple supervisors above Moldenhauer.³³

Exhibit 2: Levels of Supervision over Richard Moldenhauer at the Minnesota Department of Human Services



SOURCE: Department of Human Services Organization Chart, August 2019.

If we are wrong and Moldenhauer did make and implement the decision to pay White Earth and Leech Lake the IHS encounter rate for clients to take opioid treatment medications at home, all of the supervisors above him—as well as officials in other DHS divisions—clearly failed. They allowed a person far down in DHS’s organization to unilaterally initiate—without legal authority—a payment policy that sent millions of federal funds to those tribes.

Finally, no matter who initiated the payment policy, the fact that DHS officials did not stop the payments and allowed them to continue for several years indicates a level of mismanagement and dysfunction within DHS that is extremely troubling. We discuss this failure in the next finding.

³³ In addition, Moldenhauer’s position description explicitly requires him to “report on various activities, projects, and outcomes to other managers within the division or department” and to establish goals and reforms using a work plan developed with division management.

Finding 3. DHS failed to implement procedures to stop the department from making the unauthorized payments to the White Earth Nation and the Leech Lake Band of Ojibwe.

Every well-managed organization designs and implements procedures to ensure that the organization complies with its legal obligations and internal policies. Organizations (and auditors) call these procedures “internal controls.” Controls often require actions by individuals, but controls can also be built into computer systems as decision rules.³⁴ For example, controls in payment systems establish the criteria for allowing or not allowing a payment to be processed.

Prior to 2012, DHS relied on agreements negotiated between counties/tribes and service providers to establish the amounts the state would pay for chemical dependency treatment services. That complex arrangement may have limited DHS’s ability to establish controls to ensure that the payments it made to the tribes were correct. When DHS established uniform, statewide payment rates, however, it had an opportunity to establish controls that would have stopped unauthorized payments from being made. But, because it failed to establish payment controls, DHS processed unauthorized payments to White Earth and Leech Lake for several years.

According to people we interviewed, this disconnect between payment policy and payment controls resulted from a lack of coordination between the Behavioral Health Division and the Health Care Division, which oversees payments to providers in DHS. For example, Julie Marquardt, Deputy Assistant Commissioner and Assistant Medicaid Director, told us that the Behavioral Health Division has its own rate-setting staff and that her division’s staff “don’t interact with them very much.”

When we asked Marquardt whether officials responsible for the state’s Medicaid program and payment system still have ultimate authority to approve all payment rates, Marquardt said, “I would like to say yes to that question, and, unfortunately, I have to say no to that question.” She said that while the current controversy over DHS payments for take-home opioid treatment drugs is an example of that reality, it is “only one example of this.”

Marquardt said that she has been division director for 5 years and at Health Care Administration for 15 years, and “our presence was not always welcomed” in other areas of the department. She said that officials in other DHS divisions think the Health Care Administration is being “intrusive” if it intervenes. According to Marquardt, there is a culture at DHS of keeping the Health Care Administration out of other divisions’ business.

Multiple DHS officials told us that there is no formal policy that delineates how DHS’s program divisions must interact with the DHS Health Care Administration for purposes of setting and overseeing rates and payments.

³⁴ Computer processing rules are also often called “edits.”

There are other units within DHS that had—or should have had—opportunities to flag the unauthorized payments to the two tribes. For example:

- The department’s Surveillance and Integrity Review (SIRS) unit failed to identify the payments. SIRS is federally required to review Medicaid utilization to safeguard against unnecessary or inappropriate use of Medicaid services and against excess payments.³⁵
- The department’s Office of Inspector General (OIG) failed to identify the unauthorized payments. This is particularly troubling since we learned that in 2014, the OIG worked with the Behavioral Health Division to include in DHS’s online Provider Manual explicit instructions for providers to identify and code within their claims submissions when a client self-administers opioid treatment at “home.”³⁶ Apparently, OIG did not at that time determine whether payments for these types of services for U.S. Indian Health Service (IHS) tribal facilities were actually authorized for federal Medicaid reimbursement and did not conclude that the state’s payment system should be programmed to stop such payments.
- The American Indian Team in the Behavioral Health Division failed to identify the unauthorized payments even though this team was established to work closely with tribes on mental health and addiction issues.³⁷ However, the director of that team, Don Moore, told us that White Earth and Leech Lake have not asked for the advice of his team on billing issues in recent years. Rather, according to Moore, they have sought advice from Rick Moldenhauer, and he was not always informed of the questions posed by tribes to Moldenhauer. Moore said that had he known that DHS was paying the IHS encounter rate to tribal providers for clients who self-administered medications, it would have been a red flag.

Taken together, the facts we have presented in the findings above indicate a level of dysfunction within DHS that is deeply concerning. As we discuss in the next findings, that dysfunction has seriously harmed the state’s relationship with the White Earth Nation and the Leech Lake Band of Ojibwe.

Finding 4. After telling tribes for several years that DHS would pay them the U.S. Indian Health Service encounter rate for medications dispensed to clients to take home, the department reversed its position in 2019.

As was the case with other aspects of our review, we had difficulty obtaining documents that showed who at DHS told the tribes the department would pay the

³⁵ 42 CFR, sec. 456.3 (2019).

³⁶ These actions were part of the OIG’s initiative to investigate transportation costs for opioid treatment. See Department of Human Services, Minnesota Health Care Programs Provider Manual, Alcohol and Drug Abuse Services, revised September 11, 2014, 9. These instructions appeared in the “Billing” section of the manual. DHS’s provider training staff have instructed treatment providers to submit claims for all services, including those provided at home.

³⁷ *Minnesota Statutes* 2019, 254A.03, subd. 2.

encounter rate for opioid treatment medications clients took at home. We did, however, find several e-mail exchanges between Moldenhauer and tribal representatives.

For example, in a June 28, 2017, e-mail, the billing specialist for the Leech Lake Opioid Treatment Program asked Moldenhauer how many medications the tribe's program could dispense to a client at a time to take at home. In that exchange, the Leech Lake representative specifically asked Moldenhauer how much the department would pay the tribe for each time a client took medication at home. Here is that exchange:

Leech Lake Representative: "Just to verify that I am understanding this correctly. We can dispense 30 days at a time to the client and bill DHS the \$391.00 a day for the 30 days that were dispensed to the client for take homes[?]"

Moldenhauer: "The short answer is yes...."³⁸

A more extensive interaction between Moldenhauer and a tribal representative occurred on February 12, 2019. In that exchange, Adam Fairbanks, representing the Red Lake Nation, sent an e-mail to Moldenhauer with the subject line: "Billing for Takeouts." Fairbanks wanted written confirmation from DHS that the tribe could receive an encounter payment for each dose of an opioid treatment medication its program dispensed to a client to self-administer at home.

Moldenhauer responded "yes," Red Lake could receive an encounter rate for medications clients self-administered at home. The department's liaison to Indian tribes, Vernon LaPlante, who was copied on the e-mail, told Red Lake leaders in a February 21, 2019, e-mail to wait for an "official response."

It took the department almost three months to provide Red Lake with an official response. In separate letters sent on May 1, 2019, to the tribal chairmen of Red Lake, Leech Lake, and White Earth, DHS Commissioner Tony Lourey said:

The Minnesota Medicaid State Plan approved by the Centers for Medicare & Medicaid Services defines an encounter for a [tribal] or IHS facility as a face-to-face visit between a recipient and qualifying health care professional. Therefore, reimbursement for self-administered medication does not meet the criteria of a face-to-face visit and is not reimbursable at the federally negotiated IHS encounter rate.³⁹

The commissioner's letter not only contradicted the response Moldenhauer had given Red Lake in February, it contradicted the department's long-standing practice of paying White Earth and Leech Lake the IHS encounter rate for clients in the opioid addiction treatment programs to self-administer medications at home.

³⁸ In 2017, the IHS encounter rate was \$391.

³⁹ Tony Lourey, Commissioner, Minnesota Department of Human Services, letter to Eugene Tibbetts, Chairman, White Earth Nation, May 1, 2019; Tony Lourey, Commissioner, Minnesota Department of Human Services, letter to Darrell Seki, Red Lake Tribal Council, May 1, 2019; and Tony Lourey, Commissioner, Minnesota Department of Human Services, letter to Faron Jackson, Chairman, Leech Lake Band of Ojibwe, May 1, 2019.

Finding 5. DHS’s communications with the White Earth and Leech Lake tribes about its decision to reverse the department’s payment policy for opioid treatment medications clients take at home were not timely or respectful.

After informing White Earth and Leech Lake that the department was reversing its payment policy on take-home medications, DHS took an additional three months to inform White Earth and Leech Lake that the tribes would have to pay back the millions of dollars in unauthorized payments the department had made to the tribes. In a meeting at DHS headquarters in St. Paul on July 31, 2019, department officials told leaders from both tribes that the tribes would have to pay the money back.

In follow-up letters on August 1, 2019, Acting DHS Commissioner Pam Wheelock sent overpayment notices. The Commissioner told Chairman of the White Earth Tribal Nation Eugene Tibbetts that his tribe would have to reimburse the state \$11,979,279 for the payments the state had made to the tribe for medications clients took at home from 2017 to 2019.⁴⁰ Wheelock sent a similar letter to Faron Jackson, Chairman of the Leech Lake Band of Ojibwe, to inform him that his tribe would have to return \$13,338,094 for overpayments from 2014 to 2019.⁴¹

On August 8, 2019, Acting Commissioner Wheelock sent the tribes letters recognizing that DHS had not provided them with documentation underlying the overpayment amounts and said the 30-day deadline to appeal will begin when the department mails the claims level data and accompanying correspondence.

On August 20, 2019, Acting Commissioner Wheelock acknowledged that DHS “failed to engage in communication, coordination, and formal consultation...as we became aware of a potential overpayment of the [tribe’s] Medication Assisted Therapy program.” She said DHS “took a regulatory stance, approaching your nation as a ‘medical assistance vendor’ rather than as a sovereign nation.” In addition, Wheelock said: “We are confirming that the 30-day deadline to appeal has not started.”⁴²

On September 24, 2019, DHS told the tribes that the amounts the two tribes would have to pay back had increased. According to the department’s latest estimates, White Earth would have to pay back about \$14.2 million and Leech Lake would have to pay back about \$14.7 million.⁴³

⁴⁰ Pamela Wheelock, Acting Commissioner, Minnesota Department of Human Services, letter to Eugene Tibbetts, Chairman, White Earth Nation, August 1, 2019.

⁴¹ Pamela Wheelock, Acting Commissioner, Minnesota Department of Human Services, letter to Faron Jackson, Chairman, Leech Lake Band of Ojibwe, August 1, 2019.

⁴² Pamela Wheelock, Acting Commissioner, Minnesota Department of Human Services, letter to Faron Jackson, Chairman, Leech Lake Band of Ojibwe, August 20, 2019; and Pamela Wheelock, Acting Commissioner, Minnesota Department of Human Services, letter to Michael Fairbanks, Chairman, White Earth Nation, August 20, 2019.

⁴³ We asked DHS for documentation and officials told us they did not send letters to the tribes but the commissioner met with tribal leaders and informed them of the increase.

Representatives of the White Earth and Leech Lake tribes have criticized DHS not only for providing the tribes with misinformation about their ability to obtain encounter payments, but they have also criticized the way the department has communicated with them about the overpayment problem. The department has accepted that criticism.

Frankly, we think the department's mismanagement of its relationship with White Earth and Leech Lake is worse than Wheelock acknowledged. In a meeting on October 18, 2019, which was prompted by questions we submitted to the department, DHS officials told us they still have not obtained an official determination from federal officials that the payments to White Earth and Leech Lake were overpayments. While we believe the department's determination that the payments were not authorized is correct, and we assume federal officials will also support that determination, we were surprised to learn that the department had not, as of the date of our meeting, obtained a determination from federal officials on such a serious question.

In fact, we learned that the department only recently agreed to seek such a federal determination because White Earth and Leech Lake demanded it. We were told that in response to the tribes' position, DHS has agreed to have a conference call in which DHS, White Earth, Leech Lake, and federal officials will discuss the overpayment issue. However, the department was not sure that the result would be an official, written response from the federal government. In fact, the department was not sure when the conference call would occur or which federal officials would participate.

All of this uncertainty is occurring more than five months after DHS told White Earth and Leech Lake that the payments the department had made to the tribes for clients to self-administer medications at home did not comply with legal requirements. And, it comes over two months after DHS officials told White Earth and Leech Lake that they would have to return millions of dollars to the state because the payments DHS made over several years were not authorized.

Finding 6. The State of Minnesota could face challenges in trying to obtain the unauthorized payments DHS made to the White Earth Nation and the Leech Lake Band of Ojibwe.

The U.S. Department of Health and Human Services (HHS) can require the State of Minnesota to repay the federal government for overpayment of Medicaid funds.

Federal regulations define overpayments as "the amount paid by a Medicaid agency to a provider, which is in excess of the amount that is allowable for services furnished under section 1902 of the Act and which is required to be refunded."⁴⁴ When the state discovers overpayments, it has one year to recover (or attempt to recover) the overpayments and repay the federal government before HHS can adjust the Medicaid

⁴⁴ 42 *CFR*, sec. 433.304 (2019).

payments HHS makes to the state.⁴⁵ The Secretary of HHS determines the amount CMS may withhold from a state to recover the overpayments.⁴⁶

In addition to federal regulations, *Minnesota Statutes* 2019, 256B.0641, subd. 1(1), requires the commissioner to recover an overpayment when the commissioner or the federal government determines the state has overpaid a medical assistance vendor.⁴⁷ *Minnesota Statutes* say this is true even when DHS made the error.⁴⁸

In several important respects, American Indian tribes are different from other medical assistance vendors, but the recovery requirement applies to tribes. As tribal nations, White Earth and Leech Lake have legal authority to establish and license their medication-assisted opioid treatment programs.⁴⁹ In addition, the state has an obligation to interact with tribes on a government-to-government basis, unlike how the state interacts with counties, other political subdivisions, or other vendors.⁵⁰ Nevertheless, because White Earth and Leech Lake have enrolled their medication-assisted opioid treatment programs with the state to receive Medicaid funding, they are subject to certain federal and state legal requirements and processes, including the recovery provision noted above.⁵¹

Appeal Process

Both Leech Lake and White Earth have said they will appeal DHS’s determination. In an August 1, 2019, press release, Leech Lake said the band’s legal counsel was working to develop a response to the allegations and “will vigorously appeal any determination

⁴⁵ 42 U.S. Code, sec. 1396b(d)(2)(C) (2019).

⁴⁶ 42 U.S. Code, sec. 1396b(d)(3)(A) (2019). “The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment....”

⁴⁷ We note that *Minnesota Statutes* 2019, 256B.064, subd. 1c(a), gives the commissioner discretion on whether to recover an overpayment. Nonetheless, *Minnesota Statutes* 2019, 256B.0641, which *requires* the commissioner to recover the overpayment, also includes the phrase “notwithstanding... any law or rule to the contrary,” which then supersedes the permissive clause (commissioner *may* obtain repayment) in 256B.064.

⁴⁸ *Minnesota Statutes* 2019, 256B.064, subd. 1c(a); and 256B.0641, subd. 1(2).

⁴⁹ For a discussion of the legal basis of the tribes’ status as sovereign nations, see Research Department, Minnesota House of Representatives, *American Indians, Indian Tribes, and State Government*, January 2017, “Tribal Sovereignty: Limits of State Power,” 18-21. For additional information and from a tribal perspective, see National Congress of American Indians, *Tribal Nations and the United States: An Introduction*, (no date), 20-22.

⁵⁰ Governor Tim Walz, Executive Order 19-24, “Affirming the Government to Government Relationship between the State of Minnesota and Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation,” April 4, 2019.

⁵¹ *Minnesota Statutes* 2019, 254B.05, subd. 1, for example, says, “American Indian programs that provide substance use disorder treatment, extended care, transitional residence, or outpatient treatment services, and are licensed by tribal government are eligible vendors.”

that it was improperly overpaid.”⁵² White Earth wrote Acting Commissioner Wheelock on August 30, 2019, that it intended to appeal the overpayments.⁵³

The tribes may appeal DHS’s decision to recover the funds by filing a written request for a “contested case” hearing no later than 30 days after the commissioner’s notice seeking recovery of the funds.⁵⁴ DHS’s communication with the tribes has been so confusing that it is unclear when the 30-day time frame has started or will start. As we noted in the previous section, DHS sent overpayment notices to the tribes on August 1, 2019, but on August 8, 2019 said the 30-day deadline to appeal had not begun.⁵⁵

Once the 30-day clock starts and the tribes file an appeal within that time frame, DHS sets the matter for a contested case hearing before an administrative law judge (ALJ), according to *Minnesota Statutes 2019, Chapter 14*.⁵⁶ Following the hearing, the ALJ issues a report containing factual findings, conclusions of law, and recommended decisions to the commissioner.⁵⁷

The commissioner may adopt, reject, or modify findings, conclusions, and recommendations contained in the ALJ’s report.⁵⁸ If the tribes disagree with the final decision, they would have 30 days to file an appeal with the Minnesota Court of Appeals.⁵⁹

Equitable Estoppel

The tribes could try to prevent DHS from recovering the funds based on the premise that they relied on DHS’s advice. Known as “equitable estoppel,” the legal doctrine is

⁵² “Leech Lake Band of Ojibwe Responds to Overpayment Allegations Made by Minnesota Department of Human Services,” *Leech Lake News*, August 1, 2019, <https://www.leechlakenews.com/2019/08/01/media-release-llbo-dhs-overpayment/>, accessed October 24, 2019.

⁵³ Veronica Newcomer, Tribal Attorney, White Earth Band of Ojibwe, letter to Pamela Wheelock, Acting Commissioner, Department of Human Services, August 30, 2019.

⁵⁴ *Minnesota Statutes 2019*, 256B.064, subd. 2(e). See also *Minnesota Statutes 2019*, 256B.064, subd. 2(a), providing certain limited exceptions to the notice and hearing requirements under subd. 2(b) and (d).

⁵⁵ One reason DHS contends the 30-day deadline to appeal did not start with the August 1, 2019, overpayment notices is because DHS did not send the letters by certified mail, which is required under *Minnesota Rules*, 9505.2230, subp. 1, published electronically August 12, 2008.

⁵⁶ *Minnesota Statutes 2019*, 14.50-14.69.

⁵⁷ See *Minnesota Statutes 2019*, 14.58-14.62. After the ALJ issues the report, the record remains open for at least ten days to allow the parties to file exceptions and present arguments to the commissioner. Once the record closes, the commissioner then has 90 days to issue a final decision based on the record.

⁵⁸ *Minnesota Statutes 2019*, 14.62. If the commissioner fails to issue a final decision within 90 days of the record closing, the ALJ’s recommended decision becomes the final decision. *Minnesota Statutes 2019*, 14.62, subd. 2a.

⁵⁹ *Minnesota Statutes 2019*, 14.63. Although we did not research this legal option, we think it is possible that the tribes could go to federal court to try to block the State of Minnesota from making a repayment claim.

designed to protect a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights.⁶⁰

Courts have discretion on whether to apply estoppel,⁶¹ and whether to do so depends on the facts of each case.⁶² Minnesota’s Supreme Court has held that a party asserting estoppel against the government bears a “heavy burden of proof.”⁶³ Nonetheless, it can be used against the government if “justice requires” and there is some element of fault or wrongful conduct on behalf of the government.⁶⁴

In order to win on equitable estoppel against the government in Minnesota, the tribes would need to prove:⁶⁵

- (1) Wrongful conduct on the part of the government;
- (2) They reasonably relied on the wrongful conduct;
- (3) They incurred a unique expenditure in relying on the wrongful conduct; and
- (4) A balance of the equities that weigh in favor of estoppel.⁶⁶

The state Supreme Court has held that the first element, “wrongful conduct” on the part of the government, is the most important element of the four.⁶⁷ Minnesota’s courts have not provided a comprehensive definition as to what is “wrongful conduct” in an equitable estoppel claim against the government. They have decided in several cases, however, that a government official’s “simple mistake” is not wrongful in this context;⁶⁸ there must be some degree of malfeasance or affirmative misconduct.⁶⁹

We caution against speculating as to whether the tribes would succeed or not succeed with an estoppel claim based solely on the information contained in OLA’s report. As

⁶⁰ *Brown v. Minnesota Dep’t of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985) (quoting *N. Petrochemical Co. v. United States Fire Ins. Co.*, 277 N.W.2d 408, 410 (Minn. 1979)).

⁶¹ *Shetka v. Aitkin Cnty.*, 541 N.W.2d 349, 353 (Minn. App. 1995), *review denied* (Minn. Feb. 27, 1996).

⁶² *Northern Petrochemical Co. v. United States Fire Insurance Co.*, 277 N.W. 2d 408, 410 (Minn. 1979).

⁶³ *Nelson v. Commissioner of Revenue*, 822 N.W.2d 654, 660 (Minn. 2012) quoting *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980).

⁶⁴ *Brown v. Minn. Dep’t of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985).

⁶⁵ *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn. 2011).

⁶⁶ UCLA Law Professor Sam Bray explains the “balance of equities” (also known as the balance of hardships) as taking into consideration the burdens or costs on plaintiff and defendant, degree of fault, and tailoring a solution to the particular case. Professor Bray provides an explanation of the balance of equities at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/07/02/what-is-the-balance-of-equities/>, accessed October 20, 2019.

⁶⁷ *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 293 (Minn. 1980). For context, also see *Department of Human Services v. Muriel Humphrey Residences*, 436 N.W.2d 110, 117 (Minn. Ct. App. 1989), *pet. for rev. denied* (Minn. April 26, 1989).

⁶⁸ *North Oaks*, 797 N.W.2d at 25-26 citing *Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. Cnty. of Itasca*, 258 N.W.2d 877, 880 (Minn. 1977); *Kmart Corp. v. County of Stearns*, 710 N.W.2d 761, 771 (Minn. 2006); and *Bond v. Comm’r of Revenue*, 691 N.W.2d 831, 838 (Minn. 2005).

⁶⁹ *Kmart*, 710 N.W.2d at 771 (degree of malfeasance); *City of Minneapolis v. Minneapolis Police Relief Ass’n*, 800 N.W.2d 165, 176 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011) (affirmative misconduct).

we mentioned at the beginning of our report, the tribes did not respond to our requests to understand their perspectives on this issue. The tribal documents OLA obtained were those in the state's possession. Given that an estoppel analysis is fact-specific, the tribes could have documents or other evidence that could play a role in whether they would succeed or not succeed in a legal challenge.

Final Comment

As the discussion in the findings above clearly show, the financial and legal problems created by the DHS overpayments to White Earth and Leech Lake are going to be difficult to resolve. This is particularly troubling since DHS could have avoided the problems with simple, good management.

The fact that so many DHS management officials allowed the department to make millions of dollars in unauthorized payments over multiple years is inexcusable, as is the department's failure to document important policy decisions. We think fundamental and deep reforms within DHS are needed.

Recommendations

Recommendation 1. The Legislature should by law require the Commissioner of the Department of Human Services to design and implement a comprehensive system of documented management reviews and approvals to ensure that payments made by the department with Medicaid funds comply with state and federal legal requirements.

We were surprised—and troubled—to learn that individuals within DHS can make decisions to spend Medicaid funds without review and approval from the DHS officials who are responsible for the state's Medicaid program. Department officials told us that DHS does not have a policy that requires the department's various divisions, offices, and units to obtain approval from Medicaid officials when they make decisions that affect Medicaid spending.

In addition, the department acknowledges that it does not know who made the decisions that led to the department making \$29 million in unauthorized payments using Medicaid funds. Apparently, DHS does not require staff and officials to document their policy decisions—or cite the legal authority for decisions—that spend Medicaid funds.

We normally do not recommend legislation to correct an internal executive branch decision-making process. In this case, the DHS decision-making process was so deficient and created such serious problems that we think legislative intervention and action is necessary.

Recommendation 2. The Legislature should clarify in law whether the Department of Human Services has authority to pay a health care provider a service payment when a patient or client self-administers medication outside of the provider's facility.

DHS has stopped paying the White Earth and Leech Lake tribes' opioid treatment programs when a client self-administers a treatment medication at home. The department continues, however, to pay nontribal opioid addiction treatment programs when clients self-administer a medication at home. The amounts paid per day are relatively small (\$23) compared to the encounter rate DHS paid the White Earth and Leech Lake tribes. However, because those nontribal payments were not within the scope of our review, we do not know how much has been paid to these programs over the many years the payments have apparently been made.

As with the payments the department made to the White Earth and Leech Lake tribes, we could not find any explicit legal authority for the department to pay nontribal opioid addiction treatment programs when clients take medications at home. In addition, we question the policy basis for the state to pay a health care provider when the provider's client or patient self-administers medication since there is no direct medical service being provided. In fact, we are not aware of any other situation in which the state pays health providers when clients or patients self-administer medications at home; opioid addiction treatment drugs dispensed by treatment providers seem to be a unique example.

Given these facts, we think the Legislature should clarify in law whether the state will (or will not) pay health care providers when their clients self-administer their medications outside of the clinic.

Recommendation 3. The Legislature should consider enacting exceptions to the law that requires the Department of Human Services to recover payments to providers that resulted from department errors.

The state law that allows the Department of Human Services to recover all payments it erroneously made to providers allows the department to avoid any accountability for egregious mismanagement.

While the law may be justified in many situations, we think the facts presented in this report should be the basis for a legislative reconsideration. Specifically, the Legislature may want to consider whether actions by DHS are so unfounded and erroneous that the pay-back policy should have some exceptions.





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October 28, 2019

James Nobles, Legislative Auditor
Office of the Legislative Auditor
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Legislative Auditor Nobles:

Thank you for the opportunity to review and comment on your office's report titled "*Department of Human Services: Payments for Self-Administered Opioid Treatment Medication.*" We appreciate the effort and professionalism of you and your staff as your office completed their work on this Special Review.

Your report confirms my own assumption based on review of the available facts – that the Department is at fault for providing incorrect guidance resulting in this billing error. In particular, your report shows that our Tribal Nation partners provided detailed and transparent billing information of the at-home self-administration to the Department over the years. The Department did not have the internal controls necessary to catch the issue and did not provide correct advice.

In my first week as Commissioner I made a commitment to trustworthiness. I understand that we have significant work ahead of us to rebuild the necessary processes and internal controls that will help us to identify and prevent similar issues in the future. Fortunately, the Department has passionate and talented staff with the expertise to build integrity and compliance in all our processes, with a focus on restoring the public's trust in carrying out the critical mission of providing services to Minnesotans.

The Department also has work ahead to rebuild trustworthiness in our government-to-government relationship with the White Earth Nation and Leech Lake Band of Ojibwe. We are establishing better processes for timely consultation, coordination, and cooperation with our tribal partners.

Below are our responses to the specific recommendations in your report.

Recommendation 1:

The Legislature should by law require the Commissioner of the Department of Human Services to design and implement a comprehensive system of documented management reviews and approvals to ensure that payments made by the department with Medicaid funds comply with state and federal legal requirements.

Response to Recommendation 1:

While we do not believe enactment of a new law is necessary, we acknowledge that in this area the Department has had decentralized decision making and internal controls were lacking. To address this, the Department has initiated a Continuous Process Improvement and Internal Control Process project to sharpen payment and rate-setting policy and decision-making and to make sure the decisions are properly documented in accordance with current state laws. As part of this project, the Department plans to strengthen its internal controls to include a system of several checks and balances, including requiring high-level approvals for each payment policy decision.

We value continuous improvement and have seen the results of using a continuous improvement model to address deficiencies and inconsistencies in program policies and operations. For example, we have initiated improvements in our Child Care Assistance Program processes using this tool. Continuous improvement is just one tool in the comprehensive compliance framework that we have recently instituted across the agency. We look forward to publicly sharing this model at the upcoming legislative hearings on this topic.

Recommendation 2:

The Legislature should clarify in law whether the Department of Human Services has authority to pay a health care provider a service payment when a patient or client self-administers medication outside of the provider's facility.

Response to Recommendation 2:

For payments to tribal providers, the Department disagrees with Recommendation 2, because the Department believes the law is clear at the state and federal level.

For payments to nontribal providers, the rate structure is different, and the Department is committed to examining the issues related to that topic raised in this audit.

Recommendation 3:

The Legislature should consider enacting exceptions to the law that requires the Department of Human Services to recover payments to providers that resulted from department errors.

Response to Recommendation 3:

We support a legislative review to allow for exceptions to the repayment requirement when there is department error and good faith reliance on that error by recipients of Department payments. To clarify, state law, specifically, Minnesota Laws 2019, section 256B.0641, subdivision 1(1), requires the Department to collect an overpayment.

Thank you again for the professional and dedicated efforts of you and your staff during this Special Review. The Department's policy is to follow up on all findings to evaluate the progress made to resolve them. If you have any further questions, please contact Gary L. Johnson, Internal Audit Director, at (651) 431-3623.

Sincerely,

/s/
Jodi Harpstead
Commissioner





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