DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

Washington, D.C. 20201

AUG - 8 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 California's Medicaid Payments for State-Employed Skilled Professional Medical Personnel for the Period October 1, 2002, through September 30, 2003 (A-09-04-00049)

Attached is an advance copy of our final report on Medicaid payments made by the California Department of Health Services (California) for skilled professional medical personnel. We will issue this report to California within 5 business days.

We conducted this audit as part of a nationwide review, requested by the Centers for Medicare & Medicaid Services (CMS), of States that claimed Federal Medicaid funding at the enhanced matching rate of 75 percent (the enhanced rate) for skilled professional medical personnel.

Our objective was to determine whether California properly claimed Federal Medicaid funding at the enhanced rate for skilled professional medical personnel and their supporting staff for the period October 1, 2002, through September 30, 2003. We limited our audit to a review of $63,710,061 claimed for medical personnel and supporting staff employed directly by California.

Federal regulations provide an enhanced rate of 75 percent for the compensation and training of skilled professional medical personnel and their supporting staff. Generally, for the enhanced rate to be available, skilled professional medical personnel must have completed a 2-year program leading to an academic degree or certificate in a medically related program and perform activities that require the use of their professional training and experience.

Contrary to Federal regulations, California claimed Federal Medicaid funding at the enhanced rate for:

- overhead costs not eligible for the enhanced rate ($4,795,167 Federal share),
- salaries and other compensation for 43 supporting staff not directly supervised by skilled professional medical personnel ($352,532 Federal share), and
- salaries and other compensation for 13 positions not requiring medical expertise ($147,674 Federal share).

As a result, California received Medicaid overpayments totaling $5,295,373. These overpayments occurred because California's controls did not ensure that only eligible costs of skilled professional medical personnel and their supporting staff were claimed at the enhanced rate.

We recommended that California:

- refund $5,295,373 for the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff;

- strengthen controls to ensure that costs claimed at the enhanced rate for skilled professional medical personnel (1) do not include overhead costs, (2) include only supporting staff directly supervised by skilled professional medical personnel, and (3) are limited to positions that require medical expertise; and

- identify and refund the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff improperly claimed after September 30, 2003.

California provided extensive written comments on our draft report but did not comment on our recommended refund. California stated that it charged overhead costs based on its understanding of Office of Management and Budget rules rather than CMS rules for the enhanced rate but that it made adjustments to properly charge the overhead costs in the year subsequent to our audit period. In addition, California agreed that it improperly claimed salaries and other compensation for 43 supporting staff not directly supervised by skilled professional medical personnel and indicated that it was taking steps to correct the reporting relationships that resulted in the improper claims. Also, California did not dispute that it improperly claimed 13 positions that did not require medical expertise. Lastly, California indicated that the auditors failed to follow the CMS Title XIX Financial Management Review Guide, Skilled Professional Medical Personnel, and did not have sufficient time to perform a thorough audit. We included the full text of California's comments as an appendix to the report.

Where appropriate, we made changes in the final report to reflect California's comments. We performed sufficient work to address our audit objective and make valid conclusions.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may call George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or Lori A. Ahlstrand, Regional Inspector General for Audit Services, Region IX, at (415) 437-8360. Please refer to report number A-09-04-00049 in all correspondence.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Region IX
Office of Audit Services
50 United Nations Plaza, Room 17
San Francisco, CA 94102

AUG 12 2005

Report Number: A-09-04-00049

Ms. Sandra Shewry
Director
California Department of Health Services
1501 Capitol Avenue, MS 0000
Sacramento, California 95899-7413

Dear Ms. Shewry:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) final report entitled "Audit of California's Medicaid Payments for State-Employed Skilled Professional Medical Personnel for the Period October 1, 2002, through September 30, 2003." A copy of this report will be forwarded to the HHS action official noted below 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 members of the press and general 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-09-04-00049 in all correspondence.

Sincerely,

Lori A. Ahlstrand
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to HHS Action Official:

Mr. Jeff Flick
Regional Administrator
Centers for Medicare & Medicaid Services, Region IX
Department of Health and Human Services
75 Hawthorne Street, Fourth Floor
San Francisco, California 94105-3901

Department of Health and Human Services

OFFICE OF
INSPECTOR GENERAL

AUDIT OF CALIFORNIA'S MEDICAID PAYMENTS FOR STATE-EMPLOYED SKILLED PROFESSIONAL MEDICAL PERSONNEL FOR THE PERIOD OCTOBER 1, 2002, THROUGH SEPTEMBER 30, 2003

Daniel R. Levinson
Inspector General

AUGUST 2005
A-09-04-00049

Office of Inspector General

http://oig.hhs.gov

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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OIG's Office of Audit Services (OAS) provides all auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations in order to reduce waste, abuse, and mismanagement and to promote economy and efficiency throughout HHS.

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The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support in OIG's internal operations. OCIG imposes program exclusions and civil monetary penalties on health care providers and litigates those actions within HHS. OCIG also represents OIG in the global settlement of cases arising under the Civil False Claims Act, develops and monitors corporate integrity agreements, develops compliance program guidances, renders advisory opinions on OIG sanctions to the health care community, and issues fraud alerts and other industry guidance.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at http://oig.hhs.gov

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

BACKGROUND

Title XIX of the Social Security Act authorizes the Federal Government to reimburse States for costs necessary to administer their Medicaid State plans. In general, the Federal Government reimburses, or matches, Medicaid administrative costs at a rate of 50 percent.

Federal regulations provide an enhanced Medicaid matching rate of 75 percent (the enhanced rate) for the compensation and training of skilled professional medical personnel and their supporting staff. Generally, for the enhanced rate to be available, skilled professional medical personnel must have completed a 2-year program leading to an academic degree or certificate in a medically related program and perform activities that require the use of their professional training and experience.

OBJECTIVE

Our objective was to determine whether the California Department of Health Services (California) properly claimed Federal Medicaid funding at the enhanced rate for skilled professional medical personnel and their supporting staff for the period October 1, 2002, through September 30, 2003. We limited our audit to a review of $63,710,061 claimed for medical personnel and supporting staff employed directly by California.

SUMMARY OF FINDINGS

Contrary to Federal regulations, California claimed Federal Medicaid funding at the enhanced rate for:

- overhead costs not eligible for the enhanced rate ($4,795,167 Federal share),

- salaries and other compensation for 43 supporting staff not directly supervised by skilled professional medical personnel ($352,532 Federal share), and

- salaries and other compensation for 13 positions not requiring medical expertise ($147,674 Federal share).[1]

As a result, California received Medicaid overpayments totaling $5,295,373. These overpayments occurred because California's controls did not ensure that only eligible costs of skilled professional medical personnel and their supporting staff were claimed at the enhanced rate.

[1]In our draft report, we identified 152 positions that did not require medical expertise ($1,986,873 Federal share). We adjusted this finding based on additional documentation provided by California.

RECOMMENDATIONS

We recommend that California:

- refund $5,295,373 for the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff;

- strengthen controls to ensure that costs claimed at the enhanced rate for skilled professional medical personnel (1) do not include overhead costs, (2) include only supporting staff directly supervised by skilled professional medical personnel, and (3) are limited to positions that require medical expertise; and

- identify and refund the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff improperly claimed after September 30, 2003.

CALIFORNIA'S COMMENTS

California provided extensive written comments on our draft report but did not comment on our recommended refund. California stated that it charged overhead costs based on its understanding of Office of Management and Budget rules rather than Centers for Medicare & Medicaid Services (CMS) rules for the enhanced rate but that it made adjustments to properly charge the overhead costs in the year subsequent to our audit period. In addition, California agreed that it improperly claimed salaries and other compensation for 43 supporting staff not directly supervised by skilled professional medical personnel and indicated that it was taking steps to correct the reporting relationships that resulted in the improper claims. Also, California did not dispute that it improperly claimed 13 positions that did not require medical expertise. Lastly, California indicated that the auditors failed to follow the CMS Title XIX Financial Management Review Guide, Skilled Professional Medical Personnel, and did not have sufficient time to perform a thorough audit. We included the full text of California's comments as an appendix to this report.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

Where appropriate, we made changes in the final report to reflect California's comments. We performed sufficient work to address our audit objective and make valid conclusions.

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CALIFORNIA'S COMMENTS

INTRODUCTION

BACKGROUND

Title XIX of the Social Security Act authorizes the Federal Government to reimburse States for costs necessary to administer their Medicaid State plans. In general, the Federal Government reimburses, or matches, Medicaid administrative costs at a rate of 50 percent.

Federal regulations provide an enhanced Medicaid matching rate of 75 percent (the enhanced rate) for the compensation and training of skilled professional medical personnel and their supporting staff. Generally, for the enhanced rate to be available, skilled professional medical personnel must have completed a 2-year program leading to an academic degree or certificate in a medically related program and perform activities that require the use of their professional training and experience.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the California Department of Health Services (California) properly claimed Federal Medicaid funding at the enhanced rate for skilled professional medical personnel and their supporting staff for the period October 1, 2002, through September 30, 2003.

Scope

We reviewed California's claim for $63,710,061 for medical personnel and supporting staff employed directly by the State for the period October 1, 2002, through September 30, 2003 (line 3 of the CMS-64.10 form). We did not review $59,787,338 of State adjustments and county expenditures for skilled professional medical personnel and their supporting staff (lines 7, 8, and 10 of the CMS-64.10 form).

We limited our review to determining whether California's claims for skilled professional medical personnel and their supporting staff were eligible for the enhanced rate of 75 percent. We did not determine the Medicaid allowability of the portion claimed at the 50-percent rate. The costs questioned in this report represent the difference between the 50-percent and 75-percent rates.

We did not perform a detailed review of California's internal controls. We limited our review of internal controls to obtaining an understanding of California's policies and procedures used to claim skilled professional medical personnel costs.

We conducted fieldwork from April through September 2004 at the California Medicaid office in Sacramento, CA.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal law and regulations and Centers for Medicare & Medicaid Services (CMS) guidance;

- reviewed California's procedures for claiming costs of skilled professional medical personnel and their supporting staff;

- obtained supporting documentation from California pertaining to the relevant paid claims; and

- interviewed California departmental personnel and reviewed departmental documentation regarding job qualifications, classifications, and duties for individuals claimed as skilled professional medical personnel.

We performed the audit in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Contrary to Federal regulations, California claimed Federal Medicaid funding at the enhanced rate for:

- overhead costs not eligible for the enhanced rate ($4,795,167 Federal share),

- salaries and other compensation for 43 supporting staff not directly supervised by skilled professional medical personnel ($352,532 Federal share), and

- salaries and other compensation for 13 positions not requiring medical expertise ($147,674 Federal share).[1]

As a result, California received Medicaid overpayments totaling $5,295,373. These overpayments occurred because California's controls did not ensure that only eligible costs of skilled professional medical personnel and their supporting staff were claimed at the enhanced rate.

FEDERAL REQUIREMENTS FOR SKILLED PROFESSIONAL MEDICAL PERSONNEL

Section 1903(a)(2) of the Social Security Act provides that States are entitled to an amount equal to 75 percent of sums expended for compensation or training of skilled professional medical personnel and staff supporting such personnel.

[1]In our draft report, we identified 152 positions that did not require medical expertise ($1,986,873 Federal share). We adjusted this finding based on additional documentation provided by California.

Skilled professional medical personnel are defined in 42 CFR § 432.2 as:

> . . . physicians, dentists, nurses, and other specialized personnel who have professional education and training in the field of medical care or appropriate medical practice and who are in an employer-employee relationship with the Medicaid agency. It does not include other nonmedical health professionals such as public administrators, medical analysts, lobbyists, senior managers or administrators of public assistance programs or the Medicaid program.

Federal regulations (42 CFR § 432.50(a)) state that Federal matching funds are available "for salary or other compensation, fringe benefits, travel, per diem, and training, at rates determined on the basis of the individual's position . . . ."

In addition, 42 CFR § 432.50(d) states that the enhanced matching rate of 75 percent is available for skilled professional medical personnel and directly supporting staff if the following criteria are met:

(i) The expenditures are for activities that are directly related to the administration of the Medicaid program, and as such do not include expenditures for medical assistance;

(ii) The skilled professional medical personnel have professional education and training in the field of medical care or appropriate medical practice. "Professional education and training" means the completion of a 2-year or longer program leading to an academic degree or certificate in a medically related profession. This is demonstrated by possession of a medical license, certificate, or other document issued by a recognized National or State medical licensure or certifying organization or a degree in a medical field issued by a college or university certified by a professional medical organization . . . .

(iii) The skilled professional medical personnel are in positions that have duties and responsibilities that require those professional medical knowledge and skills;

(iv) A State-documented employer-employee relationship exists between the Medicaid agency and the skilled professional medical personnel and directly supporting staff; and

(v) The directly supporting staff are secretarial, stenographic, and copying personnel and file and records clerks who provide clerical services that are directly necessary for the completion of the professional medical responsibilities and functions of the skilled professional medical staff. The skilled professional medical staff must directly supervise the supporting staff and the performance of the supporting staff's work.

COSTS IMPROPERLY CLAIMED AT THE ENHANCED RATE

California improperly claimed Federal Medicaid funding at the enhanced rate for (1) overhead costs not eligible for the enhanced rate, (2) salaries for supporting staff not directly supervised by skilled professional medical personnel, and (3) salaries for positions not requiring medical expertise.

Overhead Costs Not Eligible for the Enhanced Rate

California improperly claimed overhead costs at the enhanced rate for skilled professional medical personnel. These overhead costs included legal fees, data processing, and office supplies. Federal regulations limit Medicaid funding at the enhanced rate to salary or other compensation, fringe benefits, travel, per diem, or training expenses for skilled professional medical personnel. As a result of improperly claiming these overhead costs, California received a Federal overpayment of $4,795,167.

Salaries for Supporting Staff Not Directly Supervised by Skilled Professional Medical Personnel

California improperly claimed salaries for 43 supporting staff who were not under the direct supervision of skilled professional medical personnel. These employees were directly supervised by nonskilled professional personnel. Federal regulations require that the skilled professional medical personnel directly supervise the supporting staff and the performance of the supporting staff's work. As a result of improperly claiming the salaries of these 43 employees, California received a Federal overpayment of $352,532.

Salaries for Positions Not Requiring Medical Expertise

California improperly claimed salaries for 13 employees whose positions did not require professional medical knowledge and skills. These employees' duties and responsibilities included maintaining computers, analyzing audit findings, and supervising personnel. Federal regulations require that skilled professional medical personnel be in positions that have duties and responsibilities that require those professional medical knowledge and skills. As a result of improperly claiming the salaries of these 13 employees, California received a Federal overpayment of $147,674.

INADEQUATE CONTROLS

In total, California received Federal Medicaid overpayments of $5,295,373 for the period October 1, 2002, through September 30, 2003. These overpayments occurred because California's controls did not ensure that only eligible costs of skilled professional medical personnel and their supporting staff were claimed at the enhanced rate.

RECOMMENDATIONS

We recommend that California:

- refund $5,295,373 for the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff;

- strengthen controls to ensure that costs claimed at the enhanced rate for skilled professional medical personnel (1) do not include overhead costs, (2) include only supporting staff directly supervised by skilled professional medical personnel, and (3) are limited to positions that require medical expertise; and

- identify and refund the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff improperly claimed after September 30, 2003.

CALIFORNIA'S COMMENTS

California provided extensive written comments on our draft report but did not comment on our recommended refund. We included the full text of California's comments as an appendix and summarized them below.

Overhead Costs Not Eligible

California stated that it charged overhead costs based on its understanding of Office of Management and Budget rules allowing overhead to be charged at the same rate as the related direct costs. It stated that these rules were inconsistent with CMS rules for the enhanced rate. However, California also stated that it made adjustments to properly charge and report the overhead costs. These adjustments totaled $5,388,272 for the period October 1, 2003, through September 30, 2004, which is the year subsequent to our audit period.

Salaries for Supporting Staff Not Directly Supervised

California agreed that it improperly claimed Federal Medicaid funding at the enhanced rate for salaries and other compensation for 43 supporting staff not directly supervised by skilled professional medical personnel. California also stated that it was taking immediate steps to correct the reporting relationships that resulted in the improper claims.

Salaries for Positions Not Requiring Medical Expertise

California did not dispute that it improperly claimed Federal Medicaid funding at the enhanced rate for 13 positions that did not require medical expertise.

Other Comments

California indicated the auditors failed to follow the CMS Title XIX Financial Management Review Guide, Skilled Professional Medical Personnel, and did not have sufficient time to perform a thorough audit.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

Where appropriate, we made changes in the final report to reflect California's comments. We performed sufficient work to address our audit objective and make valid conclusions.

APPENDIX

State of California—Health and Human Services Agency
Department of Health Services

California Department of Health Services

SANDRA SHEWRY
Director

ARNOLD SCHWARZENEGGER
Governor

MAR 23 2005

Ms. Lori A. Ahlstrand
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Regional IX
50 United Nations Plaza
San Francisco, CA 94102

Dear Ms. Ahlstrand:

This letter pertains to the draft report issued by the Office of Inspector General (OIG) entitled, "Audit of California's Medicaid Payments for State-Employed Skilled Professional Medical Personnel for the Period October 1, 2002 through September 30, 2003: (A09-04-00049). The California Department of Health Services (CDHS) appreciates the opportunity to respond to the draft report.

Attached, please find our complete response to all of the issues raised in the draft report. With regard to the appropriate classification of SPMP positions, CDHS believes that for the majority of cases, the OIG's view of these positions as "not requiring medical expertise" is factually incorrect. CDHS respectfully requests that OIG re-evaluate the draft audit report findings and more accurately reflect its conclusions in light of the evidence and information within this response.

We look forward to continuing to work with you on this matter. If you have any questions, please contact Mr. Stan Rosenstein, Deputy Director, Medical Care Services, at (916) 440-7800.

Sincerely,

Sandra Shewry
Director

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APR 14 2005

Enclosure
cc: See Next Page

1501 Capitol Avenue, Suite 6001 • P.O. Box 997413, MS 0000
Sacramento, CA 95899-7413
(916) 440-7400 Fax (916) 440-7404

Ms. Lori A. Ahlstrand
Page 2

cc: Mr. Stan Rosenstein
Deputy Director
Medical Care Services
1501 Capitol Avenue, MS 4000
P.O. Box 997413
Sacramento, CA 95899-7413

Ms. Mary Cody
Audit Coordinator
Internal Audits
1500 Capitol Avenue, MS 2001
P.O. Box 997413
Sacramento, CA 95899-7413

Mr. Mark Hutchinson
Deputy Director
Administration
1501 Capitol Avenue, MS 1000
P.O. Box 997413
Sacramento, CA 95899-7413

Ms. Diana L. Ducay
Deputy Director
Audits and Investigations
1500 Capitol Avenue, MS 2000
P.O. Box 997413
Sacramento, CA 95899-7413

Ms. Catherine Camacho
Deputy Director
Primary Care and Family Health
1501 Capitol Avenue, MS 8000
P.O. Box 997413
Sacramento, CA 95899-7413

Mr. Kevin F. Reilly, D.V.M., M.P.V.M.
Deputy Director
Prevention Services
1501 Capitol Avenue, MS 7000
P.O. Box 997413
Sacramento, CA 95899-7413

Office of Inspector General
Skilled Professional Medical Personnel Review
Department of Health Services
Response

SUMMARY

The Office of Inspector General (OIG) issued its draft report entitled, "Audit of California's Medicaid Payments for State-Employed Skilled Professional Medical Personnel for the period October 1, 2002, through September 30, 2003, dated January 24, 2005 to the California Department of Health Services (CDHS). The draft reports its audit findings of California's Medicaid payments for State employed Skilled Professional Medical Personnel (SPMP). The OIG reviewed California's claim for $63,710,061 for medical personnel and supporting staff employed directly by the State for the period of October 1, 2002, through September 30, 2003, to determine whether California's claims for SPMP and their supporting staff were eligible to be claimed at the enhanced federal rate of 75 percent.

The following represents specific findings and recommendations outlined in the draft OIG audit report.

Finding 1: *California incorrectly claimed overhead costs not eligible for the enhanced rate in the amount of $4,795,167 (Federal share).*

Finding 2: *California incorrectly claimed salaries and other compensation for positions not requiring medical expertise in the amount of $1,986,873 (Federal share).*

Finding 3: *California incorrectly claimed salaries and other compensation for supporting staff not directly supervised by medical professionals in the amount of $352,532 (Federal share).*

Recommendations

- *Refund $7,134,572 for the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff.*
- *Strengthen controls to ensure that costs claimed at the enhanced rate for skilled professional medical personnel (1) do not include overhead costs, (2) are limited to positions that require medical expertise, and (3) include only supporting staff directly supervised by medical professionals.*

- *Identify and refund the Federal share of Medicaid overpayments for skilled professional medical personnel and their supporting staff improperly claimed after September 30, 2003.*

GENERAL CONCERNS

The Department of Health Services (DHS) has several general concerns relative to the manner in which the OIG audit was conducted. Specifically, on page 2 of the draft audit report the OIG asserts under *"Methodology"* that it:

"...interviewed California departmental personnel and reviewed departmental documentation regarding job qualifications, classifications, and duties for individuals claimed as SPMP."

With respect to the OIG's SPMP findings, the OIG conducted a paper audit that was based exclusively on duty statements. The OIG auditors did not conduct direct interviews with staff that they identified as not requiring medical expertise. Note that during the audit, the OIG did meet with DHS management on several occasions to discuss the "progress" of their audit. However, these meetings did not represent "interviews" as asserted on Page 2 under *"Methodology"*.

Moreover, when DHS management met with the OIG auditors, the auditors indicated that they did not have sufficient time to perform a thorough audit. Therefore, DHS may have incurred more penalties than justified due to the OIG time constraints. Further, the OIG auditors did not provide supporting documentation for their review nor have the OIG auditors provided the methodology used to determine the amounts identified as not eligible to be claimed at the enhanced Federal rate.

The OIG failed to follow the CMS Title XIX Financial Management Review Guide, Skilled Professional Medical Personnel (Review Guide). OIG disallowed A&I doctors and registered nurses because they were providing medical expertise to teams with accountant auditors. Because one team member's function was auditing, OIG disallowed the entire team. That is contrary to the Review Guide which states:

> Finally, in any situation where a qualifying function is being performed by a team each member of that team must individually meet all the applicable criteria in order for 75 percent to be available for the individual team member. For example, medical review or independent review activities are qualifying activities generally performed by several team members. In this situation, each individual team member must meet all the applicable criteria in order to qualify; therefore, an accountant being used on the team would not qualify while the doctors and registered nurses would.[2]

CDHS Program responses to the draft findings and recommendations follow:

Administration Division Response

Finding 1: *California incorrectly claimed overhead costs not eligible for the enhanced rate in the amount of $4,795,167 (Federal share).*

RESPONSE

Contrary to Federal regulations, California claimed enhanced Federal funding for:

- Overhead costs not eligible for the enhanced rate ($4,795,167 Federal share),

CDHS agrees that it charged overhead costs based on the understanding of OMB rules that allow overhead to be charged at the same rate as the related direct costs. However, these rules are inconsistent with the CMS rules for the enhanced rate of 75%. However, when this error was brought to our attention, the Central Accounting Services Unit began compiling the amounts that were charged at the enhanced rate of 75% for the period of October 1, 2003 through September 30, 2004 to determine the appropriate amount that should have been charged and the adjustment needed. In addition, the Central Accounting Services Unit made changes to the monthly cost allocation process beginning with the quarter July 1, 2004 through September 30, 2004, to properly charge and report the overhead costs at 50%. The amount of unallowable cost for the quarter July 1, 2004 through September 30, 2004 was $1,542,599.60 (Federal Share). The adjustment amount calculated for the period October 1, 2003 through June 30, 2004, is $3,845,672.50 (Federal Share) and will be processed and reported on the CMS-64 on the March 2005 Administration Claim. The total amount of unallowable costs for the Federal Fiscal Year, October 1, 2003 through September 30, 2004 was $5,388,272.10 (Federal Share).

Audits and Investigation Division Response

Finding 2: *California incorrectly claimed salaries and other compensation for positions not requiring medical expertise in the amount of $1,986,873 (Federal share).*

The OIG review of SPMP found that California improperly claimed enhanced federal funding rate of 75 percent for salaries for 152 employees whose positions did not require professional medical knowledge and skills. Of the 152 employees, 39 are Audits and Investigations (A&I) employees. The A&I employees are numbers 111 through 149, inclusive, on OIG's List of Employees Whose Positions Did Not Require Medical Expertise. Attachment I.

RESPONSE

A&I does not agree with the OIG finding that its SPMP do not require medical knowledge and skills.

The main point of contention is whether A&I's skilled professional medical personnel are performing duties and responsibilities that require professional medical knowledge and skills.[1] OIG's determination is inaccurate because OIG did not follow the Centers for Medicare and Medicaid Services (CMS) review guidelines and limited their review to only SPMP duty statements. OIG considered the duty statements of all of the SPMP positions in isolation and did not review how the SPMP staff carried out their respective duties. California's civil service system initially determines the basic functions of a position through a class specification. The duty statement cannot limit or expand the scope of the specification functions.

A&I's SPMP staff perform medical review within multidisciplinary teams.[2] For example, a review team can consist of a research analyst, auditor, and SPMP. Once the research analyst determines that a Medi-Cal provider's claiming activity exceeds volume expectations, the auditor then obtains physical evidence of the claiming activity. At this point, the SPMP, employing their professional medical knowledge and skills, reviews the documents to determine the medical necessity of the services. The SPMP may then consult directly with the Medi-Cal provider. The duty statement only explains how the SPMP performs medical review within A&I's multidisciplinary team environment.

The CMS Title XIX Financial Management Review Guide, Skilled Professional Medical Personnel (Review Guide) states:

> Finally, in any situation where a qualifying function is being performed by a team, each member of that team must individually meet all the applicable criteria in order for 75 percent to be available for the individual team member. For example, medical review or independent review activities are qualifying activities generally performed by several team members. In this situation, each individual team member must meet all the applicable criteria in order to qualify; therefore, an accountant being used on the team would not qualify while the doctors and registered nurses would.[2]

By limiting their review to only the duty statements the OIG did not take into consideration that A&I uses the SPMP as part of a multidisciplinary team and the

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[1] Review Guide, page 8, item 3.

OIG did not reference the above section of the CMS review guidelines prior to making the audit exception. Because one team member's function was auditing, OIG wrongly concluded the team audited and thus, the medical professionals were auditing. The CMS review guidance, above, clearly allows SPMP claiming within such a team.

Further, the wages for these medical professionals make their use as auditors or investigators cost prohibitive.[3]

Specifically, OIG contests the position classifications that follow. OIG's reasons for contesting the position follow the name of the position and appear in italics, followed then by A&I's explanation of why we believe the audit exception is inaccurate.

a. Pharmaceutical Consultant I Positions #146 through #149 (Attachment I)

The functions OIG believed these positions performed:[4]

- *Accounting and auditing.*
- *Program integrity including any investigation and follow-up activities not directly involving the determination of the medical necessity of specific services.*
- *Legal services including administrative appeals.*

Accounting, auditing, and investigations beyond medical necessity determinations exceed the scope of the Pharmaceutical Consultant I specification and cannot be performed by a Pharmaceutical Consultant I.[5] The Pharmaceutical Consultant I provides technical assistance on the types of drugs prescribed, and monitor drug utilization within the multidisciplinary review teams.[6]

The duty statement provides, "*prepares documents for and testifies at legal and administrative hearings and appeals.*" No fact supports a conclusion that this position does anything other than provide expert medical opinions for adjudication hearings.[7] The Review Guide clearly recognizes that DHS cannot review and enforce CMS' requirements without expert medical opinions.[8]

[2] Statements available upon request.
[3] Base salary comparison available upon request.
[4] Review Guide, Page 10.
[5] Job specification available upon request.
[6] Job specification available upon request.
[7] Statements available upon request.
[8] Review Guide, Page 9.

b. Nurse Consultant II
Position #113 (Attachment I)

OIG maintains that the Nurse Consultant II participated in the following improper functions: [9]

- *Program integrity including any investigation and follow-up activities not directly involving the determination of the medical necessity of specific services.*

- *Program analysis where the emphasis is cost or utilization of services in lieu of the medical aspects of the program.*

According to the class specification, the Nurse Consultant II "provides complex nursing and program consultation and technical assistance to public and private agencies on the provision of health services; plans, develops, organizes, monitors, and evaluates programs and studies on the delivery of health services; may also serve in a lead capacity to Nurse Consultants and other health-related multidisciplinary staff; develops and evaluates program standards, policies, and procedures; and does other related work."[10]

Cost analysis and investigations are beyond the scope of the class specification and cannot be performed by a Nurse Consultant II. Cost analysis and investigations are performed by other members of the medical review team. Those team members only request the Nurse Consultant II's participation if they encounter an issue requiring medical review.[11]

To clarify, the Duty Statement provides, "Independently leads the discussion of and writing of appropriate health care briefs to the directorate, budget change proposals, legislative reports, bill analysis, data analysis, reports, and a variety of other correspondence giving guidance and advice, from the health professional perspective." This reflects, in part, the interaction of the Associate Governmental Program Analysts (AGPA) within the Administrative Analysis Unit (AAU) with the Nurse Consultant II. The AGPAs develop health care briefs, budget change proposals, legislative reports, bill analysis, data analysis, reports, and other nonroutine correspondence following the SPMPs professional medical guidance. SPMPs then use their professional medical guidance knowledge to review the work for conformance with that expectation.[12]

For example, the SPMPs developed the medical review criteria for an annual error rate study. They developed the methods for establishing medical necessity.

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[9] Review Guide, page 10.
[10] Job specification available upon request.
[11] Statements available upon request.
[12] Statements available upon request.

The SPMPs also provide technical assistance to Medi-Cal providers based upon the documentation recovered by the auditors.

c. Nurse Evaluator II
Positions #114 through #145 (Attachment I)

OIG claims that these employees improperly participated in:[13]

- *Accounting and auditing.*
- *Cost reimbursement including all analytical work related to the program cost of covered services, cost report settlement, and establishment of rates.*

This class of professional, licensed nurses "works as an onsite nurse or member of a Medical Review Team; evaluates quality of nursing care being received by program beneficiaries; evaluates levels of care required by program beneficiaries; evaluates Treatment Authorization Requests for services; participates in annual reviews of facilities providing care; assists in training of other staff; assists in evaluation of procedures, investigation of fraud and abuse, and enforcement of regulations."[14]

Accounting, auditing, and cost analysis exceed the scope of the Nurse Evaluator II specification and cannot be performed by a Nurse Evaluator II.[15] Other members of the medical review team perform cost analysis, auditing, and accounting. Those team members only request the Nurse Evaluator II's participation if they encounter an issue requiring medical review.[16]

d. Lab Examiner II
Position #112 (Attachment I)

OIG claims that the improper function performed consisted of:[17]

- *Legal services including administrative appeals.*

The Duty Statement for the Examiner II, Laboratory Field Services position is attached.[18] OIG decided that the reference to "*participate in appeal activities*" within the section describing 60 percent of the employee's time "could" indicate the employee acts as a hearing officer. OIG challenged the entire claim for this employee.

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[13] Review Guide, page 10.
[14] Specification available upon request.
[15] Statements available upon request.
[16] Statements available upon request.
[17] Review Guide, page 10.
[18] Duty Statement available upon request.

The Lab Examiner II furnishes expert medical opinions as to whether proper laboratory procedures were followed for the adjudication of administrative appeals.[19] This activity clearly meets the criteria for duties and responsibilities that require professional medical knowledge and skills.[20] Lab Examiner II does not act as a hearing officer or advocate.

The job specification clarifies the job responsibilities.[21] There is no suggestion that the position requires the person to act as a hearing officer or advocate.

e. AGPA
Position #111 (Attachment I)

A&I improperly claimed enhanced funding for this position.

OIG Overlooked Information Provided to a Former Employee.

The OIG audit was initially conducted by [redacted] replaced [redacted], upon her departure from OIG, and completed the audit. Based upon previous conversations with [redacted] A&I supervisory personnel met with [redacted] and were surprised over [redacted]' review findings.[22] [redacted] previously contacted the supervisory staff on numerous occasions and extensively discussed and concurred with the need for SPMP positions within Multi-disciplined Review Teams. [redacted] received every document she requested. [redacted]. [redacted] led the supervisors to believe that OIG agreed that the A&I SPMP positions properly claimed enhanced funding.

Insufficient Time Caused the Review to be Cursory.

Due to time constraints, OIG indicated that they limited their review to only duty statements. However, the CMS Review Guide[23] requires (emphasis added):

> Obtain and review the official position descriptions, job announcements, job classifications, position postings, vacancy announcements, personnel records, etc., for those SPMP positions you have listed. You should ensure through the State's personnel system that the information you are reviewing is current for the period being reviewed. Evaluate the SPMP positions in terms of criterion 3. Based on this review, establish all those positions whose functions fully or partly qualify or do not qualify as SPMP at this point.
>
> For those SPMP positions for which you still have questions, conduct interviews with the incumbents and their supervisors.

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19 Statements available upon request.
20 Review Guide, page 9.
21 Specifications available upon request
22 Statements available upon request.
23 Review Guide, page 21, items 6 B & C.

At the exit conference with A&I, OIG stated they reviewed only the duty statements due to insufficient time and that the review was cursory and contrary to the CMS Review Guide.

Medi-Cal Operations Division (MCOD) Response

The following represents an overview of the OIG draft audit findings specifically attributed to MCOD SPMP positions.

Finding 2: *California incorrectly claimed salaries and other compensation for positions not requiring medical expertise in the amount of $1,986,873 (Federal share).*

Of this amount, $1,497,999 was identified as being incorrectly claimed by MCOD. This amount is attributed to 110 MCOD SPMP positions that were identified by the OIG as "**not requiring medical expertise**". MCOD disagrees with the OIG findings related to 98 of these positions, on the basis that these positions and associated activities do, in fact, require medical expertise. (See below for detailed response to Audit Finding 2).

MCOD does not dispute the OIG findings for the remaining 12 positions.

Finding 3: *California incorrectly claimed salaries and other compensation for supporting staff not directly supervised by medical professionals in the amount of $352,532 (Federal share).*

MCOD does not dispute the OIG findings for these 43 positions and is taking immediate steps to correct the reporting relationships that resulted in this finding.

Based on the above overview, the following discussions focus on the 98 positions associated with Finding 2 of the OIG's draft audit report.

MCOD'S DETAILED RESPONSE TO AUDIT FINDING 2

The following table illustrates the distribution of positions, by classification, identified in the OIG's draft audit report. This table also identifies where these positions are located within MCOD.

MCOD'S DISTRIBUTION OF SPMP POSITIONS					
Classifications	Home & Community-Based Services Branch		Northern & Southern Field Operations Branches		Field Operations Support Branch
(Total # of Positions per Classification Identified)	In-Home Operations Section	Monitoring Oversight Section	Utilization Review	Medical Case Management	Appeals Unit
1. Nurse Evaluator (NE) IV **(1)**			1		
2. NE III **(47)**	6	1	15	21	4
3. NE II **(46)**	37	9			
4. Nurse Consultant II **(1)**	1				
5. Medical Consultant I **(1)**	1				
6. Health Program Specialist (HPS) I **(1)**	1				
7. Office Technician (T) **(1)**	1				
Office Services Supervisor (OSS) (3)			***3***		
Senior Word Processing Technician (1)			***1***		
Information Systems Technician (1)			***1***		
Medical Technician I (1)			***1***		
Medical Technician II (5)			***5***		
Medical Technician III (1)			***1***		
Totals	**47**	**10**	**28**	**21**	**4**
				Grand Total	**110**

Note: MCOD does not dispute the OIG findings relative to the 12 positions highlighted in gray and identified above in ***bold italic font.***

However, MCOD is disputing the remaining 98 positions identified in the above table (classifications 1 thru 7). The following discussions represent the basis on which MCOD is disputing the OIG findings for these remaining 98 positions. For ease of reference, each classification is addressed separately and the corresponding Branch and program area is identified accordingly

1. NURSE EVALUATOR (NE) IV CLASSIFICATION (1 POSITION)

The California State Personnel Board (SPB) classification rules require that an incumbent in this classification possess a valid license as a Registered Nurse.

The NE IV oversees the program activities of NE III's and Medical Consultants in the Southern Field Operations Branch. A major portion of the day-to-day activities performed by the NE IV includes medical review of the Treatment Authorization Request (TAR) for medical necessity (aka Utilization Review {UR}). The NE IV provides critical oversight and necessary training to NE IIIs to ensure that only medically necessary services are approved. As such, this position is a licensed medical professional, whose function and classification requires medical expertise to appropriately oversee the adjudication and medical review activities performed by NE IIIs.

2. NE III CLASSIFICATION (47 POSITIONS)

The California SPB classification rules require that an incumbent in this classification possess a valid license as a Registered Nurse.

In addition, these positions perform administrative oversight activities including, but not limited to, administrative case management, medical file review, and quality assurance of medical TARs, all of which require medical expertise.

In-Home Operations Section (IHO) (6 positions)

The NE IIIs in MCOD's Home and Community-Based Services Branch (HCBSB), IHO Section, provide appropriate medical supervision and medical guidance to their subordinate NE IIs in the development of cases and authorization of medical services. The NE IIIs provide administrative case management and quality assurance medical review/advice to subordinate NE IIs. Day-to-day activities of these NE IIIs include, but are not limited to, responsibility for review, analysis and problem resolution on initial IHO waiver and Early Periodical Screening, Diagnosis, and Treatment (EPSDT) medical services requests, and evaluation of changes to currently approved service plans including case coordination of consultations between the NE IIs, IHO Headquarters staff, Medical Consultants, and other Departmental staff. In addition, IHO NE IIIs regularly act as the state's nursing expert at fair hearings. As such, knowledge of professional nursing principles and techniques are essential in the performance of the NE III duties.

Monitoring & Oversight Section (MOS) (1 position)

HCBSB's MOS utilizes the NE III to provide appropriate medical supervision and medical guidance to subordinate NE IIs. MOS staff do not provide case management services or medical assistance. Rather, direct case management is provided by local agencies at Regional Centers, Pilot Project facilities, and Multipurpose Senior Services Program (SSP) sites. Day-to-day activities of the NE III include, but are not limited to, monitoring and oversight of medical care provided to beneficiaries receiving services through several waivers, collaborating with other state agencies regarding on-site review findings and providing recommendations for corrective actions. As such, knowledge of professional nursing principles and techniques are essential in the performance of the NE III duties.

TAR/Utilization Review (UR) (15 positions)
These TAR/UR NE III positions located in the Northern and Southern Field Operations Branches are licensed medical professional staff, whose functions require medical expertise to appropriately oversee the medical adjudication functions and related duties performed by NE IIs. This includes interpretation of medical regulations and statutes affecting clinical outcomes and appropriate authorization of medical services. The NE IIIs provide appropriate medical supervision and medical guidance to their subordinate NE IIs, as well as identify training needs related to medical issues for the NE IIs. A major portion of activities performed by the NE III's includes review of TARs for medical necessity and quality assurance to ensure consistency in medical decisions on a statewide basis. Specifically, the TAR/UR NE IIIs provide critical medical oversight to daily in-house and on-site utilization reviews of medical necessity of acute hospital stays, as well as the daily processing of non-acute TARs received from providers of services to Medi-Cal beneficiaries. As such, knowledge of professional nursing principles and techniques are essential in the performance of the NE III duties.

Medical Case Management (MCM) Program (21 positions)
The MCM program NE IIIs oversee the activities of NE II case managers located in the Northern and Southern Field Operations Branches. These state-licensed nurses ensure that medically necessary services for severely chronic or critically ill patients are provided. This includes interpretation of medical regulations and statutes affecting clinical outcomes and appropriate authorization of medical services. The NE IIIs provide appropriate medical supervision and medical guidance to their subordinate NE IIs. Day-to-day activities of these NE IIIs include, but are not limited to, providing critical medical oversight of NE II reviews of short-term and long-term MCM cases, including interaction with all levels of health professional staff, such as, physicians, discharge planners, home health agencies, and other health related entities. A major portion of activities performed by the NE III's includes review of TARs for medical necessity and quality assurance to ensure consistency in medical decisions on a statewide basis. The NE IIIs also provide oversight to NE II evaluations of beneficiaries' diagnosis and medical needs to determine amenable services under the MCM Program. As such, knowledge of professional nursing principles and techniques are essential in the performance of the NE III duties.

Provider Appeals Unit (4 positions)
The NE III staff in MCOD's Field Operations Support Branch, Provider Appeals Unit, are responsible for providing medical supervision and medical guidance to subordinate NE IIs. The NE IIIs ensure that consistent medical decisions are made by the NE II for the appropriate level of medical care, and that consistent program criteria is used for evaluating second-level appeals.

Their medical expertise is paramount in determining if the NE IIs are making appropriate decisions based on medical necessity for the service requested by the provider. The NE III also works collaboratively with the Medical Consultant ("physician medical consultant") in reaching final appeal decisions.

3. NE II CLASSIFICATION (46 POSITIONS)

The California SPB classification rules require that an incumbent in this classification possess a valid license as a Registered Nurse.

In addition, these positions perform administrative oversight activities including, but not limited to, administrative case management, medical file review, and quality assurance of medical TARs, all of which require medical expertise.

IHO Section (37 positions)

HCBSB IHO staff activities performed under the federal HCBS waivers or in the authorization of services under Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Supplemental Services are administrative in nature. IHO's NE IIs provide administrative case management, authorization of services, provider and beneficiary training, consultation, etc. IHO nurses do not perform any "hands on" medical services or medical case management. These services are authorized administratively by IHO nurses and are performed at the local level by home health agencies or individual nurse providers. The provisions of the federally approved HCBS waivers require that IHO utilize Registered Nurses to perform this work.

MOS (9 positions)

HCBSB MOS staff do not provide case management services or medical assistance. Case management is provided by local agencies at Regional Centers, Pilot Project facilities, and Multipurpose Senior Services Program (SSP) sites.

Although the NE IIs do not provide direct case management or medical assistance, they do perform duties and have responsibilities that require daily use of their professional medical knowledge. NE II staff is responsible for ensuring waiver-related regulations, policies, procedures, and the delivery of services are consistent with the Home and Community Based Services (HCBS) waiver and Medicaid law. The core activities performed by NE staff are primarily completed in the field and include: chart review; local staff interviews; consumer/client interviews; level of care determinations for the purposes of confirming consumer/client health and safety and appropriateness of care; and correspondence and report development. The results of the fieldwork completed by the NE IIs help ensure compliance with waiver provisions and lead to improved services provided by agencies such as the Department of Developmental Services and the Department of Aging, as well as Regional Centers, Pilot Project facilities, and provider sites. Activities performed under the federal HCBS waivers or in the authorization of services under EPSDT are administrative in nature. NE IIs provide administrative case management, authorization of services, provider and beneficiary training, consultation, etc. Nurses do not perform any "hands on" medical services or medical case management. These services are authorized administratively by nurses and are performed at the local level by home health agencies or individual nurse providers. The provisions of the HCBS waivers require that Registered Nurses perform this work.

4. NURSE CONSULTANT (NC) II CLASSIFICATION (1 POSITION)
The California SPB classification rules require that an incumbent in this classification possess a valid license as a Registered Nurse.

The NC II in HCBSB's IHO Section acts as lead over a multidisciplinary unit of analysts and nurses who administer three federal HCBS waivers, develop policy and procedures for staff, and conduct statewide quality assurance functions. Specifically, the NC II provides nursing consultation to IHO staff to ensure an appropriate home medical program is established for IHO waiver beneficiaries (including, but not limited to, evaluations of home safety, plan of treatment evaluation, back-up caretaker provisions). The NC II also provides nursing expertise at State fair hearings and conducts quality assurance activities to ensure proper level of care determinations were made for beneficiaries enrolled in the three IHO waivers.

5. MEDICAL CONSULTANT (MC) I CLASSIFICATION (1 POSITION)
California SPB classification rules require that the incumbent in this position possess a valid license as a medical doctor.

The MC I in HCBSB's IHO Section provides medical consultation statewide on issues relating to the authorization of medically necessary services for individuals who are medically fragile, with a physical or developmental disability, and/or the frail elderly. The MC I provides consultative advice only, and does not perform "hands on" medical activities.

6. HEALTH PROGRAM SPECIALIST (HPS) I CLASSIFICATION (1 POSITION)
MCOD believes that this position may have been erroneously identified by the OIG. Specifically, eight months prior to occupying this position (October 2002 through May 2003), the incumbent associated with this position was an NC II performing the duties described above (*# 4 NC II Classification).* Therefore, the incumbent was properly claimed at the enhanced Federal rate from October 2002 through May 2003. In June 2002, when the incumbent was hired to the HPS I position, this position was claimed at the non-enhanced Federal rate. However, MCOD did find that from July through September 2002, this HPS I position was incorrectly charged at the enhanced Federal rate. Therefore, MCOD's believes that this position was claimed incorrectly for only three months within the audit timeframe. MCOD is taking immediate action to ensure the accuracy of future claiming for this position.

7. OFFICE TECHNICIAN (OT) (T) CLASSIFICATION (1 POSITION)
The OT in HCBSB's IHO Section's Southern Regional Office provides administrative support to all NEs in the area of TAR adjudication. This OT position is directly supervised by a qualifying NE III. In addition, MCOD's review of payroll records indicates that this position was charged at the enhanced Federal rate for only three months during the audit timeframe (October 2002 through December 2002). During the remaining nine months (January 2003 through September 2003), this position was claimed at the non-enhanced Federal rate even though it qualified for claiming at the enhanced rate.

SUPPORTING FEDERAL AUTHORITY

Based on the following Federal citations, claiming the enhanced Federal rate for the classifications discussed above (based on the administrative activities they perform and the fact that, in order to perform their administrative activities, incumbents must utilize their medical expertise) is appropriate.

Specifically, the positions discussed above meet all of the qualifying criteria found under 42 CFR § 432.50(d)(i - iv), as follows:

42 CFR § 432.50(d)(i): Expenditures are for activities directly related to the administration of the program and do not include expenditures for medical assistance.

MCOD's SPMP positions identified above perform administrative oversight activities including, but not limited to, administrative case management, medical file review, and quality assurance of medical TARs, all of which require medical expertise.

MCOD SPMP staff does not provide direct medical assistance.

42 CFR § 432.50(d)(ii): The SPMPs have professional education and training in the field of medical care or appropriate medical practice (a 2-year or longer program).

In accordance with California SPB classification rules, all NE IIs, NE IIIs, and NC IIs must possess a valid registered nursing license, which requires graduation from a two-year accredited degree program. In addition, SPB classification rules require that the MC I possess a valid license as a medical doctor.

42 CFR § 432.50(d)(iii): The SPMPs are in positions that have duties and responsibilities that require professional medical knowledge and skills.

MCOD's NE II, NE III, NC II, and MC I staff perform duties that require professional medical knowledge and skills. Additionally, NE III staff must utilize their nursing backgrounds in order to provide appropriate supervision and support for the NE II staff activities.

42 CFR § 432.50(d)(iv): A State-documented employer-employee relationship exists between the Medicaid agency and the SPMP and directly supporting staff.

MCOD SPMP and the OT are full-time, permanent employees of the California State Department of Health Services, the State's Medicaid agency.

42 CFR § 432.50(d)(v): The directly supporting staff provides clerical services necessary for the completion of the professional medical responsibilities of the SPMP.

MCOD's OT provides necessary clerical support for the completion of the professional medical responsibilities of the SPMP. In addition, the OT is directly supervised by an SPMP.

Prevention Services Division Response

Finding 2: *California incorrectly claimed salaries and other compensation for positions not requiring medical expertise in the amount of $1,986,873 (Federal share).*

Response:

The Childhood Lead Poisoning Prevention Branch (Lead) emphatically believes that SPMP funds were properly claimed for the Nurse Consultant III (Supervisor) in position number 804-539-8179-001, during the period October 2002 through September 2003. The Nurse Consultant III met all requirements for SPMP personnel detailed in the draft OIG audit report, as follows: 1) she had the qualifications necessary for claiming SPMP in that she was licensed as a Registered Nurse at all times during the audit period; and 2) the positions she held required medical SPMP expertise, as demonstrated by their job specifications and the duties that she performed.

During the period October 1, 2002 through September 30, 2003 the employee in question held the following positions: October 2002, Nurse Consultant II; and November 1, 2002 to September 30, 2003, Nurse Consultant III.

State job specifications support the claim for enhanced funding for both positions, as follows:

1) Nurse Consultant II: "plans, develops, organizes, monitors, and evaluates program studies on the delivery of health services…develops and evaluates program standards, policies, and procedures…"

2) Nurse Consultant III (Supervisor): "…personally perform the most difficult, complex, or sensitive consultation and policy and program development work."

Additionally, the Nurse Consultant II (NC II) position assigned to the Medi-Cal Lead program was not filled until April 2003. Therefore, the Nurse Consultant III, while serving as a Nurse Consultant III, also completed work that otherwise would be performed by the NCII. Following the hire of the NCII in April 2003, Nurse Consultant III was also responsible for the SPMP training of the new NCII.

The Nurse Consultant III's job specifications and responsibilities required her to have medical expertise. Specific activities that the Nurse Consultant III was involved in, which require medical expertise and which as an SPMP are eligible to be reimbursed under the enhanced rate, are as follows:

- Provided technical assistance to State staff and local health jurisdictions in the design, development, and review of health related professional materials.
- Planning and developing collaborative activities for the Medi-Cal Lead Program by participating in the development of Medi-Cal Lead Program goals, objectives, activities, and evaluation tools.
- Participated in intra/interagency coordination and collaboration by attending local Childhood Lead Poisoning Prevention Program regional meetings.
- Provided training to the new SPMP (NC II) in performance of allowable SPMP administrative activities (e.g., Medi-Cal Program planning and administration, quality assurance, intra/interagency collaboration and coordination).

In summary, the Nurse Consultant III met all federal requirements for claiming enhanced SPMP status. She was licensed as a Registered Nurse and the duties that she performed required medical expertise.

Primary Care and Family Health Response

The Children's Medical Services (CMS) Branch, within Primary Care and Family Health (PCFH) disagrees with the OIG's disqualification of one of the Branch's Nurse Consultant (NC) III (Specialist) position for claiming Federal Medicaid funding at the enhanced rate for skilled professional medical personnel (SPMP). Specifically, the audit report indicates that this position, 1 of 152 department-wide, does not require professional medical knowledge and skills. The report cited examples of the types of duties and responsibilities not eligible for the enhanced rate included program management of services not requiring medical expertise, accounting and auditing, budgeting, and supervising personnel.

The NC III (Specialist) position statement identified functions as the Branch's technical specialist in the development, implementation, oversight, and monitoring of the statewide California Children's Services (CCS)/Medi-Cal Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Supplemental Services Benefit Program. The incumbent is a qualified medical professional (a Registered Nurse with a Masters in Nursing Degree) who spends at least 50% of the time doing the following:

- making clinical decisions regarding case management of CCS/Medi-Cal clients relative to eligibility;
- performing case management activities for EPSDT Supplemental Services requests for nursing and related components statewide;
- assisting and participating in the appeal process for denied cases
- participating in case conferences; and
- providing complex technical consultation for the nursing component of the program to nurses and other health professionals statewide.

The duties described above clearly require professional medical knowledge and skills.

In a discussion with the OIG regarding the medical knowledge and skills component of this position, the OIG representative actually stated it was the EPSDT function itself that disqualified the position from the enhanced SPMP claiming. CMS staff then reviewed the Title XIX Financial Management Review Guide issued by the Centers for Medicare and Medicaid Services in February 2002. The guide identifies examples of functions that do not require professional medical expertise to fulfill and would not qualify for enhanced funding regardless of the qualifications of the incumbent. EPSDT is referred to in this excluded listing as follows:

- EPSDT, including all outreach activities such as notifying clients of required screens from a periodicity schedule, scheduling appointments, informing clients, and arranging transportation.

The activities described above associated with EPSDT do not require professional medical expertise and are not the duties expected of the incumbent in the position. The staff person is required to implement the process to provide California's expansion of medically necessary services to Medi-Cal beneficiaries under 21 years of age who have a CCS-eligible medical condition as per California Code of Regulations, Title 22, Sections 51340 and 51340.1. The process that this staff person is responsible for is the CCS program's implementation of the federal Medicaid requirement to provide services that would 'correct or ameliorate' a child's condition, even if not available to the rest of the Medi-Cal population. The CCS program has, for the past 10 years, centralized this review function at the CMS Branch to ensure that only medically appropriate services are authorized above and beyond Medi-Cal benefits. This staff person is not responsible for the provision of Early and Periodic Screening Services (the services identified in the item above), that in California is under the management of the Child Health and Disability Prevention Program, also administered by the Children's Medical Services Branch.

The Financial Management Review Guide's listing of examples of functions that would meet the criteria of qualifying for enhanced federal funding include some of the same duties the NC III (Specialist) performs related to EPSDT Supplemental Services. Specifically, these are:

- furnishing expert medical opinion for the adjudication of administrative appeals;
- assessing the necessity for and adequacy of medical care and services; and
- assessing, through case management activities, the necessity for and adequacy of medical care and services by individual recipients.

The duties of the NC III (Specialist) position in the CMS Branch performing EPSDT Supplemental Services functions do necessitate professional medical expertise and as such, the CMS Branch requests reconsideration of this position's disqualification for claiming enhanced Federal Medicaid funding.

Maternal, Child and Adolescent Health Branch Response to Office of Inspector General

This is in response to the Findings and Recommendations provided to the Maternal, Child, and Adolescent Health (MCAH) Branch by the Office of Inspector General (OIG) for the period of October 1, 2002 through September 30, 2003.

FINDING:
Contrary to Federal regulations, California claimed Federal enhanced funding for salaries and other compensation for positions not requiring medical expertise.

RECOMMENDATION:
Strengthen controls to ensure that costs claimed at the enhanced rate for skilled professional medical personnel (SPMP) are limited to positions that require medical expertise.

RESPONSE:
The Maternal, Child, and Adolescent Health Branch (MCAH) position number 804-920-7715-001 for the Chief of the Programs and Policy Section (PPS) was disallowed from claiming at the enhanced rate. The OIG stated that a supervisory position does not require medical expertise.

MCAH does not concur with the finding by the OIG. Although the PPS Chief's position is that of a supervisor, this position's activities require medical expertise to efficiently perform the duties and responsibilites in the duty statement. Therefore, MCAH maintains the duties of this position substantiates the 10 percent claimed at the enhanced SPMP rate.

The PPS Chief's classification is a Public Health Medical Officer III, and therefore, must be occupied by a board certified physician licensed to practice in the State of California. The position was filled with a board certified, licensed physician. In addition, this position's duties and responsibilities require professional medical knowledge and skills that meet the requirements stated under Section 1903(a)(2) of the Social Security Act and definitions stated under regulations 42 CFR § 432.50(a) and 42 CFR § 432.50 (d) (ii) and (iii) to claim at the enhanced SPMP rate.

Following are examples of enhanced SPMP activities performed by the PPS Chief necessary for the proper and efficient administration of the approved Medicaid State Plan:

SPMP Program Planning and Policy Development

- Develop and implement program policy for the appropriate delivery of MCAH services to the local health jurisdictions that work to improve the health status of California's women, infants, children and adolescents (including low-income and Medi-Cal recipients) for improved birth outcomes, a reduction in low birthweight babies, and reduced incidences of teenage pregnancies.
- Participate in the development of program direction and annual scope of work, set goals, objectives, activities, and evaluation tools to measure Medi-Cal outcomes of 10 major programs and special projects managed by MCAH. The duties of this position include reviewing medical outcome data, reviewing medical journals and determining the appropriate local health interventions that will, for example, reduce the infant mortality rate in the African American population as well as reduce health disparities among ethnic populations.
- Provide consultation and technical assistance in the design, development, and review of health related professional educational material.
- Provide expertise necessary to conduct a continuing assessment of statewide needs, programs, and resources for maternal, child, and adolescent health.
- Recommend and initiate the development of needed preventive programs and services.
- Define outcomes to be covered by the programs.

SPMP Intra/Inter Agency Collaboration & Administration

- Coordinate the planning, development and delivery of services with other public and private resources for mothers, children and adolescents.
- Provide technical assistance to other agencies/programs that interface with the medical care needs of clients.
- Perform collaborative activities that involve planning and resource development with other agencies that will improve the cost effectiveness of the health care delivery system and improve availability of medical services.

Quality Management by SPMP

- Periodically review program protocols.
- Develop standards for MCAH services.
- Establish standard protocols for treatment of high-risk conditions.

<u>CDHS CONCLUSION</u>

CDHS agrees that it charged overhead costs based on the understanding of OMB rules that allow overhead to be charged at the same rate as the related direct costs. However, these rules are inconsistent with the CMS rules for the enhanced rate of 75%. CDHS has made appropriate adjustments. CDHS also agrees with Finding 3 where CDHS improperly claimed for 43 positions that were not directly supervised by medical professionals. However, CDHS believes that the majority of SPMP positions OIG identified as "not requiring medical expertise" are factually incorrect. For this reason, CDHS requests OIG to re-evaluate the draft audit report findings and more accurately reflect its conclusions in light of the foregoing evidence and information.

ATTACHMENT

I

List of Employees Whose Positions did Not Require Medical Expertise

Count	Branch	Name	First	Position	Classification
1	MCOD	[redacted]	[redacted]	805-234-1360-001	IST
2	MCOD	[redacted]	[redacted]	805-240-8338-001	HPS I
3	MCOD	[redacted]	[redacted]	805-240-7787-001	MED CON I
4	MCOD	[redacted]	[redacted]	805-228-8028-003	MED TECH I
5	MCOD	[redacted]	[redacted]	805-225-8032-002	MED TECH II
6	MCOD	[redacted]	[redacted]	805-229-8032-002	MED TECH II
7	MCOD	[redacted]	[redacted]	805-229-8032-004	MED TECH II
8	MCOD	[redacted]	[redacted]	805-233-8032-002	MED TECH II
9	MCOD	[redacted]	[redacted]	805-233-8032-003	MED TECH II
10	MCOD	[redacted]	[redacted]	805-229-8033-001	MED TECH III (SUPV)
11	MCOD	[redacted]	[redacted]	805-240-8195-004	NC II
12	MCOD	[redacted]	[redacted]	805-240-8144-703	NE II
13	MCOD	[redacted]	[redacted]	805-240-8144-704	NE II
14	MCOD	[redacted]	[redacted]	805-240-8144-706	NE II
15	MCOD	[redacted]	[redacted]	805-240-8144-707	NE II
16	MCOD	[redacted]	[redacted]	805-240-8144-708	NE II
17	MCOD	[redacted]	[redacted]	805-240-8144-709	NE II
18	MCOD	[redacted]	[redacted]	805-240-8144-710	NE II
19	MCOD	[redacted]	[redacted]	805-240-8144-711	NE II
20	MCOD	[redacted]	[redacted]	805-240-8144-714	NE II
21	MCOD	[redacted]	[redacted]	805-240-8144-716	NE II
22	MCOD	[redacted]	[redacted]	805-240-8144-717	NE II
23	MCOD	[redacted]	[redacted]	805-240-8144-722	NE II
24	MCOD	[redacted]	[redacted]	805-240-8144-723	NE II
25	MCOD	[redacted]	[redacted]	805-240-8144-724	NE II
26	MCOD	[redacted]	[redacted]	805-240-8144-727	NE II
27	MCOD	[redacted]	[redacted]	805-240-8144-728	NE II
28	MCOD	[redacted]	[redacted]	805-240-8144-730	NE II
29	MCOD	[redacted]	[redacted]	805-240-8144-731	NE II
30	MCOD	[redacted]	[redacted]	805-240-8144-731	NE II
31	MCOD	[redacted]	[redacted]	805-240-8144-732	NE II
32	MCOD	[redacted]	[redacted]	805-240-8144-733	NE II
33	MCOD	[redacted]	[redacted]	805-240-8144-734	NE II
34	MCOD	[redacted]	[redacted]	805-240-8144-735	NE II
35	MCOD	[redacted]	[redacted]	805-240-8144-737	NE II
36	MCOD	[redacted]	[redacted]	805-240-8144-738	NE II
37	MCOD	[redacted]	[redacted]	805-240-8144-739	NE II
38	MCOD	[redacted]	[redacted]	805-240-8144-739	NE II
39	MCOD	[redacted]	[redacted]	805-240-8144-740	NE II
40	MCOD	[redacted]	[redacted]	805-240-8144-741	NE II
41	MCOD	[redacted]	[redacted]	805-240-8144-742	NE II
42	MCOD	[redacted]	[redacted]	805-240-8144-744	NE II
43	MCOD	[redacted]	[redacted]	805-240-8144-746	NE II
44	MCOD	[redacted]	[redacted]	805-240-8144-747	NE II
45	MCOD	[redacted]	[redacted]	805-240-8144-759	NE II
46	MCOD	[redacted]	[redacted]	805-240-8144-762	NE II
47	MCOD	[redacted]	[redacted]	805-240-8144-766	NE II
48	MCOD	[redacted]	[redacted]	805-240-8144-772	NE II
	MCOD	[redacted]	[redacted]	805-240-8144-718	NE II
49	MCOD	[redacted]	[redacted]	805-240-8144-773	NE II
50	MCOD	[redacted]	[redacted]	805-240-8144-774	NE II
51	MCOD	[redacted]	[redacted]	805-240-8144-775	NE II

52	MCOD	[redacted]	805-240-8144-776	NE II
53	MCOD	[redacted]	805-240-8144-777	NE II
54	MCOD	[redacted]	805-240-8144-778	NE II
55	MCOD	[redacted]	805-240-8144-779	NE II
56	MCOD	[redacted]	805-240-8144-780	NE II
57	MCOD	[redacted]	805-240-8144-781	NE II
58	MCOD	[redacted]	805-220-8145-003	NE III
59	MCOD	[redacted]	805-220-8145-005	NE III
	MCOD	[redacted]	805-220-8145-005	NE III
60	MCOD	[redacted]	805-220-8145-006	NE III
61	MCOD	[redacted]	805-220-8145-008	NE III
62	MCOD	[redacted]	805-222-8145-001	NE III
63	MCOD	[redacted]	805-222-8145-002	NE III
64	MCOD	[redacted]	805-222-8145-004	NE III
65	MCOD	[redacted]	805-222-8145-008	NE III
66	MCOD	[redacted]	805-222-8145-009	NE III
67	MCOD	[redacted]	805-222-8145-010	NE III
68	MCOD	[redacted]	805-222-8145-011	NE III
69	MCOD	[redacted]	805-222-8145-012	NE III
70	MCOD	[redacted]	805-222-8145-013	NE III
71	MCOD	[redacted]	805-222-8145-014	NE III
72	MCOD	[redacted]	805-222-8145-015	NE III
73	MCOD	[redacted]	805-222-8145-016	NE III
74	MCOD	[redacted]	805-225-8145-002	NE III
75	MCOD	[redacted]	805-225-8145-004	NE III
76	MCOD	[redacted]	805-225-8145-005	NE III
77	MCOD	[redacted]	805-225-8145-005	NE III
78	MCOD	[redacted]	805-225-8145-006	NE III
79	MCOD	[redacted]	805-225-8145-008	NE III
80	MCOD	[redacted]	805-225-8145-009	NE III
81	MCOD	[redacted]	805-225-8145-010	NE III
82	MCOD	[redacted]	805-227-8145-001	NE III
83	MCOD	[redacted]	805-227-8145-003	NE III
84	MCOD	[redacted]	805-227-8145-004	NE III
85	MCOD	[redacted]	805-227-8145-005	NE III
86	MCOD	[redacted]	805-228-8145-002	NE III
87	MCOD	[redacted]	805-228-8145-003	NE III
88	MCOD	[redacted]	805-228-8145-011	NE III
	MCOD	[redacted]	805-228-8145-011	NE III
89	MCOD	[redacted]	805-229-8145-002	NE III
90	MCOD	[redacted]	805-229-8145-003	NE III
91	MCOD	[redacted]	805-229-8145-004	NE III
92	MCOD	[redacted]	805-229-8145-005	NE III
93	MCOD	[redacted]	805-229-8145-006	NE III
94	MCOD	[redacted]	805-229-8145-008	NE III
95	MCOD	[redacted]	805-233-8145-005	NE III
96	MCOD	[redacted]	805-233-8145-006	NE III
97	MCOD	[redacted]	805-233-8145-007	NE III
98	MCOD	[redacted]	805-240-8145-001	NE III
99	MCOD	[redacted]	805-240-8145-002	NE III
100	MCOD	[redacted]	805-240-8145-003	NE III
101	MCOD	[redacted]	805-240-8145-004	NE III
102	MCOD	[redacted]	805-240-8145-005	NE III
103	MCOD	[redacted]	805-240-8145-007	NE III
104	MCOD	[redacted]	805-240-8145-008	NE III
	MCOD	[redacted]	805-220-8145-004	NE III

105	MCOD	[redacted]	805-222-8149-002	NE IV
106	MCOD		805-222-1148-814	OSS I (T)
107	MCOD		805-227-1148-740	OSS I (T)
	MCOD		805-222-1148-804	OSS I (T)
108	MCOD		805-234-1148-805	OSS I (T)
109	MCOD		805-240-1139-006	OT (T)
110	MCOD		805-222-1213-001	SR WPT
111	A&I		806-104-5393-705	AGPA
112	A&I		806-105-7946-001	EXAMINER II
113	A&I		806-103-8195-001	NC II
114	A&I		806-102-8144-001	NE II
115	A&I		806-102-8144-708	NE II
116	A&I		806-102-8144-710	NE II
117	A&I		806-103-8144-701	NE II
118	A&I		806-103-8144-702	NE II
119	A&I		806-103-8144-703	NE II
120	A&I		806-104-8144-701	NE II
121	A&I		806-104-8144-702	NE II
122	A&I		806-104-8144-703	NE II
123	A&I		806-104-8144-704	NE II
124	A&I		806-104-8144-709	NE II
125	A&I		806-104-8144-710	NE II
126	A&I		806-105-8144-701	NE II
127	A&I		806-105-8144-702	NE II
128	A&I		806-105-8144-703	NE II
129	A&I		806-105-8144-704	NE II
130	A&I		806-105-8144-706	NE II
131	A&I		806-104-8144-901	NE II
	A&I		806-105-8144-707	NE II
132	A&I		806-105-8144-711	NE II
133	A&I		806-105-8144-712	NE II
134	A&I		806-105-8144-713	NE II
135	A&I		806-106-8144-702	NE II
136	A&I		806-106-8144-703	NE II
137	A&I		806-106-8144-704	NE II
138	A&I		806-106-8144-704	NE II
139	A&I		806-106-8144-705	NE II
140	A&I		806-107-8144-706	NE II
141	A&I		806-107-8144-701	NE II
142	A&I		806-107-8144-703	NE II
143	A&I		806-107-8144-704	NE II
144	A&I		806-107-8144-705	NE II
145	A&I		806-107-8144-708	NE II
146	A&I		806-102-7975-001	PC I
147	A&I		806-102-7975-004	PC I
148	A&I		806-104-7975-005	PC I
149	A&I		806-104-7975-006	PC I
150	CMS		804-860-8181-005	NC III - Spec
151	MCH		804-920-7715-001	PHMO III
152	CLPP		804-539-8179-001	NC III - Sup