DEC 19 2005

TO: Dennis G. Smith
Director, Center for Medicaid and State Operations
Centers for Medicare & Medicaid Services

FROM: Joseph E. Vengrin
Deputy Inspector General for Audit Services

SUBJECT: Audit of Medicaid School-Based Services in Texas (A-06-02-00047)

Attached is an advance copy of our final report on Medicaid school-based services in Texas. We will issue this report to Texas within 5 business days. This audit was part of a multistate audit of claims for school-based health services.

Our objective was to determine whether the Texas Health and Human Services Commission (the State agency) claimed Federal reimbursement for school-based health services in accordance with Federal and State requirements.

Of the 2,175 claims sampled, 991 (containing 1,146 errors) did not comply with Federal and State requirements. The State agency claimed reimbursement for services that were (1) not allowable because of programmatic deficiencies (804 errors) or (2) rendered by unlicensed providers (342 errors). As a result, we estimate that the State agency inappropriately claimed at least $8,749,158 in Federal reimbursement during State fiscal year 2000.

In our opinion, these errors occurred because (1) the State agency did not adequately monitor the claims submitted by the school districts to ensure that the services billed were in compliance with Federal and State requirements; (2) the State agency issued improper guidance; and (3) the school districts did not collect, maintain, or verify that adequate supporting documentation existed for each provider.

Our review also noted that the school districts were overpaid $53,235 for 3,993 counseling services because they were paid more than the maximum allowable fee established by the State agency.

We recommend that the State agency:

- refund to the Federal Government $8,749,158 for unallowable services,
- work with the Centers for Medicare & Medicaid Services to determine the financial impact to the Federal Government for overpayments made by the State agency for counseling services and make an appropriate refund,

- review periods after our audit period and make appropriate financial adjustments for any unallowable services,

- routinely monitor claims from school districts for compliance with Federal and State requirements,

- direct school districts to ensure that providers of services meet licensing requirements, and

- issue guidance requiring school districts to bill only for allowable Medicaid services rendered by licensed individuals.

In written comments on the draft report, State agency officials said that before seeking any recoupment from any of the sampled school districts, committing to reimbursement of any portion of the amounts associated with the errors we cited, or determining detailed action plans to resolve outstanding issues, they would need to complete a number of steps. As part of that process, the officials requested information from our office. We provided the requested information on December 2, 2005. Based on the State agency's comments, we continue to believe that our findings and recommendations are valid.

If you have any questions or comments about this report, please call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or Gordon L. Sato, Regional Inspector General for Audit Services, Region VI, at (214) 767-9206. Please refer to report number A-06-02-00047.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services
1100 Commerce, Room 686
Dallas, TX 75242

DEC 21 2005

Report Number: A-06-02-00047

Mr. Albert Hawkins
Executive Commissioner
Health and Human Services Commission
P. O. Box 13247
Austin, Texas 78711

Dear Mr. Hawkins:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Audit of Medicaid School-Based Services in Texas." A copy of this report will be forwarded to the action official noted on the next page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. § 552, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to the public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-06-02-00047 in all correspondence relating to this report.

Sincerely yours,

Gordon L. Sato

Gordon L. Sato
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to HHS Action Official:

James R. Farris, M.D.
Regional Administrator
Centers for Medicare & Medicaid Services
1301 Young Street, Suite 714
Dallas, Texas 75202

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

AUDIT OF MEDICAID SCHOOL-BASED SERVICES IN TEXAS

Daniel R. Levinson
Inspector General

DECEMBER 2005
A-06-02-00047

Office of Inspector General

http://oig.hhs.gov

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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR Part 5.)

OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.

EXECUTIVE SUMMARY

OBJECTIVE

Our objective was to determine whether the Texas Health and Human Services Commission (the State agency) claimed Federal reimbursement for school-based health services in accordance with Federal and State requirements.

SUMMARY OF FINDINGS

Of the 2,175 claims sampled, 991 (containing 1,146 errors) did not comply with Federal laws and regulations, Federal guidance, State regulations, or the Medicaid State plan. The State agency claimed reimbursement for services that were (1) not allowable because of programmatic deficiencies (804 errors) or (2) rendered by unlicensed providers (342 errors). As a result, we estimate that the State agency inappropriately claimed at least $8,749,158 in Federal reimbursement during State fiscal year (SFY) 2000.

In our opinion, these errors occurred because (1) the State agency did not adequately monitor the claims submitted by the school districts to ensure that the services billed were in compliance with Federal and State requirements; (2) the State agency issued improper guidance; and (3) the school districts did not collect, maintain, or verify that adequate supporting documentation existed for each provider.

Our review also noted that the school districts were overpaid $53,235 for 3,993 counseling services because they were paid more than the maximum allowable fee established by the State agency.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government $8,749,158 for unallowable services,
- work with CMS to determine the financial impact to the Federal Government for overpayments made by the State agency for counseling services and make an appropriate refund,
- review periods after our audit period and make appropriate financial adjustments for any unallowable services,
- routinely monitor claims from school districts for compliance with Federal and State requirements,
- direct school districts to ensure that providers of services meet licensing requirements, and

- issue guidance requiring school districts to bill only for allowable Medicaid services rendered by licensed individuals.

STATE'S COMMENTS

In their September 9, 2005, reply to our draft report, State agency officials said that before seeking any recoupment from any of the sampled school districts, committing to reimbursement of any portion of the amounts associated with the errors we cited, or determining detailed action plans to resolve outstanding issues, they would need to complete a number of steps. As part of that process, the officials requested information from our office. The State agency's comments are included as Appendix D.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

We provided the requested information on December 2, 2005. Based on the State agency's comments, we continue to believe that our findings and recommendations are valid.

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BACKGROUND

The Medicaid Program

Under Title XIX of the Social Security Act (the Act), the Medicaid program pays the health care costs of persons who qualify because of medical condition, economic condition, or other qualifying factors. Medicaid costs are shared between the Federal Government and participating States. Within the Federal Government, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program.

To participate in Medicaid, a State must submit and receive CMS's approval of a State plan. The State plan is a comprehensive document describing the nature and scope of the State's Medicaid program and the State's obligations to the Federal Government. Medicaid pays for medically necessary services that are specified in Medicaid law when included in the State plan and when provided to individuals eligible under the State plan.

Medicaid Coverage of School Health Services

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) amended section 1903(c) of the Act to permit Medicaid payments for medical services provided to children under the Individuals with Disabilities Education Act (IDEA) through a child's individualized education plan (IEP) or an individualized family service plan.

In August 1997, CMS issued a school-based guide entitled "Medicaid and School Health: A Technical Assistance Guide" (the Technical Guide). According to the Technical Guide, school health-related services included in an IEP may be covered if all relevant statutory and regulatory requirements are met. In addition, the Technical Guide provides that a State agency may cover services included in an IEP as long as (1) the services are listed in section 1905(a) of the Act and are medically necessary; (2) all Federal and State regulations are followed, including those specifying provider qualifications; and (3) the services are included in the State plan or are available under the Early and Periodic Screening, Diagnostic and Treatment Medicaid benefit. Covered services may include but are not limited to physical therapy, occupational therapy, speech pathology/therapy services, psychological counseling, nursing, and transportation services.

Texas's Medicaid Program

In Texas, the Health and Human Services Commission (the State agency) is responsible for operating the Medicaid program. The Texas Education Agency (TEA) shares responsibility for the implementation and administration of the Medicaid school-based program with the State agency. In general, under the school-based program, children under the age of 21 receive school health services from their school districts.

The Federal share of school health claims ranged from 61.36 percent to 62.45 percent during our audit period. Under the State's Medicaid program, only the Federal share is actually paid to the school health providers. The State share is provided by the existing State and local special education funds. School districts are paid based on units of service.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency claimed Federal reimbursement for school-based health services in accordance with Federal and State requirements.

Scope and Methodology

Our review covered Texas school districts' activities related to school-based Medicaid services during State fiscal year (SFY) 2000, which ended August 31, 2000. During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we limited our internal control review to the objective of our audit.

We discussed our objective with the State agency and CMS central and regional officials to identify requirements for Medicaid school-based health services. We also interviewed State agency officials and selected school district personnel and reviewed documentation to determine whether:

- services for each selected beneficiary/month were appropriately provided, supported, and billed in accordance with Federal and State requirements;

- services were included in the IEPs;

- school districts' health service providers met State and Federal qualification requirements; and

- the State share certification for SFY 2000 was correct.

We reviewed a statistical sample of 30 beneficiary/months (all paid services provided to the beneficiary during the selected month) at each of 11 selected school districts. We reviewed payments totaling $39,382 (Federal share) from a statistically valid sample of 330 beneficiary/months, or 2,175 claims, during the year. (See Appendix A for our sampling methodology and Appendix B for our selected school districts by stratum.)

We used a stratified multistage variable appraisal program to estimate the dollar impact of the improper Federal funding claimed.

We performed fieldwork at the State agency and at the Houston school district. We also obtained information from 10 other school districts.

We conducted our audit in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Of the 2,175 school-based claims in our statistically valid sample, 991 did not comply with Federal and State requirements. The 991 claims contained 1,146 payment errors.

In our opinion, these errors occurred because (1) the State agency did not adequately monitor the claims submitted by the school districts to ensure that the services billed were in compliance with Federal and State requirements; (2) the State agency issued improper guidance; and (3) the school districts did not collect, maintain, or verify that adequate supporting documentation existed for each provider. As a result, we estimate that the State agency inappropriately claimed at least $8,749,158 in Federal reimbursement during SFY 2000.

Our review also noted that the school districts were overpaid $53,235 for 3,993 counseling services because they were paid more than the maximum allowable fee established by the State agency.

STATUTES, REGULATIONS, AND GUIDANCE

Below are the Federal and State laws, regulations, and guidelines that applied to our review of school-based services.

Federal Requirements

Section 1903(c) of the Act permits Medicaid payments for medical services that are provided to children under IDEA and included in an IEP. In general, school health-related services included in an IEP may be covered if all relevant requirements are met.

Regulations at 42 CFR § 440.110 require services for occupational, physical, and speech therapy to be prescribed/referred by a physician or another licensed practitioner of the healing arts. Also, 42 CFR § 440.60 requires that medical care or any other type of remedial care be provided by licensed practitioners within the scope of their practice as defined under State law.

Regulations of the U.S. Department of Education (34 CFR § 300.343) and part B, section 614 of IDEA require school districts to conduct IEP meetings (also known as admission, review, and dismissal meetings in Texas) for the purpose of developing, reviewing, and revising the IEP of a child with a disability. These meetings are educational services reimbursable under IDEA and are not reimbursable as medical services by Medicaid.

Office of Management and Budget (OMB) Circular A-87 establishes principles and standards for determining allowable costs incurred by State and local governments under Federal awards. Attachment A, section C.3.a of OMB Circular A-87 states that costs may be charged only in accordance with relative benefits received.

Centers for Medicare & Medicaid Services Guidance

CMS's Technical Guide, issued in August 1997, provides information and technical assistance to school health services programs seeking Medicaid funding. It provides that payments for assessment services may be available under Medicaid but states, "Medicaid payment is only available for the part of the assessment that is medical in nature and provided by qualified Medicaid providers." The Technical Guide further states, "In order for schools or school providers to participate in the Medicaid program and receive Medicaid reimbursement, they must meet the Medicaid provider qualifications."

The CMS central office issued a letter to State Medicaid Directors, dated May 21, 1999, stating that transportation may be billed only for days that an allowable or billable Medicaid service other than transportation is provided.

State Plan Requirements

On September 28, 1992, CMS approved Texas's State plan amendment 90-42 for school health and related services for adoption into the Medicaid State plan effective January 1, 1991. Pursuant to the State plan amendment, State agency officials agreed to bill for services that were (1) medically necessary and reasonable, (2) included in the child's IEP, and (3) provided by a qualified provider.

The State plan requires that a qualified provider of services (1) meet licensing requirements that are consistent with Federal/State laws and regulations; (2) maintain records to ensure compliance with the IEP; (3) comply with the terms of all regulations, rules, handbooks, standards, and guidelines published by the State agency; (4) comply with all applicable Federal, State, and local laws and regulations regarding the services provided; (5) possess a valid license; and (6) bill for services in the manner and format prescribed by the State agency.

State Regulations

The Texas Occupations Code § 401.054(c) states:

> A person affected by this section [§ 401.054(c)] who performs work as a speech-language pathologist or audiologist in addition to performing the person's duties within an agency, institution, or organization under the jurisdiction of the Texas Education Agency is required to hold a license issued by the board [State Board of Examiners for Speech-Language Pathology and Audiology] unless that work is limited to speech and hearing screening procedures performed without compensation.

The Texas Occupations Code § 401.301 provides that a person may not practice speech-language pathology unless the person holds a license issued by the State Board of Examiners for Speech-Language Pathology and Audiology under subchapter G of § 401.301. The Texas Occupations Code §§ 401.311 and 401.312 require that interns and assistants be licensed by the State Board of Examiners for Speech-Language Pathology and Audiology and that licensed assistants work under the direction of a licensed speech-language pathologist.

In regard to counseling services, the Texas Occupations Code, chapter 503, section 503.002(4) states:

> "Licensed professional counselor" means a person who holds a license issued under this chapter and who:
> (A) represents the person to the public by any title or description of services incorporating the words "licensed counselor" and offers to provide professional counseling services to any individual . . . for compensation, implying that the person offering the services is licensed and trained, experienced, or expert in counseling; or
> (B) engages in any practice of counseling.

In regard to psychological services, the Texas Education Code, chapter 21, section 21.003(b) states:

> A person may not be employed by a school district as [a] . . . school psychologist, associate school psychologist . . . unless the person is licensed by the State agency that licenses that profession. A person may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate State agency.

The Texas Occupations Code § 301.251 provides that a person may not practice nursing unless the person holds a license issued by the Texas Board of Nurse Examiners.

The Texas Occupations Code § 453.201 provides that a person may not practice physical therapy or practice as a physical therapy assistant unless the person holds a license issued by the Texas Board of Physical Therapy Examiners.

State Guidance

The State plan requires that a qualified provider of services comply with the terms of all regulations, rules, handbooks, standards, and guidelines published by the State agency.

The Texas "Medicaid Provider Procedures Manual" (the provider manual) in effect during our audit period outlines the State agency requirements related to services that Texas school districts provide to Medicaid-eligible individuals. These requirements cover such areas as record retention, eligibility verification, and benefits and limitations.

The provider manual states that, "Services are reimbursed according to maximum allowable fees established by the [State agency]. Reimbursement is limited to the Federal matching percentage of the maximum allowable fee . . . ." The provider manual also requires that speech, physical, and occupational services be consistent with 42 CFR § 440.110 to be reimbursed and that a Medicaid service other than transportation be provided on the day transportation is billed.

DEFICIENCIES NOTED IN SAMPLED CLAIMS

We determined that 991 of the 2,175 school-based claims sampled did not comply with Federal and State requirements. The 991 claims contained 1,146 payment errors. The schedule below summarizes the deficiencies noted during our review and the number of errors for each type of deficiency. Appendix C shows our determinations on the sampled claims at the 11 school districts.

Type of Deficiency	Number of Errors[1]
Programmatic Deficiencies:	
1. Prescription/Referral Requirements Not Met	357
2. Transportation Requirements Not Met	248
3. Services Not Included in the IEP	87
4. No IEP	58
5. No Medicaid Service Provided	42
6. Education Services Not Reimbursable Under the Medicaid Program	9
7. Services Overbilled	3
Subtotal	**804**
Unlicensed Providers:	
8. Speech Services Rendered by Unlicensed Providers	175
9. Counseling and Psychological Services Rendered by Unlicensed Providers	108
10. Nursing and Physical Therapy Services Rendered by Unlicensed Providers	40
11. Nonmedical Assessment Services Rendered by Unlicensed Providers	19
Subtotal	**342**
Total Errors	**1,146**

Programmatic Deficiencies

We identified overpayments in 730 claims containing 804 errors. The sections below discuss the seven types of programmatic deficiencies and the criteria that we applied in determining whether claims complied with Federal and State requirements.

[1]Although some of the claims for which we are recommending a disallowance contained more than one error, we did not question more than 100 percent of the Federal Medicaid reimbursement amount for those claims.

1. Prescription/Referral Requirements Not Met

Federal regulations require a prescription for physical and occupational therapy and a referral for speech services by a physician or another licensed practitioner of the healing arts (42 CFR § 440.110). The provider manual requires that speech, physical, and occupational services must be consistent with 42 CFR § 440.110 to be reimbursed.

We identified 357 errors in claims for which there were no prescriptions or referrals.

2. Transportation Requirements Not Met

A CMS central office letter to State Medicaid Directors, dated May 21, 1999, requires that transportation be billed only for days that an allowable or billable Medicaid service other than transportation is provided. The provider manual also requires that a Medicaid service other than transportation be provided on the day for which transportation is billed.

We identified 248 errors in claims for which transportation was billed even though a billable Medicaid service was not provided on the same day.

3. Services Not Included in the Individualized Education Plan

Section 1903(c) of the Act requires that medical services provided to children under IDEA be included in an IEP. The Texas State plan also requires that services be included in the IEP.

We found 87 errors in claims for services not included in the IEP.

4. No Individualized Education Plan

Section 1903(c) of the Act permits Medicaid payments for school health services provided to children that are identified in an IEP. Part B of IDEA, which established the concept of the IEP, requires that school districts prepare, for each child with special needs, an IEP that specifies all needed special education and related services. The "related services" provided for in the IEP are often medical services that are potentially reimbursable by Medicaid. Medicaid will pay for medical services provided pursuant to an IDEA-required IEP if the services are listed in the IEP and meet all other Medicaid requirements.

The Texas State plan also requires that services be included in the IEP.

Additionally, the CMS Technical Guide states that it is CMS's policy that health-related services provided in a school may be covered under Medicaid only "if all relevant statutory and regulatory requirements are met."

We identified 58 errors in claims for services for beneficiaries who did not have an IEP.

5. No Medicaid Service Provided

Pursuant to Medicaid State operations letter 91-51, dated June 11, 1991, Medicaid pays for medically necessary services that are specified in Medicaid law when included in the State plan and when provided to eligible individuals.

We identified 42 errors in claims for services on a day when the beneficiary was absent from school or no medical service was provided. For example, a provider's calendar showed that a service was not provided because all students in the class were attending a party.

6. Education Services Not Reimbursable Under the Medicaid Program

Pursuant to 34 CFR § 300.343 and part B, section 614 of IDEA, school districts are required to conduct IEP meetings. These are educational services reimbursable under IDEA and are not reimbursable as medical services under the State Medicaid plan.

We identified nine errors in claims at three school districts for IEP meetings.

7. Services Overbilled

Pursuant to Medicaid State operations letter 91-51, dated June 11, 1991, Medicaid pays for medically necessary services that are specified in Medicaid law when included in the State plan and when provided to eligible individuals.

We identified three errors in claims for which the units of service billed exceeded those actually provided. For example, a school district billed four units of service, while the provider's service documentation showed that only two units of service had been rendered.

Unlicensed Providers

Our review identified overpayments for 342 claims containing 342 errors for unlicensed providers. The sections below discuss the four types of errors related to unlicensed providers and the criteria that we applied in determining whether claims complied with Federal and State requirements.

8. Speech Services Rendered by Unlicensed Providers

The State plan requires that a qualified provider of services must meet licensing requirements that are consistent with Federal/State laws and regulations. The Texas Occupations Code (§§ 401.054(c), 401.301, 401.311, and 401.312) provides that all persons providing speech pathology and audiology services must possess a valid State license.

We identified 175 errors for speech services rendered by providers who did not possess an appropriate State license as required by the State plan and State law.

9. Counseling and Psychological Services Rendered by Unlicensed Providers

We found a total of 108 errors, of which 107 were for services rendered by school counselors and 1 was for a service rendered by an associate school psychologist. None of these providers met Medicaid provider qualifications, i.e., they did not have a license from the applicable State licensing agency. The services rendered by these individuals were not provided within the scope of their practice under State law as required by 42 CFR § 440.60; the Texas Occupations Code, chapter 503, section 503.002(4); and the Texas Education Code, chapter 21, section 21.003(b).

10. Nursing and Physical Therapy Services Rendered by Unlicensed Providers

Pursuant to the Texas State plan, a qualified provider of services must possess a valid license and must meet licensing requirements that are consistent with Federal/State laws and regulations. The Texas Occupations Code provides that all persons providing nursing (§ 301.251) and physical therapy (§ 453.201) services must possess a State license.

We found 40 errors for services rendered by providers who did not possess licenses: 38 errors for nursing services and 2 errors for physical therapy services. In addition to querying the school districts for evidence of licenses, we checked with the licensing agencies and found that the individuals did not possess valid licenses.

11. Nonmedical Assessment Services Rendered by Unlicensed Providers

According to the CMS Technical Guide, Medicaid reimbursement is not available if evaluations or assessments of beneficiaries are for educational purposes. Medicaid payments are available only for the part of the assessment that is medical in nature and provided by qualified Medicaid providers. Pursuant to the Texas State plan, a qualified provider of services must possess a valid license.

School districts billed 19 claims, containing 19 errors, for nonmedical assessment services provided by unlicensed educational diagnosticians. Based on the limited available documentation provided for educational diagnosticians' services, educational diagnosticians rendered educational testing and assisted in summarizing other medical providers' assessments/evaluations for IEP purposes. Furthermore, no State licensure board exists for educational diagnosticians. As such, educational diagnosticians cannot obtain a State medical license to provide and bill Medicaid services.

Causes of Deficiencies in Sampled Claims

As discussed below, we found three main causes of the 1,146 errors.

The State Agency Did Not Adequately Monitor Claims. The State agency did not adequately monitor the claims submitted by the school districts to ensure that the services billed complied with Federal and State requirements. Although the State agency conducted reviews, these reviews were infrequent. Over a 2-year period, which included

our audit period, the State agency conducted three reviews that it believed did not identify issues severe enough to require recouping Medicaid reimbursement.

State Agency Guidance Was Improper. The errors for counseling and psychological services provided by unlicensed providers resulted from improper State agency guidance to the school districts. The provider manual improperly listed TEA-certified individuals (those with teaching certificates) as allowable providers of counseling, psychological, and assessment services.

School Districts Failed To Collect, Maintain, or Verify Provider Licensing Documentation. The school districts billed Medicaid for services rendered by unlicensed providers because they did not collect, maintain, or verify that all adequate supporting documentation existed for each provider.

COUNSELING CLAIMS PAID IN EXCESS OF THE ALLOWABLE AMOUNTS

The State plan requires that a qualified provider of services comply with the terms of all regulations, rules, handbooks, standards, and guidelines published by the State agency. The provider manual states that "Services are reimbursed according to maximum allowable fees established by the [State agency]."

In reviewing the counseling claims in our sample, we found that nine claims were overpaid because the school districts were paid more than the allowable maximum fee established by the State agency. After noting these errors, we asked Texas's fiscal contractor to provide us with all the counseling claims paid by the State agency to school districts during our audit period. We determined that the school districts were overpaid $53,235 on 3,993 of the counseling claims paid.

State agency officials could not explain the overpayments, and our analysis of the overpayments did not disclose why they occurred. State agency officials acknowledged that the overpayments occurred.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government $8,749,158 for unallowable services,
- work with CMS to determine the financial impact to the Federal Government for overpayments made by the State agency for counseling services and make an appropriate refund,
- review periods after our audit period and make appropriate financial adjustments for any unallowable services,

- routinely monitor claims from school districts for compliance with Federal and State requirements,

- direct school districts to ensure that providers of services meet licensing requirements, and

- issue guidance requiring school districts to bill only for allowable Medicaid services rendered by licensed individuals.

STATE AGENCY'S COMMENTS

In their September 9, 2005, reply to our draft report, State agency officials said that before seeking any recoupment from any of the sampled school districts, committing to reimbursement of any portion of the amounts associated with the errors we cited, or determining detailed action plans to resolve outstanding issues, they would need to take a number of steps. The officials indicated that they would (1) determine whether the criteria are correct, considered in the proper context, and applicable to each identified exception; (2) examine and confirm each error; (3) determine the errors, the amount of overpayment, and the "extended dollar impact" for each school district; and (4) replicate the statistical extrapolation and recalculate the results using the State agency's confirmed exceptions within each stratum and school district. The officials requested information from our office to accomplish these tasks. The State agency's comments are included in their entirety as Appendix D.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

We provided the requested information on December 2, 2005. Based on the State agency's comments, we continue to believe that our findings and recommendations are valid.

OTHER MATTERS: STATE SHARE OF MEDICAID SERVICES

According to the provider manual, to participate in the Texas school-based services program, each school district must certify the expenditure of State and/or local funds to receive Federal funds for certain services provided to Medicaid-eligible clients. Expenditures used to validate the State and local shares must be related to specific school-based service expenses for that school district. The school districts certify the State and local funds expended on the certification statement. During SFY 2000, the 11 selected school districts certified State/local funds totaling $4,691,722.

Our review of the 11 selected school districts' certification statements identified issues related to the following two areas: (1) unallowable expenditures were included as matching expenditures, and (2) the funding source of matching expenditures could not be identified.

It was beyond the scope of our audit to review the allowability of the school district's matching costs.

UNALLOWABLE EXPENDITURES WERE INCLUDED AS MATCHING EXPENDITURES

OMB Circular A-87, Attachment A, section C requires costs charged to a Federal award to be allowable, reasonable, and allocable to the Federal award in accordance with the relative benefits received. The provider manual states that, "Any budgeted expenditures that can be tracked back to the specific SHARS [school health and related services] can be used to validate State and local funds expenditures."

Six school districts used unallowable expenditures related to special education and health-related services in meeting their State share. Special education expenditures may not be included in the State match expenditures because they are not related to Medicaid services. Further, not all health-related service expenditures, such as provider salaries, should be allocated to Medicaid services because school districts provide health services to all students, not just Medicaid-eligible students.

We could not determine why the school districts included expenditures not related to the Medicaid school-based services program.

FUNDING SOURCE OF MATCHING EXPENDITURES COULD NOT BE IDENTIFIED

Federal regulations at 42 CFR § 433.51(a) state, "Public funds may be considered as the State's share in claiming [Federal funding] . . . . " Also, pursuant to 42 CFR § 433.51(b) and (c), public funds that the contributing public agency certifies as representing expenditures eligible for Federal funding are funds that the State agency may use as its share in claiming Federal funding. The public funds must not be Federal funds unless authorized by Federal law to be used to match other Federal funds.

The provider manual specifies that school districts must maintain documentation to identify the source of funds used to pay for the costs of delivering the services claimed. This documentation is necessary to confirm that sufficient State or local funds were expended to obtain the Federal match and that no Federal funds were used for matching purposes.

Our limited review showed that school districts paid expenditures from the general fund, which included both Federal and State revenues.

The State agency instructed the school districts not to include expenditures paid with Federal funds; however, we could not determine if the school districts included expenditures paid from Federal or State and local funds as matching expenditures because they did not identify or track the sources of funds used to pay the expenditures from the general fund. Expenditures that school districts pay from Federal funds would not be allowable matching expenditures.

APPENDIXES

SAMPLING METHODOLOGY

OBJECTIVE

Our objective was to determine whether the State agency claimed reimbursement for school-based health services in accordance with Federal and State requirements.

POPULATION

The sampling population was months of service for beneficiaries who received Medicaid school-based health services in Texas school districts and cooperatives during SFY 2000 (September 1, 1999, through August 31, 2000). We limited the population to paid claims and to those districts and cooperatives that were reimbursed more than $10,000 during the 12 months ended August 31, 2000.

SAMPLING FRAME

The sampling frame was a listing of all school districts and cooperatives in Texas that participated in the Medicaid school-based services program and that were reimbursed more than $10,000. Once we selected eight districts and/or cooperatives, we asked the Texas Department of Health to provide a list of monthly charges for beneficiaries who received Medicaid school-based health services from September 1, 1999, through August 31, 2000.

SAMPLE UNIT

The sample unit was a beneficiary/month for which school-based services were provided during our audit period.

SAMPLE DESIGN

We used a stratified, multistage design. We sampled three school districts with a high amount of reimbursement for Medicaid school-based services during our audit period. Each of those districts made up a stratum (3 strata) from which we randomly selected 30 sample items (90 sample items for the 3 strata). The fourth stratum was the rest of the school districts and cooperatives with more than $10,000 in Medicaid school-based reimbursement. We randomly pulled 8 primary units (school districts or cooperatives) from the fourth stratum and then pulled 30 beneficiary/months from each of those primary units.

SAMPLE SIZE

We selected 30 sample units (beneficiary/months) from each of the first 3 strata and from the 8 primary units of the fourth stratum for a total of 330 sample units.

ESTIMATION METHODOLOGY

We used the Office of Inspector General, Office of Audit Services Statistical Software Variable Appraisal program for stratified multistage sampling to project the costs of the unallowable services.

APPENDIX B

SELECTED SCHOOL DISTRICTS BY STRATUM: UNALLOWABLE COST PROJECTION

	Total Sampling Units (Beneficiary/ Months)	Sample Size	Stratum Point Estimate of Unallowable Costs	Standard Error
1st Stratum				
Houston Independent School District	25,433	30	$3,575,388	
2nd Stratum				
Austin Independent School District	8,363	30	176,273	
3rd Stratum				
Dallas Independent School District	10,417	30	1,112,095	
4th Stratum			26,423,337	
San Antonio Independent School District	11,377	30		
Texarkana Independent School District	767	30		
Fort Bend Independent School District	728	30		
Center Independent School District	588	30		
Belton Independent School District	1,381	30		
La Marque Independent School District	709	30		
Northeast Texas Tri District Cooperative	478	30		
Special Services Cooperative	931	30		
Total	**61,172**	**330**	**$31,287,093**	**$13,702,091**

Stratified Multistage Variable Appraisal

Point Estimate	Standard Error
$31,287,093	$13,702,091

90% Confidence Interval

Lower Limit	Upper Limit
$8,749,158	$53,825,028

OFFICE OF INSPECTOR GENERAL'S REVIEW DETERMINATIONS ON THE SAMPLED CLAIMS

APPENDIX C

LEGEND

1	Prescription/Referral Requirements Not Met
2	Transportation Requirements Not Met
3	Services Not Included in the IEP
4	No IEP
5	No Medicaid Service Provided
6	Education Services Not Reimbursable Under the Medicaid Program
7	Services Overbilled
8	Speech Services Rendered by Unlicensed Providers
9	Counseling and Psychological Services Rendered by Unlicensed Providers
10	Nursing and Physical Therapy Services Rendered by Unlicensed Providers
11	Nonmedical Assessment Services Rendered by Unlicensed Providers

We reviewed a statistically valid sample of 330 beneficiary/months, or 2,175 claims. Of the 2,175 claims reviewed, 991 claims were unallowable and contained 1,146 payment errors. Although some of the claims for which we are recommending a disallowance contained more than more one error, we did not question the Medicaid reimbursement amount for more than one error per claim.

	1	2	3	4	5	6	7	8	9	10	11	Total
1st Stratum												
Houston	17	54	17	37	8	7	0	35	0	11	5	191
2nd Stratum												
Austin	35	0	5	0	1	0	0	2	3	0	0	46
3rd Stratum												
Dallas	64	73	37	2	0	1	0	8	4	27	3	219
4th Stratum												
Alamo	62	27	8	0	2	0	0	23	28	2	1	153
Belton	7	29	0	0	4	0	1	53	40	0	0	134
Center	0	0	2	0	6	0	0	0	23	0	2	33
Coo	19	15	2	0	3	0	0	0	0	0	2	41
Fort Bend	13	7	0	0	2	0	0	0	10	0	0	32
La Mar	0	1	0	0	5	0	0	0	0	0	0	6
Northeast	19	6	5	14	7	1	0	3	0	0	4	59
San Antonio	121	36	11	5	4	0	2	51	0	0	2	232
Texarkana	0	0	0	0	0	0	0	0	0	0	0	0
Total	**357**	**248**	**87**	**58**	**42**	**9**	**3**	**175**	**108**	**40**	**19**	**1,146**

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

September 9, 2005

Mr. Gordon L. Sato
Regional Inspector General for Audit Services
Office of Inspector General, Office of Audit Services
1100 Commerce, Room 6
Dallas, Texas 75242

Reference Report Number A-06-02-00047

Dear Mr. Sato:

I appreciate the opportunity to respond to the Department of Health and Human Services Office of Inspector General draft audit report entitled Audit of Medicaid School-Based Services in Texas." Our management responses to the issues contained in the report are attached.

If you have any questions or require additional information, please contact David M. Griffith, CPA, CIA, Internal Audit Director. Mr. Griffith may be reached by telephone at (512) 424-6968 or by email at David.Griffith@hhsc.state.tx.us.

Sincerely,

Albert Hawkins

Attachment – Management Response

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Management Response
Audit of Medicaid School-Based Services in Texas

The Texas Health and Human Services Commission (HHSC) agrees there are issues in School Health and Related Services (SHARS) that may need to be addressed. However, staff is unable, based on the information provided in the draft report, to determine the extent of those issues. Before seeking recoupment from any of the sampled school districts, committing to reimbursement of any portion of the amounts associated with the errors cited in the report, or determining detailed plans of action designed to resolve outstanding issues, HHSC will need to:

- determine whether the criteria included in the report as Programmatic Deficiencies are correct (see **Exhibit I**), considered in the proper context, and applicable to each of the exceptions the auditors identified,

- confirm each of the errors by examining supporting documentation and applying to applicable criteria,

- determine, after consideration of the criteria and further examination of the support for each claim, the errors, amount of overpayment for each error, and the extended dollar impact for each school district included in the sample, and

- obtain the minimum information required to replicate the statistical extrapolation in each of the first three strata, apply the extrapolation methodology to each school district contained in the fourth stratum, and recalculate the statistical results based on the confirmed exceptions within each stratum and school district.

In order to accomplish these tasks, HHSC will require information from the Department of Health and Human Services (DHHS) Office of Inspector General (OIG). A list of requested information is attached (see **Exhibit II**).

In addition, HHSC disagrees with one of the three causes of deficiencies in sampled claims identified in the report and has comments about another.

State Agency Guidance Was Improper.

The report indicates the errors for counseling and psychological services provided by unlicensed providers resulted from improper State agency guidance to the school districts, because the provider manual improperly list Texas Education Agency (TEA)-certified individuals (those with teaching certificates) as allowable providers of counseling, psychological, and assessment services.

HHSC disagrees with this cause. The approved State Plan includes in its description of Benefits and Limitations of School Health and Related Services at 4.b.A.9. "Counseling: Services provided to assist the child and/or parents in understanding the nature of the disability, special needs of the child, and the child's development." The rules of the TEA codified at 19 Texas

Administrative Code Section 89.1131 indicates that "(a) All special education and related service personnel shall be certified, endorsed or licensed in accordance with 34 Code of Federal Regulations (CFR) 300.23, 300.126, Texas Education Code Sections 21.002, 21.003 and 29.304 or appropriate state agency credentials." In accordance with these requirements, TEA certification for providers of these services is based on qualifications other than a teaching certificate.

School Districts Failed To Collect, Maintain, or Verify Provider Licensing Documentation.

HHSC, in coordination with TEA, has worked through various publications, conferences, and with the current Texas Medicaid Claims Administrator, Texas Medicaid and Healthcare Partnership (TMHP), to educate SHARS providers of the necessary documentation requirements, including the appropriate licensing documentation that must be maintained. Both TEA and HHSC are working in all our publications to give SHARS providers clear direction on the specific documents that are required to be maintained.

Detailed responses to each of the recommendations included in the report follow:

- *We recommend the State agency refund to the Federal Government $8,749,158 for unallowable services.*

  Action Planned:

  - Resolve potential differences in interpretation of criteria
  - Obtain details of tested claims auditors indicate have errors
  - Apply resolved criteria and retest
  - Obtain information required to replicate statistical extrapolation, by school district
  - Apply results of retesting to statistical model
  - Determine remaining overpayment amounts for each sampled school district
  - Bill school districts for overpayments and return federal share to Medicaid program

  Estimated Completion Date: 120 days after receipt of claims testing information from DHHS OIG

  Title of Responsible Person: Senior Policy Analyst, Operations Oversight, Claims Administrator Contract Management

- *We recommend the State agency work with CMS to determine the financial impact to the Federal Government for overpayments made by the State agency for counseling services and make an appropriate refund.*

  Action Planned: HHSC will review the test data it is requesting from DHHS OIG and, once it completes a determination of the issues involved, work with the Centers for

Medicare and Medicaid Services (CMS) to determine whether any financial impact to the federal government exists.

Estimated Completion Date: 120 days after receipt of claims testing information from DHHS OIG

Title of Responsible Person: Senior Policy Analyst, Operations Oversight, Claims Administrator Contract Management

- *We recommend that the State agency review periods after our audit period and make appropriate financial adjustments for any unallowable services.*

Action Planned:

- The Medicaid/CHIP Division of HHSC will refer this potential audit area to the HHSC Office of Inspector General Audit Department to consider in developing its audit plan.

Estimated Completion Date: October 1, 2005

Title of Responsible Person: Senior Policy Analyst, Operations Oversight, Claims Administrator Contract Management

- *We recommend the State agency routinely monitor claims from school districts for compliance with Federal and State requirements.*

Management Response: HHSC and the TEA have entered into a Memorandum of Understanding (MOU) effective April 18, 2005. According to the MOU, both TEA and HHSC will perform monitoring tasks related to SHARS providers billing activities and associated documentation.

Action Planned: The MOU responsibilities and activities are currently being developed by TEA and HHSC. TEA will develop self-monitoring tools and procedures for providers, with HHSC input and approval. TEA will conduct compliance monitoring desk reviews each quarter and onsite compliance reviews, as necessary, based on risk-based assessment. TEA will share the results of these desk reviews and onsite audits with HHSC. HHSC will perform at least 80 reviews per State Fiscal Year (SFY) of the self-monitoring summaries and corrective action reports completed by SHARS providers, providing feedback and technical assistance to the providers and TEA.

Estimated Completion Date: The new process will be implemented during SFY 2006.

Title of Responsible Person: Senior Policy Analyst, Operations Oversight, Claims Administrator Contract Management

- *We recommend the State agency direct school districts to ensure that providers of services meet licensing requirements.*

  Action Planned: While it is HHSC's current position that school districts are following the guidance contained in the State Plan, after staff reviews the test data provided by DHHS OIG, it will determine whether additional clarification or guidance is required, and act appropriately to distribute that information to all school districts.

  Estimated Completion Date: 120 days after receipt of claims testing information from DHHS OIG

  Title of Responsible Person: Senior Policy Analyst, Operations Oversight, Claims Administrator Contract Management

- *We recommend the State agency issue guidance requiring school districts to bill only for allowable Medicaid services rendered by licensed individuals.*

  Action Planned: While it is HHSC's current position that school districts are following the guidance contained in the State Plan, after staff reviews the test data provided by DHHS OIG, it will determine whether additional clarification or guidance is required, and act appropriately to distribute that information to all school districts.

  Estimated Completion Date: 120 days after receipt of claims testing information from DHHS OIG

  Title of Responsible Person: Senior Policy Analyst, Operations Oversight, Claims Administrator Contract Management

Exhibit I

Issues Related to Criteria (Programmatic Deficiencies)

HHSC requests a copy of the documentation for each payment error and unallowable claim so that staff may complete research and verify all information necessary to validate the criteria used by the auditors.

1. Prescription/Referral Requirements Not Met

   HHSC agrees that Physical Therapy (PT) and Occupational Therapy (OT) require a prescription and Speech Therapy (ST) requires a referral. However, the evaluations associated with each of these three therapies do not require either a prescription or referral.

   There are separate procedure codes that providers bill for a therapy "evaluation" versus the actual "therapy" for each of these rehabilitative services. Therefore, if DHHS OIG pulled claims into this finding that include the evaluation code for PT, OT, or ST, we do not feel that those claims should be included in the finding or that we should return Federal Financial Participation (FFP) for those claims. Therefore, HHSC disagrees with any findings related to evaluations for PT, OT or ST.

2. Transportation Requirements Not Met

   HHSC agrees that transportation should be paid only on a day when another allowable or billable Medicaid service is provided. HHSC also agrees that any claim errors identified due to the client being absent on the date that transportation was billed or no other SHARS services billed on that date should be repaid. However, if the claim errors relate back to either programmatic deficiencies 6, 7, 8, 9, 10, or 11 of this draft audit, HHSC disagrees with this finding until further validation can take place.

3. Services Not Included in the Individualized Education Plan (IEP)

   HHSC agrees that only services included in the clients IEP can be billed and paid through Medicaid. HHSC verified with TEA that some SHARS services (such as school health services and medication administration) may be documented in the deliberations of the Admission, Review, and Dismissal (ARD) committee. Duration, frequency, and location should also be included because the IEP should always indicate the instructional setting to which the child is assigned, as well as the campus. The services are still part of the IEP and are included before the signature page where the members of the ARD meeting sign. However, the services do appear on a schedule like ST, OT, or PT. Therefore, HHSC disagrees with any findings where the service is documented in the deliberations of the ARD Committee.

4. No Individualized Education Plan

HHSC agrees that in order to bill SHARS the client must have an IEP. HHSC does not contest any findings where there is no IEP on record. However, based on information received from TEA, the school district has up to 90 days to fully document the IEP, therefore the claims identified in these findings may fall into a timeframe when the IEP was not yet fully documented, and HHSC disagrees with any findings that fit in this category. HHSC, in conjunction with TEA, has requested documentation related to the audit from the school districts in question to verify the existence of an IEP.

5. No Medical Service Provided

HHSC agrees that the client must be present at school and be provided a medical service in order to bill. However, Texas school policy is to take daily attendance during the second period of the day. The client may be out of school at that time, for example, attending a doctor appointment, and get counted absent when in fact the client was at school the majority of the day. In cases such as this, documentation may be available after the fact to show the client was in school that day. HHSC disagrees with any findings that fall into this category.

6. Education Services Not Reimbursable Under the Medicaid Program

HHSC agrees that education services are not reimbursable under the Medicaid program and does not contest any findings related to purely educational services. However, while SHARS services are related to educational needs, the services themselves are medical in nature. Therefore, HHSC requests time to review the detailed findings and ensure they document purely educational services.

7. Services Overbilled

HHSC agrees that services billed in excess of those actually provided are not reimbursable, and we do not contest any findings that document this fact. However, if billings include time for make-up sessions or correction of previous billings errors, HHSC would disagree with the finding.

8. Speech Services Rendered by Unlicensed Providers

HHSC disagrees with the interpretation of the State Plan and Texas Occupations Code that all persons providing speech pathology and audiology services must possess a valid State license. The State Plan says, "A qualified provider of SHRS is a person who meets state education agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the SHRS he/she is providing."

The Texas Occupations Code, Section 401.054, entitled "PERSONS CERTIFIED BY TEXAS EDUCATION AGENCY", says in subsection (a) This chapter does not prevent or restrict the activities and services or the use of an official title by a person who is certified in speech-language pathology by the Texas Education Agency if the person only performs pathology or audiology services as part of the person's duties within an agency, institution or organization under the jurisdiction of the Texas Education Agency."

The rules of the TEA codified at 19 Texas Administrative Code Section 89.1131 indicates that "(a) All special education and related service personnel shall be certified, endorsed or licensed in accordance with 34 CFR 300.23, 300.126, Texas Education Code Sections 21.002, 21.003 and 29.304 or appropriate state agency credentials."

9. Counseling and Psychological Services Rendered by Unlicensed Providers

HHSC disagrees with the draft audit's interpretation of the State Plan and State law. The approved State Plan includes in its description of Benefits and Limitations of School Health and Related Services at 4.b.A.9. "Counseling: Services provided to assist the child and/or parents in understanding the nature of the disability, special needs of the child, and the child's development." The rules of the TEA codified at 19 Texas Administrative Code Section 89.1131 indicates that "(a) All special education and related service personnel shall be certified, endorsed or licensed in accordance with 34 CFR 300.23, 300.126, Texas Education Code Sections 21.002, 21.003 and 29.304 or appropriate state agency credentials."

10. Nursing and Physical Therapy Services Rendered by Unlicensed Providers

HHSC requests clarification on the 40 claims errors identified in this finding. In order to obtain this clarification, HHSC requests a copy of the documentation for these findings from DHHS OIG in order to complete research and verify this information.

11. Non-Medical Assessment Services Rendered by Unlicensed Providers

HHSC disagrees with the draft audit's interpretation that educational diagnosticians render purely educational services. 34 CFR 300.23 states "as used in this part, the term *qualified personnel* means personnel who have met State Education Agency (SEA)-approved or SEA-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education or related services." 34 CFR 300.136 (a), (1), states " *Appropriate professional requirements in the State* means entry level requirements that: (i) are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education and related services. These two definitions cover our certified educational diagnosticians. The current SHARS State Plan, approved by CMS states "... *A qualified provider of SHARS is a person who meets state education agency approved or recognized certification, licensing, registration, or such comparable*

requirements which apply to the SHARS he/she is providing. Such requirements must be consistent with state/federal laws and regulations and are subject to approval by the single state agency..."

Exhibit II

Information Requested from DHHS/OIG

Claims

- HHSC requests a copy of the documentation for each payment error and unallowable claim the auditors identified while determining that at least $8,749,158 was inappropriately claimed, including reference to the criteria used to determine the payment error, the amount of the claim, and the amount the auditors determined to have been paid for unallowable services

- Detailed results of test work related to overpayments of $53,235 for 3,993 counseling services the auditors indicated were paid more than the maximum allowable fee established the Texas

Sampled Universe, Statistical Samples, and Extrapolated Results

- Number of claims and dollars paid for each school district within the audit scope time period

- Number of claims and dollars paid for each school district for the month tested

- Information related to the sampled population for each strata and each school district within the fourth stratum, including, as applicable, the universe size, standard deviation, and mean

- Sample precision

- Description of how a sample size of 30 for each of the first three strata, and for each school district contained in the fourth stratum, is statistically significant and representative of the sampled population

- List of claims and dollars paid for each sampled item tested in each school district

- List of claims, dollars paid, and amounts questioned for each sampled item containing an exception

- Detailed description of the extrapolation methodology – for example, are sample results extrapolated to the universe of claims in the month tested, or to the universe of claims within the full audit scope time period for each selected school district?

- Any information or data not included in the list above that would be required to enable HHSC to replicate the statistical extrapolation performed, and to enable the same methodology to be applied to each school district tested

ACKNOWLEDGMENTS

This report was prepared under the direction of Gordon Sato, Regional Inspector General for Audit Services, Region VI. Other principal Office of Audit Services staff who contributed include:

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