COMMITMENT
INTEGRITY
LEADERSHIP

November 29, 2022
Report 2021-046
FACT SHEET

Michael S. Tilden, CPA *Acting State Auditor*

CONTACT: *Public Affairs Office* | *(916) 445-0255*

Proposition 56 Tobacco Tax

The Department of Health Care Services Is Not Adequately Monitoring Provider Payments Funded by Tobacco Taxes

Background

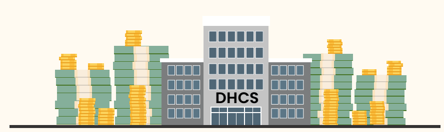
The passage of Proposition 56 enacted the California Healthcare, Research and Prevention Tobacco Tax Act, which raised the State's taxes on a pack of cigarettes by $2. It also requires an equivalent increase in the tax rate on other tobacco products—such as e-cigarettes containing nicotine and chewing tobacco. The majority of Proposition 56 funds, nearly $900 million of the $1.34 billion collected in fiscal year 2020–21, are allocated to increase payments for certain healthcare, treatment, and services provided through the Medi-Cal program.

Key Findings

- The Department of Health Care Services (DHCS) has not provided necessary oversight of Proposition 56 supplemental payments to health care providers.
  - Differences between the supplemental payments that managed care plans reported paying to health care providers and the services that the providers reported delivering to the State's Medi-Cal beneficiaries suggest that the providers do not always receive the supplemental payments to which they are entitled.
  - Some providers receiving Proposition 56 supplemental payments may have engaged in fraudulent activity.
  - DHCS's failure to promptly identify and suspend providers arrested and convicted of certain crimes placed Medi-Cal beneficiaries at unnecessary risk.
- The California Department of Tax and Fee Administration (CDTFA) has not provided adequate oversight of certain tobacco distributors, calling into question whether those distributors paid the appropriate amount of tax on other tobacco products (OTP tax).
  - During its audits, CDTFA generally did not obtain sufficient documentation to substantiate the wholesale costs on which the OTP tax is applied, increasing the risk that the manufacturer-distributors did not pay the correct amount of tax.
- All six entities that we reviewed posted on their websites the Proposition 56 funds they received and spent, as state law requires, but five of them posted either budgetary estimates or inaccurate information.
  - These estimates or inaccuracies make it difficult for the public to determine the amount of funds that the entities actually received and how two of them spent those funds.

Key Recommendations

- The Legislature should permit DHCS and the boards that license Medi-Cal providers to share information about providers' arrests for fraud or abuse.
- DHCS should do the following:
  - Require managed care plans to submit Medi-Cal beneficiary identification information with their quarterly reports, reconcile those reports to medical encounter data, and recover any overpayments.
  - Investigate instances we identified in which managed care plans were unable to provide evidence that medical services were provided.
  - Reduce the amount of time providers subject to mandatory suspension can provide services to Medi-Cal beneficiaries by issuing temporary provider suspensions and temporary payment suspensions when permissible or required by state law.
- CDTFA should obtain sufficient documentation during its audits to verify the accuracy of the amounts on which the OTP tax is applied.
- The entities that receive Proposition 56 funding should ensure the accuracy of the information they provide the public about the amounts they received and spent.



DHCS paid a total of $380,000 for 10,100 services by 14 providers that were on state and federal lists of ineligible providers.

4 of the 14

ineligible providers received payments for 90 percent of these services.