

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued August 27, 2025

Massachusetts Gaming Commission

For the period July 1, 2020 through June 30, 2023



OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

August 27, 2025

Jordan Maynard, Chair
Massachusetts Gaming Commission
101 Federal Street, Floor 12
Boston, MA 02110

Dear Mr. Maynard:

I am pleased to provide to you the results of the enclosed performance audit of the Massachusetts Gaming Commission. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2020 through June 30, 2023. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Massachusetts Gaming Commission. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team has any questions.

Best regards,



Diana DiZoglio
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

| | |
|------|---|
| CMR | Code of Massachusetts Regulations |
| CTR | Office of the Comptroller of the Commonwealth |
| EBH | Encore Boston Harbor |
| GLI | Gaming Laboratories International, LLC |
| ICP | internal control plan |
| IEB | Investigations and Enforcement Bureau |
| MEPA | Massachusetts Environmental Policy Act Office |
| MGC | Massachusetts Gaming Commission |
| PMW | PlayMyWay |
| PPC | Plainridge Park Casino |
| VSE | voluntary self-exclusion |

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Gaming Commission (MGC) from July 1, 2020 through June 30, 2023. When examining MGC’s employee settlements, we extended the audit period from July 1, 2018 through June 30, 2023. Additionally, when examining MGC’s sports wagering in the Commonwealth, we extended the audit period from March 1, 2023 through March 31, 2024.¹

The purpose of our audit was to determine the following:

- Did MGC monitor the exclusion of minors and underage youths on the gaming floor in accordance with Sections 150.01 and 150.05 of Title 205 of the Code of Massachusetts Regulations (CMR)?
- Did MGC approve the sports wagering operators’ internal control plans (ICPs) to ensure that measures were in place to prevent minors and underage youths from placing sports wagers in accordance with 205 CMR 250.01(2)?
- To what extent did MGC ensure that marketing materials from sports wagering operators were not disseminated or distributed to individuals under the age of 21 or to individuals who signed up for the Voluntary Self-Exclusion (VSE) Program, in accordance with 205 CMR 256.05?
- Did MGC implement policies and procedures to support people affected by gambling addiction in accordance with 205 CMR 133.02(3)?
- Did MGC report all monetary employee settlement claims to the Office of the Comptroller of the Commonwealth (CTR) in accordance with 815 CMR 5.09 and CTR’s “Settlement and Judgments Policy”?

Below is a summary of our findings, the effect of those findings, and our recommendations, with hyperlinks to each page listed.

| | |
|------------------------------------|--|
| Finding 1 Page 17 | MGC did not monitor sports wagering operators’ dissemination and distribution of advertising materials before they were issued to the public, as required 205 CMR 256. |
| Effect | Overall, these incidents highlight a lack of monitoring compliance and the need for MGC to enhance its oversight of sports wagering advertising to safeguard public interests and promote responsible gaming behavior. |

1. We extended the audit period from March 1, 2023 through March 31, 2024 because sports betting services began in March 2023.

| | |
|--|--|
| Recommendation Page <u>19</u> | MGC should establish policies and procedures to ensure that all sports wagering operators' marketing materials are reviewed before being disseminated and distributed to the public. By implementing policies and procedures, MGC can monitor controls to ensure that these policies are adhered to. |
| Finding 2 Page <u>19</u> | MGC did not ensure that all GameSense agents completed training before assisting people affected by gambling addiction, as required by 205 CMR 133. |
| Effect | Without this foundational training, these agents may lack the critical insights needed to assist people affected by gambling addiction. This gap in training could ultimately hinder MGC's efforts to educate and inform those at risk about the dangers associated with gambling, potentially exacerbating their vulnerabilities. |
| Recommendation Page <u>20</u> | MGC should develop and implement policies and procedures to ensure that GameSense agents are being properly trained before assisting people affected by gambling addiction. |
| Finding 3 Page <u>21</u> | MGC did not have an accountability process related to employee settlement agreements, including those containing non-disclosure, non-disparagement, or similarly restrictive clauses. |
| Effect | If MGC does not have an accountability process for handling employee settlement agreements, especially those containing non-disclosure, non-disparagement, or similarly restrictive clauses, then it cannot ensure that employee settlements are handled in an ethical, legal, and appropriate manner. If the MGC board of directors does not ensure adequate oversight regarding employee settlements, then the well-being and financial stability of MGC and its employees may be negatively impacted. Furthermore, public dollars could be abused to cover up harassment, discrimination, or other forms of misconduct, while protecting perpetrators of abuse. |
| Recommendation Page <u>23</u> | MGC should develop, document, and implement a policy related to employee settlement agreements. |

In addition to the conclusions we reached regarding our audit objectives, we also identified issues not specifically addressed by our objectives regarding the interpretation of permitting emails to suffice as mailings to a physical address for complimentary services. See [Other Matters](#) for more information.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Gaming Commission (MGC) was established by Section 3 of Chapter 23K of the Massachusetts General Laws as the oversight agency charged with monitoring gaming establishments.² On November 22, 2011, the Governor signed the Expanded Gaming Act into law. This act was created to generate new revenue for the Commonwealth and to increase economic growth in surrounding communities. Enacting the Expanded Gaming Act in the Commonwealth was expected to create thousands of jobs for Massachusetts residents in the areas of construction, hospitality, and tourism.

According to MGC's website, its mission is "to create a fair, transparent, and participatory process for implementing the expanded gaming law."

MGC is composed of five full-time commissioners, one of whom serves as the chair. The Attorney General, the Treasurer and Receiver General, and the Governor (whose appointee serves as the chair) each appoint one commissioner outright, then appoint the remaining two commissioners jointly. This five-person appointed body establishes oversight and management of the licensing and regulatory processes for two casinos, MGM Springfield and Encore Boston Harbor (EBH), and the statewide slots parlor, Plainridge Park Casino (PPC) through a series of regulations. Additionally, MGC is tasked with creating and overseeing the regulatory framework of the Commonwealth's sports wagering industry, which includes 13 sports wagering operators licensed to conduct online and in-person sports gambling within the Commonwealth.

MGC's Research and Responsible Gaming Division develops and implements responsible gaming programs, including the Voluntary Self-Exclusion (VSE) Program. These programs provide specific structures to promote responsible gaming and ethical, responsible patron behavior. MGC's Investigations and Enforcement Bureau (IEB) receives intelligence on gaming establishments and investigates any suspected violations described under Chapter 194 of the Acts of 2011 (known colloquially as the Gaming Law). The Gaming Enforcement Unit (GEU) at the Massachusetts State Police works with IEB to investigate any activity at MGM Springfield, EBH, and PPC. MGC performs all regulatory duties and responsibilities related to the Massachusetts horse-racing industry.

2. For the purposes of this audit report, we use the term gaming establishment to refer to the two casinos and the slots parlor referenced later in this section.

MGC's office is located at 101 Federal Street in Boston. MGC had 189 full-time employees as of June 30, 2023. MGC's operating costs are funded through various assessments, such as the Massachusetts Racing Development and Oversight Trust, Community Mitigation, Race Horse Development, Gaming Revenue Fund Daily Tax, and Payments to Cities and Towns for Local Racing Tax Revenue. State appropriations for MGC were approximately \$721,350, \$721,350, and \$1,112,590 in fiscal years 2021, 2022, and 2023, respectively.³

Exclusion of Minors and Underage Youths from Gaming Floors

According to 205 CMR 138.02, the three Massachusetts gaming establishments must have internal control plans (ICPs) to ensure that minors and underage youths cannot enter the gaming establishments' gaming floors, under Chapter 23K of the General Laws and Title 205 of CMR. The gaming establishments must prepare and submit their ICPs regulating minors and underage youths before commencing operations, which are approved by MGC and its executive director. Gaming establishments' ICPs are updated as needed and when the gaming establishments deem it necessary. The commissioners or the executive director may revisit any provision of the internal controls at any time, direct adjustments if required, and provide for a reasonable implementation period to ensure that a robust system of internal controls is in effect. Upon approval by the executive director, the gaming licensee is issued written evidence of the approval of its internal controls, including any associated conditions.

When entering a gaming establishment, a person must first go to the security booth, where a security guard is present, before gaining access to the gaming establishment's gaming floor. Anyone appearing to be under the age of 30 is required to present valid identification to the security guard. The physical identification card will be placed in the VeriDoc system⁴ for verification. If the identification card is valid, the system displays a green indicator; otherwise, it displays a red indicator.

The gaming establishments must actively monitor all areas of the gaming floor to ensure that minors are not present. If a minor is found on the gaming floor, then the gaming establishments must immediately report the incident to the MGC's IEB. Additionally, the gaming establishments are required to submit a detailed Underage Incident Report to the IEB by the 10th of every month.

3. The appropriations increase between fiscal years 2022 and 2023 was because sports wagering commenced in the Commonwealth starting in March 2023.

4. According to VeriDoc's website, it is a "provider of identity management with core technologies in authenticating documents and verifying a person's current status."

These Underage Incident Reports must include specific information, such as the total number of individuals under 21 years old who were found in the gaming area, including near table games, slot machines, or other electronic gaming devices. The report must also note any minors consuming alcoholic beverages and any individuals under 21 who were turned over to the appropriate law enforcement authorities or escorted away from the gaming premises. Gaming establishments are required to report incidents regarding minors and underage youths to MGC in order maintain their gaming licenses. If any incident regarding minors and underage youths is not reported, then the gaming establishment in question could be sanctioned, which includes the potential loss of the establishment's gaming license.

Sports Wagering Across the Commonwealth

On August 10, 2022, the Governor signed an act legalizing sports wagering within the Commonwealth. Following legislative approval, the inception of sports betting services began in March 2023. At least 60 days before commencing operations, a sports wagering operator must submit its proposed ICP to MGC.

MGC must refer the proposal submitted under 205 CMR 138.02(1) to the executive director. The executive director reviews the submission to ensure compliance with Chapter 23K of the General Laws, 205 CMR 138.00, and any other applicable sections of Title 205 of the CMR.

According to MGC's contract with Gaming Laboratories International, LLC (GLI), dated October 13, 2022, GLI provides consulting services for the review of internal control standards for entities applying for sports wagering licenses. This review and consultation includes the following:

- *Review of operator-submitted [Internal Control Standards (ICS)] for compliance with MGC regulations and Minimum Internal Control Standards (MICS).*
- *An evaluation of the ICS framework and controls to ensure compatibility with MGC audit requirements and workflow.*
- *Review each control standard to evaluate if the control design is adequate to meet the control objective in the MICS or other applicable regulations.*

At the conclusion of the review, a detailed report is provided to MGC, summarizing the methods of testing and the test results.

GLI ensures that the sports wagering operator application framework complies with all CMR requirements. This includes monitoring to prevent minors and underage youths from using the platform. Additionally, GLI ensures that the list of VSE individuals from the MGC is accessible to sports wagering

operators within 24 hours of the sign-up of a person affected by gambling addiction.⁵ Furthermore, GLI tests the location framework to confirm that individuals placing bets with the sports wagering operators are within Massachusetts's jurisdiction. After testing is completed, GLI provides MGC with a certificate of all completed work and the results.

According to MGC officials, after the review, the executive director either approves the submission or notifies the gaming licensee, in writing, of any deficiencies. This notification may also include recommendations and/or required changes intended to ensure the implementation of a robust system of internal controls.

The commissioners or the executive director may revisit any aspect of the internal controls at any time and make direct adjustments if necessary, allowing for a reasonable implementation period to ensure that a robust system of internal controls is in place. Once the internal controls system is approved by the executive director, the gaming licensee receives written confirmation of this approval, including any associated conditions.

At least 15 business days before making any changes to the approved internal controls, a gaming licensee must submit the proposed change, along with an explanation and new certifications⁶ from its chief legal and financial officers, consistent with 205 CMR 238.02(7)(i) and (j), to the commissioners. The commissioners refer the proposed change to the executive director, who reviews it for compliance with 205 CMR 238.00. Changes to the internal controls are generally permitted if the proposed change does not weaken the administrative, accounting, or physical controls.

After the review, the executive director either approves the proposed change or explains to the gaming licensee why the proposal does not comply with 205 CMR 238.00. The gaming licensee can appeal the executive director's determination to the commissioners, which resolves the issue. Approved changes must be maintained as part of the internal controls.

Internal controls cannot be modified without the approval of the executive director or the commissioners. However, if the executive director does not object or respond in writing within 15 business days of

5. For the purposes of this audit report, when referring to a person affected by gambling addiction, we use the following definition found in 205 CMR 13: "An individual who believes their gambling behavior is currently, or may in the future without intervention, cause problems in their life or in the lives of their family, friends, and/or co-workers."

6. This certification includes GLI's testing of regulatory requirements, such as the Internal Control Standards framework, and evaluates the design controls related to sports wagering operations in the Commonwealth.

receiving the submission, then the gaming licensee may proceed with the proposed change, subject to further direction from the executive director by 205 CMR 238.02(3).

The compliance officers working within MGC's Sports Wagering Division are responsible for closely monitoring all operators' betting platforms. The compliance officers' duty is to identify any wagers that fall outside the boundaries set by the official Massachusetts Sports Wagering Catalog, which was last approved and updated by MGC on February 6, 2025. The official wager categories include specific bets that are prohibited due to regulatory exclusions. These exclusions include any collegiate sports or athletic events that occur within the Commonwealth, as well as any event overseen by the government of Russia, the government of Belarus, or the Chinese Football Association.

If it is discovered that a sports wagering operator accepted an unauthorized wager, then sports wagering operators are obligated to promptly notify MGC. Furthermore, the sports wagering operator must take immediate action to cancel these unauthorized bets and initiate the process of refunding all affected wagers in accordance with the regulations outlined in 205 CMR 247.03(11). If a sports wagering operator accepts a wager for a prohibited event, then it is reported to MGC's IEB, which in turn reviews the prohibited event and provides any recommendations or sanctions to the commissioners for approval. Sports wagering operators are required to report incidents regarding unauthorized wagers to MGC in order to maintain their gaming licenses. If any incident regarding unauthorized wagers is not reported, then the gaming establishment in question could be sanctioned, which includes the potential loss of the establishment's gaming license.

Sports Wagering Advertising Toward Minors

According to 205 CMR 256.05(1), advertising and promotional materials for sports wagering operators must clearly state that participants must be 21 years of age or older. Operators are prohibited from targeting individuals under 21 in any marketing efforts. Additionally, this CMR states the following:

- *No materials should feature images, endorsements, or language appealing to those younger than 21.*
- *Advertising is prohibited in media where 25% of the audience may be under 21 unless strict age controls exist.*
- *Promotions cannot occur at events aimed at minors or locations like schools and college campuses.*

- *Sports Wagering logos or branding should not be used on products intended for individuals under 21.*

According to MGC officials, MGC's Sports Wagering Division received a report, compiled by the Communications Division, on sports wagering advertising conducted by sports wagering operators across various social media platforms and channels. These reports are submitted to the compliance officers for their review, which takes place weekly. Currently, MGC does not monitor or review the marketing materials of sports wagering operators before they are disseminated and distributed to the public.

VSE and Responsible Gaming

According to 205 CMR 133, people affected by gambling addiction may voluntarily bar themselves from online sports wagering operators and from entering the gaming areas of MGM Springfield, EBH, and PPC. They can do this by completing an application on the GameSense⁷ website or in person with any designated agent.⁸ Once the application is completed, a designated GameSense agent forwards it to the VSE Program manager at MGC's Research and Responsible Gaming Division, who maintains the VSE list. The VSE Program manager approves the person's addition to the VSE list. The VSE Program manager then distributes the VSE list to licensees daily and sends it to GameSense supervisors and IEB. Sports wagering operators also share the VSE list with their marketing departments to ensure that each person on the list is removed from both the marketing and player reward promotion.

MGC maintains lists of individuals who requested to be excluded from sports betting within the Commonwealth to reduce and mitigate the effects of gambling addiction. Individuals on the VSE list are prohibited from participating in any form of legalized gambling in MGC's jurisdiction and are prohibited from collecting any winnings or recovering any losses resulting from violation of the restrictions or accepting any complimentary gifts or services or any other thing of value from a Commission-licensed facility, retail location, or mobile wagering platform. If an individual has a pending wager and then self-excludes, the wager will be canceled and the funds returned to the individual.

Individuals can request exclusion for one year, three years, five years, or a lifetime. A lifetime exclusion can only be granted once a shorter exclusion period has been completed.

7. GameSense is a third-party vendor that promotes positive behaviors and attitudes to reduce the negative effects of gambling addiction.

8. Designated agents are individuals who have completed training on processing applications for the VSE Program, per 205 CMR 133.03. Designated agents include GameSense agents, community-based treatment providers, and counselors.

In addition to the VSE Program, people affected by gambling addiction can enroll in PlayMyWay (PMW). PMW is a budgeting tool that allows players to track their spending on electronic gaming machines. PMW, which was available at PPC before the audit period began, was launched at MGM Springfield on March 31, 2022 and at EBH on September 12, 2022. Once enrolled, a player receives automatic notifications when approaching 50%, 75%, and 100% of their daily, weekly, or monthly budget, which the individual sets. They may then choose to stop at any point or keep playing. PMW allows enrollment, unenrollment, and budget adjustments at any time.

Also, gaming operators are required to send a monthly statement to patrons who have a rewards card or who participate in a cashless wagering system. This statement is mailed to the patron's physical address or emailed if an email address is provided. It includes details of total bets, wins, and losses.

Settlement Agreements

State employee settlement agreements can result from claims including, but not limited to, discipline and termination, discrimination, position classifications, employment conditions, promotion, vacation, and sick leave. Claims are reviewed by MGC's human resources office, legal office, and the executive director to determine whether external counsel is required. If no conflicts are identified, then the human resources office can handle them internally with consultation from the legal office. The legal office gathers and documents facts, determines the next steps, and decides whether external counsel is necessary to continue the review and make recommendations for MGC.

If conflicts are identified, then MGC consults external legal counsel to review and determine the level of the conflict. MGC is not required to obtain approval from the Attorney General or the Secretary of the Executive Office for Administration and Finance to use external counsel.

MGC follows 815 CMR 5.01, CTR's policy for employee settlements and judgments. The policy states,

(1) The purpose of 815 CMR 5.00 is to clarify the procedures by which agencies may preserve the availability of funds and may obtain access to funds for the payment of judgments and settlements.

Such clarification will:

(a) Aid agencies in making the payment of judgments and settlements a part of their current year operation or capital project budgeting; and

(b) Ensure faster payment of judgments and settlements, which will lessen the waiting time for successful claimants and litigants against the Commonwealth and its agencies and minimize the amount of any applicable interest.

(2) 815 CMR 5.00 shall identify funds legally available for payment, and shall minimize the need to use deficiency payments for judgments and settlements of claims against the Commonwealth. 815 CMR 5.00 shall also prevent any use by agencies of the Commonwealth of funds not legally available for payments of such judgments and settlements. If a settlement is warranted MGC must obtain approval from the Commissioners in an executive session to enter into the settlement agreement.

MGC management (including its human resources office, legal office, and executive director) must present the claim to the commissioners, and the process continues through a series of executive sessions to determine whether an employee settlement is warranted. If the commissioners approve the claim, then MGC prepares a "Settlement Agreement and General Release" document, which must be signed by the claimant and MGC's executive director, and the "Non-Tort Settlement/Judgment Payment Authorization Form," which must be signed by MGC's general counsel and chief fiscal officer and submitted to CTR for review and approval. The Gaming Control Fund is used to pay attorney's fees, costs, and punitive damages, which are directly paid to the attorney or claimant through the state accounting system (instead of through payroll).

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Gaming Commission (MGC) for the period July 1, 2020 through June 30, 2023. When examining MGC's employee settlements, we extended the audit period from July 1, 2018 through June 30, 2023. Additionally, when examining MGC's sports wagering in the Commonwealth, we extended the audit period from March 1, 2023 through March 31, 2024.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

| Objective | Conclusion |
|---|---|
| 1. Did MGC monitor the exclusion of minors and underage youths on the gaming floor in accordance with Sections 150.01 and 150.05 of Title 205 of the Code of Massachusetts Regulations (CMR)? | Yes |
| 2. Did MGC approve the sports wagering operators' internal control plans (ICPs) to ensure that measures were in place to prevent minors and underage youths from placing sports wagers in accordance with 205 CMR 250.01(2)? | Yes |
| 3. To what extent did MGC ensure that marketing materials from sports wagering operators were not disseminated or distributed to individuals under the age of 21 or to individuals who signed up for the Voluntary Self-Exclusion (VSE) Program, in accordance with 205 CMR 256.05? | To an insufficient extent; see Finding <u>1</u> |
| 4. Did MGC implement policies and procedures to support people affected by gambling addiction in accordance with 205 CMR 133.02(3)? | No; see Finding <u>2</u> |
| 5. Did MGC report all monetary employee settlement claims to the Office of the Comptroller of the Commonwealth (CTR) in accordance with 815 CMR 5.09 and CTR's "Settlement and Judgments Policy"? | No; see Finding <u>3</u> |

To accomplish our audit objectives, we gained an understanding of MGC's internal control environment relevant to our objectives by reviewing applicable agency policies and procedures and by interviewing MGC's staff members and management. We evaluated the design of controls over policies and procedures regarding regulating the exclusion of minor and underage youths from entering gaming floors, monitoring sports wagering, and advertising toward minors and self-identified individuals. We tested the operating effectiveness of internal controls related to the approval of gaming establishments' and sports wagering operators' internal control plans. Additionally, we confirmed that the application controls related to the approval and submission of a vulnerable person to the VSE list were working as intended.

In addition, to obtain sufficient, appropriate evidence to address our audit objectives, we performed the procedures described below.

Exclusion of Minors and Underage Youths from Gaming Floors

To determine whether MGC monitored the exclusion of minors and underage youths on the gaming floor in accordance with 205 CMR 150.01 and 150.05, we took the actions described below.

- We inspected the ICPs of the Commonwealth's three gaming establishments, which included the policy regarding the prevention of people younger than 21 from entering the gaming establishments, and we determined whether they were approved before beginning operations in the Commonwealth.
- We inspected all 108 Monthly Underage Incident Reports that the three gaming establishments submitted to MGC's Investigations and Enforcement Bureau (IEB) during the audit period to ensure that these Monthly Underage Incident Reports were submitted by the 10th day of the following month and included the number of people younger than 21 found in the gaming area, near tables, gaming at slot machines, consuming alcohol, turned over to the proper law enforcement authority, and escorted from the gaming area.
- We selected a random, nonstatistical sample⁹ of 35 minor and underage youth incidents out of the population of 239 minor and underage youth incidents that occurred during the audit period. We compared MGC's Individual Underage Incident Reports with the gaming establishments' Underage Incident Reports to ensure that dates, names, winnings, and losses for each underage incident were accurately recorded and investigated by MGC.

For this objective, we found no significant issues during our testing. Therefore, we concluded that, based on our testing, MGC complied with 205 CMR 150.01 and 150.05.

9. Auditors use nonstatistical sampling to select items for audit testing when a population is very small, the population items are not similar enough, or there are specific items in the population that the auditors want to review.

Sports Wagering Operator Internal Control Plans

To determine whether MGC approved the sports wagering operators' ICPs to ensure that measures were in place to prevent minors and underage youths from placing sports wagers for the period March 1, 2023 (the commencement date of sports wagering in the Commonwealth) through March 31, 2024 in accordance with 205 CMR 250.01(2), we took the following actions. First, we inspected all 13 sports wagering operators' ICPs and MGC's Board Meeting Minutes (dated January 30, 2023; March 9, 2023; April 25, 2023; May 16, 2023; and July 1, 2024) to determine whether each sports wagering operator's ICP received approval from MGC's executive director and the commissioners.

Additionally, we reviewed these incident reports to ensure that the sports wagering operators were following their ICPs by reporting minor and underage youth incidents to MGC. We inspected all 19 incident reports for the name, nature, unique numerical identifier, date of the complaint, the person against whom the complaint was made, and whether the actions committed to by the sports wagering operator were completed. Also, we compared the incident reports' Date Reported to the Date of Deposit to ensure that the amount lost was deposited into MGC's Sports Wagering Fund within 45 days of the date it was reported to MGC's IEB. Lastly, we selected a random, nonstatistical sample of 5 sports wagering operators out of the population of 13 sports wagering operators that were active during the audit period. For each of the sampled sports wagering operators, we inspected the 12 Monthly Incident Reports submitted to MGC's IEB to ensure that these Monthly Incident Reports were submitted by the 10th day of the following month.

For this objective, we found no significant issues during our testing. Therefore, we concluded that, based on our testing, MGC complied with 205 CMR 250.01(2).

Sports Wagering Advertising Toward Minors and Those Who Are Vulnerable

To determine to what extent MGC ensured that marketing materials from sports wagering operators were not disseminated or distributed to individuals under the age of 21 or to individuals who signed up for the VSE Program, in accordance with 205 CMR 256.05, we conducted interviews with MGC officials about their procedures for reviewing marketing materials. During our interview, MGC officials explained that they do not review or approve advertising materials before they are disseminated. Furthermore, MGC does not have a documented process for reviewing and approving these materials. MGC only reviews

advertising materials after they are published, and only if they are reported to MGC for noncompliance issues.

For this objective, we found certain issues during our testing; namely, that MGC did not comply with 205 CMR 256.05. See Finding 1 for more information.

VSE

To determine whether MGC implemented policies and procedures to support people affected by gambling addiction in accordance with 205 CMR 133.02(3), we took the following actions. First, we inspected the course training material, the course agenda, and the test provided to GameSense agents after the completion of the training to ensure that it covered ways to identify key signs of gambling addiction. Also, we inspected the training records for all 20 (100%) GameSense agents that were active during the audit period and compared the training start dates with the email confirmation that the training was completed, which the director of GameSense operations sent to MGC. GameSense agents' roles are crucial in supporting people affected by gambling addiction. GameSense agents receive training to recognize key signs that may indicate that a person is at risk of developing gambling addiction; this includes identifying behavioral cues such as mood swings experienced by a person while they gamble. Furthermore, these agents are trained to interact with at-risk individuals compassionately, nonjudgmentally, and with an understanding that these individuals may also be grappling with other issues.

For this objective, we found certain issues during our testing; namely, that MGC did not comply with 205 CMR 133.02(3). See Finding 2 for more information.

Settlement Agreements

To determine whether MGC reported all monetary employee settlement claims to the CTR in accordance with 815 CMR 5.09 and CTR's "Settlement and Judgments Policy," we took the following actions. First, we inspected the following documents for two (100%) employee settlement agreements reported to us by MGC for the audit period:

- the Settlement Agreement Release Form (which we inspected to ensure the finalization of the employee settlement between MGC and the employee) and
- the Non-Tort Settlement Judgment Payment Authorization Form (which we inspected to ensure that the employee settlement was approved by CTR before payment).

Also, as part of our internal control review, we interviewed MGC's officials to determine the steps MGC took when entering into a settlement agreement. During this interview, these MGC officials told us that MGC did not have a documented process for reviewing and finalizing its employee settlement agreements.

For this objective, we concluded that, based on our testing, MGC complied with 815 CMR 5.09. However, we noted that MGC was not in compliance with CTR's "Settlement and Judgments Policy." Specifically, we found certain issues during our testing regarding MGC's lack of a documented process for reviewing, entering into, and finalizing its employee settlement agreements during the extended audit period (July 1, 2018 through June 30, 2023). See Finding 3 for more information.

Data Reliability Assessment

Underage Incident Software

To determine the reliability of MGC's gaming floor underage incident report data and sports wagering incident report data from the incident software, we interviewed MGC officials who were familiar with the data. We also tested select information system controls (access controls, security management, configuration management, contingency planning, and segregation of duties).

Additionally, we compared the number of underage gaming floor incidents from the underage incident report to the number observed during the data extraction process. We also tested the underage incidents for gaming floor data for any spreadsheet issues (e.g., duplicate records or hidden objects such as rows or headers). Furthermore, we selected a random sample of 10 underage incidents from the underage incident report data. We compared the information from MGC's incident report software data to the report from the gaming establishments' incident report software (e.g., date, property name, and status) for agreement. We also selected a random sample of 10 underage incidents from the gaming establishments' incident report software, and traced back to MGC's incident report software information (e.g., date, property name, and status) for agreement.

For the sports wagering incident list, we compared the number of sports wagering incidents from the list to the number observed during the data extraction process for data from the period March 1, 2023 through March 31, 2024. We also tested the underage incidents for sports wagering incident data for any spreadsheet issues (e.g., duplicate records or hidden objects such as rows or headers). Also, we inspected all 19 sports wagering underage incidents data from sports wagering incident reports

submitted to MGC and traced these back to MGC's incident report software data (e.g., date, name of complainant, nature of complaint, names, and actions taken) for agreement.

To determine the reliability of the list of sports wagering operators, we interviewed MGC officials who were knowledgeable about the list. Additionally, we inspected MGC's Board Meeting Minutes from the period March 1, 2023 through March 31, 2024 to ensure that the sports wagering operators' names were included.

VSE List

To determine the reliability of the VSE list extracted from the vulnerable person voluntary self-excluding software that MGC administered during the audit period, we conducted interviews with MGC officials who were knowledgeable about the list. We tested select information system controls, including access controls, security management, configuration management, contingency planning, segregation of duties, and application control. Specifically, we confirmed whether the application controls related to the approval and submission of a vulnerable person to the VSE list worked as intended.

To confirm the accuracy of the VSE list, we selected a random sample of 20 applicants listed in MGC's VSE applicant list database for applications filed during the audit period and compared their names, dates of birth, and addresses to their identification cards. We also tested the VSE list for any worksheet errors, including duplicate records.

Settlement Agreement

To determine the reliability of the list of employee settlement data, we selected a random sample of 32 legal invoices and traced the legal name, invoice date, amount, invoice number, and whether these legal invoices were related to any employee settlements during the audit period to the list of legal expenses. Additionally, we inspected the list of complaints from the audit period to ensure that none of the complaints resulted in employee settlements by comparing the names on both the list of complaints and the list of employee settlements.

Based on the results of the data reliability assessment procedures described above, we determined that the information we obtained was sufficiently reliable for the purposes of our audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Massachusetts Gaming Commission did not monitor sports wagering operators' dissemination and distribution of advertising materials before they were issued to the public, as required by Section 256 of Title 205 of the Code of Massachusetts Regulations.

During the audit period, the Massachusetts Gaming Commission (MGC) did not monitor the dissemination and distribution of advertising materials by sports wagering operators before their release to the public, as required by Section 256 of Title 205 of the Code of Massachusetts Regulations (CMR). This lack of monitoring of advertising material resulted in 51 incident claims submitted to MGC, where advertising materials were distributed to underage youths and people affected by gambling addiction by sports wagering operators between March 1, 2023 and March 31, 2024.

One notable issue involved direct mail marketing materials being sent to underage youths and people affected by gambling addiction. Additionally, MGC's marketing compliance team found that various adverse advertising and marketing materials (e.g., advertisements that were false, misleading, or targeted to minors and/or people affected by gambling addiction) were disseminated to the public without the mandatory disclaimer indicating that participation was restricted to individuals 21 years of age or older.

Furthermore, there were instances where sports wagering operators disseminated or distributed marketing promotions that did not include responsible gaming information and guidelines for people affected by gambling addiction. For example, 17 advertisements did not provide people affected by gambling addiction with the Massachusetts Problem Gambling Helpline, neglecting the responsibility to provide support to those who may struggle with gambling-related issues.

Additionally, another instance was a marketing promotion which required individuals to place multiple bets over a span of 10 consecutive days. This promotion contradicts GameSense's guidelines for lower-risk gaming, which recommend limiting bets to a maximum of 4 days per month. This not only undermines efforts to promote responsible gambling but also sets a dangerous precedent for encouraging excessive betting behavior among people affected by gambling addiction.

Overall, these incidents highlight a lack of monitoring compliance and the need for MGC to enhance its oversight of sports wagering advertising to safeguard public interests and promote responsible gaming behavior.

Authoritative Guidance

According to 205 CMR 256.00,

256.04: False or Misleading Advertising

No Sports Wagering Operator, Sports Wagering Vendor, or third party marketing or advertising entity required to be licensed or registered pursuant to 205 CMR 234.00: Sports Wagering Vendors, nor any employee of any of the foregoing, may advise or encourage patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities which may notify a patron of the need to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.

Section 256.05 Advertising to Youth,

(1) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall state that patrons must be 21 years of age or older to participate; provided that branding consisting only of a display of an Operator's logo or trademark related to Sports Wagering shall not be required to comply with 205 CMR 256.05(1) unless it is, or is intended to be, display on signage or a fixed structure at a sports venue where it is likely to be viewed by persons younger than 21 years old. . . .

Section 256.06 Advertising to Other Vulnerable Persons

Advertising, marketing, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health or such other responsible gaming information required by the Commission ("Responsible Gaming Messaging").

Reasons for Issue

The provisions outlined in Section 256 of the CMR do not specifically mandate that MGC is required to conduct a review of the marketing materials produced by the sports wagering operator before these materials are disseminated and made available to the public. However, it is stated that the commissioners retain the authority to enforce corrective measures in cases where it determines that the marketing materials do not meet the standards and requirements set forth in section 205 CMR 256.00. This implies that, while prior review is not a prerequisite, MGC can still take action to address any noncompliance or issues identified post-distribution.

Recommendation

MGC should establish policies and procedures to ensure that all sports wagering operators' marketing materials are reviewed before being disseminated and distributed to the public. By implementing policies and procedures, MGC can monitor controls to ensure that these policies are adhered to.

Auditee's Response

The MGC appreciates the Auditor's work and comments on this topic and agrees that operator compliance regarding advertising and the content of advertisements is critical. To this end, the MGC has a track record of taking action in instances of advertising noncompliance, as documented on the MGC's website and shared during the audit process. However, as a result of the auditor's work during this audit, the MGC has engaged an independent auditor to review each licensee's controls for compliance with 205 CMR 256. The results of this audit will help the MGC further shape discussions around a risk-based approach to regulating licensee's advertising programs.

Additionally, we note [that in the "Reasons for Issue" section of the audit report] it states, "the provisions outlined in Section 256 of the CMR do not specifically mandate that MGC is required to conduct a review of the marketing materials produced by the sports wagering operator before these materials are disseminated and made available to the public."

Auditor's Reply

Based on its response, MGC is taking measures to address our concerns regarding this matter. As part of our post-audit review process, we will follow up on this matter in approximately six months.

2. The Massachusetts Gaming Commission did not ensure that all GameSense agents completed training before assisting people affected by gambling addiction, as required by Section 133 of Title 205 of the Code of Massachusetts Regulations.

MGC did not adequately ensure that all GameSense agents underwent the mandatory training required to assist people affected by gambling addiction throughout the audit period. During our review, we examined communication records, including emails, that confirmed the training completion status for a total of 20 GameSense agents. However, we discovered that documentation was missing for 10 (50%) of these agents, indicating that they had not completed the training as required.

The absence of proper documentation raises concerns about these agents' ability to effectively assist people affected by gambling addiction. Training is designed to equip GameSense agents with the essential knowledge and skills necessary for comprehensively understanding the complexities of gambling addiction. Without this foundational training, these agents may lack the critical insights needed to assist

people affected by gambling addiction. This gap in training could ultimately hinder MGC's efforts to educate and inform those at risk about the dangers associated with gambling, potentially exacerbating their vulnerabilities.

Authoritative Guidance

According to 205 CMR 133.02,

An application for placement on the voluntary self-exclusion list may only be accepted, and an intake performed, by an available designated agent. An individual may only become a designated agent by successfully completing a course of training approved and administered by the commission or its designee. The course of training shall include, at a minimum, instruction on completion of the application, instruction on maintaining confidentiality of personal protected information, information relative to problem gambling and resources, and an understanding of 205 CMR 133.00. A designated agent is any individual authorized by the commission for the purpose of administering the voluntary self-exclusion program including, but not limited to, a GameSense advisor; a health or mental health professional; or an employee of a gaming licensee, the commission, or other government entity. The commission may refuse to offer training to any individual whose service as a designated agent it determines would be contrary to the aims of 205 CMR 133.00.

Reasons for Issue

MGC officials stated that they do not retain certifications for GameSense agents. Although the course material has been provided to these agents, there is no formal exam associated with the training. Instead, the GameSense supervisor conducts an informal exam after the training is completed. MGC currently does not have policies and procedures, including a monitoring component, to ensure that all GameSense agents are certified before they assist people affected by gambling addiction.

Recommendation

MGC should develop and implement policies and procedures to ensure that GameSense agents are properly trained before assisting people affected by gambling addiction.

Auditee's Response

The MGC, in conjunction with our vendor, the Massachusetts Council on Gaming and Health, take the VSE program and the services it provides for persons at-risk and experiencing gambling harms seriously. The Council has a robust training program for its GameSense employees including training on the VSE requirements. The MGC has shared that programming, the dates of the trainings during the audit period, and the attendee lists from those sessions with the Office of the State Auditor. The Council's Executive Director attested in writing to the State Auditor's Office that

each employee received training prior to dealing with any VSE databases or enrollment. However, the MGC agrees with the Auditor's finding that a document certifying completion of the training for VSE would be best practice.

As such, the MGC has since implemented a Certificate of Completion that the vendor must provide to both the agent and the MGC before the agent may enroll a patron in the VSE program. Moving forward, the MGC VSE Program Manager shall maintain a copy of each agent's certification.

Auditor's Reply

Based on its response, MGC is taking measures to address our concerns regarding this matter. As part of our post-audit review process, we will follow up on this matter in approximately six months.

3. The Massachusetts Gaming Commission did not have an accountability process related to employee settlement agreements, including those containing non-disclosure, non-disparagement, or similarly restrictive clauses.

MGC did not have a documented process for reviewing, entering into, and finalizing its employee settlement agreements during the extended audit period, July 1, 2018 through June 30, 2023. During our testing, we identified one settlement in the Office of the Comptroller of the Commonwealth's (CTR's) Settlement and Judgment database that was not included on the settlement list provided by MGC. Furthermore, this settlement had not been approved by CTR before disbursement.

The table below summarizes the dates, amounts, and payment methods (if applicable) of the two employee settlement agreements that MGC entered into during the extended audit period, July 1, 2018 through June 30, 2023.

| Were Allegations Specified in the Agreement? | Settlement Date | Amount | Method of Payment | Did the Agreement Include Non-disclosure, Non-disparagement, or Similarly Restrictive Clauses? |
|--|-------------------|----------|---------------------|--|
| No* | November 10, 2020 | \$47,500 | CTR | No |
| No** | October 15, 2019 | \$2,885 | HR/CMS [†] | No |

* The settlement was allegedly related to a general human resources issue (for example, the sharing of sensitive information).

** The settlement was related to an employment action (for example, employee termination because of alleged performance issues).

† This stands for the Human Resources Compensation Management System.

If MGC does not have an accountability process for handling employee settlement agreements, especially those containing non-disclosure, non-disparagement, or similarly restrictive clauses, then it cannot ensure

that employee settlements are handled in an ethical, legal, and appropriate manner. If the MGC board of directors does not ensure adequate oversight regarding employee settlements, then the well-being and financial stability of MGC and its employees may be negatively impacted. Furthermore, public dollars could be abused to cover up harassment, discrimination, or other forms of misconduct, while protecting perpetrators of abuse.

Authoritative Guidance

According to 815 CMR 5.09,

(1) Responsibility of assigned attorney or staff person: Preparation of Reports. When litigation involving a monetary claim against the Commonwealth covered by these regulation terminates in a final Settlement or judgment with regard to such a claim, the agency attorney or staff person assigned to handle or monitor the claim shall do the following:

(a) Prepare a report indicating:

- 1. the principal amount of the settlement or judgment;*
- 2. the amount of any attorney's fee award;*
- 3. the amount of any interest award or accrued, and whether the interest continues to accrue post-judgment;*
- 4. a request for payment of the amount;*
- 5. a description of the basis for the request, (e.g., Court order or settlement agreement); and*
- 6. whether the assigned attorney desires to award the payment check to the claimant;*

(b) Forward the report with a copy of the settlement or judgment just described to the General Counsel of the [Office of the Comptroller of the Commonwealth] within the time frames set forth in [815 CMR 5.09(2)]. . . .

(2) Time for preparation of reports. The report . . . shall be sent by the agency attorney to the General Counsel of the Comptroller:

(a) if based on a settlement agreement, within 15 days of signing of the final settlement papers; or

(b) if based on a judgment against the Commonwealth or any agency, within fifteen days of the Commonwealth's decision not to appeal; or

(c) if based on a judgment against the Commonwealth or an agency, where the Commonwealth decides to take an appeal from the judgment, within fifteen days of any final order on appeal or in remand proceedings, if such remand proceedings are ordered.

Reasons for Issue

MGC officials stated that nonunion employee settlements were infrequent, varying in nature, and handled on a case-by-case basis.

Recommendation

MGC should develop, document, and implement a policy related to employee settlement agreements.

Auditee's Response

The MGC agrees with the Auditor's finding. As specified [in the "Settlement Agreements" section of the audit report], the MGC did comply and follow 815 CMR 5.09, the Comptroller's policy for payment of settlement agreements. However, tracking of said settlements were insufficient in one instance. To ensure future compliance, the MGC must establish a well-documented internal process for tracking the MGC's compliance with 815 CMR 5.09. In response to the draft finding, the MGC is in the process of drafting a policy on tracking settlement agreements for consideration by the full Commission.

Auditor's Reply

Based on its response, MGC is taking measures to address our concerns regarding this matter. As part of our post-audit review process, we will follow up on this matter in approximately six months.

OTHER MATTERS

Complimentary Services or Items and Promotional Gaming Credits: Gaming Licensee's Complimentary Distribution Program

During our audit of the Massachusetts Gaming Commission (MGC), we learned that two class action lawsuits were filed against Massachusetts gaming establishments. These lawsuits are believed to have arisen from discrepancies between the Code of Massachusetts Regulations (CMR) and the Massachusetts General Laws regarding the monthly win/loss statements that should be sent to reward cardholders.

According to Section 29 of Chapter 23K of the General Laws,

The gaming establishment shall issue to each patron who has been issued a rewards card or who participates in a cashless wagering system by the gaming establishment a monthly statement, mailed to the patron at the patron's physical mailing address, which shall include the patron's total bets, wins and losses; provided, however, that a patron shall be given the opportunity to decline receiving a monthly statement at the time the rewards card is issued or during initial participation in a cashless wagering system; provided further, that a patron may later opt out of receiving monthly statements by providing a written request to cease monthly statements to the gaming establishment. A gaming licensee who has implemented such a program or system shall annually report to the commission the amount of money spent and lost by patrons who have been issued a rewards card or who participated in a cashless wagering system, aggregated by zip code.

An official from MGC clarified that it is the commissioners' responsibility to adopt, amend, or repeal regulations necessary for implementing, administering, and enforcing this chapter as outlined in Section 4(37) of Chapter 23K of the General Laws.

During an open and public meeting held on August 10, 2017, the decision was made to interpret the General Laws such that an email address provided by a reward cardholder may be considered a valid "physical mailing address." While this interpretation is reflected in 205 CMR 138.13(4), which allows win/loss statements to be sent by email, it appears to directly contradict Section 29 of Chapter 23K of the General Laws, which requires that "a monthly statement [be] mailed to the patron at the patron's physical mailing address."

Currently, MGC lacks policies and procedures to ensure that monthly win/loss statements are sent to reward cardholders in accordance with 205 CMR 138.13(4) and Section 29 of Chapter 23K of the General Laws.

As a result, during the audit period, reward cardholders were not provided with clear and detailed monthly statements—either hardcopy or electronic versions—that outlined their wins and losses. This means that cardholders were deprived of crucial information that was essential for making informed decisions regarding their gaming habits and practicing responsible gaming. By not meeting these requirements, gaming establishments may enhance their profitability at the expense of their patrons' well-being. Moreover, MGC stands to gain financially, as it receives a portion of the revenue generated by these casinos. This situation raises concerns not only about the implications of prioritizing profit over player welfare but also about the effectiveness of regulatory oversight in promoting safe gaming practices, especially when that regulatory oversight appears inconsistent with the clear language of the General Laws.

According to 205 CMR 138.13(4),

The gaming licensee's complimentary distribution program shall include provisions ensuring that each patron who has been issued a rewards card by the gaming licensee (or its parent or other associated entity) in Massachusetts is issued a monthly statement, mailed to the patron at the patron's physical mailing address, which shall include the patron's total bets, wins and losses in Massachusetts in accordance with [Section 29 of Chapter 23K of the General Laws]. For purposes of 205 CMR 138.13(4), the following shall apply:

(a) An email address provided by the patron at the time a rewards card is applied for may be considered a physical mailing address. If a gaming licensee will provide the required notices via email, its program submission shall describe the manner in which the email contact list will be compiled and maintained.

MGC officials believe that the General Laws (which require mailings to a physical address) and the CMR (which permits emails to suffice for mailings to physical addresses) are not contradictory. MGC reports that it has used its lawful discretion to interpret the statute in a way that would benefit the Commonwealth as a whole.

MGC should implement a policy and procedure that includes monitoring to ensure that monthly win/loss statements are provided to reward cardholders to promote responsible gaming. We further recommend that MGC seek additional review of 205 CMR 138.13(4) to help ensure the accuracy of MGC's decision to interpret the General Laws in a manner that appears, on its face, to contradict the expressed requirements of that law.

Auditee's Response

In response to the audit's comments under "Other Matters" the Commission has the right, to interpret its own statute and believes that electronic communications are necessary and sufficient.¹

[Footnote:]

- 1. An administrative agency has considerable leeway in interpreting its governing statute. [Student No. 9 v. Board of Educ., 440 Mass. 752, 762 (2004)] A court must give substantial deference to the agency's interpretation of the statute and apply all rational presumptions in favor of the regulation's validity. Id. at 762–63, 802 N.E.2d 105. It "will not declare a regulation void unless its provisions cannot, in any appropriate way, be interpreted in harmony with the legislative mandate." Id. at 763, 802 N.E.2d 105; see also Biogen IDEC MA, Inc., 454 Mass. at 187, 908 N.E.2d 740.*

*City of Bos. v. Massachusetts Gaming Comm'n, No. 2015 CV 0012, 2015 WL 9805753, at *12 (Mass. Super. Dec. 3, 2015); see also Genworth Life Insurance Company v. Commissioner of Ins., 95 Mass. App. Ct. 392, 395-96 (2019), quoting Commerce Ins. Co. v. Commissioner of Ins., 447, Mass 478, 481 (2006) (Courts give substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement)*

Auditor's Reply

We recommend that MGC implement a policy and procedure to ensure that monthly win/loss statements are provided to reward cardholders. Additionally, MGC should seek further review of 205 CMR 138.13(4) to help ensure the accuracy of MGC's decision to interpret the General Laws in a way that appears to contradict the stated requirements of that law; namely, that statements be "mailed to the patron at the patron's physical mailing address."